

Judge refuses to set penalty for Aguirre

By Mike Konon

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A Superior Court judge yesterday refused to order Michael Aguirre, an attorney and unsuccessful city council candidate, to pay \$79,000 in sanctions to opposing attorneys who contended he engaged in outrageous behavior during a civil trial last summer, causing a mistrial.

Judge James A. Malkus, commenting on Aguirre's tactics, said: "That's part of what makes a trial interesting. I cannot find a reason to impose sanctions."

Attorneys Louis Goebel and James Caputo, joined by attorney Daniel Bacalski, had sought sanctions against Aguirre, who lost a bid for the 8th District city council seat last Nov. 5. He contended the allegations of misconduct were politically motivated.

Goebel, Caputo and Bacalski asserted that Aguirre, in a civil trial involving investors suing an estate, engaged in "numerous frivolous and bad-faith actions and tactics," causing Superior Court Judge Artie Henderson to declare a mistrial after 5½ weeks. The trial began last June.

In the case, Barbara Allee vs. Lind-Fitzmaurice Development Co., Aguirre represented 133 investors suing the estate of a deceased real estate agent and nine other defendants. Goebel, Caputo, and Bacalski said Aguirre's tactics included attacks on the integrity of a court bailiff, a dispute with a court clerk and "bullying" a judge.

"The mistrial was indeed unfortunate," Malkus said. "... It is somewhat unusual to have a jury invited not to return. But you have to balance aggressiveness, assertiveness and trial tactics with candor and techniques designed to draw out the trial. I have to look at the entire picture."

Following the court session yesterday, Goebel denied that seeking the sanctions was related to the elections.

Initially, a hearing on the misconduct allegations was set for Sept. 16, one day after the city council primary election was scheduled. The hearing was postponed after Aguirre objected to the timing of it. Aguirre and Filner emerged as runoff candidates from a nine-candidate field and Filner went on to win the general election.