

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

LLOYD RAYMOND MARTIN, III, et al.

CIVIL ACTION

VERSUS

NO: 10-2786

WILLIAM M. MAGEE, et al.

SECTION: R(4)

**ORDER AND REASONS**

Defendants William Magee, William M. Magee, APLC, James Coate, Jr. and Buddy Coate, LLC (collectively, "Magee") move to enforce sanctions imposed against attorney Daniel G. Abel.<sup>1</sup> For the following reasons, the Court GRANTS Magee's motion.

On August 19, 2010, plaintiffs Lloyd Martin, Nicole Martin and Carol Robinson filed this action against several defendants, alleging violations of RICO, 18 U.S.C. § 1961-68.<sup>2</sup> On February 13, 2012, this Court dismissed the case with prejudice.<sup>3</sup> The plaintiffs appealed the dismissal.<sup>4</sup> On December 21, 2012, the Fifth Circuit dismissed the appeal as frivolous.<sup>5</sup> Finding that plaintiffs' counsel Daniel G. Abel "has demonstrated a continued pattern of filing frivolous, vexatious appeals that waste judicial resources," the Fifth Circuit imposed \$3,000 in

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<sup>1</sup> R. Doc. 174.

<sup>2</sup> R. Doc. 1.

<sup>3</sup> R. Doc. 168.

<sup>4</sup> R. Doc. 169.

<sup>5</sup> R. Doc. 172-1 at 1.

sanctions against Abel personally.<sup>6</sup> On January 14, 2013, the Fifth Circuit issued its sanctions against Abel as a mandate.<sup>7</sup> Magee now moves to enforce the sanctions.<sup>8</sup> Further, he asks the Court to award interest on the unpaid sanctions.<sup>9</sup> Abel has not filed an opposition to Magee's motion.

The Fifth Circuit "retains jurisdiction over an appeal until it has issued a mandate to implement its disposition." *United States v. Cook*, 592 F.2d 877, 880 (5th Cir. 1979). When the Fifth Circuit issues its mandate, the district court reacquires jurisdiction, even if the mandate does not explicitly remand the case. *Newball v. Offshore Logistics Int'l*, 803 F.2d 821, 825-26 (5th Cir. 1986). This is because "the appellate courts' powers necessarily operate in conjunction with the district court, where actual closure of cases occurs." *Fort Gratiot Sanitary Landfill, Inc. v. Mich. Dep't of Natural Resources*, 71 F.3d 1197, 1202 (6th Cir. 1995). In other words, "a district court . . . retains jurisdiction to enforce an appellate court's mandate." *United States v. White*, 751 F. Supp. 2d 173, 175 (D.D.C. 2010).

The Fifth Circuit has stated that it is "obvious" that "one district court may enforce another's sanctions." *Dominguez v.*

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<sup>6</sup> *Id.* at 4.

<sup>7</sup> R. Doc. 172 at 2.

<sup>8</sup> R. Doc. 174.

<sup>9</sup> R. Doc. 174-1 at 3.

*Scott*, No. 00-40031, 2001 WL 872771, at \*2 (5th Cir. July 5, 2001). It is equally obvious that, in appropriate circumstances, a district court may enforce an appellate court's sanctions. See *McCray v. FBI*, No. 11-87, 2011 WL 690211 (N.D. Tex. Jan. 29, 2011) ("This Court enforces sanctions imposed by the Fifth Circuit Court of Appeals."). This Court acquired jurisdiction to enforce the sanctions imposed against Abel when the Fifth Circuit issued its appellate mandate.

The Court finds that the sanctions must be enforced. The record indicates that Magee's counsel wrote to Abel on June 7, 2013, requesting that he pay the sanctions.<sup>10</sup> Magee asserts that the sanctions remain unpaid,<sup>11</sup> and Abel does not dispute this. Further, Abel offers no defense to enforcement of the sanctions, which have been due for more than a year. The Court finds that a 30-day deadline for payment is appropriate at this time. If Abel does not pay the sanctions within 30 days of the date of entry of this order, the Court shall hold him in contempt.

Finally, the Court denies Magee's request for an award of interest on the unpaid sanctions. "[A]n inferior court has no power or authority to deviate from the mandate issued by an appellate court." *Briggs v. Penn R. Co.*, 334 U.S. 304, 306 (1948). This rule "interdict[s] allowance of interest not

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<sup>10</sup> R. Doc. 174-2 at 1-2.

<sup>11</sup> R. Doc. 174-1 at 2.

provided for in the mandate." *Id.* Here, the Fifth Circuit did not award interest as part of its mandate.<sup>12</sup> This Court has no authority to award interest on the sanctions.


Accordingly,

IT IS ORDERED that Magee's motion to enforce judgment is GRANTED.

IT IS FURTHER ORDERED that within 30 days of the date of entry of this order, attorney Daniel G. Abel is to pay defendants the sum of \$3,000, the amount of sanctions awarded by the Fifth Circuit that remain due.

IT IS FURTHER ORDERED that if the sum of \$3,000 is not paid within 30 days of the date of entry of this order, attorney Daniel G. Abel shall be held in contempt of court.

New Orleans, Louisiana, this 27th day of January, 2014.

  
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SARAH S. VANCE  
UNITED STATES DISTRICT JUDGE

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<sup>12</sup> R. Doc. 172 at 2.