

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
STATE OF NEBRASKA, *et al.*,)
)
Defendants.)
_____)

8:08CV271

JUDGMENT

Pursuant to the order entered this date pursuant to Fed. R. Civ. P. 60(b)(5) terminating the parties' settlement agreement, which constituted a judgment in this case ([filings 9](#) & [10](#)), and granting the parties' Joint Motion to Dismiss ([filing 114](#)), this matter is dismissed with prejudice.

DATED this 3rd day of August, 2015.

BY THE COURT:

s/ Richard G. Koff

Richard G Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | 8:08CV271 |
| |) | |
| v. |) | |
| |) | ORDER |
| STATE OF NEBRASKA, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

Final judgment in this case was entered on July 2, 2008, pursuant to a settlement agreement between the parties ([filing 10](#)). An order related to the settlement agreement specifically stated that “the settlement agreement . . . shall constitute a final judgment the entry of which shall be deemed for all purposes to have occurred when the same is recorded on the Court’s CM/ECF system” and “the undersigned retains continuing jurisdiction over this case and the parties to construe and enforce the settlement agreement.” ([Filing 9.](#))

Seven years later, and after all parties have agreed that the defendants have satisfactorily complied with the terms of the settlement agreement, the parties have filed a Joint Motion to Dismiss ([filing 114](#)), supporting brief ([filing 115](#)), and appendices ([filing 116](#)) seeking “to terminate the Settlement Agreement (ECF No. 10, July 2, 2008) in this case and to dismiss the case with prejudice.” ([Filing 114.](#)) I construe the parties’ request to be a motion for relief from this court’s July 2, 2008, judgment (which consisted of the settlement agreement) because “applying [the judgment/settlement agreement] prospectively is no longer equitable.” [Fed. R. Civ. P. 60\(b\)\(5\).](#)¹

¹“The one-year limit applicable to some of the grounds for relief in Rule 60(b) does not apply to Rule 60(b)(5). All that is required is that the motion be made in a ‘reasonable time.’” [11 Charles Alan Wright & Arthur R. Miller, et al., Federal Practice and Procedure § 2863](#) (3d ed. Westlaw 2015) (footnotes omitted).

Rule 60(b)(5) allows “relief if it is no longer equitable for the judgment to be applied prospectively.” The rule “applies to any judgment that has prospective effect,” and it “refers to some change in conditions that makes continued enforcement inequitable.” A motion made pursuant to Rule 60(b)(5) “is addressed to the sound discretion of the court,” and “on an adequate showing the courts will provide relief if it no longer is equitable that the judgment be enforced, whether because of subsequent legislation, a change in the decisional law, or a change in the operative facts.” [*Federal Practice and Procedure* § 2863](#) (footnotes omitted).

The “critical question” in a Rule 60(b)(5) analysis is whether the objective of the judgment, consent decree, declaratory judgment order, injunction, or the like “has been achieved. If a durable remedy has been implemented, continued enforcement of the order is not only unnecessary, but improper.” [*Horne v. Flores*, 557 U.S. 433, 448, 450-51 \(2009\)](#) (noting that Rule 60(b)(5) is especially useful in “institutional reform litigation,” and the rule contemplates “a flexible standard that seeks to return control to state and local officials as soon as a violation of federal law has been remedied”).

The parties have submitted thorough documentation establishing that the State of Nebraska has fully complied with the settlement agreement. Therefore, continued enforcement of this court’s original judgment ([filing 10](#)), which incorporated the settlement agreement, is inequitable within the meaning of Rule 60(b)(5), and relief from that original judgment is warranted. Accordingly, I shall grant the parties’ Joint Motion to Dismiss ([filing 114](#)), terminate the settlement agreement ([filing 10](#)), dismiss this case with prejudice, and enter judgment by separate document.

IT IS ORDERED:

1. The parties’ settlement agreement, which constituted a judgment in this case ([filings 9 & 10](#)), is terminated pursuant to Fed. R. Civ. P. 60(b)(5);
2. The parties’ Joint Motion to Dismiss ([filing 114](#)) is granted;

3. This case is dismissed with prejudice; and
4. Judgment shall be entered by separate document.

DATED this 3rd day of August, 2015.

BY THE COURT:

s/ *Richard G. Kopf*

Richard G. Senior United States District Judge

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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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| UNITED STATES OF AMERICA, |) | 8:08CV271 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | MEMORANDUM |
| |) | AND ORDER |
| THE STATE OF NEBRASKA, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

This case was closed after judgment was entered pursuant to a settlement agreement between the parties ([filing 10](#)). An order related to the settlement agreement states that “the undersigned retains continuing jurisdiction over this case and the parties to construe and enforce the settlement agreement.” ([Filing 9](#), at 2.)

The parties’ settlement agreement ([filing 10](#)) provides for the appointment of an independent expert “to monitor the State’s implementation of this Settlement Agreement.” The parties originally appointed John J. McGee, Ph.D., as the independent expert, and Dr. McGee served in that capacity from July 2008 to December 2009. However, on December 22, 2009, the parties filed with the court a joint notice of the resignation of Dr. McGee, effective December 31, 2009. The notice stated that the parties “have jointly selected Maria E. Laurence to assume the role of the Independent Expert in this case once Dr. McGee’s term ends.” ([Filing 48](#).)

The settlement agreement requires the expert to “submit monthly statements to the Court . . . detailing all expenses the Independent Expert incurred during the prior month.” ([Filing 10](#), at 4-5.) The agreement permits payment to consultants who assist the independent expert¹ and allows parties seven business days from receipt of the

¹“The cost of the Independent Expert, including the cost of any consultant to assist the Independent Expert, shall be borne by the State in this action. All reasonable expenses incurred by . . . any consultant, in the course of the performance of the duties of the Independent Expert . . . shall be reimbursed by the State.” ([Filing 10](#), at 5.)

independent expert's monthly statements to file any comments or objections regarding the statements. ([Filing 10](#), at 6.) After such comments or objections are submitted, the court is to review the matter and "order the clerk to make the appropriate payments" to the independent expert.

On July 24, 2015, independent expert Maria Laurence filed a final motion for reimbursement for professional services in the amount of **\$2,396.88** for services provided from January 1, 2015, to July 22, 2015. ([Filing 117](#).) Pursuant to the parties' Joint Motion on the Independent Expert's Reimbursement Motion and Disposition of the Court Account ([filing 118](#)), I shall order that payment be made to Maria Laurence for professional services in the amount requested.

Accordingly,

IT IS ORDERED:

1. The motion for reimbursement ([filing 117](#)) is granted, and the Clerk of the United States District Court for the District of Nebraska shall disburse funds for the consulting services of independent expert Maria Laurence in the amount of **\$2,396.88** for services provided from January 1, 2015, to July 22, 2015.
2. Such funds shall be paid from the interest-bearing account set up by the Clerk of Court pursuant to this court's prior order ([filing 9](#)).
3. The Clerk of Court shall disburse such funds as soon as practicable; that is, on the date that the interest-bearing account has been sufficiently replenished by the defendants to allow payment of the full amount.
4. As provided in this court's prior order ([filing 9](#)), the "Clerk is authorized to deduct from any monies deposited with the Clerk a fee of 10% of the interest earned

each time funds are disbursed.”

5. The parties’ Joint Motion on the Independent Expert’s Reimbursement Motion and Disposition of the Court Account (filing [118](#)) is granted. Because this is the final disbursement to be made to independent expert Maria E. Laurence, after such final payment is made, the Clerk of Court shall return to the State of Nebraska any residual amount remaining in the court’s interest-bearing account to which the State of Nebraska is entitled and shall then close the account.

DATED this 3rd day of August, 2015.

BY THE COURT:

s/ Richard G. Kopf

Richard G. Kopf

Senior United States District Judge

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