

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

U.S. APRONS, Inc., A Nebraska Corporation,	)	
	)	
Plaintiff,	)	7:08CV5003
	)	
v.	)	
	)	
R-FIVE, Inc.,	)	MEMORANDUM AND ORDER
	)	
Defendant.	)	
_____	)	

The court entered an order awarding plaintiff its attorney fees and costs incurred in filing a motion to compel the defendant's responses to discovery. The court ordered plaintiff's counsel to provide defense counsel with an itemized statement of the fees and expenses incurred in filing the motion to compel, whereupon the parties were ordered to attempt in good faith to reach an agreement regarding the amount to be awarded. If no agreement could be reached, plaintiff's counsel was to submit a fee application to the court. See filing no. [39](#).

Plaintiff's counsel filed an application for fees and costs, and with that application, requests not only the fees and costs incurred to file its motion to compel, but also those incurred to file the fee application itself. Filing No. [43](#). The affidavit supporting plaintiff's fee application indicates that, in violation of this court's prior order, defense counsel made no good faith effort to confer with plaintiff's counsel and reach an agreement concerning the amount of fees to be awarded, and thus a fee application was necessary. The alleged conduct of defense counsel could be sanctionable.

The defendant's response to plaintiff's fee application is not yet due and has not been filed. However, in light of the plaintiff's submission,

IT IS ORDERED: The response to plaintiff's fee application, (filing no. [43](#)) shall be filed on or before February 16, 2009, and shall address:

- 1) the amount of fees and costs incurred as a result of, and to be awarded to plaintiff for, filing the motion to compel (filing no. [33](#));
- 2) plaintiff's claim that defense counsel violated the court's order, (filing no. [39](#)), requiring counsel to confer in good faith regarding plaintiff's fee application, and
- 3) whether, and to what extent, the plaintiff should be awarded attorney fees and costs arising from defense counsel's failure to engage in good-faith discussions concerning plaintiff's fee application in violation of the court's order, (filing no. [39](#)).

DATED this 3<sup>rd</sup> day of February, 2009.

BY THE COURT:

s/ *David L. Piester*

David L. Piester  
United States Magistrate Judge