

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO, SANTA FE

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

William H. Payne
Arthur R. Morales
Plaintiffs

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v

CIV NO 97 0266 SC/DJS

CLERK-ALBUQUERQUE

Lieutenant General Kenneth A. Minihan, USAF
Director, National Security Agency
National Security Agency
Defendant

Federal Rule of Civ. P. 60(b)(3), (4)

MOTION FOR RELIEF FROM ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, STRIKING PLEADINGS, AND IMPOSING SANCTIONS FOR REASONS
OF MISREPRESENTATION AND OTHER MISCONDUCT AND VOIDABLE JUDGMENTS

1 COMES NOW plaintiffs Arthur R Morales and William H Payne with
Federal Rule of Civ. P. 60(b)(3), (4) motion for relief from judge
Armijo's ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION,
STRIKING PLEADINGS, AND IMPOSING SANCTIONS file stamped August 27,
2007.

2 Judge Armijo writes

THIS MATTER comes before the Court on the Report and
Recommendation for Sanctions and Striking of Documents
[Doc. 95], filed herein on July 31, 2007. Plaintiffs filed
their Objections [Doc. 97] to the Report and Recommendation
on August 17, 2007. The Court conducted a de novo review of
the Report and Recommendation and finds that it should be
adopted.¹ In their objections, Plaintiffs argue that the
undersigned United States District Judge lacked
jurisdiction to refer this matter to a Magistrate Judge for
recommended disposition, because it is not a "pretrial"
matter. 28 U.S.C. § 636(b)(1) does refer to "pretrial
matters." However, "[c]ourts considering the meaning of the
term 'pretrial' in § 636(b) have not interpreted the term
literally with

¹Subsequent to Judge Garcia's filing of the Report and
Recommendation for Sanctions and Striking of Documents
[Doc. 95], Plaintiffs filed, on August 22, 2007, two
pleadings: Motion to Correct Response to Report and
Recommendation for Sanctions and Striking of Documents
[Doc. 98] and Motion for Extension of Time [Doc. 99].

This Court has reviewed these pleadings and determines that
their substance in no way alters the Court's analysis and
consideration of the Report and Recommendation for
Sanctions and Striking of Documents [Doc. 95]. The relief

sought therein is denied and the pleadings are stricken from the record.

respect to the time of trial, but rather have interpreted the term to refer generally to matters unconnected to the issues litigated at trial." Robinson v. Eng, 148 F.R.D. 635, 641 (D. Neb. 1993). See also, Bergeson v. Dilworth, 749 F. Supp. 1555 (D. Kan. 1990) (Magistrate Judge has authority under § 636 to impose postjudgment Rule 11 sanctions because, broadly construed, the term "pretrial matter" means any matter unrelated to the claims litigated at trial).

Robinson v Eng and Bergeson v. Dilworth are summarized

11 motions are also not listed in the statute's list of exceptions to pretrial matters that magistrate judges can permissibly determine. In Grimes v. City & County of San Francisco, 951 F.2d 236, 240-241 (9th Cir. 1991), the Ninth Circuit similarly held that discovery sanctions under Rule 37 are also appropriate for determination by magistrate judges. Accord Robinson v. Eng, 148 F.R.D. 635, 641 (D. Neb. 1993) (magistrate judge has authority to issue orders resolving Rule 11 motions; restriction to "pretrial matters" does not preclude magistrate judge from resolving post-judgment, procedural matters that arose earlier in the case); Bergeson v. Dilworth, 749 F. Supp. 1555, 1563 (D. Kan. 1990) (if a motion for sanctions can be characterized as nondispositive, the magistrate judge has authority to dispose of the matter, subject to review under "clearly erroneous" standard); San Shiah Enter. Co. v. Pride Shipping Corp., No. 88-0944, 1991 U.S. Dist. LEXIS 16046, at *14 n.1 (S.D. Ala. Oct. 23, 1991) (same), aff'd in part, rev'd in part on other grounds, 783 F. Supp. 1334 (S.D. Ala. 1992). On the other hand, a magistrate judge presiding over a Rule 11 motion that is dispositive of a claim or defense may only make recommendations, which are subject to de novo review by the district judge.

Rule 11 states

(b) Representations to Court.

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

"Magistrate Judge has authority under § 636 to impose postjudgment Rule 11 sanctions because, broadly construed, the term "pretrial matter" means any matter unrelated to the claims litigated at trial" appears to be voidable for reason of lack of jurisdiction.

A court may not render a judgment which transcends the limits of its authority.

Plaintiffs assert that they are in full compliance with Rule 11(b) and any claim by either magistrate judge Garcia or judge Armijo is a misrepresentation cognizable under Rule 60(6)(3).

CIV NO 97 0266 SC/DJS is a jury trial lawsuit which should either settled or heard by a jury to try to resolve these unfortunate matters.

3 Judge Armijo writes

In addition, the Court has authority under 28 U.S.C. § 636(b)(3), the "additional duties" provision, to refer any matter to a Magistrate Judge so long as the Article III judge "retains the 'ultimate responsibility for decision making in every instance.'" *Colorado Bldg. & Constr. Trades Council v. B.B. Andersen Constr. Co.*, 879 F.2d 809, 811 (10th Cir. 1989). In this case, the District Judge has conducted the requisite de novo review and made the independent determination that sanctions are warranted. The Court notes as well that Plaintiffs are seeking relief which, if granted, would result in this case being sent back for trial; thus, the pending motions fall within the meaning of Section 636, as it is broadly interpreted by the Tenth Circuit. Thus, the Court rejects the contention that its Order of Reference [Doc. 89] was improper.

This court was tasked to rule on motion to void judgment, not to attack plaintiffs using false charges. Plaintiffs assert that they are in full compliance with Rule 11(b).

A court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void.