

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 20 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ELVIRA M. POLLARD, individually and
as representative of Estate of Gustavus
Rugley, Jr.,

Plaintiff,

and

MICHA STAR LIBERTY,

Appellant,

v.

CITY AND COUNTY OF SAN
FRANCISCO; SAN FRANCISCO
POLICE DEPARTMENT; HEATHER
FONG, Chief, San Francisco Police
Department,

Defendants - Appellees.

No. 07-15307

D.C. No. CV-06-04541-VRW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Vaughn R. Walker, District Judge, Presiding

Argued and Submitted December 7, 2007

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

San Francisco, California

Before: B. FLETCHER, TASHIMA, and RAWLINSON, Circuit Judges.

Appellant Micha Star Liberty (Liberty) appeals the district court's Order entered February 21, 2007, *sua sponte* imposing sanctions against Liberty for failing to conduct a sufficient investigation prior to asserting a civil rights claim on behalf of her client.¹

The district court violated Liberty's due process rights by ordering sanctions without notice and a reasonable opportunity to respond. *See Navellier v. Sletten*, 262 F.3d 923, 943 (9th Cir. 2001) ("When a court imposes sanctions *sua sponte*, the general rule is that it must first issue an order to show cause why sanctions should not be imposed to give the lawyer or party an opportunity to explain his or her conduct.") (citation omitted). Additionally, the district court lacked authority to impose sanctions for pleadings filed in state court prior to removal. *See Buster v. Greisen*, 104 F.3d 1186, 1190 n.4 (9th Cir. 1997) (explaining that a party may be sanctioned by the district court based on pleading filed in state court only if the party urges the allegations of those pleadings after removal). Finally, Liberty did not engage in sanctionable conduct by amending her client's complaint to include a

¹ Nothing in the record supports this finding and the defendants in no way sought or participated in the imposition of sanctions against Liberty.

civil rights claim. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 401-02 (1990) (recognizing that a pre-filing investigation that might otherwise be unreasonable may be reasonable where the attorney has limited time to prepare pleadings before the applicable statute of limitations expires).

In sum, the district court abused its discretion when it awarded fees and costs against Liberty and referred her to the State Bar of California and the Northern District's Standing Committee on Professional Conduct. More importantly, absolutely no basis for the imposition of discipline existed.

ORDER IMPOSING SANCTIONS VACATED; AWARD OF ATTORNEY'S FEES, EXPENSES AND COSTS VACATED; REFERRAL TO STATE BAR OF CALIFORNIA AND THE NORTHERN DISTRICT'S STANDING COMMITTEE ON PROFESSIONAL CONDUCT VACATED.

Each party shall bear her or its costs on appeal.