

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

STEVEN M. JACOB,)	4:10CV3073
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
ROBERT HOUSTON,)	
)	
Respondent.)	

This matter is before the court on its own motion. For the reasons set forth below, the court will order Nebraska Attorney General Doug Peterson and counsel for Respondent, James D. Smith, to appear before the court to show cause why financial sanctions should not be imposed.

I. BACKGROUND

On October 8, 2014, the court entered an order progressing this case to final disposition. The court ordered Respondent to either file all state courts records relevant to the cognizable claims or file a motion for summary judgment by December 8, 2014. (Filing No. [137](#) at [CM/ECF pp. 1-2](#).) On December 8, 2014, Respondent asked for, and was granted, an extension of time until December 15, 2014, to file the state court records. (Filing No. [138](#); Text Order dated December 9, 2014.)

On December 15, 2014, instead of filing the state court records, Respondent filed a “Motion for Clarification or Leave Regarding Filing of State Court Records and Answer” (Filing No. [140](#)), in which he asked for leave to file a hyperlinked index of the designation of the state court records. The court granted Respondent’s motion and ordered Respondent to file the hyperlinked index by December 22, 2014. (Filing No. [141](#).)

On December 22, 2014, Respondent filed state court records, a hyperlinked index, and an answer. Respondent did not file a brief in support of the answer as required by the

court's progression order dated October 8, 2014. (*See* Filing No. [137 at CM/ECF p. 3](#) (“The answer shall be accompanied by a separate brief, submitted at the time of the filing of the answer.”) Instead, on January 8, 2015, Respondent asked for, and received, “an enlargement of time of five (5) days until January 13, 2015,” to file his brief in support of his answer. (Filing No. [145](#); Text Order dated January 9, 2015.)

Respondent did not file a brief in support of his answer on January 13, 2015. Instead, on January 26, 2015, Respondent asked for “an enlargement of time of two weeks until January 29, 2015,” to file his brief in support of answer. (Filing No. [148](#).) The court granted Respondent's request, but wrote the following message directed to counsel for Respondent:

The court realizes that, as bureau chief in the Nebraska Attorney General's Office (*see* Filing No. [145 at CM/ECF p. 1](#)), counsel for Respondent is very busy. However, the court must treat pro se litigants with the same respect and consideration as any other plaintiff or petitioner, as should the State. The court notes counsel for Respondent has failed to meet other deadlines in this case and in other cases before this court.

IT IS ORDERED: Respondent's Motion to Extend is granted. Respondent will have until January 29, 2015, to file a brief in support of an answer. The court requests that counsel for Respondent strictly abide by the court's progression orders in the future.

(Filing No. [149](#).) Despite being advised to strictly abide by the court's progression orders in the future, Respondent did not file his brief in support of answer until February 9, 2015, 11 days after the deadline set forth by the court. No request for extension of time or explanation for the late filing accompanied Respondent's brief.

The court notes that it has, on at least two previous occasions in one other case, ordered a respondent represented by James D. Smith to show cause or excusable neglect for failure to comply with the court's progression orders. (*See* Case Number 8:13-cv-00195-JFB-PRSE, Filing No. 22 and Filing No. 53.)

II. DISCUSSION

Rule 16(f) of the Rules of Civil Procedure sets forth that this court may, on its own motion, issue any just order in response to an attorney's failure to obey a scheduling order. [Fed. R. Civ. P. 16\(f\)\(1\)\(C\)](#). Upon careful consideration, the court finds that financial sanctions may be appropriate in this matter. The court notes, in particular, its prior warning to Respondent in this case that failure to file a brief in a timely fashion could result in the imposition of sanctions. (Filing No. [100](#) at CM/ECF p. 1.)

IT IS ORDERED that:

1. Nebraska Attorney General Doug Peterson and James D. Smith are ordered to appear before this court for a hearing on February 19, 2015, at 1:30 p.m., in Courtroom Number 3 of the Roman L. Hruska United States Courthouse, 111 South 18th Plaza, Omaha, Nebraska. They will be required to show cause why financial sanctions should not be imposed in this case pursuant to Rule 16(f).
2. The clerk's office is directed to mail a copy of this Memorandum and Order to Nebraska Attorney General Doug Peterson.

DATED this 17th day of February, 2015.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge

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