

# SANCTIONS one and all



by Thomas H. Smith

IN RE MARRIAGE OF FELDMAN (2007) 153 Cal.App.4<sup>th</sup> 1470 is a wake-up call to anyone who has not yet taken seriously the Family Code's financial disclosure requirements (and its resulting sanctions when those requirements are not met). A party to a dissolution proceeding who attempts to avoid full financial disclosure invites specific Family Code ("FC") sanctions and attorney fees awards. The FC's disclosure requirements, sanctions and fee awards complements the FC §271 sanctions and FC §2030 need-based fee awards. They are separate, and potentially far more powerful, than those set forth in the *Code of Civil Procedure's* ("CCP's") discovery statutes.

*Feldman* focuses on the FC's duty of disclosure during dissolution proceedings and confirms the consequences of breaching those duties. The trial court found that the husband (the "husband") established a "pattern" of financial non-disclosures and issued sanctions against him. These sanctions were set in an amount the court deemed sufficient to deter future non-compliance with the disclosure requirements of FC §§721, 2100, 2120, and 1100(e), as well as *Corporations Code* §§16403(c)(1) & (2). The trial court also awarded the wife ("wife") attorney fees incurred in pursuing husband's compliance with the statutes, including bringing and defending the motion.

The fiduciary obligations of spouses are set forth in FC §721, and are made specifically applicable during dissolution proceedings by FC §1100(e). It provides:

*Each spouse shall act with respect to the other spouse in the management and control of the community assets and liabilities in accordance with the general rules governing fiduciary*

*relationships which control the actions of persons having relationships of personal confidence as specified in Section 721, until such time as the assets and liabilities have been divided by the parties or by a court. This duty includes the obligation to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest and debts for which the community is or may be liable, and to provide equal access to all information, records, and books that pertain to the value and character of those assets and debts, upon request.*

Consistent with these fiduciary obligations, FC §2100(c), in part, provides that "...a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties." This disclosure duty is ongoing, as FC §2100(c) further provides that "...each party has a continuing duty to immediately, fully, and accurately update and augment that disclosure to the extent there have been any material changes so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have a full and complete knowledge of the relevant underlying facts." (Italics added.)

Similarly, FC §2102(a) provides: From the date of separation to the date of the distribution of the community or quasi-community asset or liability in question, each party is subject to the standards provided in Section 721, as to all activities

that affect the assets and liabilities of the other party, including, but not limited to...(1) The accurate and complete disclosure of all assets and liabilities in which the party has or may have an interest or obligation and all current earnings, accumulations, and expenses, *including an immediate, full, and accurate update or augmentation* to the extent there have been any material changes. (Italics added.)

FC §2107(c) now *requires* the trial court to impose monetary sanctions, including an award of reasonable attorney fees if a party fails to comply with any portion of the FC chapter dealing with a spouse's fiduciary duty of disclosure during dissolution proceedings, *i.e.*, §§2100 to 2113. The sanctions "shall be in an amount sufficient to deter repetition of the conduct or comparable conduct... unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

Notably, unlike FC §271, FC §2107 does not require the court to consider the parties' incomes, assets, and liabilities. It merely *requires* sanctions in an amount sufficient to deter repetition of the failure to disclose. Public policy favors cooperation of the litigants and the promotion of settling litigation [*Feldman* at 1480]. As such, neither statute requires the moving party to show damages or demonstrate financial need. The FC further directs that, "Remedies for breach of the fiduciary duty by one spouse, including those set out in Sections 721 and 1100, *shall include*, but not be limited to, an award to the other spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty

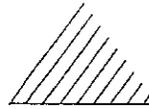
plus attorney's fees and court costs." [See FC §1101(g). (Italics added.)]

*Feldman* affirmed these non-disclosure sanctions. A little over a year after filing her petition for dissolution, wife applied for an order (1) imposing monetary sanctions against husband for violating his fiduciary duty to make financial disclosures to her during the dissolution proceedings (the "sanctions motion"), and (2) requiring husband to pay her attorney fees [*Feldman* at 1474]. The sanctions motion was based on sections 1101(g), 2107(c), and 271(a) of the FC [Id.]. Wife's declaration in support of the sanctions motion alleged that husband repeatedly failed to disclose several different financial transactions, including the purchase of a personal residence through one of his companies, the purchase of a \$1 million bond, the existence of a 401(k) account, and the existence of several business entities [Id. at 1475].

Following full briefings and a hearing, the trial court ruled that husband repeatedly breached his fiduciary duty to disclose financial information to wife, and concluded the numerous deficiencies in disclosure showed "a clear pattern" and that husband had no intention of complying with the disclosure statutes [Id.]. Husband's "failure to disclose [was] intentional" and "trying to circumvent the process," and the court ordered husband to pay sanctions in the amount of \$250,000 and attorney fees of \$140,000 [Id.]. The Court of Appeal of the Fourth District upheld the ruling.

In summary, in addition to the well established FC §2030 need-based attorney fees awards and FC §271 sanctions (and in addition to the fee awards associated with the CCP's discovery statutes), *Feldman* stands for the proposition that a court may sanction a party to a dissolution proceeding, and award the other party his or her attorney fees, to deter future violations of the party's fiduciary obligation; and, all this without a court's finding of need or even a party's ability to pay. ♦

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