



# Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

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Serving all of California

## Ron's Corner

In this edition of *Forensic Accounting Today*, I continue to explore the growing trend toward financial fault rulings in cases of breach of fiduciary duty. The subject I address in this issue is *Family Code §271*. I ask that you reexamine this code from the viewpoint of no-fault divorce and whether in your mind it has had any impact on California truly being a no-fault state.

As you know, Family Code §271 allows sanctions in the form of attorney's fees and costs when a party or his or her attorney's conduct has hindered the expeditious settlement of the case or has breached fiduciary duty. When upheld, these sanctions provide the power required to ensure the opposing party ceases and desists from unjustifiable and unreasonable conduct. What differs from Family Codes §2030 and §2032 is that the punishment issued makes the requesting party's need to receive the fees and costs irrelevant. Thus, these sanctions can prevent cases from dragging out and attorney fees skyrocketing.

In the following issue of *Forensic Accounting Today*, I will once more explore the question of no-fault divorce exceptions. Specific topics I will consider include financial acts occurring before and after separation, and attempts by a party to take advantage of his or her wrong doing.

I hope you find the continued exploration of this subject interesting and beneficial.

Ron

\* For an explanation of these titles, please visit our website or request a copy of Issue 3 of *Forensic Accounting Today*.

## I Thought California is a No-Fault State

### Part 2

Presented by Ron J. Anfuso, CPA, ABV, CFF, CDFE, FABFA

Yes, California is a no-fault state. However, *no fault* relates only to grounds for the termination of a marriage. Financial fault, on the other hand, has no limits. It can lie in the past, present or future. In fact, it seems that as time passes and cases grow, in law, the theories for asserting financial fault have increased. You might say that financial fault is trending.

Let us take a look at Family Code §271 while keeping in mind the perspective that California is a no-fault state.

### Family Code §271

Family Code §271 states:

*(a) Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award.*

*(b) An award of attorney's fees and costs as a sanction pursuant to this section shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard.*

*(c) An award of attorney's fees and costs as a sanction pursuant to this section is payable only from the property or income of the party against whom the sanction is imposed, except that the award may be against the sanctioned party's share of the community property.*



## If Your Forensic Accountant Misses the Deadline, How Will This Impact Your Case?

### My Pledge to Our Referring Attorneys



- We will never take on a case unless we have the qualified manpower to timely handle the work
- We will engage in meticulous planning prior to beginning our assignments
- I will carefully delegate and oversee all tasks to ensure timely completion of all work

We make good on our pledges. This is why attorneys who refer to us know they can count on us to meet their deadlines. Just ask them.

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California family law courts clearly prefer settlement over litigation when it is in the best interest of each party to achieve an expeditious and conclusive solution to their disputes. However, as you are aware, in cases where one spouse possesses more financial resources than the other, sometimes that party will employ tactics designed to deplete the financial resources of the other party. Most forensic accountants, for example, have witnessed a party's questionable delays and excuses to produce essential financial documents needed to complete their work.

On the other hand, because the party requesting sanctions is not required to demonstrate financial need for the award, in many cases, sanctions are ruled against the party with a lower financial status or that party's attorney. Such is the case of an attorney sanctioned for unjustifiable and unreasonable conduct in the case below. Thus, §271 sanctions are an essential tool to help ensure equitable resolutions regardless of California's position as a no-fault state.

### **In re Marriage of Davenport and California Family Code §271**

In the case of Jill and Ken Davenport, the individual guilty of unjustifiable conduct was Jill's attorney. The senior counsel of the retained firm was named as Jill's attorney of record. However, that attorney chose to delegate the case to his nephew who had just passed the California Bar and recently joined the firm. This decision turned out to be not so good. Jill's attorney managed to antagonize Ken's counsel thereby creating a perfect scenario for a Judge to rule for sanctions against an attorney under §271, which indeed the Judge did. The Judge's statement of decision concluded that:

- Jill's counsel failed to meet and confer with Ken's attorney before filing her motion and during the proceedings, thus was sanctionable.
- Jill's attorney was hostile and disrespectful, which was sanctionable.
- All fees relating to Jill's motions could have been avoided by her attorney if he had conferred with Ken's counsel, been more cooperative, used the assigned case manager, and accepted Ken's attorney's offer to agree to a neutral forensic accountant.
- Jill's attorney insisting that the case might as well have been called *In re Marriage of Feldman* was inaccurate. Her attorney contended that the decision should assert that *Feldman would become Jill's short-hand description of all that should be wrong with Ken's conduct.*
- Jill's attorney's secretive conduct with computer consultants in relation to extracting data on a computer in his possession that was believed to include privileged information was sanctionable.
- Jill's attorney repeatedly made references to what was said and presented in a mediation that the parties had undertaken, in violation of *Evidence Code §1119.*

The California Court of Appeals affirmed the trial court's decision that evidence was clearly sufficient to support sanctions and ordered Jill to pay \$100,000 to Ken for §271 sanctions plus \$304,387 for his attorney fees in defending her motions.