

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ERNEST F. HEFFNER, et al.,	:	No. 4:08-cv-990
	:	
Plaintiffs	:	(Judge Jones)
	:	
v.	:	
	:	
DONALD J. MURPHY, et al.,	:	
	:	
Defendants	:	

**JOINT MOTION TO AMEND
AUGUST 22, 2012 ORDER REGARDING ATTORNEYS' FEES**

Plaintiffs and Defendant hereby jointly move to amend the August 22, 2012 Order (Doc. 204) regarding attorneys' fees and in support thereof state as follows:

Procedural History

1. Plaintiffs filed the Complaint (Doc. 1) in this action on May 8, 2009 and the Amended Complaint (Doc. 101) on November 9, 2010, challenging the constitutionality of certain provisions of the Pennsylvania Funeral Director Law ("FDL").
2. By Memorandum and Order of May 8, 2012 (Doc. 182), the Court granted Plaintiffs' motion for summary judgment with regard to Counts I through IX and XII through XIII of the Amended Complaint.
3. By Memorandum (Doc. 201) and Order (Doc. 202) of August 22, 2012, the Court entered judgment in Plaintiffs' favor as to Counts I through IX and

XII through XIII of the Amended Complaint and enjoined Defendants from enforcing certain provisions of the FDL.

4. By Memorandum and Order of August 22, 2012 (Doc. 204), the Court granted in part Plaintiffs' Motion for Interim Award of Attorneys' Fees and awarded Plaintiffs \$1,112,034.80 in attorneys' fees.

5. Defendants appealed the Court's August 22, 2012 Order (Doc. 202) granting injunctive relief to the United States Court of Appeals for the Third Circuit;

6. By Judgment entered February 19, 2014, the Third Circuit affirmed this Court as to Count IX, otherwise reversed, and remanded the case, in accordance with the opinion of the Third Circuit entered on that same date.

7. The Third Circuit's mandate issued on March 25, 2014. (Doc. 243.)

Requested Amendment

8. The parties agree that the Court's August 22, 2012 Order regarding attorneys' fees should be amended in light of the Third Circuit's ruling.

9. The parties agree that Plaintiffs are prevailing parties with regard to Count IX for purposes of 42 U.S.C. § 1988.

10. The parties agree that \$101,094.07 is a reasonable fee with regard to Count IX.

11. This amount equals 1/11th of the total amount awarded by the Court in its August 22, 2012 Order and, thus, proportionately reflects the Third Circuit's decision on appeal. *Cf. Fox v. Vice*, 131 S. Ct. 2205, 2226 (2011) (“[T]rial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees ... is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time.”).

12. The parties agree that this Motion and the Court's granting of the relief requested herein is without prejudice to Plaintiffs' ability to seek additional attorneys' fees as to any claim asserted in the Amended Complaint, except Count IX, should Plaintiffs become prevailing parties as to any such claim.

13. The parties submit that good cause has been shown for amendment of the Court's August 22, 2012 Order regarding attorneys' fees and that the relief requested by this Motion presents just terms upon which to amend that Order. *See* Fed. R. Civ. P. 60(b)(5), (6) (“On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: ... the judgment ... is based on an earlier judgment that has been reversed or vacated ... or ... any other reason that justifies relief.”).

WHEREFORE, the Parties jointly and respectfully move the Court to amend its August 22, 2012 Order (Doc. 204) so as to award Plaintiffs \$101,094.07 with regard to Count IX of the Amended Complaint.

Respectfully submitted,

POST & SCHELL, P.C.

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4/2/2014

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Counsel for Defendants

Dated:

April 2, 2014

CERTIFICATE OF SERVICE

I, James J. Kutz, Esquire, hereby state that I have this day caused the foregoing document to be transmitted to the Court electronically for electronic service upon the following attorneys of record:

Maryanne M. Lewis, Esquire
Senior Deputy Attorney General
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Harrisburg, PA 17120

POST & SCHELL, P.C.

By:


James J. Kutz, Esquire

Dated : 4/3/14