

PROFESSIONAL LIABILITY UPDATE

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Kravitz v. Superior Court (2001) 91 Cal.App.4th 1015

The Fourth District decides that pro se litigants cannot recover attorney's fees as a discovery sanction

Michelle Kravitz sued Timothy Milner for legal malpractice. Milner appeared in *propria persona* and served Kravitz with a request for production of documents. When Kravitz did not respond, Milner moved for an order compelling production and for sanctions including fees for his time. Kravitz opposed Milner's request on the grounds that an attorney in *pro per* is not entitled to an award of attorney's fees as discovery sanctions.

Under the Discovery Act of 1986, the trial court must impose monetary sanctions, including reasonable attorney's fees against a party engaging in conduct that is a misuse of the discovery process. In *Trope v. Katz* (1995) 11 Cal.4th 274, 277, the Supreme Court held that an attorney who represents himself is not entitled to contractual prevailing party attorneys' fees under Civil Code § 1717 because "reasonable attorney's fees" is consideration paid in exchange for legal representation rather than compensation for lost earnings.

Abandonato v. Coldren (1995) 41 Cal.App.4th 264, 268, distinguished *Trope* and held that a *pro se* lawyer can be awarded attorney's fees as sanctions under Code of Civil Procedure §128.5. *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173 rejected *Abandonato's* analysis and applied the reasoning of *Trope* to disallow attorney's fees to *pro se* litigants under C.C.P. §§ 2030 and 2023.

The Kravitz court followed *Argaman* and held that a *pro se* lawyer cannot recover attorney's fees as a discovery sanction. Reasonably identifiable and allocable costs, such as computer-assisted legal research, photocopying, or transportation to and from court are recoverable as sanctions.

The court expressed a need for the legislature to consider special provisions for *pro se* litigants. It suggested that reasonable attorney's fees for *pro se* litigants should not include profit and overhead built into rates charged to clients for similar services.

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