

Family Law Judge Properly Grants Substantial Sanctions Against Party Whose Misconduct Increased Litigation Costs

August 2, 2011 by David J. McMahon

In *Marriage of Davenport*, 2011 DJDAR 6386 (2011), the California Court of Appeal for the First District rendered an important decision reiterating the policies established by the California Family Code relating to the alleged misconduct of one of the family law litigants.

The parties were married for more than 40 years. During that timeframe, they accumulated significant marital assets and had three daughters. The parties separated in 1990, and in 2006, the wife filed a petition for dissolution of the marriage.

In 2008, after substantial litigation activities took place, the wife filed a motion under Family Code Section 271 seeking \$933,794 in sanctions and attorney fees. The accompanying papers included a 52-page declaration from her attorney, which attached 1,250 pages of exhibits. The judge who heard the motion later concluded that the declaration inappropriately asserted hearsay, improper arguments, opinion, and conclusions.

The husband responded with a sanctions request of his own.

After the hearing, the judge denied the wife's request and granted the husband's, awarding him \$100,000 in sanctions and \$304,387 in attorney fees. In granting the husband's request, the judge explained that counsel for the wife engaged in inappropriate conduct which significantly increased the cost of the litigation. The wife appealed the trial court's rulings.

The Court of Appeal affirmed, noting that Family Code Section 271 provides that the court may award attorney fees where a litigant's conduct frustrates the policies of the Family Court. Such sanctions are within the trial court's discretion.

The court of appeal concluded that the trial judge correctly determined that the wife's attorney increased the cost of litigation, violated the mediation privilege, and mistreated opposing counsel. The court of appeal stated that there was substantial evidence to support the trial court's decision.