

457 Fed.Appx. 751, 2012 WL 130702 (C.A.10 (Okla.))  
**(Not Selected for publication in the Federal Reporter)**  
**(Cite as: 457 Fed.Appx. 751, 2012 WL 130702 (C.A.10 (Okla.)))**

## H

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Tenth Circuit Rule 32.1. (Find CTA10 Rule 32.1)

United States Court of Appeals,  
 Tenth Circuit.

Johnny O'MARA; Jill O'Mara,  
 Plaintiffs–Appellants,

v.

GOVERNMENT EMPLOYEES INSURANCE  
 COMPANY; Geico General Insurance Company,  
 Defendants–Appellees.

No. 10–5158.  
 Jan. 18, 2012.

**Background:** Plaintiffs brought action against insurance company in connection with motorcycle accident. Following jury trial, the United States District Court for the Northern District of Oklahoma entered final judgment in favor of one plaintiff. Parties cross-appealed.

**Holding:** The Court of Appeals, [David M. Ebel](#), Circuit Judge, held that appellate jurisdiction did not exist over sanctions issue.

Appeal dismissed.

West Headnotes

## Federal Courts 170B 666

### 170B Federal Courts

#### 170BVIII Courts of Appeals

170BVIII(E) Proceedings for Transfer of  
 Case

170Bk665 Notice, Writ of Error or Citation

170Bk666 k. Requisites and suffi-

ciency; defects. [Most Cited Cases](#)

Failure of plaintiffs and/or their counsel to file separate notice of appeal to challenge attorney fees sanction imposed against plaintiffs' counsel precluded appellate review of sanctions issue where, at the time plaintiffs' initial notice of appeal was filed, district court had not entered any sanctions order, let alone a final, appealable order, and, instead, magistrate judge had entered only non-binding recommendation on sanction issue. 28 U.S.C.A. §§ 636(b)(1)(B), 1291; F.R.A.P.Rule 4(a)(2), 28 U.S.C.A.; Fed.Rules Civ.Proc.Rule 72(b)(1), 28 U.S.C.A.

\*751 [Stephen Joseph Capron](#), Capron & Edwards, P.C., [Andrew Thomas Harrison](#), Esq., Sneed Lang Herrold, Tulsa, OK, for Plaintiffs–Appellants.

[Clayton Barrett Bruner](#), [Dawn Michelle Goeres](#), [Gerard F. Pignato](#), [Mark Boyd Houts](#), [Brad Leslie Roberson](#), [Pignato](#), Cooper, Kolker & Roberson, PC, Oklahoma City, OK, for Defendants–Appellees.

Before [TYMKOVICH](#), Circuit Judge, [BRORBY](#), Senior Circuit Judge, and [EBEL](#), Circuit Judge.

## ORDER AND JUDGMENT<sup>FN\*</sup>

<sup>FN\*</sup> After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See [Fed. R.App. P. 34\(f\)](#); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with [Fed. R.App. P. 32.1](#) and 10th Cir. R. 32.1.

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DAVID M. EBEL, Circuit Judge.

\*\*1 This civil diversity case involves an insurance dispute related to a motorcycle accident. Following a jury trial, the district court entered a final judgment in favor of one of the appellants, and this appeal followed. The only issue remaining in this appeal, however, is whether the district court erred in imposing an attorneys' fees sanction against appellants' counsel under Fed.R.Civ.P. 30(g)(1) based on events that occurred during discovery.<sup>FN1</sup> \*752 Although neither side has raised the issue of whether this court has jurisdiction to consider the sanction issue, we have an independent duty to examine that question and may raise the issue sua sponte. See *Phelps v. Hamilton*, 122 F.3d 1309, 1315–16 (10th Cir.1997). We conclude that we lack jurisdiction to consider the sanction issue.

FN1. Appellants initially raised two other issues in this appeal (No. 10–5158), and appellees raised three issues in a cross-appeal (No. 10–5160). Pursuant to stipulations of the parties, this court dismissed the cross-appeal and all issues except the sanction issue have been withdrawn from this appeal.

Appellants and their counsel filed a notice of appeal on November 23, 2010. See *R.*, Doc. 305. At that time, the magistrate judge had entered only a non-binding recommendation regarding the sanction issue pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed.R.Civ.P. 72(b)(1). *Id.*, Doc. 302. As a result, the district court had not yet entered a final appealable order on the sanction issue within the meaning of 28 U.S.C. § 1291. Indeed, at that point, there was no *district court* decision or order at all. Hence, the provision in Fed. R.App. P. 4(a)(2) allowing a notice of appeal filed between the announcement of a district court decision or order and the subsequent entry of judgment to be “treated as filed on the date of and after the entry” is not applicable here. Instead, after the district court made a de novo determination of the sanction issue and entered its final orders on December 6 and 7, 2010, accepting

the magistrate judge's recommendation and imposing the attorneys' fees sanction against appellants' counsel, see *R.*, Docs. 317, 321, appellants and/or their counsel were required to file a separate notice of appeal to challenge the sanction award, but they failed to do so.<sup>FN2</sup> See *EEOC v. Wal-Mart Stores, Inc.*, 187 F.3d 1241, 1250 (10th Cir.1999) (“[A] supplemental notice of appeal is required for us to have jurisdiction over an attorneys' fee issue that becomes final subsequent to the initial notice of appeal.”); *RMA Ventures Cal. v. SunAmerica Life Ins. Co.*, 576 F.3d 1070, 1073 (10th Cir.2009) (“[A] decision on the merits and a decision on attorneys' fees are considered separate, final decisions of the district court, subject to appeal under 28 U.S.C. § 1291.”).

FN2. We do not need to decide whether the separate notice of appeal should have been filed on behalf of counsel or appellants, or both, to resolve the jurisdictional issue raised by this appeal.

This appeal is **DISMISSED** for lack of jurisdiction.

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 O'Mara v. Government Employees Ins. Co.  
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