

SANCTIONS FOR FRIVOLOUS APPEALS

By Robin Meadow

Appellate courts have always had the power to award sanctions for frivolous appeals, but in the last several years they have been increasingly willing to do so, sometimes at very high levels.

The situation is especially difficult for lawyers who rarely handle appeals, since they are the ones most likely to misjudge the merit of an appeal or fall victim to procedural mishaps. But all lawyers should be concerned about the increased frequency of sanctions awards. The law cannot afford to have its growth sacrificed to a fear that creative advocacy inevitably carries with it the risk of sanctions.

The watershed in this problematic area was *In re Marriage of Flaherty*,¹ in which the California Supreme Court enunciated a comprehensive definition of frivolousness and set out procedural guidelines for the imposition of sanctions.

Flaherty arose from a custody and child support dispute. It apparently passed through an appellate settlement conference, briefing and oral argument with no suggestion by either the respondent or the court of appeal that they considered the appeal frivolous.²

In its opinion, however, the Third District court unleashed a tirade against "meritless appeals which burden the limited resources of the appellate courts."³ The court said that "it is fair to say that the only significant consideration presented by the record is the abuse of the right of appeal by the pursuit of

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this utterly hopeless appeal."⁴ The court imposed \$500 sanctions on the appellant's counsel and certified the opinion for publication.

The supreme court granted a hearing. It held that the appeal was not frivolous

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and took the opportunity to consider both the standards to be applied in determining whether an appeal is frivolous and the procedures that a court must follow in making that determination.

In discussing the standards for determining frivolousness, the court identified two trends in California law:

The California cases discussing frivolous appeals provide a starting point for the development of a definition of frivolous. Those cases apply standards that fall into two general categories: subjective and objective. [Citation.] The subjective standard looks to the motives of the appellant and his or her counsel....

The objective standard looks at the merits of the appeal from a reasonable person's perspective.⁵

The court concluded:

[A]n appeal should be held to be frivolous only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit.⁶

The court added a word of caution: *[A]ny definition must be read so as to avoid a serious chilling effect on the assertion of litigants' rights on appeal. Counsel and their client have a right to present issues that are arguably correct, even if it is extremely unlikely that they will win on appeal. An appeal that is simply without merit is not by definition frivolous and should not incur sanctions.⁷*

Turning to procedural matters, the supreme court held that "fundamental constitutional mandates" require that attorneys be afforded the basic protections of due process:

Penalties for prosecuting frivolous appeals should not be imposed without giving fair warning, affording the attorney an opportunity to respond to the charge, and holding a hearing. Further, when imposing sanctions, the court should provide the attorney with a written statement of the reasons for the penalty.⁸

Flaherty apparently gave the courts of appeal greater confidence in their ability to impose sanctions: the published opinions reflect more sanctions awards in the three years since *Flaherty* than in the 10 years preceding it.

As the supreme court observed in *Flaherty*, lack of merit does not necessarily make an appeal frivolous. In *Balboa Ins. Co. v. Aguirre*,⁹ for instance, the court denied a sanctions request because the appeal, while meritless, was not "indisputably meritless."¹⁰ And in *Treharne v. Loftin*,¹¹ although the court found the appeal meritless, it declined to impose sanctions, pointing out that sanctions should be awarded only "sparingly."¹² Few decisions have awarded sanctions solely because an appeal was meritless; whether or not the courts explicitly rely

ITIONS US APPEALS

on it, there has almost always been some element of bad faith.¹³

An extreme example—which resulted in the largest reported sanctions award, \$125,000—is *Hersch v Citizens Sav. & Loan Ass'n*.¹⁴ The defendants in *Hersch* were obligated to secure a \$4 million note with bonds of equal value. When the bonds' value declined, they failed to post additional collateral. Plaintiffs sold the bonds and then sued to recover a deficiency of about \$1 million. The defendants appealed the judgment against them. In finding the appeal frivolous, the court of appeal made these comments about the defendants' tactics:

*The evidence is persuasive that every tactic employed by defendants since the answer to the complaint was prompted by a desire to secure the advantage of the differential between interest rates obtainable in the open market and the legal rate applicable to judgments during the trial on appeal [sic]. . . . Defendants' motive in this case is as easy to understand as it is difficult to hide. For nearly five years defendants have had the use of approximately \$1 million legally owed by them to plaintiffs. . . . [W]e are compelled to the conclusion that material gain through delay was and is their motive.*¹⁵

Similar considerations motivated a \$53,000 sanctions award in *Song v. Smatko*.¹⁶ In that case, because of a doctor's negligent diagnosis the plaintiff became a terminal cancer victim with a minimal life expectancy. The defendant filed an untimely new trial motion, filed an untimely notice of appeal, delayed perfecting the appeal and apparently devoted little effort to briefing the appeal. In assessing whether to impose sanctions, the court observed that it was

dealing with a "most egregious case":

*The record reflects that at all times defendant has known that plaintiff is suffering from a far-advanced terminal case of metastasized cancer and has only a minimal life expectancy. Defendant, at all times, has known that unless plaintiff can soon receive the benefit of her jury verdict she will never live to receive it. Defendant's taking, and persistence in prosecuting, this purported appeal has deprived plaintiff of the only chance which she would have had to use her funds, awarded by the jury, to ease her living circumstances and to lessen the pain and anxiety of the final months of her life.*¹⁷

In assessing whether to impose sanctions, the court observed that it was dealing with a "most egregious case."

Other less dramatic cases reflect no less concern with improper motive. For example, in *Custom Craft Carpets, Inc. v. Miller*,¹⁸ in which the plaintiff sought to enjoin the attorney general from a consumer fraud investigation, the court stated:

Despite present counsel's valiant effort to persuade us that this litigation including the prior appeal contained the germ of an important and serious legal issue, albeit inarticulately and ineffectually pleaded and briefed, we continue in our firm belief that the entire matter from trial level to the appellate level was

*a sham designed to gain time for Custom Craft to continue its improper conduct.*¹⁹

And in *Cosenza v. Kramer*,²⁰ the court said:

*Dr. Kramer and his attorney have joined together to misuse the appellate process to delay the payment of a legitimate obligation of \$1,450 for over six years and to compel the opposing party to expend legal fees and costs far in excess of the amount sought in the litigation.*²¹

¹³ 31 Cal.3d 637 (1982).

¹⁴ *Id.* at 646.

¹⁵ No. 3 Civ. 19744, Court of Appeal Slip Opinion at 3 (April 10, 1981) (unpublished).

¹⁶ *Id.*

¹⁷ 31 Cal.3d at 649.

¹⁸ *Id.* at 650.

¹⁹ *Id.* (emphasis in original).

²⁰ *Id.* at 654.

²¹ 149 Cal.App.3d 1002 (1983).

²² *Id.* at 1010.

²³ 153 Cal.App.3d 878 (1984).

²⁴ *Id.* at 887.

²⁵ Only three decisions since Flaherty awarded sanctions with no intimation of improper motive: *Maple Properties v. Harris*, 158 Cal.App.3d 997 (1984) (\$20,000); *Menasco v. Snyder*, 157 Cal.App.3d 729 (1984) (\$1,000); and *Wax v. Infante*, 145 Cal.App.3d 1029 (1983) (\$1,000).

²⁶ 146 Cal.App.3d 1002 (1983).

²⁷ *Id.* at 1012.

²⁸ 161 Cal.App.3d 920, 208 Cal.Rptr. 300 (1984). The supreme court has ordered (January 31, 1985) that the opinion not be published. Although the decision therefore cannot be cited, it is discussed here because of the insight it provides on how appellate courts may react in potential sanctions situations.

²⁹ 161 Cal.App.3d at 936, 208 Cal. Rptr. at 310.

³⁰ 137 Cal.App.3d 120 (1982) (\$10,000 sanctions).

³¹ *Id.* at 123.

³² 152 Cal.App.3d 1100 (1984) (\$3,000 sanctions).

³³ *Id.* at 1102-03. See also *Kapelus v. Newport Equity Funds, Inc.*, 147 Cal.App.3d 1, 9 (1983) (\$5,000 sanctions); *People v. Beverly Bail Bonds*, 134 Cal.App.3d 906, 914-15 (1982) (\$2,000 sanctions).

Improper motive alone, however, probably is not a sufficient basis for the imposition of sanctions. It seems unlikely that *Flaherty* intended that a clearly meritorious appeal could be the subject of sanctions solely because of the appellant's motive, and no case to date has imposed sanctions on that basis.²² What seems to have emerged is a sort of balancing test in which the court weighs the substantive merit of an appeal against the appellant's motives. In those few cases where the court maintains that an appeal is truly "objectively" frivolous—meaning that no reasonable lawyer would think it had merit—the appellant's motive is irrelevant. But in cases that are perhaps less obvious, the court considers both the merit of the claim and the appellant's apparent purposes in bringing the appeal.

In evaluating the appellant's motives, the courts have consistently gone beyond the confines of the appeal itself. In the cases cited above, the courts gave considerable weight to the appellant's approach to the case as a whole, at the trial level as well as on appeal.²³

The courts also have gone beyond the particular case at hand where the appellant has shown a pattern of questionable conduct. For instance, in *Comora v. Comprehensive Care Corp.*,²⁴ the court, in awarding \$10,000 sanctions, mentioned that in the 14 years preceding the appeal the appellant had "initiated a lengthy series of groundless litigation" involving a number of appeals and previous sanctions awards.²⁵ And in *Beckstead v. International Industries, Inc.*,²⁶ the court's \$6,000 sanctions award was influenced by "appellant's long history of unmeritorious and frivolous appeals."²⁷

An appeal that might have merit can decline into frivolousness through procedural mishandling. In *Song v. Smatko*, for instance, the court stressed the appellant's failure to file a timely new trial motion, a failure that affected the timeliness of his notice of appeal.²⁸ Several cases seem to have turned on the fact that the appellant's failure to designate an adequate record made affirmance a virtual certainty.²⁹

An extreme example is *Corona v. Lundingan*,³⁰ an appeal from a default judgment. The appellant commented extensively on the evidence, but since a default judgment allows review only of questions of jurisdiction and the sufficiency of the complaint, "virtually none of the issues raised by [appellant] are reviewable."³¹

In the same vein, an appeal that began with merit can become frivolous because of subsequent events. In *Wax v. Infante*,³² the trial court awarded sanctions against the parties and their coun-

sel. The parties appealed, but their counsel then paid the sanctions, thus mooted the appeal. The court held that it was frivolous for the parties to pursue the appeal.

The courts also mention the poor quality of appellate work as some indication of the appellant's motive.³³ The unstated reasoning seems to be that lack of effort in the briefing and related work reflects the appellant's lack of belief in the appeal.

PARTIALLY FRIVOLOUS APPEALS

In *Flaherty*, the supreme court cited *Anders v. California*³⁴ for the proposition that "an appeal is not frivolous if 'any of the legal points [are] arguable on their merits.'"³⁵ *Maple Properties v. Harris*,³⁶ however, seems to have departed from this principle in holding that a party may be sanctioned when an appeal is only partially frivolous, i.e., some of the appellant's claims are meritorious, but others are "objectively" meritless. In rejecting the appellant's argument that partially frivolous appeals are not sanctionable, the court stated:

*If an appeal consists of 100 causes of action and 99 of said actions were frivolous, then [under appellant's argument] the appeal could not be totally frivolous because one cause of action had merit. Therefore, we must look to the entire character of the appeal to determine whether the frivolous aspects are significant and material such as to warrant sanctions because the appeal was partially frivolous.*³⁷

A lawyer whose client has meritorious, but conventional, grounds for an appeal may shy away from more adventurous arguments rather than risk an award of sanctions.

This approach could reintroduce much of the uncertainty that *Flaherty* sought to eliminate. In *Maple Properties*, about half of the briefing concerned claims that were concededly not objectively meritless. How can counsel predict where a court may draw the line?

The risk of sanctions in this type of situation reflects precisely the "chilling effect" on appellate advocacy that *Flaherty* said must be avoided.³⁸ A lawyer whose client has meritorious but conventional grounds for an appeal

may shy away from more adventurous arguments rather than risk an award of sanctions. The result could be to discourage the assertion of novel theories that are essential to the growth of the law. The court's observations in *Umansky v. Urquhart*³⁹ are pertinent:

*The law, however, is not immutable. It remains in flux to allow for constructive change through the efforts of diligent and conscientious lawyers. It is through legal imagination and ingenuity in pleading that evolution of the law occurs. Whether we examine the law of torts and the development of strict liability for product defect [citation] or family law and the division of retirement benefits as community property [citation] we note the effect of the dynamics of the legal process. Statutes which withstand constitutional challenge in one year may be declared unconstitutional in later years.*⁴⁰

CALCULATING SANCTIONS

The amount of sanctions imposed in the reported decisions varies dramatically and the basis for the awards is not always clear. Section 907 of the Code of Civil Procedure merely speaks of awarding "such damages as may be just"; it does not suggest that sanctions may have any separate punitive aspect. On the other hand, Rule 26(a) of the California Rules of Court provides for "such penalties . . . as the circumstances of the case and the discouragement of like conduct in the future may require."

Some decisions expressly treat sanctions as a penalty.⁴¹ Others, however, are mainly concerned with providing some measure of compensation. In *Hersch*, for instance, respondents asked the court to award lost interest on their \$1 million claim. The court did not do so, but it observed:

*Absent any basis for direct measurement of damages, we are left to assess such an amount as will bear some rational relationship to the circumstances of the parties and to the purpose of the Code of Civil Procedure section 907.*⁴²

In *Song*, the court awarded \$12,000 in actual costs that would otherwise not have been recoverable on appeal, together with \$41,000 on the basis that it was "a just amount, rationally related to the amount of the judgment, the circumstances of the parties and the purpose of Section 907 and Rule 26(a)."⁴³ The \$20,000 award of sanctions in *Maple Properties* apparently was based in part on the respondents' attorneys' fees, but the court did not describe how it calculated the remainder.

Unfortunately, most decisions do not discuss how sanctions were calculated and the briefs do not reveal any consis-

tent approach by the parties seeking sanctions. Flaherty did not address the issue (although it noted the absence of guidelines)⁴⁴ and it denied hearings in *Hersch, Maple Properties and Song*.

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One recent decision, *Otworth v. Southern Pacific Transportation Co.*,⁴⁵ added a new element by remanding the matter to the trial court for determination. This is a typical procedure for fixing attorneys' fees awarded on appeal.⁴⁶ The *Otworth* court awarded the respondent "costs and attorneys' fees," so the trial court's role in assessing the amount presumably was limited. It probably would not be appropriate to remand a matter to the trial court to assess penalty-type sanctions since the court of appeal is in a better position to evaluate the appellant's conduct and motive in the appeal.

WHO PAYS THE AWARD?

Flaherty discusses frivolous appeals solely with respect to attorneys' responsibilities, but most decisions have awarded sanctions against the parties alone or against both the parties and their counsel. In two cases, *Maple Properties* and *Menasco v. Snyder*,⁴⁷ counsel explicitly requested that any sanctions award be made against them only.

A contrasting approach appears in *Custom Craft Carpets, Inc.* The court's position was that it could not, without invading the attorney-client privilege, determine whether responsibility for the appeal lay with client or counsel. It decided to award sanctions against the client only:

*In any event, if the fault lies with counsel the client can obtain relief in another forum. Thus we conclude that the appropriate course of action is to impose the sanctions on the party—Custom Craft—which in the final analysis was the beneficiary of the delay and disruption which this litigation produced.*⁴⁸

The selection of who will pay a sanctions award is in some ways as significant as the determination of frivolousness in the first instance, but so far the courts have not devoted much attention to the issue. In one sense, the lawyer is always responsible: it is the lawyer's job to evaluate whether an appeal has merit and to decline to pursue an objectively meritless appeal. In the real world, however, a client's insistence on attempting to remedy a perceived injustice may cloud even an experienced lawyer's judgment. And, as the court observed in *Custom Craft*, the client is the one who obtains the benefit of any delay.

Since it would be inappropriate for the appellate court to inquire into the lawyer's and client's respective roles in the decision to prosecute an appeal, the best solution probably is to award sanctions jointly unless there is an affirmative

⁴²But see *Hersch*, 146 Cal.App.3d at 1012; Eisenberg, *The Threat of Sanctions Is Alive and Well*, CEB CIVIL LITIGATION REPORTER at 74 (December 1983).

⁴³See also *M.E. Gray Co. v. Gray*, 163 Cal.App.3d 1025 (1985) (appeal of sanctions award; \$8,850 sanctions); *Swickard v. Crecelius Ranches, Inc.*, 164 Cal.App.3d 1251 (1985) (same; \$2,500 sanctions).

⁴⁴140 Cal.App.3d 369 (1983).

⁴⁵*Id.* at 377.

⁴⁶127 Cal.App.3d 927 (1982) (a pre-Flaherty case).

⁴⁷*Id.* at 935. See also *Reber v. Beckloff*, 6 Cal.App.3d 341 (1970), cited in Flaherty (65 appeals and 19 writ applications involving the same parties).

⁴⁸See n. 16, *supra*.

⁴⁹E.g., *Sui v. Landi*, 163 Cal.App.3d 383, ___ (1985) (absence of reporter's transcript "prevents us from reviewing the evidence and evaluating [appellant's] arguments"; \$5,000 sanctions); *Menasco*, 157 Cal.App.3d at 731-32, 734 (no reporter's transcript, no objection at trial to claimed misconduct, and concession in new trial motion that claimed misconduct was insubstantial); *Cosenza*, 152 Cal.App.3d at 1102 (partial reporter's transcript).

⁵⁰158 Cal.App.3d 764 (1984) (\$4,000 sanctions).

⁵¹*Id.* at 768.

⁵²145 Cal.App.3d 1029 (1983).

⁵³E.g., *Song*, 161 Cal.App.3d at 936. 208 Cal.Rptr. at 310 (see n. 16, *supra*); *People v. Beverly Bail Bonds*, 134 Cal.App.3d at 913-14. See also *117 Sales Corp. v. Olsen*, 80 Cal.App.3d 645, 651-52 (1978).

⁵⁴386 U.S. 738, 744 (1967).

⁵⁵31 Cal.3d at 649.

⁵⁶158 Cal.App.3d 997 (1984).

⁵⁷*Id.* at 1009 n.12 (emphasis in original). But see *Agricultural Labor Relations Board v. Abatti Produce*, ___ Cal.App.3d ___, 85 Daily Journal D.A.R. 1791 (May 21, 1985) (no sanctions despite one issue that was "sham," because another issue "was novel and warranted hearing").

⁵⁸Flaherty, 31 Cal.3d at 650.

⁵⁹84 Cal.App.3d 368 (1978).

⁶⁰*Id.* at 372.

⁶¹E.g., *M.E. Gray Co.*, 163 Cal.App.3d at 1041; *Kapelus*, 147 Cal.App.3d at 9.

⁶²146 Cal.App.3d at 1013.

⁶³161 Cal.App.3d at 938. 208 Cal.Rptr. at 312. See n. 16, *supra*.

⁶⁴31 Cal.3d at 646 n.5.

⁶⁵166 Cal.App.3d 452 (1985).

⁶⁶See *American City Bank v. Zetlen*, 272 Cal.App.2d 65, 68-69 (1969).

⁶⁷157 Cal.App.3d 729 (1984).

⁶⁸137 Cal.App.3d at 123.

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reason to do otherwise, such as a lawyer's candid admission that it was his judgment, rather than the client's insistence, that resulted in the prosecution of the appeal.

Each appeal carries with it the potential for a finding of frivolousness, and counsel must address that possibility. The Second Circuit court aptly observed in a frequently quoted comment:

Counsel must realize that the decision to appeal should be a considered one . . . not a knee-jerk reaction to every unfavorable ruling.⁴⁹

A lawyer who handles the appeal of a case he has tried never can be as objective about the case as someone unfamiliar with it. The lawyer in this situation, particularly one with limited appellate experience, should obtain input from another lawyer regarding not only the decision to appeal but also the issues to be raised.

A fresh and dispassionate review of the case by an objective third party may do more than nip a frivolous appeal in the bud. It also may help the trial lawyer identify the relative strength of various issues and perhaps help identify issues of which he was unaware. Moreover, in the unfortunate event that counsel is faced with a possible sanctions award, the third party's views may assist in responding to the argument that "any reasonable attorney would agree that the appeal is totally and completely without merit."⁵⁰

NOT A HIRED GUN

By the same token, counsel—whether the client's original trial counsel or another lawyer retained to handle the appeal—must recognize that he has the right, if not the duty, to refuse to handle a frivolous appeal.

An attorney in a civil case is not a hired gun required to carry out every direction given by the client. (Bus. & Prof. Code §6068, subd. (c).) As a professional, counsel has a professional responsibility not to pursue an appeal that is frivolous or taken for the purpose of delay, just because the client instructs him or her to do so. (Rule 2-110(c), Rules Prof. Conduct.) Under such circumstances, the high ethical and professional standards of a member of the bar and an officer of the court require the attorney to inform the client that the attorney's professional responsibility precludes him or her from pursuing such an appeal, and to withdraw from the representation of the client.⁵¹

However, the frivolous nature of an appeal may not always be clear at the outset. Lawyers are frequently retained to handle appeals before the reporter's transcript is even prepared, much less reviewed. "Frequently, issues simply

cannot even be seen—let alone assessed—without reading an accurate transcript."⁵²

A review of the transcript may reveal that what the trial lawyer saw as potent issues on appeal in fact have no basis: indeed, the trial lawyer could reach the same conclusion when the transcript turns out different from his recollection of the trial.

The lawyer and client should have an explicit understanding that the lawyer may withdraw from the case if the client insists on prosecuting an appeal that the lawyer believes has no merit. However, counsel should remember that withdrawal may not be a matter of right and there may be circumstances where withdrawal is not feasible. In a questionable case, prudent counsel should at least attempt to determine whether an appeal may be frivolous before formally appearing in the case.

A lawyer who handles the appeal of a case he has tried never can be as objective about the case as someone unfamiliar with it.

What if, despite all precautions, sanctions are threatened? At an absolute minimum, counsel must respond to any sanctions arguments in the respondent's brief and must appear at oral argument prepared to answer the court's questions. Failure to respond in the reply brief may be considered a concession that sanctions are appropriate. And, of course, oral argument may well be counsel's only chance to address any specific concerns the court has.

In a serious case, it may be appropriate for counsel to obtain separate representation, particularly if the handling of the appeal (as distinct from its substantive merit) is an issue. It might seem useful to obtain declarations of experienced lawyers or scholars to the effect that the appellant's position on a particular issue is not "totally and completely without merit." However, the effectiveness of this strategy is questionable. As the court observed in *Hersch*:

Defendants support their argument with declarations of reputable legal-scholars. Tested by this theory, however, it would virtually never be possible to hold an appeal frivolous.⁵³

A more problematic question is whether a lawyer threatened with sanctions is placed in a conflict of interest. Of course, if he acknowledges responsibility for any sanctions, there should be no conflict. Otherwise, however, the client and lawyer probably will have a clear incentive to blame one another. In a serious case, both may require separate representation.⁵⁴

Beyond these specific matters, counsel should realize that many frivolous appeals have grown out of trial court proceedings that were of questionable merit or reflected questionable motives. In a very real sense, the responsibility for a sanctions award may begin when the complaint is filed. If, over the life of a lawsuit, the lawyer and his client have built up a pattern of poor conduct, they should not be surprised if an appellate court finds that the appeal itself is merely one more step in that process.

A TROUBLING DEVELOPMENT

Despite the dramatic increase in reported sanctions awards, they still represent only a minuscule percentage of the appellate courts' work. But the very existence of the trend necessarily creates some risks: each sanctions award makes the next one easier and less momentous than it might otherwise have been.

The relative frequency of sanctions awards in recent years suggests not only that courts are more willing to award them, but also that respondents are more readily inclined to ask for them. This is a troubling development, particularly since a sanctions request could force opposing counsel to seek withdrawal from a case. If sanctions are to have any meaning at the appellate level, they should be reserved for truly egregious cases, and the courts should be alert to sanctions requests that are themselves frivolous.⁵⁵

The courts are no doubt becoming overwhelmed by skyrocketing caseloads and are more anxious than ever to weed out irksome and time-consuming frivolous appeals. But access to the courts is a right of such overarching magnitude that it may well be better to let frivolous appeals go unpunished than to discourage even a single meritorious case.

Lawyers also have a responsibility to avoid knee-jerk appeals by bringing objectivity and common sense to bear on their recommendations to clients. **■**

⁴⁹Simon & Flynn, Inc. v. Time Inc., 513 F.2d 832, 834 (2d Cir. 1975).

⁵⁰Flaherty, 31 Cal. 3d. at 650.

⁵¹Cosenza, 152 Cal.App.3d at 1103.

⁵²People v. Gaston, 20 Cal.3d 476, 483 (1978).

⁵³146 Cal.App.3d at 1012.

⁵⁴See *Sanctions—The Views from Both Sides of the Bench*, ABTL REPORT at 6 (April 1985).

⁵⁵Cf. Frankel v. Four Star International, Inc., 104 Cal.App.3d 897, 906 (1980).