

Attorney Fee Waiver Not Always Valid in Prenup

**By Matthew Crider, JD
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As a Sacramento Divorce Lawyer, clients and potential clients frequently ask me about whether they can get the other spouse to pay attorney's fees. Attorney's fees generally may be awarded in a divorce case, and enterprising clients sometimes seek to limit an award of attorney's fees in a prenuptial or premarital agreement. A spouse's ability to limit attorney's fees in a prenuptial or premarital agreement is itself limited, as a recent California case demonstrates.

Husband and wife entered into a prenuptial agreement under Michigan law where, among other things, they agreed to waive any attorney's fees resulting from any divorce, separation or annulment proceedings. Later, they moved to California and bought an expensive Montecito residence to which pricey improvements were made. Once the relationship broke down, a divorce proceeding resulted in an order that husband pay \$6,000 in monthly child support payments. Because wife had to rebut claims of negative net worth advanced by husband (claims found unpersuasive), the trial court awarded her attorney's fees of \$175,000 out of a requested \$313,000.

Husband, on appeal in *Marriage of Lane*, Case No. B215911 (2d Dist., Div. 6 Jan. 13, 2011) (unpublished), principally argued that the attorney's fee award was barred by the fee waiver clause in the Michigan prenuptial agreement.

Nope, said the appellate court.

The attorney fee waiver clause only related to property/spousal issues, but was silent as to any attorney fee waiver on child-related issues. Beyond that, California will not enforce attorney fee waivers relating to these type of child custody, visitation, and support issues. (*In re Marriage of Joseph*, 217 Cal.App.3d 1277, 1280, 1284-1285 (1990) .No cited Michigan cases held to the contrary, only allowing waiver on property or spousal issues.

About Matthew Crider, J.D.

Matthew Crider formed [Crider Law PC](#) in 1999 so he could help individuals through the California divorce process by providing creative solutions as their trusted advisor and legal counselor. His divorce and family law practice focuses on assisting people in dissolution matters, including divorce, child custody and visitation, child and spousal support, spousal support and alimony, and parental rights.

