

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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ELAINE BLANCHARD, KEEDRAN )  
FRANKLIN, PAUL GARNER, and )  
BRADLEY WATKINS, )  
) )  
Plaintiffs (dismissed), )  
) )  
and )  
) )  
ACLU OF TENNESSEE, INC., )  
) )  
Intervening Plaintiff, )  
) )  
v. )  
) )  
CITY OF MEMPHIS, TENNESSEE, )  
) )  
Defendant. )

Case No. 2:17-cv-2120-JPM-egb

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**ORDER DENYING MOTION FOR RECONSIDERATION**

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Before the Court is the Motion for Reconsideration of Interlocutory Order (“Motion for Reconsideration”) filed by Intervening Plaintiff ACLU of Tennessee, Inc. (“Plaintiff”) on July 13, 2018. (ECF No. 96.) On July 12, 2018, the Court granted Defendant City of Memphis, Tennessee’s Motion for *In Camera* Review. (ECF No. 95.) Plaintiff now asserts that the motion was granted “under a mistaken belief that Defendant’s Certificate of Consultation indicated that Plaintiff did not oppose the relief sought in the Motion.” (ECF No. 96 ¶ 2.)

Defendant’s Motion for *In Camera* Review included a Certificate of Consultation stating that “Counsel for ACLU-TN did not object to the City seeking permission to request *in camera* review of the Affidavits, but reserves the right to object at a later time.” (ECF No. 86 at PageID

1639.) The parties “agree that the Certificate of Consultation in Defendant’s Motion for *In Camera* Review accurately captures the conversation of counsel.” (ECF No. 96 ¶ 4.)

The parties also agree, however, that their “conversation may not have accurately conveyed the scope of the parties’ understanding of the Plaintiff’s position, which is that while Plaintiff did not object to the Defendant seeking the relief requested of being allowed to file affidavits for *in camera* review, the Plaintiff would then file a substantive response objecting to the propriety of the *in camera* review.” (*Id.*) Essentially, therefore, Plaintiff’s counsel did not object to Defendant’s filing of the Motion for *In Camera* Review, but “intended to reserve Plaintiff’s right to respond and object to the Motion once counsel had the opportunity to review the arguments made by Defendant in their Motion.” (*See id.* ¶ 3.)

Under this Court’s Local Rules, parties cannot wait for a motion to be filed before deciding whether they oppose the substantive relief it requests. Instead, before a motion is filed, parties must consult and state their agreement or disagreement “as to all issues” raised by the motion. *See* LR 7.2(a)(1)(B) (requiring motions to “be accompanied by a certificate of counsel affirming that, after consultation between the parties to the controversy, they are unable to reach an accord as to all issues or that all other parties are in agreement with the action requested by the motion”). The question is not whether a party opposes the *filing* of a motion, but whether the party opposes the “action requested” by the motion. *See id.* Parties must answer that question before a motion is filed; they cannot “reserve [the] right to respond and object to the Motion [until] counsel ha[s] the opportunity to review the arguments made by [the other party] in their Motion.” (*See* ECF No. 96 ¶ 3.)

Accordingly, Plaintiff's Motion for Reconsideration is DENIED. The Court's Order Granting Motion for *In Camera* Review is not withdrawn, and the Court will conduct the *in camera* review of the affidavits of Sergeant Timothy Reynolds and Colonel Paul Wright of the Memphis Police Department.<sup>1</sup> After reviewing the affidavits *in camera*, however, the Court may, if warranted, require Defendant to disclose them to Plaintiff before ruling on Defendant's requests to seal documents. To that end, the Court will consider Plaintiff's Response In Opposition to Defendant's Motion for *In Camera* Review. (See ECF No. 96-1.)

**IT IS SO ORDERED**, this 16th day of July, 2018.

/s/ Jon P. McCalla  
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JON P. McCALLA  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The deadline for Defendant to file the affidavits is today, July 16, 2018. (ECF No. 95.)