

Mark Reynolds

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

**STATE OF NEW MEXICO, ex rel.
STATE ENGINEER,**

Plaintiff-Appellee,

v.

**A-1-CA-33535
San Juan County
D-1116-CV-1975-00184**

UNITED STATES OF AMERICA,

Defendant-Appellee,

v.

NAVAJO NATION,

Defendant/Intervenor-Appellee,

v.

**SAN JUAN AGRICULTURAL WATER USERS
ASSOCIATION; HAMMOND CONSERVANCY
DISTRICT; BLOOMFIELD IRRIGATION
DISTRICT; VARIOUS DITCHES AND VARIOUS
MEMBERS THEREOF,**

Defendants-Appellants.

**ORDER DENYING EMERGENCY MOTION
TO ENFORCE RULE 21-211 AND
SUBSEQUENT MOTIONS FILED BY APPELLANTS AND
ORDER IMPOSING SANCTIONS AND
AWARDING ATTORNEY'S FEES**

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3 THIS MATTER is before this Court upon Appellants' "Emergency
4 Motion to Enforce Rule 21-211" filed on February 26, 2018. After due
5 consideration of the motion, brief in support, and Appellees' responses thereto,
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7 the Court concludes as follows:

8 1. Appellants' statement in the motion that Judge Wechsler represented
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10 the Navajo Nation is void of any factual foundation.

11 2. Appellants' statement in the motion that DNA Legal Services is "an
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13 agency and instrumentality of the Navajo Nation" is void of any factual
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15 foundation.

16 3. Appellants' statement in the motion that Judge Wechsler has "personal
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18 extrajudicial knowledge from living on the reservation" that biased him in favor
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20 of the Navajo Nation is void of any factual foundation.

21 4. Appellants' contention that Judge Wechsler violated Rule 21-211
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23 NMRA is frivolous.

24 5. When an attorney files a motion with this Court, that attorney is
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26 inherently representing to the Court that there is good ground to support the
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28 motion.

6. Basic inquiry and simple investigation would or should have informed

1 Appellants' counsel, Victor R. Marshall, that the motion was without factual
2 foundation. Appellants' motion itself states that it was filed after only a
3 "preliminary but incomplete investigation."
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5 7. By filing a frivolous motion, Mr. Marshall has needlessly caused this
6 Court and the parties to expend resources and in so doing has violated the Rules
7 of Professional Conduct. Further, and more troubling, Mr. Marshall has
8 attempted to discredit a judge with absolutely no basis for doing so.
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11 8. This Court has inherent authority to impose sanctions and award
12 attorney's fees to protect its judicial process against improper and frivolous
13 actions.
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15 9. Appellants have also filed, on March 26, 2018, a Motion for Leave to
16 File a Reply Brief, a Motion for Disclosure of Ex Parte Communications, and
17 a Motion for Disclosure and Discovery Concerning Disqualification. There is
18 no merit to any of those motions.
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21 IT IS THEREFORE ORDERED that Appellants' emergency motion to
22 enforce Rule 21-211 is DENIED.
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24 IT IS FURTHERED ORDERED that Appellants' Motion for Leave to
25 File a Reply Brief, Motion for Disclosure of Ex Parte Communications, and
26 Motion for Disclosure and Discovery Concerning Disqualification are DENIED.
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1 IT IS FURTHER ORDERED that Appellant's attorney, Victor R.
2 Marshall, is HEREBY SANCTIONED and shall pay the costs and attorney's
3 fees incurred by the other parties in responding to the Emergency Motion to
4 Enforce Rule 21-211. Any party seeking to recover costs and attorney's fees shall
5 file with this Court an affidavit setting forth those costs and fees within 15 days
6 of the date of this Order.
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9 IT IS FURTHER ORDERED that the Clerk of the Court is directed to
10 forward this Order to the Disciplinary Board of the New Mexico Supreme Court
11 for any action it sees fit.
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16 LINDA M. VANZI, Chief Judge

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18 J. MILES HANISEE, Judge
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21 BRUCE D. BLACK, Judge Pro Tem
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