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Civil Procedure - Townsend v. Holman Consulting Corp.: Rule 11 Sanctions, Ignorance or Vigorous Litigation Is No Excuse

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CIVIL PROCEDURE

SUMMARY

TOWNSEND v. HOLMAN CONSULTING CORP.: RULE 11 SANCTIONS, IGNORANCE OR VIGOROUS LITIGATION IS NO EXCUSE

I. INTRODUCTION

In a unanimous en banc ruling, the Ninth Circuit Court of Appeals, in *Townsend v. Holman Consulting Corp.*,[1] held that an attorney may be sanctioned under Rule 11 of the Federal Rules of Civil Procedure[2] for a partially frivolous[3] pleading. The

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1. Townsend v. Holman Consulting Corp., 914 F.2d 1136 (9th Cir. 1990)(en banc)(per Fletcher, C. J.; the other panel members were Wallace, J., Tang, J., F. Poole, J., Nelson, J., Noonan, J., O'Scannlain, J., Trott, J., concurring, Canby, J., and Pregerson, J.).

2. FED. R. CIV. P. 11 deals with disciplinary sanctions to check abuses in signing of pleadings. The rule provides in part,

> The signature of an attorney constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation . . . . If a pleading, motion, or other paper is signed in violation of this rule, the court . . . shall impose . . . an, appropriate sanction.

The provisions apply to motions and other papers by incorporation of FED. R. CIV. P. 7 (b)(2) and 7(b)(3). Sanctions may be imposed on the attorney, the party the attorney represents or both.

court rejected the argument that the pleadings could not be the subject of sanctions because they also included non-frivolous requests for relief.[4] Prior Ninth Circuit decisions had permitted imposition of Rule 11 sanctions only when the pleading as a whole was frivolous.[5]

This decision expands attorney liability under Rule 11 and vacates an earlier panel decision of the Ninth Circuit,[6] which had reversed the district court's orders imposing sanctions.[7]

II. FACTS

After an unsuccessful state court action, Patrick Townsend, an employee of a contracting company, sued in federal court for the payment of medical benefits under an Employer Benefit Plan (Plan).[8] The complaint named the law firm of Wilson & Reitman (Wilson), which had represented the Plan in the state court action as one of the defendants.[9] Wright, the attorney for the Townsends,[10] alleged that Wilson had "advised the Plan to adopt certain provisions challenged in the suit, counseled the Plans' administrators not to make payments to Townsend and

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3. *Townsend*, 914 F.2d at 1137. Frivolous is a term used by the Ninth Circuit "to denote a filing that is baseless and made without a reasonable inquiry." *Id.* at 1140.

4. *Id.* at 1138-39.

5. *See* Murphy v. Business Cards Tomorrow, Inc., 854 F.2d 1202 (9th Cir. 1988) (Rule 11 sanctions inappropriate of pleading as a whole is not frivolous or harassing). The holding in *Murphy* interpreted a passage in Golden Eagle Dist. Corp. v. Burroughs Corp., 801 F.2d 1531, 1540-41 (9th Cir. 1986) (Rule 11 sanctions inappropriate where only a portion of an otherwise meritorious pleading is frivolous) to include not just legal arguments but also allegations. *Townsend*, 914 F.2d at 1141. In *Golden Eagle*, the court addressed two issues: whether a lawyer's failure to identify a legal argument as an extension of existing law rather than application of existing law was sanctionable, and whether a lawyer's failure to cite contrary authority in violation of the American Bar Association's ethical rules was sanctionable. *Townsend*, 914 F.2d at 1141. The court dealt with legal arguments not allegations or claims. *Townsend*, 914 F.2d at 1141. The en banc court in *Townsend* emphasized that the passage in *Golden Eagle* which stated the district court could not impose sanctions because "a particular argument or ground for relief contained in a non-frivolous motion is found to be unjustified" referred solely to legal arguments in support of claims. *Townsend*, 914 F.2d at 1140-41.

6. *See* Townsend v. Holman Consulting Corp., 881 F.2d 788 (9th Cir. 1989) (*Townsend I*).

7. *Townsend*, 914 F. 2d at 1139.

8. *Townsend I*, 881 F.2d at 788.

9. *Id.* at 791.

10. *Townsend*, 914 F.2d at 1138.

improperly obstructed the unsuccessful state court action."[11]

Wilson moved to dismiss the complaint and requested sanctions.[12] He included affidavits, from the President of the Plan and from another attorney who represented the Plan, stating that the firm had been involved with the Plan only during the state litigation process and did not participate in the adoption, implementation, or administration of the Plan.[13] Wright did not rebut the affidavits.[14] In an amended complaint, Wright dropped the allegation that Wilson had given advice regarding the adoption of Plan provisions, but continued to name the firm as a defendant involved in conduct which injured his client.[15] Wilson again moved to dismiss the amended complaint and again requested sanctions.[16]

The district court dismissed the complaint and permitted Townsend to file a second amended complaint against all defendants except Wilson.[17] The court also imposed a Rule 11 sanction against Wright finding that Wright had sued "without a reasonable investigation, without adequate basis in law or fact, and for the purposes of harassment."[18]

Wright filed a notice of appeal of the sanction order,[19] then moved for reconsideration of the sanction or in the alternative for a stay pending appeal.[20] The district court denied the motion and imposed an additional $500 sanction.[21] The court determined that the motion for reconsideration was frivolous, because the filing of a notice of appeal divested the district court of jurisdiction.[22] The motion for a stay pending appeal was also de-

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11. *Id.* at 1139.
12. *Id.*
13. *Id.*
14. *Townsend*, 914 F.2d at 1139.
15. *Id.*
16. *Townsend I*, 881 F.2d at 791.
17. *Id.* The claims against Wilson & Reitman were dismissed with prejudice. *Id.* The Townsend's did submit a second amended complaint. The district court dismissed all of the Townsend's claims with prejudice. *Id.*
18. *Townsend*, 914 F.2d at 1139. The district court imposed a Rule 11 sanction in the amount of $3,000 finding that the conduct of the Townsend's attorney was "plainly nothing short of outrageous." *Townsend I*, 881 F.2d at 791.
19. Townsend, 914 F.2d at 1139.
20. *Id.*
21. *Id.*
22. *Townsend*, 914 F.2d at 1139. The district court stated that the filing of a post-

termined to be frivolous because it did not comply with FED. R. CIV. P. 62.[23] Wright appealed the order for further sanction.[24] The appeals of both sanctions were consolidated.[25]

Originally, a three-judge panel for the Ninth Circuit reversed both sanction orders in *Townsend I* finding that neither appeal could be sanctioned as frivolous, because neither was frivolous as a whole.[26] The Ninth Circuit took the case en banc to reconsider Rule 11 sanctions for partially frivolous pleadings.[27]

III. COURT'S ANALYSIS

A. BACKGROUND

Rule 11 provides that a paper, certified by an attorney, must be sanctioned if the paper is filed for an improper purpose or is frivolous, both baseless and made without reasonable and competent inquiry.[28] Improper purpose and frivolousness are independent grounds.[29] Either ground is sufficient to sustain a sanction.[30] An objective standard is used to review both grounds, the "reasonableness under the circumstances" standard.[31] A spe-

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appeal motion was against "obvious and well known principle[s] of law." *Townsend I*, 881 F.2d at 791.

23. *Id.* FED. R. CIV. P. 62 (c) requires the appellant to give a supersedeas bond at or after the time of filing of the notice of appeal in order to obtain a stay. The stay is effective when the supersedeas bond is approved by the court.

24. *Townsend*, 914 F.2d at 1139.

25. *Id.*

26. *Townsend I*, 881 F.2d at 794. The first amended complaint had named nonfrivolous defendants, and the motion for reconsideration was not frivolous in asking for a stay pending appeal. *Id.* at 795, 797.

27. *Townsend*, 914 F.2d at 1139.

28. Townsend v. Holman Consulting Corp., 914 F.2d 1136, 1140 (9th Cir. 1990) The two clauses of Rule 11: "well grounded in fact and warranted by existing law" and "improper purpose" clauses are linked by the conjunction "and". Because both clauses are certified to by the attorney when signing, the rule suggests each clause is to be viewed independently. *Id.* (quoting Zaldivar v. City of Los Angeles, 780 F.2d 823, 832 (9th Cir. 1986) (filing of federal court action claiming that recall petition violated Voting Rights Act was good faith argument that was grounded in fact and not interposed for any improper purpose).

29. *Townsend*, 914 F.2d at 1140. *See Zaldivar*, 780 F.2d at 832. The court in *Townsend* emphasized that while separate and distinct inquiries, the two grounds often overlap. Evidence regarding frivolousness is often highly indicative of improper purpose. *Townsend*, 914 F.2d at 1140.

30. *Townsend*, 914 F.2d at 1140.

31. *Id.* (citing *Zaldivar*, 780 F.2d at 829). The 1983 Amendments to Rule 11 changed

cial rule applies when the court considers complaints which initiate actions.[32] In order to determine that a complaint is filed for an improper purpose a court must first find that it was frivolous.[33]

In *Townsend*, the district court had imposed sanctions on the first amended complaint on both frivolousness and improper purpose grounds.[34] For this reason, and because a finding of improper purpose must be supported by a finding of frivolousness for a complaint, the Ninth Circuit considered the frivolousness issue.[35]

1. Frivolousness

The Ninth Circuit found that a previous panel of the Ninth Circuit, in *Murphy v. Business Cards Tomorrow, Inc.*,[36] had misinterpreted a passage in *Golden Eagle Distribution Corp. v. Burroughs Corp.*[37] that discussed Rule 11 to include frivolous allegations.[38] The passage read:

> Nothing in the language of the Rule or the Advi-

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the standard against which an alleged violation is to be tested. Prior to 1983, Rule 11 required subjective bad faith by the signing attorney. The new standard tests the knowledge of the attorney by a reasonableness under the circumstances standard. While the former standard required the signing attorney to make a willful violation of the rule, the new standard does not require the violation to be willful. "There is no room for a pure heart, empty head defense under Rule 11." *Zaldivar*, 780 F.2d at 829 (quoting Schwarzer, *Sanctions Under the New Federal Rule 11—A Closer Look*, 104 F.R.D. 181, 187 (1985)).

32. *Townsend*, 914 F.2d at 1140.

33. *Id.* (citing *Zaldivar*, 780 F.2d at 832), in which it was found that a defendant cannot be harassed under Rule 11 if the plaintiff files a complaint which is "well grounded in fact and warranted by existing law." The court in *Townsend* noted that greater protection must be given to the complaint which is the means by which a plaintiff seeks to obtain substantive legal rights. The court noted that enforcement of the private plaintiff's substantive legal rights may often benefit the public in advancing public policies, even if the motive for asserting the claim is not entirely pure. *Townsend*, 914 F.2d at 1140.

34. *Id.* The district court stated, "[p]laintiff did not make the 'reasonable inquiry' required by Rule 11 and it is found that suing the lawyers was not in good faith and for the purposes of harassment." *Townsend*, 914 F.2d at 1140. The Ninth Circuit noted that the district court's finding of no reasonable inquiry was equivalent to a finding of frivolousness, baseless and made without a reasonable and competent inquiry. *Id.*

35. *Id.*

36. 854 F.2d 1202 (9th Cir. 1988).

37. 801 F.2d 1531, 1540-41 (9th Cir. 1986).

38. *Murphy*, 854 F.2d at 1205.

> sory Committee Notes supports the view that the Rule empowers the district court to impose sanctions on lawyers simply because a particular argument or ground for relief contained in a non-frivolous motion is found by the district court to be unjustified.[39]

The court in *Townsend* stated that the phrase "ground for relief" referred to legal arguments in support of claims, not allegations or claims.[40] In *Murphy*, the Ninth Circuit, without any discussion, simply substituted the word "allegations" for the term "ground for relief."[41] The holding in *Murphy* was subsequently followed in *Community Electric Services of Los Angeles, Inc. v. National Electrical Contractors Association*,[42] among other succeeding cases.[43] The court stated that under the logic of *Murphy* and *Community Electric*, the earlier Ninth Circuit panel decision in *Townsend* was understandable.[44]

However, citing *Cooter & Gell v. Hartmarx Corp.*,[45] the en banc court determined that the central purpose of Rule 11 was to deter baseless filings.[46] Because the holding in *Murphy* would allow a party with one non-frivolous claim to add frivolous allegations without the fear of sanctions, the en banc court ex-

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39. *Townsend*, 914 F.2d at 1140.

40. *Id.* at 1141.

41. *Id.* at 1205. The court stated, "Rule 11 permits sanctions only when the pleading as a whole is frivolous or of a harassing nature, not when one of the allegations or arguments in a pleading may be so characterized." *Id.*

42. 869 F.2d 1235, 1242-43 (9th Cir. 1989), *cert. denied*, 110 S. Ct. 236 (1990) (Rule 11 permits sanctions only where pleading as a whole is frivolous).

43. *See* Romero v. City of Pomona, 883 F.2d 1418, 1429 (9th Cir. 1989) (that some allegations made at the onset of litigation later prove to be unfounded does not make a complaint frivolous if the complaint also contains some un-frivolous claims).

44. *Townsend*, 914 F.2d at 1141. *Community Electric*, 869 F. 2d at 1242, stated that the language of Rule 11 requires the court to evaluate the pleading or paper filed as a whole (quoting *Zaldivar*, 780 F.2d at 831, emphasizing that Rule 11 sanctions are assessed if the paper is frivolous, legally unreasonable, or without factual foundation).

45. 110 S. Ct. 2447 (1990) (District Court can impose Rule 11 sanctions after plaintiff voluntarily dismissed action. Policy goals of Rule 11 include deterrence and streamlining of the judicial process).

46. *Townsend*, 914 F.2d at 1141. The court quoted a passage in Cooter & Gell v. Hartmax Corp., 110 S. Ct. 2447 (1990) which stated: "It is now clear that the central purpose of Rule 11 is to deter baseless filings in District Court, and thus, consistent with the Rule Enabling Act's grant of authority, streamline the administration and procedure of the federal courts." *Townsend*, 914 F.2d at 1141 (quoting *Cooter & Gell*, 110 S. Ct. at 2454).

pressly overruled *Murphy*.[47] The primary rational was to prevent parties with one non-frivolous claim from adding frivolous allegations without fear of sanctions.[48]

In response to concerns that Rule 11 sanctions would "spawn satellite litigation and chill vigorous advocacy,"[49] the court found that the best answer was not to construct an "artificial 'safe harbor' for frivolous allegations or claims" which would favor form over substance.[50] The Ninth Circuit stated that in determining whether a claim was frivolous, the courts should determine if the attorney's inquiry was reasonable under "all the circumstances of the case."[51]

The court offered several examples of when a determination of a "reasonable inquiry under all the circumstances of the case" may permit a more limited and cursory inquiry.[52] A determination of what is reasonable inquiry under the circumstances of the case may differ depending on the amount of time available and the complexity of the case.[53] If a lawyer discovers a potential cause of action with only a short period of time before the statute of limitations expire, a more limited inquiry will be tolerated than when there is ample time to investigate before filing a complaint.[54] If relevant facts are under the control of the opposing party, or if the case is complex and initially requires the

47. *Townsend*, 914 F.2d at 1141.

48. *Id.* The court stated, "[i]t would ill serve the purpose of deterrence to allow, as does *Murphy*, a safe harbor for improper or unwarranted allegations." *Id.*

49. *Id.* (quoting *Cooter & Gell*, 110 S. Ct. 2447, 2454 (1990)). The Supreme Court in *Cooter & Gell* stated, "[a]though the rule must be read in light of concerns that it will spawn satellite litigation and chill vigorous advocacy, any interpretation must give effect to the rule's central goal of deterrence." *Cooter & Gell*, 110 S. Ct. at 2454. The Ninth Circuit offered an example of the chilling of advocacy as attorneys, because of the fear of sanctions, refusing cases where courts must recognize new rights. *Townsend*, 914 F.2d at 1141.

50. *Townsend*, 914 F.2d at 1142. The Ninth Circuit stated that such a safe-harbor rule would encourage pleading parties to manipulate the form in which claims were presented, allowing combination of frivolous and non-frivolous claims. *Id.*

51. *Id.* The Ninth Circuit stated, "[t]he answer lies in recognizing, as did the Supreme Court in *Cooter & Gell*, that Rule 11's requirement of a 'reasonable inquiry' means an inquiry reasonable under 'all the circumstances of the case.'" *Townsend*, 914 F.2d at 1142 (quoting *Cooter & Gell*, 110 S. Ct. at 2459).

52. *Townsend*, 914 F.2d at 1142 (citing examples from the Supreme Court analysis of "reasonable inquiry under all the circumstances of the case" in *Cooter & Gell*, 110 S. Ct. at 2459).

53. *Townsend*, 914 F.2d at 1142.

54. *Id.*

naming of numerous defendants, such as a complex product liability case, more leeway may be given to imprecision at the onset of litigation.[55]

The court cited the Second Circuit's opinion in *Oliveri v. Thompson*,[56] as a "straight forward, common sense application of the 'reasonable inquiry.' "[57] *Oliveri* denoted factors for assessment including knowledge that reasonably could have been acquired at the time the pleading was filed, the type of claim and the difficulty of acquiring sufficient information, which party had access to relevant facts, and "the significance of the claim in the pleading as a whole."[58] Unlike *Murphy*, the Ninth Circuit in *Townsend* found that the mere existence of a non-frivolous claim is not dispositive.[59]

The court acknowledged that while *Murphy* created a "bright line" which would decrease satellite litigation, the Rule's requirement of a "reasonable inquiry" demands a fact-based inquiry for which "bright lines" are not appropriate.[60]

2. Legal Distinction Between Improper Purpose in Part and Frivolousness In Part

The en banc court in *Townsend* noted that with the overruling of *Murphy*, there was no need for the previous legal distinction, made by the earlier panel majority,[61] which allowed a

55. *Id.*

56. 803 F.2d 1265 (2d Cir. 1986) (analysis of a district courts award of sanctions against a civil rights attorney for allegedly instituting and continuing prosecution of meritless and frivolous claims).

57. *Townsend*, 914 F.2d at 1142.

58. *Townsend*, 914 F.2d at 1142 (quoting Cross & Cross Properties v. SOS Everett Allied Co., 886 F.2d 497, 504 (2d Cir. 1989) (citing Oliveri)).

59. *Townsend*, 914 F.2d at 1142.

60. *Id.* at 1142-43.

61. *Townsend*, 881 F.2d at 795. The Ninth Circuit, in a majority panel, noted that the pleading-as-a-whole rule did not apply to "improper purpose" cases. The panel emphasized the difference in the analyses between frivolousness and improper purpose. The court stated that "[i]t is illogical, and counter to *Golden Eagle*, to hold a pleading, examined as a whole, frivolous if it states a colorable claim for relief. By contrast, there is no logical difficulty with a finding that the inclusion in a pleading of an unconscionable damages claim (or any other claim), for the purpose of harassing the opposing party, renders the pleading unsanctionable under Rule 11. 'Rule 11 permits sanctions [for frivolousness] only where the pleading as a whole is frivolous . . . . An entire pleading has a harassing or improper purpose if the litigant included one of the claims or allegations

pleading or paper harassing-in-part to be sanctioned but not one that was only frivolous-in-part.[62] The court stated that as the inquiries into frivolousness and improper purpose frequently overlap, a district court may infer that the pleading is filed for an improper purpose if there is solid evidence of a pleading's frivolousness.[63] The court stated that the inference was permissible because the test for improper purpose is objective.[64]

B. Application of Principles to the Case

1. The First Amended Complaint

The Ninth Circuit held that the sanction of the first amended complaint was justified and not an abuse of discretion.[65] The court did not address the issue of whether sufficient information existed to name the law partnership of Wilson & Reitman in the initial complaint.[66] Instead, the court addressed the facts found by the district court after the filing of the complaint. The court noted that Wright did not rebut the affidavits provided by Wilson in a motion to dismiss.[67] Rather, in response, Wright filed a first amended complaint that re-alleged the firm's involvement.[68] The district court determined that

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with that purpose'. " (quoting *Community Electric*, 869 F.2d at 1242-43).

62. *Townsend*, 914 F.2d at 1143. The court emphasized that the holding in *Community Electric*, (a pleading or paper that was harassing in part could be sanctioned) was made to reconcile the *Murphy* reading of *Golden Eagle* (pleading-as-a-whole rule includes allegations and claims) with the decision in Hudson v. Moore Business Forms, Inc., 836 F.2d 1156, 1162 (9th Cir. 1987), which held that although a defendant's counterclaim was non-frivolous, the four million dollar claim for damages, in the same pleading, was frivolous. The Ninth Circuit, in *Hudson*, agreed with the district court that there was a strong inference from the nature and lack of justification for the defendant's damage claim that the claim was filed for an improper purpose. *Hudson* was therefore distinguished, in *Community Electric*, as an improper purpose case. *Townsend*, 914 F.2d at 1143.

63. *Townsend*, 914 F.2d at 1143. The court stated, "[a] district court confronted with solid evidence of a pleading's frivolousness may in circumstances that warrant it infer that it was filed for an improper purpose." *Id.*

64. *Id.*

65. *Id.* at 1143.

66. *Id.* The court noted in footnote 5, that the sanctioning of claims in initial complaints are more likely to be an abuse of discretion. The court firmly stated that Rule 11 sanctions are not meant to take precedence over the Federal Rules' generous discovery provisions. *Id.*

67. *Townsend*, 914 F.2d at 1144.

68. *Id.* The Ninth Circuit majority panel noted that although the first amended complaint no longer alleged that the defendants had any role in the adoption of the Plan, the complaint still named Wilson & Reitman as defendants. *Townsend*, 881 F.2d at 791.

Wright conducted "absolutely no inquiry" before filing the first amended complaint.[69] The en banc court determined that the lack of inquiry and the baselessness of the allegations justified the district court's finding of frivolousness as a ground for Rule 11 sanction.[70]

The Ninth Circuit also held the district court's finding of improper purpose to be justified and not an abuse of discretion.[71] The en banc court determined, from the district court record, that the district court inferred from the facts[72] that the naming of Wilson as a defendant in the federal court action was "essentially vindictive."[73] The Ninth Circuit again noted that the test for improper purpose was objective, and determined that it was not an abuse of discretion to find that Wright's behavior manifested an improper purpose under a reasonableness standard.[74]

2. The Motion for Reconsideration

The Ninth Circuit held that the district court was justified in finding that the motion to vacate and reconsider was frivolous, and no abuse of discretion had occurred.[75] The district court had determined that the attorney should have known that filing of an appeal would divest the district court of jurisdiction.[76] The Ninth Circuit agreed, stating that a "competent

69. *Townsend*, 914 F.2d at 1144.

70. *Id.*

71. *Id.* The district court stated, "[n]ot only does plaintiff not state a cause of action against the plan's lawyers, or submit any facts in opposition to the motion for summary judgment, the act of suing the opponent's lawyers in this situation is plainly nothing short of outrageous." *Id.*

72. *Townsend*, 914 F.2d at 1144. The Ninth Circuit cited two facts: the fact that the allegations were frivolous and the fact that Wilson & Reitman had been the law firm which opposed Wright in the state court action. *Id.*

73. *Id.* The court emphasized that in order to defer to the fact-finding power of the district courts, the district courts need to give thorough explanations of the reasons for sanctions. In this case because Wright conducted absolutely no inquiry, the district court's brief statement of findings and reasoning was adequate. *Id.*

74. *Townsend*, 914 F.2d at 1144.

75. *Id.* at 1145.

76. *Id.* The district court stated, "[a]s should have been apparent to plaintiff's counsel, the taking of an appeal divested this court of jurisdiction to consider any modification of its previous sanction order, even if it was convinced that it should modify the order. This is an obvious and well-known principle of law which should have been known

reading of our rule and precedents would have quickly made clear to Wright that he did not follow the correct procedures."[77]

However, the en banc court found legally incorrect the district court's rationale for finding the motion for a stay frivolous[78] and the district court's holding an abuse of discretion.[79] The en banc court noted that in *International Telemeter v. Hamlin International Co.*,[80] the Ninth Ciruit had held that a district court may, at its discretion, permit other securities than a bond.[81] The court stated that the fact that Wright did not cite *International Telemeter* did not make the motion subject to sanction.[82] The court held that the motion was warranted under existing law.[83]

3. Concurring Opinion

Judge Canby, joined by Judge Pregerson, concurred with the result reached by the majority regarding the first amended complaint.[84] However, Judge Canby emphasized that sanctions should be imposed only when *all* of the allegations against a particular defendant are frivolous.[85] Differing from the majority, he maintained that the previous Ninth Circuit cases had been properly decided.[86] While agreeing that *Golden Eagle* dealt only with legal arguments, Judge Canby emphasized that other portions of

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to plaintiff and obviated the necessity of defendant's expenditure in defending the motion." *Id.* at 1144.

77. *Id.* at 1145.

78. *Id.*

79. *Townsend*, 914 F.2d at 1145. The district court stated that the attorney did not correctly follow the procedure of FED. R. CIV. P. 62, in posting a supersedeas bond. "[A] simple reading of Rule 62 should have answered plaintiff's inquiry about a stay. Accordingly, plaintiff's counsel could not have made the 'reasonable inquiry it [the motion]. . . is warranted by existing law. . .' since there is no semblance of existing law which would have justified the motion." *Id.*

80. 754 F.2d 1492 (9th Cir. 1985) (although federal rule provides that a supersedeas bond may be used to stay execution of judgment pending appeal, the court has discretion to allow alternate forms of judgment guarantee).

81. *Townsend*, 914 F.2d at 1145 (citing *International Telemeter*, 754 F.2d at 1495).

82. *Townsend*, 914 F.2d at 1145 (citing *Golden Eagle*, 801 F.2d at 1541-42) (reversal of a district court sanction given because the attorney failed to cite contrary authority).

83. *Townsend*, 914 F.2d at 1145. Because the district court erroneously believed there were two grounds for the sanction of the motion, the en banc court remanded the case for consideration of the amount of the award. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* at 1146.

that opinion were concerned with the effect of "over-exacting interpretations of Rule 11" which could chill vigorous advocacy and create extensive satellite litigation.[87]

Judge Canby stated that *Murphy* and *Community Electric* were appropriate decisions according to the language of Rule 11.[88] He emphasized that the language of Rule 11 provides that the attorney or party signing the pleading, motion, or paper certifies that "it" is well grounded in fact and law.[89] Judge Canby asserted that the use of the word "it" refers to the pleading, or paper filed as a whole.[90]

Judge Canby expressed concern that the majority's approach of permitting sanctions for partially frivolous pleadings could lead to serious abuse.[91] He noted that the flexible rule could result in after-the-fact scrutiny of pleadings for isolated deficiencies.[92] Judge Canby asserted that the lack of a bright line rule would lead to varying standards and greatly increased satellite litigation over sanctions.[93]

Judge Canby stated that he would not overrule *Murphy*, but would slightly modify the bright line rule, and impose sanctions only when all claims against any particular defendant were frivolous.[94] He stated that this modification would protect defendants against frivolous lawsuits, establish an easily administered boundary, and allow vigorous advocacy.[95]

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87. *Id.* (citing *Golden Eagle*, 801 F.2d at 1540 n.4, 1541) (expressing concern regarding possible misrepresentation of aggressive and justified representation of the client and the expenses of satellite litigation).

88. *Townsend*, 914 F.2d at 1146.

89. *Id.*

90. *Id.* (quoting *Community Electric*, 869 F.2d at 1242) (language of Rule 11 requires the court to evaluate the pleading or paper as a whole). The majority disagreed with Judge Canby's belief that the plain language of Rule 11 favors the *Murphy* pleading-as-a-whole rule. The majority stated that the Rule 11 language did not imply that a pleading is well-grounded simply because one part of the pleading is well grounded. The majority felt that the language simply implied that a minor or insignificant allegation or subclaim should not be sanctioned. The majority noted that under Judge Canby's proposed disposition of the case, the court would have to ignore significant parts of a pleading in determining if sanctions are appropriate. *Townsend*, 914 F.2d at 1143 n.4.

91. *Townsend*, 914 F.2d at 1146.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* at 1146-47.

IV. CONCLUSION

The Ninth Circuit in *Townsend* addressed whether an attorney may be sanctioned for a complaint which is only partially frivolous. In deciding that pleadings, motions, or papers may be sanctioned even if only frivolous in part, the court overruled *Murphy v. Business Cards Tomorrow, Inc.* As a consequence, the court overruled completely the pleading-as-a-whole rule for a complaint, or for any other paper. Papers may now be sanctioned if frivolous-in-part or filed for an improper purpose in part. In taking this step, the Ninth Circuit Court of Appeals has greatly increased the scope of papers which may be sanctioned.

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