

Second Circuit Splits on Authority of Magistrate Judge to Impose Rule 11 Sanctions Absent Consent of the Parties

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Kiobel v. Millson, 07-3903-cv (2nd Circuit, Jan. 8, 2010)

Brief Summary

A panel of the Second Circuit filed separate concurring opinions on the nature of the authority of a Magistrate Judge to issue Rule 11 orders sanctioning attorneys absent consent of the parties. Because the panel split evenly, the question of the deference to be paid to a Magistrate Judge's sanctions order remains unresolved.

Complete Summary

The Federal Magistrate Judge Act ("Act"), 28 U.S.C. § 636(b)(1)(A), authorizes Magistrate Judges to issue orders resolving certain pretrial matters without the parties' consent. Excluded from the scope of that authority are "dispositive motions such as motions for injunctive relief." The Magistrate Judge in this case ordered Rule 11 sanctions of money and attorney fees related to the Rule 11 motion against members of the defense team for two factual statements with respect to certain testimony and evidence in a class certification proceeding. Chief Judge Kimba Wood of the District Court applied a deferential "clearly erroneous or contrary to law" standard of review for both the imposition and amount of the sanctions, and affirmed the Magistrate Judge's Opinion and Order. The defense counsel appealed to the Second Circuit on the merits, and they also contended that absent the parties' consent to the Magistrate Judge's authority to issue dispositive decisions, the District Court properly should have treated the Magistrate Judge's order not as a dispositive decision but rather as a "report and recommendation" under 28 USC § 636(b)(1)(B), thus subject to *de novo* and not deferential review by the District Court.

A panel of the Second Circuit Court of Appeals reversed the District Court's order imposing sanctions because the panel disagreed with the imposition of sanctions on the merits. In three separate opinions, the panel then addressed the degree of deference that the District Court should accord to a Magistrate Judge's sanctions

decision absent the parties' consent.

Judge Jose A. Cabranes agreed with other courts that have analyzed the scope of a Magistrate Judge's sanctions authority from the starting point of independent claims, because a Magistrate Judge's disposition (by contrast to a report and recommendation) of those is not allowed under the Act without the parties' consent. To Judge Cabranes, a Rule 11 sanctions award should be treated as the functional equivalent of an independent claim. As such, for a Magistrate Judge to decide sanctions with the force of an order on a "dispositive" issue (as opposed to issuing a "report and recommendation" on the issue), and thus to be entitled to deference on review, a Magistrate Judge's sanctions decision would require the parties' consent.

By contrast, Judge Pierre Leval interpreted the Act as giving Magistrate Judges broad powers to hear and determine a range of matters, excepting those expressly prohibited within the Act. Although resolution of dispositive issues is outside the scope of a Magistrate Judge's powers absent the parties' consent, a Rule 11 sanction does not dispose of a claim. Therefore, the decision of Magistrate Judges on sanctions should be entitled to deference on review, regardless of the parties' consent. In support of this view, Judge Leval cited a 1990 decision that held that monetary sanctions are not "dispositive" as well as Congress's silence on the issue when it subsequently amended the Act in 2000 to give Magistrate Judges enhanced punitive and contempt authority.

Chief Judge Dennis Jacobs declined to join the opinion of either of his colleagues. Chief Judge Jacobs instead contrasted the gulf between their two opinions. He cited the same 1990 decision as Judge Leval, but concluded that Congress's subsequent silence created more ambiguity, not less. Because the Act did not offer clear direction, Chief Judge Jacobs wrote that he would defer the issue to Congress or the United States Supreme Court to unravel.

Significance of Opinion

This opinion offers litigators two contrasting views of the nature of a Magistrate Judge's powers under the Federal Magistrate Judge Act, and the consequent standard of review on appeal. Until either the Supreme Court or Congress follows the suggestion of Chief Judge Jacobs to resolve the Act's inherent ambiguity, good arguments can be made on both sides, and the Second Circuit's opinions will provide potentially persuasive authority for either result.

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