

(Cite as: 230 F.3d 1201)

Weeks v. Independent School Dist. No. I-89
C.A.10 (Okla.),2000.United States Court of Appeals,Tenth Circuit.
H. Michael WEEKS, Plaintiff-Appellant,

v.

INDEPENDENT SCHOOL DISTRICT NO. I-89,
OF OKLAHOMA COUNTY, OKLAHOMA,
BOARD OF EDUCATION, Defendant-Appellee,
Marilyn D. Barringer; Richard B. Wilkinson, Attor-
neys-Appellants.

Nos. 98-6293, 98-6382, 99-6239.

Oct. 25, 2000.

Bus driver brought action against school district, under Americans with Disabilities Act (ADA), Title VII, and the Fair Labor Standards Act (FLSA). The United States District Court for the Western District of Oklahoma, Robin J. Cauthron, J., disqualified driver's attorney, based on her ex parte communications with school district employees, and, after jury returned verdict for driver on his FLSA and due process claims, reduced award of costs to driver and awarded attorney fees in amount less than that requested by driver. Attorney appealed. The Court of Appeals, Ebel, Circuit Judge, held that: (1) attorney had standing to appeal disqualification order that barred attorney from further participating in the case; (2) both operations supervisor and driver's immediate supervisor had "speaking authority" for district, for purpose of rule prohibiting ex parte contacts with represented parties; (3) sanction of disqualification was not abuse of discretion; (4) attorney was not entitled to evidentiary hearing prior to disqualification; (5) district's motion for protective order and motion to exclude evidence were timely; and (6) attorney lacked standing to appeal either reduction in costs or award of attorney fees.

Disqualification order affirmed; appeal dismissed in part.


Briscoe, Circuit Judge, filed concurring opinion.

West Headnotes

[1] Federal Courts 170B  **544**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(B) Appellate Jurisdiction and Procedure in General
170Bk543 Right of Review
170Bk544 k. Particular Persons. Most Cited Cases
(Formerly 45k21.20)

Plaintiff's attorney had standing to appeal disqualification order that barred attorney from further participating in the case, since order was sanction directly affecting attorney, and favorable court decision would likely provide at least some redress from resulting injury because it could help ameliorate damage to attorney's professional reputation.

[2] Federal Courts 170B  **544**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(B) Appellate Jurisdiction and Procedure in General
170Bk543 Right of Review
170Bk544 k. Particular Persons. Most Cited Cases
Counsel have standing to appeal orders that directly aggrieve them.

[3] Attorney and Client 45  **36(2)**

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k36 Jurisdiction of Courts
45k36(2) k. Power of Judge at Chambers. Most Cited Cases
The control of attorneys' conduct in trial litigation is ordinarily within the supervisory powers of the trial judge, and is thus a matter of judicial discre-

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Wilkinson), the magistrate judge filed a recommendation reducing the fee request from \$54,823.50 to \$42,746.70. Barringer and Wilkinson appealed the magistrate's recommendation. They contended the trial court should have considered the market evidence as to a reasonable hourly rate, and they objected to the denial of additional fees and the twenty percent reduction in fees based on the limited success of the litigation. The district court affirmed, but directed the parties to confer regarding some additional expenses, and report to the court. Barringer and Wilkinson filed a pleading requesting \$1,933.77 in unreimbursed expenses.^{FN4} The court denied any additional costs because Barringer and Wilkinson did not show that the costs were reasonable or provide sufficient itemization.

FN4. This amount was calculated by reducing the amount of expenses Barringer and Wilkinson had billed (\$4,670.02) by amounts reimbursed by Weeks (\$1,255.50) and amounts disallowed for Hix and Midgett's depositions (\$868.00 and \$612.75, respectively).

Barringer now appeals (1) the district court's November 10, 1997 disqualification order and its February 10, 1998 order denying the motion to reconsider the disqualification^{FN5}; (2) the district court's September 2, 1998 order granting the School District's motion to review taxation of costs, which denied Weeks the costs for the depositions of Midgett and Hix; and (3) the district court's April 15, 1999 order awarding attorney fees in an amount less than Barringer believes should have been awarded.

FN5. The School District filed a motion to dismiss the appeal of the disqualification order for failure to file a timely appeal. Barringer's notice of appeal was incorrectly docketed as being filed on July 9, 1998, one day after the thirty-day period for filing an appeal had expired. Because the docket was ultimately corrected to reflect the actual July 8, 1998 filing date, we

deny the School District's motion to dismiss.

II. DISCUSSION

A. Standing to Appeal the Disqualification Order

[1][2] The School District argues that Barringer does not have standing to appeal the disqualification order issued against her. We disagree. Counsel have standing to appeal orders that directly aggrieve them. See *Uselton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 854-55 (10th Cir.1993); see also *Riggs v. Scrivner, Inc.*, 927 F.2d 1146, 1149 (10th Cir.1991) (stating that the plaintiff's attorney, not the plaintiff, is the proper party to appeal from a sanction imposed on the attorney). The disqualification order is a sanction directly affecting Barringer, and a favorable court decision would likely provide at least some redress from the injury from the sanction because it could help ameliorate the damage to her professional reputation from the sanction order. See *Johnson v. Board of County Comm'rs*, 85 F.3d 489, 492-93 (10th Cir.1996) (finding *1208 that an appeal of a disqualification order was not moot, even though the underlying case had settled, as long as the disqualification order rested on grounds that could harm the attorney's professional reputation). Thus, Barringer has standing to appeal the disqualification order.^{FN6}

FN6. The School District cites *Cities Serv. Co. v. Gulf Oil Corp.*, 976 P.2d 545 (Okla.1999), to support its argument that Barringer lacks standing. In *Cities Serv. Co.*, the Oklahoma Supreme Court held that attorneys lacked standing to challenge a trial judge's bench rulings which, by way of sanction, limited their participation in the proceedings. See 976 P.2d at 547-49. We find *Cities Serv. Co.*, distinguishable from the present case. The court that decided *Cities Serv. Co.*, specifically limited its decision to the "facts and circum-