

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW MEXICO

WILLIAM H. PAYNE and  
ARTHUR R. MORALES,

Plaintiffs,

v.

CIVIL NO. 97-266 MCA/LFG

NATIONAL SECURITY AGENCY,

Defendant,

UNITED STATES OF AMERICA,

Garnishor,

and,

SANDIA LABORATORY FEDERAL CREDIT UNION  
AND ITS SUCCESSORS OR ASSIGNS  
ATTENTION: LOSS PREVENTION,

Garnishee.

UNITED STATES' RESPONSE TO PLAINTIFF PAYNE'S'  
MOTION TO VOID AND AMEND JUDGMENTS (Doc. 152)

The United States opposes the Motion to Void and Amend Judgments in Order Adopting Magistrate Judge's Findings and Recommended Disposition Mailed July 14, 2008, filed by Plaintiff William Payne<sup>1</sup> (Doc. 152).

To the extent this document is intended as an objection to the Magistrate Judge's Findings and Recommended Disposition filed March 27, 2008 (Doc. 150), it is

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<sup>1</sup> The United States notes that former Plaintiff Arthur Morales has not joined in this motion.

untimely under FED. R. CIV. P. 72(a) and should be disregarded. Any objection was required to be filed within ten days and over four months has passed.

To the extent this motion is a request for relief from the Order Adopting Magistrate Judge's Findings and Recommended Disposition filed July 11, 2008 (Doc. 151) under FED. R. CIV. P. 59(e), it was not filed within ten days after entry of the Order and is therefore untimely. Any such motion was due July 25, 2008, and this motion was not filed until August 1, 2008.

Thus, this motion can only be treated as one for relief from an order under FED. R. CIV. P. 60(b). United States v. Emmons, 107 F.3d 762, 764 (10th Cir. 1997). Relief under Rule 60(b) is discretionary, extraordinary, and warranted only in exceptional circumstances. Yapp v. Excel Corp., 186 F.3d 1222, 1230-32 (10th Cir. 1999); Cashner v. Freedom Stores, Inc., 98 F.3d 572, 576 (10th Cir. 1996); Farr v. Int'l Fin. and Trading Network, 175 F.R.D. 333, 336 (D. Kan. 1997). Further, a motion under FED. R. CIV. P. 60(b) is not intended to rehash issues that have already been finally determined. Cashner, 98 F.3d at 577; VanSkiver v. United States, 952 F.2d 1241, 1243 (10th Cir.1991), cert. denied, 506 U.S. 828 (1992) ("revisiting the issues already addressed is not the purpose of a motion to reconsider" filed under Rule 60(b)).

Plaintiff Payne apparently asserts that the order was obtained by fraud, misrepresentation or misconduct and is void. FED. R. CIV. P. 60(b)(3) & (4). However, he does nothing more than restate his prior arguments about alleged insufficient service

and errors in the notice of the garnishment proceeding. Doc. 152, pp. 2-3, 5<sup>2</sup>. The Magistrate Judge and this Court have already rejected those arguments. Doc. 150, pp. 6-10; Doc. 151, pp. 1-2. Reargument of issues that have been decided is not a proper basis for relief under FED. R. CIV. P. 60(b), as noted above. Plaintiff Payne also calls the hearing before the Magistrate Judge a “Kangaroo court” and asserts that this Court is engaged in extortion. Doc. 152, pp. 2, 5. Such frivolous assertions do not provide a basis for relief under Rule 60(b) and, if anything, provide a new basis for further sanctions or contempt against Plaintiff Payne.

Finally, Plaintiff Payne notes that Arthur Morales was dismissed as a plaintiff in 1997. Doc. 42. However, Mr. Morales continued to join in the frivolous motions and other documents filed in this case which formed the basis of the sanctions previously imposed by the Court. See Doc. 95, p. 2, referencing Docs. 81, 82, 84, 85 and 91; see also Doc. 100, pp. 2-3, referencing Docs. 93, 94. Thus, this provides no basis for relief from the Order Adopting Magistrate Judge’s Findings and Recommended Disposition.

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<sup>2</sup> Doc. 152 contains no page 4.

WHEREFORE, the United States requests that Plaintiff Payne's Motion to Void and Amend Judgments in Order Adopting Magistrate Judge's Findings and Recommended Disposition Mailed July 14, 2008, be denied.

Respectfully submitted,

GREGORY J. FOURATT  
United States Attorney

**/s/ Electronically filed August 11, 2008**

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I HEREBY CERTIFY that a true copy of the foregoing pleading was mailed, postage prepaid, on August 11, 2008, to the following non-participant in the CM/ECF electronic filing system:

William H. Payne at 13015 Calle De Sandias NE, Albuquerque, New Mexico 87111-2924.

/s/ JOHN ZAVITZ  
JOHN ZAVITZ  
Assistant United States Attorney

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