

**RESOLUTION 07-01-2018 – AS AMENDED**

**DIGEST**

Sanctions: Expand Court’s Authority to Grant

Amends Family Code section 271 to expand the court’s authority to grant sanctions beyond attorney fees and costs.

**STATEMENT OF REASONS**

The Problem: Family Code section 271 is meant to deter conduct in family law litigation that obstructs settlement and cooperation between the parties. It is used to deter behavior and conduct of parties and attorneys that increase the cost of litigation in family law matters. However, it limits the court’s authority to only order sanctions in the amount of the attorney’s fees and costs expended by the wronged party. This is often times insufficient to deter the conduct.

The Solution: This resolution would amend Family Code section 271 to expand the court’s authority to award sanctions it deems appropriate in conjunction with the conduct – beyond just attorney fees and costs, thereby expanding the court’s authority to deter obstructive conduct.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 271 to read as follows:

- 1 §271
- 2 (a) Notwithstanding any other provision of this code, the court may base an award of
- 3 attorney's fees ~~and costs~~, and any other monetary, issues, or evidentiary sanction the court deems
- 4 appropriate, on the extent to which the conduct of each party or attorney furthers or frustrates the
- 5 policy of the law to promote settlement of litigation and, where possible, to reduce the cost of
- 6 litigation by encouraging cooperation between the parties and attorneys. An award of attorney's
- 7 fees and costs pursuant to this section is in the nature of a sanction to deter such future conduct.
- 8 In making an award pursuant to this section, the court shall take into consideration all evidence
- 9 concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction
- 10 pursuant to this section that imposes an unreasonable financial burden on the party against whom
- 11 the sanction is imposed. In order to obtain an award under this section, the party requesting an
- 12 award of attorney's fees and costs is not required to demonstrate any financial need for the
- 13 award.
- 14 (b) ~~An award of attorney's fees and costs~~ as a sanction pursuant to this section shall be
- 15 imposed only after notice to the party against whom the sanction is proposed to be imposed and
- 16 opportunity for that party to be heard.
- 17 (c) ~~An award of attorney's fees and costs~~ as a sanction pursuant to this section is payable
- 18 only from the property or income of the party against whom the sanction is imposed, except that
- 19 the award may be against the sanctioned party's share of the community property.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Santa Clara County Bar Association

**IMPACT STATEMENT**

The resolution does not affect laws, statute, or rules other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

**AUTHOR AND/OR PERMANENT CONTACT:** B J Fadem, Law Offices of B J Fadem & Associates, APC; 111 W. St. John Street, Suite 700, San Jose, CA 95113, (408) 280-1220, [bjfadem@fademlaw.com](mailto:bjfadem@fademlaw.com); Fariba R. Soroosh, 191 North First St., San Jose, CA 95113, (408) 882-2922, [fsoroosh@scscourt.org](mailto:fsoroosh@scscourt.org).; and Lynn Yates-Carter, Law Office of Lynn Yates-Carter, 111 W. St. John Street, Suite 300, San Jose, CA 95113, (408) 294-9544, [lycesq@aol.com](mailto:lycesq@aol.com)

**RESPONSIBLE FLOOR DELEGATE:** B. J. Fadem

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**COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS**

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**FAMILY LAW SECTION – APPROVE AS AMENDED**

FLEXCOM supports the goal of this Resolution in amending Family Code section 271 to correctly reflect the intent and goal of this important remedy where it is warranted. However, FLEXCOM agrees with the Sacramento County Bar Association (SCBA) Counterargument that the Resolution as written is not clear enough in trying to achieve this goal. FLEXCOM Approves as Amended Resolution 07-1-18 with the amendments proposed by SCBA and reflected in the Counterargument.

**SACRAMENTO COUNTY BAR ASSOCIATION**

SCBA supports the general goal of this Resolution. However, we feel it is too vague to accomplish the goal effectively. We propose the following revisions to 07-01-18:

- 1). Line 3- add a comma after word fees;
- 2). Line 6-10: Add a comma after word fees, delete word “and”, add a comma after word “costs” and add phrase “and any other sanction the court deems appropriate.” Line 6-7 delete words “of attorney’s fees, costs or other award.” Delete two sentences starting with “In making an award” from lines 7-10.
- 3). Line 11: Delete word “an” and replace with word “the”. Add a comma after ‘fees’; delete word ‘and’; add a comma after ‘costs’ and add phrase ‘or other award’ after ‘costs’.
- 4). Line 13: Delete phrase “of attorney’s fees and costs”.
- 5). Lines 15-16: Add sentence Such an award for monetary sanctions is intended to serve as a deterrent to similar future conduct on the part of the party being sanctioned.
- 6). Add subsection (d) An award under this section is not limited to the amount of attorney’s fees and costs incurred by the injured party. To the extent that *Sagonowsky v. Kekoa* (2016) 6

Cal.App.5th 1142 or *Webb v. Webb* (2017) 12 Cal. App. 5th 876 hold otherwise, they are hereby abrogated.

The statement of reasons submitted with 07-01 erred in identifying the problem. Family Code §271 has always been interpreted and applied to address the overall expense the non-cooperative conduct causes the other party to incur as well as the need to deter such future conduct. The two cases mentioned in the added subsection (d) limited application of §271 to attorney fees and legal costs. This limited interpretation is what needs to be specifically addressed, since the injured party can suffer lost time, multiple pleadings, lost time from employment, delayed relief, loss of opportunities/assets due to delays, etc.

Since the statute already provides that the requesting party is not required to show need to receive such an award, it is unfair to have the court consider the ability of the sanctioned party to pay. The reality is that a party with a minimal assets/income has no disincentive to cooperate with the law and process because the current language ties the hands of the court in this regard. To be a true deterrent there needs to be an expectation that the court will award a sanction if the conduct rises to the level sufficient for such an award.