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Ninth Circuit Sanctions Lawyers in High-Profile Case

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In re Girardi, ___ F.3d ___, 2010 WL 2735731 (2010)

Brief Summary
Relying on federal statutes and rules of professional conduct, the U.S. Court of Appeals for the Ninth Circuit sanctioned a group of attorneys who, in seeking to enforce a foreign judgment, made false statements to the court. The sanctions included monetary sanctions of $390,000 and ranged from a reprimand to a six-month suspension depending on the mental state, experience, and degree of involvement of each attorney.

Complete Summary
Four lawyers represented a group of Nicaraguan plaintiffs in an action against various U.S. entities. Some of the defendants were misidentified in the complaint, and this error was reflected in the Nicaraguan court's $489 million default judgment and writ of execution against defendants. The attorneys later sought to enforce the judgment in California federal court relying on a notary affidavit which translated the writ of execution. The notary affidavit, however, was neither a perfect nor complete translation. Among other things, it altered the names of the defendants to correctly identify them. The lawyers maintained, in both the district court and the appellate court, that the notary affidavit was the actual judgment/writ of execution rather than a translation. Defendants moved for sanctions based on the filing of a frivolous appeal and making of false statements. The Ninth Circuit issued an order to show cause why the attorneys should not be sanctioned, and appointed a Special Master to oversee further proceedings.

Following a four-day trial, the Special Master found that the lawyers had vexatiously multiplied the proceeding by recklessly and intentionally misleading the court. He therefore recommended sanctions totaling $390,000, pursuant to 28 U.S.C. §§ 1912 and 1927, and Fed. R. App. P. 38. That sanction was designed to reimburse defendants. The Ninth Circuit ultimately adopted the Special Master's findings of fact and conclusions of law, and its recommended sanctions.

The Ninth Circuit further sanctioned the lawyers for engaging in "conduct unbecoming a member of the court's bar" in violation of Fed. R. App. P. 46. In reaching this conclusion, the court relied on both the California and American Bar Association (ABA) Rules of Professional Conduct, as well as the ABA Standards for Imposing Lawyer Sanctions. The court held the lawyers' conduct clearly violated Rule 46 based on Model Rules 3.1 (lawyer shall not bring a frivolous proceeding), and 3.3 (lawyer shall not knowingly make or fail to correct a false statement made to a tribunal), as well as California Rule 5-200 (lawyer shall not seek to mislead a judge).

In determining the appropriate sanctions, the court reserved the six-month suspensions for conduct that was either knowing, intentional, reckless or willfully blind to the misrepresentations, including failing to satisfy the duty to investigate the legal and factual bases of the claim. The court also issued a public and private reprimand, respectively, to one lawyer whose actions were essentially limited to authorizing the other lawyers to sign his name on briefs, and to another inexperienced attorney who had tried to persuade his colleagues to discontinue the frivolous appeal.

Significance of Opinion

This opinion is a good illustration of how federal sanctions statutes, rules of appellate procedure, and state and model disciplinary rules intersect in the context of monetary and disciplinary sanctions on appeal. In addition, it demonstrates the potentially serious individual consequences for lawyers who make misrepresentations to the court, having failed to make the requisite effort to investigate their claims.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.