

## Scholarly Commons @ UNLV Boyd Law

---

Nevada Supreme Court Summaries

Law Journals

---

10-6-2011

### Summary of Emerson v. Dist. Ct., 127 Nev. Adv. Op. 61

Kendra Kisling  
*Nevada Law Journal*

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Civil Procedure Commons](#)

---

#### Recommended Citation

Kisling, Kendra, "Summary of Emerson v. Dist. Ct., 127 Nev. Adv. Op. 61" (2011). *Nevada Supreme Court Summaries*. 222.

<https://scholars.law.unlv.edu/nvscs/222>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [youngwoo.ban@unlv.edu](mailto:youngwoo.ban@unlv.edu).

*Emerson v. Dist. Ct.*, 127 Nev. Adv. Op. 61 (October 6, 2011)<sup>1</sup>  
CIVIL PROCEDURE – WRIT RELIEF AND SANCTIONS

**Summary**

An original petition for a writ of mandamus or prohibition challenging a district court order imposing sanctions on the petitioner, an attorney.

**Disposition / Outcome**

The Supreme Court denied writ relief because the district court has broad power to award sanctions. Furthermore, a sanction awarding the harmed party costs and attorney fees is appropriate if the attorney misconduct resulted in awarding the harmed party a new trial.

**Factual / Procedural History**

The issue before the Court arose from a multivehicle accident and the subsequent dispute over fault for the incident.<sup>2</sup> Gregory Lioce (“Lioce”) sued Dana Cohen, Morry Cohen, and John Wilson (“Wilson”).<sup>3</sup> Petitioner, Phillip Emerson (“Emerson”), while defending Wilson at trial, made a series of improper statements to the jury.<sup>4</sup> After the jury verdict in favor of the defendants, Lioce moved for a directed verdict or a new trial because of Emerson’s improper statements.<sup>5</sup> The district court denied Lioce’s motions.<sup>6</sup> Lioce challenged this ruling to the Supreme Court of Nevada.<sup>7</sup> The Court held that Emerson’s comments “were improper and amounted to impermissible jury nullification,” vacated the district court’s order denying a new trial, and remanded the matter to the district court with instructions.<sup>8</sup>

On remand, the district court granted Lioce a new trial with respect to Wilson because Wilson’s attorney’s remarks at trial affected the jury’s verdict as to Wilson’s fault. Lioce filed a motion for sanctions of attorney fees and costs based on Emerson’s misconduct. The district court orally granted Lioce sanctions in the amount of attorney’s fees and costs related to the first trial in July 2009. In August 2009, the parties filed a stipulation and order dismissing the matter with prejudice, and the court entered the order. In September 2009, the district court entered an order imposing \$19,330 in sanctions on Emerson, personally, based on Lioce’s declaration of costs and attorney fees from the original trial. Emerson petitioned the Supreme Court for writ relief after the district court denied Emerson’s motion for reconsideration, arguing that the district court improperly imposed sanctions against him.

**Discussion**

Justice Hardesty wrote for the unanimous three-justice panel and denied Emerson’s writ petition. The Court determined that a writ was unwarranted because (1) the district court has

---

<sup>1</sup> By Kendra Kisling

<sup>2</sup> *Lioce v. Cohen*, 124 Nev. 1, 9, 174 P.3d 970, 975-76 (2008).

<sup>3</sup> *Id.* at 9, 174 P.3d at 975.

<sup>4</sup> *Id.* at 9-10, 20, 174 P.3d at 975-76, 982.

<sup>5</sup> *Id.* at 10, 174 P.3d at 976.

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

<sup>7</sup> *Id.* at 21-22, 174 P.3d at 983-84.

<sup>8</sup> *Lioce v. Cohen*, 124 Nev. 1, 21-22, 174 P.3d 970, 983-84.

jurisdiction to consider sanctions, and (2) the district court did not abuse its discretion in awarding sanctions for Emerson's misconduct. Emerson raised a question of first impression before the Court, whether the district court retains jurisdiction to consider sanctions following the voluntary dismissal of a case. Emerson was not a party to the litigation in the lower court and could not appeal the district court's decision. Thus, a writ was his only remedy available at law.

The Court held that the district court has jurisdiction to consider sanctions even after the parties' voluntary dismissal because "allowing the district court to retain jurisdiction to impose sanctions is consistent with other jurisdictions' rational for sanctioning attorney misconduct."<sup>9</sup> Federal courts may impose sanctions for attorney misconduct under FRCP 11 after parties file a voluntary dismissal notice.<sup>10</sup>

Attorney misconduct and sanctions are distinct from adjudicating the merits of a case because behavior that results in attorney sanctions is both unrelated to the merits of the case and an insult to the judicial process. Although the district court's jurisdiction related to the merits of a case ends upon the case's dismissal,<sup>11</sup> the sanctions the district court filed against Emerson were unrelated to the merits of the underlying case and related only to Emerson's misconduct.

Further, the Court held that the district court did not abuse its discretion in awarding sanctions for Emerson's misconduct in the amount of Lioce's fees and costs because district courts have inherent powers and broad discretion to sanction attorneys for trial misconduct.<sup>12</sup> Sanctions, however, must be proportionate to the litigant's misconduct.<sup>13</sup> Emerson argued that a sanction totaling the costs and fees incurred by Lioce at the first trial was not proportionate to Emerson's misconduct. The Court was not persuaded, however, because Emerson's inappropriate statements directly resulted in Lioce's new trial. Thus, the Court held that Emerson's sanction was proportional to his conduct.

## **Conclusion**

The district court retains jurisdiction after a case's dismissal to order sanctions against attorneys for misconduct at trial. The district court has broad power to award sanctions, and a sanction awarding the harmed party costs and attorney fees is appropriate if the attorney misconduct resulted in awarding the harmed party a new trial.

---

<sup>9</sup> Emerson v. Dist. Court, 127 Nev., Ad. Op. 61, 67 (2011).

<sup>10</sup> Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 395 (199).

<sup>11</sup> Jeep Corp. v. Dist. Court, 98 Nev. 440, 443-44, 652 P.2d 1183, 1186 (1982).

<sup>12</sup> Young v. Johnny Ribeiro Building, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

<sup>13</sup> Heinle v. Heinle, 777 N.W.2d 590, 602 (N.D. 2010).