

STATUTORY AUTHORITY FOR ATTORNEY'S FEES & SANCTIONS IN YOUR FAMILY LAW CASES

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As family law attorneys, we are accustomed to citing a small handful of statutes in favor of our requests for attorney's fees. But there are a variety of statutes that provide a basis for an award of fees and sanctions in your

family law cases. The chart below is a summary of those statutes, organized by category. The chart should be used as a reference guide to the statutory authority for the variety of attorney's fee and sanction remedies available.

	Category	Authority	Basis	Amount	Comment
A	CONTEMPT				
A1	Contempt	CCP § 1218(a)	Against a party who is held in contempt for violation of court's order.	Reasonable attorney's fees of the moving party.	Quasi-criminal.
B	CUSTODY				
BI	Caretaker Responsibility/ Interference with Visitation Rights	FC § 3028(d) MANDATORY ¹	To a prevailing party who shows that the other parent failed to assume the court ordered or agreed caretaker role or interfered with the moving parent's court ordered or agreed visitation rights.	Not specified.	Requires a showing of the non-prevailing party's ability to pay. (FC § 3028(d))

	Category	Authority	Basis	Amount	Comment
B2	Decline of Jurisdiction for Inconvenient Forum	FC § 3427(e)	Against a party who commences a custody proceeding in California if it appears to the court that California is clearly an inappropriate forum.	The costs incurred by the other parties or their witnesses in the California proceeding, including attorney's fees.	Payment is to be made to the clerk of the court for remittance to the proper party. (FC § 3427(e))
B3	Decline of Jurisdiction for Unjustifiable Conduct	FC § 3428(c) MANDATORY	Against a party who engages in unjustifiable conduct to invoke California's jurisdiction, provided the California court dismisses a petition or stays the proceeding based on this conduct, unless the party against whom fees are sought establishes that the award would be clearly inappropriate.	The necessary and reasonable expenses incurred during the proceeding, including attorney's fees.	Not awardable against the state. (FC § 3428(c))
B4	Minor's Counsel	FC § 3153(a) MANDATORY	Against parents or joined parties, payable to an attorney appointed by the court to represent a child in contested custody cases.	A "reasonable sum," as determined by the court, based on ability to pay.	<ul style="list-style-type: none"> • Any portion the court determines the parties are unable to pay to be paid by county. (FC § 3153(b)) • "Party" liability for fees not limited to parents; applies to all parties. (<i>Marriage of Perry</i> (1998) 61 Cal.App.4th 295)
B5	Prevailing Party – UCCJEA or Hague Convention	FC § 3450(b), § 3452(a) MANDATORY	To a prevailing party to enforce an out-of-state custody order, unless the party against whom fees are sought establishes that the award would be clearly inappropriate.	Necessary and reasonable expenses, including attorney's fees.	Not awardable against the state unless authorized by law. (FC § 3452(b))
B6	Unwarranted Disclosure of Custody Evaluation	FC § 3111(d)	Against any party who makes an unwarranted disclosure of a written confidential custody evaluation, unless the party acted with substantial justification or other circumstances make the sanction unjust.	Sanction shall be in an amount sufficient to deter repetition of conduct and may include reasonable attorney's fees and costs incurred or both.	Court shall not impose unreasonable financial burden against a party. (FC § 3111(d))
C DISCLOSURE					
C1	Failure to Disclose	FC § 2107(c) MANDATORY	Against a party who fails to meet the disclosure requirements of the Family Code, unless the non-complying party acted with substantial justification or other circumstances make the imposition of a sanction unjust.	Sanctions shall be in an amount sufficient to deter repetition of conduct and shall include reasonable attorney's fees and costs incurred, or both.	No required showing of harm to the complaining party. (<i>Marriage of Feldman</i> (2007) 153 Cal.App.4th 1470)
D DISCOVERY					
D1	Admissions	CCP § 2033.420(b) MANDATORY	Against any party who fails to admit the truth of any matter or the genuineness of any document, unless the court finds: (1) An objection to the request was sustained or a response to it was waived under CCP § 2033.290. (2) The admission sought was of no substantial importance. (3) The party failing to make the admission had reasonable ground to believe that that party would prevail on the matter. (4) There was other good reason for the failure to admit.	Reasonable expenses, including fees, incurred to prove fact or genuineness.	Fees may be awarded in addition to an order that all requests are deemed admitted. (See CCP § 2033.290(e))

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Category	Authority	Basis	Amount	Comment
D2	Meet & Confer re Discovery Motion CCP § 2023.020 MANDATORY	Against any party or attorney who fails to meet and confer regarding a discovery motion.	Reasonable expenses, including attorney's fees, incurred as a result.	Award is made notwithstanding the outcome of the discovery motion. (CCP § 2023.020)
D3	Misuse of the Discovery Process CCP § 2023.030(a)	Any person who engages in (or attorney who advises) a misuse of the discovery process.	Reasonable expenses, including attorney's fees and costs, incurred as a result.	Other expenses can be awardable to self-represented litigants as sanctions. (<i>Kravitz v. Superior Court</i> (2001) 91 Cal.App.4th 1015)
D4	Motion for Protective Order MANDATORY CCP § 2017.020(b) – to limit the scope of discovery. CCP § 2019.030(c) – to restrict the frequency/ extent of a discovery method. CCP § 2025.420(h) – oral deposition CCP § 2030.090(d) – interrogatories. CCP § 2031.060(h) – inspection demand. CCP § 2032.510(f) – physical/mental examination. CCP § 2033.080(d) – request for admission. CCP § 2034.250(d) – demand for exchange of expert witness information.	Against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless the court finds that one acted with substantial justification or if imposition of the sanction would be unjust.	Not specified.	<ul style="list-style-type: none"> • Award is in the nature of a sanction under CCP § 2023.030. • Exception for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten in good faith. (See CCP § 2031.060(i)(1))
D5	Motion to Compel MANDATORY CCP § 2030.290(c) – motion to compel response to interrogatories. CCP § 2030.300(d) – motion to compel further response to interrogatories. CCP § 2031.300(c) – motion to compel response to a demand for inspection. CCP § 2031.310(h) – motion to compel further response to a demand for inspection. CCP § 2031.320(b) – motion to compel compliance with a demand for inspection. CCP § 2032.620(b), 2032.650(b) – motion to compel delivery of medical reports. CCP § 2033.290(d) – motion to compel further response to request for admission.	Against a party, person or attorney who unsuccessfully makes or opposes a motion to compel, unless the court finds that one acted with substantial justification, or if imposition of the sanction would be unjust.	Expenses awarded must be reasonable and the court may not impose a fine or penalty (See <i>Ghanooni v. Super Shuttle of Los Angeles</i> (1993) 20 Cal. App.4th 256, 262).	Award is in the nature of a sanction under CCP § 2023.030

	Category	Authority	Basis	Amount	Comment
E DOMESTIC VIOLENCE					
E1	Court Appointed Attorney – Domestic Violence Prevention Act (“DVPA”)	FC § 6386(b)	Against respondent in an action to enforce the terms of a protective order where the court appoints attorney to represent petitioner.	Reasonable attorney’s fees and costs incurred by petitioner.	
E2	Prevailing Party – DVPA	FC § 6344 MANDATORY (in part)	To a prevailing party in DVPA action after notice and hearing. FC § 6344(a) – discretionary. FC § 6344(b) – mandatory against respondent where prevailing party is the petitioner and cannot afford to pay, if appropriate, and based on the respective incomes and needs of the parties and any factors affecting the parties’ respective abilities to pay.	Not specified.	In making the award under 6344(b), the court may consider any factors affecting the parties’ respective abilities to pay. (FC § 6344(b))
F FIDUCIARY DUTIES					
F1	Breach of Fiduciary Duty	FC § 1101 MANDATORY (in part)	To a prevailing party in an action for the other party’s breach of fiduciary duty. FC § 1101(g) – mandatory, if breach is not due to malice, fraud or oppression. FC § 1101(h) – discretionary, if breach is due to malice, fraud or oppression.	Not specified.	<ul style="list-style-type: none"> • If breach is not due to oppression, family court “lacks discretion to deny an aggrieved spouse’s request for attorney fees.” (<i>Marriage of Fossum</i> (2011) 192 Cal.App.4th 336) • Discretionary award may be based on parties’ financial circumstances. (<i>Marriage of Hokanson</i> (1998) 68 Cal.App.4th 987; <i>Marriage of Rossi</i> (2001) 90 Cal.App.4th 34) • Award is in addition to other available remedies. (See FC §§ 1101(g) and (h))
G NEED BASED					
G1	Custody of a child in a parentage case	FC § 3121 MANDATORY	To either party in an action to establish exclusive custody (without a petition for dissolution, legal separation, or nullity).	Whatever amount is reasonably necessary for fees and costs to maintain or defend the proceeding during the pendency of the proceeding.	<ul style="list-style-type: none"> • The court shall make findings on: (1) whether an award of fees is appropriate, (2) whether there is a disparity in access to funds to retain counsel, and (3) whether one party is able to pay for legal representation of both parties. (FC § 3121(b)) • If the findings demonstrate disparity in access and ability to pay, the court shall make an award of fees. (FC § 3121(b)) • Cannot be assessed against government entity. (FC § 3121(a)) • The court must rule on an application for fees under this section within 15 days of the hearing. (FC § 3121(f))

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Category	Authority	Basis	Amount	Comment
G2 Dissolution, Legal Separation, Nullity and any proceeding subsequent to entry of a related judgment	FC § 2030 FC § 2032 MANDATORY	To either party if necessary based on income and needs assessments to maintain or defend the action, if just and reasonable under the relative circumstances of the parties.	<ul style="list-style-type: none"> • Whatever amount is reasonably necessary for fees and costs to maintain or defend the proceeding. (FC § 2030(a)(1)) • The amount of the award must be just and reasonable under the relative circumstances of the parties. (FC § 2032(a)) 	<ul style="list-style-type: none"> • The court shall make findings on: (1) whether an award of fees is appropriate, (2) whether there is a disparity in access to funds to retain counsel, and (3) whether one party is able to pay for legal representation of both parties. (FC § 2030(a)(2)) • The court shall award fees if the findings demonstrate a disparity in access and ability to pay. (FC § 2030(a)(2)) • Cannot be assessed against government agency. (FC § 2030(a)(1)) • Fees and costs may be for legal services rendered before or after the action was commenced. (FC § 2030(b)) • In determining what is just and reasonable under the relative circumstances of the parties, the court shall take into consideration the need for the award to enable each party to have financial resources or to present his or her case adequately, taking into consideration the factors in FC § 4320, if relevant. (FC § 2032(b)) • The fact that a party requesting an award has financial resources from which to pay his or her own fees is not itself a bar to the award. (FC § 2032(b))
G3 Support Enforcement	FC § 3557 MANDATORY	To custodial parent or supported spouse in an action to enforce existing child or spousal support order, absent good cause to the contrary, and upon determining (1) an attorney's fee award is appropriate, (2) there is a disparity in access to funds to retain counsel, and (3) one party is able to pay for legal representation of both parties.	Reasonable attorney's fees.	<ul style="list-style-type: none"> • Cannot be assessed against government entity. (FC § 3557(b)). • Good cause may exist where no support is found due. (<i>Marriage of Scherck</i> (1991) 228 Cal.App.3d 1474.)
G4 Uniform Parentage Act	FC § 7605	To either party in any action to establish physical or legal custody or a visitation order, or any proceeding subsequent to entry of a related judgment.	Whatever amount is reasonably necessary for fees and costs to maintain or defend the proceeding during the pendency of the proceeding.	Cannot be assessed against government entity. (FC § 7605(a))

	Category	Authority	Basis	Amount	Comment
H	PROPERTY				
H1	Reimbursement for Payment of Debt Assigned to Other Party	FC § 916(b)	Against a party who was assigned the debt if the property of the other party was applied and that party incurs fees enforcing his or her right to reimbursement for payment of the debt.	The reasonable attorney's fees and costs incurred in enforcement action.	Construed by <i>CMRE Financial Services, Inc. v. Parton</i> (2010) Cal.App.4th 263.
I	SANCTIONS				
I1	Attempted Murder	FC § 274 MANDATORY	Against a convicted spouse who pursues an action for support or any other benefit from the victim spouse.	Reasonable attorney's fees and costs incurred by victim to defend against the action.	<ul style="list-style-type: none"> • Shall be imposed only after notice and opportunity to be heard. (FC § 274(b)) • The requesting party is not required to demonstrate financial need for the award. (FC § 274(c)) • The sanction is payable from the property or income of the offending party, including that party's share of community property. (FC § 274(c))
I2	False Accusation of Child Abuse	FC § 3027.1	Against any witness, party or attorney who knowingly makes a false accusation of child abuse or neglect.	Reasonable attorney's fees incurred in recovering sanctions.	Reasonable money sanctions are also available in an amount not to exceed the amount incurred to defend against the accusation. (FC § 3027.1; <i>Marriage of Dupre</i> (2005) 127 Cal.App.4th 1517)
I3	Frivolous Appeal	CCP § 907	Against party who pursues frivolous or dilatory appeal.	Not specified.	Example: <i>Marriage of Schnabel</i> (1994) 30 Cal.App.4th 747 – appeal “totally devoid of merit” and “brought merely to harass and delay.”
I4	Improper Motion for Reconsideration	CCP § 1008(d)	Against moving party if the party fails to show new, different facts and why not earlier produced.	Sanctions payable pursuant to CCP § 128.7.	Family Code Exceptions: (1) Modification of FC § 2030 attorney fee award. (<i>Marriage of Hobdy</i> (2004) 123 Cal.App. 4th 360) (2) Reconsideration of child custody order. (FC § 3022.5)
I5	Obstreperous Conduct	FC § 271	Against a party for conduct by a party or by an attorney that frustrates the policy of the law to promote settlement and to reduce the cost of litigation by encouraging cooperation.	The court shall not impose a sanction that imposes an unreasonable financial burden.	<ul style="list-style-type: none"> • The requesting party is not required to demonstrate financial need for the award. (FC § 271(a)) • The court shall take into consideration all evidence regarding the parties' incomes, assets, and liabilities. (FC § 271(a)) • The sanction is payable from the property or income of the party against whom the sanction is imposed, including the sanctioned party's share of community property. (FC § 271(c))
I6	Set Aside of Default for Fault	CCP § 473(b) MANDATORY	Against defending party or attorney after set aside of default or dismissal based on attorney's affidavit of fault.	Reasonable compensatory attorney's fees of moving party.	Court may also assess a \$1,000 penalty, make \$1,000 payable to State Bar Client Security Fund, or grant other appropriate relief. (CCP § 473(c))

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Category	Authority	Basis	Amount	Comment	
17	Violation of Certificate of Merit	CCP § 128.7	Against parties or attorneys who submit a pleading: (1) for an improper purpose, (2) with legal contentions unsupported by law, (3) with factual contentions unsupported by evidence, or (4) with factual denials unsupported by evidence.	Reasonable expenses and attorney's fees incurred as a direct result of the violation. Separately, reasonable attorney's fees to prevailing party in presenting or opposing a motion under this section.	<ul style="list-style-type: none"> • Mandatory 21 day safe-harbor period for offending party to cure. (<i>Reese & Guy</i> (1999) 73 Cal.App.4th 1214) • May be awarded against attorneys or parties who are responsible for the violation (and not just the individual who signed the pleading). (<i>Falcone & Fyke</i> (2008) 164 Cal.App.4th 814) • Fee sanctions not awardable to self-represented litigants, even if he/she is an attorney. (<i>Musaelian v. Adams</i> (2009) 45 Cal.4th 512)
18	Violation of Court Order	CCP § 177.5	Against any person for violation of a court order without good cause or substantial justification.	Not to exceed \$1,500 and payable to county.	<ul style="list-style-type: none"> • Upon notice by party or the court's own motion, after notice and opportunity to be heard. (CCP § 177.5) • The order must be in writing and shall recite in detail the conduct or circumstances justifying the order. (CCP § 177.5) • Violation does not need to be willful; only committed without a valid excuse. (<i>In re Woodham</i> (2001) 95 Cal.App.4th 438)
19	Violation of Rule of Court	CRC 5.14	Against any party, attorney, law firm, witness, or other individual necessary for the disposition of the case, in favor of the court, or an aggrieved party (or both), for failure to comply without good cause with the rules of court in an action under the Family Code.	County's attorney's fees and costs.	<ul style="list-style-type: none"> • Sanction must not impose an unreasonable financial burden on person ordered to pay. (CRC 5.14(c)) • After notice and opportunity to be heard. (CRC 5.14(c)) • Fees and CRC 5.14 Sanctions may be ordered in addition to other sanctions permitted by law. (CRC 5.14(c))
J CHILD SUPPORT ONLY					
J1	DCSS Director's Final Decision	FC §17803 MANDATORY	To a parent who is successful in an action to reconsider director's final decision in DCSS case.	Reasonable attorney's fees and costs.	Review petition must be taken within one year after receiving notice of the director's final decision. (FC § 17803)
J2	Employer in Department of Child Support Services Case ("DCSS")	FC § 17512(e)	Against employer who receives a written request for employment information from DCSS and fails to act.	Attorney's fees and costs of county.	Fees awarded in addition to any civil penalty assessed. (FC § 17512(e))
J3	Prevailing Party – Health Care Costs	FC § 4063(c)	Against either parent upon a motion to enforce the terms of an order under FC § 4063 if court finds that the party acted without reasonable cause regarding his/her obligations.	Filing costs and reasonable attorney's fees.	In addition to court's power to hold a party in contempt or issue other orders of enforcement. (FC § 4063(c), FC § 290)

	Category	Authority	Basis	Amount	Comment
J4	Private Child Support Collector	FC § 5615(a)(3)(A) MANDATORY	Mandatory to a prevailing party against private child support collector. OR Discretionary to a prevailing private child support collector if the court finds that the party bringing the action was not acting in good faith.	Reasonable attorney's fees, based on time necessarily expended to enforce liability.	Fees awarded in addition to any actual damages and civil penalties assessed. (FC § 5615(a)(2))
K SUPPORT (Child and Spousal)					
K1	County Action	Child Support: FC § 4002(c); Spousal Support: FC § 4303(c)	Against a parent or an obligor spouse in a proceeding brought by the county to enforce a child's right of support against a parent, or a spouse's right of support against his or her spouse.	Reasonable attorney's fees and costs of the county.	May be applied to temporary spousal support and pendente lite attorney's fees. (<i>Kitroy v. Kitroy</i> (1995) 35 Cal. App.4th 1141)
K2	General – Uniform Interstate Family Support Act (“UIFSA”)	FC § 4919(b)(11)	California court may award fees in interstate support proceeding to the extent authorized by law.	Reasonable attorney's fees.	Subject to FC § 4927 (See below in K3 and K4).
K3	Hearing Used to Delay – UIFSA	FC § 4927(c) MANDATORY	Against a support obligor who requests a UIFSA hearing primarily for delay.	Reasonable attorney's fees.	Presumed if registered order is confirmed or enforced without change. (FC § 4927(c))
K4	Prevailing Obligees – UIFSA	FC § 4927(b)	To prevailing obligee in interstate support proceeding.	Reasonable attorney's fees as well as other costs and expenses incurred by the obligee and his/her witnesses.	<ul style="list-style-type: none"> • Support obligation has priority over fee award. (FC § 4927(b)) • May be ordered paid directly to attorney. (FC § 4927(b))
K5	Prevailing Party	FC § 3652	To a prevailing party in an action to modify, terminate, or set-aside a support order.	Not specified.	<ul style="list-style-type: none"> • Cannot be assessed against government entity. (FC § 3652) • Does not preclude need-based award to losing party under FC § 2030. If both sections apply, FC § 2030 fees awarded instead of fees under FC § 3652. (<i>Marriage of Popenhagen</i> (1979) Cal.App.3d 514)
K6	Support of Parents	FC § 4403(c)	Against adult child if county takes action to enforce support right.	Reasonable attorney's fees and costs of county.	The discretion to award fees lies with the trial court. Appellate court should interfere only if it finds that no judge could reasonably have made the challenged order. (<i>County of Kern v. Ginn</i> (1983) 146 Cal.App.3d 1107)

Endnote:

1 The “Mandatory” designation in this article refers to the use of “shall” in the applicable statute. Please note, however, that a “Mandatory” statute may also provide for exceptions. ■