

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

THE RELIGIOUS SISTERS OF
MERCY, *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, *et al.*,

Defendants.

No. 3:16-cv-386

**RSM PLAINTIFFS' UNOPPOSED MOTION TO CLARIFY DEADLINE
FOR FILING PETITION FOR FEES AND EXPENSES**

Plaintiffs the Religious Sisters of Mercy, Sacred Heart Mercy Healthcare Center, SMP Health System, and the University of Mary (collectively, the “RSM Plaintiffs”) move to clarify their deadline for seeking attorneys’ fees as prevailing parties in this litigation. Defendants do not oppose the requested clarification of the deadline but have indicated that they reserve the right to request a stay of briefing on the RSM Plaintiffs’ fee motion so that the Court may address all fees in the consolidated cases together.

The RSM Plaintiffs have prevailed on their claims under the Religious Freedom Restoration Act and thus intend to seek reasonable attorneys’ fees and expenses under 42 U.S.C. § 1988(b); *see also* Dkt. 124. This Court, exercising its authority under Rule 54 of the Federal Rules of Civil Procedure, has set a fee-petition deadline of “60 days after the expiration of the deadline to appeal or after final resolution of all appeals, whichever is later.” Dkt. 133 at 5.

The Eighth Circuit issued its ruling on Defendants’ appeal—affirming this Court’s permanent injunction in favor of the RSM Plaintiffs in its entirety—on December 9,

2022. *Religious Sisters of Mercy v. Becerra*, 55 F.4th 583, 588, 609 (8th Cir. 2022).^{*} Soon after, the Eighth Circuit remanded the determination of Plaintiffs' appellate fees to this Court, to be determined with the rest of their fee request. Order, No. 21-1890 (8th Cir. Jan. 5, 2023).

On January 23, 2023, the Government and the CBA filed petitions for rehearing en banc. Government Pet. for Rehearing En Banc, No. 21-1890 (8th Cir. Jan. 23, 2023); CBA Pet. for Rehearing En Banc, No. 21-1890 (8th Cir. Jan. 23, 2023). On March 21, 2023, the Eighth Circuit denied both petitions. Order, No. 21-1890 (8th Cir. Mar. 21, 2023).

Sixty days after the Eighth Circuit's denial of rehearing en banc would be May 22, 2023. As the RSM Plaintiffs understand this Court's fee deadline, however, their deadline to seek fees has not yet begun running, since the time for Defendants to seek certiorari will not expire until (at least) June 19. Put differently, until Defendants' certiorari deadline has expired (or any petition or resulting appeal has been resolved), it will not yet be clear whether the "final resolution of all appeals" potentially affecting the RSM Plaintiffs' fee recovery (Dkt. 133 at 5) has occurred.

The RSM Plaintiffs therefore respectfully request that this Court clarify their fee deadline. This clarification would state that any motion for attorneys' fees and expenses filed by the RSM Plaintiffs shall be filed within 60 days after the expiration of Defendants' deadline for seeking certiorari from the Eighth Circuit's judgment in this case (if Defendants do not file a certiorari petition) or within 60 days after the final resolution of all appeals or petitions for certiorari (if Defendants do file a certiorari petition). A proposed order embodying this relief is submitted alongside this motion.

^{*} The Eighth Circuit's limited remand applies only to the associational standing of the Catholic Benefits Association (CBA), a separately represented plaintiff in a different case before this Court (Case No. 3:16-cv-432).

Such clarification will reduce uncertainty and foster judicial economy, as it will ensure that all of the RSM Plaintiffs' fee recovery in this case can be determined at the same time, after the case is entirely over. This relief also simply makes explicit what the RSM Plaintiffs already understand the Court's intended deadline to be, since their unopposed motion to extend the time to seek fees—which this Court granted, resulting in the current deadline—was premised on “the interests of judicial economy and avoiding duplicative fee litigation.” Dkt. 132 at 3.

* * *

For these reasons, the Court should grant this motion and enter an order clarifying the deadline for the RSM Plaintiffs to file any petition for fees and expenses, as set out in the attached proposed order.

Respectfully submitted this 4th day of May, 2023.

/s/ Luke W. Goodrich

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CERTIFICATE OF SERVICE

I certify that on May 4, 2023, the foregoing was served on all parties via ECF.

/s/ Luke W. Goodrich

Luke W. Goodrich

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**[Proposed] Order Granting
Plaintiff's Unopposed Motion to
Clarify Deadline for Filing
Petition for Fees and Expenses**

Having considered the motion to clarify filed by Plaintiffs the Religious Sisters of Mercy, Sacred Heart Mercy Healthcare Center, SMP Health System, and the University of Mary (collectively, the "RSM Plaintiffs"), the motion is **GRANTED**. It is **ORDERED** that the RSM Plaintiffs shall file any motion for attorneys' fees and expenses within 60 days after the expiration of Defendants' deadline for seeking certiorari from the Eighth Circuit's judgment in this case (if there is no certiorari petition) or within 60 days after the final resolution of all appeals or petitions for certiorari (if Defendants do file a certiorari petition).

SO ORDERED this _____ day of _____, 2023.

Peter D. Welte, Chief Judge
UNITED STATES DISTRICT JUDGE