

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROBERT J. PROKOP,)
)
Plaintiff,)
)
v.)
)
NEBRASKA ACCOUNTABILITY)
AND DISCLOSURE COMMISSION, et)
al.,)
)
Defendants.)

4:10CV3176

**MEMORANDUM
AND ORDER**

This matter is before the court on its own motion. Also pending is Plaintiff’s Motion for Bill of Exceptions. (Filing No. [51](#).) On March 7, 2011, the court dismissed this matter against Defendants and granted James and Lori McClurg’s Motion for Attorney’s fees with respect to liability. (Filing No. [47](#).) In doing so, the court provided James and Lori McClurg (the “McClurgs”) with 21 days to file an affidavit detailing the attorney’s fees they incurred in defending this action. (*Id.* at CM/ECF p. 6.)

On March 28, 2011, the McClurgs filed an Index in Support of the court’s March 7, 2011, Memorandum and Order. (Filing No. [49](#).) In this Index, counsel for the McClurgs stated that he billed the McClurgs fees in the amount of \$2,439.90 for defending this action. (*Id.* at CM/ECF pp. 4-5.) Plaintiff has not responded to the McClurgs’ Index. (*See* Docket Sheet.) After a careful review, the court finds that the McClurgs’ Index complies with the court’s March 7, 2011, Memorandum and Order. Plaintiff is sanctioned and ordered to pay the McClurgs \$2,439.90 for their reasonable attorney’s fees in defending this action.

Separately, the court notes that Plaintiff filed a Notification of Appeal in this matter. (Filing Nos. [50](#) and [53](#).) In addressing this Notice of Appeal, the Eighth Circuit Court of Appeals stated:

A notice of appeal is **ineffective** until the entry of the order disposing of the last outstanding motion. A new notice of appeal is not required under Federal Rule of Appellate Procedure Rule 4(a)4 to perfect the appeal after disposition of the last outstanding motion **unless** the party seeks review of the ruling on

the attorney's fees motion. In such a case, an amended notice of appeal must be filed within the prescribed time. No additional fees shall be required for such filing.

(Filing No. [54](#).) The court reminds Plaintiff that if he seeks appellate review of this Memorandum and Order, he must file an amended notice of appeal within the prescribed time.

IT IS THEREFORE ORDERED that:

1. Plaintiff is sanctioned for violating Rule 11 and ordered to pay the McClurgs \$2,439.90 for their reasonable attorney's fees in defending this action.

2. Plaintiff's Motion for Bill of Exceptions (filing no. [51](#)) is denied. The Clerk of the court will transmit the record on appeal in accordance with all relevant rules and procedures.

3. The Clerk of the court shall provide the Court of Appeals a copy of this Memorandum and Order.

4. A separate judgment will be entered in accordance with this Memorandum and Order and the court's March 7, 2011, Memorandum and Order.

DATED this 3rd day of May, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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