

Attorney Fee Awards in Family Law

Clients often come to us eager to ask the court to order their fees be paid by the other side. These clients are often armed with a long list of reasons why they feel their fees should be reimbursed by the opposing party. In a divorce or child custody/support case, unlike many other types of legal actions, the court has the discretion to award attorney's fees and costs to one party or the other. *Discretion* is the key word here. The court is not necessarily required or *supposed to* award attorney's fees. Rather, the judge has the *authority*, given primarily by two statutes discussed below, to award part, all, or none of attorney's fees and costs depending on the facts of a case, if a request for attorney's fees is brought.

Typically, either *Family Code Section 271*, or *Section 2030*, will be the statute providing the court with the authority to award attorney's fees in a family law case.

Family Code Section 271 awards attorney's fees to a party when they have been driven up by unreasonable and uncooperative behavior from the other side, which has frustrated reasonable settlement efforts. The court is still required to consider the parties' incomes, assets, and liabilities in making this award but the central focus of *FC 271* sanctions is to reimburse a party who has paid far higher fees than they otherwise should have because of litigious conduct of the opposing party.

Family Code Section 2030 fee awards are different. They are based upon the judicial policy that both parties be ensured equal access to legal representation. To that end, courts have the authority to order one party to pay a reasonable amount of attorney's fees on behalf of the other party. *FC Section 2030* fee awards are based on one party having a "need" or being unable to pay their fees due to unemployment, lower earning capacity, etc., and the other party having the ability to pay, due to superior earnings, control over significant assets, etc. If neither party has the ability to pay a portion of the other's fees, *FC Section 2030* probably will not be of assistance.

If neither of these statutes fit your situation there may be other authority you can use to request attorney's fees and costs. Furthermore, if you are able to negotiate directly with the opposing party perhaps you can reach an agreement where they help you with your attorney's fees. In any event, keep in mind that awards of attorney's fees and costs are not guaranteed. When a court does see fit to award attorney's fees, it can help significantly with the costs of litigation.