

Family Court Sanctions

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Family law is not like other kinds of law.

If you're a corporate lawyer, or a tax attorney, or a land use lawyer, your clients are either businesses, or at most, you are dealing with their money.

But family law is different. It deals with families, and often, children. And as a result, the parties involved sometimes (and understandably) take the outcome of a matter very personally. Emotion, often powered by marital or relationship issues that have been simmering for a long time, can overwhelm reason and respect for the legal process. This often means defiant behavior, in large ways and small, up to and including simply refusing to obey an order of the court. The same fury that can cause, say, a betrayed wife to go after her soon-to-be-ex's BMW with a golf club and a can of spray paint can be displayed in court, albeit with vastly different results.

The difference? It's direct intervention by the court.

What kind of "direct intervention" are we talking about here? One word: sanctions. Family court litigants are sometimes surprised to learn that just as in criminal matters, South Carolina's family courts have the power to punish parties who don't play by the rules. The ability to enforce rulings using measures with real teeth is, of course, fundamental to the operation of any court, but in all the smoke and heat of a contentious family dispute, parties sometimes overlook this point. That is a mistake.

In fashioning sanctions, family court judges have a lot of discretion, and a wide range of tools at their disposal, including fines, payment of the other party's costs and expenses, and if the judge believes it's necessary, community service or incarceration. In the words of a 1947 opinion, the court can impose sanctions to coerce a party into compliance, and/or to compensate the other party for the losses resulting from that party's noncompliance.

Let's get a little more specific. It is unusual, but it does happen that: a) a party to a family law matter simply refuses to obey an order of the court, say, involving custody, child support or alimony; and b) the infraction is severe enough that the court decides sanctions are in order for contempt of court. And these sanctions are nearly always payable, by the way, to the opposite party in the dispute. It is even possible that the court will require a party to pay the legal fees of the other party to the dispute.

Sanctions can range from requiring one party to pay another's expenses to actual incarceration

if, in the words of a recent South Carolina judge's opinion, a party "has an extensive history of misconduct with regard to the issue at hand, and incarceration is necessary to punish the misconduct." Yes, if your conduct is egregious enough, you can be sent to jail for up to six months.

And in the end, the underlying dispute isn't relevant. Family court is still court, the judges are still judges, and whoever allegedly once did what to whom, they can, and will impose real punishments. And in that way, family law is exactly like every other kind of law. Clients are well advised to keep this point in mind.