

PROFESSIONAL LIABILITY UPDATE

SANCTIONS

By John B. Sullivan

***In Re Marriage Of Davenport* (2011) 194 Cal.App.4th 1507**

The First District holds attorney conduct warrants substantial sanctions.

Michael and Andrew Watters of O'Brien Watters & Davis LLP represented Jill Davenport in her dissolution. Her former husband Ken Davenport was represented by multiple different law firms. The proceedings were extensive, and generated nineteen volumes of court files, considered outrageous in a family law case.

Before the litigation concluded, Jill moved for an award of substantial sanctions and attorney's fees under Family Code § 271. That statute permits the Court to award attorney's fees and costs based on the conduct of the litigants and attorneys. Ken responded with a motion for substantial attorney's fees and costs under the same statute.

The trial court denied Jill's request but granted Ken's. The court found that Andrew Watters' uncivil, rude, aggressive and unprofessional conduct marred the case from the beginning. His uncooperative and uncivil courses of action caused his own client unnecessary and delays and attorney's fees.

The Court of Appeal affirmed the trial court's decision. It held that the record was replete with correspondence from Watters to Ken's attorneys that contained abusive, rude, hostile, and/or disrespectful language. The Court of Appeal

listed with great specificity several instances of such misconduct it held supported the trial court's decision. It concluded with a reminder to all counsel that zealous advocacy does not equate with "attack dog" or "scorched earth" litigation tactics, nor does it mean lack of civility.

Comment: Attorneys have an obligation to behave civilly when advocating for a client. In this case the attorney's failures resulted in increased fees to the client, a substantial sanction against the client, and a very public exposure of the attorney's conduct by the trial court and the Court of Appeal.

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