

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:08-CV-564-FL

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE HONORABLE JERRY BRASWELL,
SENIOR RESIDENT SUPERIOR COURT
JUDGE FOR NORTH CAROLINA JUDICIAL
DISTRICT 8-B, in his official capacity;

AND

ADMINISTRATIVE OFFICE OF THE COURTS
OF THE STATE OF NORTH CAROLINA,

Defendants.

SETTLEMENT AGREEMENT

This matter is before the Court for entry of this settlement agreement by consent of plaintiff United States of America ("United States") and defendants The Honorable Jerry Braswell, Senior Resident Superior Court Judge for North Carolina Judicial District 8-B, in his official capacity; and the Administrative Office of the Courts of the State of North Carolina ("defendants") to effectuate a final compromise and settlement of all claims raised in the United States' Complaint.

1. The United States commenced this action in the United States District Court for the Eastern District of North Carolina, alleging that defendants violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by considering James Myles's ("Myles") military service in the Army Reserve as a motivating factor in their failure to reappoint Myles to an additional term as a Magistrate.

2. As a result of settlement discussions, the United States and defendants (collectively the “parties”) have resolved their differences and have agreed that this action should be settled by entry of this Settlement Agreement (“Agreement”). It is the intent of the parties that this Agreement be a final and binding settlement in full disposition of any and all claims alleged in the Complaint filed by the United States in this action. By his signature to the accompanying release, attached hereto as Appendix A, Myles agrees that the relief provided in this case is a satisfactory resolution of his USERRA claims raised in Department of Labor Case No. NC-2007-00040-20-R and the Complaint filed in this case, and adequately compensates him for those claims.

STIPULATIONS

3. The parties acknowledge the jurisdiction of the United States District Court for the Eastern District of North Carolina over the subject matter of this action and of the parties to this case for the purpose of entering this Agreement and, if necessary, enforcing this Agreement.

4. Venue is proper in this district for purposes of this Agreement and any proceedings related to this Agreement only. The parties agree that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

5. Having examined the terms and provisions of the Agreement, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action and the parties to this action.
- b. The terms and provisions of this Agreement are fair, reasonable, and just. The rights of Myles and of the parties are protected adequately by this Agreement.
- c. This Agreement conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any

person.

- d. The entry of this Agreement will further the objectives of USERRA and other applicable law, and will be in the best interests of the parties.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND AGREED AS FOLLOWS:

NON-ADMISSION

6. This Agreement is being entered with the consent of the parties and shall not constitute an adjudication or finding on the merits of the case or be construed as an admission by defendants of any violations of USERRA.

NON-RETALIATION

7. Defendants shall not take any action against any person, including but not limited to Myles, that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

8. Defendants shall not fail or refuse to hire any individual, discharge any employee, or take any other adverse action against any employee, based on the military service obligation or past or present military service of such individual or employee, in violation of USERRA.

REMEDIAL RELIEF

9. Within ten (10) business days from the date of entry of this Agreement, defendants shall pay Myles a total monetary award of \$12,000, less those employee tax withholdings and employee contributions on the back pay component (\$6,000) of the total monetary award as required by law. Defendants shall timely pay all monies withheld to the appropriate governmental agencies on behalf of Myles. Defendants shall separately pay to the appropriate governmental agencies the appropriate employer's contribution to the Social

Security fund due on the back pay portion of the total monetary award; i.e., the employer's contribution shall not be deducted from any part of the monetary award to Myles.

10. Within thirty (30) calendar days following the date of entry of this Agreement, defendants shall provide the United States with documentation of having paid Myles the monetary award due him pursuant to Paragraph 9, supra, by mailing such documentation to:

Sarah Canzoniero Blutter
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section, PHB 4916
950 Pennsylvania Avenue, NW
Washington, DC 20530

**RETENTION OF JURISDICTION
DISPUTE RESOLUTION AND COMPLIANCE**

11. The entry of this Agreement constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in or that could have been asserted by the United States in this action. The Court, however, shall retain jurisdiction over this matter and shall have all equitable powers, including injunctive relief, to enforce this Agreement.

12. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Agreement. The parties shall engage in good faith efforts to resolve any dispute concerning compliance prior to seeking review by the Court. The parties shall be required to give notice to each other ten (10) days before moving for review by the Court. All parties may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Agreement or defending against a claim of non-compliance.

EXPIRATION OF THIS AGREEMENT

13. This Agreement shall expire, and this action shall be dismissed, without further

order of this Court one (1) year from the date of its entry by this Court, provided that defendants have provided Myles with the relief to which he is entitled pursuant to this Agreement and defendants have otherwise complied with the provisions of this Agreement.

MISCELLANEOUS

14. All parties shall bear their own costs and expenses of litigation, including attorneys' fees.

15. If any provision of this Agreement is found to be unlawful, only the specific provision in question shall be affected, and the other provisions will remain in full force and effect.

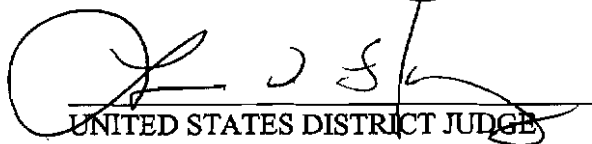
16. The terms of this Agreement are and shall be binding upon current, former, and future officials, directors, employees, agents, trustees, administrators, successors, representatives, and assigns of defendants and upon heirs, successors, and assigns of Myles.

17. This Agreement constitutes the entire agreement and commitment of the parties. Any modifications to this Agreement must be mutually agreed upon and memorialized in a writing signed by the United States and defendants.

EFFECTIVE DATE

18. The effective date of this Agreement shall be the date upon which it is entered by the Court.

APPROVED and ORDERED this 26th day of February, 2009.


UNITED STATES DISTRICT JUDGE

Agreed and consented to on behalf of Plaintiff
United States of America:

LORETTA KING
Acting Assistant Attorney General
Civil Rights Division

John M. Gadzichowski
Sarah Canzoniero Blutter

JOHN M. GADZICHOWSKI

WI Bar No. 1014294

Chief

KAREN D. WOODARD

MD Bar - no number issued

Deputy Chief

SARAH CANZONIERO BLUTTER

DC Bar No. 487723

Trial Attorney

U.S. Department of Justice

Civil Rights Division

Employment Litigation Section

Patrick Henry Building, Room 4916

950 Pennsylvania Avenue, NW

Washington, DC 20530

Telephone: (202) 305-3613

Facsimile: (202) 514-1005

Email: sarah.blutter@usdoj.gov

GEORGE E. B. HOLDING

United States Attorney

RUDY RENFER

Chief

Civil Division

310 New Bern Avenue, Suite 800

Terry Sanford Federal Building & US Courthouse

Raleigh, NC 27601

Telephone: (919) 856-4530

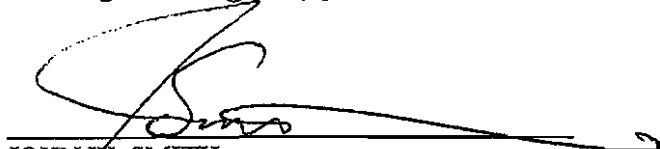
Email: rudy.renfer@usdoj.gov

Agreed and Consented to on Behalf of Defendants
The Honorable Jerry Braswell, Senior Resident
Superior Court Judge for North Carolina Judicial
District 8-B, in his official capacity; and
Administrative Office of the Courts of the State
of North Carolina:

ROY COOPER
Attorney General



GRADY L. BALENTINE, JR.
Special Deputy Attorney General
North Carolina State Bar No. 19541
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602
Telephone: (919) 716-6867
Facsimile: (919) 716-6755
Email: gbalentine@ncdoj.gov



JOHN W. SMITH
Director, North Carolina Administrative Office
of the Courts
P.O. Box 2448
Raleigh, NC 27602

APPENDIX A

RELEASE OF CLAIMS

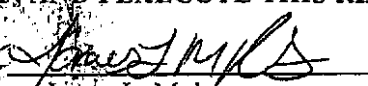
For and in consideration of my acceptance of all or any part of the relief to be provided to me pursuant to the provisions of the Settlement Agreement that is to be entered in the case of United States of America v. The Honorable Jerry Braswell, Senior Resident Superior Court Judge for North Carolina Judicial District 8-B, in his official capacity; and the Administrative Office of the Courts of the State of North Carolina, Case No. 5:08-CV-564-FL in the United States District Court for the Eastern District of North Carolina, Western Division, I, James L. Myles, hereby forever release and discharge the Honorable Jerry Braswell, in his official capacity of Senior Resident Superior Court Judge for North Carolina Judicial District 8-B, and the Administrative Office of the Courts of the State of North Carolina ("defendants"), as well as their current, former, and future officials, directors, employees, agents, and successors, from all legal and equitable claims arising out of the Complaint in this action and USERRA claims in Case No. NC-2007-00040-20-R filed with the United States Department of Labor.

I understand that the relief to be provided to me by defendants under the terms of the Settlement Agreement does not constitute an admission by any of the parties hereby released of the validity of any claim raised by me, or on my behalf. I further understand that defendants expressly deny having violated any of my legal rights, and that the payments and other terms and conditions set forth in this release are in settlement of disputed claims.

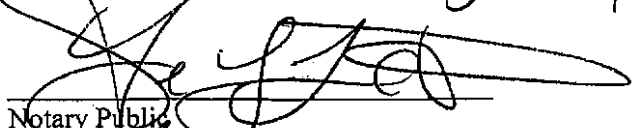
This release constitutes the entire agreement between defendants and me, without exception or exclusion.

I acknowledge that a copy of the Settlement Agreement in this action has been made available to me for my review.

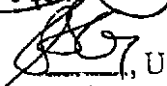
I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF, AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signature: 
James L. Myles
Date: 20 Feb 2009

Subscribed and sworn to before me this 20th day of February, 2009.


Notary Public

My Commission expires:

, US Army
Paralegal NCO
10 USC 936, 1044a
AR 27-55