

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

DANIEL BINDERUP,)
)
 Plaintiff,)
 v.)
) **Case No. 5:13-cv-06750-JKG**
 ERIC H. HOLDER, JR.,)
 Attorney General of the)
 United States et al.,)
)
 Defendants.)
 _____)

OBJECTION TO PLAINTIFF’S BILL OF COSTS

On September 25, 2014, the Court granted summary judgment for Defendants as to Count I of Plaintiff’s complaint, and granted summary judgment for Plaintiff as to Count II of Plaintiff’s complaint. See Mem. Op. [ECF No. 27]. Plaintiff filed a bill of costs on October 8, 2014 [ECF No. 29].

Defendants respectfully submit that any consideration of Plaintiff’s bill of costs should await the conclusion of any appeal in this case, or the exhaustion of the time for taking an appeal. At this juncture, it is uncertain whether the government will elect to appeal and, if so, what the result will be. It is therefore not clear whether Plaintiff will be a “prevailing party” entitled to costs, or the extent to which Plaintiff will have achieved any success at the conclusion of this litigation. Interests of judicial economy weigh strongly in favor of waiting for any appeals before Plaintiff’s bill of costs is considered by the Clerk or the Court.

Under the Federal Rules of Appellate Procedure, a timely notice of appeal of the final judgment in this case must be filed by November 24, 2014. Fed. R. App. P. 4(a)(1)(B).

Therefore, the bill of costs is premature and should be held in abeyance until November 24, 2014, or the conclusion of any appeal, whichever is later. If costs were to be assessed now, pending the possibility of an appeal, and Defendants were to later substantively prevail on an appeal to the Third Circuit, Defendants, as the prevailing parties, would be entitled to recover such costs from Plaintiff and, indeed, would themselves be eligible for an award of costs.

Denying Plaintiff's application without prejudice to later re-file after the time for any appeal has passed and/or any appeal has concluded, or holding the application in abeyance until after the time for any appeal has passed and/or any appeal has concluded, avoids this situation and represents the appropriate approach under the circumstances. See Hogan v. Raymond Corp., No. 10-846, 2014 WL 292170 (W.D. Pa. Jan. 27, 2014) (explaining that the Clerk of Court had deferred consideration of bill of costs until after the disposition of plaintiff's appeal); Kocher v. Larksville Borough, No. 11-2053, 2014 WL 888523, at *2 n.1 (M.D. Pa. Mar. 6, 2014) (explaining that litigant had timely filed bill of costs that was submitted six days after the Third Circuit had issued its mandate affirming the judgment of the district court).

Dated: October 17, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2014, I caused the foregoing document to be served via e-mail and via electronic case filing, as follows:

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