

WHITTIER LAW REVIEW

VOLUME 28

SUMMER 2007

NUMBER 4

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THE PRICE OF FRIVOLITY: A LONGITUDINAL STUDY OF CALIFORNIA APPELLATE SANCTIONS

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Despite the infrequency with which they are awarded, appellate sanctions in California's appellate courts can have significant monetary and other prejudicial effects on both parties and their attorneys. Analyzing the cases that awarded sanctions from 2002 through 2005 shows few definitive trends and, even though some appellate panels appear more willing to award sanctions than others, there is virtually no way to predict whether a given panel of justices will award sanctions in any given case. Despite this, analysis of the data reveals a few general trends and lessons.

The cases reveal that the typical appellate sanctions award is made against a *pro per* appellant or solo practitioner or small-firm counsel for an appellant in a civil case who engages in a combination of (a) violating rules of practice; (b) using offensive or insulting language in appellate briefs; and/or (c) pursuing a frivolous appeal. In short, an appellant ordinarily needs to make more than one mistake or

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misstep, usually of different types, to incur sanctions. Consequently, parties should take care to follow procedural rules; refrain from insulting the courts or other parties in their briefs; ensure that their arguments have merit; and heed the warnings from any court that their arguments are frivolous or that they are in violation of court rules. Failure to do so could result in an award of sanctions against a party on one hand, or the court's refusal to award requested sanctions on the other.

I. INTRODUCTION

Appellate sanctions for frivolous motions or appeals, a rare occurrence in California, are often newsworthy (at least in legal periodicals) because the penalties can be severe for both the sanctioned party and his or her attorney.¹ However, there exists little literature analyzing California appellate sanctions trends.² This article attempts to fill that void by exploring the "5 W's"—who, what, where, when, and why—of California appellate sanctions by analyzing court of appeal sanctions awards from 2002 (the first year unreported cases were included in online search engines) through 2005. More specifically, this article describes which courts award sanctions, how much is awarded (compared to how much was requested), how often courts award sanctions upon their own motions, what kind of errors (and how egregious) are necessary for an award, and against whom sanctions are awarded (parties, their attorneys, or both).

II. BACKGROUND

Sanctions on appeal are governed by California Code of Civil Procedure section 907, California Rule of Court 8.276(e) and the

1. See Tina Bay, *Lawyers Sanctioned for Frivolous Motion in Appellate Court*, <http://www.metnews.com/articles/2006/hunt071706.htm> (July 17, 2006).

2. See e.g. Honey Kessler Amado, *Unappealing Behavior*, <http://www.lacba.org/showpage.cfm?PageID=718> (Feb. 1998); Benjamin G. Shatz, *Appellate Sanctions: A Review of 2005 Cases*, 28:4 CEB Civ. Litig. Rptr. 158 (Aug. 2006); Benjamin G. Shatz, *Dilatory or Frivolous: Two Recent Cases Address Appellate Court Sanctions*, <http://www.manatt.com/newsevents.aspx?id=3816&folder=24> (Oct. 3, 2001); Benjamin G. Shatz & Michael M. Berger, *Courts' Response to Shoddy Appellate Practice? Pony Up!*, <http://www.manatt.com/newsevents.aspx?id=3802&folder=24> (Jan. 3, 2006).

seminal opinion of *In re Marriage of Flaherty*.³ Under section 8.276(e)(1), courts of appeal may award sanctions “including the award or denial of costs, on a party or an attorney for: (A) taking a frivolous appeal or appealing solely to cause delay; (B) including in the record any matter not reasonably material to the appeal’s determination; or (C) committing any other unreasonable violation of these rules.”⁴ These sanctions may be awarded against the offending party (even if acting *pro se*), the attorney, or both.⁵

Sanctions may be awarded on a properly filed motion or on the court’s own initiative.⁶ Sanctions “may be both compensatory and punitive,”⁷ may take the form of the attorney’s fees and costs the opposing party incurred in resisting a frivolous appeal,⁸ and may also include compensation to the appellate court for the waste of its resources.⁹ In determining the appropriate amount of sanctions, courts generally consider the degree of frivolousness, the delay occasioned by the appeal or claim, the chilling effect of the appeal or claim on the other party’s rights, and the need to discourage similar conduct in the future.¹⁰ Courts are not limited to monetary sanctions and may “impose appropriate sanctions or penalties upon the parties or their attorneys”¹¹ for filing a frivolous appeal. For example, although never

3. Cal. Civ. P. Code Ann. § 907 (West 2007); Cal. R. Ct. 8.276(e) (2007); *In re Marriage of Flaherty*, 646 P.2d 179 (Cal. 1982); Jeffery A. Hogge, *California Forms of Pleading & Practice*; vol. 5, ch. 49, § 49.10 (Matthew Bender & Co. 2006).

4. Cal. R. Ct. 8.276(e)(1). The Conference of Delegates of California Bar Associations has recently written a Resolution recommending that the Judicial Council amend California Rule of Court 8.276 to require both a finding of meritlessness and bad faith before a court may award appellate sanctions. Conference of Delegates of California Bar Associations, *Resolution 02-02-07*, <http://cdcba/pdfs/R2007/02-02-2007.pdf> (Feb. 2, 2007). The Resolution states that it is an attempt to create a more stringent requirement for the imposition of appellate sanctions and prevent hostile appellate panels from “chilling” new and innovative requirements. *Id.*

5. Cal. R. Ct. 8.276(e)(1); Hogge, *supra* n. 3, at § 49.11[2].

6. See *Stern v. Am. Sts. Ins. Co.*, 2003 WL 1611291 (Cal. App. 2d Dist. Mar. 28, 2003); *Harvard Bus. Park, LLC v. Dodge*, 2005 WL 1595274 at *1 (Cal. App. 3d Dist. July 8, 2005); Hogge, *supra* n. 3, at § 49.11[5].

7. Hogge, *supra* n. 3, at § 49.15[1].

8. Cal. Civ. P. Code Ann. § 907 (West 2007); see also *Millennium Corp. Solutions v. Peckinpaugh*, 23 Cal. Rptr. 3d 500, 507 (Cal. App. 2d Dist. 2005).

9. Cal. Civ. P. Code Ann. § 907; see also *Amado*, *supra* n. 2.

10. See Hogge, *supra* n. 3, at § 49.15[2][a].

11. *Ferguson v. Keays*, 484 P.2d 70, 76 (Cal. 1971).

exercised during the time period studied, courts have the power to summarily dismiss a frivolous appeal.¹²

Sanctioned attorneys may lose more than just money. An extra penalty for attorneys is that Business and Professions Code section 6068(o) requires notification to the state bar of sanctions over one thousand dollars, and such sanctions could lead to disciplinary action by the bar.¹³ The time and expense entailed in defending a future disciplinary action may end up costing the attorney far more than the original sanctions amount. Moreover, even if the attorney is not actually disciplined by the state bar, any disciplinary proceedings will remain on his or her record, which, combined with being shamed in an opinion (possibly reported in the media), will be professionally embarrassing, presumably harming the lawyer's reputation and, thus, his or her ability to obtain future business. Attorneys who have represented sanctioned parties also face possible malpractice lawsuits from their former clients.¹⁴

When analyzing whether an appeal is frivolous, section 907 allows the court to use an objective or subjective standard. According to the seminal case, *In Re Marriage of Flaherty*, an appeal will be deemed frivolous under section 907 if it is pursued for an improper purpose¹⁵ (such as to harass the respondent or delay the effect of an adverse judgment), if it is "dilatatory,"¹⁶ or when it "indisputably has no merit."¹⁷ An appeal generally will be found to be "indisputably"

12. As a practical matter, courts are reluctant to use this sanction because in order "to determine whether the appeal is frivolous, the court usually will have to examine the record and review the merits; having done so, little is to be gained by dismissing rather than deciding the appeal on its merits." *Mabie v. Kaplan Higher Educ. Corp.*, 2005 WL 1376422 at *2 (Cal. App. 4th Dist. Div. 1 June 10, 2005) (citations and quotations omitted)

13. Cal. Bus. & Prof. Code Ann. § 6068(o)(3) (West 2007).

14. See Kenneth Ofgang, *Taking Frivolous Appeal Not Necessarily Malpractice*, C.A. Rules in Tiff Between Orange County Lawyers, <http://www.metnews.com/articles/daws060203.htm> (June 2, 2003).

15. *In re Marriage of Flaherty*, 646 P.2d 179, 185 (Cal. 1982).

16. If an appeal is only partially frivolous, courts will still award sanctions if the frivolous portion was "dilatatory" and the party gained an unfair benefit from the frivolous argument. Hogge, *supra* n. 3, at § 49.11[3].

17. Although, under *Flaherty*, courts should use both standards together, evidence under one standard can be used to prove a violation of the other. *Flaherty*, 646 P.2d at 187. For example, a complete absence of merit can be used to show improper motive. Hogge, *supra* n. 3, at § 49.12[1][c].

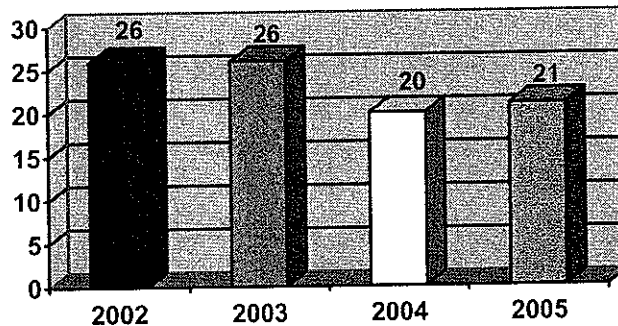
without merit if there is a case, statute or rule that directly contradicts the argument made.¹⁸ Finding dilatory motives is more complex but generally involves the following factors: lack of merit, failure to designate an adequate record, mootness of appellate issues, repeated litigation, and delaying trial tactics.¹⁹

In addition to awarding sanctions for a frivolous appeal, a court also may award sanctions (to the other party or the court itself) under Rule 8.276(e)(1)(C) for a party's unreasonable violation of the California Rules of Court governing appellate procedure and the preparation of appellate briefs.²⁰ An example of a failure to prepare an acceptable appellate brief that appellate courts are quick to punish is a brief that attacks the trial judge, opposing counsel, or the court of appeal.²¹

All in all, there are several grounds under which a party may be sanctioned by the court of appeal. As shown below, requests for sanctions are rarely granted.

III. SANCTIONS ARE RARE -- RELIABILITY PROBLEMS

Chart 1 - Number of Annual Sanctions Awards



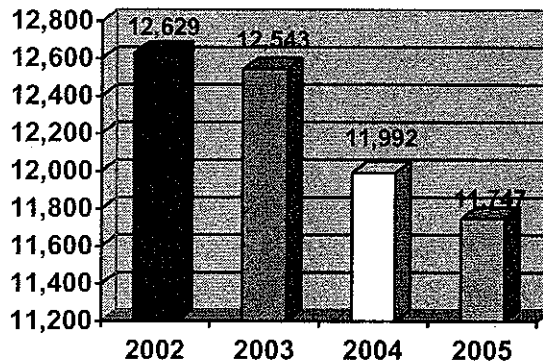
18. See Hogge, *supra* n. 3, at § 49.12[1][a]. In addition, Amado lists three reasons for awarding sanctions: (1) "There is no evidence or legal support for the issues raised on appeal." (2) "The appeal is taken from a stipulated judgment that expressly waived the right to appeal." and (3) "There is a pattern of filing appeals from nonappealable orders for the purpose of harassment and delay." See Amado, *supra* n. 2, at [¶ 3] (footnotes omitted). All three of these categories are evident in the data studied here.

19. See Hogge, *supra* n. 3, at § 49.12[1][b]. Note that the "lack of merit" and "failure to designate a record sufficient to review the contentions on appeal" factors also evidence wholly separate grounds for a finding of frivolousness.

20. Cal. R. Ct. 8.276(e)(1)(c).

21. See *Harvard Bus. Park, LLC v. Dodge*, 2005 WL 1595274 at *3 (Cal. App. 3d Dist. July 8, 2005).

Chart 1a - Number of Annual Dispositions



As noted, appellate sanctions in California are very rare.²² The courts of appeal awarded sanctions twenty-six times in both 2002 (out of 12,629 dispositions) and 2003 (out of 12,543 dispositions); twenty times in 2004 (out of 11,992 dispositions); and twenty-one times in 2005 (out of 11,747 dispositions).²³ Thus, although there were twenty to twenty-six sanctions awards per year in 2002-2005, sanctions were awarded in approximately 0.2% of all dispositions each year. The California Supreme Court did not even address the issue of appellate sanctions at all in 2002-2005. Moreover, as seen in Charts 1 and 1a, the number of both dispositions and sanctions awards per year has decreased from 2002 to 2005.

The courts often provide reasons for declining to award sanctions. Generally, the most common reason courts will not award sanctions is that the appeal, although meritless, was not meritless enough to find the appeal frivolous.²⁴ The second most common²⁵ reason courts gave for not awarding sanctions was that the respondent did not file a proper

22. See Amado, *supra* n. 2, at [¶ 29]. Courts intentionally award sanctions rarely to avoid the chilling effect sanctions may have on appellants. Hogge, *supra* n. 3, at §49.12[2].

23. See Judicial Council of California, *Preserving Equal Access to Justice* 25-28, <http://www.courtinfo.ca.gov/reference/documents/ar2003.pdf> (last accessed Apr. 8, 2007). See also Shatz, *Appellate Sanctions: A Review of 2005 Cases*, *supra* n. 2.

24. For example, in 2005, in 37 of 110 cases where sanctions were requested, sanctions were not awarded because the appeal was meritless but not frivolous.

25. Of the 89 cases where sanctions were considered in 2005, they were not awarded in 15 cases because no proper motion was filed.

motion for sanctions under Rule 8.276(e)(2).²⁶ In other cases, courts have refused to award sanctions when the appeal was not meritless,²⁷ or when both parties had behaved badly (and in the same way).²⁸

The small number of sanctions awards from 2002 to 2005 (n = 93) impacts the statistical significance of this article's analysis, especially when broken down by year. The ability to predict trends from such a small sample is inherently difficult, especially when the fact-specific nature of appeals and the personalities of those involved (litigators, attorneys, and justices) in each appeal are taken into account. Despite these limitations, this article does show some trends that may form the basis for future research with further data.

IV. WHY SANCTIONS ARE AWARDED?

In the past few years, sanctions have been awarded in approximately twenty to twenty-six cases per year.²⁹ Although sanctions are theoretically available to both appellants and respondents for frivolous motions³⁰ or appeals, sanctions are overwhelmingly requested by (and awarded to) respondents.³¹ Since 2002, there has been only one case where sanctions were awarded against a respondent, and that was for filing a frivolous motion to dismiss the

26. Under Rule 8.276(e)(2), a motion for sanctions "must include a declaration supporting the amount of any monetary sanction sought and must be served and filed before any order dismissing the appeal but no later than 10 days after the appellant's reply brief is due." Cal. R. Ct. 8.276(e)(2). A request contained in a brief is not sufficient.

27. 22 cases in 2005.

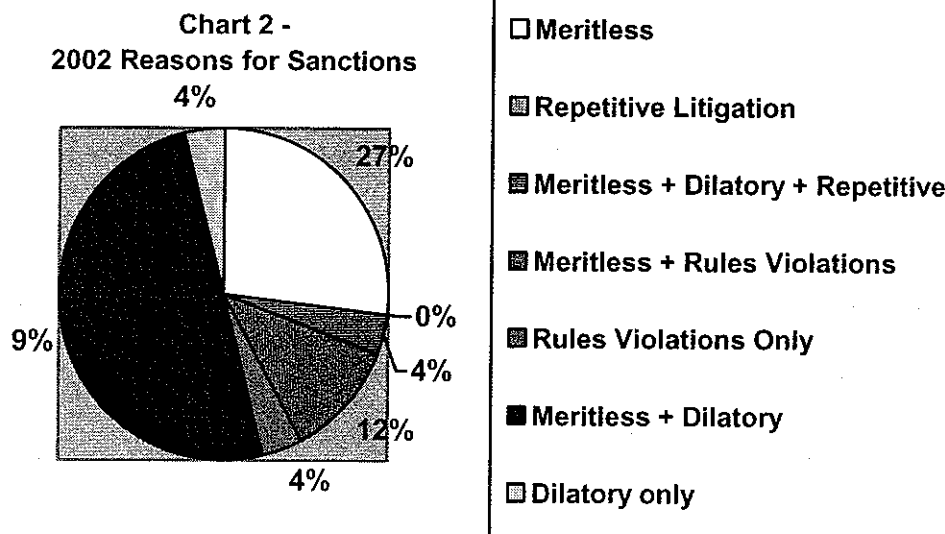
28. 6 cases in 2005. See e.g. *Ciolino v. Ryan*, 2005 WL 2065302 (Cal. App. 1st Dist. Aug. 29, 2005).

29. See Chart 1.

30. A court of appeal recently affirmed its ability to award sanctions for frivolous motions in *Dana Com. Credit Corp. v. Ferns & Ferns*, 108 Cal. Rptr. 2d 278, 280 (Cal. App. 2d Dist. 2001). The motion in question was a motion to recall a remittitur. *Id.*; see Metro. News-Enter., *Justices Claim Power to Impose Sanctions for Frivolous Motions*, <http://www.metnews.com/articles/dana0628.htm> (June 28, 2001).

31. As a result, we refer to sanctioned parties as "appellants" and sanctions recipients as "respondents."

appeal.³²



In 2002, the vast majority of sanctions were awarded because the appeal was found to be meritless and dilatory.³³ The second most common reason for sanctions awards in 2002 was a finding of meritlessness alone.³⁴ Meritlessness in combination with rule

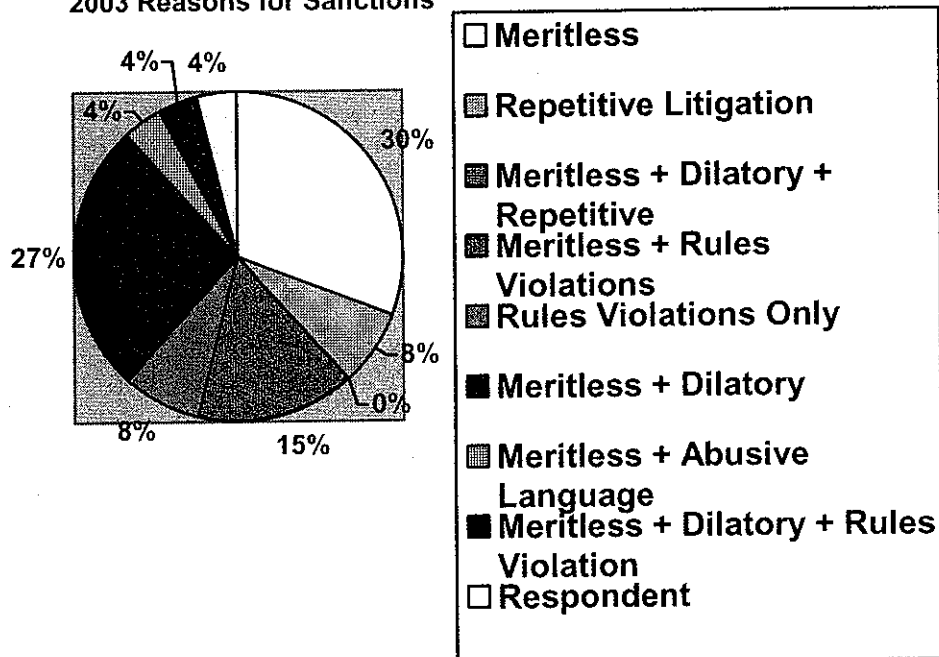
32. *Swann v. DaimlerChryslers Motors Corp.*, 2003 WL 1818139 at *11 (Cal. App. 4th Dist. Div. 1 Apr. 8, 2003). Note that the appellant actually lost the appeal, but the respondent's motion was still found to be frivolous. *Id.*

33. *Keitel v. Heubel*, 126 Cal. Rptr. 2d 763, 777 (Cal. App. 1st Dist. 2002); *Brazil v. Brazil*, 2002 WL 31235829 at *4 (Cal. App. 1st Dist. Oct. 4, 2002); *Keitel v. Heubel*, 120 Cal. Rptr. 2d 216, 228 (Cal. App. 1st Dist. 2002); *Hanley v. Carlsen*, 2002 WL 541648 at *4 (Cal. App. 1st Dist. Apr. 12, 2002); *Nohre v. W.J. Gallagher & Co., Inc.*, 2002 WL 31424914 at *4 (Cal. App. 2d Dist. Oct. 30, 2002); *Harris v. Sandro*, 117 Cal. Rptr. 2d 910, 915 (Cal. App. 2d Dist. 2002); *Cal. Bus. Bureau, Inc. v. Bloch*, 2002 WL 440404 at *6 (Cal. App. 2d Dist. Mar. 21, 2002); *Hawkes v. Sommer*, 2002 WL 31124572 at *4 (Cal. App. 4th Dist. Div. 1 Sept. 26, 2002); *Stone v. Felix*, 2002 WL 31032815 at *4 (Cal. App. 4th Dist. Div. 2 Sept. 12, 2002); *Syntron Bioresearch, Inc. v. Fan*, 2002 WL 991008 at *11 (Cal. App. 4th Dist. Div. 1 May 15, 2002); *Dickerson v. Ve Vea*, 2002 WL 31656559 at *13 (Cal. App. 5th Dist. Nov. 25, 2002); *Holmes v. Forest River Prop. Owner's Assn., Inc.*, 2002 WL 31661265 at **18-19 (Cal. App. 6th Dist. Nov. 26, 2002); *Achkar v. Hilton*, 2002 WL 31097679 at *10 (Cal. App. 6th Dist. Sept. 20, 2002); *Est. of Lawrence*, 2002 WL 541750 at *8 (Cal. App. 6th Dist. Apr. 12, 2002).

34. *Flanagan v. Leuty*, 2002 WL 1365601 at *1 (Cal. App. 1st Dist. June 24, 2002); *Himed v. Black*, 2002 WL 1067804 at *8 (Cal. App. 1st Dist. May 29, 2002); *In re Marriage of Farris*, 2002 WL 1397000 at *4 (Cal. App. 2d Dist. June 27, 2002); *In re Guardianship of Melissa W.*, 118 Cal. Rptr. 2d 42, 48 (Cal. App. 2d Dist. 2002); *Hawkes*, 2002 WL 31124572 at *4; *In re Marriage of Deborah D.*, 2002 WL 1316177

violations was the third most common reason for sanctions awards in 2002.³⁵ Appellate courts also awarded sanctions based on findings of repetitive litigation plus dilatory tactics,³⁶ dilatory tactics only,³⁷ and rule violations only.³⁸ When applicable, the appellate court was quick to point out that the errant appellant had been previously warned about rule violations or meritless arguments.³⁹

Chart 3 -
2003 Reasons for Sanctions



Unlike 2002, in 2003, the most common reason for awarding sanctions was a finding of objective meritlessness alone.⁴⁰

at *11 (Cal. App. 4th Dist. Div. 1 June 18, 2002); *Est. of Lawrence*, 2002 WL 541750 at *8.

35. *GreatAmerica Leasing Corp. v. On the Scene Prod., Inc.*, 2002 WL 1172925 at *4 (Cal. App. 2d Dist. June 4, 2002); *Feather v. WCO Vacationland, Inc.*, 2002 WL 343406 at *6 (Cal. App. 4th Dist. Div. 1 Mar. 6, 2002); *In re Conservatorship of the Est. of Waters*, 2002 WL 170725 at **9-10 (Cal. App. 4th Dist. Div. 1 Feb. 4, 2002).

36. *People v. Ranger Ins. Co.*, 124 Cal. Rptr. 2d 359, 363 (Cal. App. 3d Dist. 2002).

37. *DeRose v. Heurlin*, 122 Cal. Rptr. 2d 630, 648 (Cal. App. 4th Dist. Div. 3 2002).

38. *Fahy v. Pisano*, 2002 WL 1365621 at *6 (Cal. App. 1st Dist. June 24, 2002).

39. *Fahy*, 2002 WL 1365621 at *6.

40. *Chang v. Schwartz*, 2003 WL 1685705 at *3 (Cal. App. 1st Dist. Mar. 28,

Meritlessness was found in a variety of factual scenarios including reliance on a recently overturned case,⁴¹ arguing a contention barred by *res judicata*,⁴² appealing a non-final (and therefore, non-appealable) order,⁴³ and citing authorities or evidence that did not support the arguments made.⁴⁴ In two of these cases, the court of appeal noted that the trial court judge had warned appellant that his or her arguments were meritless.⁴⁵ The next most common reason for awarding sanctions was a finding of meritlessness plus dilatory tactics.⁴⁶ The third most common reason for awarding sanctions in 2003 was a finding of meritlessness and rule violations.⁴⁷ The remaining sanction awards were for repetitive litigation,⁴⁸ rule violations only (without a

2003); *Laroue v. Bd. for Prof. Engrs. and Land Surveyors*, 2003 WL 22391091 at *4 (Cal. App. 2d Dist. Oct. 21, 2003); *Mikol v. Celaya*, 2003 WL 21983704 at *5 (Cal. App. 2d Dist. Aug. 21, 2003); *Stern v. Am. Sts. Ins. Co.*, 2003 WL 1611291 at *17 (Cal. App. 2d Dist. Mar. 28, 2003); *Copus v. Bietz*, 2003 WL 22996114 at **7-8 (Cal. App. 4th Dist. Div. 1 Dec. 22, 2003); *In re Marriage of Flynn*, 2003 WL 21470328 at **4-5 (Cal. App. 4th Dist. Div. 3 June 26, 2002); *LeBeau v. Roxane Laboratories, Inc.*, 2003 WL 21054640 at *22 (Cal. App. 4th Dist. Div. 1 May 12, 2003); *In re Marriage of Miranda*, 2003 WL 1984740 at *5 (Cal. App. 4th Dist. Div. 3 Apr. 30, 2003).

41. *Copus*, 2003 WL 22996114 at *7.

42. *Laroue*, 2003 WL 22391091 at *4.

43. *In re Marriage of Flynn*, 2003 WL 21470328 at *4.

44. See e.g. *In re Marriage of Miranda*, 2003 WL 1984740 at *5; *LeBeau*, 2003 WL 21054640.

45. *Chang*, 2003 WL 1685705 at *3; *In re Marriage of Flynn*, 2003 WL 21470328 at *4.

46. *In re Marriage of Majer*, 2003 WL 22017872 at *2 (Cal. App. 1st Dist. Aug. 27, 2003); *In re Conservatorship of Person and Est. of William*, 2003 WL 22482065 at *4 (Cal. App. 2d Dist. Nov. 4, 2003); *Nagler v. Hartman Group, Inc.*, 2003 WL 21750992 at **9-11 (Cal. App. 2d Dist. July 30, 2003); *Barnard v. Langer*, 1 Cal. Rptr. 3d 175, 184-85 (Cal. App. 2d Dist. 2003); *Bfunny, Inc. v. Donald Cornelius Prods., Inc.*, 2003 WL 1901288 at *5 (Cal. App. 2d Dist. Apr. 18, 2003); *In re Marriage of Boone*, 2003 WL 22139005 at *2 (Cal. App. 6th Dist. Sept. 16, 2003); *In re Marriage of Boone*, 2003 WL 21085406 at *2 (Cal. App. 6th Dist. May 14, 2003).

47. *Anselmo v. Cal. Fin. Group*, 2003 WL 23002722 at *2 (Cal. App. 1st Dist. Dec. 23, 2003); *Martin v. Alexander*, 2003 WL 205156 at *7 (Cal. App. 3d Dist. Jan. 31, 2003); *Reiss v. Boyd*, 2003 WL 22040783 at *6 (Cal. App. 4th Dist. Div. 3 Sept. 2, 2003); *Seven Oaks Homeowners Assn., Inc. v. Abureyaleh*, 2003 WL 22112008 at *5 (Cal. App. 5th Dist. Sept. 11, 2003).

48. *Pollock v. U. of S. Cal.*, 6 Cal. Rptr. 3d 122, 137 (Cal. App. 2d Dist. 2003); *Brown v. Lincoln Meml. Park, Inc.*, 2003 WL 21061335 at *10 (Cal. App. 2d Dist. May 13, 2003).

finding of frivolousness),⁴⁹ meritlessness in combination with dilatory tactics and rule violations,⁵⁰ and meritlessness plus abusive language towards the respondent.⁵¹

A unique sanctions award in 2003 was against the *respondent* for filing a frivolous motion.⁵² This is noteworthy not only as the only reported instance (since 2002) of an award against a respondent, but also because the respondent was sanctioned even though the appeal was ultimately unsuccessful.⁵³ This case signals that whoever ultimately prevails may be irrelevant with regard to sanctions. This sentiment is echoed in the cases where rule violations were sufficient for sanctions awards even though the court noted that the appeal itself was not frivolous.⁵⁴ Clearly, at least in 2003, courts of appeal were sending a message to sloppy litigants that they could be penalized despite the ultimate merits of their case.

49. *In re Conservatorship of Francine S.*, 2003 WL 21290041 at *9 (Cal. App. 4th Dist. Div. 1 June 4, 2003); *Tiote Constr. & Dev. Co., Ltd. v. City of Tehachapi*, 2003 WL 21781095 at *11 (Cal. App. 5th Dist. Aug. 1, 2003).

50. *Torshkoev v. Trubnikov*, 2003 WL 21380879 at *3 (Cal. App. 1st Dist. June 16, 2003).

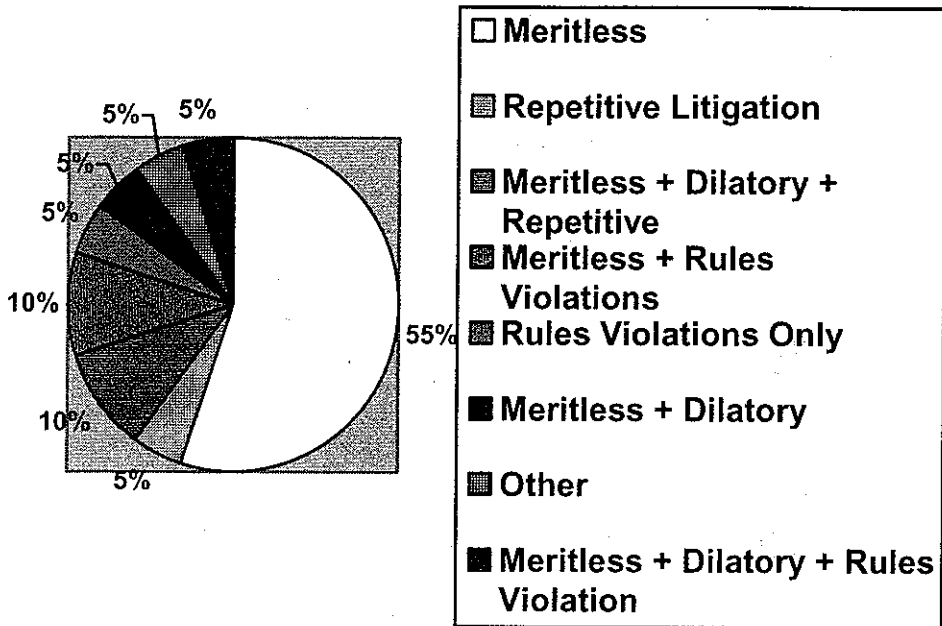
51. *In re Conservatorship of Clifford H.*, 2003 WL 22753622 at **10-11 (Cal. App. 4th Dist. Div. 2 Nov. 21, 2003).

52. *Swann v. DaimlerChrysler Motors Corp.*, 2003 WL 1818139 at *11 (Cal. App. 4th Dist. Div. 1 Apr. 8, 2003).

53. *Id.*

54. *In re Conservatorship of Francine S.*, 2003 WL 21290041 at *9; *Tiote Constr. & Dev. Co., Ltd. v. City of Tehachapi*, 2003 WL 21781095 at *11.

Chart 4 -
2004 Reasons for Sanctions



Like 2003, the most common reason for sanctions in 2004 was for solely objectively meritless briefs.⁵⁵ Meritlessness was found in contexts such as lack of standing to appeal,⁵⁶ raising frivolous arguments,⁵⁷ and failing to address the order from which the appellant appealed.⁵⁸ Additionally, there were three instances of repeated

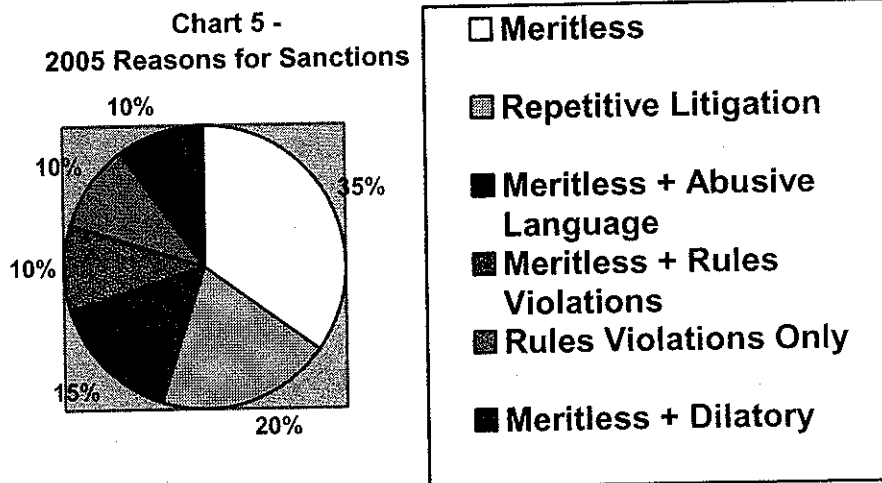
55. *Markey v. Super. Ct.*, 2004 WL 1576447 at **5, 8 (Cal. App. 2d Dist. July 15, 2004); *In re White*, 18 Cal. Rptr. 3d 444, 471 (Cal. App. 3d Dist. 2004); *Mackley v. Weis*, 2004 WL 1399082 at *6 (Cal. App. 3d Dist. June 23, 2004); *Johnson v. Lewis*, 15 Cal. Rptr. 3d 507, 517 (Cal. App. 3d Dist. July 7th, 2004); *Raike v. Hampton*, 2004 WL 1632670 at **8-9 (Cal. App. 4th Dist. Div. 1 July 22, 2004); *In re Marriage of Anderson & O'Brien*, 2004 WL 1399053 at *4 (Cal. App. 4th Dist. Div. 3 June 23, 2004); *Hawkes v. Sommer*, 2004 WL 837916 at *4 (Cal. App. 4th Dist. Div. 1 Apr. 20, 2004); *Brumbaugh v. Depew*, 2004 WL 397269 at *5 (Cal. App. 4th Dist. Div. 1 Mar. 4, 2004); *Tittle v. Bottorff-Tittle*, 2004 WL 385267 at *6 (Cal. App. 4th Dist. Div. 3 Mar. 2, 2004); *Guerrero v. Acqua*, 2004 WL 2403583 at *1 (Cal. App. 5th Dist. Oct. 27, 2004); *Gardella v. Alexander*, 2004 WL 2943255 at *7 (Cal. App. 6th Dist. Dec. 21, 2004).

56. See *Raike*, 2004 WL 1632670 at *8.

57. See *Markey*, 2004 WL 1576447 at *5; *Brumbaugh*, 2004 WL 397269 at *4.

58. See *In re Marriage of Anderson & O'Brien*, 2004 WL 1399053 at *3.

litigation.⁵⁹ The 2004 cases also saw a decline in the instances of sanctions awards for meritlessness plus dilatory tactics,⁶⁰ continuing a trend from 2003. The rest of the awards were widely spread out. Two were for a finding of meritlessness and rule violations,⁶¹ one was for rule violations alone,⁶² and one was for a meritless, dilatory appeal combined with rule violations.⁶³ Another was for an appellant's failure to appear at a settlement conference.⁶⁴



In 2005, like 2004, the most common reason for awarding sanctions was a finding that the appeal was legally meritless.⁶⁵ The

59. Two cases awarded sanctions for repetitive litigation plus intent to use dilatory tactics: *Opong-Mensah v. Stracener*, 2004 WL 1447604 at *14 (Cal. App. 3d Dist. June 29, 2004); *Lacher v. E. County Investigations*, 2004 WL 2898118 at *5 (Cal. App. 4th Dist. Div. 1 Dec. 15, 2004), one case for repetitive meritless litigation alone (*Gutkin v. U. of S. Cal.*, 2004 WL 2797435 at *5 (Cal. App. 2d Dist. Dec. 7, 2004).

60. *Consumer Just. Ctr. v. Trimedica Intl., Inc.*, 2004 WL 2699941 at *5 (Cal. App. 4th Dist. Div. 3 Nov. 29, 2004).

61. *In re Marriage of Janczar & Mermilliod*, 2004 WL 2538805 at *9 (Cal. App. 4th Dist. Div. 2 Nov. 10, 2004); *In re Marriage of Hetland*, 2004 WL 902165 at *4 (Cal. App. 4th Dist. Div. 3 Apr. 28, 2004).

62. *Dodge v. Youssefi*, 2004 WL 838836 at *13 (Cal. App. 3d Dist. Apr. 20, 2004).

63. *BioCell Tech. v. Alkayali*, 2004 WL 114699 at **4-6 (Cal. App. 4th Dist. Div. 3 Jan. 26, 2004).

64. *Schmuel v. Grover Hollingsworth & Assocs., Inc.*, 2004 WL 35801 at *3 (Cal. App. 2d Dist. Jan. 8, 2004).

65. *Henton v. Prentice*, 2005 WL 1433533 at **5-6 (Cal. App. 1st Dist. June 21, 2005); *Millennium Corp. Solutions v. Peckinpugh*, 23 Cal. Rptr. 3d 500, 505 (Cal.

court found appeals meritless for reasons including the raising of forfeited claims and misconstruing facts and law.⁶⁶ As with 2004, there was a marked decrease in sanctions awards for meritlessness combined with a finding of dilatory tactics.⁶⁷ Instead, courts seemed content to stop their inquiry at objective meritlessness.

Most noteworthy in 2005 is a large increase in sanctions for appeals found to be meritless and repetitive of previously failed litigation.⁶⁸ As in earlier years, the courts were especially willing to award sanctions if the mistakes had been pointed out to the party by opposing counsel⁶⁹ or the court itself.⁷⁰ Other, less common reasons for finding an appeal frivolous were: (1) a finding of meritlessness combined with rule violations, including failure to cite to the record on appeal;⁷¹ (2) violations of court rules;⁷² and (3) a finding of meritless plus the use of invective and abusive language against opposing counsel and/or the court.⁷³

App. 2d Dist. 2005); *Olsen v. Harbison*, 35 Cal. Rptr. 3d 909, 916-17 (Cal. App. 3d Dist. 2005); *Peterson v. Granite Bay Golf Club, Inc.*, 2005 WL 1515710 at *9 (Cal. App. 3d Dist. June 28, 2005); *Western Pacific States Constr., Inc. v. Frey*, 2005 WL 958404 at ** 4-5 (Cal. App. 3d Dist. Apr. 27, 2005); *In re Marriage of Abdo*, 2005 WL 408032 at *3 (Cal. App. 4th Dist. Div. 3 Feb. 22, 2005); *Bureau of Missing Heirs, Inc. v. Geitner*, 2005 WL 1532380 at *2 (Cal. App. 5th Dist. June 30, 2005).

66. *Pelkey v. Cavalli*, 2005 WL 1275153 at *5 (Cal. App. 1st Dist. May 31, 2005); *Harvard Bus. Park, LLC v. Dodge*, 2005 WL 1595274 at *11 (Cal. App. 3d Dist. July 8, 2005); *Evans v. CenterStone Dev. Co.*, 35 Cal. Rptr. 3d 745, 756 (Cal. App. 4th Dist. Div. 3 2005).

67. *Pelkey*, 2005 WL 1275153 at *5; *In re Marriage of Dennis*, 2005 WL 1346553 at **8-9 (Cal. App. 4th Dist. Div. 3 June 7, 2005).

68. *Lemaire v. Super. Ct.*, 2005 WL 469239 at *7 (Cal. App. 2d Dist. Mar. 1, 2005); *Hall v. U. of S. Cal.*, 2005 WL 273206 at **6-7 (Cal. App. 2d Dist. Feb. 4, 2005); *Saber v. Leeper*, 2005 WL 236548 at *3 (Cal. App. 2d Dist. Feb. 1, 2005); *Desmond v. Geitner*, 2005 WL 1538206 at *10 (Cal. App. 5th Dist. June 30, 2005).

69. *Evans*, 35 Cal. Rptr. 3d at 756.

70. *Johnson v. Antelope Valley Union High Sch. Dist.*, 2005 WL 2090352 at *6 (Cal. App. 2d Dist. Aug. 31, 2005).

71. *Cynthia J. v. Charlton A.*, 2005 WL 327530 at **15-16 (Cal. App. 1st Dist. Feb. 10, 2005); *Evans*, 35 Cal. Rptr. 3d at 757.

72. *Strickland v. Edna H. Pagel, Inc.*, 2005 WL 3112774 at *1 (Cal. App. 2d Dist. Nov. 22, 2005); *Johnson*, 2005 WL 2090352 at *6.

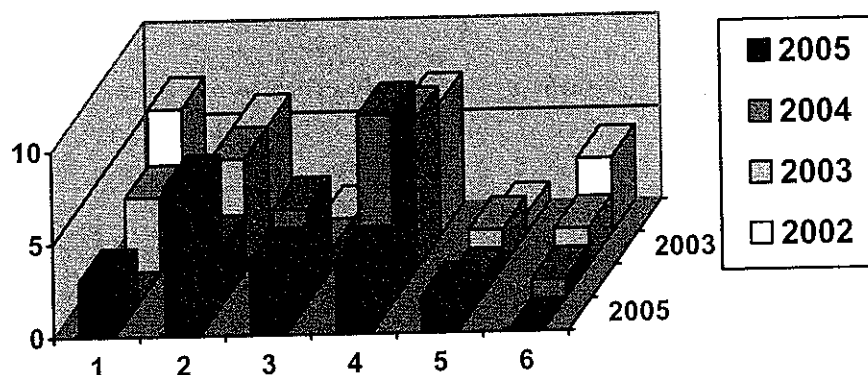
73. *In re Koven*, 35 Cal. Rptr. 3d 917, 927-28 (Cal. App. 2d Dist. 2005), *Harvard Bus. Park, LLC v. Dodge*, 2005 WL 1595274 at *11 (Cal. App. 3d Dist. July 3, 2005), *Sporn v. Home Depot USA, Inc.*, 24 Cal. Rptr. 3d 780, 787 (Cal. App. 4th Dist. Div. 3 2005).

In examining these four years of sanctions awards, meritlessness emerges as the most common reason for sanctions awards, yet is also the most difficult to prove. For that reason, courts often combine meritlessness with other infractions such as dilatory tactics or rule violations.⁷⁴ In addition, other mistakes, such as repetitive litigation and abusive language, are much more likely to be sanctioned when they arise, no doubt premised on the underlying bad faith.⁷⁵

V. WHO AWARDS SANCTIONS?

Although it would be useful to determine which courts are more likely to award sanctions, the data available shows almost no discernable trends.

Chart 6 - Sanctions By District Only



A quick look at the sanctions awards per appellate court per year shows that the Second District and Divisions One, Two, Three of the Fourth District are consistently the most active (although with a sharp decline in 2005), with the First and Sixth Districts becoming less active over time and the Third District becoming more active over time.

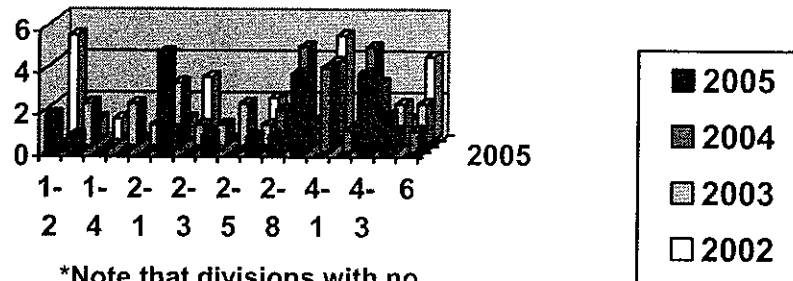
74. In fact, in every year except 2004, "meritless plus" awards equaled or outnumbered awards for meritlessness alone.

75. As a Glendale attorney recently discovered, an attorney's behavior at oral argument can also form the basis for a sanctions award. See Scott Graham, *Court Says Glendale Lawyer Tried a Snow Job*, <http://legalpad.wordpress.com/2006/02/01/snowjob/> (Feb. 1, 2006). See also *Mammoth Mtn. Ski Area v. Graham*, 38 Cal. Rptr. 3d 422, 426-28 (Cal. App. 3d Dist. 2006).

However, the inconsistent and short-term nature of the data makes it extremely difficult to predict which courts will award sanctions in 2006. When divisions within the districts and the turnover in justices on the courts are examined, the picture becomes even muddier.

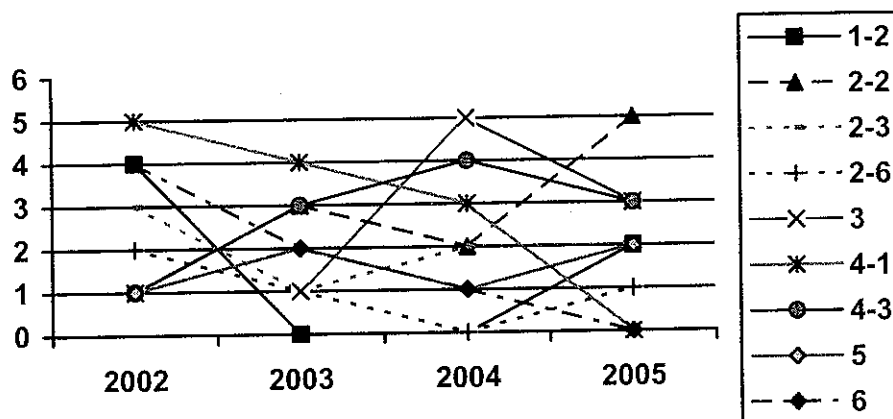
Sanctions awards are spread out among all districts and practically every division has awarded sanctions at least once since 2002. Although some divisions appear more reluctant to award sanctions, such as Divisions Three and Four of the First District, most courts' frequency of sanctions awards varies widely each year. For example, during 2002-2003, Division One of the Fourth District awarded the most sanctions and awarded the second largest number of sanctions in 2004. However, that same division awarded no sanctions in 2005. Similarly, Division Two of the First District awarded sanctions five times in 2002 (a relatively large number) but only once in 2005 and not at all in 2003 and 2004.

Chart 7 - Sanctions by District and Division*



*Note that divisions with no sanctions awards in 2002-2005 are not included

Chart 8 - Illustration of Trends for Number of Sanctions Awards



On the other hand, a few divisions seem to show general trends. Division Two of the Second District,⁷⁶ the Third District and Division Three of the Fourth District have had a general increase in the number of sanctions awards since 2002⁷⁷ and Division One of the Fourth District and the Sixth District have had decreases. Moreover, it appears that fewer courts in total have awarded sanctions over time since 2002. More specifically, in 2002, thirteen courts (of the nineteen courts of appeal, construing the divisions within the districts as separate courts) awarded sanctions and fourteen courts awarded sanctions in 2003. However, only eight courts awarded sanctions in 2004 and nine courts awarded sanctions in 2005. This decrease arises from certain courts suddenly ceasing to award sanctions in 2004 and 2005.⁷⁸

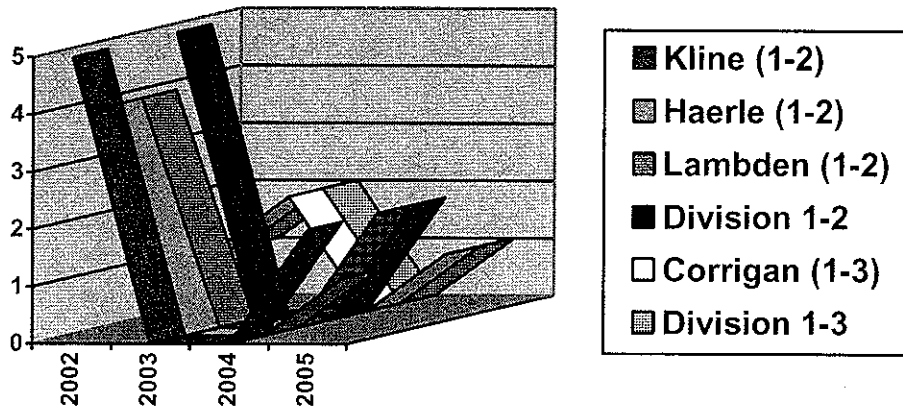
76. Division 2 of the Second District is the only division that has consistently awarded sanctions in the last few years.

77. For example, in 2005, Division 2 of the Second District handed down five sanctions awards, four of which were for repeated meritless litigation. *In re Marriage of O'Brien*, 2005 WL 3549212 at **10-11 (Cal. App. 2d Dist. Dec. 29, 2005); *Johnson v. Antelope Valley Union High Sch. Dist.*, 2005 WL 2090352 at *7 (Cal. App. 2d Dist. Aug. 31, 2005) (meritless but non-repetitive litigation); *Lemire v. Super. Ct.*, 2005 WL 469239 at *7 (Cal. App. 2d Dist. Mar. 1, 2005); *Hall v. U. of S. Cal.*, 2005 WL 273206 at **6-7 (Cal. App. 2d Dist. Feb. 4, 2005); *Saber v. Leeper*, 2005 WL 236548 at *3 (Cal. App. 2d Dist. Feb. 1, 2005).

78. Divisions 4 and 5 of the First District, and 3 and 5 of the Second District awarded sanctions in 2002 and 2003 but did not in 2004 and 2005. Divisions 1 and 2

An analysis of frequency of awards by individual justices provides some insight into these results. Ninety-two different justices authored decisions awarding sanctions from 2002 to 2005 with almost half (forty-three) of them awarding sanctions only once or twice over that four-year period. An additional twenty justices had only three awards over that time period, which leaves twenty-nine justices with four or more awards over the four-year period studied. When the most active justices' sanctions trends are compared with their division, a naturally clear correlation appears.

Chart 7a - Sanctions by Justice - First District



of the Fourth District awarded sanctions in 2002, 2003, and 2004 but did not award sanctions in 2005.

Chart 7b - Sanctions by Justice - Second District

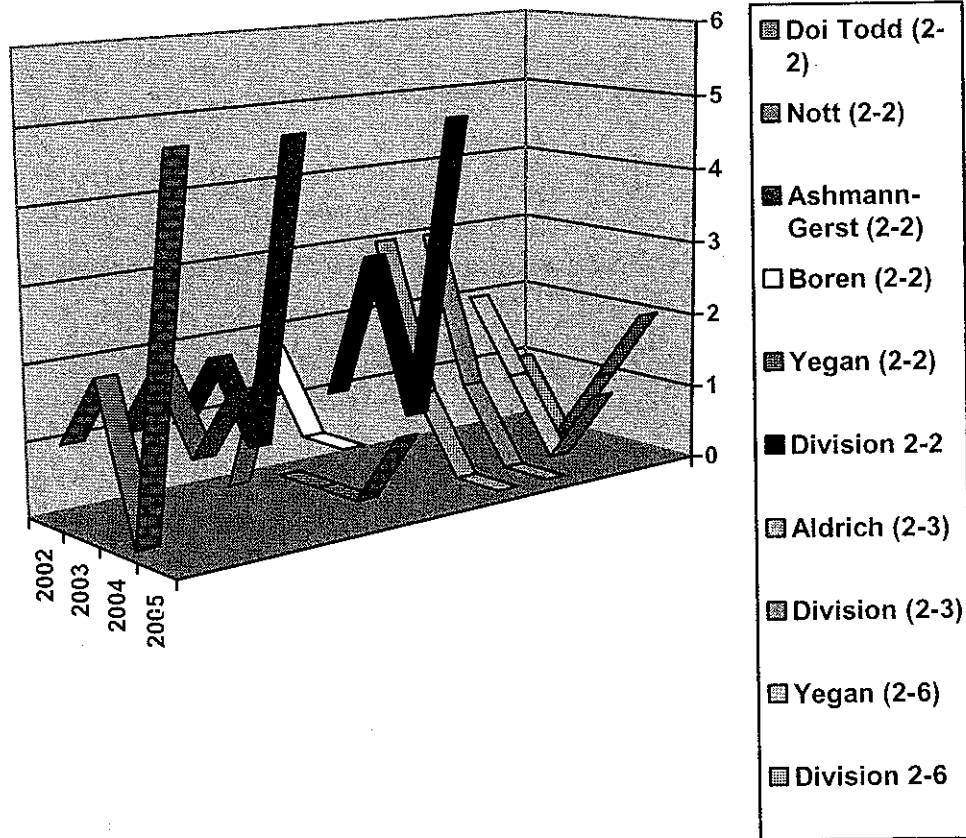


Chart 7c - Sanctions by Justice - Third District

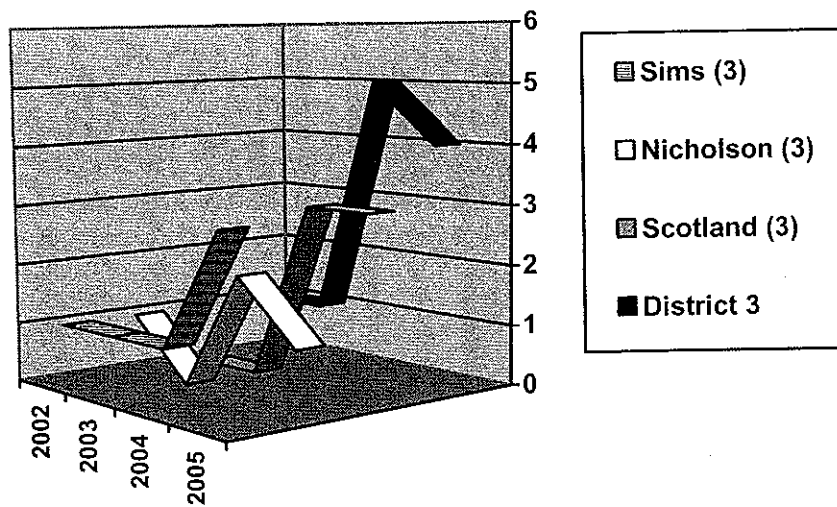


Chart 7d - Sanctions by Justice - Fourth District

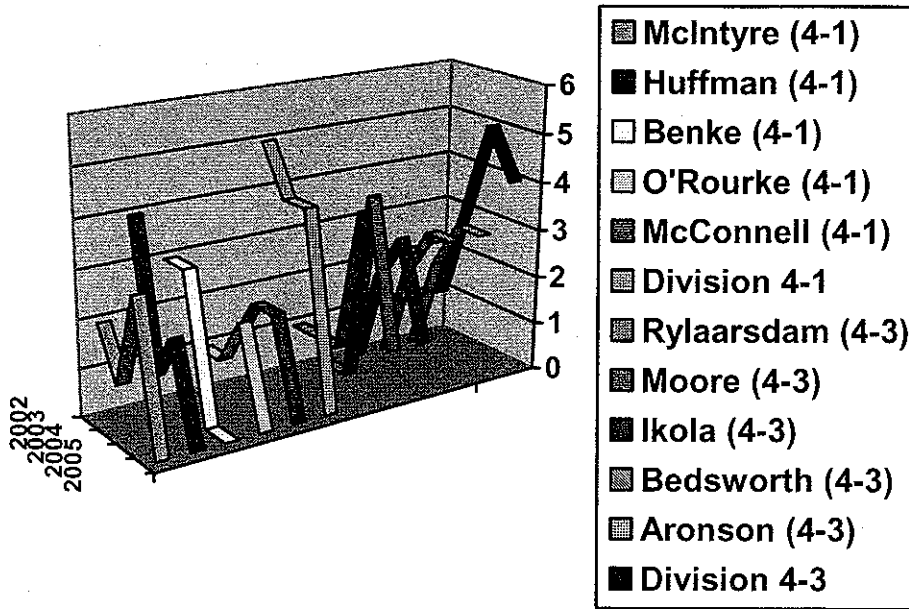


Chart 7e - Sanctions by Justice - Fifth District

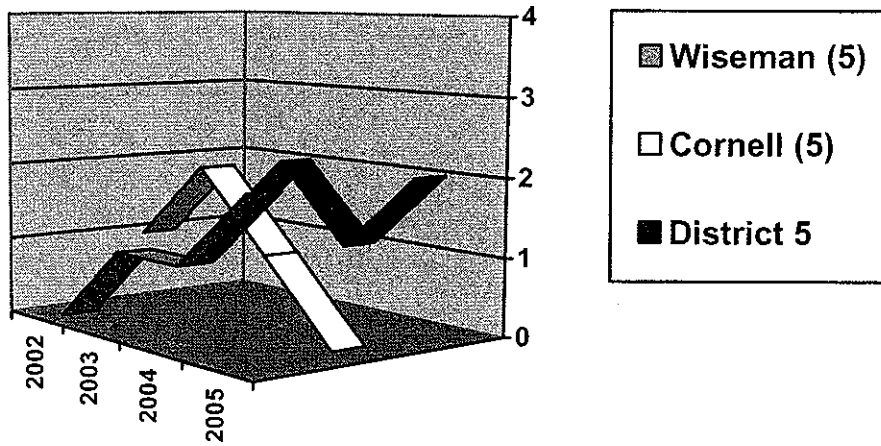
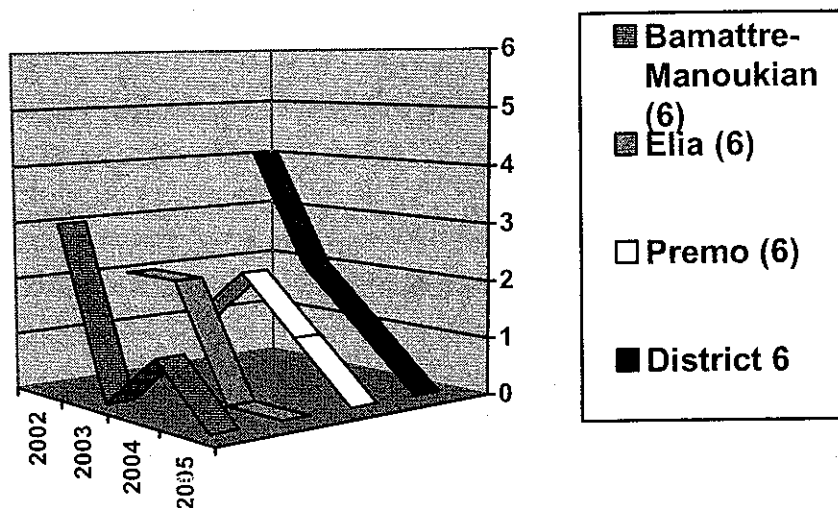


Chart 7f - Sanctions by Justice - Sixth District



The remaining twenty-nine justices, as seen in Charts 7a-7f, have some impact on the sanctions trends in their respective divisions. In certain divisions, most notably Divisions One, Two, and Three of the Second District, and Division Three of the First District, a few prolific judges largely determine how often sanctions will be awarded each year.⁷⁹ This is not surprising considering that there are only four justices presiding in each of these divisions.⁸⁰ In contrast, the Third District has eleven justices, Division One of the Fourth District has ten justices, Division Three of the Fourth District has eight justices, the Fifth District has ten justices, and the Sixth District has seven justices.⁸¹ However, even in those courts, a few justices have a large

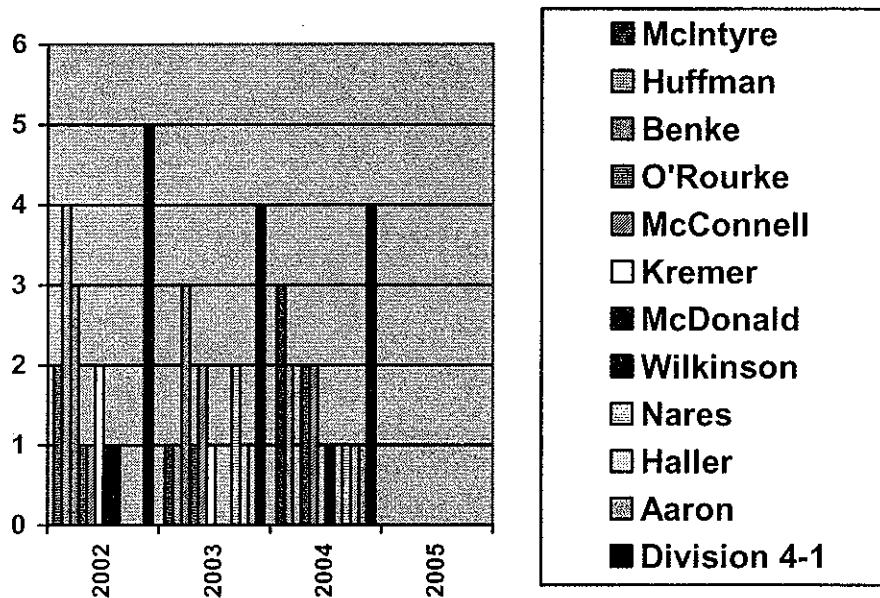
79. See Charts 7a and 7b.

80. See official court information at Judicial Council of California, *Current Justices*, <http://www.courtinfo.ca.gov/courts/courtsofappeal/1stDistrict/justices.htm> (last accessed Apr. 8, 2007); *Id.* at <http://www.courtinfo.ca.gov/courts/courtsofappeal/2ndDistrict/justices.htm> (last accessed Apr. 8, 2007).

81. See Judicial Council of California, *Current Justices*, <http://www.courtinfo.ca.gov/courts/courtsofappeal/3rdDistrict/justices.htm> (last accessed Apr. 8, 2007); *Id.* at <http://www.courtinfo.ca.gov/courts/courtsofappeal/4thDistrict/justices.htm> (last accessed Apr. 8, 2007); *Id.* at <http://www.courtinfo.ca.gov/courts/courtsofappeal/5thDistrict/justices.htm> (last

impact on the number of sanctions awards per year.⁸² For example, Division One of the Fourth District's sanctions have been almost entirely awarded by five justices, with six others contributing only one to three total awards from 2002 to 2005. It appears that almost every justice in Division Four of the First District has awarded sanctions at least once during the four years studied. However, despite the relatively large number of sanctions awards in 2002-2004, Division Four of the First District did not award any sanctions in 2005.

Chart 7g - Sanctions by Justice - Division 4-1



As seen in the charts above, the number of sanctions awards, for the most part, varies widely every year. This is largely because whether a court awards sanctions depends almost entirely on the actions of the litigants before it. After all, a court should not award sanctions if an appeal is not frivolous, dilatory, or in violation of appellate rules. Because almost every court has awarded sanctions in the past, it is clear that no court is a safe haven for poor practices or unprofessionalism, and litigants should be aware that sanctions are always a possibility if adequate care is not used. In addition, the higher

accessed Apr. 8, 2007); *Id.* at <http://www.courtinfo.ca.gov/courts/courtsofappeal/6thDistrict/justices.htm> (last accessed Apr. 8, 2007).

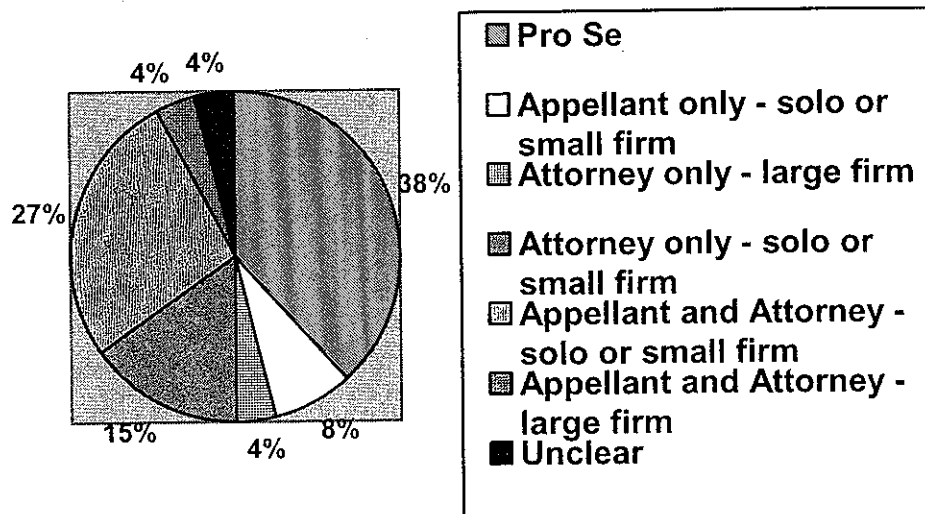
82. See Charts 7c-7f.

frequency of awards meted out by a relatively few justices in each district means that appellants appearing before the justices noted in Charts 7a-7f should be particularly diligent.

VI. WHO IS SANCTIONED?

As noted above, sanctions have been awarded against appellants in all but one reported instance during the past few years.⁸³ Consequently, appellants (and their attorneys) should take extra care when formulating their briefs.

Chart 9 -
2002 Sanctioned Parties



In 2002, two groups were most likely to be sanctioned: (1) *pro se* appellants⁸⁴ (ten cases), and (2) appellants and their small firm or solo

83. *Swann v. DaimlerChrysler Motors Corp.*, 2003 WL 1818139 at *11 (Cal. App. 4th Dist. Div. 1 Apr. 8, 2003).

84. *Brazil v. Brazil*, 2002 WL 31235829 at *2 (Cal. App. 1st Dist. Oct. 4, 2002); *Fahy v. Pisano*, 2002 WL 1365621 at **1, 7 (Cal. App. 1st Dist. June 24, 2002); *Flanagan v. Leuty*, 2002 WL 1365601 at **1-2 (Cal. App. 1st Dist. June 24, 2002); *Cal. Bus. Bureau, Inc. v. Bloch*, 2002 WL 440404 at *1, 6-7 (Cal. App. 2d Dist. Mar. 21, 2002); *Hawkes v. Sommer*, 2002 WL 31124572 at *1, 4 (Cal. App. 4th Dist. Div. 1 Sept. 26, 2002); *In re Conservatorship of the Est. of Waters*, 2002 WL 170725 at **9-10 (Cal. App. 4th Dist. Div. 1 Feb. 4, 2002); *Holmes v. Forest River Prop. Owners' Assn.*, 2002 WL 31661265 at **17, 19 (Cal. App. 6th Dist. Nov. 26, 2002); *In re Est. of Lawrence*, 2002 WL 31425011 at **1-2 (Cal. App. 6th Dist. Oct. 30, 2002); *Achkar v.*

practitioner attorneys (seven cases).⁸⁵ The appellant's attorney alone (small firm or solo practitioner)⁸⁶ or the appellant (represented by a small firm or solo practitioner) alone⁸⁷ were the next most commonly sanctioned groups, with four and two cases, respectively. Large firms, in contrast, were sanctioned rarely—once in each of the following categories: large firm attorney only,⁸⁸ and large firm and appellant.⁸⁹ In the remaining case, it was unclear against whom sanctions were awarded.⁹⁰

Hilton, 2002 WL 31097679 at **9-10 (Cal. App. 6th Dist. Sept. 26, 2002); *In re Est. of Lawrence*, 2002 WL 541750 at *8 (Cal. App. 6th Dist. Apr. 12, 2002).

85. *Keitel v. Heubel*, 126 Cal. Rptr. 2d 763, 778 (Cal. App. 1st Dist. 2002); *Keitel v. Heubel*, 120 Cal. Rptr. 2d 216, 228 (Cal. App. 1st Dist. 2002); *Hanley v. Carlsen*, 2002 WL 541648 at *4 (Cal. App. 1st Dist. Apr. 12, 2002); *In re Marriage of Farris*, 2002 WL 1397000 at *4 (Cal. App. 2d Dist. June 27, 2002); *People v. Ranger Ins. Co.*, 124 Cal. Rptr. 2d 359, 363 (Cal. App. 3d Dist. 2002); *Stone v. Felix*, 2002 WL 31032815 at *4 (Cal. App. 4th Dist. Div. 2 Sept. 12, 2002); *Syntron Bioresearch, Inc. v. Fan*, 2002 WL 991008 at *11 (Cal. App. 4th Dist. Div. 1 May 15, 2002).

86. *GreatAmerica Leasing Corp. v. On the Scene Prods., Inc.*, 2002 WL 1172925 at *5 (Cal. App. 2d Dist. June 4, 2002); *In re Guardianship of Melissa W.*, 118 Cal. Rptr. 2d 42, 48 (Cal. App. 2d Dist. 2002); *DeRose v. Heurlin*, 122 Cal. Rptr. 2d 630, 648 (Cal. App. 4th Dist. Div. 3 2002); *Dickerson v. Ve Vea*, 2002 WL 31656559 at *14 (Cal. App. 5th Dist. Nov. 25, 2002).

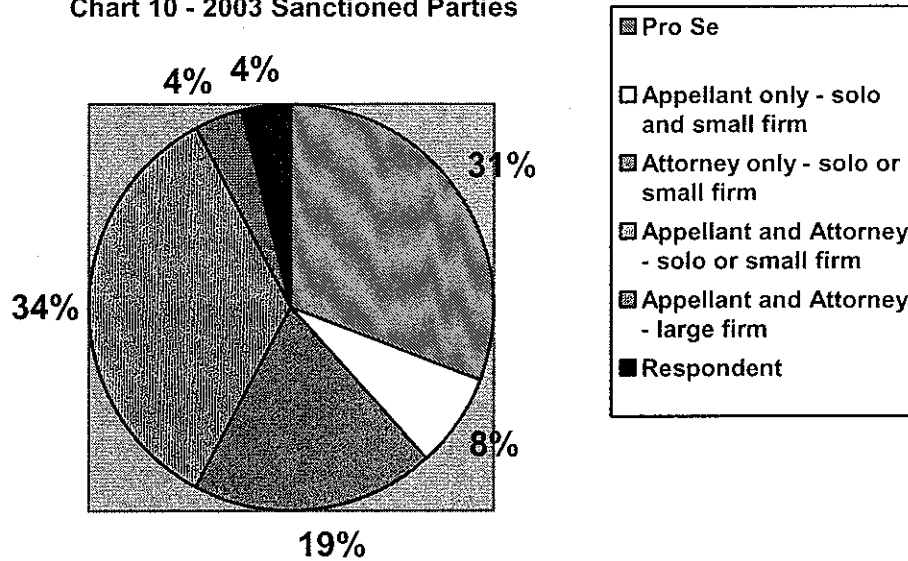
87. *Himed v. Black*, 2002 WL 1067804 at **8-9 (Cal. App. 1st Dist. May 29, 2002); *In re Marriage of Deborah D.*, 2002 WL 1316177 at *11 (Cal. App. 4th Dist. Div. 1 June 18, 2002).

88. *Harris v. Sandro*, 117 Cal. Rptr. 2d 910, 915 (Cal. App. 2d. Dist. 2002).

89. *Nohre v. W.J. Gallagher & Co.*, 2002 WL 31424914 at *4 (Cal. App. 2d Dist. Oct. 30, 2002).

90. *Feather v. WCO Vacationland, Inc.*, 2002 WL 343406 at *6 (Cal. App. 4th Dist. Div. 1 Mar. 6, 2002).

Chart 10 - 2003 Sanctioned Parties



In 2003, the trends noted above continued. Most of the sanctioned parties were either *pro se* appellants (eight cases),⁹¹ appellants and their small firm, or solo practitioner attorneys (nine cases).⁹² Solo practitioners and small firms alone showed a very slight increase in frequency of sanctions with five cases⁹³ and represented

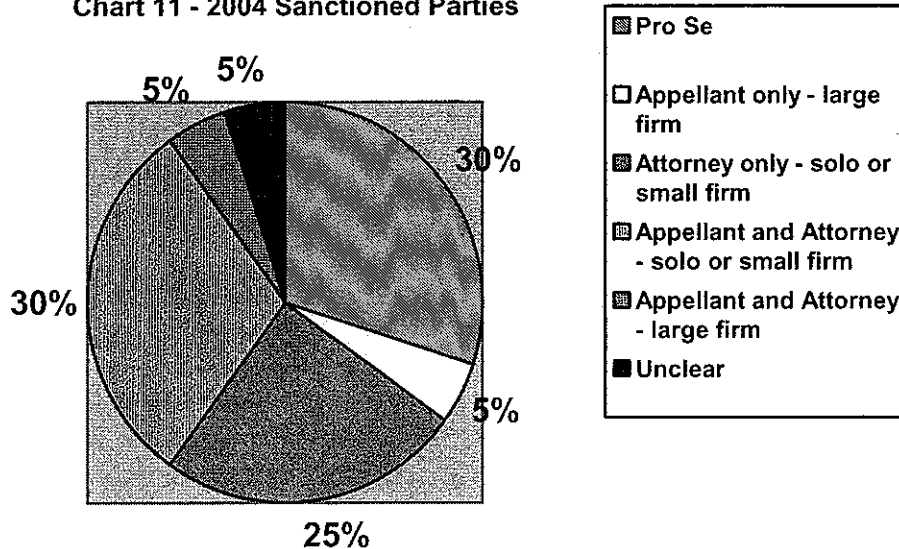
91. *Chang v. Schwartz*, 2003 WL 1685705 at **1, 3 (Cal. App. 1st Dist. Mar. 28, 2003); *Laroue v. Bd. for Prof. Engrs. and Land Surveyors*, 2003 WL 22391091 at *5 (Cal. App. 2d Dist. Oct. 21, 2003); *Barnard v. Langer*, 1 Cal. Rptr. 3d 175, 184-85 (Cal. App. 2d Dist. 2003); *Stern v. Am. States Ins. Co.*, 2003 WL 1611291 at **1, 17 (Cal. App. 2d Dist. Mar. 28, 2003); *Martin v. Alexander*, 2003 WL 205156 at *7 (Cal. App. 3d Dist. Jan. 31, 2003); *In re Conservatorship of Clifford H.*, 2003 WL 22753622 at *11 (Cal App. 4th Dist. Div. 2 Nov. 21, 2003); *Reiss v. Boyd*, 2003 WL 22040783 at *6 (Cal. App. 4th Dist. Div. 3 Sept. 2, 2003); *In re Marriage of Boone*, 2003 WL 21085406 at *2 (Cal App. 6th Dist. May 14, 2003).

92. *In re Marriage of Majer*, 2003 WL 22017872 at *2 (Cal. App. 1st Dist. Aug. 27, 2003); *Torshkoev v. Trubnikov*, 2003 WL 21380879 at *3 (Cal. App. 1st Dist. June 16, 2003); *Pollock v. U. of S. Cal.*, 6 Cal. Rptr. 3d 122, 138 (Cal. App. 2d Dist. 2003); *Mikol v. Celaya*, 2003 WL 21983704 at *5 (Cal. App. 2d Dist. Aug. 21, 2003); *Nagler v. Hartman Group, Inc.*, 2003 WL 21750992 at *11 (Cal. App. 2d Dist. July 30, 2003); *Copus v. Bietz*, 2003 WL 22996114 at *8 (Cal. App. 4th Dist. Div. 1 Dec. 22, 2003); *In re Marriage of Flynn*, 2003 WL 21470328 at *5 (Cal. App. 4th Dist. Div. 3 June 26, 2003); *LeBeau v. Roxane Laboratories, Inc.*, 2003 WL 21054640 at *22 (Cal. App. 4th Dist. Div. 1 May 12, 2003); *Seven Oaks Homeowners Assn., Inc. v. Abureyaleh*, 2003 WL 22112008 at **5-6 (Cal. App. 5th Dist. Sept. 11, 2003).

93. *Anselmo v. Cal. Fin. Group*, 2003 WL 23002722 at *3 (Cal. App. 1st Dist. Dec. 23, 2003); *In re Conservatorship of the Person and Est. of William*, 2003 WL

(solo or small firm) appellants alone maintained the same frequency of two cases.⁹⁴ Large firms were sanctioned even less frequently in 2003: only once and with their appellant.⁹⁵ The remaining case involved sanctions against a respondent for filing a frivolous motion to dismiss (the only respondent sanctioned in the entire data set) but it is unclear whether the respondent, its attorney, or both were sanctioned.⁹⁶

Chart 11 - 2004 Sanctioned Parties



The numbers in 2004 are nearly identical to 2003. Most of the sanctions were against *pro se* appellants,⁹⁷ appellants and their small

22482065 at *5 (Cal. App. 2d Dist. Nov. 4, 2003); *Brown v. Lincoln Meml. Park, Inc.*, 2003 WL 21061335 at *10 (Cal. App. 2d Dist. May 13, 2003); *In re Conservatorship of Francine S.*, 2003 WL 21290041 at *9 (Cal. App. 4th Dist. Div. 1 June 4, 2003); *Tiote Constr. & Dev. Co., Ltd. v. City of Tehachapi*, 2003 WL 21781095 at *11 (Cal. App. 5th Dist. Aug. 1, 2003).

94. *In re Marriage of Miranda*, 2003 WL 1984740 at *5 (Cal. App. 4th Dist. Div. 3 Apr. 30, 2003); *In re Marriage of Boone*, 2003 WL 22139005 at *2 (Cal. App. 6th Dist. Sept. 16, 2003).

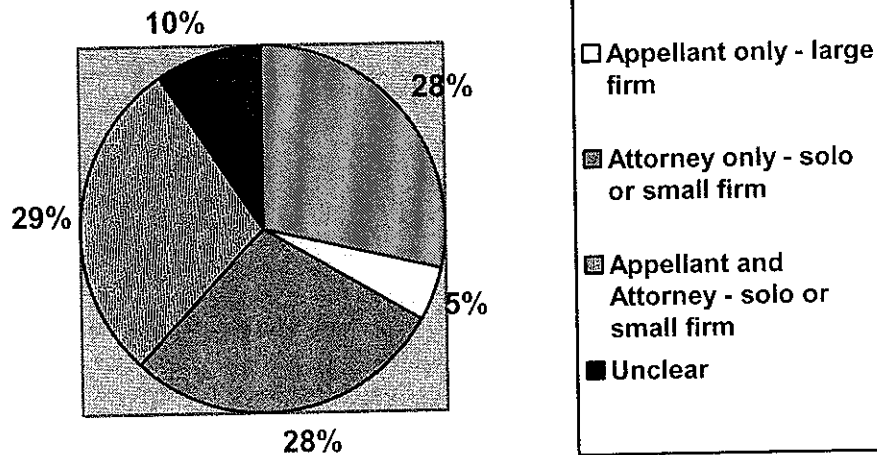
95. *Bfunny, Inc. v. Donald Cornelius Prod., Inc.*, 2003 WL 1901288 at *5 (Cal. App. 2d Dist. Apr. 18, 2003).

96. *Swann v. DaimlerChryslers Motors Corp.*, 2003 WL 1818139 at *11 (Cal. App. 4th Dist. Div. 1 Apr. 8, 2003).

97. *Opong-Mensah v. Stracener*, 2004 WL 1447604 at *15 (Cal. App. 3d Dist. June 29, 2004); *Lacher v. E. County Investigations*, 2004 WL 2898118 at *5 (Cal. App. 4th Dist. Div. 1 Dec. 15, 2004); *Hawkes v. Sommer*, 2004 WL 837916 at **3-4 (Cal. App. 4th Dist. Div. 1 Apr. 20, 2004); *Tittle v. Bottorff-Tittle*, 2004 WL 385267 at *6 (Cal. App. 4th Dist. Div. 3 Mar. 2, 2004); *BioCell Tech. v. Alkayali*, 2004 WL 114699 at *6

firm or solo practitioner attorneys⁹⁸ and (solo or small firm) attorneys alone.⁹⁹ In one case, it was unclear who was sanctioned, but the appellant was represented by a small firm.¹⁰⁰ Only two cases involving a large firm resulted in sanctions—one against the appellant alone¹⁰¹ and one against the large firm and appellant.¹⁰²

Chart 12 - 2005 Sanctioned Parties



(Cal. App. 4th Dist. Div. 3 Jan. 26, 2004); *Gardella v. Alexander*, 2004 WL 2943255 at **1, 7 (Cal. App. 6th Dist. Dec. 21, 2004).

98. *Schmuel v. Grover Hollingsworth & Assocs., Inc.*, 2004 WL 35801 at *3 (Cal. App. 2d Dist. Jan. 8, 2004); *In re Marriage of Anderson & O'Brien*, 2004 WL 1399053 at *4 (Cal. App. 4th Dist. Div. 3 June 23, 2004); *Raike v. Hampton*, 2004 WL 1632670 at *9 (Cal. App. 4th Dist. Div. 1 July 22, 2004); *Markey v. Super. Ct.*, 2004 WL 1576447 at *7 (Cal. App. 2d Dist. July 15, 2004); *Mackley v. Weis*, 2004 WL 1399082 at *6 (Cal. App. 3d Dist. Jun. 23, 2004); *In re Marriage of Hetland*, 2004 WL 902165 at *4 (Cal. App. 4th Dist. Div. 3 Apr. 28, 2004).

99. *Gutkin v. U. of S. Cal.*, 2004 WL 2797435 at **4-5 (Cal. App. 2d Dist. Dec. 7, 2004); *In re White*, 18 Cal. Rptr. 3d 444, 471-72 (Cal. App. 3d Dist. 2004) (3 frivolous habeas petitions); *Johnson v. Lewis*, 15 Cal. Rptr. 3d 507, 517 (Cal. App. 3d Dist. 2004) (at oral argument, attorney took full responsibility for frivolous appeal and asked that sanctions be awarded against him alone); *Dodge v. Youssefi*, 2004 WL 838836 at *13 (Cal. App. 3d Dist. Apr. 20, 2004); *In re Marriage of Janczar & Mermilliod*, 2004 WL 2538805 at **9-10 (Cal. App. 4th Dist. Div. 2 Nov. 10, 2004).

100. *Guerrero v. Acqua*, 2004 WL 2403583 at **1-2 (Cal. App. 5th Dist. Oct. 27, 2004).

101. *Consumer Just. Ctr. v. Trimedica Intl., Inc.*, 2004 WL 2699941 at *5 (Cal. App. 4th Dist. Div. 3 Nov. 29, 2004).

102. *Brumbaugh v. Depew*, 2004 WL 397269 at **4-5 (Cal. App. 4th Dist. Div. 1 Mar. 4, 2004).

In 2005, the above trends continued—the vast majority of awards were against either *pro se* appellants (six cases),¹⁰³ appellants represented by small firms or solo practitioners and their attorneys,¹⁰⁴ or solo practitioners and small firms alone.¹⁰⁵ In the single instance where a large firm was involved, only the appellant was sanctioned.¹⁰⁶ The remaining two cases were unclear.¹⁰⁷

These results show that firms with more resources and, arguably, more experience, are less likely to be sanctioned than smaller firms or, worst of all, *pro se* litigants. These results are remarkably consistent over the years and are one of the few trends that can be described with confidence.

VII. WHO RECEIVED SANCTIONS AWARDS?

In addition to who is sanctioned, it is useful to note who receives the award and how often courts take it upon themselves to

103. *Pelkey v. Cavalli*, 2005 WL 1275153 at *5 (Cal. App. 1st Dist. May 31, 2005); *Lemaire v. Super. Ct.*, 2005 WL 469239 at *7 (Cal. App. 2d Dist. Mar. 1, 2005); *Saber v. Leeper*, 2005 WL 236548 at *3 (Cal. App. 2d Dist. Feb. 1, 2005); *Olsen v. Harbison*, 35 Cal. Rptr. 3d 909, 916-17 (Cal. App. 3d Dist. 2005); *In re Marriage of Dennis*, 2005 WL 1346553 at *9 (Cal. App. 4th Dist. Div. 3 June 7, 2005); *In re Marriage of Abdo*, 2005 WL 408032 at *3 (Cal. App. 4th Dist. Div. 3 Feb. 22, 2005).

104. *Johnson v. Antelope Valley Union High Sch. Dist.*, 2005 WL 2090352 at *7 (Cal. App. 2d Dist. Aug. 31, 2005); *Millennium Corp. Solutions v. Peckinpaugh*, 23 Cal. Rptr. 3d 500, 507 (Cal. App. 2d Dist. 2005); *W. P. Sts. Constr., Inc. v. Frey*, 2005 WL 958404 at *5 (Cal. App. 3d Dist. Apr. 27, 2005); *Evans v. CenterStone Dev. Co.*, 35 Cal. Rptr. 3d 745, 758 (Cal. App. 4th Dist. Div. 3 2005); *Desmond v. Geitner*, 2005 WL 1538206 at *10 (Cal. App. 5th Dist. June 30, 2005); *Bureau of Missing Heirs, Inc. v. Geitner*, 2005 WL 1532380 at *2 (Cal. App. 5th Dist. June 30, 2005).

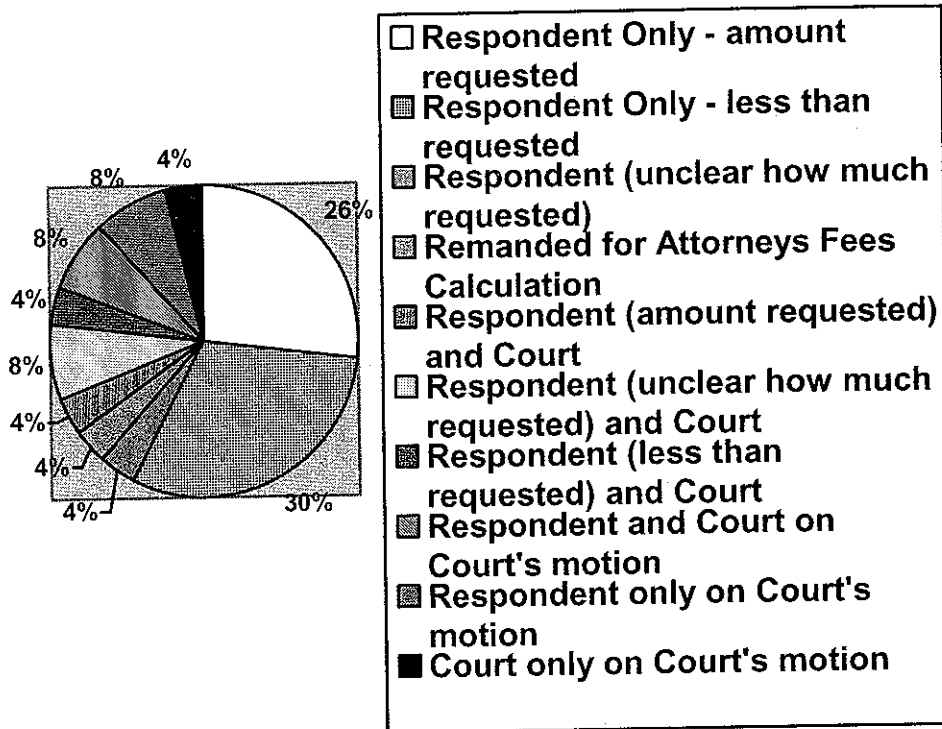
105. See *Cynthia J. v. Charlton A.*, 2005 WL 327530 at *16 (Cal. App. 1st Dist. Feb. 10, 2005); *In re Koven*, 35 Cal. Rptr. 3d 917, 928 (Cal. App. 2d Dist. 2005); *Strickland v. Edna H. Pagel, Inc.*, 2005 WL 3112774 at *1 (Cal. App. 2d Dist. Nov. 22, 2005); *Hall v. U. of S. Cal.*, 2005 WL 273206 at *7 (Cal. App. 2d Dist. Feb. 4, 2005); *Harvard Bus. Park, LLC v. Dodge*, 2005 WL 1595274 at *11 (Cal. App. 3d Dist. July 8, 2005); *Peterson v. Granite Bay Golf Club, Inc.*, 2005 WL 1515710 at *9 (Cal. App. 3d Dist. June 28, 2005).

106. See *Sporn v. Home Depot USA, Inc.*, 24 Cal. Rptr. 3d 780, 787 (Cal. App. 4th Dist. Div. 3 2005).

107. See e.g. *Henton v. Prentice*, 2005 WL 1433533 (Cal. App. 1st Dist. June 21, 2005); *In re Marriage of O'Brien*, 2005 WL 3549212 (Cal. App. 2d Dist. Dec. 29, 2005).

award sanctions in the absence of a valid motion.

Chart 13 -
2002 Sanctions Award Recipients



In 2002, the most common type of award (sixteen cases) went to the respondent alone upon the respondent's motion.¹⁰⁸ Of these

108. *Brazil v. Brazil*, 2002 WL 31235829 at **2, 4 (Cal. App. 1st Dist. Oct. 4, 2002); *Flanagan v. Leuty*, 2002 WL 1365601 at **1-2 (Cal. App. 1st Dist. June 24, 2002); *Himed v. Black*, 2002 WL 1067804 at *8 (Cal. App. 1st Dist. May 29, 2002); *Nohre v. W.J. Gallagher & Co., Inc.*, 2002 WL 31424914 at **1, 4 (Cal. App. 2d Dist. Oct. 30, 2002); *In re Marriage of Farris*, 2002 WL 1397000 at *1 (Cal. App. 2d Dist. June 27, 2002); *GreatAmerica Leasing Corp. v. On the Scene Prods., Inc.*, 2002 WL 1172925 at **4-5 (Cal. App. 2d Dist. June 4, 2002); *Harris v. Sandro*, 117 Cal. Rptr. 2d 910, 915 (Cal. App. 2d Dist. 2002); *California Business Bureau, Inc. v. Bloch*, 2002 WL 440404 at *1 (Cal. App. 2d Dist. Mar. 21, 2002); *In re Guardianship of Melissa W.*, 118 Cal. Rptr. 2d 42, 47-48 (Cal. App. 2d Dist. 2002); *Hawkes v. Sommer*, 2002 WL 31124572 at *4 (Cal. App. 4th Dist. Div. 1 Sept. 26, 2002); *Syntron Bioresearch, Inc. v. Fan*, 2002 WL 991008 at *7 (Cal. App. 4th Dist. Div. 1 May 15, 2002); *In re Conservatorship of Est. of Waters*, 2002 WL 170725 at **1, 10 (Cal. App. 4th Dist. Div. 1 Feb. 4, 2002); *Holmes v. Forest River Prop. Owners' Assn., Inc.*, 2002 WL 31661265 at *16 (Cal. App. 6th Dist. Nov. 26, 2002); *In re Est. of Lawrence*, 2002 WL 31425011 at *2 (Cal. App. 6th Dist. Oct. 30, 2002); *Achkar v. Hilton*, 2002 WL 31097679 at **6, 10 (Cal. App. 6th Dist. Sept. 20, 2002); *In re Est. of Lawrence*, 2002

awards, the respondent received the amount requested in seven instances,¹⁰⁹ less than they requested in eight instances,¹¹⁰ and, in one case, it was unclear how much was requested.¹¹¹

The second largest group of sanctions awards went to the respondent and the court. Four of these awards were upon the respondent's motion¹¹² and two were upon the court's own motion.¹¹³ Of the awards to both the court and respondent upon the respondent's motion, one of the four was reduced from the amount the respondent requested.¹¹⁴ Of the remaining awards, two awards in 2002 went to the respondent alone on the court's own motion,¹¹⁵ one went to the court alone on its own motion,¹¹⁶ and one went to the respondent alone, but was remanded to the trial court to determine the appropriate amount of sanctions.¹¹⁷

When refusing to award the full amount of sanctions requested,

WL 541750 at **1, 8 (Cal. App. 6th Dist. Apr. 12, 2002).

109. *Brazil*, 2002 WL 31235829 at *4; *Flanagan*, 2002 WL 1365601 at *2; *Himed*, 2002 WL 1067804 at **8-9; *Nohre*, 2002 WL 31424914 at *4; *GreatAmerica Leasing Corp.*, 2002 WL 1172925 at *5; *Harris*, 117 Cal. Rptr. 2d at 915; *Cal. Bus. Bureau, Inc.*, 2002 WL 440404 at *7.

110. *In re Marriage of Farris*, 2002 WL 1397000 at *4; *In re Guardianship of Melissa W.*, 118 Cal. Rptr. 2d at 47-48; *Hawkes*, 2002 WL 31124572 at *4; *Syntron Bioresearch, Inc.*, 2002 WL 991008 at **7, 10-11; *In re Conservatorship of the Est. of Waters*, 2002 WL 170725 at **9-10; *Holmes*, 2002 WL 31661265 at **16, 19; *In re Est. of Lawrence*, 2002 WL 31425011 at *2; *In re Est. of Lawrence*, 2002 WL 541750 at *8.

111. *Achkar*, 2002 WL 31097679 at *6.

112. *Keitel v. Heubel*, 126 Cal. Rptr. 2d 763, 767-68, 778 (Cal. App. 1st Dist. 2002); *Keitel v. Heubel*, 120 Cal. Rptr. 2d 216, 220, 228 (Cal. App. 1st Dist. 2002); *Hanley v. Carlsen*, 2002 WL 541648 at **2, 4 (Cal. App. 1st Dist. Apr. 12, 2002); *In re Marriage of Deborah D.*, 2002 WL 1316177 at **9, 11 (Cal. App. 4th Dist. Div. 1 June 18, 2002).

113. *Fahy v. Pisano*, 2002 WL 1365621 at **2, 5-7 (Cal. App. 1st Dist. June 24, 2002) (respondent's motion was defective); *People v. Ranger Ins. Co.*, 124 Cal. Rptr. 2d 359, 363 (Cal. App. 3d Dist. 2002).

114. *Hanley*, 2002 WL 541648 at **3-4.

115. *Stone v. Felix*, 2002 WL 31032815 at *4 (Cal. App. 4th Dist. Div. 2 Sept. 12, 2002); *Dickerson v. Ve Vea*, 2002 WL 31656559 at *13 (Cal. App. 5th Dist. Nov. 25, 2002).

116. *DeRose v. Heurlin*, 122 Cal. Rptr. 2d 630, 647-48 (Cal. App. 4th Dist. Div. 3 2002).

117. *Feather v. WCO Vacationland, Inc.*, 2002 WL 343406 at *6 (Cal. App. 4th Dist. Div. 1 Mar. 6, 2002).

courts sometimes did so without explanation¹¹⁸ and any explanations that were given varied. For example, courts sometimes determined that the full amount requested would be too severe,¹¹⁹ that only some of the appellant's arguments were frivolous,¹²⁰ or that the respondent included fees in their request for which they were not entitled.¹²¹

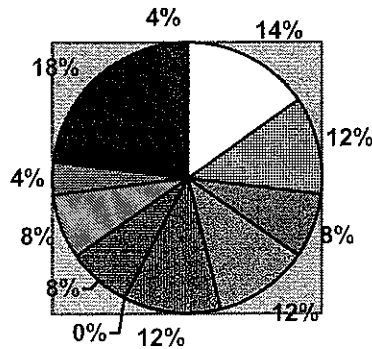
118. *In re Conservatorship of the Est. of Waters*, 2002 WL 170725 at *10 (Cal. App. 4th Dist. Div. 1 Feb. 4, 2002); *In re Guardianship of Melissa W.*, 118 Cal. Rptr. 2d 42, 47 (Cal. App. 2d Mar. 6, 2002).

119. *Mikol v. Celaya*, 2003 WL 21983704 at *5 (Cal. App. 2d Dist. Aug. 21, 2003); *In re Marriage of Farris*, 2002 WL 1397000 at *4 (Cal. App. 2d Dist. Mar. 6, 2002); *In re Est. of Lawrence*, 2002 WL 541750 at *8 (Cal. App. 6th Dist. Apr. 12, 2002).

120. *Hawkes*, 2002 WL 31124572 at *4 (Cal. App. 4th Dist. Div. 1 Sept. 26, 2002).

121. *Pelkey v. Cavalli*, 2005 WL 1275153 at *5 (Cal. App. 1st Dist. May 31, 2005) (court reduced the award because of respondent's own bad behavior); *Nagler v. Hartman Group, Inc.*, 2003 WL 21750992 at **10-11 (Cal. App. 2d Dist. July 30, 2003) (Respondent's request of 113,551 dollars in sanctions included 86,301 dollars interest the court refused to award); *In re Est. of Lawrence*, 2002 WL 31425011 at *2 (Cal. App. 6th Dist. Oct. 30, 2002) (Respondent asked for 6,550 dollars but the Respondent's attorney failed to observe that Appellant "had appealed from a nonappealable order, and these attorney's fees were uselessly expended on an irrelevant brief." *Id.*); see also *Hanley*, 2002 WL 541648 at **3-4 (Cal. App. 1st Dist. Apr. 12, 2002); *Gardella v. Alexander*, 2004 WL 2943255 at *7 (Cal. App. 6th Dist. Dec. 21, 2004).

Chart 14 -
2003 Sanctions Award Recipients



- Respondent Only - amount requested
- Respondent Only - less than requested
- Respondent Only (unclear how much requested)
- Remanded for Attorneys Fees Calculation
- Respondent (amount requested) and Court
- Respondent (unclear how much requested) and Court
- Respondent (less than requested) and Court
- Respondent and Court on Court's motion
- Respondent only on Court's motion
- Court only on Court's motion
- Appellant (amount requested)

In 2003, the pattern of sanctions recipients already was beginning to change. As with 2002, the respondent alone was most often the sole recipient of sanctions. In four cases, the respondent received the amount they requested,¹²² in three cases the respondent received less,¹²³ and in two cases, it was unclear how much was requested.¹²⁴

122. *Anselmo v. Cal. Fin. Group*, 2003 WL 23002722 at **2-3 (Cal. App. 1st Dist. Dec. 23, 2003); *Barnard v. Langer*, 1 Cal. Rptr. 3d 175, 183 (Cal. App. 2d Dist. 2003); *In re Conservatorship of Clifford H.*, 2003 WL 22753622 at **7, 11 (Cal. App. 4th Dist. Div. 2 Nov. 21, 2003); *In re Marriage of Flynn*, 2003 WL 21470328 at *5 (Cal. App. 4th Dist. Div. 3 June 26, 2003).

123. *Mikol*, 2003 WL 21983704 at **4-5; *Nagler*, 2003 WL 21750992 at **10-11; *In re Conservatorship of Francine S.*, 2003 WL 21290041 at *9 (Cal. App. 4th Dist. Div. 1 June 4, 2003).

124. *Bfunny, Inc. v. Donald Cornelius Prods., Inc.*, 2003 WL 1901288 at **3, 5 (Cal. App. 2d Dist. Apr. 18, 2003); *Copus v. Bietz*, 2003 WL 22996114 at **7-8 (Cal. App. 4th Dist. Div. 1 Dec. 22, 2003).

Three times, the court granted the respondent's motion for sanctions but remanded the matter to the trial court to determine the appropriate amount.¹²⁵ In the sole case where the appellant was awarded sanctions, the party received the amount they requested.¹²⁶ The main difference in these categories between 2002 and 2003 is that courts in 2003 were much more willing to remand the question of the amount of sanctions to the trial court (once in 2002 and three times in 2003).

When both the court and respondent were the recipients, the respondent received the amount they requested three times,¹²⁷ and less than the amount they requested twice.¹²⁸ When sanctions were awarded upon the court's motion, the court and the respondent were the recipient twice,¹²⁹ the respondent alone benefited once,¹³⁰ and the court was the sole beneficiary five times.¹³¹ It is this set of numbers that changed significantly from 2002. In 2003, courts were more willing to make their own sanctions motions (five cases in 2002 compared to eight cases in 2003) and *five times* more willing to award sanctions to themselves.

125. *Torshkoev v. Trubnikov*, 2003 WL 21380879 at *3 (Cal. App. 1st Dist. June 16, 2003); *LeBeau v. Roxane Laboratories, Inc.*, 2003 WL 21054640 at **16, 22 (Cal. App. 4th Dist. Div. 1 May 12, 2003); *In re Marriage of Miranda*, 2003 WL 1984740 at *5 (Cal. App. 4th Dist. Div. 3 Apr. 30, 2003).

126. *Swann v. DaimlerChryslers Motors Corp.*, 2003 WL 1818139 at *11 (Cal. App. 4th Dist. Div. 1 Apr. 8, 2003).

127. *In re Marriage of Majer*, 2003 WL 22017872 at *2 (Cal. App. 1st Dist. Aug. 27, 2003); *Pollock v. U. of S. Cal.*, 6 Cal. Rptr. 3d 122, 137-38 (Cal. App. 2d Dist. 2003); *Seven Oaks Homeowners Assn., Inc. v. Abureyaleh*, 2003 WL 22112008 at *6 (Cal. App. 5th Dist. Sept. 11, 2003).

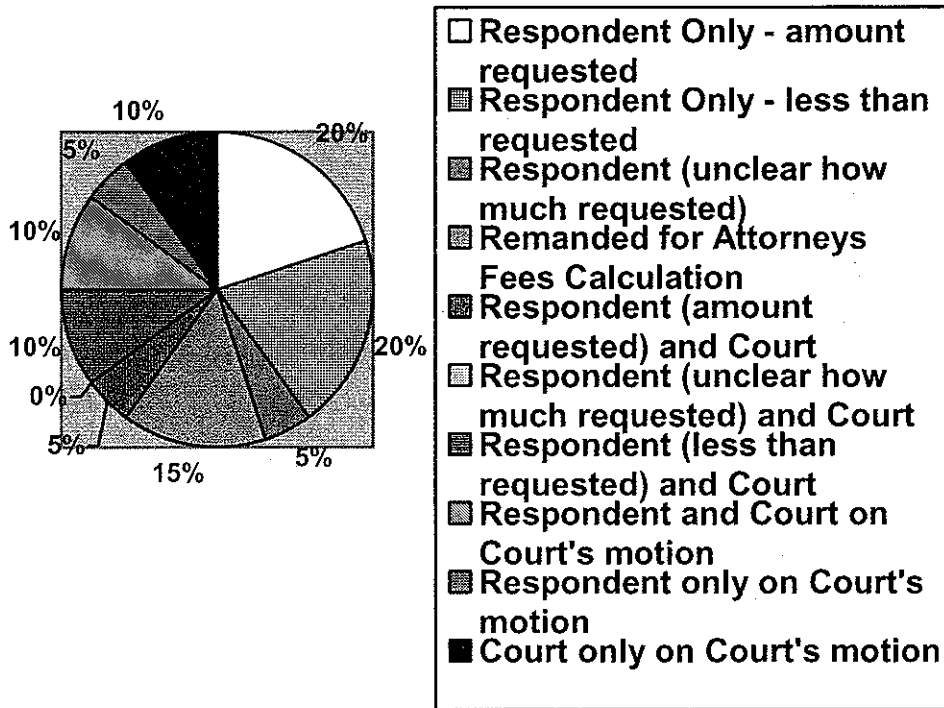
128. *In re Marriage of Boone*, 2003 WL 22139005 at *2 (Cal. App. 6th Dist. Sept. 16, 2003); *In re Marriage of Boone*, 2003 WL 21085406 at *2 (Cal. App. 6th Dist. May 14, 2003).

129. *Laroue v. Bd. for Prof. Engrs. & Land Surveyors*, 2003 WL 22391091 at *5 (Cal. App. 2d Dist. Oct. 21, 2003) (respondent actually received more than requested); *Martin v. Alexander*, 2003 WL 205156 at *7 (Cal. App. 3d Dist. Jan. 31, 2003).

130. *Stern v. Am. Sts. Ins. Co.*, 2003 WL 1611291 at *17 (Cal. App. 2d Dist. Mar. 28, 2003).

131. *Chang v. Schwartz*, 2003 WL 1685705 at *4 (Cal. App. 1st Dist. Mar. 28, 2003); *In re Conservatorship of the Person and Est. of William*, 2003 WL 22482065 at *5 (Cal. App. 2d Dist. Nov. 4, 2003); *Brown v. Lincoln Meml. Park, Inc.*, 2003 WL 21061335 at *10 (Cal. App. 2d Dist. May 13, 2003); *Reiss v. Boyd*, 2003 WL 22040783 at *6 (Cal. App. 4th Dist. Div. 3 Sept. 2, 2003); *Tiote Constr. & Dev. Co., Ltd. v. City of Tehachapi*, 2003 WL 21781095 at *11 (Cal. App. 5th Dist. Aug. 1, 2003).

Chart 15 -
2004 Sanctions Award Recipients



The trends noted above continued in 2004. When the respondent was the sole recipient, he or she received the amount he or she requested four times,¹³² less than the amount requested four times,¹³³ the amount requested was unclear once,¹³⁴ and the matter was remanded three times.¹³⁵ The respondent and the court were the

132. *Gutkin v. U. of S. Cal.*, 2004 WL 2797435 at **4-5 (Cal. App. 2d Dist. Dec. 7, 2004); *Schmuel v. Grover Hollingsworth & Assocs., Inc.*, 2004 WL 35801 at *3 (Cal. App. 2d Dist. Jan. 8, 2004); *Raike v. Hampton*, 2004 WL 1632670 at *9 (Cal. App. 4th Dist. Div. 1 July 22, 2004); *Guerrero v. Acqua*, 2004 WL 2403583 at *2 (Cal. App. 5th Dist. Oct. 27, 2004).

133. *Markey v. Super. Ct.*, 2004 WL 1576447 at **7-8 (Cal. App. 2d Dist. July 15, 2004); *In re Marriage of Janczar & Mermilliod*, 2004 WL 2538805 at **10-11 (Cal. App. 4th Dist. Div. 2 Nov. 10, 2004); *In re Marriage of Anderson and O'Brien*, 2004 WL 1399053 at *4 (Cal. App. 4th Dist. Div. 3 June 23, 2004); *Brumbaugh v. Depew*, 2004 WL 397269 at **4-5 (Cal. App. 4th Dist. Div. 1 Mar. 4, 2004).

134. *Lacher v. E. County Investigations*, 2004 WL 2898118 at *5 (Cal. App. 4th Dist. Div. 1 Dec. 15, 2004).

135. *Consumer Just. Ctr. v. Trimedica Intl., Inc.*, 2004 WL 2699941 at *6 (Cal. App. 4th Dist. Div. 3 Nov. 29, 2004); *In re Marriage of Heiland*, 2004 WL 902165 at *4

beneficiaries of the respondent's motion for sanctions three times and in two of these cases, the respondent's award was reduced.¹³⁶

When the court made the motion for sanctions, the respondent alone received the award once,¹³⁷ the respondent and the court were the recipients twice,¹³⁸ and the court alone received the award twice.¹³⁹ It should also be noted that in one case, the court informed the parties that it was considering awarding sanctions on its own motion but then declined to do so.¹⁴⁰

As with 2003, courts in 2004 were more willing to remand the amount of sanctions for the trial court to determine. In addition, courts continued to award sanctions to themselves upon their own motions more often. Twenty-five percent of the sanctions awards in 2004 were upon the court's motion, which is a significant increase from 2002 (less than twenty percent) but a decrease from 2003 (thirty-one percent). Moreover, courts received sanctions in a larger percent of awards in general, whether from their own motions or on the respondents' motions. Only sixty percent of the sanctions awards in 2004 went to respondents alone and only fifty-four percent in 2003, compared with sixty-nine percent in 2002.

(Cal. App. 4th Dist. Div. 3 Apr. 28, 2004) (reasonable fees plus 500 dollars); *Tittle v. Bottorff-Tittle*, 2004 WL 385267 at *6 (Cal. App. 4th Dist. Div. 3 Mar. 2, 2004).

136. *Dodge v. Youssefi*, 2004 WL 838836 at **13-14 (Cal. App. 3d Dist. Apr. 20, 2004); *Gardella v. Alexander*, 2004 WL 2943255 at *7 (Cal. App. 6th Dist. Dec. 21, 2004); see also *Hawkes v. Sommer*, 2004 WL 837916 at **3-4 (Cal. App. 4th Dist. Div. 1 Apr. 20, 2004) (court awarded roughly the amount requested). It should be noted that in one instance, the respondent's motion included a request for sanctions to be awarded to the court as well, which the court refused to do. *Gutkin v. U. of S. Cal.*, 2004 WL 2797435 at **4-5 (Cal. App. 2d Dist. Dec. 7, 2004).

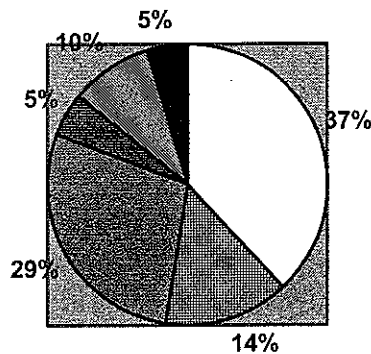
137. *Opong-Mensah v. Stracener*, 2004 WL 1447604 at *15 (Cal. App. 3d Dist. June 29, 2004).

138. *Mackley v. Weis*, 2004 WL 1399082 at *6 (Cal. App. 3d Dist. June 23, 2004) (respondent's motion was defective and the amount of sanctions was remanded); *BioCell Tech. v. Alkayali*, 2004 WL 114699 at *6 (Cal. App. 4th Dist. Div. 3 Jan. 26, 2004).

139. *In re White*, 18 Cal. Rptr. 3d 444, 472 (Cal. App. 3d Dist. 2004); *Johnson v. Lewis*, 15 Cal. Rptr. 3d 507, 517 (Cal. App. 3d Dist. 2004) (the parties stipulated to their own sanctions so no award was given to respondents).

140. *Markey v. Super. Ct.*, 2004 WL 1576447 at *7 (Cal. App. 2d Dist. July 15, 2004).

Chart 16 -
2005 Sanctions Award Recipients



- Respondent Only - amount requested
- Respondent Only - less than requested
- Remanded for Attorneys Fees Calculation
- Respondent (less than requested) and Court
- Respondent and Court on Court's motion
- Court only on Court's motion

Most of the apparent trends observed in 2003 and 2004 reversed in 2005 with the vast majority of awards going to respondents alone on their own motions. Of these awards, an impressive eight awards were the amount the respondent requested¹⁴¹ and only three were reduced.¹⁴²

Continuing with the trend observed in 2003 and 2004 (the only trend that continued), six sanctions awards were remanded so that the trial court could determine the proper amount of sanctions.¹⁴³ Only

141. *Henton v. Prentice*, 2005 WL 1433533 at *6 (Cal. App. 1st Dist. June 21, 2005); *Cynthia J. v. Charlton A.*, 2005 WL 327530 at **15-16 (Cal. App. 1st Dist. Feb. 10, 2005); *In re Marriage of O'Brien* 2005 WL 3549212 at *11 (Cal. App. 2d Dist. Dec. 29, 2005); *Strickland v. Edna H. Pagel, Inc.*, 2005 WL 3112774 at *1 (Cal. App. 2d Dist. Nov. 22, 2005); *Johnson v. Antelope Valley Union High Sch. Dist.*, 2005 WL 2090352 at **6-7 (Cal. App. 2d Dist. Aug. 31, 2005); *Lemair v. Super. Ct.*, 2005 WL 469239 at *7 (Cal. App. 2d Dist. Mar. 1, 2005); *Hall v. U. of S. Cal.*, 2005 WL 273206 at *7 (Cal. App. 2d Dist. Feb. 4, 2005); *W. P. Sls. Constr., Inc. v. Frey*, 2005 WL 958404 at *5 (Cal. App. 3d Dist. Apr. 27, 2005).

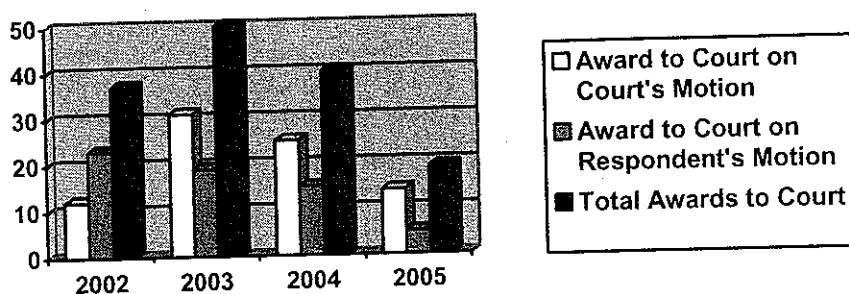
142. *Pelkey v. Cavalli*, 2005 WL 1275153 at *5 (Cal. App. 1st Dist. May 31, 2005); *Saber v. Leeper*, 2005 WL 236548 at *3 (Cal. App. 2d Dist. Feb. 1, 2005); *Millennium Corporate Solutions v. Peckinpaugh*, 23 Cal. Rptr. 3d 500, 507 (Cal. App. 2d Dist. 2005).

143. *Evans v. CenterStone Dev. Co.*, 35 Cal. Rptr. 3d 745, 758 (Cal. App. 4th Dist. Div. 3 2005); *In re Marriage of Dennis*, 2005 WL 1346553 at *9 (Cal. App. 4th Dist.

one sanctions award went to both the court and the respondent upon the respondent's motion and the court reduced the amount to the respondent.¹⁴⁴ In another case, the court refused to award sanctions to itself even though requested to do so by the respondent.¹⁴⁵

The three times the court made its own motion for sanctions, the award went to both the court and the respondent twice¹⁴⁶ and to the court alone only once.¹⁴⁷ Consequently, the court made a motion for sanctions in only fourteen percent of the sanctions cases in 2005, a dramatic decrease from 2004 (twenty-five percent), 2003 (twenty-seven percent) and even 2002 (nineteen percent). Likewise, as seen in Chart 17, the court awarded sanctions to itself fewer times overall with nineteen percent compared to the forty percent in 2004, forty-six percent in 2003 and thirty-one percent in 2002.

Chart 17 - Percentage of Sanctions Awards to Court



When the divisions are considered individually, it is clear that only a few courts seem willing to award sanctions upon their own motions.

Div. 3 June 7, 2005); *In re Marriage of Abdo*, 2005 WL 408032 at *3 (Cal. App. 4th Dist. Div. 3 Feb. 22, 2005); *Sporn v. Home Depot USA, Inc.*, 24 Cal. Rptr. 3d 780, 787 (Cal. App. 4th Dist. Div. 3 2005); *Bureau Of Missing Heirs, Inc. v. Geitner*, 2005 WL 1532380 at *2 (Cal. App. 5th Dist. June 30, 2005); *Desmond v. Geitner*, 2005 WL 1538206 at *10 (Cal. App. 5th Dist. June 30, 2005).

144. *Olsen v. Harbison*, 35 Cal. Rptr. 3d 909, 916-17 (Cal. App. 3d Dist. 2005).

145. *Hall v. U. of S. Cal.*, 2005 WL 273206 at *7 (Cal. App. 2d Dist. Feb. 4, 2005).

146. *Harvard Bus. Park, LLC v. Dodge*, 2005 WL 1595274 at *11 (Cal. App. 3d Dist. July 8, 2005); *Peterson v. Granite Bay Golf Club, Inc.*, 2005 WL 1515710 at *9 (Cal. App. 3d Dist. June 28, 2005).

147. *In re Koven*, 35 Cal. Rptr. 3d 917, 928 (Cal. App. 2d Dist. 2005).

Chart 17a - Awards to Court on its Own Motion

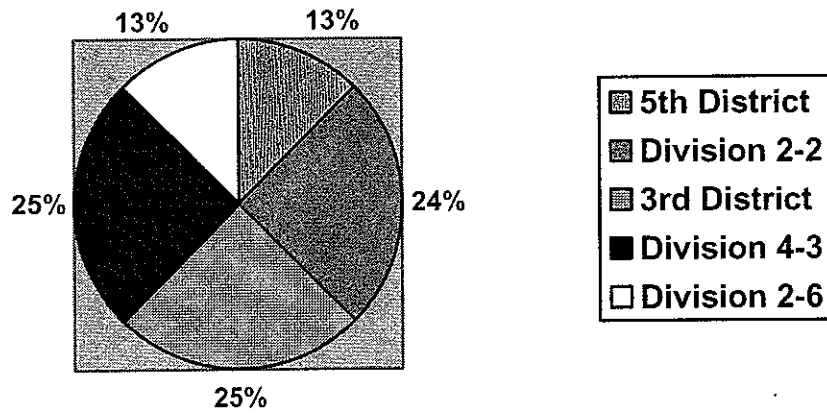


Chart 17b - Awards to Court and Respondent on Court's Own Motion

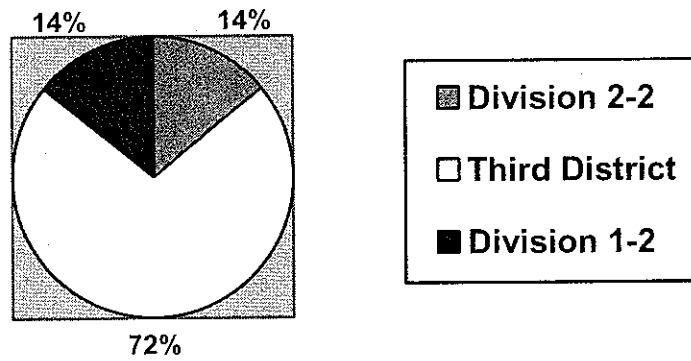


Chart 17c - Awards to Respondent on Court's Own Motion

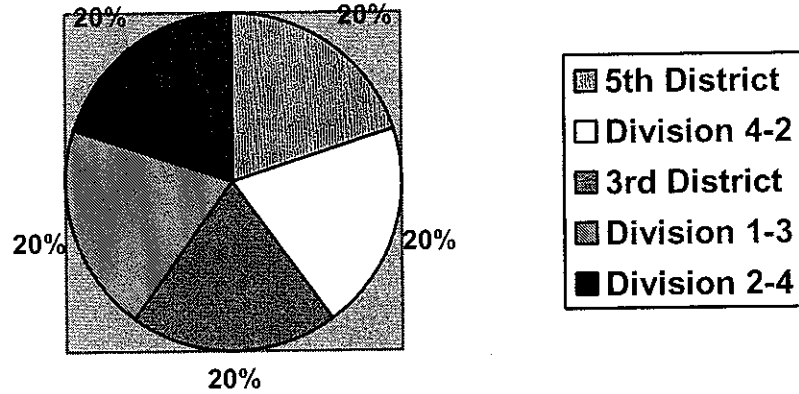
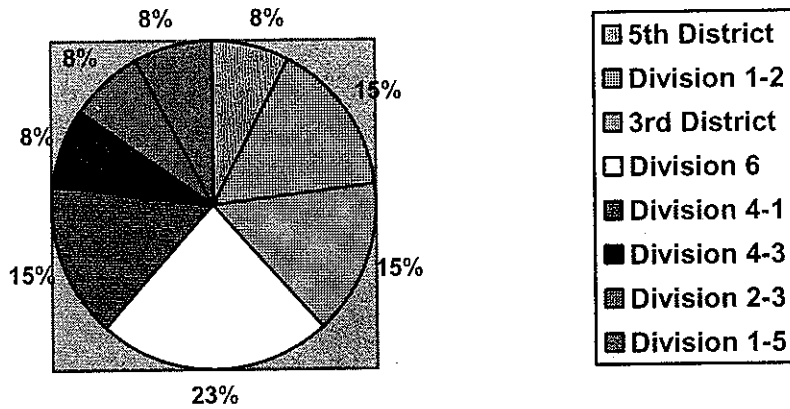


Chart 17d - Awards to Court and Respondent on Respondent's Motion



Of the seventeen divisions that awarded sanctions from 2002 to 2005, only five awarded sanctions to themselves or the respondent upon their own motions and only three awarded sanctions to

respondents and the court upon their own motions.¹⁴⁸ When respondents raised the issue of sanctions, eight courts were willing to award sanctions to themselves as well.¹⁴⁹ As can be seen from Charts 17a-d, certain divisions and districts, such as the Third District, Fifth District or Division Two of the Second District, show up repeatedly and are therefore much more likely to raise the issue of sanctions and award sanctions to themselves.

VIII. HOW LARGE ARE SANCTIONS AWARDS?

As noted above, the small sample size of sanctions awards available has a considerable impact on the type and complexity of statistical analyses that may be used in this article. Such small numbers makes any meaningful analysis of the subgroups discussed above in combination with the dollar value of sanctions awards effectively impossible. In addition, in thirteen of the cases (approximately fourteen percent), the amount of sanctions was remanded to the trial court to determine, which further reduces the number of sanctions awards that may be analyzed by dollar value.¹⁵⁰ Accordingly, any analysis of the amount of sanctions awards will be incomplete.

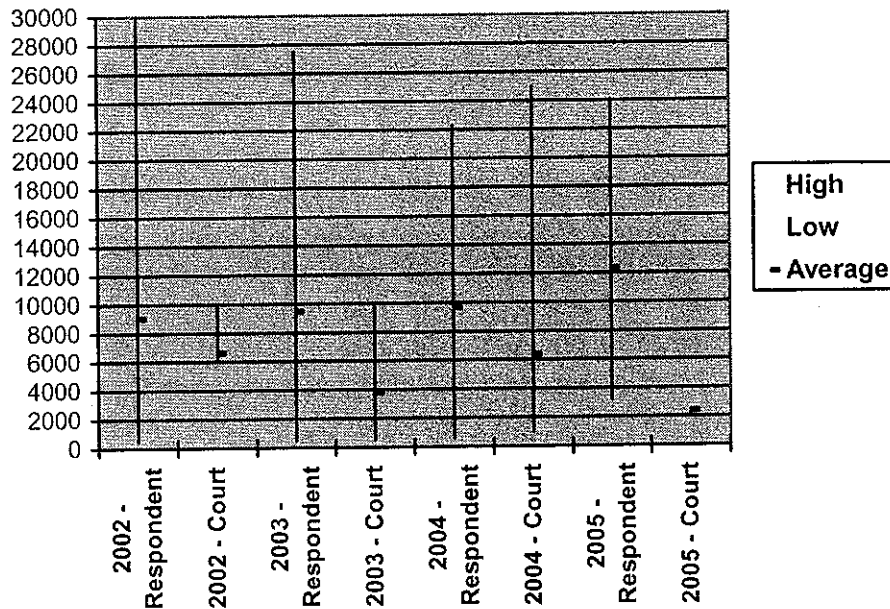
Similarly, the fact-sensitive nature of each case, including the complexity of the case, which would necessitate more or less time being spent to defend the appeal, not to mention the diversity of attorneys' fees rates that may have been charged in each case, necessarily results in a wide range of dollar values for sanctions award requests and awards. Accordingly, only the broadest picture of the trends for sanctions awards amounts may be gleaned.

148. See Charts 17a-c.

149. See Chart 17d.

150. Interestingly, the vast majority of cases that were remanded were decided in the Division 3 of the Fourth District.

Chart 18 - Dollar Value Range of Sanctions Awards



In 2002, sanctions awards varied in amount from 500 dollars to over 26,000 dollars to the respondent and between 6,000 dollars and 10,000 dollars to the court. The mean award of the (non-remanded) twenty-four awards to the respondent was 9,027 dollars and the median award was 7,400 dollars. The mean award of the twelve awards to the court was 6,589 dollars and the median award was 6,000 dollars.

In 2003, the awards ranged from 500 dollars to 27,500 dollars for the respondent and 500 dollars to 10,000 dollars for the courts. The mean award of sanctions to respondents (of eighteen non-remanded awards) was 9,460 dollars and the median was 7,094 dollars. As for the courts, the mean award (of twelve awards) was 3,833 dollars and the median award was 3,000 dollars.

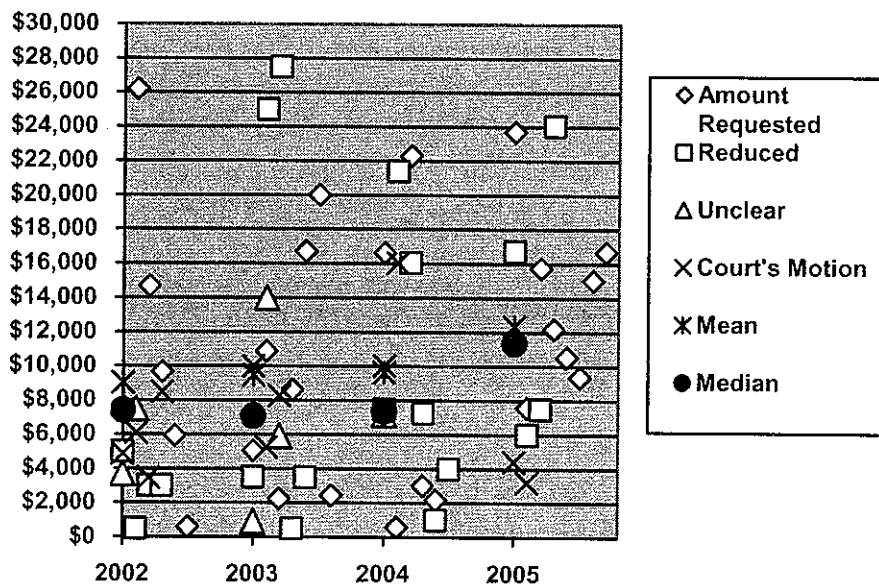
In 2004, the awards ranged between 585 dollars and 22,302 dollars for the respondent and from 1,000 dollars to 25,000 dollars for the court. The mean award for the respondents (out of thirteen non-remanded awards) was 9,648 dollars and the median was 7,357 dollars. The mean award for the courts (out of seven awards) was 6,357 dollars and the median was 3,000 dollars.

In 2005, the smallest award to a respondent was 3,200 dollars and the largest award was 24,045 dollars. The mean award (out of fourteen non-remanded awards) was 12,334 dollars and the median was 11,361 dollars. With regard to court awards, the smallest award was 2,000 dollars and the largest was 2,500 dollars. The mean award for the courts (out of four awards) was 2,375 dollars and the median was 2,500 dollars.

According to this data, the minimum sanctions award since 2002 is 500 dollars. As shown in Chart 18, both the minimum and the average sanctions award to respondents have risen considerably since 2002. Awards to courts, in contrast, have varied considerably in the past few years—from up to 25,000 dollars in 2004 to hovering around 2,500 dollars in 2005. In addition, it appears that the smallest sanction awards to respondents have risen in dollar value. The smallest award in 2002 was 500 dollars and the smallest award in 2005 was 3,200 dollars—a significant increase.

When broken down further, little additional information is gleaned. Chart 19 depicts sanctions awards to respondents from 2002 to 2005 broken down in type—whether the respondent received the amount they requested, a reduced amount, or an amount based on the court’s own motion. For illustration, each year’s mean and median awards are also included.

Chart 19 - Sanctions Awards Amounts



The smallest award amounts were provided by the court on its own motion. What is surprising, however, is that “reduced awards”—awards where the court awarded less than the respondent requested—were often larger than the “amount requested” awards in the same year.¹⁵¹ Based on this information, respondents (and appellants) would be well advised to move for sanctions when appropriate because even reduced awards will still be sizeable. Parties should not rely on courts to make a sanctions motion *sua sponte* because even if the court does make its own motion for sanctions, the amount awarded is likely to be much less than what could be obtained by a proper sanctions motion.¹⁵²

IX. CONCLUSION

The main drawback of this study is its small sample size. Only four full years of data were available, which, considering the small yearly number of appellate sanctions awards, limits the reliability of the data presented here. It is very possible that the results presented here have been biased by temporal circumstances that will not be repeated again. Indeed, there is evidence that “repeat offenders” appearing in the same court may have skewed the data set because they are more likely to be sanctioned and have been sanctioned repeatedly within the timeframe studied.¹⁵³

Some general trends have been noted, however, even with the small data set used. First, although sanctions awards are rare, they are also unpredictable. Any court can award sanctions and although a couple of divisions did not awarded sanctions in 2002-2005, every

151. This is not surprising because courts seem more inclined to reduce attorneys’ fees requests where the attorney’s rate and, therefore, the award requested, is relatively high.

152. There are cases where the court, once it has decided that it will award sanctions upon its own motion, has remanded the case for a sanctions amount determination or asked the non-sanctioned party to submit their attorneys fees amount so that it can determine appropriate sanctions amount. See *Mackley v. Weis*, 2004 WL 1399082 at *6 (Cal. App. 3d Dist. June 23, 2004); *BioCell Tech. v. Alkayali*, 2004 WL 114699 at *6 (Cal. App. 4th Dist. Div. 3 Jan. 26, 2004). It is much more likely, however, that the court will simply award a dollar amount that it finds appropriate, with little to no discussion of the actual fees incurred by the respondent. See *Stern v. Am. Sts. Ins. Co.*, 2003 WL 1611291 at *17 (Cal. App. 2d Dist. Mar. 28, 2003); *Harvard Bus. Park, LLC v. Dodge*, 2005 WL 1595274 at *11 (Cal. App. 3d Dist. July 8, 2005).

153. See *Gutkin v. U. of S. Cal.*, 2004 WL 2797435 at **4-5 (Cal. App. 2d Dist. Dec. 7, 2004).

district has. Second, *pro se* appellants and solo practitioners or small firms are far more likely to be sanctioned. Third, the dollar value of sanctions awards has increased over time, making the penalty for filing a frivolous appeal or violating court rules that much more severe. Fourth, parties (appellants and respondents) and their attorneys are advised to avoid “venting their spleens” at the courts and to follow the court’s rules (especially when bringing a motion for sanctions) as these transgressions are more likely to be caught and, therefore, more likely to be punished. Finally, appellants and their attorneys should ensure that the issues they raise on appeal can be seen at least as having some potential merit and should heed any court’s warning that they do not. Failure to do so could result in heavy monetary sanctions even if the issue is not raised by the other party.