

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|-------------------------------------|---|-------------------|
| UNITED STATES OF AMERICA, |) | 8:08CV271 |
| |) | |
| Plaintiff, |) | |
| |) | AMENDED |
| vs. |) | MEMORANDUM |
| |) | AND ORDER |
| THE STATE OF NEBRASKA; |) | |
| DAVE HEINEMAN, Governor |) | |
| of the State of Nebraska, in his |) | |
| official capacity only; CHRISTINE |) | |
| PETERSON, Chief Executive |) | |
| Officer, Nebraska Department |) | |
| of Health and Human Services, |) | |
| in her official capacity only; JOHN |) | |
| WYVILL, Director, Division of |) | |
| Developmental Disabilities, |) | |
| Nebraska Department of Health |) | |
| and Human Services, in his official |) | |
| capacity only; RON STEGEMANN, |) | |
| Chief Executive Officer, Beatrice |) | |
| State Developmental Center, in his |) | |
| official capacity only, |) | |
| |) | |
| 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 that “John J. McGee, Ph.D., shall be appointed as the Independent Expert to monitor the State’s implementation of this Settlement Agreement,” and that Dr. McGee “shall submit monthly statements to the Court . . . detailing all expenses the Independent Expert

incurred during the prior month.” ([Filing 10](#), at 4-5.) The agreement allows parties seven business days from receipt of the 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 October 15, 2008, independent expert John J. McGee, Ph.D., filed an activities and expense report ([filing 15](#)) requesting \$12,000 for professional services performed in September 2008; \$1,358.45 in mileage for July to September 2008; \$585.00 in meal expenses; \$945.20 in hotel costs; and \$421.52 in copying expenses, for a total of \$15,310.17. As no objections or comments regarding Dr. McGee’s report were filed, I shall order that payment be made to John J. McGee, Ph.D., in the amount requested pursuant to the terms of the settlement agreement.

Accordingly,

IT IS ORDERED:

1. Within 10 days of the date of this order, the Clerk of the United States District Court for the District of Nebraska shall pay to independent expert John J. McGee, Ph.D., \$15,310.17 for professional services, meal expenses, hotel costs, and copying expenses.

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. 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.”

4. As provided in the parties' settlement agreement ([filing 10](#), at 6), and within 45 days of the date of this order, the defendants shall replenish the above-described interest-bearing account with the full amount paid by the Clerk of Court to independent expert John J. McGee, Ph.D., in order to restore the account's total to \$100,000.00.

5. The court's prior order entered on October 27, 2008 (filing 16), shall be stricken.

October 29, 2008.

BY THE COURT:
s/ Richard G. Kopf
United States District Judge