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Scientology Told to Pay Fees in Copyright Suit

By Rex Bossert
Daily Journal Staff Writer

SAN FRANCISCO — Saying that the Church of Scientology has been playing "fast and loose with the judicial system," a federal appeals court has ordered the religious organization to pay nearly \$3 million in attorneys fees to a former member it sued after he formed his own splinter group.

The 9th U.S. Circuit Court of Appeals ordered the unusual sanction against the church for years of litigation spawned by two 1985 suits it filed against David Mayo and others involved with the Church of the New Civilization.

Scientology attorneys claimed that Mayo and his splinter group violated copyright, patent and trademark laws when they made unauthorized use of allegedly stolen documents relating to the church's confidential counseling and training procedures, called "the Advanced Technology."

Mayo counter-sued Scientology for libel, unfair competition under the federal Lanham Act, emotional distress, and false designation of the origin of the disputed documents.

In an unpublished ruling issued last week, the federal appeal court upheld a Los Angeles district judge's dismissal of Scientology claims and his award of about \$2.9 million in attorneys fees. The appeals panel also allowed all of Mayo's counter-claims — except for emotional distress — to proceed in the lower court.

Los Angeles attorney Jerold Fagelbaum, who represents the defendant Mayo, said an award of attorneys fees of this magnitude as a sanction is "pretty rare."

Fagelbaum said the ruling could encourage others sued by the group to seek attorneys fees, and thus "teach Scientology a lesson."

Scientology general counsel Elliot Abelson said the ruling "is the most unfair, outrageous, and biased decision I have ever seen."

Abelson said he will seek a review of the sanction, which he admitted is "probably the biggest" ever awarded against Scientology, by an en banc 9th Circuit court, and by the U.S. Supreme Court, if necessary.

He also criticized the 9th Circuit for issuing an unpublished ruling, which is less likely to gain review in the nation's high court, and Judge Ideman for not recusing himself for alleged bias. "I can assure you we are not going to turn the other cheek," Abelson said.

In its ruling, the appeals court adopted findings made in 1983 by U.S. District Judge James M. Ideman that Scientology's voluminous pre-trial filings in the case amounted to "puffery — motions without merit or substance."

Ideman said the church employed "eva-

sions, misrepresentations, broken promises and lies" in their refusal to comply with discovery requests made by the defendant Mayo and others in the suit.

The 9th Circuit said that Ideman's "pointed and pungent review of the record" made by a special master, who was appointed to untangle discovery issues, warranted dismissal of the two suits.

The appeals court also said the lower court was justified in ordering sanctions for Scientology's "destruction and concealment of documents, refusal to comply with many court orders, needless delay and multiplication of the proceedings by the plaintiffs, and their filing of frivolous motions and of offensive and unreasonable motions."

The attorneys fees were awarded to the defendant under the Lanham and Copyright Acts, as the prevailing party under contract law, and as a result of "bad faith litigation conduct."

The appeals court also rejected Scientology's claim that the lower court merely "rubber stamped" the special master's findings on fee issues.

The appellate ruling in *Religious Technology Center v. Church of the New Civilization*, 94-55781, was issued by Circuit Judge Cynthia Holcomb Hall and U.S. District Judge William B. Shubb of Sacramento, who was sitting on the appeals court by designation. Circuit Judge John T. Noonan concurred separately in the judgment.

Religious Technology Center, an entity that describes itself as "the protector" of the religion of Scientology and its philosophy and "technology," brought the suits, along with the Church of Scientology International and the Church of Scientology of California, two nonprofit groups that disseminate the writings of founder L. Ron Hubbard.

The 42-year-old Church of Scientology is known as an aggressive litigator in both state and federal court, and has brought numerous suits, for such things as copyright infringement or libel, against former members, news organizations, and Internet access providers.

The 9th Circuit ruling noted that the protracted litigation against Mayo generated a court record "well in excess of 100 volumes," as well as nine years of pretrial maneuverings, 1,825 docket entries, three discovery magistrates, a special master, the recusal of two district judges, three separate appeals and three denials of review by the U.S. Supreme Court before former U.S. District Judge A. Wallace Tashima — who is now on the 9th Circuit — entered a final judgment of dismissal.

"It's true the church litigates fully and it litigates hard, but it litigates ethically and legally," Abelson said. "The only place we have a problem [with the courts] is in L.A. County."