

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 03-2006-EGS-JMF
)	
FELD ENTERTAINMENT, INC.,)	
)	
Defendants.)	

**RESPONSE TO DEFENDANT FELD ENTERTAINMENT INC.'S
OBJECTIONS TO APPOINTMENT OF SPECIAL MASTER**

Third-parties Katherine Meyer and the law firm of Meyer, Glitzenstein & Crystal hereby respond to a portion of Defendant Feld Entertainment Inc.'s Objections To Appointment Of Special Master And Recommendations For Duties And Authority Of Special Master ("Feld's Objections").

On page 13, Feld's Objections recite that:

FEI further objects to the referral of the amount of sanctions against Ms. Meyer and the law firm Meyer, Glitzenstein & Crystal ("MGC") to the Special Master, because claims for fees as sanctions pursuant to 28 U.S.C. § 1927 cannot be referred to a Special Master under Rule 54. See Fed. R. Civ. P. 54(d)(2)(E) ("Subparagraphs (A)-(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under 28 U.S.C. § 1927."). The amount of the sanction to be entered against Ms. Meyer and MGC must be determined by the District Court.

(Emphasis added).

While Feld's Objections accurately quote the language of the cited rule, Fed. R. Civ. Pro. 54(d)(2)(E) ("Subparagraphs (A)-(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under 28 U.S.C. § 1927."), they draw the wrong conclusion from that language. The quoted language refers back to the special procedures

established by Rule 54 for evaluating claims of attorney's fees in Subparagraphs (A)-(D), not to the substantive powers of a Special Master Magistrate. There is nothing in Rule 54(d)(2)(E) or subparagraphs A-D that leads to Feld's asserted conclusion that "claims for fees as sanctions pursuant to 28 U.S.C. § 1927 cannot be referred to a Special Master under Rule 54." The fact that Rule 54(d)(2)(E) states that Rule 54's procedures and timelines do not constrain a party seeking sanctions under 28 U.S.C. § 1927 does not mean that a court cannot appoint a special master to oversee fees for sanctions.

Local Rule 72.1(B) allows a district court to appoint a magistrate to "[s]erve as a special master in civil actions pursuant to Rule 53" and to "[p]erform any additional duty not inconsistent with the Constitution and laws of the United States." There is nothing that we know of that is "inconsistent with the Constitution and laws of the United States" in allowing Magistrate Judge Facciola to determine the amount of these fees, and Feld has certainly not cited anything of that magnitude to the Court. As a result, courts routinely appoint special masters specifically for this purpose. See, e.g., In re: Girardi, 611 F.3d 1027, 1034-35 (9th Cir. 2010) (explaining that the Ninth Circuit appointed a special master to oversee the allocation of fees for sanctions under 1927 related to the filing of a frivolous appeal); Dominion Video Satellite, Inc. v. Echostar Satellite, LLC, 430 F.3d 1269, 2174 (10th Cir. 2005) (explaining that the district court granted a motion for sanctions under 28 U.S.C. § 1927, and ordered that the "[i]f there is a disagreement as to the amount of fees, I will appoint a special master and assess costs as the special master recommends on the attorneys fees issue"); Lewis v. Smith, No. 4:07-cv-2011, 2010 WL 3081938, at *2 (M.D. Pa. Aug. 6, 2010) (noting that the district court appointed a magistrate judge to serve as special master over fees for sanctions under 28 U.S.C. § 1927, and

that the magistrate had recommended a certain figure after reviewing all of the evidence); Dunbar v. Cnty of Maui, No. 07-107, 2008 WL 199908 (D. Haw. Jan. 23, 2008) (district court judge adopting report and recommendation from magistrate who served as special master overseeing fees for sanctions under 28 U.S.C. § 1927). Cf. Wallace v. Skadden, Arps, Slate, Meagher & Flom, LLP, 362 F.3d 810, 814-17 (D.C. Cir. 2004) (finding error with the district court's failure to comply with the proper procedures for allowing objections to the special master's fee sanction findings and for reviewing the special master's report de novo under federal and local rules, but expressing no concern with the appointment of a magistrate as a special master over these issues)

Moreover, even where a Magistrate Judge is serving only in his magistrate capacity under 28 U.S.C. § 636 – as opposed to in his additional capacity as a designated special master under Rule 53 – the Magistrate Judge has the power to oversee and make findings with respect to claims under 28 U.S.C. § 1927. See Novelty Textile Mills, Inc. v Stern, 136 F.R.D. 63, 75-77 & n.26 (rejecting argument that magistrate does not have authority to impose or deny sanctions under 28 U.S.C. § 1927); Ullmann v. Olwine, Connelly, Chase, O'Donnell & Weyher, 123 F.R.D. 253, 262 (sanction motion granted), 123 F.R.D. 559 (amount awarded) (S.D. Ohio 1987), *aff'd*, 857 F.2d 1475 (6th Cir.1988) (table), cert. denied, 489 U.S. 1080 (1989); Manville Sales Corp. v. Paramount Systems, Inc., 1988 WL 3855 (E.D.Pa. Jan. 20, 1988) (§ 1927 sanctions imposed by Magistrate sua sponte).

Thus, contrary's to Feld's assertion, there is no judicial power impediment to Magistrate Judge Facciola's initial determination of the Section 1927 fee award amount in this case.

/s/
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