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# The authority of Magistrate Judges to impose Rule 11 Sanctions after Kiobel v. Royal Dutch Petroleum Co.

In our federal court system, magistrate judges play a critical role in the administration of justice. The Federal Magistrate Judge Act ("Act"), 28 U.S.C. § 636, authorizes magistrate judges to:

> [H]ear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.[1]

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On occasion, lapses during the pre-trial phase have led to the imposition of sanctions by magistrate judges under Federal Rule of Civil Procedure 11.[2]

Recently, the United States Court of Appeals for the Second Circuit published a decision that addressed, among other things, whether magistrate judges have the authority to issue Rule 11 sanctions themselves, or, instead, are authorized only to make a recommendation to the District Court Judge for the imposition of Rule 11 sanctions.[3] This decision is an important one for federal court practitioners, as it addresses an issue that divides both the federal courts within the Second Circuit as well as the Circuit Courts themselves.

## Factual & Procedural Background

A putative class action was brought in the Southern District of New York pursuant to the Alien Tort Statute, 28 U.S.C. § 1350, arising out of defendants involvement in oil exploration and development in Nigeria.[4] Chief Judge Kimba Wood referred plaintiffs' Rule 23(c) motion for class certification to Magistrate Judge Henry B. Pitman for a report and recommendation. On March 31, 2004, Magistrate Judge Pitman recommended that the District Court deny plaintiffs' motion.[5]

Plaintiffs objected to Magistrate Pitman's Report and Recommendation, and defendants filed an Opposition to those objections. In the Opposition, defendants' attorneys stated: (1) "Now we have learned that seven of [plaintiffs'] identified witnesses are being paid for their testimony;" (2) "[T]here can be no doubt that the witnesses are giving testimony that [plaintiffs'] counsel knows to be false;" and (3) "[W]e know that between February 29, 2004 and April 2, 2004, [plaintiffs' counsel] wired $15,195 to the Benin Republic for the benefit of the witnesses."[6] On the basis of these statements, plaintiffs moved for an order imposing Rule 11 sanctions on the ground that these statements had no evidentiary support. Defendants' attorneys opposed the motion, arguing that that the statements were supported by record evidence.[7]

In an "Opinion and Order" dated September 29, 2006, Magistrate Judge Pitman denied plaintiffs' motion with respect to the first statement, but granted the motion with respect to defendant's second and third statements.[8] For the second statement, Magistrate Judge Pitman imposed a $5,000 sanction on each attorney who signed the filing. Magistrate Pitman declined to impose sanctions for making the third statement because "[a]lthough defendants' counsel overstated the amount of money sent to benefit the [w]itnesses, the amount of the overstatement was small…and did not materially change the nature of the statement."[9] Magistrate Judge Pitman did, however, award plaintiffs one-third of their attorneys' fees arising from their partially successful Rule 11 motion.[10]

Defendants' attorneys appealed Magistrate Judge Pitman's "Opinion and Order" to the District Court. Applying a deferential "clearly erroneous or contrary to law" standard of review under 28 U.S.C. § 636(b)(1)(A), Chief Judge Wood affirmed Magistrate Judge Pitman's Order.

Defendants' attorneys thereafter appealed Chief Judge Woods' Order on two grounds: (1) Magistrate Judge Pitman was not authorized to issue a dispositive decision, such as an Order imposing Rule 11 sanctions, absent the consent of the parties; and (2) the imposition of Rule 11 sanctions on the basis of the statements identified by plaintiffs could not be sustained because of the record evidence supporting those statements.[11] The Second Circuit reversed Chief Judge Wood's Order solely upon the second ground. The Panel, however, chose not to ignore the now-mooted first ground for appeal but instead published their conflicting views. The Second Circuit's analysis of the mooted issue – whether magistrate judges, when acting pursuant to a district court's reference, are authorized to issue orders, or only make recommendations to district judges on whether Rule 11 sanctions should be imposed – provides persuasive guidance for practitioners on each side of this issue until such time as Congress or the United States Supreme Court addresses the matter.

## Analysis

**1. The Honorable Jose A. Cabranes**

In his Opinion, Judge Cabranes was persuaded by the decisions and reasoning of the Sixth and Seventh Circuits, which have held that decisions on Rule 11 motions are dispositive of a claim and are therefore not properly resolved by an order of a magistrate judge.[12]

In reaching his conclusion, Judge Cabranes reasoned first that a Rule 11 motion for sanctions, which gives rise to proceedings separate and distinct from the underlying actions and involves parties distinct from those in the underlying action, is the functional equivalent of an independent claim.[13] As such, when a court determines whether a monetary award is appropriate, the "claim" has been disposed of and nothing but the entry of a judgment, or its functional equivalent, remains.[14] Second, Judge Cabranes reasoned that a narrow statutory exception – allowing magistrate judges to summarily punish acts of criminal conduct that occur in the magistrate's presence – to the general principle that magistrate judges may not dispose of claims when acting by referral already exists and there was no basis to expand this exception by judicial action.[15]

Judge Cabranes concluded accordingly that a magistrate judge is authorized by law only to recommend, not impose, sanctions absent the consent of the parties.[16]

**2. The Honorable Pierre Leval**

Judge Leval found that the Act empowers magistrate judges to hear and determine a wide range of matters, save for those matters expressly excepted within the Act.[17] Moreover, Judge Leval relied upon the amendments to the Act made by Congress in 2000, which further vested magistrate judges with a range of contempt powers.[18] Judge Leval viewed this as indicative of the fact that Congress intended to allow magistrate judges the power to impose monetary sanctions and concluded that all indications "very strongly support" the conclusion that the Act empowers magistrate judges to impose sanctions, except in the form of sanctions that dispose of a claim or defense.[19]

While Judge Leval agreed with Judge Cabranes that sanctions that are case dispositive require *de novo* review, he stated that a Rule 11 sanction does not dismiss a suit or prevent a claim or defense from being advanced.[20] As such, Judge Leval concluded that a magistrate judge is authorized by law to impose by way of Order, Rule 11 sanctions without the consent of the parties.[21]

**3. The Honorable Chief Judge Dennis Jacobs**

Chief Judge Jacobs declined to join the opinion of either Judge Cabranes or Judge Leval and instead stated that the issue – whether magistrate judges have the authority to order Rule 11 sanctions themselves, or only to make a recommendation of Rule 11 sanctions to the district court – is an issue that divides the district courts within the Second Circuit and the Circuit Courts themselves.[22] Chief Judge Jacobs went on to state that he would defer the issue to Congress.[23]

## Significance

It follows from the Second Circuit's decision in *Kiobel* that there is no binding precedent in the Second Circuit as to whether a Magistrate Judge has the power under the Act to impose sanctions. Consequently, until such time as Congress or the United States Supreme Court addresses this issue or resolves the Act's inherent ambiguity, the analysis of Judges Cabranes and Leval – *albeit dicta* – provides a roadmap for practitioners, and judges alike, on each side of this issue.

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1. 28 U.S.C. § 636(b)(1)(A) (2002).
2. *See, e.g., Alpern v. Lieb*, 1993 U.S. Dist. LEXIS 3229 (N.D. Ill. 1993); *Maisonville v. F2 Am., Inc.*, 902 F.2d 746 (9th Cir. 1990); *DiPonio Construction Co., Inc., v. Int'l Union of Bricklayers*, 2010 U.S. Dist. LEXIS 62047, * (E.D. Mich. June 23, 2010); *McGuffin v. Baumhaft*, 2010 U.S. Dist. LEXIS 59497 (E.D. Mich. June 16, 2010).
3. *Kiobel v. Millson et al.*, 592 F.3d 78 (2d Cir. 2010).
4. *See Kiobel v. Royal Dutch Petroleum Co.*, 456 F. Supp. 2d 457 (S.D.N.Y. 2006).
5. *See Kiobel v. Royal Dutch Petroleum Co.*, 2004 U.S. Dist. LEXIS 28812 *29, 43 (S.D.N.Y. 2004).
6. *Kiobel*, 592 F.3d at 80.
7. *Id.*
8. *Kiobel*, 2004 U.S. Dist. LEXIS 28812, at 32-34.
9. *Id.* at *34.
10. *See Id.* at *37.
11. *Kiobel*, 592 F.3d 78.
12. *Id.* at 85; *see also Bennett v. General Caster Service of N. Gordon Co.*, 976 F.2d 995, 998 (6th Cir. 1992) ("nothing in the Act expressly vests magistrate judges with jurisdiction to enter orders imposing Rule 11 sanctions"); *Alpern v. Lieb*, 38 F.3d 933, 936 (7th Cir. 1994) ("the power to award sanctions, like the power to award damages, belongs in the hands of the district judge.")
13. *Kiobel*, 592 F.3d at 86-87.
14. *Id.* at 87.
15. *See* 28 U.S.C. § 636(e)(2); *Kiobel*, 592 F.3d at 87-88.
16. *Kiobel*, 592 F.3d at 89.
17. *Id.* at 91 (the Act "broadly empowers magistrate judges to 'hear and determine' any pretrial matter designated to them by the district court, with the exception of a specified list of matters. As for the matters falling within this excepted list, the extent of the magistrate judge's powers is to take evidence and submit recommendations to the district court…[and] such additional duties as are not inconsistent with the Constitution and laws of the United States") (citing 28 U.S.C. § 636[b][1][B]).
18. *See* Federal Courts Improvement Act of 2000, Pub. L. 106-518 § 202 (2000) (addressing "Magistrate Judge Contempt Authority").
19. *Kiobel*, 592 F.3d at 98.
20. *Id.* at 97-98; *see also Lawrence v. Wilder Richman Sec. Corp.*, 467 F.Supp. 2d 228, 232-33 (D. Conn. 2006); *Laser Med. Research Found. v. Aerofloat Soviet Airlines*, 1994 U.S. Dist. LEXIS 15210 *2 (S.D.N.Y. 1994); *Magee v. Paul Revere Life Ins. Co.*, 178 F.R.D. 33, 37 (E.D.N.Y. 1998).
21. *See also Maisonville v. F2 Am. Inc.*, 902 F.2d 747-48 (9th Cir. 1990).
22. *Kiobel*, 592 F.3d at 106-07.
23. *Id.* ("I respectfully suggest that this knot needs to be untied by Congress or by the Supreme Court.").