COMPENDIUM UPDATE CASE LIST

Publisher’s Note: For your convenience, below is an alphabetical list of the cases added to the 2019 California Compendium on Professional Responsibility index. This list consists of cases decided from January 2017 to December 2018. Recently published state and county bar ethics opinions and some cases from prior years have also been added to this update.

101 Ops. Cal. Atty Gen. 1 (04/03/18; No. 14-301)
American Bankers Management Company, Inc. v. Heryford (9th Cir. 2018) 885 F.3d 629
American Civil Liberties Union of Northern California v. United States Department of Justice (9th Cir. 2018) 880 F.3d 473
Arenti v. Zuckerberg (2017) 8 Cal.App.5th 768 [214 Cal.Rptr.3d 358]
Atlas v. Raimondo (9th Cir. 2017) 860 F.3d 1185
Barry v. State Bar (2017) 2 Cal.5th 318 [212 Cal.Rptr.3d 124]
Behunin v. Superior Court (Schwab) (2017) 9 Cal.App.5th 833 [215 Cal.Rptr.3d 475]
Burkhaller Kessler Clement & George LLP v. Hamilton (2018) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]
Decker v. Berryhill (9th Cir. 2017) 856 F.3d 659
Ellis v. Hamilton (9th Cir. 2018) 891 F.3d 1160
Glacier Funds (USA), Inc. v. Turchin (9th Cir. 2018) 896 F.3d 1033
Hassell v. Bird (2018) 5 Cal.5th 522 [234 Cal.Rptr.3d 867]
Healthsmart Pacifie v. Kabateck (2017) 7 Cal.App.5th 416 [212 Cal.Rptr.3d 589]
Heller Ehman LLP v. Davis Wright Tremaine LLP (2018) 4 Cal.5th 467 [229 Cal.Rptr.3d 371]
Hernandez v. Chappell (9th Cir. 2018) 878 F.3d 843
Herons Bay Homeowners Assn. v. City of San Leandro (2018) 19 Cal.App.5th 376 [227 Cal.Rptr.3d 885]
IAR Systems Software Inc. v. Superior Court (Sheahy) (2017) 12 Cal.App.5th 503 [218 Cal.Rptr.3d 852]
Irvine Unified School District v. K.G. (9th Cir. 2017) 853 F.3d 1087
Jones v. Whisenand (2017) 8 Cal.App.5th 543 [214 Cal.Rptr.3d 72]
Kinney v. Clark (2017) 12 Cal.App.5th 724 [219 Cal.Rptr.3d 247]
LA 528 (2017)
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LA 530 (2018)
La Mirada Ave. v. City of Los Angeles (2018) 22 Cal.App.5th 1149 [232 Cal.Rptr.3d 338]
Leighton v. Forster (2017) 8 Cal.App.5th 467 [213 Cal.Rptr.3d 899]
Lynn v. George (2017) 15 Cal.App.5th 630 [223 Cal.Rptr.3d 407]
Maschin v. Epstein Grin nell & Howell (9th Cir. 2017) 845 F.3d 984
McDermott Will & Emery. LLP v. Superior Court (Hausman) (2017) 10 Cal.App.5th 1083 [217 Cal.Rptr.3d 47]
Osborne v. Todd Farm Services (2016) 247 Cal.App.4th 43 [202 Cal.Rptr.3d 84]
Penal Code 1054.2
Penal Code 1054.10
People v. Angel (2017) 9 Cal.App.5th 1107 [214 Cal.Rptr.3d 897]
People v. Cowan (2017) 8 Cal.App.5th 1152 [214 Cal.Rptr.3d 576]
People v. Espinoza (2018) 27 Cal.App.5th 908 [238 Cal.Rptr.3d 619]
People v. Gutierrez (2017) 2 Cal.5th 1150 [218 Cal.Rptr.3d 289]
People v. Lavoie (2018) 29 Cal.App.5th 875 [240 Cal.Rptr.3d 825]
People v. Lucero (2017) 18 Cal.App.5th 532 [226 Cal.Rptr.3d 660]

See How to Use This Index, supra, p. i 2019 (updated entries through 12/31/2018)
People v. Olivera (2018) 24 Cal.App.5th 1112 [235 Cal.Rptr.3d 200]
People v. Perez (2018) 4 Cal.5th 421 [229 Cal.Rptr.3d 303]
People v. Ruiz (2018) 4 Cal.5th 1100 [232 Cal.Rptr.3d 714]
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SD 2017-1
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Shame On You Productions, Inc. v. Banks (9th Cir. 2018) 893 F.3d 661
U.S. v. Martinez (9th Cir. 2017) 850 F.3d 1097
U.S. v. Walter-Eze (9th Cir. 2017) 869 F.3d 891
Weeden v. Johnson (9th Cir. 2017) 854 F.3d 1063
White v. Ryan (9th Cir. 2018) 895 F.3d 641
HOW TO USE THIS INDEX

SUBJECT LISTINGS AND HEADINGS

The subject listings in this index were adapted, with the permission of the American Bar Foundation, from the 1980 Supplement to Digest of Bar Association Ethics Opinions edited by Olavi Maru. Therefore, the listings in this index are compatible with and cumulative to the listings in American Bar Association professional responsibility materials, which should be consulted for the views of other jurisdictions. If there are no California citations or entries under a primary heading, the entry has been retained so that you may consult ABA Digests for authority in other states.

The index contains primary subject listings which are alphabetically arranged. Cross references immediately following the listing refer you to the subject or subjects where citations and other information are to be found. In the interest of providing comprehensive coverage of a subject or analogous or related topics, many subject listings have more than one cross-reference. Primary listings are printed in capital letters, in darker print, followed by sub-headings, citations and cross references, as shown in the example below:

Primary heading: ARBITRATION

Cross reference: [See Fee arbitration.]

Subheading: Agreement with client to arbitrate any malpractice claim by client

Citation to subheading: CAL 1977-47

Next subheading: Arbitrator

Sub-subheading: appointment of law office associate as

Secondary sub-subheading: -by attorney representing claimant in same proceeding

Citation to preceding subheadings: LA 302 (1968)

CITATIONS

The intent of this index is to provide, in one location, a comprehensive research guide to California authorities relating to professional responsibilities of members of the legal profession and related topics.

** SPECIAL NOTE **: --CASES PRECEDED BY AN ASTERISK (*) SHOULD BE CAREFULLY SHEPARDIZED, AS THEY ARE SUBJECT TO REVIEW (AT THE TIME OF PUBLICATION OF THIS COMPREHENDUM UPDATE), OR HAVE BEEN OVERRULED OR DISAPPROVED EITHER WHOLLY OR IN PART BY THE SUPREME COURT OF CALIFORNIA.

--CASES PRECEDED BY A CROSS SYMBOL (+) ARE STATE BAR COURT REVIEW DEPARTMENT DECISIONS WHICH ARE EITHER TEMPORARILY OR PERMANENTLY DEPUBLISHED DUE TO A PETITION FOR REVIEW BY THE CALIFORNIA SUPREME COURT. (SEE RULE 310, RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS (EFF. JANUARY 1, 1995).) PLEASE CHECK THE STATUS OF THE DECISION BEFORE CITING THE CASE AS AUTHORITY. (SEE "HOW TO USE" AND "TABLE OF CASES AND SUBSEQUENT HISTORY" SECTIONS, CALIFORNIA STATE BAR COURT REPORTER.)

OPINIONS AND OTHER AUTHORITIES: Authorities under each subject heading are listed in the following order of priority:

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JURISDICTION  LEVEL OF COURT  ORDER
California (cont'd): California Ethics Opinions  In alphabetical order, as follows: CAL, LA, OCBA, SD and SF. Most recent opinions first, descending chronologically to oldest opinions. Formal opinions precede informal opinions.
Selected California Attorney General Opinions  Most recent opinions first, descending chronologically to oldest cases.

RULES OF PROFESSIONAL CONDUCT: The Rules of Professional Conduct are listed in alphabetical order under "Rules" and each specific rule follows in numerical order.

CAVEAT: Subject headings must be consulted for cases interpreting particular Rules of Professional Conduct in addition to rule headings.

EXAMPLE:  RULES OF PROFESSIONAL CONDUCT  [The full text of the rules are reprinted in part I A above;  See below for former rules. ]
Purpose of, generally
Zitny v. State Bar (l966) 64 Cal.2d 787, 793 [51 Cal.Rptr. 825]
Rule 1-100  Rules of Professional Conduct, In General.
CAL 1975-33
SD 1977-2, SD 1974-6, SD 1972-17
SF 1977-2, SF 1977-1
LA 342 (1973)
Rule 1-101  Maintaining Integrity and Competence of the Legal Profession.  [See Admission to the bar.]

STATUTES: Selected statutes are listed alphabetically by code and numerically by statute number.

EXAMPLE:  BUSINESS AND PROFESSIONS CODE  [The entire text of the State Bar Act (Business and Professions Code, §6000 et seq.) is reprinted as Part I A to this Compendium.]
Sections 6000 et seq.
CAL 1979-48
Section 6067  [See Oath of attorney.]
CAL 1972-30
Section 6068
LA 394 (1982)
subdivision (d)
CAL 1972-30

KEY TO SYMBOLS
CAL 1981-64: Formal Opinion No. 1981-64 of the State Bar's Standing Committee on Professional Responsibility and Conduct. (The full text of each opinion is reprinted within Tab II A.)
OC 93-001: Formal Opinion No. 93-001 of the Orange County Bar Association. (The full text of each opinion is reprinted within Tab II D.)
SD 1970-1: Opinion No. 1970-1 of the San Diego County Bar Association Legal Ethics and Unauthorized Practice Committee. (The full text of each opinion is reprinted within Tab II C.)
SF 1980-1: Opinion No. 1980-1 of the Legal Ethics Committee of the Bar Association of San Francisco. (The full text of each opinion is reprinted within Tab II B.)
See: Refers you to the heading wherein citations or other information are contained within the compendium.
Contact: Refers you to the person or office where you may obtain copies of the document referenced or further information on the subject referenced.

READER PARTICIPATION
The index to this Compendium is a service to you the reader.  Your constructive ideas concerning its improvement will be gratefully received by the editors.  Also, if you discover authorities or cases which would be helpful to the index, please forward them to the editors.
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CALIFORNIA COMPENDIUM ON PROFESSIONAL RESPONSIBILITY
INDEX

ABA [See AMERICAN BAR ASSOCIATION.]


Business and Professions Code section 6067

ABUSE OF PROCESS [See Malicious prosecution.]

ACADEMIC DEGREES [See Advertising, use of.]

Use of
LA 349 (1975), LA 331 (1973), LA 113 (1937)
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ACCEPTANCE OF EMPLOYMENT [See Attorney-client relationship. Conflict of interest.]

Rule 2-110, Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-200, Rules of Professional Conduct (operative as of May 27, 1989)

Adverse

to former client

Gendron v. State Bar (1983) 35 Cal.3d 409, 411
-representation of corporation against officers and directors
--formerly associated with firm representing officers and directors
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Adverse interest
to former client

-in related matter
LA 136 (1941)

Adverse to client

guardianship for client

-institution of proceedings for appointment of
--by attorney
LA 138 (1941)

Appointment of counsel to serve as advisor to criminal defendant

refusal to accept


Attorney must decline representation where attorney lacks time and resources to pursue client’s case with reasonable diligence in both paid and pro bono representations

Segal v. State Bar (1988) 44 Cal.3d 1077 [245 Cal.Rptr. 404]

Bad faith appeal


By attorney

clients
--of real estate business
--associated with attorney
LA 140 (1942)
--operated by attorney
LA 140 (1942)

Duty to counsel or maintain only legal or just actions

Canatella v. California (9th Cir. 2002) 304 F.3d 843
Sorensen v. State Bar (1991) 52 Cal.3d 1036
In the Matter of Scott (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446

Duty to decline to file pleading which advances totally meritless and frivolous positions

LA 464 (1991)

Frivolous appeal

Business and Professions Code section 6068(c)
Code of Civil Procedure section 907
Rule 8.272, California Rules of Court

civil proceeding
--attorney fees awarded at discretion of trial court; absent clear abuse appeal of award is frivolous [See Sanctions.]
--mortgage foreclosure

Huber v. Shedaudy (1919) 180 Cal. 311

--spousal support action


-attorney has responsibility not to pursue a client’s frivolous appeal because client demands


-definition of frivolous appeal

In re Marriage of Flaherty (1982) 31 Cal.3d 637

-delay in filing briefs caused unreasonable delay

Estate of Walters (1950) 99 Cal.App.2d 552 [222 P.2d 100]

-delay is frivolous if motive is to outlive the other party through appeals


-divorce actions

--alimony


--appeal for refusal to pay court ordered payments is meritless


--award of attorney’s fee not appealable absent clear abuse


--bifurcated action is complicated so appeal is not frivolous

Marriage of Fink (1976) 54 Cal.App.3d 357 [126 Cal.Rptr. 626]

--full faith and credit to out-of-state divorce decree


--repealed appeals


-evidentiary appeals

--complaint deemed sufficient in first appeal so second appeal on sufficiency is frivolous

Sipe v. McKenna (1951) 105 Cal.App.2d 373 [233 P.2d 615]

--conflicting evidence is not appealable if trial court makes a determination

Kruckow v. Lesser (1952) 111 Cal.App.2d 198 [244 P.2d 19]

--more cursory inspection of evidence required so appeal was not meritless

Crook v. Crook (1960) 184 Cal.App.2d 745 [7 Cal.Rptr. 892]

See How to Use This Index, supra, p. i 2019 (updated entries through 12/31/2018)
ACCEPTANCE OF EMPLOYMENT

--new trial based on insufficient evidence will not be distributed by appellate court
--not supported by the evidence on appeal, so appeal meritless and taken only for delay
  Danziger v. POehle (1948) 88 Cal.App.2d 307 [198 P.2d 719]
--reversal of trial court if substantial evidence does not exist
--good faith erroneous appeal is not frivolous, court has discretion
  Doyle v. Hamren (1966) 246 Cal.App.2d 733 [55 Cal.Rptr. 84]
--jurisdiction for appeal improper therefore meritless
  --California cannot modify out-of-state court order
    Marriage of Schwander (1978) 79 Cal.App.3d 1013 [145 Cal.Rptr. 325]
  --if federal jurisdiction clearly applies, then state court appeal is frivolous
    Miller v. RKA Management (1979) 99 Cal.App.3d 460 [160 Cal.Rptr. 164]
--lack of effort on appeal suggests improper motive
  --even without actual proof
  --motive improper if used to cloud title to property
    Blackmore Investment Co. v. Johnson (1971) 213 Cal. 148
--multi-judgment proceeding in divorce action; appeal not frivolous in light of complicated facts
  Marriage of Fink (1976) 54 Cal.App.3d 357 [126 Cal.Rptr. 626]
--multiple defendants in personal injury action; appeal frivolous as to one defendant
--multiple meritless appeals lead to substantial sanctions
--municipal court merit appeals must be heard by appellate court
  Gilbert v. Municipal Court (1977) 73 Cal.App.3d 723 [140 Cal.Rptr. 897]
--new facts leading trial court to vacate order of divorce is proper; therefore an appeal of court's action is frivolous
--new trial at discretion of trial court
  Estate of Wall (1920) 183 Cal. 431
--notice received in child custody action; so appeal based on lack of notice is frivolous
--objective standard for improper motive
  Marriage of Flaherty (1982) 31 Cal.3d 637

--partially frivolous appeal
--part must be significant and material to the appeal before sanctions imposed
--patently meritless appeal based on court misconduct where court had exchanged a superficial pleasantry with one party and not the other
--pleading defects waived or cured; therefore the appeal is frivolous for delay
  Rule 2-110, Rules of Professional Conduct (operative until May 26, 1989)
  Rule 3-200, Rules of Professional Conduct (operative as of May 27, 1989)
  Business and Professions Code section 6068(e)
--previously litigated contentions are frivolous as appeal
--procedural objections must be made at trial court level
  Moore v. El Camino Hospital District (1978) 78 Cal.App.3d 661 [144 Cal.Rptr. 314]
--reasonableness of damages challenged by defendant at trial court level
  --not challenged by plaintiff before closing arguments
  --plaintiff appeal based on defendant's prejudicial misconduct is meritless
  --reversal of trial court not argued for in appellate brief; denied reversal, but not frivolous
--sanctions
  Rule 8.272, California Rules of Court
  Code of Civil Procedure section 907
  --factors used to determine sanctions
  --interest on settlement funds as well as attorney fees may be imposed
  --maintaining a second appeal based on parallel issues after first appeal received an unfavorable decision
    Cohen v. General Motors Corp. (1992) 2 Cal.App.4th 693
    --"rational relationship" to circumstances as standard for sanctions when clear evidence of damages is lacking
  --sanctions for multiple meritless claims

See How to Use This Index, supra, p. i
-subjective bad faith or motive required
-meritless appeal is not frivolous
  Marriage of Flaherty (1982) 31 Cal.3d 637 [183 Cal.Rptr. 508]

solely for delay
  Ainsworth v. State Bar (1988) 46 Cal.3d 1218

spite as a motive is frivolous
  Rule 2-110, Rules of Professional Conduct (operative until May 26, 1989)
  Rule 3-200, Rules of Professional Conduct (operative as of May 27, 1989)
In re Stephens (1890) 84 Cal. 77, 81

suit with no questions of law or fact remaining
--libel
--real estate commission action
  Towl v. Lewis (1969) 274 Cal.App.2d 376 [79 Cal.Rptr. 58]
-Supreme Court adjudication is law of the case; so further appeal on same matter is meritless and improper
-waiver of right to appeal in settlement makes the appeal frivolous for delay
  -wholly inadequate appeal is frivolous
  -will contest is personal; so an appeal may not be frivolous
  -writ of execution on sale of property is quashed by trial court at its discretion; appeal therefore is frivolous

criminal proceeding
  -appeal on jurisdiction and legality of the proceedings where no error existed is meritless
    People v. Wallace (1963) 217 Cal.App.2d 440 [31 Cal.Rptr. 691]
  -death penalty appeals exhausted; re-appeal on same issues is frivolous
    People v. Smith (1933) 218 Cal. 484, 489
  -dismissal of frivolous appeals should be used sparingly in criminal matters
    People v. Sumner (1968) 262 Cal.App.2d 409, 414-415 [69 Cal.Rptr. 15]
  -limited review of errors of fact or factual disputes; appeal was frivolous
  -facts not known or available to defendant at the time of the verdict
  -withdrawal
    --attorney may include brief to support

Frivolous motion
  In re Disciplinary Action Mooney (9th Cir. 1988) 841 F.2d 1003

In propria persona litigant
  LA 502 (1999)

Malicious prosecution
  attorney is jointly liable with client for malicious prosecution
    Jarrow Formulas, Inc. v. LaMarche (2003) 31 Cal.4th 728 [3 Cal.Rptr.3d 636]
  attorney may be held liable for continued prosecution of a case that lacks probable cause
    Zamos v. Stroud (2004) 32 Cal.4th 958 [12 Cal.Rptr.3d 54]
  burden of proof on plaintiff to show “want of probable cause” necessary for a malicious prosecution action
    Grant v. Moore (1866) 29 Cal. 644, 648
  client must fully disclose all necessary facts to attorney before defense of “advice of counsel” is allowed
    Siffert v. McDowell (1951) 103 Cal.App.2d 373, 378 [229 P.2d 388]
  evidence of self-defense kept from district attorney who then prosecutes, destroys probable cause defense
    Starkweather v. Eddy (1930) 210 Cal. 483
  defendant entitled to attorney’s fees when claim filed by county found to be frivolous and brought to harass defendant
  defendant has burden of proving action taken in good faith
    Masterson v. Pino-N-Whistle Corp. (1968) 161 Cal.App.2d 322 [326 P.2d 918]
  discrepancies of fact not enough for court to find “want of probable cause”
    Lee v. Levinson (1916) 173 Cal. 166
  dismissal of action by negotiation is not “want of probable cause,” but may be used as evidence
    Weaver v. Superior Court (1979) 95 Cal.App.3d 166 [156 Cal.Rptr. 745]
  evidence of misappropriation of money for enough for probable cause, even though acquitted
    Haydel v. Morton (1935) 8 Cal.App.2d 730
  felony grand theft evidence is disputed; enough to show probable cause
  felony of grand theft acquittal was malicious prosecution because defendant had an “honest” belief that goods were plaintiff’s
  good faith belief in action is a defense to malicious prosecution
  malice does not exist if client acted in good faith on attorney advice
    Brinkley v. Appleby (1969) 276 Cal.App.2d 244 [80 Cal.Rptr. 244]
  negligence or failure of attorney to conduct factual research and lack of probable cause do not support an inference of malice, an element of malicious prosecution
    Daniels v. Robbins et al. (2010) 182 Cal.App.4th 204 [105 Cal.Rptr.3d 683]
  probable cause exists even where plaintiff in first action claimed only a small portion
    Murdock v. Gerth (1944) 65 Cal.App.2d 170
ACCOUNTANT

reliance of attorney on client’s distorted facts in filing an action creates a want of probable cause


Prior counsel terminated

CAL 1994-134, SD 1972-17

Prohibited employment

- proseecute solely for delay
  Rule 2-110(C), Rules of Professional Conduct (operative until May 26, 1989)
  Rule 3-200, Rules of Professional Conduct (operative as of May 27, 1989)

-take solely for delay
  Rule 2-110(C), Rules of Professional Conduct (operative until May 26, 1989)
  Rule 3-200, Rules of Professional Conduct (operative as of May 27, 1989)

litigation

- claim/defense not warranted under existing law
  Rule 2-110(B), Rules of Professional Conduct (operative until May 26, 1989)
  Rule 3-200, Rules of Professional Conduct (operative as of May 27, 1989)

-good faith exception
  Rule 2-110(B), Rules of Professional Conduct (operative until May 26, 1989)
  Rule 3-200, Rules of Professional Conduct (operative as of May 27, 1989)
  Rule 2-110(C), Rules of Professional Conduct (operative until May 26, 1989)
  Rule 3-200, Rules of Professional Conduct (operative as of May 27, 1989)

malicious injury to a person

- bringing action, conducting defense or asserting position in litigation
  Rule 2-110(A), Rules of Professional Conduct (operative until May 26, 1989)
  Rule 3-200, Rules of Professional Conduct (operative as of May 27, 1989)

- harassing a person by bringing action, conducting defense or asserting position in litigation
  Rule 2-110(A), Rules of Professional Conduct (operative until May 26, 1989)
  Rule 3-200, Rules of Professional Conduct (operative as of May 27, 1989)

- spite, prosecute, or defend action solely out of
  Sorensen v. State Bar (1991) 52 Cal.3d 1036

Special appearance by an attorney results in the formation of an attorney-client relationship with the litigant


In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

ACCOUNTANT [See Business activity and Practice of law, dual occupation.]

ACCOUNTING [See Business Activity and Practice of Law.]

ADDRESS [See Advertising. Solicitation.]

Attorney’s failure to keep current address with the State Bar of California

Business and Professions Code section 6002.1

In the Matter of Respondent AA (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721
In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349
In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476

ADJUSTER [See Lay employee.]

Act for employer; later represent against in same matter as lawyer
LA 216 (1953)
Former acts against former employer
LA 216 (1953)
Settlement negotiated with or by
SD 1978-8

ADMINISTRATIVE AGENCY [See Public office.]

Federal
foreign attorney appears before
LA 168 (1948), LA 156 (1945)
Foreign attorney practices before
LA 168 (1948), LA 156 (1945)
Law student appears before
SD 1974-1, SD 1973-9
Lay person appears before
LA 195 (1952), LA 143 (1943)
SD 1974-1, SD 1973-9

ADMISSION TO THE BAR [See Candor. Moral Turpitude.]

Business and Professions Code section 6060 et seq.
Rule 1-101, Rules of Professional Conduct (operative as of May 26, 1989)
Rule 1-200, Rules of Professional Conduct (operative as of May 27, 1989)
Admission denied
In re Glass (2014) 58 Cal.4th 500 [167 Cal.Rptr.3d 87]
Greene v. Committee of Bar Examiners (1971) 4 Cal.3d 189
Bernstein v. Committee of Bar Examiners (1968) 69 Cal.2d 90
history of drug trafficking
history of felony convictions as an attorney in New Jersey for theft of client funds, failure to file tax returns, manufacture of methamphetamines and failure to make restitution
In re Menna (1995) 11 Cal.4th 975 [47 Cal.Rptr.2d 2]
omission of felony convictions in application demonstrates lack of frankness and truthfulness required by the admission process
In re Gossage (2000) 23 Cal.4th 1080 [99 Cal.Rptr.2d 130]
Admission granted
National Association for the Advancement of Multijurisdiction Practice v. Berch (9th Cir. 2014) 773 F.3d 1037
In re Garcia (2014) 58 Cal.4th 440 [165 Cal.Rptr.3d 855]
Lubetzky v. State Bar (1991) 54 Cal.3d 308 [285 Cal.Rptr. 268]
Kwasnik v. State Bar (1990) 50 Cal.3d 1061 [269 Cal.Rptr. 749]
Hall v. Committee of Bar Examiners (1979) 25 Cal.3d 730 [159 Cal.Rptr. 484]
Hallinan v. Committee of Bar Examiners (1966) 65 Cal.2d 447 [55 Cal.Rptr. 228]

Admission of undocumented immigrants
In re Garcia (2014) 58 Cal.4th 440 [165 Cal.Rptr.3d 855]
Admission revoked
Langert v. State Bar (1954) 43 Cal.2d 636
Spears v. State Bar (1930) 211 Cal. 183
In the Matter of Pasyanos (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746
In the Matter of Ike (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483

2019 (updated entries through 12/31/2018) 4
See How to Use This Index, supra, p. i
Admission to Practice, Rules Regulating

Text is located in:
- Deering’s Annotated California Codes, Court Rules, vol. 2, and in
- West’s Annotated California Codes, Court Rules, vol. 23, pt 3, p. 232

Text available through State Bar’s home page: http://www.calbar.ca.gov

Admission to the federal bar

federal district court could reasonably rely upon distinction that State Bar made between active and inactive members to limit practice of inactive attorneys before that court

In re North (9th Cir. 2004) 383 F.3d 871

Americans with Disabilities Act, accommodations for use of computer programs for legally blind applicant so as to best ensure that the exam results accurately reflect aptitude rather than disabilities

Enyart v. National Conference of Bar Examiners, Inc. (9th Cir. 2011) 630 F.3d 1153

Authority of Committee of Bar Examiners

Mather v. Justice of the Supreme Court (9th Cir. 2005) 410 F.3d 602

Craig v. State Bar (9th Cir. 1998) 141 F.3d 1353


In re Gossage (2000) 23 Cal.4th 1080 [99 Cal.Rptr.2d 130]


Bar examination

accommodations for use of computer programs for legally blind applicant, likely to be successful under Americans with Disabilities Act

Enyart v. National Conference of Bar Examiners, Inc. (9th Cir. 2011) 630 F.3d 1153

disbarment for taking Bar Examination for another

In re Lamb (1990) 49 Cal.3d 239 [260 Cal.Rptr. 856]

unsuccessful bar examinee has no breach of contract action against preparer of multistate bar exam


Business and Professions Code sections 6060-6067

§ 6064(b)

In re Garcia (2014) 58 Cal.4th 440 [165 Cal.Rptr.3d 855]

oath of attorney

Business and Professions Code section 6067

Certification of Law Students [See Practical Training of Law Students.]

Committee of Bar Examiners of The State Bar of California. [See Addresses, supra.]

criminal defendant’s rights and privileges restored upon a pardon by the governor may not operate to usurp the authority of the rules relating to admission

In re Lavine (1935) 2 Cal.2d 324

Determines that an applicant possesses the good moral character required of an officer of the court

Klarfeld v. United States (9th Cir. 1991) 944 F.2d 583

In re Garcia (2014) 58 Cal.4th 440 [165 Cal.Rptr.3d 855]

may initiate investigation of criminal charges against applicant but may not "re-try" applicant

Martin v. Committee of Bar Examiners (1983) 33 Cal.3d 717 [190 Cal.Rptr. 610, 661; P.2d 160]

Correspondence law schools


Misappropriation

attorney’s petition for reinstatement, after disbarment for misappropriation, is denied

In the Matter of Rudnick (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27

Misconduct prior to admission

In re Glass (2014) 58 Cal.4th 500 [167 Cal.Rptr.3d 87]

In re Garcia (2014) 58 Cal.4th 440 [165 Cal.Rptr.3d 855]

In re Gossage (2000) 23 Cal.4th 1080 [99 Cal.Rptr.2d 130]

In the Matter of Pasyanos (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746

*In the Matter of Respondent Applicant A (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318

In the Matter of Ike (1996) 3 Cal. State Bar Ct. Rptr. 483

In the Matter of Lybbert (1994 Review Dept.) 2 Cal. State Bar Ct. Rptr. 297

Moral character proceedings (governed by Rules Proc. of State Bar, Rule 680 et seq.)

burden of proof

In re Glass (2014) 58 Cal.4th 500 [167 Cal.Rptr.3d 87]

In re Gossage (2000) 23 Cal.4th 1080 [99 Cal.Rptr.2d 130]

In re Menina (1995) 11 Cal.4th 975

Lubetzky v. State Bar (1991) 54 Cal.3d 308 [285 Cal.Rptr. 268]

Kwasnik v. State Bar (1990) 50 Cal.3d 1061 [269 Cal.Rptr. 749]

Hightower v. State Bar (1983) 34 Cal.3d 150

Bernstein v. Committee of Bar Examiners (1968) 69 Cal.2d 90

Hallinan v. Committee of Bar Examiners (1966) 65 Cal.2d 447 [55 Cal.Rptr. 228]

In the Matter of Pasyanos (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746

In the Matter of Applicant A (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318

discovery

In the Matter of Lapin (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279

quasi-judicial immunity of the State Bar and the Committee of Bar Examiners


Oath

district court lacks subject matter jurisdiction in reviewing applicant’s request to take an amended oath because of religious conflicts

Craig v. State Bar of California (9th Cir. 1998) 141 F.3d 1353

Privilege to practice law


Pro hac vice

Rule 9.40, California Rules of Court

Ninth Circuit Civ. L.R. 83.3(c)(5) [S.D.Cal.]


Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815

Gallo v. U.S. District Court of Arizona (2003) 349 F.3d 1169

Paculcan v. George (8th Cir. 2000) 229 F.3d 1226


People v. Cooks (1983) 141 Cal.App.3d 224, 290 [190 Cal.Rptr. 211]

Arizona requirement for pro hac vice admission could not be waived orally by a hearing officer

Shapiro v. Paradise Valley Unified School District No. 69 (9th Cir. 2004) 374 F.3d 857

attorney not entitled to fees for work done prior to admission pro hac vice

Shapiro v. Paradise Valley Unified School District No. 69 (9th Cir. 2004) 374 F.3d 857


attorney’s pattern of inability to practice law in an unethical and orderly manner, including pending disciplinary proceedings and lack of candor supports court’s rejection of pro hac vice application in criminal case

Bundy v. U.S. District Court of Nevada (9th Cir. 2016) 840 F.3d 1034

See How to Use This Index, supra, p. i
ADOPTION

California Rules of Court do not require out-of-state law firms to apply to appear pro hac vice in California courts when firm employs attorneys who are licensed to practice law in California to represent clients. Daybreak Group, Inc. v. Three Creeks Ranch, LLC (2008) 162 Cal.App.4th 37 [75 Cal.Rptr.3d 365].

A court may, in its discretion, revoke status of pro hac vice attorney for bad faith misconduct; it cannot impose monetary sanctions unless authorized by statute. Sheller v. Superior Court (2008) 158 Cal.App.4th 1697 [71 Cal.Rptr.3d 207].

Property right
Gallo v. U.S. District Court of Arizona (2003) 349 F.3d 1169

Public access to bar examination statistics: balancing of right of access and right of applicants’ privacy

Reciprocity admission
Arizona Supreme Court rule allowing admission on motion (AOM) for out of state attorneys is constitutional because it does not discriminate against non-residents
National Association for the Advancement of Multijurisdiction Practice v. Berch (9th Cir. 2014) 773 F.3d 1037

Rehabilitation
In re Glass (2014) 58 Cal.4th 500 [167 Cal.Rptr.3d 87]
In re Gossage (2000) 23 Cal.4th 1080 [99 Cal.Rptr.2d 130]
In re Bellinci (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883
In the Matter of Bodell (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459

Reinstatement
In the Matter of Rudnick (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27
In the Matter of Bodell (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459
In the Matter of Salant (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1

Residency requirements
Supreme Court of Virginia v. Friedman (1988) 487 U.S. 59 [108 S.Ct. 2260]
Supreme Court of New Hampshire v. Piper (1985) 470 U.S. 274

State Supreme Court’s rules governing bar admissions do not violate First Amendment right
Mothershed v. Justice of the Supreme Court (9th Cir. 2005) 410 F.3d 602

Undocumented immigrant admission to the Bar
In re Garcia (2014) 58 Cal.4th 440 [165 Cal.Rptr.3d 855]

Unqualified person
lawyer furthering the application of
Rule 1-200, Rules of Professional Conduct (operative as of May 27, 1989)

ADOPTION

Family Code section 8800

Act for both parties
Civil Code section 225(m)
LA 284 (1964)

Award of attorney’s fees
fees denied under Code of Civil Procedure 1021.5 where litigant had done nothing to curtail a public right, but sought a judgment only to settle her private rights and those of her children, notwithstanding the public benefit to others whose adoptions were validated by the litigation
Adoption of Joshua S. (2008) 42 Cal.4th 945 [70 Cal.Rptr.3d 372]

Independent adoption
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ADVANCEMENT OF FUNDS [See Expenses, Fee.]

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Rule 4-210, Rules of Professional Conduct (operative as of May 27, 1989)

Advance deposit
Securities and Exchange Commission v. Interlink Data Network of Los Angeles (9th Cir. 1996) 77 F.3d 1201

Attorney’s fees from client
failure to return unearned portion
Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)
In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
-client entitled to a refund of entire advance fee amount because client received nothing of value
In the Matter of Selzter (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263

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attorney acting as guarantor of client’s cost
CAL 1981-55
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-advance deposit
Securities and Exchange Commission v. Interlink Data Network of Los Angeles (9th Cir. 1996) 77 F.3d 1201
-advance payment retainer distinguished from true retainer
In re Montgomery Drilling Co. (E.D. Cal. 1990) 121 B.R. 32
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

-of costs
Rule 8-101(A), Rules of Professional Conduct (operative until May 26, 1989)
Rule 4-100, Rules of Professional Conduct (operative as of May 27, 1989)
Baranowski v. State Bar (1979) 24 Cal.3d 153, 163 [154 Cal.Rptr. 752, 593 P.2d 613]

-of legal fees to attorney
In re Montgomery Drilling Co. (E.D. Cal. 1990) 121 B.R. 32

-retainer fee
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Securities and Exchange Commission v. Interlink Data Network of Los Angeles (9th Cir. 1996) 77 F.3d 1201
In re Montgomery Drilling Co. (E.D. Cal. 1990) 121 B.R. 32
Baranowski v. State Bar (1979) 24 Cal.3d 153, 164 fn.4 [154 Cal.Rptr. 752, 593 P.2d 613]
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In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615
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In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
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Rule 4-210, Rules of Professional Conduct (operative as of May 27, 1989)
Boccardo v. Commissioner of Internal Revenue (9th Cir. 1985) 76 F.3d 1016
LA 76 (1934)
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Rule 5-104(A)(3), Rules of Professional Conduct (operative as of May 26, 1989)
Rule 4-210, Rules of Professional Conduct (operative as of May 27, 1989)
Discussion with client prior to employment
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Rule 4-210, Rules of Professional Conduct (operative as of May 27, 1989)
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Rule 4-210, Rules of Professional Conduct (operative as of May 27, 1989)
to client
- upon promise to repay
Dixon v. State Bar (1982) 32 Cal.3d 728, 733
In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
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Misappropriation of advanced fees and costs not maintained in trust account
In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1
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for damages recovered by opposing party
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Rule 2-101, Rules of Professional Conduct (operative until May 26, 1989)
Rule 1-400, Rules of Professional Conduct (operative as of May 27, 1989)
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-conducted for existing clients
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of former firm, announcement of new partnership
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Johnson v. State Bar (1935) 4 Cal.2d 744, 752 [52 P.2d 928]
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LA 511 (2003)
Attorneys not partners nor associates share office space
People v. Pastrano (1997) 52 Cal.App.4th 610 [60 Cal.Rptr.2d 620]
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LA 198 (1952)
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SD 1975-9
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Rule 2-105, Rules of Professional Conduct [repealed effective February 20, 1985; former rule 18]

Generally
LA 191 (1952), LA 181 (1951), LA 148 (1944), LA 8 (1920)
Newspaper
tax problems
-series of articles on, authored by attorney
LA 87 (1935)

Radio show

attorney answers legal questions submitted by listeners
LA 299 (1966)
attorney participating in
-audience may talk with attorney over airwaves
CAL 1969-17

Tax problems
-series of articles on, in newspaper
LA 87 (1935)

ADVISORY VIOLATION OF LAW


Rule 3-210, Rules of Professional Conduct (operative as of May 27, 1989)


Snyder v. State Bar (1976) 18 Cal.3d 286, 288 [133 Cal.Rptr. 864, 555 P.2d 1104]


Townsend v. State Bar (1948) 32 Cal.2d 592, 593-598

Waterman v. State Bar (1937) 8 Cal.2d 17 [63 P.2d 1133]

In re Jones (1929) 208 Cal. 240, 241-243 [280 P. 964]


CAL 1996-146, LA 527 (2015). SD 1993-1
Advice regarding how the client should not violate state law is not advising client to violate federal law
LA 527 (2015)
Advocating civil disobedience
CAL 2003-162

Bankruptcy


Collections

LA 522 (2009)

Conflict between state and federal law
LA 527 (2015)

Judge solicited the commission of perjury in a federal investigation

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

Medical marijuana

attorneys may give legal advice and assistance limited to activities permissible under California state law provided the client is advised of possible liability under federal law and other potential adverse consequences
LA 527, SF 2015-1

Negotiation of private agreement not to prosecute a crime
CAL 1986-89

Negotiation of private agreement to compromise civil claim arising from crime
CAL 1986-89

ALCOHOL ABUSE

Alcohol and drug addiction brought under control

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289

For confidential assistance, contact:
State Bar of California Lawyer Assistance Program (LAP)
Telephone: (877) LAP 4 HELP, (877) 527-4435
Email: LAP@calbar.ca.gov
Website: http://calbar.ca.gov/LAP

AMERICAN BAR ASSOCIATION MODEL CODE OF PROFESSIONAL RESPONSIBILITY

Can be of assistance where California has not spoken

Paul E. Iacono Structural Engineering, Inc. v. Humphrey (9th Cir. 1983) 722 F.2d 435, 438


See How to Use This Index, supra, p. i
SD 2017-1

AMERICAN BAR ASSOCIATION MODEL RULES OF PROFESSIONAL CONDUCT

Can be of assistance where California has not spoken
Dieter v. Regents of the University of California (E.D. Cal. 1997) 963 F.Supp. 908
Frye v. Tendelon Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]


Inadvertent disclosure of confidential information
Gomez v. Vernon (9th Cir. (Idaho) 2001) 255 F.3d 1118 [50 Fed. R. Serv.3d (Callaghan) 436]

Not binding in California
In re AFI Holdings, Inc. (9th Cir, BAP 2006) 355 B.R.139
City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]
General Dynamics Corp. v. Superior Court (1994) 7 Cal.4th 1164, 1190, fn. 6


APPOINTMENT OF ATTORNEY BY COURT [See Attorney-client relationship. Contract for employment.]
Business and Professions Code section 6068(h)
Standard 5.10 and standard 10.21, Standards of Judicial Administration
Brashaw v. U.S. Dist. Court (9th Cir. 1984) 742 F.2d 515

Abuse of discretion
found when court removed and refused to reappoint the public defender in a juvenile proceeding absent showing that minor was not indigent or a conflict existed
not found when court held that defendant failed to establish good cause to depart from the statutory scheme for appointment of assigned counsel
Assigned counsel
contract for private employment
SD 1969-9
duty to maintain inviolate client’s confidence and secrets
LA 504 (2000)

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See How to Use This Index, supra, p. i
defense attorney
freeing minor from parental custody
In re Rodriguez (1973) 34 Cal.App.3d 510 [110 Cal.Rptr. 56]
indigent defendants does not have the right to select court-appointed attorney
People v. Nogues (2010) 48 Cal.4th 517 [108 Cal.Rptr.3d 74]
indigent defendants entitled to effective pro bono assistance
Cunningham v. Superior Court (1986) 177 Cal.App.3d 336
narcotics commitment hearing
*People v. Moore (1968) 69 Cal.2d 674 [72 Cal.Rptr. 800]
Defendant’s ability to afford private counsel
United States v. Condo (9th Cir. 1984) 741 F.2d 238

Dependency proceedings
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
In re Jesse C. (1999) 71 Cal.App.4th 1481 [84 Cal.Rptr.2d 609]
actual conflict amongst multiple siblings requires disqualification of appointed counsel from joint representation
attorney appointed for a dependent minor under California Rule of Court 5.660 may also function as the independent guardian ad litem
representation of a minor client
LA 504 (2000)
- attorney acting as guardian ad litem is holder of psychotherapist-patient privilege for minor client
- no ineffective assistance where counsel informed the court of the conflict between minor’s stated interest and what counsel believed was minor’s best interests
In re Kristen B. (2008) 163 Cal.App.4th 1535 [78 Cal.Rptr.3d 495]
sanctions imposed against attorney for bringing frivolous conflict motions
Duties of appointed counsel
authority to bind conservatee-client who requests not to be present at hearing
In re Conservatorship of the Person of John L. (2010) 48 Cal.4th 131 [105 Cal.Rptr.3d 424]
conservatorship proceedings
- duty of counsel to perform in an effective and professional manner is implicit in statute (Welf. & Inst. Code § 5365) providing for appointment of attorney for proposed conservatee
Fees
Good cause to relieve counsel appointed for a minor
In re Jesse C. (1999) 71 Cal.App.4th 1481 [84 Cal.Rptr.2d 609]
Inadvertent disclosure of confidential information
City’s inadvertent disclosure of documents in response to Public Records Act request did not waive attorney-client privilege
Ardon v. City of Los Angeles (2016) 62 Cal.4th 1176 [199 Cal. Rptr. 3d 743]

No absolute Sixth Amendment right to both pro bono counsel and assistance of counsel
United States v. Condo (9th Cir. 1984) 741 F.2d 238
Preservation of constitutional rights
United States v. Condo (9th Cir. 1984) 741 F.2d 238
Pro bono publico service
Business and Professions Code sections 6068(h), 6103
Bradshaw v. U.S. Dist Court (9th Cir. 1984) 742 F.2d 515
Yarbrough v. Superior Court (1985) 39 Cal.3d 197 [216 Cal.Rptr. 425]
Payne v. Superior Court (1976) 17 Cal.3d 908, 924
Lamont v. Solano County (1974) 49 Cal.2d 158, 159
Rowe v. Yuba County (1866) 17 Cal. 60, 63

County of Fresno v. Superior Court (1978) 82 Cal.App.3d 51, 194-196 [146 Cal.Rptr. 880]

Protect interests of party

Right to counsel
defendant has choice when retaining counsel, but not for appointed counsel
juvenile court had no power to remove public defender absent a showing that minor was not indigent or a conflict existed
may be forfeited by defendant’s conduct towards counsel only after a full due process proceeding is afforded
U.S. v. Farias (9th Cir. 2010) 618 F.3d 1049
may not be forfeited without defendant’s voluntary, knowing and intelligent waiver
McCormick v. Adams (9th Cir. 2010) 621 F.3d 970
People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
waiver of right must be knowing and intelligent
U.S. v. Gerritsen (9th Cir. 2009) 571 F.3d 1001

ARBITRATION
Agreement with client to arbitrate claims brought by client
CAL 1977-47
court may decline to compel arbitration if “a party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of same transaction or series of related transactions and there is a possibility of conflicting rulings of law or fact” (CCP 1281.2)
malpractice claims
-arbitrator’s decision to dismiss legal malpractice case due to plaintiff’s inability to pay should have allowed case to proceed in federal court
Tillman v. Tillman, Rheingold, Valet, Rheingold, Shkolnik & McCartney (9th Cir. 2016) 825 F.3d 1069
ARBITRATION

no duty to separately explain arbitration agreement when attorney changes firms and client signs new fee agreement when client is a sophisticated businessperson

Arbitration provisions of retainer agreement are enforceable

Arbitration provisions of retainer agreement are enforceable and applicable to legal malpractice action

Arbitrator

Code of Civil Procedure section 1141.18

Code of Civil Procedure section 1286.2(a)(4)

Code of Civil Procedure section 1286.2(a)(4)

Code of Civil Procedure section 1281.9

Code of Civil Procedure section 1284

Code of Civil Procedure section 1141.18

Code of Civil Procedure section 1286.2(a)(4)

Code of Civil Procedure section 1286.2(a)(5)

Nullification of arbitration agreement not subject to judicial review where determination of validity ground for vacating arbitration award

ECC Capital Corporation et al., v. Manatt, Phelps & Phillips, LLP (2017) 7 Cal.App.5th 885 [215 Cal.Rptr.3d 492]

United Health Centers of the San Joaquin Valley Inc. v. Superior Court (2014) 229 Cal.App.4th 63 [177 Cal.Rptr.3d 214]


Rebmann v. Rohde (2011) 196 Cal.App.4th 1283 [127 Cal.Rptr.3d 510]


Dornbirer v. Kaiser Foundation Health Inc. (2008) 112 Cal.Rptr.3d 597

failure of arbitrator to disclose nature of professional responsibility

United Health Centers of the San Joaquin Valley Inc. v. Superior Court (2014) 229 Cal.App.4th 63 [177 Cal.Rptr.3d 214]

Dornbirer v. Kaiser Foundation Health Inc. (2008) 112 Cal.Rptr.3d 597

failure of arbitrator to disclose grounds for disqualification as the basis for civil liability

- arbitral immunity protects arbitrator from civil liability; vacation award proper remedy


failure of arbitrator to disclose grounds for disqualification as the basis to vacate interim award


failure of arbitrator to disclose that his wife had worked for law firm that represents party to arbitration more than 2 years before firm represented that party, does not require vacatur of award

Johnson v. Gruma Corporation (9th Cir. 2010) 614 F.3d 1062

failure to timely disclose a conflict arising from prior service as a mediator for one of the parties


federal securities law preempts California Standards Code rules on arbitrator disclosure and disqualification for persons serving as neutral arbitrators under contractual arbitration agreements

Jevne v. Superior Court (2005) 35 Cal.4th 935 [28 Cal.Rptr.3d 685]

judiciary is precluded from vacating an arbitration award on the basis of purported error of fact or law


neutral arbitrators must be held to the same ethical standards of impartiality as the judiciary in order to promote public confidence in the arbitration system

Haworth v. Superior Court (2010) 50 Cal.4th 372 [112 Cal.Rptr.3d 853]


United Health Centers of the San Joaquin Valley Inc. v. Superior Court (2014) 229 Cal.App.4th 63 [177 Cal.Rptr.3d 214]


Rehmann v. Rohde (2011) 196 Cal.App.4th 1283 [127 Cal.Rptr.3d 510]


no duty on arbitrator to disclose religion or family background when such facts do not cause a reasonable person to entertain a doubt regarding his ability to be impartial

Rehmann v. Rohde (2011) 196 Cal.App.4th 1283 [127 Cal.Rptr.3d 510]

parties may enter into an agreement that authorizes arbitrator to determine existence of an attorney-client relationship


standards for neutral arbitrators adopted by the Judicial Council


Attachment prior to


Attorney as arbitrator

Rule 1-710, Rules of Professional Conduct (effective March 18, 1999)

LA 415 (1983)

while representing client on other matters

CAL 1984-80

Attorney conflict or breach of duty of loyalty may justify vacating an arbitration award


law firm obligated to pay attorney fees to its “of counsel”
attorney for representation in fee dispute with client
[133 Cal.Rptr.3d 274]
notice of client’s right to arbitrate a dispute must be given
after dispute has arisen
Cal.Rptr.2d 550]
LA 521, OC 99-002
prevailing defendant not entitled to award of attorney fees
where case brought under anti-hate crime statute
Cal.App.4th 636 [98 Cal.Rptr.3d 300]
trial court procedures
Civil Code of Procedure section 1285 et seq.
trial de novo
Cal.Rptr.3d 546]
Corell v. Law Firm of Fox and Fox (2005) 129
Cal.App.4th 531 [28 Cal.Rptr.3d 310]
Shiver, McGrane & Martin v. Littell (1990) 217
Cal.App.3d 1041 [88 Cal.Rptr.3d 800]
Cal.Rptr. 91]
Attorney’s associate as arbitrator in case in which attorney
represents client
LA 302 (1968)
Authority of arbitration
Pacific Motor Trucking v. Automotive Machinists (9th Cir.
1983) 702 F.2d 176
Moncharsh v. Heily & Blase (1997) 3 Cal.4th 1 [10
Cal.Rptr.2d 183]
Hoso Foods, Inc. v. Columbus Club, Inc. (2010) 190
Cal.App.4th 881 [116 Cal.Rptr.3d 594]
Bak et al. v. MCL Financial Group, Inc. (2009) 170
Cal.App.4th 1118 [88 Cal.Rptr.3d 800]
531 [28 Cal.Rptr.3d 310]
Cal.Rptr.3d 293]
Cal.Rptr.2d 553]
California Faculty Association v. Superior Court (1998) 63
Cal.App.4th 935 [75 Cal.Rptr.2d 1]
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arbitration award need not be vacated when judge who
ordered arbitration should have been disqualified
Rossco Holdings Inc. v. Bank of America (2007) 149
Cal.App.4th 1353 [58 Cal.Rptr.3d 141]
binding agreement
- arbitration in accordance with Business and Professions
Code section 6200 et seq. is non-binding unless parties
agree in writing to make it binding
Glaser, Weil, Fink, Jacobs and Shapiro, LLP v. Goff
(2011) 194 Cal.App.4th.423 [125 Cal.Rptr.3d 26]
panel’s denial of a motion to disqualify lawyers for an
alleged conflict of interest may not support party’s
subsequent assertion of claim preclusion of res judicata
Cal.App.4th 96 [116 Cal.Rptr.2d 644]
Authority of attorney to unilaterally bind client to binding
arbitration with opposing party
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Cal.Rptr.3d 109]
CPI Builders, Inc. v. IMPCO Technologies, Inc. (2001) 94
Cal.App.4th 1167 [114 Cal.Rptr.2d 851]
Binding clause in law firm employment agreement
Davis v. O’Melveny & Myers (9th Cir. 2007) 485 F.3d 1066
Binding clause in retainer agreement
45 Cal.4th 1034 [87 Cal.Rptr.3d 700]
Agular v. Lerner (2004) 32 Cal.4th 974 [12 Cal.Rptr.3d
287]
Cal.App.4th 821 [54 Cal.Rptr.3d 685]
663]
Law Offices of Ian Herzog v. Law Offices of Joseph M.
Powers v. Dickson, Carlson & Camplilo (1997) 54
Cal.App.4th 1102 [63 Cal.Rptr.2d 261]
Cal.Rptr.2d 27]
Lawrence v. Walzer & Gabrielson (1989) 207 Cal.App.3d
1501 [256 Cal.Rptr. 6]
CAL 1989-116, CAL 1981-56
LA 489 (1997)
binding private arbitration clause in attorney-client fee
agreement may be enforced under the California Arbitration
Act (CAA) once the MFAA arbitration process is over
Schatz v. Allen Matkins Leck Gamble & Mallory LLP
(2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]
Greenberg Glusker Flamsen Claman & Machtinger LLP v.
Rosenson (2012) 203 Cal.App.4th 688 [137 Cal.Rptr.3d
489]
court may decline to compel arbitration if “a party to the
arbitration agreement is also a party to a pending court
action or special proceeding with a third party, arising out of
same transaction or series of related transactions and there
is a possibility of conflicting rulings of law or fact” (CCP
1281.2)
446 [155 Cal.Rptr.3d 567]
Mandatory Fee Arbitration Act does not impliedly repeal
California Arbitration Act
Schatz v. Allen Matkins Leck Gamble & Mallory LLP
(2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]
no duty to separately explain arbitration agreement when
attorney changes firms and client signs new fee agreement
when client is a sophisticated businessperson
Desert Outdoor Advertising v. Superior Court (2011) 196
Cal.App.4th 866 [127 Cal.Rptr.3d 158]
not applicable to business deal between attorney and client
[62 Cal.Rptr.2d 271]
Certification of non-resident, out-of-state attorney
representatives
Code of Civil Procedure section 1282.4
Code of Civil Procedure section 1286.6 (authority to amend or
correct a final award)
Bak et al. v. MCL Financial Group, Inc. (2009) 170
Cal.App.4th 1118 [88 Cal.Rptr.3d 800]
663]
paragraph (a)(4)
- arbitrator exceeded his power by awarding statutory
attorney’s fees to defendant employer for prevailing on
meal and rest claims in violation of public policy
Ling v. P.F. Chang’s China Bistro Inc. (2016) 245
Cal.App.4th 1242 [200 Cal.Rptr.3d 230]
paragraph (a)(5)
- court properly corrected award and remanded to
arbitrator to determine reasonable fees and costs
Ling v. P.F. Chang’s China Bistro Inc. (2016) 245
Cal.App.4th 1242 [200 Cal.Rptr.3d 230]
Costs
law firm required to pay arbitration cost of former clients
who sued firm, where client is of limited economic means
[161 Cal.Rptr.3d 493]
County bar association as arbitrator

Immune from suit arising from arbitration of attorney-client dispute


Disqualification of arbitrator, grounds

Johnson v. Gruma Corporation (9th Cir. 2010) 614 F.3d 1062

Haworth v. Superior Court (2010) 50 Cal.4th 372 [112 Cal.Rptr.3d 853]


Definition of “professional relationship” for purposes of statutory disclosure of information that could affect the arbitrator’s neutrality


Denied when arbitrator fails to disclose a prior connection to attorney defendant of which arbitrator was not aware of


Failure of arbitrator to disclose that his wife had worked for law firm that represents party to arbitration more than 2 years before firm represented that party, does not require vacatur of award

Johnson v. Gruma Corporation (9th Cir. 2010) 614 F.3d 1062

Failure to disclose information that might indicate bias (CCP § 1281.9 et seq.)


United Health Centers of the San Joaquin Valley Inc. v. Superior Court (2014) 229 Cal.App.4th 63 [177 Cal.Rptr.3d 214]

Dornbirer v. Kaiser Foundation Health Inc. (2008) 166 Cal.Rptr.3d 214

Vacatur of arbitration award denied where arbitrator’s voluntary disclosure of his membership in the same professional organization as the expert witness as such disclosure was not required by law (CCP § 1281.9 et seq.)


Employment contract between associate and law firm contains an arbitration agreement as to all disputes


No right of parties to seek arbitrator’s disqualification based on disclosure that was not statutorily required (CCP § 1281.9 et seq.)


Nominee for service as a neutral arbitrator must disclose any matter that could cast doubt on his or her ability to be impartial


Disclosure of public censure while previously serving as judge not required

Haworth v. Superior Court (2010) 50 Cal.4th 372 [112 Cal.Rptr.3d 853]

Not available when motion to disqualify is brought after ruling by arbitrator on any contested matter


Requires raising issue in a timely manner

United Health Centers of the San Joaquin Valley Inc. v. Superior Court (2014) 229 Cal.App.4th 63 [177 Cal.Rptr.3d 214]

Employment contract between associate and law firm contains an arbitration agreement as to all disputes


Federal securities law preempts California Standards Code rules on arbitrator disclosure and disqualification for persons serving as neutral arbitrators under contractual arbitration agreements

Jevne v. Superior Court (2005) 35 Cal.4th 935 [28 Cal.Rptr.3d 685]

Arbitrator’s failure to disclose that his resume listed one of the firm’s partners as a reference required vacation of arbitration award

ARBITRATION

vacation of arbitration award where arbitrator refused to hear evidence that an issue material to the controversy had previously been resolved and where the arbitrator’s refusal substantially prejudiced the party seeking to introduce such evidence


Fee arbitration [See Fee, Professional liability.]

Business and Professions Code section 6200 et seq.

Schatz v. Allen Matskins Leck Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]

Aguilar v. Lerner (2004) 32 Cal.4th 974 [12 Cal.Rptr.3d 287]


Mandatory Fee Arbitration Act (updated entries through 12/31/2018)

reduction of attorney’s fees to client is dischargeable in personal bankruptcy

Scheer v. State Bar of California (9th Cir. 2016) 819 F.3d 1209

binding private arbitration clause in attorney-client fee agreement may be enforced under the California Arbitration Act (CAA) once the MFAA arbitration process is over

Schatz v. Allen Matskins Leck Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]


binding private arbitration clause in attorney-client fee agreement not effective where client requested mandatory arbitration pursuant to State Bar rules for fee disputes


arbitration award becomes binding 30 days after notice of award


-filing of claim in small claims court is effective rejection of award

Giorianni v. Crowley (2011) 197 Cal.App.4th 1462 [129 Cal.Rptr.3d 546]

law of fee arbitration corrections


arbitration award to attorney not an enforceable judgment where attorney failed to file petition for the court to confirm award or to request entry of judgment confirming award


arbitrator’s authority to determine own jurisdiction


attorney’s debt to client is dischargeable in personal bankruptcy

Scheer v. State Bar of California (9th Cir. 2016) 819 F.3d 1209

binding private arbitration clause in attorney-client fee agreement may be enforced under the California Arbitration Act (CAA) once the MFAA arbitration process is over

Schatz v. Allen Matskins Leck Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]


binding private arbitration clause in attorney-client fee agreement not effective where client requested mandatory arbitration pursuant to State Bar rules for fee disputes


client waiver of arbitration rights


dismissal is not automatic after attorney fails to give client arbitration right notice in fee dispute action


Mandatory Fee Arbitration Act does not impliedly repeal California Arbitration Act

Schatz v. Allen Matskins Leck Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]

notice of claim against client’s fee guarantor


public policy

Schatz v. Allen Matskins Leck Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]


trial de novo after award of fees by arbitrator not preserved by client’s filing of a malpractice claim


untimely request for trial following an arbitration conducted pursuant to the mandatory fee arbitration act


waiver due to filing of pleading for affirmative relief


Insurance cases

Civil Code section 2860(c)

-defense costs and attorney’s fees distinguished for purposes of arbitration of disputes between Cumis counsel and insurer


-disputes over attorney’s fees and expenses between parties other than Cumis counsel for insured and insurer cannot be arbitrated under this code section

ASSIGNED COUNSEL

Buying an interest in the judgment against one’s client from former client’s opponent

Debt
where attorney is owed a debt, client’s assignment to attorney does not constitute “buying of claim” for purposes of Business and Professions Code § 6129
Martin v. Freeman (1963) 216 Cal.App.2d 639 [31 Cal.Rptr. 217]

Fees
right to statutory award of attorney fees in civil rights case cannot be contractually assigned to attorney
Pony v. County of Los Angeles (9th Cir. 2006) 433 F.3d 1138

Legal malpractice claims are not assignable under California law and public policy
Baum v. Duckor Spradling & Metzger (1999) 72 Cal.App.4th 54 [84 Cal.Rptr.2d 703]
bankruptcy estate representative pursuing claim for the estate is not an assignee

SHAREHOLDERS


Lottery ticket to attorney
LA 115 (1937)

Third-party funding of lawsuit in exchange for interest in proceeds distinguished from buying a claim
LA 500 (1999)

Tort claims for personal injuries are not assignable under California law
Pony v. County of Los Angeles (9th Cir. 2006) 433 F.3d 1138

ASSOCIATE

City council member’s practice by
CAL 1977-46, LA(I) 1975-4

Conducts employer’s practice during employer’s disability or absence
LA 348 (1975)

Definition
Rule 1-100(B)(4), Rules of Professional Conduct

where an outside lawyer functions on a particular matter essentially on the same basis as an employee, the outside lawyer is an associate for purposes of rule 2-200

Division of fees

attorney as partner or employee of two law firms
LA 511 (2003)

Duty to represent a client competently
LA 383 (1979)

Duty with respect to disabled employer’s practice
LA 348 (1975)

Former attorney-employees liable for violation of Uniform Trade Secrets Act (Civil Code § 3246 et seq.) if found to have misappropriated employer’s protected trade secret client list for solicitation
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]

Former attorney-employees may compete for the business of former employer so long as such competition is fairly and legally conducted
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]

Form for listing on announcements
SF 1973-18
ASSOCIATE COUNSEL

Practice by employer of when associate is prosecutor
LA 377 (1978)
Represented other side
LA 363 (1976)

ASSOCIATE COUNSEL

Division of fees
association of outside counsel not a basis for exemption from 2-200 requirements
outright legal services
LA 518 (2006)
Employment as subject to approval of other attorney
LA 193 (1951)
Employment as, subject to approval of client
SD 1974-2
Outsourcing legal services
LA 518 (2006)

ATTACHMENT

Of assets of another lawyer’s client when learned of assets during unrelated representation
LA(I) 1963-1

ATTORNEY-ATTORNEY RELATIONSHIP

Business and Professions Code section 6068(f)

Civil Code section 47(2)
Rules: 2-100, 2-200, 2-300, and 2-400, Rules of Professional Conduct
United States v. Wunsch (9th Cir. 1996) 84 F.3d 1110, 1119
In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775, 786-787

Attorney as agent of another
Beck v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]

Attorney as independent contractor

Attorney as partner or employee of two law firms
LA 511 (2003)
Communications with the State Bar are privileged
Consultation with an independent attorney regarding the client's case may be permitted
SD 1996-1

Division of fees
attorneys’ oral agreement to form joint venture to share legal fees held enforceable notwithstanding argument that such arrangement may have violated rules of professional conduct requiring clients’ consent to share fees and waiver of conflict of interest
Jorgensen v. Cassidy (9th Cir. 2003) 320 F.3d 906
by attorneys who represented each other in recovery of contingent fee due under retainer agreement
Farmers Insurance Exchange v. Law Offices of Conrado Roe Savas, Jr. (9th Cir. 2001) 250 F.3d 1234
former shareholder of law firm has no ownership or lien interest upon fees owed to firm by client
post-dissolution profits from unfinished partnership business
Special appearance by an attorney results in the formation of an attorney-client relationship with the litigant. In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

Specially appearing attorney undertakes a limited association with the litigant’s attorney of record. Streit v. Covington & Crowe (2000) 82 Cal.App.4th 441 [82 Cal.Rptr.2d 193]

Subpoena

grand jury subpoena of court-appointed defense counsel to testify against client would likely destroy the attorney-client relationship. U.S. v. Bergeson (9th Cir. (Or.) 2005) 425 F.3d 1221

Termination of employer-employee relationship

former attorney-employees acted unlawfully and unethically when they engaged in campaign to disrupt employer’s business. Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]

former attorney-employees liable for intentional interference with at-will employment relation by engaging in unlawful and unethical conduct and causing personnel to terminate their at-will employment contracts. Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289, 95 P.3d 513]

former attorney-employees liable for Violation of Uniform Trade Secrets Act (Civil Code § 3426 et seq.) if found to have misappropriated employer’s protected trade secret client list. Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289, 95 P.3d 513]

former attorney-employees may compete for the business of former employer so long as such competition is fairly and legally conducted. Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289, 95 P.3d 513]

Threat to opposing counsel

Standing Committee on Discipline of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1171


Abstrac’t

In re Ochse (1951) 38 Cal.2d 230, 231 [238 P.2d, 561]

Accusing opposing counsel of misrepresentation may be moral turpitude when done with gross neglect. In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252

Acts constituting malpractice


Acts in role other than as an attorney


Acts of client

concurrence in or conspiracy with client’s acts not inferred from the existence of attorney-client relationship itself. Contreras v. Dowling (2016) 4 Cal.App.5th 774 [208 Cal.Rptr.3d 707]

Advance fees and costs [See Fees, advance.]

Adverse interest

In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252


Advise client of disability of attorney; associate’s duty

L A 348 (1975)

Advise client of potential malpractice claims against oneself

CAL 2009-178

Advise client of prior attorney’s malpractice

LA 390 (1981)

ATTORNEY-CLIENT RELATIONSHIP

Agency


normally client bound by acts of attorney agent, however, where gross negligence amounts to abandonment, client entitled to relief. Mackey v. Hoffman (9th Cir. 2012) 682 F.3d 1247

Appellate counsel for minor

in a dependency matter, attorney has the authority to dismiss the child’s appeal based on appellate counsel’s assessment of minor’s best interest only with approval of guardian ad litem. In re Josiah Z. (2005) 36 Cal.4th 664 [31 Cal.Rptr.3d 472]

Appointment of attorney for indigent


Appointee of succeeding attorney

Franklin v. Murphy (9th Cir. 1984) 745 F.2d 1221, 1236


As bank’s director, bank attorney


Association for particular case

Wells Fargo & Co. v. San Francisco (1944) 25 Cal.2d 37 [152 P.2d 625]

Brunner v. Lucas, Pino & Lucco (1959) 2 Cal.2d 450 [342 P.2d 308]

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

limited scope of representation as “appearance attorney” in an immigration proceeding is improper. In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

specially appearing attorney undertakes a limited association with the litigant’s attorney of record. Streit v. Covington & Crowe (2000) 82 Cal.App.4th 441 [82 Cal.Rptr.2d 193]

where an outside lawyer functions on a particular matter essentially on the same basis as an employee, the outside lawyer is an associate for purposes of rule 2-200. Sims v. Charness (2001) 86 Cal.App.4th 884 [103 Cal.Rptr.2d 619]

Attorney as agent


Echlin v. Superior Court (1939) 13 Cal.2d 368 [90 P.2d 6]

Sullivan v. Dunne (1926) 198 Cal. 183 [244 P. 343]


agent is also a wrongdoer when the principal is a wrongdoer. Mindy’s Cosmetics, Inc. v. Dakar (9th Cir. 2010) 611 F.3d 590

-currence in or conspiracy with client’s acts not inferred from the existence of attorney-client relationship itself. Contreras v. Dowling (2016) 4 Cal.App.5th 774 [208 Cal.Rptr.3d 707]

client has right and power to discharge at any time. O’Connell v. Superior Court (1935) 2 Cal.2d 418 [41 P.2d 334]

dissolutes on suspension of attorney


See How to Use This Index, supra, p. i 23 2019 (updated entries through 12/31/2018)
exception when attorney has a present and co-existing interest in the object of representation

Echlin v. Superior Court (1939) 13 Cal.2d 368 [90 P.2d 63]

imputation of agency relationship


-agent imputed to client


notice to attorney

-agent imputed to client


outside counsel for a corporation


Attorney as employee

Casselman v. Harford etc. Co. (1940) 36 Cal.App.2d 700 [98 P.2d 539]

CAL 1993-132

Attorney as independent contractor


LA 473 (1992)

outside counsel for a corporation


outsourcing legal services

LA 518 (2006)

Attorney as trustee, client as beneficiary

Probate Code sections 16002 and 16004

Probate Code section 15687

*Civil Code section 2235 (repealed 7/1/87)

LA 496 (1998)

Attorney as witness


Attorney assumes personal obligation of reasonable care


specially appearing attorney owes a duty of care to the litigant


In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 439

Attorney entitled to reasonable value of services rendered, quantum meruit


Attorney need not blindly follow desire of client

Summerlin v. Schring (9th Cir. 2005) 427 F.3d 623

Blanton v. Womancare (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]


counsel has a professional responsibility not to pursue an appeal that is frivolous or taken for the purpose of delay just because client instructs him to do so


court's advice to defendant that he follow his attorney's advice did not impair defendant's ability to waive his right to testify

United States v. Joelson (1993) 7 F.3d 174

Attorney neglect must be excused to avoid imputation to client


Attorney not liable to insured when insurer, under consent clause of policy, settles claim without consulting insured


Attorney of record

Singh v. Immigration and Naturalization Service (2003) 315 F.3d 1186


mere "blue sky" work in offering does not create attorney-client relationship between underwriter's counsel and issuing company


payment of attorney fees alone not determinative, only a factor


specially appearing attorney forms an attorney-client relationship with the litigant


Attorney's partner or employee


Attorney-client have co-existing interests

SD 1983-11

Authority of attorney

Levy v. Superior Court (1995) 10 Cal.4th 578 [41 Cal.Rptr.2d 878]

Blanton v. Womancare (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]

Linsk v. Linsk (1969) 70 Cal.2d 272, 276 [74 Cal.Rptr. 544]

Provost v. Regents of the University of California (2011) 201 Cal.App.4th 1289 [135 Cal.Rptr.3d 591]


In re Marriage of Helsel (1998) 18 Cal.3d 332 [243 Cal.Rptr. 667]


In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

*In the Matter of Jennings (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 337

CAL 2002-160

commitment proceedings

-counsel for client found to be insane and dangerous to others may render informed tactical decisions over client's objections

ATTORNEY-CLIENT RELATIONSHIP

payment to client
LA 437 (1985)

Client has right to discharge
Echlin v. Superior Court (1939) 13 Cal.2d 368 [90 P.2d 63]
absolute right with or without cause in California

exception when attorney has a present and co-existing interest in the object of the representation
Echlin v. Superior Court (1939) 13 Cal.2d 368 [90 P.2d 63]
should not be tied to attorney after losing faith
Fracas v. Brent (1972) 6 Cal.3d 784 [100 Cal.Rptr. 385, 494 P.2d 9]

Client’s non-payment of fee [See Fee.] withdrawal
Rule 2-111(C)(1)(f), Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)

-notice to client
LA 125 (1940)
- protect client’s position in litigation
LA 125 (1940)

Client’s rights may not be deprived because of attorney neglect
Segal v. State Bar (1988) 44 Cal.3d 1077 [245 Cal.Rptr. 404]

Client’s right to choice of counsel
Cohen v. United States District Court for the Northern District of California (9th Cir. 2009) 586 F.3d 703
People v. Ramirez (2006) 39 Cal.4th 398 [46 Cal.Rptr.3d 677]
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]


In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
automatic vicarious disqualification of a firm would reduce the right of the client to choose an attorney
County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990
class actions

-right to lead plaintiff to select lead counsel under
Private Securities Litigation Reform Act
Cohen v. United States District Court for the Northern District of California (9th Cir. 2009) 586 F.3d 703

client’s interests are paramount in any consideration of the relationship between attorney and client
Fracas v. Brent (1972) 6 Cal.3d 784 [100 Cal.Rptr. 385, 494 P.2d 9]

conservatorship proceedings
criminal defendant enjoys right to discharge retained counsel for any reason unless denial compelled by fair, efficient and orderly administration of justice
U.S. v. Brown (9th Cir. 2015) 785 F.3d 1337
defendant’s exclusion from an in-camera conference regarding defense counsel’s withdrawal deprived defendant of due process of law

*Bradley v. Henry (9th Cir. 2005) 428 F.3d 811
defendant’s right to substitute attorneys of his choice, even after defendant was made aware that chosen counsel did not meet standards for appointed counsel and offer to defendant to consult with independent counsel was declined
People v. Ramirez (2006) 39 Cal.4th 398 [46 Cal.Rptr.3d 677]
attorney-client relationship

indigent defendants does not have the right to select court-appointed attorney

People v. Noriega (2010) 48 Cal.4th 517 [108 Cal.Rptr.3d 74]
must yield to considerations of ethics

Comden v. Superior Court (1978) 20 Cal.3d 906, 915 [145 Cal.Rptr. 9, 576 P.2d 971]
Client suffering from a mental disorder
client, previously found not guilty by reason of insanity, must act through counsel who may properly waive, over client's objections, a jury trial in a proceeding to extend commitment

counsel for client found to be insane and dangerous to others may render informed tactical decisions over client's objections


Communications

between attorney and inmate client

-prison officials opening mail

Mann v. Adams (9th Cir. 1988) 846 F.2d 589

with a minor client in ways consistent with minor's age, language skills, intelligence, experience, maturity, and mental condition

LA 504 (2000)

Competence of the client


LA 509 (2002)

Competent representation at time of representation

specialy appearing attorney owes a duty of care to the litigant

In re Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

Condominium associations

Confidence of client in attorney

CAL 1987-93, CAL 1984-83

Confidential in character

Baum v. Ducker Spradling & Metzger (1999) 72 Cal.App.4th 54 [84 Cal.Rptr.2d 703]
Plxweve Aircraft Co. v. Greenwood (1943) 61 Cal.App.2d 21 [141 P.2d 933]

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179

CAL 2016-195

Confidential in nature


Conflict of interest

based on relationship between class action counsel and class representative

buying an interest in the judgment against one's client from former client's opponent


client as beneficiary, attorney as trustee

Probate Code sections 16002 and 16004

Probate Code section 15687

*Civil Code section 2235 (repealed 7/1/87)

LA 496 (1998)

defendant's right to conflict free counsel required that new appointed counsel be present before conducting further proceedings in open court to hear PD's request to be re-appointed after being relieved for a conflict of interest


disqualification of counsel and firm

W.L. Gore & Assoc. v. Intern. Medical Prosthetics (9th Cir. 1984) 745 F.2d 1463, 1466-1467

none exists when trustee is also creditor


wife's signature on post-nuptial agreement was tantamount to a written waiver of any potential conflict of interest

In re Marriage of Friedman (2002) 100 Cal.App.4th 65 [122 Cal.Rptr.2d 412]

Conservatorship proceedings

attorney initiated conservatorship proceedings, absent client consent


authority to bind conservatee-client who requests not to be present at hearing

In re Conservatorship of the Person of John L. (2010) 48 Cal.4th 131 [105 Cal.Rptr.3d 424]

reestablishing conservatorship by stipulation filed by conservatee's attorney

In re Conservatorship of Deidre B. (2010) 180 Cal.App.4th 1306 [103 Cal.Rptr.3d 825]

right of prospective conservatee to effective assistance of counsel


Consultation with, prima facie case of existence of

Barton v. U.S. Dist. Court for Central Dist. of Cal. (9th Cir. 2005) 410 F.3d 110

United States v. Rowe (9th Cir. 1996) 96 F.3d 1294

Davis v. State Bar (1983) 33 Cal.3d 231 [188 Cal.Rptr. 441, 655 P.2d 1276]


Miller v. Metzinger (1979) 91 Cal.App.3d 31 [154 Cal.Rptr. 22]

In re Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483

CAL 1984-84, LA 465 (1991), SD 2006-1, SD 1977-6

attorney's duty to communicate includes the duty to advise people who reasonably believe they are clients that they are, in fact, not clients

Butler v. State Bar (1990) 42 Cal.3d 323, 329 [228 Cal.Rptr. 499]

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547

CAL 2005-168, CAL 2003-161

-dealing with constituents of an organization


burden rests on client to prove existence of

U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148

Ferrara v. LaSalla (1960) 74 Cal.App.2d 263 [9 Cal.Rptr. 179]

constructive attorney-client relationship not formed between a conservatee and her conservator's designated attorney

In re Lee G. (1991) 1 Cal.App.4th 17 [1 Cal.Rptr.2d 375]
contract formality is not required

district attorney assigned to enforce a child support order did not establish attorney-client relationship re a malpractice action brought by the parent entitled to

Jager v. County of Alameda (1992) 8 Cal.App.4th 294 duty of confidentiality extends to preliminary consultations by a prospective client with a view to retention of that lawyer although employment does not result

In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]


for conflicts of interest purposes, an attorney represents the client when the attorney knowingly obtains material confidential information from the client and renders legal advice or services as a result In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]


ATTORNEY-CLIENT RELATIONSHIP


ATTORNEY-CLIENT RELATIONSHIP

- attorney not barred from continuing to represent insider of closely held company in a derivative lawsuit pursuant to Forrest v. Baeza
- in bringing the derivative action, shareholder’s attorney is acting against the corporation’s wishes because the corporation refuses to pursue the claim
totality of circumstances test used to determine whether manager employees are clients
- U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
- unincorporated organization
Court appointed attorney for bankruptcy trustee may not be removed by spouse of bankrupt party
- Matter of Fonoilier (9th Cir. 1993) 707 F.2d 441, 442
Court appointed attorney to coordinate discovery in complex litigation
- no interference to parties’ right to counsel of choice
- Court appointed for criminal defendant for a civil action
Creation of relationship
- United States v. Rowe (9th Cir. 1996) 96 F.3d 1294
- City of Petaluma v. Superior Court (2016) 248 Cal.App.4th 1023 [204 Cal.Rptr.3d 196]
SD 2006-1
- attorney-client relationship may exist when an attorney provides a legal service, including investigative fact-finding, without also providing advice
- City of Petaluma v. Superior Court (2016) 248 Cal.App.4th 1023 [204 Cal.Rptr.3d 196]
- between corporate employee and corporate counsel
- U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
formed with bank when attorney writes an opinion letter for bank at the request of a client who is a customer of the bank
mere “blue sky” work in offering does not create attorney-client relationship between underwriter’s counsel and issuing company
no relationship based on receipt of private information from potential client via unsolicited email
SD 2006-1
no relationship with third party absent an intent by attorney and client to benefit third party
payment of attorney fees alone not determinative, only a factor
specially appearing attorney forms an attorney-client relationship with the litigant
statement that attorney represented client is sufficient to support a finding of an attorney-client relationship also, work performed to obtain loan supports finding
subjective belief that an attorney-client relationship exists cannot create such a relationship; instead, the parties’ intent and conduct determine whether such a relationship has been created
under the implied contract theory (Civil Code § 1621)
Defendant must make knowing and intelligent waiver of counsel
- McCormick v. Adams (9th Cir. 2010) 621 F.3d 970
- U.S. v. Farias (9th Cir. 2010) 618 F.3d 1049
- People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
right to counsel may be forfeited by defendant’s conduct towards counsel only after a full due process proceeding is afforded
Defendant’s right to counsel of choice includes right to enter into legitimate arrangements with retained counsel, including retaining counsel only through preliminary examination
Defendant’s right to substitute attorneys of his choice, even after defendant was made aware that chosen counsel did not meet standards for appointed counsel and offer to defendant to consult with independent counsel was declined
- People v. Ramirez (2006) 39 Cal.4th 398 [46 Cal.Rptr.3d 677]
Defined
Definition of attorney
- Evidence Code section 950
Definition of client
- Evidence Code section 951
Dependency proceeding
- representation of a minor client
In re Charlisse C. (2008) 45 Cal.App.4th 145 [84 Cal.Rptr.3d 597]
LA 504 (2000)
- Discharge of attorney, rights and obligations of client
Disqualification of attorney
- attorney retained by insurer to represent insured has attorney-client relationship with insurer for purposes of
- former personal involvement with opposing party
ATTORNEY-CLIENT RELATIONSHIP

to take all actions necessary to protect his client’s rights may not be sanctioned
[91 Cal.Rptr. 735]
to take reasonable measures to determine law at time of actions
*Sharpe v. Superior Court (1983) 143 Cal.App.3d 469
[192 Cal.Rptr. 16]
Effect on communication with opposing party on attorney-client relationship
Established by contract
Established by inquirers calling attorney telephone hotline for advice
LA 449 (1988)
Estoppel
attorney for suspended corporation cannot claim that statute of limitations expired when reliance upon his advice led to the statute expiring
[126 Cal.Rptr.2d 782]
Executors
existence of relationship for purposes of privilege
Existence of, prima facie case
Miller v. Metzinger (1979) 91 Cal.App.3d 31 [154 Cal.Rptr. 22]
Extended attorney-client privilege to lay persons
Welfare Rights Organization v. Crisan (1983) 33 Cal.3d 766
[191 Cal.Rptr. 919, 661 P.2d 1073]
Extent of privileged communications
People v. Chapman (1984) 36 Cal.3d 98, 110
In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
Failure to communicate with clients
Butler v. State Bar (1986) 42 Cal.3d 323 [228 Cal.Rptr. 499]
Sharp v. State Bar (1986) 38 Cal.3d 525 [213 Cal.Rptr. 236]
In the Matter of Freed (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349
Failure to disclose legal authority in the controlling jurisdiction adverse to client breach of duty
Southern Pacific Transp. v. P.U.C. of State of California (9th Cir. 1983) 716 F.2d 1285, 1291
Fee payment as evidence of existence of relationship
Hicks v. Drew (1897) 117 Cal. 305
Fiduciary duty
LA 389 (1981)
representation of a minor client in a dependency proceeding
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
LA 504 (2000)
to client
-specially appearing attorney owes a duty of care to the litigant
to make files available to client on withdrawal
CAL. 2007-174, CAL. 1994-134
LA 493 (1998), SD 1997-1
SD 1984-3, SD 1977-3
SF 1996-1
to represent client until withdrawal or substitution
In re Jackson (1985) 170 Cal.App.3d 773 [216 Cal.Rptr. 539]
In the Matter of Dahiz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269
to represent client zealously
*People v. McKenzie (1983) 34 Cal.3d 616 [194 Cal.Rptr. 462, 668 P.2d 769]
ATTORNEY-CLIENT RELATIONSHIP

- plaintiff and alleged beneficiary of a testamentary instrument may have no standing to bring malpractice action against attorney-defendant

Hampfield v. Hancock (9th Cir. (Idaho) 2004) 364 F.3d 1024
do not extend to co-counsel

Beck v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]

no duty owed to non-client potential beneficiary absent testator’s express intent to benefit non-client


Former client

Kearns v. Fred Lavery Porsche Audi Co., (Fed. Cir. 1984) 745 F.2d 600, 603-605
Elan Transdermal, Ltd. v. Cygnus Therapeutic Systems (N.D. Cal. 2001) 809 F.Supp. 1383, 1384

Metropolis etc. Sav. Bank v. Monnier (1915) 169 Cal. 592, 598 [147 P. 265]


PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP (2007) 150 Cal.App.4th 384 [58 Cal.Rptr.3d 516]


In the Matter of Gillis (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387

In the Matter of McCarthy (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364

Formal substitution ordinarily ends the attorney/client relationship. However, the relationship can continue—withstanding the withdrawal and substitution—if objective evidence shows that the attorney continues to provide legal advice or services.


In the Matter of Allen (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198

using funds obtained by the representation


In the Matter of Gillis (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297

buying an interest in the judgment against one’s client from former client’s opponent


“Framework” contract, where attorney and client provide a structure for future “as requested” representation does not create a current attorney client relationship

Banning Ranch distinguished


Friends require the same strict adherence to professional rules and record keeping as regular clients

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128

Gifts to attorney

Rule 4-400, Rules of Professional Conduct (operative as of May 27, 1989)

McDonald v. Hewlett (1951) 102 Cal.App.2d 680 [228 P.2d 83]
attorney/beneficiary drafts gift instrument

Probate Code sections 15687, 21350 et seq,


Magee v. State Bar (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839]

inducing client to offer of free use of client’s vacation property

CAL 2011-180

Good faith of defendant client


Governmental entities

Brown Act (CCP § 54956.9)

- board of a non-profit corporation created by city to assist in eminent domain litigation could not meet in closed session with legal counsel for the city’s redevelopment agency because the board was not a party to the litigation

Shapiro v. Board of Directors of Centre City Development Corp. (2005) 134 Cal.App.4th 170 [35 Cal.Rptr.3d 826]

Guardian ad litem

SD 2017-2

Imputation of knowledge

Mossman v. Superior Court (1972) 22 Cal.App.3d 706 [99 Cal.Rptr. 638]


presumption of shared confidences in a law firm

- rebuttable

County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990

Imputed to client


In propria persona client and advisor counsel share handling of case

Johnson, York, O’Connor & Caudill v. Board of County Commissioners for the County of Fremont (1994) 868 F.Supp. 1226

People v. Bloom (1989) 48 Cal.3d 1194 [259 Cal.Rptr 669]

Mux v. Tumanian Development Corp. (2002) 102 App.4th 1318 [126 Cal.Rptr.2d 267]


LA 502 (1999)

capital inmates represented by counsel have no right to personally supplement or supersede counsel’s briefs and arguments to the Supreme Court

In re Barnett (2003) 31 Cal.4th 466 [3 Cal.Rptr.3d 108, 73 P.3d 1106]

Incompetent client

attorney initiated conservatorship proceedings, absent client consent

duty of confidentiality compared with duty to be truthful to the court


Insurance company


"monitoring counsel" distinguished from "Cumis counsel"


Insurer's attorney has duty to include insured's independent counsel in settlement negotiations and to fully exchange information


Intent and conduct of the parties are important factors to be considered


Interference with

by third party (district attorney and sheriff) -results in dismissal of criminal accused's case


government attorney improperly interfered with defendant's attorney-client relationship by obtaining tape recordings of informant's conversations with defendant on privileged matters

U. S. v. Danielson (9th Cir. (Or.) 2003) 325 F.3d 1054

Interference with economic advantage


Intervention by lay entity

attorney employed by religious organization -performs legal services for members of LA 298 (1966)

Joinder of attorney and client in an action when neither can show joinder was manifestly prejudicial

United States v. Rogers (9th Cir. 1983) 649 F.2d 1117, Rev. 103 S.C. 2132

Joint defense agreements

U.S. v. Gonzalez (9th Cir. 2012) 669 F.3d 974

advance waiver of potential future conflict contained in a joint defense agreement found enforceable

In re Shared Memory Graphics (9th Cir. 2011) 659 F.3d 1336

considered a non-waiver doctrine under CA attorney-client privilege and work product doctrines


establishes an implied attorney-client relationship with the co-defendant

United States v. Henke (9th Cir. 2000) 222 F.3d 633

Joint venturers


fiduciary duties exist even absent attorney-client relationship


LA 412 (1983)

Juvenile delinquency proceedings

indigent juvenile delinquent has right to appointed counsel on a first appeal


ineffective assistance of counsel for minor


juvenile court had no power to remove public defender absent a showing that minor was not indigent or a conflict existed


Litigious client

Brodshaw v. U.S. Dist. Court (9th Cir. 1984) 742 F.2d 515

Loan to client

Dixon v. State Bar (1982) 32 Cal.3d 728, 733


In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752

Malpractice actions tolled while attorney continues to represent client


test for whether attorney continues to represent client in same matter


Malpractice claims are not assignable under California law and public policy


Baum v. Duckor Spradling & Metzger (1999) 72 Cal.App.4th 54 [84 Cal.Rptr.2d 703]


bankruptcy estate representative pursing claim for the estate is not an assignee


shareholder's derivative action does not transfer the cause of action from the corporation to the shareholders


May not relinquish substantial right of client

exception: best discretion

Blanton v. Womancare, Inc. (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]

See How To Use This Index, supra, p. i 2019 (updated entries through 12/31/2018)
ATTORNEY-CLIENT RELATIONSHIP

Medical marijuana attorneys may give legal advice and assistance limited to activities permissible under California state law provided the client is advised of possible liability under federal law and other potential adverse consequences LA 527, SF 2015-1


Partnership


Party represented by counsel communicating with -regarding counsel's neglect of matter LA 14 (1922) -regarding subject in controversy LA 14 (1922)


Prison officials may not read mail, only open it People v. Poe (1983) 145 Cal.App.3d 374 [193 Cal.Rptr. 479]


ATTORNEY-CLIENT RELATIONSHIP

survives corporate merger

triplarite attorney-client privilege arises when title insurer hires law firm to prosecute action on behalf of its insured under title insurance policy
Bank of America v. Superior Court of Orange County (2013) 212 Cal.App.4th 1076 [151 Cal.Rptr.3d 526]

Protection of
Mitton v. State Bar (1969) 71 Cal.2d 525, 534 [78 Cal.Rptr. 649, 455 F.2d 753]

Publishing book [See Conflict of interest, literary rights.]
attorney
--concerning representation of criminal defendant
Maxwell v. Superior Court (1982) 30 Cal.3d 606 [180 Cal.Rptr. 177]
LA 287 (1965)

third party
--attorney furnishes information and material
--relating to representation of criminal defendant
LA 287 (1965)

Purchaser of client’s assets
LA 433 (1984)

Purpose
intention of confidentiality

Reasonable measures must be taken to determine the law at time of actions
*Sarpe v. Superior Court (1983) 143 Cal.App.3d 469 [192 Cal.Rptr. 16]

Receivers
existence of relationship for purposes of privilege
Refusal to execute substitution works hardship on client

Reimbursement of client
for damages recovered by defendant in action
LA 76 (1934)
reliance on attorney’s advice is only single factor in determining whether a trustee has breached a fiduciary duty
Donovan v. Mazzola (9th Cir. 1983) 716 F.2d 1226, 1234

Reliance on attorney
not good cause for filing late tax return
Sarto v. United States (N.D. Cal. 1983) 563 F.Supp. 476, 478

Reliance on counsel’s advice is only one single factor in determining whether a trustee has breached a fiduciary duty
Donovan v. Mazzola (9th Cir. 1983) 716 F.2d 1226

Reliance on party’s opinion that he is represented by counsel
LA 287 (1965)

Remedies of former clients

Represent client zealously
*People v. McKenzie (1983) 34 Cal.3d 616 [194 Cal.Rptr. 462, 668 F.2d 769]

Representation of minor in juvenile delinquency proceedings
--ineffective assistance of counsel for minor

right to appointed counsel
--juvenile court had no power to remove public defender absent a showing that minor was not indigent or a conflict existed

See How to Use This Index, supra, p. i 33 2019 (updated entries through 12/31/2018)
ATTORNEY-CLIENT RELATIONSHIP

Voice-Sought Counsel

-juvenile delinquency proceeding is sufficiently similar in substance and import to criminal prosecution that indigent juveniles are entitled to Fourteenth Amendment protections


Representation on previous charges

United States v. Masuolo (2nd Cir. 1973) 489 F.2d 217, 223

Respective roles


Retention of out-of-state law firm by California resident


Right of a party to select counsel

Panduit Corp. v. All States Plastic Mfg. Co., Inc. (7th Cir. 1984) 744 F.2d 1564, 1576

automatic vicarious disqualification of a firm would reduce the right

County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2006) 223 F.3d 990

criminal defendant not entitled to second court-appointed counsel when death penalty not sought

U.S. v. Waggner (9th Cir. (Ariz.) 2003) 339 F.3d 915

Right of defendant

People v. Davis (1984) 161 Cal.App.3d 796, 802

to counsel of choice


-defendant’s right to counsel of choice includes right to enter into legitimate financial arrangements with retained counsel, including retaining counsel only through preliminary examination


Right to appointed counsel

ineffective assistance of counsel for minor


juvenile delinquency proceeding is sufficiently similar in substance and import to criminal prosecution that indigent juveniles are entitled to Fourteenth Amendment protections


Right to counsel of choice

Cohen v. United States District Court for the Northern District of California (9th Cir. 2009) 586 F.3d 703

Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]

People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]


applies to retained counsel, not appointed counsel

U.S. v. Brown (9th Cir. 2015) 785 F.3d 1337


automatic disqualification of a firm would reduce the right

County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990


class actions

-right to lead plaintiff to select lead counsel under Private Securities Litigation Reform Act

Cohen v. United States District Court for the Northern District of California (9th Cir. 2009) 586 F.3d 703

conservatorship proceedings


court did not abuse discretion in denying motion to substitute in retained counsel; waiver based on an adequate conflict waiver


court has discretion to overrule defendant’s choice of counsel in order to eliminate potential conflicts, ensure adequate representation or prevent substantial impairment of court proceedings


court has latitude to remove counsel where potential conflict exists, over objection of defendant

People v. Noriega (2010) 48 Cal.4th 517 [108 Cal.Rptr.3d 74]


-improper due to insufficient conflict of interest

People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]

criminal defendant’s right to discharge retained counsel


People v. Lara (2001) 86 Cal.App.4th 139 [103 Cal.Rptr.2d 201]

-court may deny untimely request to discharge retained counsel


-criminal defendant enjoys right to discharge retained counsel for any reason unless denial compelled by fair, efficient and orderly administration of justice

U.S. v. Brown (9th Cir. 2015) 785 F.3d 1337

defendant’s right to conflict free counsel required that new appointed counsel be present before conducting further proceedings in open court to hear PD’s request to be reappointed after being relieved for a conflict of interest


includes criminal defendant’s Sixth Amendment right to use her own “innocent” assets (those not traceable to a criminal offense) to pay a reasonable fee for the assistance of counsel

Luis v. United States (2016) ___ U.S. ___ [136 S.Ct. 1083]

juvenile court had no power to remove public defender absent a showing that minor was not indigent or a conflict existed


may be forfeited by defendant’s conduct towards counsel only after a full due process proceeding is afforded


may not be forfeited without defendant’s voluntary, knowing and intelligent waiver

People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]

public defender not required to represent indigent person on appeal

Erwin v. Appellate Department (1983) 146 Cal.App.3d 715

waiver not effective if defendant must choose between right to speedy trial and right to competent representation

People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
Sanctions may not be levied against attorney for taking all actions necessary to protect his clients.*


Scope of representation


class action

-counsel owed a duty, post certification, to advise clients of other claims related to but outside the scope of the representation


-counsel owed a duty, post-judgment, to pursue class claims through enforcement of judgment


-counsel owed no duty to class member to give notice beyond the court-approved settlement notice procedure


defendant’s right to counsel of choice includes right to enter into legitimate financial arrangements with retained counsel, including retaining counsel only through preliminary examination


factors demonstrating ongoing attorney-client relationship for concurrent representation conflict purposes


firm’s representation terminated when firm emailed client that it “must withdraw” as client’s attorney, that its “attorney-client relationship with client is terminated forthwith,” and that it “no longer represents client with regard to any matters.”


malicious prosecution

-an associated attorney whose name is on filings cannot avoid liability by claiming ignorance facts that may lead to malicious prosecution claim


specially appearing attorney undertakes a limited association with the litigant’s attorney of record


Settlement

-general rule that attorney-agent lacks authority, without specific client authorization, to bind client to settlement agreement distinguished where the authorized corporate representative is an in-house attorney

Provost v. Regents of the University of California (2011) 201 Cal.App.4th 1289 [135 Cal.Rptr.3d 591]

Sexual harassment of client


Sexual relations with client

Rule 3-120, Rules of Professional Conduct

Business and Professions Code section 6106.9 CAL 1987-92

OC 2003-02

Special appearances

CAL 2004-165

LA 483 (1995)

specially appearing attorney forms an attorney-client relationship with the litigant and owes a duty of care to the litigant


ATTORNEY-CLIENT RELATIONSHIP


Statutory reduction of defendant's control of the case

People v. Davis (1984) 161 Cal.App.3d 796, 802 fn. 2

Substantial previous relationship


Substantial right of client may not be relinquished: exception -- best discretion

Blanton v. Womancare (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]

Substitution of attorney clause in retainee agreement

LA 371 (1977)

Substitution when conflicts of interest occur based on obligations to clients in different proceedings

Leversen v. Superior Court (1983) 34 Cal.3d 530

Telephone "hotline" run by attorney

LA 449 (1988)

Termination of employment


Threat to

Phaksuan v. United States (9th Cir. 1984) 722, F.2d 591, 594

mere threat of malpractice suit against criminal defense attorney insufficient to create actual conflict of interest

United States v. Moore (9th Cir. 1998) 159 F.3d 1154

Trustees

existence of relationship for purposes of privilege

Wells Fargo Bank v. Superior Court (Boltwood) (2000) 22 Cal.4th 201 [901 Cal.Rptr.2d 716]

Moeller v. Superior Court (1997) 16 Cal.4th 1124 [69 Cal.Rptr.2d 317]


Fiduciary Trust International of California v. Klein (2017) 9 Cal.5th 1184 [216 Cal.Rptr.3d 61]


-trust may not allow a former trustee to withdraw from successor trustee all communications between that former trustee and the trust's legal counsel


Unauthorized appearance by mistake

Omega Video Inc. v. Superior Court (1983) 146 Cal.App.3d 470

Unauthorized representation

Standing Com. on Dis. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1172


In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

Undue influence

Estate of Witt (1926) 198 Cal. 407, 419 [245 P.2d 197]

Violation of probation by client

leaving jurisdiction

-disclosure in letter --privilege

LA 82 (1935)

Willful failure to perform and communicate

Trousil v. State Bar (1985) 38 Cal.3d 337 [211 Cal.Rptr. 525]


In re Ronald A. Jackson (1985) 170 Cal.App.3d 773 [142 Cal.Rptr. 315]

*See How to Use This Index, supra, p. i

2019 (updated entries through 12/31/2018)
ATTORNEYS OF GOVERNMENTAL AGENCIES

Wills
Probate Code section 21350 et seq.
- attorney's failure to comply with provisions of Probate Code § 21350 could be grounds for discipline
- liability to intended beneficiary where attorney failed to advise client regarding requirements governing presumptively disqualified donees, resulting in damage to intended beneficiary
  person who must sign a will is a client regardless of who has sought out and employed the attorney
  SD 1990-3
Withdrawal
In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269 [Cal.1993-74]
inability to provide competent legal services because of disagreement with a minor client
  LA 504 (2000)
Work product
client's right to
  SD 2004-1
  SD 1997-1
  SF 1990-1
-law firm's right to
ATTORNEYS OF GOVERNMENTAL AGENCIES [See Conflict of interest, disqualification,]
Business and Professions Code section 6131(a)
Rule 7-102, Rules of Professional Conduct (operative until May 26, 1989)
Rule 5-110, Rules of Professional Conduct (operative as of May 27, 1989)
Administrative agency attorneys
Administrative Procedure Act does not prohibit state agency attorney from acting as an agency prosecutor in one case and concurrently acting as agency advisor in unrelated case
Assistants' actions do not create official policy
Attorney general
D'Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1 [112 Cal.Rptr. 786]
authority under Proposition 65
deputy attorney general may not represent clients in private action absent consent of the Office of the Attorney General
  Gibson v. Office of the Attorney General (9th Cir. 2009) 561 F.3d 920
duty to investigate violations of Ethics in Government Act
  opinions are not merely advisory but are statements to be regarded as having a quasi-judicial character and are entitled to great weight by the courts
  Shapiro v. Board of Directors of Centre City Development Corp. (2005) 134 Cal.App.4th 170 [35 Cal.Rptr.3d 826]
Attorney general may represent board where another state agency in the underlying proceeding retains separate counsel to avoid prohibited dual representation conflict
Attorney-client relationship not formed between prosecutor enforcing child support & parent entitled to payment
Authority of court to sanction
  Bonus program tied to savings by public agency
  SD 1997-2
Child support modification and enforcement activities do not create an attorney-client relationship with any parent
City attorney
People v. Rhodes (1974) 12 Cal.3d 180 [115 Cal.Rptr. 235]
  Quintero v. City of Santa Ana (2003) 114 Cal.App.4th 810 [7 Cal.Rptr.3d 896]
  Tri-Cor v. Hawthorne (1970) 8 Cal.App.3d 134 [87 Cal.Rptr. 311]
  CAL 2001-156
  acts as both advocate of city’s position and advisor to neutral decision maker
  anti-discrimination suit against city attorney’s employer is not entitled to First Amendment protection
  Randelish v. City of Tacoma (W.D. (Wash.) 1997) 123 F.3d 1216
  assigned to represent constituent agency
  attorney may not advise city council regarding arbitration award when another attorney in the same firm represented the city’s police department at arbitration
  disqualified from representing city in matter related to prior representation of private company
  City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]
  recording a conversation per Penal Code section 633 while prosecuting misdemeanor cases
  79 Ops. Cal. Atty. Gen. 221 (9/16/96; No. 96-304)
  vicarious disqualification of city attorney’s office not required, when attorney representing party took job in city attorney’s office which was adverse to the attorney’s former client and where screening measures were timely and effective
Closed-session meetings pursuant to the Brown Act (CCP § 54956.9)
  board of a non-profit corporation created by city to assist in eminent domain litigation could not meet in closed session with legal counsel for the city’s redevelopment agency because the board was not a party to the litigation
  Shapiro v. Board of Directors of Centre City Development Corp. (2005) 134 Cal.App.4th 170 [35 Cal.Rptr.3d 826]
Confidences
inadvertent disclosure
  Gomez v. Vernon (9th Cir. (Idaho) 2001) 255 F.3d 1118 [50 Fed. R. Serv.3d (Callaghan) 436]
  Rico v. Mitsubishi (2007) 42 Cal.4th 807 [68 Cal.Rptr.3d 758]
prosecutor's recusal not required where prosecutor advocates but does not formally represent the interests of third party
People v. Superior Court (Humberto) (2008) 43 Cal.4th 737 [76 Cal.Rptr.3d 276]
public law office
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
representation of one co-defendant by public defender and representation of other co-defendant by alternate public defender

screening measures
Jefferson v. Board of Assessment and Appeals No. 3 for Orange County (9th Cir. 2012) 695 F.3d 960
-vicarious disqualification of city attorney’s office not required, when attorney representing party took job in city attorney’s office which was adverse to the attorney’s former client and where screening measures were timely and effective

state agency’s mere payment of license fee for professional employees does not necessarily bar employees from rendering professional services to others for compensation

vicarious disqualification of city attorney’s office not required, when attorney representing party took job in city attorney’s office which was adverse to the attorney’s former client and where screening measures were timely and effective

vicarious disqualification of public law office
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
witness

County counsel
Conservatorship of Early (1983) 35 Cal.3d 244, 255
Mize v. Crail (1973) 29 Cal.App.3d 797 [106 Cal.Rptr. 34]
combined public offices assumed by attorneys
Conservatorship of Early (1983) 35 Cal.3d 244, 255
dual representation of county tax assessor and appeals board does not violate Due Process as long as attorney advising the board is screened from any inappropriate contact with advocate for the assessor
Jefferson v. Board of Assessment and Appeals No. 3 for Orange County (9th Cir. 2012) 695 F.3d 960

giving advice to independent board of retirement
80 Ops. Cal. Atty. Gen. 36 (2/7/97; No. 96-301)

limitations on court authority to order employment of independent counsel for county employee under Government Code section 31000.6
Strong v. Sutter County Bd. of Supervisors (2010) 188 Cal.App.4th 482 [115 Cal.Rptr.3d 498]

may serve simultaneously as a city council member
85 Ops. Cal. Atty. Gen. 115 (8/7/02; No. 01-1107)
CAL 2001-156

County prosecuting attorneys and investigators had absolute immunity from civil suits when duties carried out in preparation for prosecutor’s case
Freeman on Behalf of the Sanctuary v. Hittle (9th Cir. 1983) 708 F.2d 442

Distinguish public officials from government employees
Oeland v. Superior Court (1942) 52 Cal.App.2d 530

District attorney
People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]
Madera v. Grendron (1963) 59 Cal.2d 798 [31 Cal.Rptr. 302]
CAL 1979-51

authority of
ATTORNEYS OF GOVERNMENTAL AGENCIES

Ciaccio v. Superior Court (1984) 156 Cal.App.3d 130, 133 authorized by law to communicate with parties represented by counsel
75 Ops. Cal. Atty. Gen. 223 (10/8/92; No. 91-1205)
court of interest
People v. Superior Court (Humberto) (2008) 43 Cal.4th 737 [76 Cal.Rptr.3d 276]
People v. Vasquez (2006) 39 Cal.4th 47 [45 Cal.Rptr.3d 372]
People v. Snow (2003) 30 Cal.4th 43 [132 Cal.Rptr.2d 271]
Hambarian v. Superior Court (2002) 27 Cal.4th 826 [118 Cal.Rptr.2d 725]
People v. Eubanks (1996) 14 Cal.4th 580 [59 Cal.Rptr.2d 200]
district attorney’s office cannot be recused from case where alleged conflict was speculative and did not show actual unfairness
recusal of entire office
--not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office
People v. Garnache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]
defense attorney changes to prosecutor’s office
district attorney cannot assert attorney-client privilege as to documents prepared in official capacity when the attorney is subject of criminal investigation
determines the control of prosecution of criminal cases
People v. Sweeney (1984) 150 Cal.App.3d 553, 566-569 discharge of prosecutor for challenge to superior in election is not First Amendment violation
Fazio v. City and County of San Francisco (9th Cir. 1997) 125 F.3d 1328
emergency appointment
disqualification, conflict of interest
Packer v. Superior Court (2014) 60 Cal.4th 695 [181 Cal.Rptr.3d 41]
People v. Superior Court (Greer) (1977) 19 Cal.3d 255 [137 Cal.Rptr 476, 561 P.2d 1164]
People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]
disqualification not required where ethical wall would be effective alternative
recusal of entire office
People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]
discharge of prosecutor for challenge to superior in election is not First Amendment violation
duties
In re Ferguson (1971) 5 Cal.3d 525, 531
In re Martin (1983) 150 Cal.App.3d 148, 169
QC 94-003
acts on behalf of the state when training personnel and developing policy regarding prosecution and the preparation for prosecution of criminal violations of state law
Pitts v. Kern (1988) 17 Cal.4th 340 [70 Cal.Rptr.2d 823]
of prosecutor
Haraguchi v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 264]
People v. Eubanks (1996) 14 Cal.4th 580
financial assistance to prosecutor’s office disqualified district attorney
People v. Eubanks (1996) 14 Cal.4th 580
ATTOREYS OF GOVERNMENTAL AGENCIES

People v. Vasquez (2006) 39 Cal.4th 47 [45 Cal.Rptr.3d 372]
People v. Snow (2003) 30 Cal.4th 43 [132 Cal.Rptr.2d 271]
Hambarian v. Superior Court (2002) 27 Cal.4th 826 [118 Cal.Rptr.2d 725]
People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]
People v. Vasquez (2006) 39 Cal.4th 47 [45 Cal.Rptr.3d 372]
People v. Vasquez (2006) 39 Cal.4th 47 [45 Cal.Rptr.3d 372]

recusal of the prosecutor not required when victim pays for prosecutorial expenses
Hambarian v. Superior Court (2002) 27 Cal.4th 826 [118 Cal.Rptr.2d 725]
representation of same parties in different actions
role distinguished from prosecutor’s role
Haines v. Barney’s Club Inc. (1980) 28 Cal.3d 603

Duties
competence
SD 1997-2
 disclose identity of informants to defendant
Twigg v. Superior Court (1983) 34 Cal.3d 360, 365-366
[194 Cal.Rptr. 152, 667 P.2d 1165]
loyalty
SD 1997-2
 maintain contact with informants
Twigg v. Superior Court (1983) 34 Cal.3d 360, 366-367
[194 Cal.Rptr. 152, 667 P.2d 1165]
Ethics walls and screening procedures found sufficient to ensure due process
Jefferson v. Board of Assessment and Appeals No. 3 for Orange County (9th Cir. 2012) 695 F.3d 960
Immune from tort liability arising out of conduct about civil cases
Immunity
private attorney hire by the city acting as government agent
Delia v. City of Rialto (9th Cir. 2010) 621 F.3d 1069
private counsel retained by a city to assist in an investigation of alleged employee wrongdoing is entitled to the same protection of qualified immunity as city employees and officials
under the Noerr-Pennington doctrine
-attorney sued for allegedly aiding and abetting in human trafficking scheme may not appeal denial of immunity
Nunan-Tanedo v. East Baton Rouge Parish School Board (9th Cir. 2013) 711 F.3d 1136
-sham litigation exception
--law firm, as agent for school district in an eminent domain petition, may not be immune from liability if found to have engaged in represented misrepresentations and to have suppressed information relevant to the dispute
Kearney v. Foley & Lardner, LLP (9th Cir. 2009) 590 F.3d 638
Judge’s right to hire private counsel when county counsel has conflict of interest

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Limitations on authority
Notice of motion to disqualify a district attorney
Penal Code section 1424

Outside counsel

Immunity from § 1983 claims
- private counsel retained by a city to assist in an investigation of alleged employee wrongdoing is entitled to the same protection of qualified immunity as city employees and officials
private counsel retained by a city to assist in an investigation of alleged employee wrongdoing is entitled to the same protection of qualified immunity as city employees and officials

Those contracting with a municipality are presumed to know the extent of its authority regarding the constitutional municipal debt limitation and must bear the risk of a shortfall in current year's revenues
  Delia v. City of Rialto (9th Cir. 2010) 621 F.3d 1069

Outside counsel retained by county in civil rights action not entitled to qualified immunity when defending own suit for violating plaintiff's constitutional rights
  Gonzales v. Spencer (2003) 336 F.3d 832

Private attorney under contract to government agency
County of Santa Clara v. Superior Court (2010) 50 Cal.4th 35
  [112 Cal.Rptr.3d 697]

Orange County Water District v. Arnold Engineering Company et al. (2011) 196 Cal.App.4th 1110 [127 Cal.Rptr.3d 328]


Privilege against self-incrimination
Gwillim v. City of San Jose (9th Cir. 1991) 929 F.2d 465
  Spielbauer v. County of Santa Clara (2009) 45 Cal.4th 704
  [88 Cal.Rptr.3d 590]

Probable cause
duty of attorney when charges not supported
LA 429 (1984)

Prosecutorial misconduct
denial of attorney's fees to plaintiffs where government's litigation position, although substandard, was not vexatious, frivolous, or pursued in a bad faith
U.S. v. Manchester Farming Partnership (9th Cir. (Mont.) 2003) 315 F.3d 1176

Trial conduct
-use of visual aid in the form of a jigsaw puzzle to demonstrate reasonable doubt standard impermissibly misstated the law to the jury
  [101 Cal.Rptr.3d 122]

Prosecutors
absolute immunity does not protect prosecutor for comments made to the media
  Milestein v. Cooley (9th Cir. 2001) 257 F.3d 1004

absolute immunity for actions taken in the normal prosecutorial role
  Ceballos v. Garcetti (9th Cir. 2004) 361 F.3d 1168

absolute immunity for acts performed in scope of judicial process; qualified immunity for investigative or administrative acts
  Eng v. Cooley (9th Cir. 2009) 552 F.3d 1062

Ceballos v. Garcetti (9th Cir. 2004) 361 F.3d 1168
absolute immunity for parole recommendations
  Brown v. California Dept. of Corrections (9th Cir. 2009) 554 F.3d 747
absolute immunity for liability for decision not to prosecute police officer cases
  Roe v. City and County of San Francisco (9th Cir. 1997) 109 F.3d 578
absolute immunity may not be available against being sued for supervising or participating in investigations
  Eng v. Cooley (9th Cir. 2009) 552 F.3d 1062
  Roe v. City and County of San Francisco (9th Cir. 1997) 109 F.3d 578
  Pitts v. Kern (1998) 17 Cal.4th 340 [70 Cal.Rptr.2d 823]

absolute immunity may not be available when alleged false statements were made in application for search warrant
  *Fletcher v. Kalina (9th Cir. 1996) 93 F.3d 653
absolute immunity may not be available where prosecutor gives advice to the police
  Pitts v. Kern (1998) 17 Cal.4th 340 [70 Cal.Rptr.2d 823]
absolute immunity, scope of
authorized by law to communicate with parties represented by counsel
  75 Ops. Cal. Atty. Gen. 223 (10/8/92; No. 91-1205)

communication with the media
  Milestein v. Cooley (9th Cir. 2001) 257 F.3d 1004
conduct when he/she does not believe in case
LA 429 (1984)
deputy district attorney cannot assert attorney-client privilege as to documents prepared in official capacity when the attorney is subject of criminal investigation
district attorney's statements in a press release are privileged pursuant to prosecutorial immunity principles
  Ingram v. Filipp (1999) 74 Cal.App.4th 1280 [89 Cal.Rptr. 60]
duty to seek justice not convictions
  People v. Rutherford (1975) 14 Cal.3d 399 [121 Cal.Rptr. 357]

In re Ferguson (1971) 5 Cal.3d 525
for purposes of section 1983 claim, California county district attorney acted as state official when deciding whether to prosecute individual for criminal defense
  Weiner v. San Diego County (9th Cir. 2009) 210 F.3d 1025
held to higher standards because of the unique function he or she performs in representing the interests, and in exercising the sovereign power, of the state
lawyers temporarily deputized to prosecute whose appointments were defective were “de facto deputy district attorneys” and thus their actions were in furtherance of a protected activity within the meaning of the anti-SLAPP statute

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pattern of conduct needed to prove prosecutor’s liability for failing to train employees in Brady obligations
qualified immunity may not be available for executing search warrant against criminal defense attorney
recusal of entire office
- not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office
People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]
State Bar has authority and jurisdiction to discipline
Price v. Superior Court (1982) 30 Cal.3d 537
In re Bloom (1977) 19 Cal.3d 175
OC 94-003
strong public policy advising against interference by a bankruptcy court in the decisions of state prosecutors to pursue charges therefore prevents a bankruptcy court from granting sanctions against the district attorney
suppression of evidence of defendant’s mental state, by conditioning plea agreement with percipient witness/co-defendant that the witness not testify at trial was denial of defendant’s compulsory process rights under 6th and 14th amendments
suppression of evidence, no prejudice to defendant found
Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897
use of courtroom to eavesdrop on confidential attorney-client communications requires severe sanctions
People v. Shriver (2010) 190 Cal.App.4th 400 [118 Cal.Rptr.3d 233]
Public defender
acts of privately retained counsel and publicly appointed counsel should be measured by the same standards of care, except as otherwise provided by statute
appointment of deputy public defender by court to serve as “stand-by counsel” in the event defendant cannot continue with self-representation is impermissible under Government Code section 27706
can be sued under 42 U.S.C. 1983, not as “state actor” but as administrative head of office
Miranda v. Clark County, Nevada (9th Cir. ( Nev.) 2003) 279 F.3d 1102
conflict of interest
People v. Noriega (2010) 48 Cal.4th 517 [108 Cal.Rptr.3d 74]
- conflict where compelled by excessive caseload to choose between the rights of the various indigent defendants he or she is representing

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--one investigator shared among 12 contract defenders

- no prejudice where former client is witness against current client and Public Defender is able to impeach witness with other convictions
People v. Friend (2009) 47 Cal.4th 1 [97 Cal.Rptr.3d 1]
- not found where former member of public defender’s office had represented witness in current matter where defendant was represented by another member of public defender’s office and where office had received no confidential information of witness

- removal of public defender was proper where defendant made credible death threat against counsel
- representation of one co-defendant by public defender and representation of other co-defendant by alternate public defender improper

- three strikes cases


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dependency proceeding
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
[124 Cal.Rptr.2d 891]
do not act under color of state law when lawyer for criminal defendant
Glover v. Tower (9th Cir. 1983) 700 F.2d 556, 558
Miranda v. Clark County, Nevada (9th Cir. ( Nev.) 2003) 279 F.3d 1102
does not enjoy “discretionary immunity” pursuant to Government Code section 820.2
in-person contact with arrested person permissible
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not immune from legal malpractice under statute granting discretionary immunity to public employees
not independent contractors for purposes of a government tort claim
sanctions not imposed resulting from misleading emergency petition where factual omission resulted from mistake
Jones v. Superior Court (1994) 26 Cal.App.4th 92 [31 Cal.Rptr.2d 264]
Public employees
attorney employee investigated for misconduct can be compelled, under threat of job discipline, to answer questions regarding his job performance, so long as the employee is not required to waive the constitutional protection against criminal use of those answers
Spiebauer v. County of Santa Clara (2009) 45 Cal.4th 704 [88 Cal.Rptr.3d 590]

Recording a conversation
city attorney recording a conversation pursuant to Penal Code section 633 while prosecuting misdemeanor cases
79 Ops. Cal. Atty. Gen. 221 (9/16/96; No. 96-304)
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Representation of criminal defendant by member of firm acting as city prosecutor
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Retaining private counsel for special services

Denio v. Huntington Beach (1943) 22 Cal.2d 580 [140 P.2d 392]

State Comp. Ins. Fund v. Riley (1937) 9 Cal.2d 126 [69 P.2d 953]


Errata of Schnell (1947) 82 Cal.App.2d 170 [185 P.2d 854]

Rules of Professional Conduct, applicability to government attorneys

In re Lee G. (1991) 1 Cal.App.4th 17, 34 [1 Cal.Rptr.2d 375]


80 Ops. Cal. Atty. Gen. 36 (2/7/97; No. 96-301)

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When an attorney leaves employment of one firm
side switching
Henriksen v. Great American Savings and Loan (1992)

11 Cal.App.4th 109 [14 Cal.Rptr.2d 184]

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ATTORNEY OF RECORD [See Authority of attorney. Withdrawal from employment.]

ATTORNEY’S LIEN [See Fee, unpaid. Lien.]

Attorney’s lien is created and takes effect at the time fee contract is executed

Bankruptcy attorney’s lien not payable in circumvention of the Bankruptcy Code

Charging lien
common law

Isher v. Superior Court (1965) 63 Cal.2d 153 [15 Cal.Rptr. 320]

Jones v. Martin (1953) 41 Cal.2d 23 [256 P.2d 905]

Ex parte Kyle (1950) 1 Cal. 331

contract


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requires compliance with rule 3-300 when included in hourly fee agreement
Fletcher v. Davis (2004) 33 Cal.4th 61 [14 Cal.Rptr.3d 58]

-contingency fee agreements distinguished
Plummer v. Davis/Eisenberg, LLP (2010) 184 Cal.App.4th 38 [108 Cal.Rptr.3d 455]

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tax consequences to plaintiff in contingent fee agreement with attorney
Banaitis v. Commissioner of Internal Revenue (9th Cir. 2003) 340 F.3d 1074

Client settlement
check issued only to client, but delivered to attorney who has a lien
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failure of subsequent counsel to honor
-liability for interference with prospective economic advantage


Client’s award
improper


Client’s funds
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no right to


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Created by contract
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Pou Chen Corporation v. MTS Products (2010) 183 Cal.App.4th 188 [107 Cal.Rptr.3d 57]


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Tracy v. Ringole (1927) 87 Cal.App. 549 [262 P. 73]

In the Matter of Feldsott (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 754

CAL 2009-177, CAL 2006-170

OC 99-002

attorney lien in relation to medical lien in contingency fee case

attorney’s lien is created and takes effect at the time fee contract is executed


nature and effect
Cetenko v. United California Bank (1982) 30 Cal.3d 528
[179 Cal.Rptr. 902, 638 P.2d 1299]


LA 496 (1998)

Enforcement of attorney lien in probate matter

Equitable lien for fees

Family law attorney’s real property lien expunged
In re the Marriage of Turkani (2013) 213 Cal.App.4th 332 [152 Cal.Rptr.3d 498]

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Holding client’s funds
coerce fee payment
- without lien or proper authority
  McGrath v. State Bar (1943) 21 Cal.2d 737 [135 P.2d 1]
Independent action required to establish existence and amount of lien
  Mohajedi v. Vargas (2014) 228 Cal.App.4th 974 [176 Cal.Rptr.3d 313]
  CAL 2009-177
nature and effect
right of attorney to intervene in the underlying matter to enforce his lien is limited to those actions in which client specifically gives attorney interest in the subject matter of the action by way of their fee contract
No duty of successor counsel to hold money in client trust account to honor prior attorney’s lien
  In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234
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  Wagner v. Sariotti (1943) 69 Cal.App.2d 693 [133 P.2d 430]
client’s files or papers
  - no right to
    4. SF 1975-4
Priority of
  Cal.App.4th 320 [9 Cal.Rptr. 3d 912]
  No duty of successor counsel to hold money in client trust account to honor prior attorney’s lien
  In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234
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Possessory
  Hulland v. State Bar (1972) 8 Cal.3d 440 [105 Cal.Rptr. 152]
  Isrin v. Superior Court (1965) 63 Cal.2d 153 [15 Cal.Rptr. 320]
  Ex parte Kyle (1850) 1 Cal. 331
  Wagner v. Sariotti (1943) 69 Cal.App.2d 693 [133 P.2d 430]
client’s files or papers
  - no right to
    4. SF 1975-4
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Pacific Tel. & Tel. Co. v. Fink (1956) 141 Cal.App.2d 332 [296 P.2d 843]
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Apparent authority as to procedural or tactical matters
United States v. Fredman (9th Cir. 2004) 350 F.3d 1153
Blanton v. Womancare, Inc. (1985) 38 Cal.3d 507 [212 Cal.Rptr. 151]
LA 502 (1999)

Appeal
- attorney cannot appeal without client’s consent
- in the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844
- attorney may file notice of appeal on behalf of deceased client
  Code of Civil Procedure section 903
  in a dependency matter, appellate counsel for a minor client has the authority to dismiss the client’s appeal based on appellate counsel’s assessment of minor’s best interest only with approval of guardian ad litem
  In re Josiah Z. (2005) 36 Cal.4th 664 [31 Cal.Rptr.3d 472]

- Attorney may bind client to stipulation without client’s consent which does not affect issues central to the dispute

- Attorney of record must take legal steps
  Epley v. Califro (1958) 49 Cal.2d 849, 854 [323 P.2d 91]
  Goetz v. Superior Court (1958) 49 Cal.2d 784, 786 [322 P.2d 217]
  People v. Merkouris (1956) 46 Cal.2d 540, 554
  Boca etc. R.R. Co. v. Superior Court (1907) 150 Cal. 153, 157 [88 P. 718]
  Toy v. Haskell (1900) 128 Cal. 558, 560 [61 P. 89]
  Wylie v. Sierra Gold Co. (1898) 120 Cal. 485, 487
  Anglo California Trust Co. v. Kelly (1928) 195 Cal.App. 390 [272 P. 1086]

- Attorney plays greater role for making fundamental choices for client once court has raised competency of criminal defendant

- Bind client
  Blanton v. Womancare, Inc. (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]

Kaslavage v. West Kern County Water District (1978) 84 Cal.App.3d 529, 536-537 [148 Cal.Rptr. 729]
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CAL 2002-160
advise attorney for in propria persona litigant
LA 502 (1999)

- conserve bound by appointed attorney’s action where conserve requests not to be present at conservatorship heard
  In re Conservatorship of the Person of John L. (2010) 48 Cal.4th 131 [105 Cal.Rptr.3d 424]
  to stipulation without consent

Bind client in action or proceeding
- authority to bind conservee-client who requests not to be present at hearing
  In re Conservatorship of the Person of John L. (2010) 48 Cal.4th 131 [105 Cal.Rptr.3d 424]
  to stipulation without consent

Client
cannot be located
cedes to counsel the right to protect the client’s vest interests and the client cannot be expected to correct counsel’s behavior during examination of a witness in order to avoid inferences as to the client’s actions
court’s advice to client to follow attorney’s advice
United States v. Joelson (1993) 7 F.3d 174
criminal defendants instructions cannot reduce an attorney’s professional obligations
Summerlin v. Schriro (9th Cir. 2005) 427 F.3d 623
death of
- attorney may file notice of appeal on behalf of decedent
  Code of Civil Procedure section 903
decides matters that affect substantive rights
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endorse client’s name
- incapacity
- on settlement check without authorization
  Himmel v. State Bar (1971) 4 Cal.3d 786, 798 [94 Cal.Rptr. 625, 484 P.2d 993]
  Tardif v. State Bar (1972) 1 Cal.3d 903, 904 [92 Cal.Rptr. 301, 479 P.2d 661]

See How to Use This Index, supra, p. i
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insane or incompetent clients may lack authority over substantive issues
LA 509 (2002)
-commitment proceedings under Penal Code section 1026.5(b)
--counsel for client found to be insane and dangerous to others may properly waive a jury trial over client’s objections
retains the authority to settle the case without the lawyer’s consent
LA 505 (2000)
Client’s instructions intentionally ignored
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Client suffering from a mental disorder
client, previously found not guilty by reason of insanity, must act through counsel who may properly waive over client’s objections, a jury trial in a proceeding to extend commitment
Compelling client to follow advice
Control of case
by client
Linsk v. Linsk (1969) 70 Cal.2d 272, 276 [74 Cal.Rptr. 544]
cross examination, manner in which attorney conducts, is within control of counsel
statutory reduction of client’s control
People v. Davis (1984) 161 Cal.App.3d 796, 802 fn. 2
-commitment proceedings under Penal Code section 1026.5(b)
--counsel for client found to be insane and dangerous to others may render informed tactical decisions over client’s objections
Control of litigation [See Trial conduct.]
Lovret v. Seyfarth (1972) 22 Cal.App.3d 841 [100 Cal.Rptr. 143]
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Smith v. Whittier (1992) 95 Cal. 279 [30 P. 529]
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--of advice attorney for in propria persona litigant
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arguments raised at trial
criminal defense counsel can make all but a few fundamental decisions for defendant
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-settlement decisions belong to client
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Endorse client's name


CAL 2002-160, LA 441 (1987)

Discharge claim

after judgment

Code of Civil Procedure section 283, par. 2

upon payment of money claimed in action

Code of Civil Procedure section 283, par. 2

District attorney, city attorney at direction of Board of Supervisors or city legislative authority

People ex rel. Clancy v. Superior Court (1985) 39 Cal.3d 740 [218 Cal.Rptr. 24]


Effect on client’s rights


Endorse client's name


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settlement check without authorization


Himmel v. State Bar (1971) 4 Cal.3d 786, 798 [94 Cal.Rptr. 825, 484 P.2d 993]

Tardiff v. State Bar (1971) 3 Cal.3d 903, 904 [92 Cal.Rptr. 301, 479 P.2d 661]

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Power of attorney

Estate of Huston (1997) 51 Cal.App.4th 1721 [60 Cal.Rptr. 275]


assignment of power of attorney to heir hunter’s attorney is properly denied access to home owner’s association board meetings

Security Loan & Trust Co. v. Estudillo (1901) 134 Cal. 460 [289 P.2d 466]

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Security Loan & Trust Co. v. Estudillo (1901) 134 Cal. 166 [66 P. 257]

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LA 300 (1967)

-continued representation


LA 300 (1967)

Effect on client’s rights


Endorse client's name


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settlement check without authorization


Himmel v. State Bar (1971) 4 Cal.3d 786, 798 [94 Cal.Rptr. 825, 484 P.2d 993]

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In propria persona litigant

LA 502 (1999)

Power of attorney

Estate of Huston (1997) 51 Cal.App.4th 1721 [60 Cal.Rptr. 275]


assignment of power of attorney to heir hunter’s attorney is against public policy

Estate of Wright (2001) 90 Cal.App.4th 228 [108 Cal.Rptr.2d 572]

attorney for LLC that owned residential property was neither a member nor a manager of the LLC, attorney not authorized to manage the company’s business and affairs and was thus properly denied access to home owner’s association board meetings


definition

Civil Code section 2410(a)

duties

Civil Code section 2421(a)

short form

Civil Code section 2450(1)
Presumption of authority

Pac. Paving Co. v. Vizelich (1903) 141 Cal. 4 [74 P. 353]

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Dole v. City Court (1951) 105 Cal.App.2d 602 [234 P.2d 110]


Receive money claimed by client unless revocation of authority filed
Code of Civil Procedure section 283, par. 2
upon payment of money claimed in action or after judgment
-acknowledge satisfaction of judgment
-withdraw or rescission
-acknowledge discharge of judgment

Satisfaction of judgment, acknowledge after judgment
Code of Civil Procedure section 283, par. 2
upon payment of money claimed in action
Code of Civil Procedure section 283, par. 2

Settlement
Mallott & Peterson v. Director, Office of Workers’ Compensation Program (9th Cir. 1996) 98 F.3d 1170
Levy v. Superior Court (1995) 10 Cal.4th 578 [41 Cal.Rptr.2d 878]

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attorney may not sue client who decides on a “walk away” settlement, even when client promised to take case to trial or settlement to ensure attorney is paid for legal representation, because client cannot be constrained to pursue a lawsuit he wishes to abandon

negotiations by advice attorney for in propria persona litigant
LA 502 (1999)

threat to withdraw if client refuses settlement
Nehad v. Mukasey (9th Cir. 2008) 535 F.3d 962

Settlement negotiated by clients enforceable despite lack of attorney approval

agreement providing that attorney waives specified fees if client agrees not to accept a confidentiality clause in any settlement permitted if client retains the authority to settle the case without the lawyer's consent
LA 505 (2000)

Stipulations
attorney may bind client
-court found that stipulation re probable cause to arrest was valid after plaintiff's counsel signed it on plaintiff's behalf and in the plaintiff's presence
-if it does not affect issues central to the dispute

-waiver or compromise of a fundamental right is not involved
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-special rules applicable
Ukiah v. Fones (1966) 64 Cal.2d 104, 107 [48 Cal.Rptr. 865, 110 P.2d 369]
Buckley v. Roche (1931) 214 Cal. 241 [4 P.2d 929]
Jackson v. Puget Sound Lumber Co. (1898) 137 Cal. 97, 100 [55 P. 786]
People v. Nolan (1917) 19 Cal.App. 337 [165 P. 715]

-withdrawal or rescission
Palmer v. Longbeach (1948) 33 Cal.2d 134 [199 P.2d 952]
Moffitt v. Jordan (1900) 127 Cal. 628 [60 P. 175]
Troxell v. Troxell (1965) 237 Cal.App.2d 147 [46 Cal.Rptr. 723]
Loomis v. Loomis (1948) 89 Cal.App.2d 232 [201 P.2d 33]

construction and rules
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179 Cal. 598 [178 P.2d 507]
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  -- probable cause stipulation admissible as an admission in plaintiff’s action against police arising out of arrest

- withdrawal and rescission
  -- plaintiff cannot resort to subjective and unreasonable interpretation to circumvent the intent and meaning of the stipulation

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  73 Am.Jur.2d, Stipulations, section 1
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oral stipulations not entered
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reliance by interpretation or rescission
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    Palmer v. City of Long Beach (1948) 33 Cal.2d 134 [199 P.2d 952]
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  Theatrical Enterprises v. Ferron (1932) 119 Cal.App. 671 [7 P.2d 351]

- plaintiff cannot resort to subjective and unreasonable interpretation to circumvent the intent and meaning of the stipulation

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  no independent pleading pursuant to Code of Civil Procedure section 284 need be filed before a complaint or other initial pleading is served

Test for, substantial rights
  People v. Sumstine (1984) 36 Cal.3d 909, 922

Unauthorized representation
  Standing Com. on Dis. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1172

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  after substitution
  - attorney had no right to file proposed fee order after discharge and substitution out of case
  In re Marriage of Read (2002) 97 Cal.App.4th 476 [118 Cal.Rptr.2d 497]
  “appearing” defined for purposes of Business and Professions Code section 6104
  In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844
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  In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93

Verification
  Probate Code section 21350 et seq.
  attorney’s use of pre-signed verification forms
  Drociak v. State Bar (1991) 52 Cal.3d 1085 [278 Cal.Rptr. 86]
  client’s signature on blank
  LA 174 (1950)

AUTOMOBILE ACCIDENT CASE

Receiving unsolicited information by email from non-client driver in multi-vehicle collision
  SD 2006-1
  Represent
  daughter-passenger against her driver-husband after representing both parties
  SF 1973-6
  owner-passenger against driver after representing both parties
  LA(I) 1974-10

BANKRUPTCY

11 U.S.C. § 110(c) enacted to remedy widespread fraud and the unauthorized practice of law in the bankruptcy petition preparers industry (BPP)
In re Reynoso (9th Cir. 2007) 477 F.3d 1117
  Taub v. Weber (9th Cir. 2004) 366 F.3d 966

Advice to “load up” on debt with the expectation of obtaining its discharge, conduct that is abusive per se

Attorney assisted debtor-client in concealing assets from trustees and his lack of experience in bankruptcy law is not a shield from criminal liability
  U.S. v. Sullivan (9th Cir. 2008) 522 F.3d 967

Attorney fees and costs that creditor incurs in successfully prosecuting nondischargeability complaint, should be awarded as party of this nondischargeable debt, if such fees would be recoverable outside bankruptcy under state or federal law
  Fry v. Dinan (9th Cir. 2016) 448 B.R. 775

Attorney’s fees
  In re Auto Parts Club, Inc. (9th Cir. BAP 2016) 1324

attorney fees and costs awarded against debtors for dragging proceedings for too long due to inaction

In re Starky (9th Cir. BAP 2014) 522 B.R. 220

attorney fees incurred during litigation after the confirmation of a Chapter 11 bankruptcy plan were discharged by that bankruptcy

In re Castellino Villas, A. K. F., LLC (9th Cir. BAP 2016) 836 F.3d 1028

attorney who provided debtor with pre-petition legal services in marital dissolution matter lacks standing to complain her unpaid fee is not dischargeable


attorney's fees and costs are recoverable against bankruptcy debtor in absence of any compensatory judgment based on violation of protective order

Suarez v. Barrett (9th Cir. 2009) 400 B.R. 732

attorney's fees and costs awarded to defendant/creditor in a post-petition state court suit based on pre-petition causes of action were dischargeable as personal liability of debtor

In re Ybarra (9th Cir. BAP 2003) 295 B.R. 609

attorney's fees are administrative expenses that must be paid first

In re Short (9th Cir. BAP 1989) 101 B.R. 185

attorney's fees are recoverable if they are linked to litigation seeking to enforce a contract


-fee provision in security agreement did not serve as ground for awarding fees and costs to oversecured creditor following its successful defense of adversary preference proceeding

In re Connolly (9th Cir. BAP 1999) 238 B.R. 475 [34 Bankr.Ct.Dec. 1219]

attorney's fees are recoverable under sections of the Bankruptcy Code regarding discharge exceptions for fraud, provided that successful plaintiff could recover such fees in non-bankruptcy court

In re Bertola (9th Cir. BAP 2004) 317 B.R. 95

attorney's fees are recoverable under sections of the Bankruptcy Code regarding discharge exception for “willful and malicious injury”

Suarez v. Barrett (9th Cir. 2009) 400 B.R. 732

attorney's fees awarded as sanction for frivolous legal arguments not subject to automatic stay in attorney's bankruptcy proceeding

Berg v. Good Samaritan Hospital (9th Cir. 2000) 230 F.3d 1165

attorney's fees claim against lender's collateral barred where law firm negotiated and approved comprehensive waiver in loan agreement which bared surcharge or assessment against the collateral

In re Cooper Commons LLC (9th Cir. 2008) 512 F.3d 533

attorney's fees denied to debtor in discharging student loan debt

In re Hossoini (9th Cir. BAP 2014) 504 B.R. 558

attorney's fees from discharge action are allowed

Bankruptcy of Hanson (9th Cir. 1994) 173 B.R. 189

attorney's fees from discharge action may/may not preclude appeal over attorney fees award


award of fees to unsecured creditor incurred post-petition but based on a pre-petition contract

In re SNTL Corp. (9th Cir. BAP 2007) 380 B.R. 204

bankruptcy court erred in awarding debtor's their attorney fees and costs under statute

In re Faltalia (9th Cir. BAP 2016) 561 B.R. 767

bankruptcy court erred in discharging unpaid attorney fees when debtor agreed in writing to personally pay fees upon completion of plan payments

In re Johnson (9th Cir. BAP 2006) 344 B.R. 104

bankruptcy court's authority to order disgorgement of debtor's counsel's prepetition security retainer

In re Dick Cepek, Inc. (9th Cir. BAP 2006) 339 B.R. 730

chapter 7 bankruptcy

-attorney cannot use confidences of former client to challenge client's discharge of fees owed

In re Rindt (9th Cir. BAP 1998) 225 B.R. 180


-attorney fees and costs not dischargeable when awarded for debtor's willful and malicious conduct

In re Suarez (9th Cir. BAP 2009) 400 B.R. 732

-attorney's fees and costs awarded to defendant/creditor in a post-petition state court suit based on pre-petition causes of action were dischargeable as personal liability of debtor

In re Ybarra (9th Cir. BAP 2003) 295 B.R. 609

-attorney's fees denied to debtor in discharging student loan debt

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-automactic stay

In re Jastrem (9th Cir. 2001) 253 F.3d 438 [37 Bankr.Ct.Dec. 275]

In re Hines (9th Cir. BAP 1998) 198 B.R. 769

-award of fees and costs to judgment creditor not dischargeable under willful and malicious injury dischargeability exception

Suarez v. Barrett (9th Cir. 2009) 400 B.R. 732

-award of fees for services rendered by creditor's attorney must meet statutory requirements

In re Wind N' Wave (9th Cir. 2007) 509 F.3d 938

-debtor's attorney may receive professional fees from bankruptcy estate for post-petition services

In re Jastrem (9th Cir. 2001) 253 F.3d 438 [37 Bankr.Ct.Dec. 275]

In re Century Cleaning Services, Inc. (9th Cir. BAP 1999) 195 F.3d 1053 [35 Bankr.Ct.Dec. 63]

-entitlement to fees and costs upon dismissal of an involuntary bankruptcy petition may be waived if all parties consent or if debtor waives relief

In the Matter of Maple-Whitworth (9th Cir. 2009) 556 F.3d 742

-expenses incurred by petitioning creditors in connection with filing an involuntary bankruptcy petition may be reimbursed by debtor's estate

In re Wind N' Wave (9th Cir. 2007) 509 F.3d 938

-fees for trustee's attorney may be denied if attorney lacks disinterestedness or represents interests adverse to the interest of the estate

In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]

-must benefit the estate

Bankruptcy of Hanson (9th Cir. 1994) 172 B.R. 67

-must file detailed proof of time spent in each role to receive fee award for services as trustee

In re Roderick Timber Co. (9th Cir. 1995) 185 B.R. 801

-pre-petition attorney fee agreement may be dischargeable

In re Jastrem (9th Cir. 2001) 253 F.3d 438 [37 Bankr.Ct.Dec. 275]

-statutory silence regarding expenses incurred by a creditor does not necessarily mean foreclosure of a fee award from the debtor estate

In re Wind N' Wave (9th Cir. 2007) 509 F.3d 938

See How to Use This Index, supra, p. i
trustee expenses incurred in marketing & selling property & in defending stay relief to prevent foreclosure properly chargeable to sales proceeds & trustee may withhold such proceeds pending resolution of claims by non-debtor, co-owner of property  
In re Flynn (9th Cir. BAP 2003) 297 B.R. 599 [41 Bankr.Ct.Dec. 211]

trustee may withhold non-debtor, co-owner’s share of proceeds from the sale of property pending resolution of claims by co-owner relating to such sale  
In re Flynn (9th Cir. BAP 2003) 297 B.R. 599 [41 Bankr.Ct.Dec. 211]

chapter 9 (municipality bankruptcy)  

-fee agreement based on fixed hourly rate but provides for possible increase found valid  


-pre-petition attorney fee agreements may be dischargeable  

Bankruptcy of Biggar (9th Cir. 1995) 185 B.R. 825

-pre-petition debt is dischargeable  

Bankruptcy of Biggar (9th Cir. 1997) 110 F.3d 685

Bankruptcy of Zapanta (9th Cir. 1997) 204 B.R. 762

chapter 11 bankruptcy  

creditor may be ordered to pay chapter 11 debtor’s fees upon dismissal of involuntary petition under Bankruptcy Code § 305  

In re Macke International Trade, Inc, (9th Cir. BAP 2007) 370 B.R. 236

chapter 13  

In re Eliapo (Boone v. Derham-Burk) (9th Cir. BAP 2006) 468 F.3d 592

-bankruptcy court erred in discharging unpaid attorney fees when debtor agreed in writing to personally pay fees upon completion of plan payments  

In re Johnson (9th Cir. BAP 2006) 344 B.R. 104

contingent fee agreement  

In re Reimers (9th Cir. 1992) 972 F.2d 1127

court’s jurisdiction to amend award of attorney’s fees under CCP § 187 and the inherent power of federal courts  

In re Levander (9th Cir. 1999) 180 F.3d 1114


creditor may be ordered to pay chapter 11 debtor’s fees upon dismissal of involuntary petition under Bankruptcy Code § 305  

In re Macke International Trade, Inc, (9th Cir. BAP 2007) 370 B.R. 236

creditor may recover attorney’s fees via proof of claim  

In re Atwood (9th Cir. BAP (Nev.) 2003) 293 B.R. 227

delay in bankruptcy court’s approval of payment does not entitle enhanced attorney’s fees  


dischargeability of a contempt judgment  

Suarez v. Barrett (9th Cir. 2009) 400 B.R. 732

disgorgement of attorney fees against firm and attorney employee is proper  

Bankruptcy of Sandoval (9th Cir. 1995) 186 B.R. 490

disgorgement of attorney fees against firm not proper where law firm representation was approved by court  

In re S.S. Retail Stores (9th Cir. 2000) 216 F.3d 882 [36 Bankr.Ct.Dec. 78]

disgorgement of attorney fees for professional misconduct  

Price v. Lehtinen (In re Lehtinen) (9th Cir. BAP 2005) 332 B.R. 404

disgorgement of attorney fees is allowed after violations of bankruptcy code and rules  

Bankruptcy of Basham (9th Cir. 1997) 208 B.R. 926

In re Peterson (1994) 163 B.R. 685

documents submitted to bankruptcy trusts by plaintiff’s attorney to support claims for compensation for alleged asbestos-related injuries may be discoverable in similar litigation against another party where the documents are not privileged and do not include information about an offer to compromise or settle a claim  

Volkswagen of America Inc. v. Superior Court (2006) 139 Cal.App.4th 1481 [43 Cal.Rptr.3d 723]

emergency nature of legal services provided before court appointment justifies fee award to former counsel  

Bankruptcy of Larson (9th Cir. 1994) 174 B.R. 797

fees awarded to party who prevailed, not necessarily on all issues, but on “disputed main issue”  

In re Hoogal (9th Cir. BAP 2007) 369 B.R. 506

following dismissal of involuntary petition, debtor did not have to join all creditors in order to move for award of reasonable attorney fees and costs  

In re Maple-Whitworth, Inc, (9th Cir. BAP 2007) 375 B.R. 558

open book account attorney’s fees claim not barred by statute of limitations  

In re Roberts Farms (9th Cir. 1992) 980 F.2d 1248

prevailing party may recover attorney fees in state court following dismissal of bankruptcy proceeding  


security retainer agreements require appropriate fee application made to the court  

In re Montgomery Drilling Co, (E.D. Cal. 1990) 121 B.R. 32

totality of circumstance test applied when awarding attorney’s fee  

Higgins v. Vortex Fishing Systems Inc, (9th Cir. 2004) 379 F.3d 701

Bankruptcy petition preparers  

BPP can only transcribe and type bankruptcy forms that debtor alone must prepare without assistance and may charge only what professional typists or word processors would charge  

In re Reynoso (9th Cir. 2007) 477 F.3d 1117

Scott v. United States (In re Doser) (9th Cir. 2005) 412 F.3d 1056

code provision requiring public disclosure of petition preparers’ social security numbers does not violate equal protection, due process, and privacy rights  

In re Crawford (9th Cir. 1999) 194 F.3d 954 [3 Cal. Rptr.3d 211]

disgorgement of excessive fees for services constituting the unauthorized practice of law  

In re Reynoso (9th Cir. 2007) 477 F.3d 1117

Taub v. Weber (9th Cir. 2004) 366 F.3d 966

petition preparer’s interpretation of such terms as “market value” and “secured claim or exemption” went beyond his role of scrivener  

Taub v. Weber (9th Cir. 2004) 366 F.3d 966

Conflict of interest  

attorney for bankruptcy estate trustee has duty to disclose all facts concerning his transactions with the debtor  

In re Gthes (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]

attorney has a clear conflict of interest when he represents client in bankruptcy, solicits client to use his services as a real estate broker, and serves client as loan broker  

Price v. Lehtinen (In re Lehtinen) (9th Cir. BAP 2005) 332 B.R. 404

bankruptcy  

In re Hines (9th Cir. BAP 1998) 198 B.R. 769
-attorney for bankrupt estate not inherently in conflict if represent estate creditors against others in a separate action  

concurrent representation of clients with adverse interests  
In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]
lawyer may concurrently represent both creditor and debtor in unrelated matters without written consent when debtor-client is adequately prescreened through a pro bono program  
CAL, 2014-191

represent  
-bankrupt/creditor  
LA 50 (1927)
-receiver  
--party in divorce and  
LA 51 (1927)
-receiver/general creditor  
LA 74 (1934)

successive representation  
In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]

Debt relief agencies includes attorneys, as they provide assistance under BAPCPA  
prohibited from advising a debtor to incur more debt because the debtor is filing for bankruptcy, rather than for a valid purpose. However, attorneys may talk fully and candidly about the incurrence of debt in contemplation of filing a bankruptcy case. The inhibition of frank discussion serves no conceivable purpose within the statutory scheme  

Disciplinary action abstention by a bankruptcy court from interference with a State Bar disciplinary proceeding  
In re Franceschi (9th Cir. BAP 2001) 268 B.R. 219 [38 Bankr.Cl.Dec. 140]
attorney’s bankruptcy not a bar to an order to pay restitution  
Brookman v. State Bar (1988) 46 Cal.3d 1004
In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302
In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231
bankruptcy court has authority to impose its own sanctions and to refer the matter to the State Bar  
Price v. Lehtinen (In re Lehtinen) (9th Cir. BAP 2005) 332 B.R. 404

bankruptcy court has inherent power to suspend or disbar an attorney for misconduct  
In re Lehtinen (9th Cir. 2009) 564 F.3d 1052
payment of costs to State Bar under 2003 amendments to Business & Professions Code § 6086.10 are not dischargeable  
In re Findley (9th Cir. 2010) 493 F.3d 1048
-intent of imposing attorney disciplinary costs was to promote rehabilitation and to protect the public and is not dischargeable  
In re Findley (9th Cir. 2010) 493 F.3d 1048
payment of costs to State Bar under Business & Professions Code § 6086.10 are dischargeable while payment of monetary sanctions under § 6086.13 are not  
In re Taggart (2001) 249 F.3d 987
proceeding by Arizona Bar to discipline an Arizona attorney is exempted from bankruptcy automatic stay provisions  
In re Wade (9th Cir. 1991) 948 F.2d 1122

Legal malpractice claim brought by individual members dismissed because attorney was court appointed to represent the unsecured creditors’ committee not the individual members  
Schultz v. Chandler (9th Cir. 2014) 765 F.3d 945
Legal malpractice claims cannot be assigned by trustee of bankruptcy estate  
Baum v. Duckor, Spradling & Metzger (1999) 72 Cal.App.4th 54 [84 Cal.Rptr.2d 703]
bankruptcy estate representative pursuing claim for the estate is not an assignee  
Majority shareholder’s attorney may represent debtor  
In re Sidco (1993) 162 B.R. 299
Receiver entitled to attorney-client privilege  
Represent bankrupt/creditor  
LA 51 (1927)

Sanctions  
In re DeVille (9th Cir. 2004) 361 F.3d 539, 58
Berg v. Good Samaritan Hospital (9th Cir. 2000) 230 F.3d 1165
Hednes v. Resolution Trust Corp. (9th Cir. 1994) 32 F.3d 1360
In re Hansen (9th Cir. BAP 2007) 358 B.R. 868
In re DeVille (9th Cir. BAP 2002) 260 B.R. 483
against attorney for failure to list asset on debtor’s bankruptcy schedule  
In re Kayne (9th Cir. BAP 2011) 453 B.R. 372
bankruptcy court has inherent power to impose district-wide suspension of attorney  
In re Brooks-Hamilton (9th Cir. 2009) 400 B.R. 238
bankruptcy court’s inherent power allows it to sanction “bad faith” or “willful misconduct” by attorneys  
In re Lehtinen (9th Cir. 2009) 564 F.3d 1052
In re Blue Pine Group, Inc. (9th Cir. BAP 2011) 457 B.R. 64
In re Kayne (9th Cir. BAP 2011) 453 B.R. 372
consideration of ABA standards to categorize misconduct and to identify the appropriate sanction  
In re Brooks-Hamilton (9th Cir. 2009) 400 B.R. 238
Price v. Lehtinen (In re Lehtinen) (9th Cir. BAP 2005) 332 B.R. 404
for delay  
In re Silberkraus (9th Cir. 2003) 336 F.3d 864
for fraudulent transfers and misrepresentations by attorney debtor  
In re Hansen (9th Cir. BAP 2007) 368 B.R. 868
for frivolous objection to creditor’s claim  
In re Brooks-Hamilton (9th Cir. 2009) 400 B.R. 238
not appropriate against district attorney in debt collection matter, strong public policy advising against interference by bankruptcy court in state criminal matters  
trustee lacked standing to appeal order awarding discovery sanctions against counsel  
In re Hessco Industries, Inc. (9th Cir. BAP 2003) 295 B.R. 372

Trustee  
attorney as bankruptcy trustee must file detailed proof of time spent in each role to receive fee award  
In re Roderick Timber Co. (9th Cir. 1995) 185 B.R. 601
attorney serving as trustee was removed due to an indirect relationship with the debtor that violated the requirement that a trustee be  
In re AFI Holding, Inc. (9th Cir. BAP 2006) 355 B.R.139
fees for trustee's attorney may be denied if attorney lacks disinterestedness or represents interests adverse to the interest of the estate

In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]

standing to sue corporate attorneys of "sham" corporation for malpractice

Lloyd v. Paine Webber, Inc. (9th Cir. 2000) 208 F.3d 755

trustee of a corporation has the power to waive the corporation's attorney-client privilege with respect to prebankruptcy communications


shows both professions on card or letterhead

LA 224 (1955)
-on sign

LA 225

Adjusting

LA 216 (1953)

Adviser to radio and television scripts

LA(I) 1947-5

Agent, attorney acting as

for actors, theatrical agency

LA 84 (1935)

for corporation

CAL 1968-13

-to solicit athletic contracts

CAL 1968-13

Aviation consultants

law firm associates with

CAL 1969-18

Brokerage

LA(I) 1962-4

Business and Professions Code

§ 6088
LA 396 (1982)

§ 6088(e)

General Dynamics Corp. v. Superior Court (1994) 7 Cal.4th 1164 [876 P.2d 487]

CAL 1994-135


SD 2008-1

Business operated by lawyer

discontinues active practice of law

-competition with former client

LA 98 (1936)

not engaged in active practice of law

-handling local matters gratuitously

LA 98 (1936)

Client's business

promotion of

-by attorney

LA 91 (1936)

Client's participation or work in

LA 176 (1950)

Collection agency

attorney operation of

Business and Professions Code section 6077.5

-Fair Debt Collection Practices Act applies to attorneys regularly engaged in consumer debt-collection


undertake collections for other attorneys

LA 124 (1939)

while operates law office

LA 124 (1939)

by attorney's spouse

LA 120 (1938)

Collections

LA(I) 1971-12, LA(I) 1967-7, LA(I) 1965-6, LA(I) 1965-3, LA(I) 1952-1

by inactive lawyer

LA 105 (1936)

Competition with former client

LA 98 (1936)

in non-legal business

-where lawyer ceased to engage in active law practice

LA 98 (1936)

Conform to professional standards of attorney in whatever capacity


Jacobs v. State Bar (1933) 219 Cal. 59 [25 P.2d 401]

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824
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CAL 1968-13
Corporation
agent for
-to solicit athletic contracts
CAL 1968-13
Donation of legal services  [See Auction.]
Dual occupation
CAL 1982-69, CAL 1968-13
LA 351 (1975), SD 1992-1, SD 1969-2
Collection agency and law practice
Business and Professions Code section 6077.5
Fair Debt Collection Practices Act applies to attorneys
regularly engaged in consumer debt-collection
LA 124 (1939)
Escrow business
LA 205 (1953)
Exchange for professional services of others
lawyer participates in
CAL 1981-60, CAL 1977-44, LA(I) 1965-18
Insurance
SD 1974-18
Investment counsel
LA(I) 1963-2
Legal document
annual report of business
LA(I) 1971-1
business prospectus
CAL 1969-19, LA(I) 1971-1
stockholder’s report
LA(I) 1971-1
Legal forms sold
LA(I) 1976-11
Legal research and writing
LA 327 (1972)
Legal research service
operated by attorneys
-advertising of
LA 301 (1967)
-constitutes practice of law
LA 301 (1967)
-incorporation
LA 301 (1967)
Lending operations
LA(I) 1931-4
Malpractice litigation service by lawyer and physician’s
LA 335 (1973)
Medicine
LA 331 (1973)
Notary public
LA 214 (1953), LA 206 (1953)
Partnership
interests sold
LA 199 (1952)
partners of a dissolved partnership have a fiduciary duty to
complete the partnership’s unfinished business and to act in
the highest good faith
-Dickson, Carlson & Campillo v. Pole (2000) 83
Cal.App.4th 436 [99 Cal.Rptr.2d 678]
with non-lawyer
-defined
In the Matter of Bragg (Review Dept. 1997) 3 Cal.
State Bar Ct. Rptr. 615
-prohibited if any of partnership activities constitute
practice of law
Rule 1-310, Rules of Professional Conduct
Promotion
by attorney
-of client’s business
--posting bail bonds
LA 91 (1936)
Publishing  [See Conflict of interest, literary rights. Publication.]
Real estate  [See This heading, dual occupation.]
CAL 1982-69
SD 1992-1, SD 1969-2
SF 1973-23
agent, attorney acting as
CAL 1982-69
LA 140 (1942)
board
-affiliate of attorney becoming
CAL 1968-15
broker, attorney acting as
CAL 1982-69, LA 140 (1942)
business
--operating
LA 140 (1942)
---accepting legal business referred by
LA 140 (1942)
-partnership with non-attorney broker
SF 1973-23
recommend own attorney to client
LA(I) 1976-9, LA(I) 1971-16
represent customers of own
LA 205 (1953), LA(I) 1975-2, LA(I) 1976-9
Referring clients to doctor for medical services for compensation
prohibited
LA 443 (1988)
School to teach how to obtain government loans
LA(I) 1976-5
Stenography
LA 214 (1953)
Tax opinion letter about tax shelter prospective
SD 1984-1
Tax work
LA 236 (1956)
SD 1975-2
BUSINESS AND PROFESSIONS CODE  [The entire text of the
State Bar Act (Business and Professions Code sections 6000 et
seq.) is reprinted at Part I A of this Compendium.]
§ 6000 et seq.
CAL 1979-48
§ 6001.1
101 Ops. Cal. Atty Gen. 1 (04/03/18; No. 14-301)
§ 6002.1
In the Matter of Downey (Review Dept. 2009) 5 Cal. State
Bar Ct. Rptr. 151
In the Matter of Miller (Review Dept. 2008) 5 Cal. State Bar
CT. Rptr. 110
In the Matter of Respondent AA (Review Dept. 2004) 4 Cal.
State Bar Ct. Rptr. 721
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar
Ct. Rptr. 498
In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar
CT. Rptr. 220
In the Matter of Clinton (Review Dept. 1994) 3 Cal. State Bar
CT. Rptr. 63
purpose of address requirement
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State
Bar Ct. Rptr. 498
§ 6007(b)(3)
Walker v. State Bar (1989) 49 Cal.3d 1107, 1119
Ballard v. State Bar (1983) 35 Cal.3d 274, 289
Newton v. State Bar (1983) 33 Cal.3d 480, 483-484
*In the Matter of Wolfgram (Review Dept. 1995) 3 Cal. State
Bar Ct. Rptr. 355
§ 6007(c)
Conway v. State Bar (1989) 47 Cal.3d 1107
In the Matter of Phillips (Review Dept.1999) 4 Cal. State Bar
CT. Rptr. 47
§ 6007(c)(4) in the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93

credit for period of involuntary inactive enrollment towards period of actual suspension

In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138

§ 6007(d) in the Matter of Tiernan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 139

§ 6007(e) in the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220

§ 6013 in the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41


§ 6049 In the Matter of Member W (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 535

§ 6049.1 In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349

In the Matter of Kaufman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

§ 6050 In the Matter of Respondent Q (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18

§ 6051.1 In the Matter of Respondent Q (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18

§ 6060 Envart v. National Conference of Bar Examiners, Inc. (9th Cir. 2011) 630 F.3d 1153

In re Glass (2014) 58 Cal.4th 500 [167 Cal.Rptr.3d 87]

§ 6060(b) In re Gossage (2000) 23 Cal.4th 1080 [99 Cal.Rptr.2d 130]

§ 6062(b) In re Glass (2014) 58 Cal.4th 500 [167 Cal.Rptr.3d 87]

In re Gossage (2000) 23 Cal.4th 1080 [99 Cal.Rptr.2d 130]

§ 6064 In re Gossage (2000) 23 Cal.4th 1080 [99 Cal.Rptr.2d 130]

§ 6067 [See: Oath of attorney.]

CAL 2003-162, CAL 1983-72, CAL 1979-51

LA 497 (1999)

§ 6068 Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]

Bates v. State Bar (1990) 51 Cal.3d 1056

CAL 1983-74, CAL 1983-72

LA 394 (1982)

“life story” fee agreements, waiver of attorney-client privilege


subdivision (a)


In re Morse (1995) 11 Cal.4th 184 [44 Cal.Rptr.2d 620]

Aronin v. State Bar (1999) 52 Cal.3d 276

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

In re Loftus (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80

In the Matter of Rose (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 966

In the Matter of Dale (Review Dept. 2005) 5 Cal. State Bar Ct. Rptr. 798

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In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1


-attorney/realtor licensee who shares a commission with an unlicensed person may risk forfeiture of fees under Bus. & Prof. Code § 10137


-no discipline for a negligent mistake made in good faith

In the Matter of Respondent P (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 631

subdivision (b)


Hanson v. Superior Court of Siskiyou County (2001) 91 Cal.App.4th 75 [109 Cal.Rptr.2d 782]


In re Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160


In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]

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-subdivision (d)
  -attorney sanctioned for disregarding court's ruling at sidebar
  -attorneys are officers of the court and as such, must respect and follow court orders whether they are right or wrong
    Osborne v. Todd Farm Services (2016) 247 Cal.App.4th 43 [202 Cal.Rptr.3d 84]
  -no discipline for factual statements unless the State Bar proves that such statements are false
    Standing Committee on Discipline of the United States District Court v. Yagman (9th Cir. 1995) 55 F.3d 1430
    In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775
  -no discipline for rhetorical hyperbole incapable of being proven true or false
    Standing Committee on Discipline of the United States District Court v. Yagman (9th Cir. 1995) 55 F.3d 1430
    In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775

-subdivision (e) [See Confidences of client.]

City and County of San Francisco v. Cofrin Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]

People v. Superior Court (Laff) (2001) 25 Cal.4th 703 [107 Cal.Rptr.2d 323]

General Dynamics Corp. v. Superior Court (1994) 7 Cal.4th 1164 [32 Cal.Rptr.2d 1]
Eliahi W. v. Superior Court of Los Angeles (2013) 216 Cal.App.4th 140 [156 Cal.Rptr.3d 592]
Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]
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Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]


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CAL 2015-194, CAL 2008-175, CAL 1989-111, CAL 1972-30
SD 2017-1, SD 2012-1, SD 2011-2, SD 2011-1
OC 2011-1, OC 95-001
SF 2011-1

-making repeated misrepresentations of both law and facts of the case and contentions that no reasonable attorney would have raised

In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]

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Sacramento County Department of Health and Human

Hanson v. Superior Court of Siskiyou County (2001) 91 Cal.App.4th 75 [109 Cal.Rptr.2d 782]

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In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179

-applies to advancement of prejudicial facts, but perhaps not prejudicial intimations

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 128

-unconstitutional vagueness of "offensive personality"

United States v. Wunsch (9th Cir. 1996) 84 F.3d 1110

In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775

subdivision (g)

Canatella v. California (9th Cir. 2002) 304 F.3d 843
Sorensen v. State Bar (1991) 52 Cal.3d 1036 [804 P.2d 44]

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In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179

subdivision (h)

CAL 2009-176, CAL 1981-64, CAL 1970-23

subdivision (i)

Friedman v. State Bar (1990) 50 Cal.3d 235 [786 P.2d 356]

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In the Matter of Gorman (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 507
In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220
In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907
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In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 585
In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767
In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47
CAL 2012-184, CAL 2009-178, CAL 2008-175, CAL 2004-165, CAL 1997-151
SD 2017-1, SD 2007-1, SD 2004-1

-does not address issue of whether an attorney communicates correct or incorrect legal advice

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138

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In the Matter of Alvin Gilbert Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688
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In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483
In the Matter of Kittrell (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195
In the Matter of Respondent X (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592

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Sarraf v. Standard Insurance Co. (9th Cir. 1996) 102 F.3d 991
Hill v. MacMillan/McGraw Hill School Company (9th Cir. 1996) 102 F.3d 422
In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41
In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966
In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112
In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70
In the Matter of Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862
In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179
In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170
CAL 1997-153
- improper to charge a violation where there is sufficient evidence of attorney's knowledge of final, binding sanctions order
In the Matter of Maloney and Vrisik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774
- reporting sanctions by the court
-- court neither required to report sanctionable conduct to the Bar nor to take action with other authorities
subdivision (o)(4)
In the Matter of Sullivan II (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189
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In the Matter of Sullivan II (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189
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§ 6076
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101 Ops. Cal. Atty Gen. 1 (04/03/18; No. 14-301)
CAL 1979-51
§ 6077 [See Oath, Attorney]
Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221
Conservatorship of Becerra (2009) 175 Cal.App.4th 1474 [96 Cal.Rptr.3d 910]
R.S. Creative Inc. v. Creative Cotton Ltd., et al. (1999) 75 Cal.App.4th 486 [89 Cal.Rptr.2d 353]
101 Ops. Cal. Atty Gen. 1 (04/03/18; No. 14-301)
CAL 1979-51
§ 6078
Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221
In the Matter of Respondent Z (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 85
§ 6079.1
§ 6082
In re Franceschi (9th Cir. BAP 2001) 268 B.R. 219 [38 Bankr.Ct.Dec. 140]
§ 6083
Bercovich v. State Bar (1990) 50 Cal.3d 116
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§ 6085
In re Franceschi (9th Cir. BAP 2001) 268 B.R. 219 [38 Bankr.Ct.Dec. 140]
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§ 6086.5
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In re Ringgold (2006) 142 Cal.App.4th 1001 [48 Cal.Rptr.3d 507]
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In re Findley (9th Cir. 2010) 493 F.3d 1048
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In re Taggart (2001) 249 F.3d 987
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In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 827
In the Matter of Wu (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263
In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495
In the Matter of Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 521
In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703
§ 6086.13
In re Findley (9th Cir. 2010) 493 F.3d 1048
In re Taggart (2001) 249 F.3d 987
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trial courts don’t have responsibility of directly enforcing rules of professional responsibility; disciplinary authority is lodged with Supreme Court, delegated to State Bar
Conservatorship of Becerra (2009) 175 Cal.App.4th 1474 [96 Cal.Rptr.3d 910]

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In courts don’t have responsibility of directly enforcing rules of professional responsibility; disciplinary authority is lodged with Supreme Court, delegated to State Bar
Conservatorship of Becerra (2009) 175 Cal.App.4th 1474 [96 Cal.Rptr.3d 910]

§ 6101
CAL 1972-30
attorney’s conviction of a crime is conclusive evidence of guilt
In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888
felony determination at the time plea of nolo contendere was made, for State Bar purposes, although crime reduced to misdemeanor at time of sentencing by trial judge
In the Matter of Jackson (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 610

§ 6102
Crooks v. State Bar (1990) 51 Cal.3d 1090
In re Ewaniszky (1990) 50 Cal.3d 543 [788 P.2d 690]
In re Utz (1989) 48 Cal.3d 468 [256 Cal.Rptr. 561]
In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920
In the Matter of Weber (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942
In the Matter of Smith (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 261

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In the Matter of Jackson (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 610

§ 6102(c)
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summary disbarment requirement not retroactive
In the Matter of Jebbia (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51

§ 6103
King v. State Bar (1990) 52 Cal.3d 307
Bates v. State Bar (1990) 51 Cal.3d 1056
In re Ringgold (2006) 142 Cal.App.4th 1001 [48 Cal.Rptr.3d 507]

§ 6090.5
with Supreme Court, delegated to State Bar of professional responsibility; disciplinary authority is lodged with Supreme Court, delegated to State Bar of professional responsibility; disciplinary authority is lodged with State Bar. Trial courts don’t have responsibility of directly enforcing rules of professional responsibility for State Bar purposes, although crime reduced to misdemeanor at time of sentencing by trial judge was made, for State Bar purposes, although crime reduced to felony determination at the time plea of nolo contendere was made, for State Bar purposes, although crime reduced to misdemeanor at time of sentencing by trial judge


§ 6094
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In the Matter of Myrdal (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363
In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138
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In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1
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In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126
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In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576

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LA 522 (2009)
§ 6106 [See Moral turpitude]
In re Grant (2014) 58 Cal.4th 469 [167 Cal.Rptr.3d 401]
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In re Loftus (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80
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In the Matter of Peavley (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483
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LA 522 (2009), SD 2007-1, SD 1983-7, OC 94-002

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Z. A. v. San Bruno Park School District (9th Cir. 1999) 165 F.3d 1273
Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]
People v. Starski (2017) 7 Cal.App.5th 215 [212 Cal.Rptr.3d 622]
In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]
In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966
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Attorney not automatically entitled to the maximum contingency percentages under § 6146, which establishes caps on the recovery, not guarantees of the attorney's fees.


### § 6147


Foxen v. Carpenter (2016) 6 Cal.App.5th 284 [211 Cal.Rptr.3d 372]


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CAL 2008-175, CAL 2006-170, CAL 2004-165, CAL 1994-135


SF 1999-1, SF 1989-1

contract making material changes to existing contingency fee contract must comply with Business and Professions Code § 6147


### § 6147(a)(2)

**Boccardo v. Commissioner of Internal Revenue (9th Cir. 1995) 56 F.3d 1016 LA 518 (2006)**

### § 6147(a)(4)


### § 6148


Leighton v. Forster (2017) 8 Cal.App.5th 467 [213 Cal.Rptr.3d 899]

In re Estate of Wong (2012) 207 Cal.App.4th 366 [143 Cal.Rptr.3d 342]


LA 502 (1999), LA 456 (1998),

OC 1991-01, OC 1991-00, OC 1990-12, OC 1989-11

contract must comply with Business and Professions Code § 6147


### § 6147(a)(2)

**Boccardo v. Commissioner of Internal Revenue (9th Cir. 1995) 56 F.3d 1016 LA 518 (2006)**

### § 6147(a)(4)


### § 6148


Leighton v. Forster (2017) 8 Cal.App.5th 467 [213 Cal.Rptr.3d 899]

In re Estate of Wong (2012) 207 Cal.App.4th 366 [143 Cal.Rptr.3d 342]


LA 502 (1999), LA 456 (1998),

OC 1991-01, OC 1991-00, OC 1990-12, OC 1989-11

contract must comply with Business and Professions Code § 6147


### § 6147(a)(2)

**Boccardo v. Commissioner of Internal Revenue (9th Cir. 1995) 56 F.3d 1016 LA 518 (2006)**

### § 6147(a)(4)


### § 6148


Leighton v. Forster (2017) 8 Cal.App.5th 467 [213 Cal.Rptr.3d 899]

In re Estate of Wong (2012) 207 Cal.App.4th 366 [143 Cal.Rptr.3d 342]


LA 502 (1999), LA 456 (1998),

OC 1991-01, OC 1991-00, OC 1990-12, OC 1989-11

contract must comply with Business and Professions Code § 6147


### § 6147(a)(2)

**Boccardo v. Commissioner of Internal Revenue (9th Cir. 1995) 56 F.3d 1016 LA 518 (2006)**

### § 6147(a)(4)


### § 6148


Leighton v. Forster (2017) 8 Cal.App.5th 467 [213 Cal.Rptr.3d 899]

In re Estate of Wong (2012) 207 Cal.App.4th 366 [143 Cal.Rptr.3d 342]


LA 502 (1999), LA 456 (1998),

OC 1991-01, OC 1991-00, OC 1990-12, OC 1989-11

contract must comply with Business and Professions Code § 6147


### § 6147(a)(2)

**Boccardo v. Commissioner of Internal Revenue (9th Cir. 1995) 56 F.3d 1016 LA 518 (2006)**

### § 6147(a)(4)

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CAL 1997-148
§ 6157 [See Advertising]
SD 2018-1
§ 6158
CAL 2004-165, CAL 2001-155
LA 514 (2005)
§ 6159
CAL 2012-186
§ 6161
definition of “attorney” for purposes of law corporation registration
§ 6167
law corporation is bound by applicable statutes, rules, and regulations to the same extent therein as a member of the State Bar
§ 6180
§ 6200 [See Fee arbitration.]
Schatz v. Allen Matkine Leck Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]
Giorgianni v. Crowley (2011) 197 Cal.App.4th 1462 [129 Cal.Rptr.3d 546]
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Giorgianni v. Crowley (2011) 197 Cal.App.4th 1462 [129 Cal.Rptr.3d 546]
Glaser, Weil, Fink, Jacobs and Shapiro, LLP v. Goff (2011) 194 Cal.App.4th 423 [125 Cal.Rptr.3d 26]
§ 6211(a)
IOLTA interest income is private property of owner of principle for purposes of Takings Clause
no regulatory taking, no net loss to clients
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§ 6450
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§ 10133
attorney/real estate licensee who shares a commission with an unlicensed person may risk forfeiture of fees under Bus. & Prof. Code § 10137
§ 10137
attorney/real estate licensee who shares a commission with an unlicensed person may risk forfeiture of fees under Bus. & Prof. Code § 10137
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Rule 3-300, Rules of Professional Conduct (operative as of May 27, 1989)

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SD 2012-1

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concealment of a material fact is as misleading as an overtly false statement
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CAL 1997-150, CAL 1986-90, CAL 1971-27

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-partnership name when no partnership exists
CAL 1971-27

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affirmative
-prohibited in any context
In re Kristovich (1976) 18 Cal.3d 468 [134 Cal.Rptr. 409, 556 P.2d 771]

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attempt to deceive immigration judge
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disclosure of death of client

-during settlement negotiation
LA 300 (1967)

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-disclosure of death of client
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To opposing party

advising opposing party of that party’s mistake of law affecting settlement
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Third-party funding of lawsuit in exchange for interest in proceeds distinguished from buying a claim

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CHILD CUSTODY

Disclosure to court of conflict between client and child suggest appointment of separate counsel to court

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Post-divorce child custody fee order requires trial court to first consider parties’ relative circumstances


Referee, assuming the function of both judge and advocate in presenting and questioning the witness and in adjudicating a minor’s status, acts in violation of minor’s constitutional right to procedural due process


Representation of a minor child in a dependency proceeding

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factors determining whether disqualification of appointed counsel and entire public law office is required in substantially related successive representations

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In re Kristen B. (2008) 163 Cal.App.4th 1535 [78 Cal.Rptr.3d 495]

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Attorney’s fees not classified as gross income in calculating child support obligations


Communicate with other party about

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Contingent fee for collecting

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Contingent fee for collecting

LA 500 (1999)

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with intent to bring suit on

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CRS Recovery, Inc. v. Laxton (9th Cir. 2010) 600 F.3d 1138

--where attorney is owed a debt, client’s assignment to attorney does not constitute “buying of claim” for purposes of Business and Professions Code § 6129

Martin v. Freeman (1963) 216 Cal.App.2d 639 [31 Cal.Rptr. 217]

Third-party funding of lawsuit in exchange for interest in proceeds distinguished from buying a claim

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Absent class members not liable for employer’s attorney’s fees in overtime dispute


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Attorney fee awards in federal securities fraud actions must be reasonable in relation to the plaintiffs’ recovery

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Attorney’s fees

attorney’s failure to disclose fee-splitting agreement to court before obtaining approval of attorney’s fees in class action settlement barred later enforcement of the agreement


attorney’s fees approved by the trial court in a class action settlement are presumed to be reasonable where defendant agreed not to oppose award of certain amount to class counsel

In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]

awarded pursuant to Civil Code section 1717


basis for court decision

-loan fee reduction requires a relatively specific articulation of court’s reasoning

Stetson v. Grissom (9th Cir. 2016) 821 F.3d 1157

basis of award to an unnamed member of putative class who defeats class certification


clear sailing agreements

In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]

denied

-shareholder’s class action against corporation did not confer sufficient benefits under the substantial benefit doctrine to warrant an award of attorney’s fees

Pipefitters Local No. 636 v. Oakley, Inc. (2010) 180 Cal.App.4th 1542 [104 Cal.Rptr.3d 78]

dispute among class counsel

Carder v. Patten (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]

fee allocation among co-counsel subject to court approval

In re FPI/Agretech Securities Litigation (9th Cir. 1997) 105 F.3d 469

Carder v. Patten (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]


fees paid directly to plaintiff’s counsel by defendant pursuant to ADEA’s fee-shifting provision is taxable income to plaintiff

Sinyard v. Commissioner of Internal Revenue (9th Cir. 2001) 219 F.3d 756

See How to Use This Index, supra, p. i
for securities class action suits should be based on individual case risk
In re Quantum Health Resources, Inc. (C.D. Cal. 1997) 962 F.Supp. 1254

interest on award of attorney’s fees

lodestar multiplier method
-adjustment based on benefit conferred on class by class counsel
In re Bluetooth Headset Products Liability Litigation (9th Cir. 2011) 654 F.3d 935
Wininger v. SSI Management, L.P. (9th Cir. 2002) 301 F.3d 1115
-court failed to identify and consider the relevant community when determining the prevailing hourly rate for similar services by lawyers of comparable skill and experience
Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973

reduction is justified where amount of time attorney
spent on case was unreasonable and duplicative

when risk was slight

no abuse of discretion where district court failed to increase the fee award to account for the class members’ view of the requested fee award because there was an early settlement; the court used the lodestar method and applied a 1.5 multiplier for counsel’s 100% success rate
Fischel v. Equitable Life Assurance Society of the U.S. (9th Cir. 2002) 307 F.3d 997

no abuse of discretion where trial court granted a temporary restraining order to prevent firm from distributing fees to itself without court approval

settlement shall not include attorney fees as portion of common fund established for benefit of class
Staton v. Boeing Co. (9th Cir. Wash.) 2003) 327 F.3d 938
In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]

should be adequate to promote consumer class action

standing to appeal award of
Lobatz v. U.S. West Cellular (9th Cir. 2000) 222 F.3d 1142
-class member lacks standing to object to attorney’s fees and costs because attorney failed to demonstrate how the award adversely affected that member or the class
Glasser v. Volkswagen of America, Inc. (9th Cir. 2011) 645 F.3d 1084
-objector has standing to appeal denial of own claim for fees even if objector did not submit a settlement claim
Stetson v. Grissom (2016) 821 F.3d 1157

under Code of Civil Procedure section 916

former attorneys enjoined from prosecuting suit for fees against litigants while judgment was pending on appeal

Communication with potential members of class [See Advertising, Solicitation of business.]

In re McKesson HBOC, Inc. Securities Litigation (N.D. Cal. 2001) 126 F.Supp.2d 1239
LA(I) 1966-7, LA(I) 1974-2

prior to certification

-scope of commercial speech exemption to the anti-SLAPP statute (Code of Civ. Proc. §§ 425.16, 425.17)

Conflict of interest
Anti-SLAPP statute inapplicable to claims that attorney abandoned clients in order to represent adverse interests
class certification in unnamed class member’s case paired with evidence that unnamed class member would be a witness in concurrent class action sufficient for findings that firm represented unnamed class member for conflicts of purposes
class counsel offers to dismiss case if defendant makes multi-million dollar payment to attorney personally
Cal Pak Delivery, Inc. v. United Parcel Service Inc. (1997) 52 Cal.App.4th 1
class representatives may waive conflicts of interest on behalf of potential class members

conflict of interest when law firm that represents class also employs an attorney who serves as class representative
defendant agrees to hire counsel to monitor the proposed settlement agreement if approved

Linney v. Cellular Alaska Partnership (9th Cir. 1998) 151 F.3d 1234
disqualification is more likely in class action context because putative class counsel are subject to a ‘heightened standard’ which they must meet if they are to be allowed by the court to represent absent class members
disqualification not required when representing class in two cases since putative class members are not ‘clients’ and no conflict exists
Kullar v. Footlocker Retail, Inc. (2011) 191 Cal.App.4th 1201 [121 Cal.Rptr.3d 353]
duty of class counsel runs to the class and, in the event of conflicts, withdrawal is the appropriate course to take


incentive agreement between class representatives and class counsel
Rodriguez v. West Publishing Corporation (9th Cir. 2009) 563 F.3d 948
no automatic various disqualification of law firm when tainted attorney is properly screened
withdrawal by counsel who previously represented members opposed to the settlement, then later represented those in favor, was not improper


Counsel owed a duty, post certification, to advise clients of other claims related to but outside the scope of the representation

Counsel owed a duty, post certification, to pursue class claims through enforcement of judgment

Counsel owed no duty to class member to give notice beyond the court-approved settlement notice procedure

Disclosure of putative class members’ identity
Tien v. Superior Court (2006) 139 Cal.App.4th 528 [43 Cal.Rptr.3d 121]

Duty to communicate with members of class to correct erroneous impression
LA(I) 1966-13

Duty to pursue class claims through enforcement of judgment

Federal Rule of Procedure 23
LA 481

no per se rule that continued participation by previous class counsel, whose conflict of interest led to denial of class certification, constitutes inadequate representation
Linney v. Cellular Alaska Partnership (9th Cir. 1998) 151 F.3d 1234 [41 Fed.R.Serv.3d 1079]

Former member who opted out of class is not class representative and has no right to the class action papers
LA 481

Organization of [See Solicitation of business, communicate information about claims or actions in law to parties; by lay entity, group representation.]

client solicits participation
LA(I) 1971-13

lawyer solicits participation
LA(I) 1966-7

Procedure for class action
LA 481

Right to lead plaintiff to select lead counsel under Private Securities Litigation Reform Act
Cohen v. United States District Court for the Northern District of California (9th Cir. 2009) 586 F.3d 703

Settlement

court must have sufficient information to make an informed evaluation on fairness

Standard of care to class counsel owed a duty, post certification, to advise clients of other claims related to but outside the scope of the representation

counsel owed a duty, post-judgment, to pursue class claims through enforcement of judgment

Standing of objecting class member in securities fraud settlement is not needed for reconsideration and reduction of attorney fees award to class
Zucker v. Occidental Petroleun (9th Cir. 1999) 192 F.3d 1323

Standing to pursue an award of fees
Churchill Village LLC v. General Electric (9th Cir. 2004) 361 F.3d 566

standing to pursue claim for award of attorney’s fees

Unnamed class member who failed to intervene at trial in a federal securities fraud action had standing to appeal the trial court’s award of attorney fees
Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249

CLIENT [See Attorney-client relationship. Candor. Confidences of the client. Conflict of interest, client.]

Conflict of interest

Anti-SLAPP statute inapplicable to claims that attorney abandoned clients in order to represent adverse interest


Defined

Evidence Code section 951


Moeller v. Superior Court (1997) 16 Cal.4th 1124 [69 Cal.Rptr.2d 317]


State Farm Fire and Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625 [62 Cal.Rptr.2d 834]

CLINT SECURITY FUND

Business and Professions Code section 6140.5


Alvarado Community Hospital v. Superior Court (1985) 173 Cal.App.3d 476, 483-484 [219 Cal.Rptr. 52]

In the Matter of Jauregui (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 56

Former licensed attorney is ordered by court to pay restitution after conviction of embezzlement by an employee and is not entitled to an offset for payment to victim from CSF

People v. Hume (2011) 195 Cal.App.4th 265 [125 Cal.Rptr.3d 540]

State Bar’s subrogation rights


CLIENTS’ TRUST ACCOUNT

Business and Professions Code section 6210 et seq.

Code of Civil Procedure sections 283, par. 2, 1518

Rule 8-101, Rules of Professional Conduct (operative until May 26, 1989)

Rule 4-100, Rules of Professional Conduct (operative as of May 27, 1989)

State Bar of California. Legal Services Trust Fund Program

[See also Handbook on Client Trust Accounting For California Attorneys]

Accounting

Business and Professions Code section 6091 failure to keep adequate records

Friedman v. State Bar (1990) 50 Cal.3d 235

Matthew v. State Bar (1989) 49 Cal.3d 784


In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239

In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1
failure to make to client
Friedman v. State Bar (1990) 50 Cal.3d 235
Silva-Vidor v. State Bar (1989) 49 Cal.3d 1071

Guzzetta v. State Bar (1987) 43 Cal.3d 962 [239 Cal.Rptr. 675]


Clark v. State Bar (1952) 39 Cal.2d 161, 169 [246 P.2d 1105]
Parker v. State Bar (1952) 39 Cal.2d 161, 169 [246 P.2d 1]


In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 496
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 671
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788
In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708
In the Matter of Aulakh (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690
In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547
In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128
In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96

-attorney claims monies are non-refundable retainer
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752

-attorneys claims oral permission to invest client’s funds
Himmel v. State Bar (1971) 4 Cal.3d 786 [94 Cal.Rptr. 825, 484 P.2d 993]

-client demand for an account is not required for finding a violation of [rule 4-100(B)(3)]
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

duty to inform client that he has been named as a defendant due to attorney’s accounting

-failure to answer repeated client demands

-failure to report and transmit to clients checks from insurance company

-funds collected with repeated failure to notify client
In re Smith (1967) 67 Cal.2d 460 [62 Cal.Rptr. 615, 432 P.2d 231]

-habitual failure to account to clients results in disbarment
Tardiff v. State Bar (1971) 3 Cal.3d 903 [92 Cal.Rptr. 301, 479 P.2d 661]

-misappropriation and moral turpitude found when attorney deceived his client by overcharging when client had limited English-speaking ability
In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170

-misappropriation and moral turpitude found when attorney fails to answer client inquiries
Murray v. State Bar (1985) 40 Cal.3d 575 [220 Cal.Rptr. 667, 709 P.2d 480]

-obtaining and converting settlement proceeds without client’s knowledge

-prior violation’s effect on petition to reinstate disbarred attorney

-receipt of settlement check not reported to client
Phillips v. State Bar (1975) 14 Cal.3d 492 [121 Cal.Rptr. 605, 535 P.2d 733]

-restitution as appropriate sanction for failure to report receipt of settlement check

-sanctions
-disbarment

-ethics excuse or reprimand

-suspension
McCray v. State Bar (1985) 38 Cal.3d 257 [211 Cal.Rptr. 691, 696 P.2d 83]

-VSS-sanctions

Sunderlin v. State Bar (1944) 33 Cal.2d 785 [205 P.2d 362]

-services not performed for monies advanced

-timeliness of account when attorney’s office is struck by a fire
In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96

-trust account was not established since attorney claims all monies as non-refundable retainer
Mrakich v. State Bar (1973) 8 Cal.3d 896 [106 Cal.Rptr. 497, 506 P.2d 633]

-trust accounts with no records kept as deemed a “sham”

-violation occurs when non-segregated funds lose their separate character
Black v. State Bar (1962) 57 Cal.2d 219

-warrants discipline even if no financial loss to client
McCray v. State Bar (1985) 38 Cal.3d 257 [211 Cal.Rptr. 691, 696 P.2d 83]

-fiduciary duty to inform

-notice to client of receipt of funds on client’s behalf

In re Smith (1967) 67 Cal.2d 460, 463

See How to Use This Index, supra, p. i 67 2019 (updated entries through 12/31/2018)
CLIENTS’ TRUST ACCOUNT

Advance deposit
Securities and Exchange Commission v. Interlink Data Network of Los Angeles (9th Cir. 1996) 77 F.3d 1201

Advance for legal fees
In re Montgomery Drilling Co. (E.D. Cal. 1990) 121 B.R. 32

advance payment retainer distinguished from true retainer
In re Montgomery Drilling Co. (E.D. Cal. 1990) 121 B.R. 32

distinguished from retainer fee
In re Montgomery Drilling Co. (E.D. Cal. 1990) 121 B.R. 32
Baranowski v. State Bar (1979) 24 Cal.3d 153, 163 fn.4 [154 Cal.Rptr. 752, 593 P.2d 613]

failure to return unearned portion

Rule 3-700(D)(2), Rules of Professional Conduct (operative as of May 27, 1989)

Matthew v. State Bar (1989) 49 Cal.3d 784
Pineda v. State Bar (1989) 49 Cal.3d 753
Bambic v. State Bar (1985) 40 Cal.3d 314 [219 Cal.Rptr. 489]

Baranowski v. State Bar (1979) 24 Cal.3d 153, 163 [154 Cal.Rptr. 752, 593 P.2d 613]
Lester v. State Bar (1976) 17 Cal.3d 547 [131 Cal.Rptr. 225, 551 P.2d 841]


In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
SF 1980-1

Bank charges
deposit of $121.00 of attorney’s personal funds in client trust account for bank charges is not unreasonable
In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17

permissible so long as the funds held bear a reasonable relationship to the bank service charges incurred for the general operation of the account and do not serve as a buffer against potential overdrafts
LA 485 (1995)

Bank’s action to improperly debit trust account
In the Matter of Moriarity (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9

Billing
clients must understand and consent to billing practices
CAL 1996-147, SD 2013-3

check used to cover disbursements may be allowed if not unconscionable and client consents
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838

improper billing and retention of funds out of a client’s lien
In the Matter of Kroff (Review Dept. 1999) 3 Cal. State Bar Ct. Rptr. 838

“over-billing”
In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 725

Check
holding client’s funds in
Vaughn v. State Bar (1972) 6 Cal.3d 847, 854 [100 Cal.Rptr. 713, 494 P.2d 1257]

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354

Check profession shown
LA(I) 1970-3

settlement check issued only to client, but delivered to attorney who has a lien
OC 99-002

stop payment of settlement check
LA(I) 1966-5

Checks issued with insufficient funds
Lipson v. State Bar (1991) 53 Cal.3d 1010
Read v. State Bar (1991) 53 Cal.3d 394, mod. at 53 Cal.3d 1009
Porter v. State Bar (1990) 52 Cal.3d 518

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708

CAL 2005-169

overdraft protection
CAL 2005-169

Client cannot be located
Code of Civil Procedure section 1518
Client's use and control of

Commingling

advancing fee payment is distinguished from true retainer fee

- allowing a friend to use the account for business

at client's use and control of

attorney holding funds for the benefit of client

- advanced fee payment is distinguished from true retainer fee


Baranowski v. State Bar (1979) 24 Cal.3d 153, 164, fn.4 [154 Cal.Rptr. 752, 594 P.2d 906]


Commingling

- attorney's unauthorized use or withholding of client's funds
- alcoholic client requests funds be held by attorney and attorney claims a right to use such funds for own purposes


- attorney claims funds are a loan from client but court determines funds are held in trust


- attorney's funds placed in trust account


- collection agency receives funds on behalf of client but funds are used for attorney's benefit


- failure to promptly disburse settlement funds from trust account


- money collected on a promissory note is not turned over to client

Lavin v. State Bar (1975) 14 Cal.3d 581, 583 [121 Cal.Rptr. 729, 535 P.2d 1185]

- right to retain funds pursuant to a fee agreement is disputed by client

Prime v. State Bar (1941) 18 Cal.2d 56, 59

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 920

- attorney deposit settlement check in his personal checking account

In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 287

- attorney's funds placed in trust account


Seavey v. State Bar (1953) 4 Cal.2d 73, 74-77 [47 P.2d 281]

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213

- attorney's funds placed in trust account

In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420

- attorney's funds placed in trust account

Rhodes v. State Bar (1989) 49 Cal.3d 50 [260 Cal.Rptr. 266]

In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920

- attorney's funds placed in trust account

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615

-- commingling occurs when an attorney opens a purported trust account but in fact uses it as a personal account


-- employee's salary and other business expenses paid by checks drawn on the client trust account

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615

-- funds reasonable sufficient to pay bank charges

In the Matter of Respondent F. (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17

- attorney's funds placed in trust account

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 696

-- attorney's funds placed in trust account

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615

-- attorney's use of funds improper deposited in attorney's account

Aronin v. State Bar (1990) 52 Cal.3d 276

-- attorney's use of funds improper deposited in attorney's account

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615

-- attorney's use of funds improper deposited in attorney's account

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213

-- attorney's use of funds improper deposited in attorney's account


disbursement of funds held for client and adverse party


In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456

failure to keep attorney's and clients' funds separate

CLIENTS' TRUST ACCOUNT

--client's corporation funds controlled by attorney who places them in personal account

--client's funds eventually misappropriated
  Stevens v. State Bar (1990) 51 Cal.3d 283 [794 P.2d 925]

--estate's distribution check to beneficiaries is deposited in attorney's payroll account

--expert witness fees inadvertently kept in general account pending an ongoing fee dispute
  In re Matter of Respondent E (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716

--habitual practice of depositing client funds into personal account
  Sturr v. State Bar (1959) 52 Cal.2d 125, 127-133 [338 P.2d 897]

--probate monies in an account under attorney's name
  Murray v. State Bar (1985) 40 Cal.3d 575 [220 Cal.Rptr. 677]

--proceeds from sale of home placed with attorney's funds
  Read v. State Bar (1991) 53 Cal.3d 394, mod. at 53 Cal.3d 1009

--unilateral determination and deposit of attorney fees

--client transacts business with his attorney and attorney keeps transaction funds on his personal account

--disbarment upheld due to multiple offenses including failure to place advances for fees and costs in client trust account

--earned fees received from clients deposited in trust account
  In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871

--failure to maintain funds in trust account when attorney is unable to pay doctor bills because doctor refuses payment
  Vaughn v. State Bar (1972) 6 Cal.3d 847, 854-865 [100 Cal.Rptr. 713, 494 P.2d 1257]

--failure to maintain client funds in trust
  In the Matter of Laws (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239

--failure to promptly withdraw attorney funds once fees become fixed
  In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239

--failure to withdraw earned fees, after they become fixed, within reasonable time
  CAL 2005-169

inadequate management of trust account

--aberrational failure of elaborate bookkeeping system
  In the Matter of Respondent E (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716

--allowing a friend to use the account for business
  In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420

--checks issued to clients from commingled accounts with insufficient funds
  Alkow v. State Bar (1952) 38 Cal.2d 257, 259-261 [239 P.2d 871]

--overdraft protection
  CAL 2005-169

-duty to deliver escrow funds to client before taking fees for services
  Greenbaum v. State Bar (1976) 15 Cal.3d 893, 899 [126 Cal.Rptr. 785, 544 P.2d 921]

-failure to establish and supervise a proper trust account procedure
  Gasman v. State Bar (1976) 18 Cal.3d 125, 129-130 [132 Cal.Rptr. 675]
  In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213

-failure to keep adequate records
  Friedman v. State Bar (1990) 50 Cal.3d 235
  In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871

-failure to notify client of receipt of funds from insurance company

-failure to notify workers' compensation board that an advance of attorney's fees was received from a claimant

-failure to oversee office manager's record keeping and control over clients' funds
  In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

-layperson signatory okay if attorney ultimately responsible for integrity of account
  CAL 1988-97

-negligent banking practices
  Kelly v. State Bar (1991) 53 Cal.3d 509

-secretary blamed by attorney when clients' funds are deposited in attorney's office account
  Wells v. State Bar (1975) 15 Cal.3d 367 [124 Cal.Rptr. 218, 540 P.2d 58]

-secretary's misdeposit of client's funds into attorney's operating account did not amount to misappropriation
  In the Matter of Respondent E (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17

-trust account established but attorney fails to use it
  Zitny v. State Bar (1966) 64 Cal.2d 787, 793 [51 Cal.Rptr. 825, 415 P.2d 521]

-where attorney uses personal account for clients' funds, mere bookkeeping entries will not be a sufficient protection of clients
  Bernstein v. State Bar (1972) 6 Cal.3d 909, 917 [101 Cal.Rptr. 369, 495 P.2d 1289]

-wife of attorney acts as bookkeeper and is told personal use of clients' funds is okay
  Burns v. State Bar (1955) 45 Cal.2d 296, 300 [288 P.2d 514]

mitigation and restitution efforts by attorney

-actual financial detriment to a client is not an element and neither good faith nor restitution is a defense to commingling

-little weight is given to an attorney's restitution of client funds when it is done under pressure and as a matter of expediency
  Pearl v. State Bar (1941) 18 Cal.2d 682, 683-684 [117 P.2d 341]

-violation found even when all parties involved ultimately received every cent to which they were entitled
  Ring v. State Bar (1933) 218 Cal. 747, 752 [24 P.2d 821]
moral turpitude
- abdication of responsibility for proper maintenance of client trust account
  In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
- moral turpitude not necessarily involved if client’s money is always available and not endangered
- recurring deficiencies in balances
  In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239
- willful commingling not moral turpitude
  Spindelli v. State Bar (1975) 13 Cal.3d 253, 256 fn.1 [118 Cal.Rptr. 480, 530 P.2d 168]

negligent commingling
- found when attorney fails to transmit support funds to client’s former wife
  Schultz v. State Bar (1975) 15 Cal.3d 799, 802 [126 Cal.Rptr. 232, 543 P.2d 600]

sanctions
- disbarment
  Sturr v. State Bar (1959) 52 Cal.2d 125, 134 [338 P.2d 897]

suspension
  Burns v. State Bar (1955) 45 Cal.2d 296, 303
  Alkow v. State Bar (1952) 38 Cal.2d 257, 264
  Bennett v. State Bar (1945) 27 Cal.2d 31 36-37
  Griffith v. State Bar (1945) 26 Cal.2d 273, 278
  In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213
  In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871

trust account never established
- practice of designating accounts as “trust accounts” but not using them as such is a violation
  Cutler v. State Bar (1969) 71 Cal.2d 241, 244 [78 Cal.Rptr. 172, 455 P.2d 108]
- trust account not established or maintained

violation found when attorney’s procedure for disbursing client’s funds does not utilize a client trust account

Control may be given to non-members of the State Bar

LA 454 (1988)

Costs advanced
status as trust funds
  Aronin v. State Bar (1990) 52 Cal.3d 276
  In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196

Currency
holding client’s funds in

Damages to a client is not necessary for a finding of commingling or a failure to manage trust funds
Internal Revenue Code section 6050(I)
- anyone engaged in a trade or business must report to the IRS the receipt in any year of $10,000 or more in cash payments from any one person
  United States v. Blackman (9th Cir. 1995) 72 F.3d 1418
  Guzzetta v. State Bar (1987) 43 Cal.3d 962, 976

In the Matter of Curtis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601

identity of current clients not disclosed to third parties and client specific information regarding funds held by the attorney in a client trust account need not be disclosed to creditor by attorney debtor


Duty
consult governing legal authorities and make a reasonable determination of the amount attorney is entitled to receive without delay

CAL 2009-177

of succeeding attorney


to co-counsel

LA 454

to keep accurate records


to supervise lay signatory on client trust account

CAL 1988-97

Embezzlement
criminal proceeding against attorney
- inadmissible as evidence

People v. Stein (1979) 94 Cal.App.3d 235

Endorsement of client check

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

attorney’s authority to sign client’s name in retainer agreement

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SF 1980-1
Flat rate for legal fees
SF 1980-1

Funds having trust account status
CAL 2006-171
Funds properly withdrawn from a client trust account under rule 4-100(A)(2) and later disputed by the client neither retain nor regain their trust account status and do not need to be re-deposited into the trust account.

**CAL** 2006-171

Garnishment

counsel discloses his possession of client’s money in a garnishment proceeding

LA(I) 1954-4

Interest bearing accounts

compliance provisions for -establishment of interest bearing trust account pursuant to Business and Professions Code section 6211(a) -duty of lawyer to place client funds in -Business and Professions Code section 6212

IOLTA interest income is private property of owner of principle for purposes of Takings Clause


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- no regulatory taking, no net loss to clients


nominal funds in -Business and Professions Code section 6211(a)


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lay employee on

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- settlement proceeds never transmitted to client

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- in the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602
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  - third parties involved
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- settlement received for client is deposited in attorney's business account

- settlement check cashed by attorney, clients do not receive their share

- settlement of case and conversion of proceeds without client's knowledge or consent

- settlement received for client is deposited in attorney's business account

- third parties involved
  - attorney for defendant delays in transmitting funds to plaintiff
  - settlement received for client is deposited in attorney's business account

- settlement check cashed by attorney, clients do not receive their share
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- settlement of case and conversion of proceeds without client's knowledge or consent

- settlement received for client is deposited in attorney's business account

- third parties involved
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- retaining funds without authority involves moral turpitude

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Lawyers Personal Assistance Program of the State Bar of California
for confidential assistance, contact:
  Center for Human Resources/West
  Telephone: (415) 502-7290

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COMPETENCE
for information about program, contact:
Office of Professional Competence, Planning & Development
Telephone: (415) 538-2107
Attorney is responsible for supervising work delegated to paraprofessionals
Pincay v. Andrews (9th Cir. 2004) 389 F.3d 853
Attorney prepares will and receives a substantial gift
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Urbina v. I.N.S. (9th Cir. 2003) 321 F.3d 889

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identity of client confirmed through reasonable steps
CAL 2012-184
in collaborative family law practice, negotiation and facilitation of settlement only role of attorney, should be communicated with client
OC 2011-01
inattention to the needs of a client and a failure to communicate are proper grounds for discipline
Spindell v. State Bar (1975) 13 Cal.3d 253, 260
In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263
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In re Sanders (1999) 21 Cal.4th 697 [87 Cal.Rptr.2d 899]
appellate court has the obligation to ensure adequate representation of counsel even to the extent of removing retained counsel
counsel's claim of ineffective assistance of counsel fails when defense attorney, for tactical reasons, did not seek a time-value discount on victim's restitution claim
counsel was deficient in failing to investigate and present mitigating evidence at sentencing or resentencing hearing
White v. Ryan (9th Cir. 2018) 895 F.3d 641
defense attorney failed to present evidence of client's mental impairment prejudiced client in first degree murder trial
Hernandez v. Chappell (9th Cir. 2018) 878 F.3d 843
defendant's attorney was ineffective for failing to file suppression motion on Miranda grounds while defendant was in custody and interrogated by police
defendant's attorney was not ineffective for not objecting to prosecutor's asking attorney to explain certain evidence
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Salisbury v. County of Orange (2005) 131 Cal.App.4th 756 [31 Cal.Rptr.3d 831]
Wiley v. County of San Diego (1998) 19 Cal.4th 532 [79 Cal.Rptr.2d 672]
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Declaraton of fault by foreign attorney entitled client to relief under CCP § 473
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People v. Diagon (1986) 177 Cal.App.3d 958
Delay in handling of client's matter amounts to reckless incompetence
In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41
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Porter v. Ollison (9th Cir. 2010) 620 F.3d 952

Duties
specially appearing attorney owes a duty of care to the litigant

Duty in handling discovery of electronically stored information (ESI)
CAL 2015-193

Duty to advise client of reasonably apparent legal problems outside the scope of representation
LA 502 (1999)
attorneys may give legal advice and assistance limited to activities permissible under California state law provided the client is advised of possible liability under federal law and other potential adverse consequences
LA 527, SF 2015-1

Duty to protect client interest by asserting proper objections and consulting with client where appropriate to fulfill duty of competent representation
LA 497 (1999)

Excessive caseload and limited resources
one investigator shared among 12 contract defenders

Failure to adequately represent client’s interest in land sale
Guzzetta v. State Bar (1987) 43 Cal.3d 962 [239 Cal.Rptr. 675]

Failure to adequately supervise
CAL 2015-193, CAL 2010-179
LA 522 (2009)
adequate office procedures and staff training
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

attorney employed non-attorney to supervise other non-attorneys in preparing habeas corpus petitions
In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]

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Bernstein v. State Bar (1990) 50 Cal.3d 221, 231

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-pattern of conduct needed to prove prosecutor’s liability for failing to train employees in Brady obligations

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In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
-paralegal submitted incorrect address for attorney to the Bar
In the Matter of Respondent AA (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721
-responsibility for calendaring error falls on attorney regardless of whether the error was made by the attorney or paralegal
Pincay v. Andrews (9th Cir. 2004) 389 F.3d 853
outside lawyers or providers of outsourced legal services
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SD 2007-1
outside vendors related to ESI (electronically stored information)
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Failure to advise client on immigration matter
Ghahremani v. Gonzales (9th Cir. 2007) 498 F.3d 993
-attorney's incorrect advice on immigration matter resulted in alien being denied his right to appeal
Salazar-Gonzalez v. Lynch (9th Cir. 2015) 798 F.3d 917
-possible adverse implications of participating in collaborative family law agreement
OC 2011-01

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Wise v. DLA Piper LLP (2013) 220 Cal.App.4th 1180 [164 Cal.Rptr.3d 54]

In re Oheb (Review Dept. 2004) 6 Cal. State Bar Ct. Rptr. 970
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claims of prior attorney in matter
CAL 2008-175
-class action
-counsel owed a duty, post certification, to advise clients of other claims related to but outside the scope of the representation

failure to advise client of collateral penalty (deportation) is not ineffective assistance of counsel
U.S. v. Fry (9th Cir. (Nev.) 2003) 322 F.3d 1198

possible adverse implications of participating in collaborative family law agreement
OC 2011-01

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not shown when client signed a form with boilerplate language about immigration consequences of guilty plea
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Failure to advise/misadvise about the immigration consequences of guilty plea
U.S. v. Rodriguez-Vega (9th Cir. 2015) 797 F.3d 781
U.S. v. Chan (9th Cir. 2015) 792 F.3d 1151
U.S. v. Bonilla (9th Cir. 2011) 637 F.3d 980
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In re Resendiz (2001) 25 Cal.4th 230 [105 Cal.Rptr.2d 431]
People v. Espinosa (2016) 27 Cal.App.5th 908 [238 Cal.Rptr.3d 619]
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Failure to appear at hearing to mitigate prejudice caused by attorney
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

Failure to argue for reversal of judgment

Failure to cite case law or authorities in opposition brief
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

Failure to communicate with client before penalty phase of trial
Summerlin v. Schriro (9th Cir. 2005) 427 F.3d 623

Failure to communicate status of case to client
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

Failure to conduct discovery
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

Failure to consult experts
Richter v. Hickman (9th Cir. 2009) 578 F.3d 944

Failure to cooperate with discovery
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

Failure to deliver trust amendment to trustee before death of settlor

Failure to file opposition to summary judgment motion
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

Failure to file opposition to summary judgment motion prepared poorly due to his serious illness and heavy medication, court finds excusable neglect
Minnick v. City of Petaluma (2016) 3 Cal.App.5th 15 [207 Cal.Rptr.3d 350]

Failure to file responsive pleading thereby causing harm to client

Failure to file timely notice of appeal
Canales v. Roe (9th Cir. 1998) 151 F.3d 1226 [949 F.Supp. 762]

Failure to inform client of denial of habeas petition constitutes abandonment
Foley v. Biter (9th Cir. 2015) 793 F.3d 998

Failure to interview and call witnesses
Miranda v. Clark County, Nevada (9th Cir. ( Nev.) 2003) 279 F.3d 1102
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Failure to investigate California and non-California law applicable to client’s case
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Failure to investigate potential client fraud
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 Failure to overrule criminal defendant’s decision to call witness not incompetent

Failure to provide competent legal services in bankruptcy matters
In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861

Failure to provide competent legal services in immigration matters
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In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416

Failure to provide competent legal services in patent matters

Failure to pursue breach of contract action on behalf of client

Failure to respond to cross-complaint
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

Failure to return client’s multiple telephone messages

Failure to serve answer repeatedly and in violation of court order
Community Dental Services v. Tani (2002) 282 F.3d 1164

Failure to supervises
client related to ESI
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permitted investigator to obtain search warrants in violation of court order
In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

Failure to suppress evidence

Failure to take action to set aside default judgment
Moore v. State Bar (1964) 62 Cal.2d 74, 84 [41 Cal.Rptr. 161, 396 P.2d 577]
Hyland v. State Bar (1963) 59 Cal.2d 765, 772 [31 Cal.Rptr. 329, 382 F.2d 369]
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Failure to take steps to establish pregnancy

Failure to use reasonable skill and diligence
Sands v. State Bar (1989) 49 Cal.3d 919
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In the Matter of Aulakh (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690
In the Matter of Hindin (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657

fee dispute does not relieve counsel of duty

LA 521 (2007)
specially appearing attorney owes a duty of care to the litigant

will registry, attorney had duty to determine that registry protects interests of the client before registering client’s identifying information

CAL 2007-173

Gross negligence
Lai v. State of California (9th Cir. 2010) 610 F.3d 518
violation of attorney’s oath

Business and Professions Code section 6067
Black v. State Bar (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288, 499 P.2d 968]
Vaughn v. State Bar (1972) 6 Cal.3d 847, 859 [100 Cal.Rptr. 713, 494 P.2d 1257]
Clark v. State Bar (1952) 39 Cal.2d 161, 174 [246 P.2d 1]
Stephens v. State Bar (1942) 19 Cal.2d 580
Waterman v. State Bar (1936) 8 Cal.2d 17, 19-20
Marsh v. State Bar (1930) 210 Cal. 303, 307

-default judgment may be set aside when attorney is grossly negligent which resulted in the judicial system losing credibility and appearance of fairness and an innocent party suffers drastic consequences

Community Dental Services v. Tani (2002) 282 F.3d 1164

Habeas corpus
Foley v. Biter (9th Cir. 2015) 793 F.3d 998
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Foley v. Biter (9th Cir. 2015) 793 F.3d 998

Incapacity to attend to law practice

inactive enrollment
Business and Professions Code section 6007

-alcohol addiction
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-conservator appointed on account of mental condition
Business and Professions Code section 6007(a)

-drugs, addiction
Business and Professions Code section 6007(b)

-guardian appointed on account of mental condition
Business and Professions Code section 6007(a)

-illness
Business and Professions Code section 6007(b)

-incompetent, mentally
Business and Professions Code section 6007(a)

-insane, following judicial determination
Business and Professions Code section 6007(a)

-involuntary treatment required
Business and Professions Code section 6007(a)

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Business and Professions Code section 6007(b)

unfinished client matters

-alcohol, excessive use of
Business and Professions Code section 6190

-drugs, excessive use of
Business and Professions Code section 6190

-infamy
Business and Professions Code section 6190

-jurisdiction of the courts
Business and Professions Code sections 6190-6190.6

-mental illness
Business and Professions Code section 6190

-physical illness
Business and Professions Code section 6190

Incompetent representation of counsel

basis for reversal of judgment

-report by clerk to State Bar

Business and Professions Code section 6086.7

specially appearing attorney owes a duty of care to the litigant


Lack of zealous defense

a competent attorney would not have conceded the cause of death, where there were “tantalizing indications” that autopsy specimens had been contaminated, serious questions raised, additionally, an alternative cause of death was readily apparent and there had been a lapse in chain of custody of the autopsy specimens

Rossum v. Patrick (9th Cir. 2010) 622 F.3d 1262

failure to investigate and introduce exculpatory evidence at trial

Hart v. Gomez (9th Cir. 1999) 174 F.3d 1067


Lack of zealous representation

People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]

Lack time and resources to represent pro bono client

Segal v. State Bar (1988) 44 Cal.3d 1077 [245 Cal.Rptr. 404]

Yarbrough v. Superior Court (1985) 39 Cal.3d 197 [216 Cal.Rptr. 425]


Licensed attorneys who are not active members of the State Bar of California

effect on underlying matter

People v. Ngo (1996) 14 Cal.4th 30 [57 Cal.Rptr.2d 456]


People v. Medler (1986) 177 Cal.App.3d 927 [223 Cal.Rptr. 401]


federal courts may require membership in State Bar of California to ensure a uniform minimum level of competence for lawyers

Russell v. Hug (9th Cir. 2002) 275 F.3d 812

Limited preparation does not affect

LA 379 (1979)

See How to Use This Index, supra, p. i
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Mere ignorance of law insufficient
Zitny v. State Bar (1966) 64 Cal.2d 787 [51 Cal.Rptr. 825, 415 P.2d 521]
Griffith v. State Bar (1953) 40 Cal.2d 470, 476
Friday v. State Bar (1943) 23 Cal.2d 501, 505-508

Miscalendaring of a five-year statute of limitation period
In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47

Motion for relief from mistake appropriate where attorney neglected to pay transfer of venue fees resulting in dismissal of client’s matter

Negligent legal representation by itself does not prove misconduct
In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138

Negligent negotiation
goal of lawyer is to achieve a reasonable settlement
settlements are often protected judgment calls

Obligation to represent client competently not alleviated by a conflict of interest waiver
CAL 1989-115

Reversal of judgment in judicial proceeding based upon incompetent representation
-report by clerk to State Bar
Business and Professions Code section 6086.7
Right to discharge retained counsel does not require showing of incompetence

Sexual relations with client
Rule 3-120, Rules of Professional Conduct (operative as of September 14, 1992)
Business and Professions Code section 6106.9

Suspected attorney engaged in unlawful practice of law may not be charged with failure to act competently
In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563

Technology
understanding transmittal and storage of digital information, ESI (electronically stored information)
CAL 2015-193, SD 2012-1
use and understanding of technology assisted review (TAR)
SD 2018-3
use and understanding of virtual law office (VLO)
CAL 2012-184

COMPLAINT

Business and Professions Code section 6043.5
Business and Professions Code section 6094

CONFIDENTIALITY OF THE CLIENT [See Attorney-client relationship. Conflict of interest, client.]

Pro bono clients
Segal v. State Bar (1988) 44 Cal.3d 1077 [245 Cal.Rptr. 404]

Public defender

Attorney-client privilege, existence of
Emerick v. Eagan (1986) 41 Cal.3d 275 [228 Cal.Rptr. 249, 721 P.2d 967]
Hoffman v. City and County of San Francisco (N.D. Cal. September 14, 1992)

Attorney-client disagreement as to claim or defense
In re Grand Jury Subpoena (Horn) (9th Cir. 1992) 976 F.2d 1098

Rules 4-101 and 5-102(B), Rules of Professional Conduct (operative until May 26, 1989)

Rules
3-310(D) and 3-310, Rules of Professional Conduct (operative as of March 26, 1989)

Arbitration agreements
confidentiality provision within law firm employment agreement
Davis v. O'Melveny & Myers (9th Cir. 2007) 485 F.3d 1066

Assertation of attorney-client privilege

Attorney as partner or employee of two law firms
LA 511 (2003)

Arbitration agreements
confidentiality provision within law firm employment agreement
Davis v. O'Melveny & Myers (9th Cir. 2007) 485 F.3d 1066

Assertation of attorney-client privilege

Attorney as partner or employee of two law firms
LA 511 (2003)

Attorney opinion does not reveal any protected information

Attorney-client disagreement as to claim or defense
In re Atchley (1957) 48 Cal.2d 408, 418 [310 P.2d 15]

Attorney-client privilege, existence of
U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
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Attorney-client privilege, existence of
U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
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CONFIDENCES OF THE CLIENT

trust obligations between the United States and Indian tribes are defined by statute and are not comparable to a private trust relationship


Attorney-client privilege, scope

People v. Canfield (1979) 12 Cal.3d 699, 705 [117 Cal.Rptr. 81, 527 P.2d 633]
CAL 2016-195
LA 519 (2006) SF 2014-1
broaders than Fifth Amendment’s protection in a federal investigation

confidential communications of documents that are available to the public and information that may be known to others

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
CAL 2016-195
court may not find waiver of privilege when objecting party submits an inadequate privilege log that fails to provide sufficient information to rule on merits of objections

court may not require disclosure of information to rule on claim of privilege

DP Pharm LLC v. Cheadle (2016) 246 Cal.App.4th 653 [200 Cal.Rptr.3d 937]
does not ordinarily protect the identity of the client

U.S. v. Bauer (9th Cir. 1997) 132 F.3d 504
People v. Chapman (1984) 36 Cal.3d 98, 110
does not require DOJ to release certain sections of USA Book due to attorney work product exemption under Freedom of Information Act

American Civil Liberties Union of Northern California v. United States Department of Justice (9th Cir. 2018) 880 F.3d
extends to all communication relating to a client’s matter or interests among and between multiple attorneys who are representing client

Fireman’s Fund Insurance Co. v. Superior Court (2011) 196 Cal.App.4th 1283 [127 Cal.Rptr.3d 768]
extends to investigative report prepared for city by outside attorney despite attorney not providing legal advice to city

City of Petaluma v. Superior Court (2016) 248 Cal.App.4th 1023 [204 Cal.Rptr.3d 196]
extends to opinion letter by outside counsel to corporate counsel which court could not require in camera disclosure for ruling on claim of privilege

Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]
in camera
-determination of issue of privilege

DP Pharm LLC v. Cheadle (2016) 246 Cal.App.4th 653 [200 Cal.Rptr.3d 937]
--court may not review the content of a communication to determine whether it is privileged

DP Pharm LLC v. Cheadle (2016) 246 Cal.App.4th 653 [200 Cal.Rptr.3d 937]
in camera review of communications to determine privilege

in identifying the “real client” for purposes of finding the fiduciary exception to the attorney-client privilege, the Court applied the following factors: whether the advice was paid for by the trust corpus; whether the trustee had reason to seek personal advice rather than as a fiduciary; and whether the advice could be intended for a purpose other than the benefit of trust

not limited to litigation communications

Behumin v. Superior Court (Schwab) (2017) 9 Cal.App.5th 833 [215 Cal.Rptr.3d 475]
survives client’s death

survives corporate merger


See How to Use This Index, supra, p. i 93 2019 (updated entries through 12/31/2018)
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opinion letter by outside counsel to corporate counsel
covered by attorney-client privilege
Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]

report prepared by police officers in the performance of their
duties are public record and are not privileged

Sixth Amendment's Confrontation Clause vs. attorney-client privilege
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source of funds in client trust account
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tripartite attorney-client privilege arises when title insurer
hires law firm to prosecute action on behalf of its insured
under title insurance policy
Bank of America v. Superior Court of Orange County (2013) 212 Cal.App.4th 1076 [151 Cal.Rptr.3d 526]

use of courtroom to eavesdrop on confidential attorney-client
communications
- dismissal of criminal complaint based on government’s
use of law enforcement agents to eavesdrop on
confidential attorney-client communications was not an
appropriate remedy
People v. Shiner (2010) 190 Cal.App.4th 400 [118 Cal.Rptr.3d 233]

Attorney-client relationship, existence of
Davis v. State Bar (1983) 33 Cal.3d 231 [188 Cal.Rptr. 441, 655 P.2d 1276]
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        - I.R.C. sec. 6050(I)
      - United States v. Blackman (9th Cir. 1995) 72 F.3d 1418
    - to law enforcement agents
      - intentionally placed to eavesdrop on privileged attorney-client communications
        - People v. Shrier (2010) 190 Cal.App.4th 400 [118 Cal.Rptr.3d 233]
    - to legal aid society’s Board of Directors
      - LA 358 (1976)
    - to opposing counsel and to the court
      - law firm representing corporation has duty to disclose client’s suspended status
    - to own counsel
      - attorney plaintiff may not prosecute a lawsuit if client confidences would be disclosed unless statute removes the protection of the attorney-client privilege
        - General Dynamics Corp. v. Superior Court (1994) 7 Cal.4th 1164, 1190 [32 Cal.Rptr.2d 1]
      - Dietz v. Meisheimer et al. (2009) 177 Cal.App.4th 771 [177 Cal.Rptr.3d 464]
      - former in-house counsel may disclose employer-client confidences to her own attorneys to the extent relevant to her wrongful termination action
        - CAL 2012-183
        - LA(i) 1961-3
        - SD 2008-1
      - parties may disclose to their respective counsel documents containing potentially confidential or privileged information of third party clients
        - Chubb & Son v. Superior Court (Lemmon) (2014) 228 Cal.App.4th 1094 [176 Cal.Rptr.3d 389]
    - to police
    - to prosecutor pursuant to a search warrant
      - People v. Superior Court (Lafta) (2001) 25 Cal.4th 703 [107 Cal.Rptr.2d 323]
      - to protect self
        - -in tax audit
          - LA(l) 1974-12
        - to third parties reasonably necessary to carry out the representation
    - -common interest doctrine, did not protect otherwise privileged communications disclosed between parties because their interests were fundamentally divergent
    - -public relations consultant was not someone to whom disclosure was reasonably necessary to accomplish the purpose for which client retained attorney
      - Behunin v. Superior Court (Schwab) (2017) 9 Cal.App.5th 833 [215 Cal.Rptr.3d 475]
    - to third party who will fund litigation
      - LA 500 (1999)
    - to third party who will pay client’s legal fees
      - LA 456
    - violation of court order by third party
      - LA 394 (1982)
    - when known to others
      - In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
      - CAL 2016-195, CAL 1981-58
      - LA(i) 1971-3
    - where attorney believes innocent person wrongly convicted of felony
      - LA 389 (1981)
    - will
      - -contents after incompetency of client
        - LA 229 (1955)
      - will depository, Probate Code sections 700 et seq., provide for termination of deposit with attorney, attorney may not use a commercial will depository without client consent
        - COSTCO Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 1023 [204 Cal.Rptr.3d 196]
    - will registry, attorney may register certain identifying information about a client’s will or estate documents if the attorney can determine, based on knowledge of client, that disclosure will not be detrimental to the client and will advance the client’s interests
        - CAL 2007-173
    - withdrawal from case by attorney at sentencing phase
      - CAL 1983-74
      - Discovery
        - Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]
        - City of Petaluma v. Superior Court (2016) 248 Cal.App.4th 1023 [204 Cal.Rptr.3d 196]
      - In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
      - CAL 1993-133

See How to Use This Index, supra, p. i
CONFIDENCES OF THE CLIENT

automatic disqualification is not appropriate for mere exposure to the opposing party’s confidential information with no evidence that they attorney actually received or used such information


because of possibility of breach

Kearns v. Fred Lavery Porsche Audi Co. (C.A. Fed. 1984) 745 F.2d 600, 603


choice of counsel

La Jolla Cove Motel and Hotel Apartments Inc. v. Superior Court (2004) 121 Cal.App.4th 773 [17 Cal.Rptr.3d 467]

defense counsel disqualified when former co-defendant is called as the prosecution’s key witness and counsel’s ability to cross-examine former client is impaired

United States v. Henke (9th Cir. 2000) 222 F.3d 633

marital relationship does not create assumption that the attorney will use such information


DCH Health Services Corp. v. Waite (2002) 95 Cal.App.4th 829 [115 Cal.Rptr.2d 847]

no automatic various disqualification of law firm when tainted attorney is properly screened


no automatic vicarious disqualification of law firm when tainted attorney leaves the firm and there’s evidence that no one other than the departed attorney had any dealings with the client or obtained confidential information


no conflict of interest found where former member of public defender’s office represented witness in current matter where defendant was represented by another member of public defender’s office and where office received no confidential information of witness


not automatic where previous representation did not expose attorney to confidential information material to the current representation


not required when based on counsel’s alleged familiarity with claims procedures from a prior representation of the moving party


not required where attorney who handled adverse party’s prior matter has left firm and there is no evidence that confidential information was exchanged


not required where defendants had common interests and shared information


not required where firm-switching attorney’s relationship with client at former firm was peripheral and attenuated and documents relating to case that attorney accessed contained no confidential information


not required where plaintiff’s expert waived conflict where defense counsel had previously represented expert

Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]
CONFIDENCES OF THE CLIENT

not warranted where expert witness, initially retained by
defendant and later designated as a potential witness for
plaintiff, disclosed no confidential information from defendant
to plaintiff’s counsel
preservation of shared confidences in a law firm
-rebuttable
County of Los Angeles v. United States District Court
(Forsyth) (9th Cir. 2000) 223 F.3d 990
Openwave Systems, Inc. v. Myriad France S.A.S.
Lexis 93147
vicarious disqualification of city attorney’s office not required,
when attorney representing party took job in city attorney’s
office which was adverse to the attorney’s former client and
where screening measures were timely and effective
vicarious disqualification where “of counsel” attorney and law
firm represented opposing parties and where “of counsel”
attorney obtained confidential information and provided legal
services to client
People ex rel. Dept. of Corporations v. Speedee Oil
Change Systems (1999) 20 Cal.4th 1135 [86 Cal.Rptr.2d
816]
Distinguished from attorney-client privilege
763]
Cal.App.3d 529, 536, fn. 5
In the Matter of Johnson (Review Dept. 2000) 4 Cal. State
Bar Ct. Rptr. 179
CAL 2016-195, OC 97-002
District attorney
deputy district attorney cannot assert attorney-client privilege
as to documents prepared in official capacity when the
attorney is subject of criminal investigation
People ex rel. Lockyer v. Superior Court (Pfingst) (2000)
83 Cal.App.4th 387 [99 Cal.Rptr.2d 646]
Does not extend to communications intended to be confidential
where party claiming privilege fails to explain who was the
attorney and who was the client to communications
League of California Cities v. Superior Court (2015) 241
Cal.App.4th 976 [194 Cal.Rptr.3d 444]
Dual professions, attorney engaged in
CAL 1999-154
Duty of loyalty to client may require attorney’s limited response
to judge’s questions absent an affirmative duty to inform the
court
OC 95-0001
client’s absence from court, attorney may not answer court’s
inquiry if harmful to client
SD 2011-1
Duty to assert attorney-client privilege
CAL 2015-193
Duty to divulge client fraud
Hinds v. State Bar (1941) 19 Cal.2d 87, 92-93
LA 436 (1985)
Duty to former client
Trone v. Smith (9th Cir. 1980) 621 F.2d 994, 998-999
Duty to protect client confidences and secrets
after death of client
[118 S.Ct. 2081]
HLC Properties, Ltd. v. Superior Court (2005) 35 Cal.4th
54 [24 Cal.Rptr.3d 199]
after termination of attorney-client relationship
Elan Transdermal Limited v. Cygnus Therapeutic
Systems (N.D. Cal. 1992) 809 F. Supp. 1383
In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39
Cal.Rptr.3d 1]
150, 155 [172 Cal.Rptr. 478, 480]
Dietz v. Meisenheimer et al. (2009) 177 Cal.App.4th 771
[177 Cal.Rptr.3d 464]
Cal.Rptr.3d 880]
[20 Cal.Rptr.2d 132]
Cal.Rptr. 185]
In the Matter of Johnson (Review Dept. 2000) 4 Cal.
State Bar Ct. Rptr. 179
CAL 2016-195, CAL 1993-133
communication between defendant/minor and
psychotherapist appointed to assist in his defense are
confidential under attorney-client privilege
Elijah W. v. Superior Court of Los Angeles (2013) 216
Cal.App.4th 140 [156 Cal.Rptr.3d 592]
does not protect third party information unless third party is
an agent of client
389 [163 Cal.Rptr.3d 135]
extends to e-discovery
CAL 2015-193
extends to judgment creditor’s request on debtor’s attorney’s
other clients, firm’s billings on matters for these clients and
possible alter ego entities of judgment debtor
Fox Johns Lazar Pekin & Wexler, APC, et al. v. Superior
Court (2013) 219 Cal.App.4th 1210 [162 Cal.Rptr.3d 571]
extends to preliminary consultations by a prospective client
with a view to retention of that lawyer although employment
does not result
In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39
Cal.Rptr.3d 1]
People ex rel. Dept. of Corporations v. Speedee Oil
Change Systems (1999) 20 Cal.4th 1135 [86 Cal.Rptr.2d
816]
CAL 2003-161
extends to questions submitted by potential client via website
CAL 2005-168
-does not extend to private information received from a
non-client via an unsolicited email
SD 2006-1
handling discovery of electronically stored information (ESI)
CAL 2015-193
listserv postings should avoid including information regarding
particular cases
LA 514 (2005)
minor defendant is entitled to assistance of expert
psychotherapist, who will not report confidential information
about child abuse or threats to authorities
In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39
Cal.Rptr.3d 1]
People v. Superior Court (Laff) (2001) 25 Cal.4th 703
[107 Cal.Rptr.2d 323]
where the third party funds lawsuit in exchange for interest in
proceeds
LA 500 (1999)
Duty to reveal the fruits of crime in his possession to the
prosecution
CAL 1994-76
Electronic file
metadata
CAL 2015-193, CAL 2007-174, SD 2012-1
E-mail
CAL 2012-184, CAL 2010-179, CAL 2007-174
SD 2006-1
OC 97-002

See How to Use This Index, supra, p. i
CONFIDENCES OF THE CLIENT

from client to attorney sent on client’s employer’s computer, where client warned that communication was neither private nor confidential


Employee who also works for other lawyers

Penal Code section 135

CAL 1979-50

educate employee about maintaining clients’ confidences

CAL 1979-50

Evidence

state rule of professional conduct cannot provide an adequate basis for a federal court to suppress evidence that is otherwise admissible

United States v. Ruehle (9th Cir. 2009) 583 F.3d 600

Evidence of crime in lawyer’s possession

United States v. Kellogg (9th Cir. (Or.) 2000) 217 F.3d 1084

People v. Piccione (1982) 31 Cal.3d 731 [183 Cal.Rptr. 685]

People v. Meredith (1981) 29 Cal.3d 682, 696

People v. Superior Court (Fairbanks) (1987) 192 Cal.App.3d 32, 39

People v. Lee (1970) 3 Cal.App.3d 514 [83 Cal.Rptr. 715]

CAL 1984-76

LA 466

Exceptions to rule of confidentiality

U.S. v. Sideman & Bancroft, LLP (9th Cir. 2013) 710 F.3d 1197

McClure v. Thompson (9th Cir. (Or.) 2003) 323 F.3d 1233

Chubb & Son v. Superior Court (Blackmon) (2014) 228 Cal.App.4th 1094 [176 Cal.Rptr.3d 389]


CAL 2012-183


SD 2008-1

SF 2014-1

Exceptions to the attorney-client privilege codified in the Evidence Code modify the duty of confidentiality under Bus. & Prof. Code § 6068(e)


Expert


LA 513 (2005)

communication between defendant/minor and psychotherapist appointed to assist in his defense are confidential under attorney-client privilege

Elijah W. v. Superior Court of Los Angeles (2013) 216 Cal.App.4th 140 [156 Cal.Rptr.3d 592]

designation of a party as an expert trial witness is not in itself implied waiver of party’s attorney-client privilege


disqualification may be required if the expert possesses confidential information material to the pending litigation

Rico v. Mitsubishi (2007) 42 Cal.4th 807 [68 Cal.Rptr.3d 758]


disqualification of counsel not warranted where expert witness, initially retained by defendant and later designated as a potential witness for plaintiff, disclosed no confidential information from defendant to plaintiff’s counsel


disqualification of expert witness interviewed but not retained by opposing party is abuse of discretion

Western Digital Corp. v. Superior Court (1998) 60 Cal.App.4th 1471 [71 Cal.Rptr.2d 179]

expert’s opinion

CAL 1981-58

-minor defendant is entitled to assistance of expert psychotherapist, who will not report confidential information about child abuse or threats to authorities

Elijah W. v. Superior Court of Los Angeles (2013) 216 Cal.App.4th 140 [156 Cal.Rptr.3d 592]

law firm’s retention of expert previously rejected by opposing party justifies disqualification from further representation


need not be removed where plaintiff’s expert was previously represented by defense counsel and where expert waives conflict

Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

Extends to information learned from third parties resulting from confidential communications with client


Fee agreement considered confidential communication

Business and Professions Code section 6149

Dietz v. Meisenheimer et al. (2009) 177 Cal.App.4th 771 [177 Cal.Rptr.3d 464]

LA 456

Fee arrangement not subject to attorney-client privilege, no revelation of confidential information

U.S. v. Bauer (9th Cir. 1997) 132 F.3d 504

United States v. Blackman (9th Cir. 1995) 72 F.3d 1418

Ralls v. U.S. (9th Cir. 1995) 52 F.3d 223

In re Grand Jury Proceedings v. U.S. (9th Cir. 1994) 33 F.3d 1060

Tornay v. U.S. (9th Cir. 1988) 840 F.2d 1424

U.S. v. Hirsch (9th Cir. 1986) 803 F.2d 493

Phaksuan v. United States (9th Cir. 1984) 722 F.2d 591, 594

U.S. v. Sherman (9th Cir. 1980) 627 F.2d 189, 191-192

Fiduciary relationship, existence of

Oasis West Realty, LLC v. Goldman (2011) 51 Cal.4th 811 [124 Cal.Rptr.3d 256]


Johnstone v. State Bar (1966) 64 Cal.2d 153, 155-156 [49 Cal.Rptr. 97]

People v. Davis (1957) 48 Cal.2d 241, 256 [309 P.2d 1]

CAL 1987-93, CAL 1984-83


in identifying the “real client” for purposes of finding the fiduciary exception to the attorney-client privilege, the Court applied the following factors: whether the advice was paid for by the trust corpus; whether the trustee had reason to seek personal advice rather than as a fiduciary; and whether the advice could be intended for a purpose other than the benefit of trust


trust obligations between the United States and Indian tribes are defined by statute and are not comparable to a private trust relationship


Former client

accept employment adverse to

-knowledge of former client’s property and property rights involved in action

LA 31 (1925)

use of confidential communications of

-in subsequent representation of adverse party

LA 27 (1925)

Franchise group

franchisee law firms of franchise group obtaining confidences

LA 423 (1983)

See How to Use This Index, supra, p. i 2019 (updated entries through 12/31/2018)
FRAUD AGAINST CLIENT

upon client

Choate v. State Bar (1953) 41 Cal.2d 399

Hinds v. State Bar (1941) 19 Cal.2d 87, 92-93

FUGITIVE

client’s absence from court, attorney may not answer court’s inquiry if harmful to client

SD 2011-1

inadvertent release of documents under Public Records Act does not waive the attorney-client privilege

Clark v. Superior Court (2011) 196 Cal.App.4th 37 [125 Cal.Rptr.3d 361]

electronic communication technologies, utilization of

OC 97-002

if involuntary disclosure, privilege will be preserved if the holder has made efforts “reasonably designed” to protect the privilege

Gomez v. Vemon (9th Cir.(Idaho) 2001) 255 F.3d 1118

[50 Fed. R. Serv.3d (Callaghan) 436]

inadvertent release of documents under Public Records Act does not waive the attorney-client privilege

Newark Unified School District v. Superior Court (Brazil) (2016) 245 Cal.App.4th 887 [190 Cal.Rptr.3d 721]
thief of documents by an associate and the employer’s subsequent release of information in those documents to a third-party to investigate the associate’s conduct constituted a waiver of privilege

Pacific Pictures Corporation v. U.S. District Court (9th Cir. 2012) 679 F.3d 112

Incompetent client

attorney initiated conservatorship proceedings, absent client consent


duty of confidentiality compared with duty to be truthful to the court


Joint defense agreement

advance waiver of potential future conflict contained in a joint defense agreement found enforceable

In re Shared Memory Graphics (9th Cir. 2011) 659 F.3d 1336

may be created (and ended) by conduct as well as express agreement

U.S. v. Gonzalez (9th Cir. 2012) 669 F.3d 974

privilege related to documents shared before litigation


MEDIATION

Simmons v. Ghaderi (2008) 44 Cal.4th 570 [80 Cal.Rptr.3d 83]

Stewart v. Preston Pipeline Inc. (2005) 133 Cal.App.4th 1565 [36 Cal.Rptr.3d 901]

all communications among all participants remain privileged unless all mediation participants involved in a mediation-related communication agree to its disclosure

Gassel v. Superior Court (2011) 51 Cal.4th 113 [119 Cal.Rptr.3d 437]


communications and writings are confidential if materially related to and foster mediation, though not necessarily confidential simply because they are contemporaneous to a mediation

evidence of alleged oral settlement agreement made in mediation was inadmissible

Simmons v. Ghaderi (2008) 44 Cal.4th 570 [80 Cal.Rptr.3d 83]

See How to Use This Index, supra, p. i
exception mediation privilege
- admissibility of a chart, ruled to be a settlement agreement, which the parties had previously consented to disclosure in the event there was litigation to enforce the agreement (Evidence Code § 1123 et seq.)
- California, Inc. (2001) 26 Cal.4th 1
- LA 1971-25
- 107
- Possession of, presumed if substantial relationship of the client
- 2013) 2013 WL 2403641
- LA 504 (2006)
- Mismanagement of funds by client
- People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
- People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
- Possession of, presumed if substantial relationship of the matters
- rebuttable presumption
- County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990
- Perjury
- People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
- People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
- People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
- People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
bankruptcy proceedings
- attorney cannot use confidences of former client to challenge client's discharge of fees owed
breach by attorney, no "fruit of the poisonous tree" remedy absent government misconduct
- deceased client
    HLC Properties, Ltd. v. Superior Court (2005) 35 Cal.4th 54 [24 Cal.Rptr.3d 199]
    -- federal investigation
    -- intention of affecting property interest
    Evidence Code section 961
- defined
  U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
  Wells Fargo Bank v. Superior Court (Boltwood) (2000) 22 Cal.4th 201 [901 Cal.Rptr.2d 716]
  Moeller v. Superior Court (1997) 16 Cal.4th 317 [69 Cal.Rptr.2d 317]
  People v. Gionis (1995) 9 Cal.4th 1196 [40 Cal.Rptr.2d 456]
  St. Croix v. Superior Court (City and County of San Francisco) (2014) 228 Cal.App.4th 434 [175 Cal.Rptr.3d 202]
  State Farm Fire and Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625 [62 Cal.Rptr.2d 834]
  SD 2006-1
  - disqualification of law firm appropriate due to violation of ethical obligations regarding use of inadvertently disclosed privilege e-mail
    McDermott, Will & Emery, LLP v. Superior Court (Hausman) (2017) 10 Cal.App.5th 1083 [217 Cal.Rptr.3d 47]
  - email to attorney on client's employer's computer, where client warned that communication was not private nor confidential
    - fiduciaries: receivers, trustees, executors entitled to privilege
  - file
  - identity
    United States v. Blackman (9th Cir. 1995) 72 F.3d 1418
    In the Matter of the Grand Jury Subpoena Issue to Chesnoff (9th Cir. 1995) 62 F.3d 1144
    Rails v. U.S. (9th Cir. 1995) 52 F.3d 223
    Alexiou v. United States (9th Cir. 1994) 39 F.3d 973
    In re Grand Jury Subpoena (Horn) (9th Cir. 1992) 976 F.2d 1314, 1317

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Dole v. Milonas (9th Cir. 1989) 889 F.2d 885
Baird v. Koerner (9th Cir. 1960) 279 F.2d 623, 629
- in-house counsel may establish attorney-client relationship with law firm attorney
- joint clients
  -- common interest doctrine, no waiver of
    -- community of interest doctrine
    In re the Regents of the University of California (1996 Ind.) 101 F.3d 1386
    -- exception to privilege
    Evidence Code section 962
    -- joint defense agreement
    United States v. Henke (9th Cir. 2000) 222 F.3d 633
    -- when one of the joint clients sues their former attorney and not the other client, the non-suing client cannot prevent the parties to the lawsuit from introducing otherwise privileged attorney-client communications made in the course of the joint representation
    -- joint defense agreement; documents shared before litigation

common interest doctrine
- U.S. v. Gonzalez (9th Cir. 2012) 669 F.3d 974
- based on waiver analysis; parties may share privileged information when it furthers the attorney-client relationship
  Bank of America v. Superior Court of Orange County (2013) 212 Cal.App.4th 1076 [151 Cal.Rptr.3d 626]
- common interest doctrine, did not protect otherwise privileged communications disclosed between parties because their interests were fundamentally divergent

communications which are privileged
- American Civil Liberties Union of Northern California v. United States Department of Justice (9th Cir. 2016) 880 F.3d
  U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
  in re Grand Jury Subpoena Issued to Mark Torf of Torf Environmental Management (9th Cir. (Idaho) 2004) 357 F.3d 900
  Rails v. U.S. (9th Cir. 1995) 52 F.3d 223
  Alexiou v. United States (9th Cir. 1994) 39 F.3d 973
  in re Grand Jury Subpoena Issued to Gerson S. Horn (9th Cir. 1992) 976 F.2d 1314
  Chevron Corporation v. Pennzoil Company (9th Cir. 1992) 974 F.2d 1156
CONFIDENCES OF THE CLIENT

Dole v. Milonas (9th Cir. 1989) 889 F.2d 885
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Wells Fargo Bank v. Superior Court (Boltwood) (2000) 22 Cal.4th 201 [901 Cal.Rptr.2d 716]
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Holm v. Superior Court (1954) 42 Cal.2d 500, 506 [267 P.2d 1025]
City & County of San Francisco v. Superior Court (1951) 37 Cal.2d 227, 234-235 [251 P.2d 26]
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People v. Shrier (2010) 190 Cal.App.4th 400 [118 Cal.Rptr.3d 233]
Tilmas v. Superior Court of Orange County (2001) 87 Cal.App.4th 738 [104 Cal.Rptr.2d 803]
People v. Morgan (1956) 140 Cal.App.2d 796, 803 [296 P.2d 75]
In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
CAL 2016-195

-client was unable to demonstrate communications with third-party were made in the course of the attorney-client relationship, the attorney-client privilege does not attach

-communications between firm attorney and in-house counsel related to dispute with current client may be privileged

-differences between confidences and secrets and privileged communications
SD 2011-1

documents improperly taken by employee, from employer, in violation of non-disclosure agreement, were attorney-client privileged documents and were improperly reviewed by counsel for the employee
Clark v. Superior Court (2011) 196 Cal.App.4th 37 [125 Cal.Rptr.3d 361]

-does not allow former trustee to withhold communications with trust’s former counsel on ground of attorney-client privilege unless trustee retains his/her own counsel for personal services and pays fees out of pocket

-does not protect third party information unless third party is an agent of client
Behunin v. Superior Court (Schwab) (2017) 9 Cal.App.5th 833 [215 Cal.Rptr.3d 475]

-email to attorney was neither private nor confidential

-exceptions
Murdoch v. Castro (9th Cir. 2010) 609 F.3d 983
Arden v. State Bar (1959) 52 Cal.2d 310, 320

-does not extend to employee’s personal claim of attorney-client privilege to protect his communications with corporate counsel
U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148

-does not extend to otherwise unprivileged subject matter that has been communicated to attorney

--co-defendant’s statements in letter to own attorney which, if disclosed, would be purportedly of exculpatory nature as to other co-defendant
McKnew v. Castro (9th Cir. 2010) 609 F.3d 983

--does not apply to work product

--does not extend to employee’s personal claim of attorney-client privilege to protect his communications with corporate counsel
U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148

--does not extend to otherwise unprivileged subject matter that has been communicated to attorney


--DOJ cannot withhold documents under FOIA that do not present a risk of circumvention of legitimate government surveillance and the law by wrongdoers

American Civil Liberties Union of Northern California v. United States Department of Justice (9th Cir. 2018) 880 F.3d

See How to Use This Index, supra, p. i
--extends to opinion letter by outside counsel to
corporate counsel which court could not require in
camera disclosure for ruling on claim of privilege
Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]
--in camera review of communications to determine privilege
--investigation activities by a claims adjuster who also
is an attorney may not be covered by the privilege
--purpose of the communication, between attorney and client
Clark v. Superior Court (2011) 196 Cal.App.4th 37 [125 Cal.Rptr.3d 361]
--questionnaire, where no waiver of privilege
Barton v. U.S. Dist. Court for Central Dist. of Cal. (9th Cir. 2005) 410 F.3d 110
--report prepared by expert-consultant is protected by the
attorney's work product privilege
In re Grand Jury Subpoena Issued to Mark Torf of Torf Environmental Management (9th Cir. (Idaho) 2004) 357 F.3d 909

Confidences of the Client

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-due process
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-fraud or crime
In re Napster, Inc., Copyright Litigation (9th Cir. 2007) 479 F.3d 1078

--preponderance of evidence required to establish
In re Napster, Inc., Copyright Litigation (9th Cir. 2007) 479 F.3d 1078

-identity of putative class members not covered by privilege
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-no implied exceptions to attorney-client privilege

-to mediation privilege
--admissibility of a chart, ruled to be a settlement agreement, which the parties had previously consented to disclosure in the event there was litigation to enforce the agreement (Evidence Code § 1123 et seq.)
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-attorney appointed for minor serves as guardian ad litem and is holder of psychotherapist-patient privilege

-bankrupt corporation’s attorney-client privilege passes to insurers assigned to defend against claims where no director could be elected to waive privilege

-personal representative as
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-successor fiduciary

-successor of a merged corporation

in identifying the “real client” for purposes of finding the fiduciary exception to the attorney-client privilege, the Court applied the following factors: whether the advice was paid for by the trust corpus; whether the trustee had reason to seek personal advice rather than as a fiduciary; and whether the advice could be intended for a purpose other than the benefit of trust

-in house counsel may establish attorney-client relationship with law firm attorney

-insurance cases

-liability carrier for directors and officers of pre-merger corporation has no standing to waive privilege where it is not defending itself on the basis of the advice it received

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--privilege extends to opinion letter by outside counsel to corporate counsel which court could not require in camera disclosure for ruling on claim of privilege
Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]

-preservation of attorney-client privilege is a critical pretrial matter
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strictly scrutinized for fairness
Rodgers v. State Bar (1989) 48 Cal.3d 300
Beery v. State Bar (1987) 43 Cal.3d 802

unsecured promissory note does not give attorney a present interest in client’s property to trigger rule 3-300


Business transaction with former client

no violation of rule 3-300 found in disciplinary action where attorney did not comply with rule regarding the transaction

In the Matter of Allen (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198

using funds obtained in the representation

In the Matter of Gilles (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387

-attorney-client relationship continues to exist

Hunnicutt v. State Bar (1988) 44 Cal.3d 362

Child custody proceeding, disclosure to court, improper

conflict between client and child

-suggest appointment of separate counsel for child

CAL 1976-37

*Chinese Wall*

settlement confidentiality agreement

LA 512 (2004)

Circumstances of case evidence, reasonable possibility that

district attorney’s office may not act in even-handed manner


City

act against while representing insurance carrier of

SD 1974-22

advising constituent public agency ordinarily does not give

rise to attorney-client relationship separate and distinct from

entity of which agency is a part


assist in representation of actions and represent city employee against city in unrelated matter

LA 77 (1934)

associate of

-practice by

LA(I) 1975-4

attorney

46 Ops. Cal. Atty. Gen. 74 (10/14/65; No. 64-65)

No. 64-65

award when another attorney in the same firm represented

the city's police department at arbitration


city attorney/county counsel


74 Ops. Cal. Atty. Gen. 155 (8/13/91; No. 91-201)

61 Ops. Cal. Atty. Gen. 18, 22-23 (1/5/78; No. CV 77-118)

CAL 2001-156

-city attorney disqualified from representing city in matter related to prior representation of private company

City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]

-may serve simultaneously as a city council member

85 Ops. Cal. Atty. Gen. 115 (6/7/02; No. 01-1107)

-partner

--appointed as county counsel may contract with own firm to assist in the performance of duties

74 Ops. Cal. Atty. Gen. 155 (8/13/91; No. 91-201)

--practice by

LA(I) 1975-4

-partner represents

--in criminal matters

LA 242 (1957), LA(I) 1975-4

-practice by

--associate of

LA(I) 1975-4

-private attorney under contract to government agency

County of Santa Clara v. Superior Court (2010) 50 Cal.4th 35 [112 Cal.Rptr.3d 697]


-recusal of

People v. Municipal Court (Byars) (1978) 77 Cal.App.3d 294 [143 Cal.Rptr. 491]

-simultaneously acts as a member of Coastal Regional Commission which votes on matters relating to the city

SD 1977-1

-vicarious disqualification of city attorney’s office not required, when attorney representing party took job in city attorney’s office which was adverse to the attorney’s former client and where screening measures were timely and effective


city council member

-city council member who is also an attorney may not advocate on behalf of a client’s interests when those interests are adverse to the city

101 Ops. Cal. Atty Gen. 1 (04/03/18; No. 14-301)

-defense attorney in criminal matter


-practice by

CAL 1977-46

-practice by partners of

CAL 1981-63, CAL 1977-46

LA(I) 1975-4

SD 1976-12

-represent tort claimants against city

CAL 1981-63

-represents

--civil litigants

CAL 1977-46

--criminal defendants

CAL 1977-46

--in ordinance violations

LA 273 (1962)

SD 1969-1

--in traffic cases

SD 1969-1

fee, contingency contract with government agency

Orange County Water District v. Arnold Engineering Company et al. (2011) 196 Cal.App.4th 1110 [127 Cal.Rptr.3d 328]


Government Code section 1090

-city council may not contract with a law firm to represent the city when a member of the city council is also a member of the law firm, even where the firm will receive no fees for the representation


Class action

Anti-SLAPP statute inapplicable to claims that attorney abandoned clients in order to represent adverse interests
CONFLICT OF INTEREST

class action representatives may waive conflicts of interest on behalf of potential class members

class counsel offers to dismiss case if defendant makes multimillion dollar payment to attorney personally


class of interest when firm who employs attorney/plaintiff is counsel for the class for which attorney/plaintiff is a class representative

defendant agreed to hire class counsel to monitor the proposed settlement if approved

Linney v. Cellular Alaska Partnership (9th Cir. 1998) 151 F.3d 1234 [41 Fed.R.Serv.3d 1079]
disqualification not required when representing class in two cases since putative class members are not ‘clients’ and no conflict exists

Kullar v. Footlocker Retail, Inc. (2011) 191 Cal.App.4th 1201 [121 Cal.Rptr.3d 353]
duty of class counsel runs to the class and, in the event of conflicts, withdrawal is appropriate


incentive agreement between class representatives and class counsel

Rodriguez v. Disney (9th Cir. 2012) 668 F.3d 645
Rodriguez v. West Publishing Corporation (9th Cir. 2009) 563 F.3d 948

no automatic various disqualification of law firm when tainted attorney is properly screened

withdrawal by counsel who previously represented members opposed to the settlement, then later represented those in favor, was not improper


Client [This heading is used for fact situations that do not easily fit under other, less abstract headings. Most conflict of interest matters involving clients are indexed under various other headings.]

act against

LA(I) 1972-15, SD 1976-10

-in related matter

LA 448 (1987), LA(I) 1974-13, LA(I) 1971-7

-in unrelated matter

LA 266 (1959), LA(I) 1975-2, LA(I) 1971-7, LA(I) 1965-2
SD 1974-14

-witness

--against present client

---in criminal proceedings

CAL 1979-49

--expert witness is former client of attorney

LA 513 (2005)

former

-act against

LA(I) 1972-5

-in related matter

SD 1970-2

-in unrelated matter

LA(I) 1971-7, LA(I) 1969-2, LA(I) 1964-6
SD 1974-14, SD 1974-12, SD 1970-2

-expert witness is former client of attorney

LA 513 (2005)

holder of the privilege

Evidence Code section 953

initiation of conservatorship proceedings against


multiple clients

Evidence Code section 962

of associate

-represent client in claim against

CAL 1981-57
SD 1972-15

-witness

--against present client

CAL 1980-52

represent

-despite client malpractice suit against attorney’s former law corporation

SD 1978-10

-self and

LA 39 (1927)

Co-counsel

attorney’s self-interest does not create conflict with client when attorney seeks indemnification in malpractice action

Musser v. Provencher (2002) 28 Cal.4th 274 [121 Cal.Rptr.2d 373]

no fiduciary duty owed to co-counsel, where no collateral duties may interfere with duty of undivided loyalty and total devotion to client’s best interest


Communicate with client

potential malpractice claim, facts related to

CAL 2009-178

where attorney has professional or financial interest in the subject matter

CAL 2009-178

Communication with treating physician

SD 1983-9

sibling relationship between a lawyer and the opposing party’s physician is insufficient, standing alone, to preclude the lawyer from representing her client


Concurrent representation of clients with adverse interests

SD 2017-2

client as witness in another client’s case


witness, who is a client in a concurrent matter, has right to not have her counsel put her in such a position where she is portrayed in a negative manner


Condemnation

assist governmental body, former employer, when clients of partnership involved in the matter

LA 246 (1957)

Cone of silence


Confidential information

Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]


Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]


CONFLICT OF INTEREST

-burden to show presence of screening is on the party sought to be disqualified

County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990


Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100

*Croce v. Superior Court (1937) 21 Cal.App.2d 18, 19 [68 P.2d 369]

attorney’s purchase of judgment from adverse party and his attempt to enforce that judgment against former client in the same matter established a certainty that attorney possessed confidential information that could be used against former client


“Chinese wall”

-attorney’s receipt of confidential information as settlement officer would bar attorney’s firm from representing the opposing party


See How to Use This Index, supra, p. i 129 2019 (updated entries through 12/31/2018)
CONFLICT OF INTEREST


- separation between Public Defender and Alternate Public Defenders’ offices
  CAL. 2002-158

-settlement confidentiality agreement
  LA 512 (2004)

-steps which must be taken to set up an effective screen
  Armstrong v. McAlpin (2nd Cir. 1980) 625 F.2d 433
  -- public law office
  In re Charliesse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]

- vicarious disqualification not required
  -- district attorney
  --- recusal of entire office
  ---- not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office
  People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]

- vicarious disqualification of a firm denied because of the timely and effective screening of the tainted attorney
  County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990
  Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100

- vicarious disqualification of city attorney’s office not required, when attorney representing party took a job in city attorney’s office which was adverse to the former client and where screening measures were timely and effective

- vicarious disqualification of city attorney’s office where in related matter city attorney previously represented private company
  City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]

- vicarious disqualification of entire firm where no attempt to screen

- vicarious disqualification of public law office
  In re Charliesse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]

- vicarious disqualification required despite screening measures when attorney switches sides and the attorney is not a former government attorney moving to private practice

- waiving off of witness/employee of district attorney’s office is less drastic measure than disqualification

- when attorney is screened from participation in the matter to the satisfaction of adverse party
  LA 501 (1999)

-client and witness for co-defendant represented by same law firm
  Eversen v. Superior Court (1983) 34 Cal.3d 530 [194 Cal.Rptr. 448, 668 P.2d 755]

-common interest doctrine

-commonly known facts deemed not given in confidence

-conflict occurs when prosecution calls as witness former co-defendant with whom defense attorney had an attorney-client relationship under a joint defense agreement
  United States v. Henke (9th Cir. 2000) 222 F.3d 633

-county counsel representation of both parties

-detrimental use based on adverse positions as attorney for insurance company and counsel for opposing party
  Anderson v. Eaton (1930) 211 Cal. 113, 116 [93 P.2d 788]

-disclosure

-disclosure of, based on prior relationship with former client now opposing party
  Goldstein v. Leses (1975) 46 Cal.App.3d 614, 619-624 [120 Cal.Rptr. 253]
  LA 501 (1999)

-disqualification based on double imputation of confidential knowledge not found when lawyer is two steps removed from attorney who has confidential information about a client

-disqualification of attorney and attorney general denied where moving party had no reasonable expectation that confidential information shared with opposing party and party was advised and consented to disclosure
  Allegaert v. Perot (9th Cir. 1977) 565 F.2d 246

-disqualification of attorney from representing debtor is not attributable to his firm under Bankruptcy Code
  In re S.S. Retail Stores Corp. (9th Cir. 2000) 216 F.3d 633

-disqualification of attorney not required where firm-switching attorney’s relationship with client at former firm was peripheral or attenuated and documents relating to case that attorney accessed contained no confidential information
disqualification of attorney not required where party shared information of another party, with the adverse party, where there were simply overlapping interests, no joint clients privilege


disqualification of attorney not required where record does not create reasonable probability that confidential information was divulged – attorney dating opposing firm’s secretary


disqualification of attorney not required where substantial relationship is not shown and actual confidences of the former client are not breached


Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]


disqualification of attorney required where attorney actually possessed confidential information despite the fact that substantial relationship is not shown

Costello v. Buckley (2016) 245 Cal.App.4th 748 [199 Cal.Rptr.3d 891]

disqualification of counsel not required when based on counsel’s familiarity with claims procedures from a prior representation of the moving party that was not substantial


disqualification of defense counsel not required where plaintiff’s expert witness was a former client of defense counsel and where expert waives conflict

Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

disqualification of law firm not required where attorney who handled adverse party’s prior matter has left firm and there is no evidence confidential information was exchanged


disqualifying conflict may arise, with regard to an adverse non-client, by virtue of representing non-client’s attorney


disqualifying the firm from the litigation is reversed and remedied where disqualified attorney departs from mega-firm during pendency of appeal


dissemination of information to counsel for adversary by a third party


Cooke v. Superior Court (1978) 83 Cal.App.3d 582, 590-592 [147 Cal.Rptr. 915]

duty to protect continues after formal attorney-client relationship ends


former counsel for opposing party

Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]


-for disqualification purposes, confidential information may include knowledge of a client’s internal operations, policies, and litigation philosophies


-no automatic disqualification where previous representation did not expose attorney to confidential information material to the current representation


former law clerk/student in firm involved in litigation against former firm’s client


former state-employed attorney in firm involved in litigation against state


franchise group

-franchisee law firms of franchise group obtaining confidences

LA 423 (1983)

impute knowledge to co-counsel

Panduit Corp. v. All States Plastic Mfg. Co., Inc. (7th Cir. 1984) 744 F.2d 1564, 1578

In re Airport Car Rental Antitrust Litigation (N.D. Cal. 1979) 470 F.Supp. 495, 501


LA 501 (1999)

-to all in firm

CAL 1998-152, LA 377 (1978)

imputed knowledge not found


imputed knowledge theory holds that knowledge by any member of a law firm is knowledge by all of the attorneys, partners, and associates

In re S.S. Retail Stores Corp. (9th Cir. 2000) 216 F.3d 882 [36 Bankr.Ct.Dec. 79]

Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1984) 744 F.2d 1564, 1578

-also automatic where previous representation did not expose attorney to confidential information material to the current representation

CONFLICT OF INTEREST


"joint-client" exception to lawyer-client privilege

-when one of the joint clients sues their former attorney and not the other client, the non-suing client cannot prevent the parties to the lawsuit from introducing otherwise privileged attorney-client communications made in the course of the joint representation

[183 Cal.Rptr.3d 422]

joint defense agreement implied

U.S. v. Gonzalez (9th Cir. 2012) 669 F.3d 974

knowledge of attitudes, strengths, weaknesses strategy

Knight v. Ferguson (2007) 149 Cal.App.4th 1207 [57 Cal.Rptr.3d 823]

material to new representation

LA 501 (1999)

"materiality" of confidential information may be lost through passage of time

[45 Cal.Rptr.3d 464]

multiple representation

SF 1973-10

obtained from non-client and useful in representation in an action on behalf of a client


SD 2006-1

obtaining during course of representation of opposing party in previous lawsuit

Wutchumna Water Co. v. Bailey (1932) 216 Cal. 564, 573-574

"of counsel" to defendant’s firm becomes "of counsel" to plaintiff's firm

Atasi Corp. v. Seagate Technology (9th Cir. 1988) 847 F.2d 826

possession of as impetus to representation of client against former client

Sheaffer v. State Bar (1934) 220 Cal. 681 [32 P.2d 140]

potential disclosure


-in criminal case

Yorn v. Superior Court (1979) 90 Cal.App.3d 669, 675
[153 Cal.Rptr. 295]

-representation under Joint Powers Act

Government Code section 6500 et seq.

60 Ops. Cal. Atty. Gen. 206, 212-213 (7/7/77; No. CV 76-14)

presumption of possession

Trone v. Smith (9th Cir. 1980) 621 F.2d 994, 999

In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]


In re Airport Car Rental Antitrust Litigation (N.D. Cal. 1979) 470 F.Supp. 495

Knight v. Ferguson (2007) 149 Cal.App.4th 1207 [57 Cal.Rptr.3d 823]


Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]


Civil Service Comm v. Superior Court (1985) 163 Cal.App.3d 70 [209 Cal.Rptr. 159]


-attorney never performed services for former client of attorney’s former firm


Dieter v. Regents of the University of California (E.D. Cal. 1997) 963 F.Supp. 908


-attorney never performed services for former client of attorney’s wife's previously disqualified firm


-automtic disinqualification is not appropriate for mere exposure to the opposing party’s confidential information with no evidence that the attorney actually received or used such information


-disqualification granted where family entanglements, potential misuse of confidential information, near certain prospect that counsel would testify, and preservation of integrity of the judicial system would require it

Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]

-due to similarity between the two cases and the overlapping factual issues common to both, father and daughter should be treated as a single unit for determining whether a conflict exists

Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]

-rebuttable

County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990

COUNTRY OF INTEREST

Cal.App.4th 671 [14 Cal.Rptr.3d 618]


SD 2006-1

settlement confidentiality agreement

- attorney disqualified for seeking to call former clients as witnesses in pending action who were subject to

- confidentiality clause could not prevent former client from testifying in pending matter as to the facts and circumstances he witnessed

Cal.App.4th 843 [117 Cal.Rptr.2d 489]

switching sides in same matter

Sheffield v. State Bar (1943) 22 Cal.2d 627, 630 [140 F.2d 376]


Knight v. Ferguson (2007) 149 Cal.App.4th 1207 [57 Cal.Rptr.3d 823]


CAL 1998-152

LA 363 (1976), LA(1) 1962-2

- associate switches sides

LA 363 (1976)

- attorney’s purchase of judgment from adverse party and his attempt to enforce that judgment against former client put attorney in the position of being the opposing side in the same litigation in which he represented former client


- defense attorney to prosecutor’s office


rule 3-310(E) requires court determination that a “member” has obtained confidential information for purpose of disqualification


Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]


removal of expert for plaintiff not required where defense counsel had represented the expert ten years before and expert offered unqualified waiver of conflict

Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

- vicarious disqualification of city attorney’s office not required, when attorney representing party took job in city attorney’s office which was adverse to the attorney’s former client and where screening measures were timely and effective


telephone “hotline” taking legal inquiries from callers

LA 449 (1988)

vicarious disqualification where “of counsel” attorney and law firm represented opposing parties and where “of counsel” attorney obtained confidential information and provided legal services to client

where public defender’s office held no confidential information, conflict of interest did not exist where witness in current matter had been represented by former member of public defender’s office


Conflicting offices concurrently holding

3 Ops. Cal. Atty. Gen. 18 (1/20/44; No. NS-5288)
2 Ops. Cal. Atty. Gen. 177 (8/30/43; No. NS-5077)

potential conflict

SD 1977-1

Consent

associate switches sides

LA 363 (1976)

attorney/arbitrator hiring counsel of party appearing before him requires written consent to continue arbitration

LA 415 (1983)

authority of attorney to consent to conflict without client’s personal waiver


blanket waiver

In re Shared Memory Graphics (9th Cir. 2011) 659 F.3d 1336

Concat LP v. Unilevel, PLC (N.D. Cal. 2004) 350 F.Supp.2d 796

Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1109

CAL 1989-115

class action representatives may waive conflicts of interest on behalf of potential class members


class representative’s authority to make decisions concerning conflicts of interest for the entire class

Pettway v. American Cast Iron Pipe Company (5th Cir. 1976) 576 F.2d 1157

client’s consent to forbidden act insufficient

Ames v. State Bar (1973) 8 Cal.3d 910, 915 [106 Cal.Rptr. 489, 506 P.2d 625]

CAL 1988-105

conservatorship proceedings

OC 95-002, SF 1999-2

failure to object in a timely manner deemed to be a waiver

Trust Corporation of Montana v. Piper Aircraft Corp. (1983) 701 F.2d 85, 87-88

failure to object to district attorney as prosecutor when former counsel in action based on same; deemed to be waiver


franchise law firms of franchise group representing adverse or multiple clients

LA 423 (1983)

from buyer and seller where attorney is broker for both, but attorney to only one

LA 413 (1993)

implied


-insufficient to resolve a conflict in a lawyer’s representation of two clients, one of whom implicated co-client in a fraudulent scheme while the latter declared that she had no involvement in the illegal activity


improper to request consent from client when a disinterested lawyer would conclude that the client should not agree to representation involving a conflict of interest under the circumstances


loaning money received on behalf of estate to other clients without consent of administratrix

Black v. State Bar (1972) 7 Cal.3d 676, 681 [103 Cal.Rptr. 288, 499 P.2d 968]

may not be sufficient in dual representation situations where actual, present, existing conflict


Klemm v. Superior Court (1977) 75 Cal.App.3d 893, 898 [142 Cal.Rptr. 509]

CAL 1993-133


SD 2013-1

-must withdraw

CAL 1988-96


minor may not have legal capacity

LA 459 (1990)

necessity for full disclosure of representation of adverse party

Concat LP v. Unilevel, PLC (N.D. Cal. 2004) 350 F.Supp.2d 796


Ishmael v. Millington (1966) 241 Cal.App.2d 520, 526 [50 Cal.Rptr. 592]

necessity for written consent

Concat LP v. Unilevel, PLC (N.D. Cal. 2004) 350 F.Supp.2d 796

Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100

In re Airport Car Rental Antitrust Litigation (N.D. Cal. 1979) 470 F.Supp. 495, 500


In re Marriage of Friedman (2002) 100 Cal.App.4th 65 [122 Cal.Rptr.2d 412]

3-310


Klemm v. Superior Court (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509]


Jeffry v. Pounds (1977) 67 Cal.App.3d 6, 10 [136 Cal.Rptr. 373]

In the Matter of Aguiluz (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 32

CAL 1998-152

-after disclosure of former representation of adverse party


-by appropriate constituent of organization other than the constituent to be represented


CAL 1999-153
Contingent fee from insurer, based on percentage of medical expenses recovered, for protecting insurer’s lien on recovery of expenses
LA 352 (1976)
Contract
draft
-for both parties
SF 1973-26
-for own son and other party
SF 1973-26
re-negotiation of fee contract with client while case is pending
CAL 1989-116
-no duty to separately explain arbitration agreement when attorney changes firms and client signs new fee agreement when client is a sophisticated businessperson
Corporations as client
actual conflict defined
Corporations Rule 3-600, Rules of Professional Conduct (operative as of May 27, 1989)
In re Sidco (1993) 162 B.R. 299
*Matter of Jennings (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 337
acting as agent for and construing contracts for potential clients of corporation
CAL 1968-13
acting as both receiver for and attorney against corporation
LA 74 (1934)
advising officers and directors when corporate control changes
attorney (employee) sues employer/client
-employment information versus legal services information
SD 2008-1
attorney acting as director and as attorney
OC 2011-02
attorney for governmental entity advises constituents with antagonistic positions
CAL 2001-156
because minority shareholder’s derivative claims render majoriy shareholder’s and corporation’s interests adverse, majority shareholder’s attempt to consent to attorney’s concurrent representation of corporation over majority shareholder’s objection was ineffective
corporate director/attorney representing client in transaction with corporation
CAL 1993-132
CONFLICT OF INTEREST

counsel for
- corporation and CEO as individual
  Pringle v. La Chappelle (1999) 73 Cal.App.4th 1000 [87 Cal.Rptr.2d 90]
- in-house counsel represented employer and employee concurrently (to the employee’s detriment)
  without obtaining informed consent
- employer and management employees
- former represents against
  LA(I) 1973-5, SD 1970-2
  in-house counsel for corporate client represents outside company in merger with client
  LA 353 (1976)
former attorney for corporation representing parties in litigation against corporation covering time period of previous employment
organization as client
  In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
  LA 353 (1976)
parent /subsidiary considered single entity for conflicts purposes
representation of corporation and board of directors in derivative action
  CA 1989-113, OC 2012-1
representation of corporation and controlling shareholders
representation of corporation and corporate director as co-defendants
representation of corporation and directors is impermissible, but attorney can represent one party
representation of corporation and officer, in a separate matter, may require withdrawal from representation where corporation may be liable for officer’s action
  CA 2003-163
representation of corporation deemed not representation of corporate officers personally
  La Jolla Cove Motel and Hotel Apartments Inc v. Superior Court (2004) 121 Cal.App.4th 773 [17 Cal.Rptr.3d 467]
representation of corporation not deemed representation of minority shareholder
representation of former shareholders against former corporate client in related matters requires disqualification because of duty of loyalty and confidentiality
representation of minority shareholder and director in proxy fight by former corporate general counsel
  Goldstein v. Lees (1975) 46 Cal.App.3d 614 [120 Cal.Rptr. 253]
representation of corporation or director against corporation’s outside counsel cannot proceed because attorney-client privilege precludes counsel from mounting meaningful defense
  attorney not barred from continuing to represent insider of closely held company in a derivative lawsuit pursuant to Forrest v. Baeza
  -director of represents stockholder against
    LA(I) 1955-2
  -corporate stockholder
    LA(I) 1955-2
  stockholder
  -director of corporation represents stockholder against corporation
    LA(I) 1955-2
County counsel
  attorney for governmental entity advises constituents with antagonistic positions
  Strong v. Sutter County Bd. of Supervisors (2010) 188 Cal.App.4th 482 [115 Cal.Rptr.3d 498]
  CAL 2001-156
  collective bargaining by government attorneys
  *Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]
  conflict exists when county counsel represents both minor and county department of social services
  conflict of interest rules do not bar county counsel from suing county where no breach of duties of loyalty or confidentiality
  *Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]
  dispute between district attorney and county sheriff prevented county counsel from representing either party since the two were county public officers, thus, requiring independent counsel for sheriff
  Rivero v. Lake County Board of Supervisors (2014) 232 Cal.App.4th 1187 [181 Cal.Rptr.3d 769]
giving advice to independent board of retirement
limitations on court authority to order employment of independent counsel for county employee under Government Code section 31000.6

Strong v. Sutter County Bd. of Supervisors (2010) 188 Cal.App.4th 482 [115 Cal.Rptr.3d 498]
may serve simultaneously as a city council member
85 Ops. Cal. Atty. Gen. 115 (6/7/02; No. 01-1107)
outside counsel represents county in tort liability also may represent parties in actions against county if unrelated matter
61 Ops. Cal. Atty. Gen. 18 (1/578; No. CV 77-118)
representation of both child and Department of Children Services

LA 459 (1990)
representation of both Sheriff's Department and Employment Appeals Board places burden on county to show effective screening or be disqualified

Howitt v. Superior Court of Imperial County (1992) 3 Cal.App.4th 1575
representation of county improper after prior representation of county commission in same matter

representation of county tax assessor and appeals board by separate branches of county counsel's office proper, where effective screening procedures were shown

Jefferson v. Board of Assessment and Appeals No. 3 for Orange County (9th Cir. 2012) 695 F.3d 960
representation of district organized under Municipal Water District Act of 1911 incompatible with duties as county counsel, notwithstanding provision allowing outside private law practice

representation of social services department and of public conservator by separate branches of the county counsel office may not be a conflict of interest

In re Lee G. (1991) 1 Cal.App.4th 17 [1 Cal.Rptr.2d 375]

Creating a conflict
absent an actual conflict between an opposing attorney's clients, a party should not be able to create one by merely filing a meritless cross-complaint


conflicts of interest may arise where an attorney assumes a role other than as an attorney adverse to an existing client


plaintiff's expert waives potential conflict where defense counsel previously represented expert; expert need not be removed and defense counsel need not be disqualified

Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

Conflict of interest

Lockhart v. Terrhune (9th Cir. 2001) 250 F.3d 1223
U.S. v. Christakis (9th Cir. 2001) 238 F.3d 1164
actual conflict that adversely affects defense counsel's performance is required to find ineffective assistance of counsel

U.S. v. Rodrigues (9th Cir. 2003) 347 F.3d 818
People v. Perez (2018) 4 Cal.5th 421 [229 Cal.Rptr.3d 303]
People v. Ramirez (2006) 39 Cal.4th 398 [46 Cal.Rptr.3d 677]

Harris v. Superior Court (2014) 225 Cal.App.4th 1129 [170 Cal.Rptr.3d 780]
appointment of substitute or conflict counsel to evaluate a defendant's claim of incompetent advice regarding entry of a guilty plea

People v. Sanchez (2011) 53 Cal.4th 80 [133 Cal.Rptr.3d 564]
attorney's conflict of interest violates Sixth Amendment right to effective counsel (former representation of co-defendant in earlier trial)

Lockhart v. Terrhune (9th Cir. 2001) 250 F.3d 1223
U.S. v. Christakis (9th Cir. 2001) 238 F.3d 1164
Fitzpatrick v. McCormick (9th Cir. 1989) 869 F.2d 1247
-no violation of defendant's Sixth Amendment rights where defense counsel previously represented prosecution witness's spouse in a previous case

People v. Cornwell (2005) 37 Cal.4th 50 [33 Cal.Rptr.3d 117]
city attorney disqualified from prosecuting misdemeanor where probable future representation of city to defend actions brought by same criminal defendants

People v. Municipal Court (Byars) (1978) 77 Cal.App.3d 294 [143 Cal.Rptr. 491]

client
-witness
--against present client

CAL 1979-49
conflict occurs where public defender compelled by excessive caseload to choose between the rights of the various indigent defendants he or she is representing

-one investigator shared among 12 contract defenders

court has duty to inquire into possibility of conflict of interest on part of defense counsel

Daniels v. Woodford (9th Cir. 2005) 428 F.3d 1181
U.S. v. Adelzo-Gonzalez (9th Cir. 2001) 268 F.3d 772
Lockhart v. Terrhune (9th Cir. 2001) 250 F.3d 1223
U.S. v. Christakis (9th Cir. 2001) 238 F.3d 1164
Schell v. Witek (9th Cir. 2000) 218 F.3d 1017

People v. Cornwell (2005) 37 Cal.4th 50 [33 Cal.Rptr.3d 117]
court has duty to inquire into possibility of conflict of interest on part of defense counsel

People v. Bonin (1989) 47 Cal.3d 808 [254 Cal.Rptr. 298]
People v. Cook (1975) 13 Cal.3d 683 [119 Cal.Rptr. 500]

-no duty where no potential conflict of interest exists

People v. Dunkle (2005) 36 Cal.4th 861 [32 Cal.Rptr.3d 23]

See How to Use This Index, supra, p. i
CONFLICT OF INTEREST

-removal of defense counsel improper due to insufficient conflict of interest
  People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
-removal of public defender was proper where defendant made credible death threat against counsel

Where court failed to inquire into potential conflicts, defendant must establish that conflict adversely affected counsel’s performance
  death penalty confirmed in spite of defense counsel’s alleged conflict of interest (similar representation of defendant and witness)
  People v. Bonin (1989) 47 Cal.3d 808 [254 Cal.Rptr. 298] death row inmate entitled to assistance from conflict-free counsel in federal habeas petition to argue equitable tolling
  defense attorney consults in confidence one defendant who becomes witness against other co-defendants --attorney may not represent other co-defendants
  defense counsel good friend of defendant’s roommate who was also a suspect
  Plumlee v. Del Papa (9th Cir. 2005) 426 F.3d 1095
defense counsel in criminal matter is being prosecuted by district attorney in other matters
  Campbell v. Rice (9th Cir. 2005) 408 F.3d 1166
  Harris v. Superior Court (2014) 225 Cal.App.4th 1129
  defense counsel left public defender’s office and went to district attorney’s office during case
  Plumlee v. Del Papa (9th Cir. 2005) 426 F.3d 1095
  defense counsel married to bailiff
  CAL 1987-93
defense counsel testifies at penalty phase
  People v. Dunkle (2005) 36 Cal.4th 861 [32 Cal.Rptr.3d 23]
defense counsel told defendant that he needed psychiatric treatment when counsel denied the existence of a bail order, later produced by DA’s office
  Plumlee v. Del Papa (9th Cir. 2005) 426 F.3d 1095
defense counsel’s secretary dating plaintiff’s attorney
defense counsel’s separate retainers agreements with defendant and with defendant’s family did not create a conflict of interest that affected counsel’s performance
  People v. Ramirez (2006) 39 Cal.4th 398 [46 Cal.Rptr.3d 677]
disqualification -ineffective representation in covering attorney’s conduct in failing to file timely notice of appeal
  In re Fountain (1977) 74 Cal.App.3d 715 [141 Cal.Rptr. 654]
-recusal of entire D.A.’s office unnecessary when defendant and victim exchange roles in concurrent cases
  -when former co-defendant under a joint defense agreement is prosecution witness
  United States v. Henke (9th Cir. 2005) 426 F.3d 1095
  district attorney
  -recusal of entire office
  People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]
  --not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office
  People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]
former client -now co-defendant
  --disqualification
  -now witness
  --against present client
  Hovey v. Ayers (9th Cir. 2006) 458 F.3d 892
  United States v. Henke (9th Cir. 2000) 222 F.3d 633
  People v. Lomax (2010) 49 Cal.4th 530 [112 Cal.Rptr.3d 96]
  --no prejudice where former client is witness against current client and Public Defender is able to impeach witness with other convictions
  People v. Friend (2009) 47 Cal.4th 1 [97 Cal.Rptr.3d 1]
potential witness of potential perpetrator is potential conflict and court has latitude to remove defense counsel over the objection of defendant
  -prior representation of murder victim by defense attorney
habeas relief -client entitled to, when trial attorney’s conflict of interest results in failure of attorney to file direct appeal
  Manning v. Foster (9th Cir. (Idaho) 2000) 224 F.3d 1129
  -substitution of counsel should be granted where defense counsel who filed untimely petition would be required to denigrate own performance
  joint defense agreement implied
  U.S. v. Gonzalez (9th Cir. 2012) 669 F.3d 974
limited conflict does not taint defense counsel’s entire representation of defendant
mere threat of malpractice suit against defense attorney insufficient to create actual conflict of interest
  United States v. Moore (9th Cir. 1998) 159 F.3d 1154
  mere veiled threats to defense counsel’s staff insufficient to declare conflict of interest and relieve counsel
  People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
  no actual representation of conflicting interests when attorney was involved in his own unrelated legal matter
  United States v. Baker (9th Cir. 2001) 256 F.3d 855
  not found where defendant claimed irreconcilable conflict based on petitioner dismissed lawsuit against the public defender’s office and appointed pre-trial counsel
  Foote v. Del Papa (9th Cir. (Nev.) 2007) 492 F.3d 1026

See How to Use This Index, supra, p. i
post-indictment subpoena on target’s counsel creates possibility of conflict of interest but is insufficient to disturb conviction

United States v. Perry (9th Cir. 1988) 857 F.2d 1346 private attorney now district attorney prosecuting former client in a related matter

-by same attorney
-potential conflict between CAL 1975-35, CAL 1970-22 representation of criminal defendant by member of firm acting as city prosecutor
LA 453 (1989) representation of one co-defendant by public defender and representation of other co-defendant by alternate public defender
-superior, head of criminal organization pays legal fees CAL 1975-35 right to counsel does not include right to any particular court-appointed counsel
right to counsel may be forfeited by defendant’s threatening conduct towards counsel only after a full due process proceeding is afforded
right to counsel may not be forfeited without defendant’s voluntary, knowing and intelligent waiver
right to counsel, not infringed by court’s denial of defendant’s motion to substitute a retained counsel who had a conflict with a former client
People v. Baylis (2006) 139 Cal.App.4th 1054 [43 Cal.Rptr.3d 559] test for entitlement to a hearing on a conflict of interest Sixth Amendment claim by habeas petitioner
Ellis v. Harrison (9th Cir. 2018) 891 F.3d 1160 U.S. v. Rodrigues (9th Cir. 2003) 347 F.3d 818 threats of possible prosecution against defense counsel and unlicensed investigator by district attorney, although serious, did not prejudice defendant
-by defendant

CONFLICT OF INTEREST

--denied if showing of a serious potential conflict
-no valid waiver found
withdrawal
witness for prosecution former client of public defender’s office
People v. Pennington (1991) 228 Cal.App.3d 959
-witness for prosecution former colleague and friend of defense counsel
CAL 1987-93 Criminal prosecution
conflict occurs when prosecution calls as witness former co-defendant with whom defense attorney had an attorney-client relationship under a joint defense agreement
United States v. Henke (9th Cir. 2000) 222 F.3d 633
defendant entitled to counsel free of conflict
Lockhart v. Terhune (9th Cir. 2001) 250 F.3d 1223 U.S. v. Christakis (9th Cir. 2001) 238 F.3d 1164 People v. Cormwell (2005) 37 Cal.4th 50 [33 Cal.Rptr.3d 117]
-client may waive right to conflict-free counsel so long as he understands the specific ramifications of his waiver
Lewis v. Mayte (9th Cir. 2004) 391 F.3d 989
-jump sum payment of fees and costs does not create inherent conflict
People v. Doolin (2009) 45 Cal.4th 390 [87 Cal.Rptr.3d 209]
district attorney
-recusal of entire office
--not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office
People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]
dual representation of co-defendants
-by appointed counsel
-by private counsel
-program where volunteer attorneys staff prosecutor’s office on part-time basis
LA 377 (1978)
-active representation of conflicting interests deprives defendant of effective assistance of counsel
representation of criminal defendant by member of firm acting as city prosecutor
LA 453.
representation of one co-defendant by public defender and representation of other co-defendant by alternate public defender

CAL 2002-158

threats of possible prosecution against defense counsel and unlicensed investigator by district attorney, although serious, did not prejudice defendant


waiver of

-by defendant

--denied if showing of a serious potential conflict


-defendant may waive right to conflict-free counsel so long as he understands the specific ramifications of his waiver

Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

DATING/SOCIAL RELATIONSHIPS

34 Santa Clara L. Rev. 1157 (1994)
criminal defense lawyer dating prosecutor at time of trial

moved to bailiff

CAL 1987-93

plaintiff attorney dating secretary of law firm representing defendant

social contacts and dating conflicts of interest

34 Santa Clara L. Rev. 1157 (1994)

DISCHARGE OF ATTORNEY

to buyer and seller where attorney is broker for both, but attorney to only one

LA 413 (1983)
to client

OC 2011-02

-arguments made by attorney on opposite sides of a controverted issue in different cases

CAL 1989-108

-attorney’s relationship with courtroom personnel

CAL 1987-93

-former representation of adverse party


LA 406 (1982)

-insurance cases


-interest in subject matter of the representation

CRS Recovery, Inc. v. Laxton (9th Cir. 2010) 600 F.3d 1138


-witness is former colleague of attorney

CAL 1987-93

to court

-attorney’s relationship with courtroom personnel

CAL 1987-93

-in child custody proceedings

--conflict between client and interests of child

CAL 1976-37

-in welfare proceeding

--conflict between child and state

CAL 1977-45

-form of representation of related trust

to former client

LA 6 (1918)

where attorney has professional or financial interest in the subject matter

CAL 2009-178, SD 2017-1

DISQUALIFICATION OF COUNSEL

People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]

-absent an actual conflict between an opposing attorney’s clients, a party should not be able to create one by merely filing a meritless cross-complaint


alleged protected activity under Anti-SLAPP statute (C.C.P. § 425.16) found to be incidental to conflict of interest


appeal

-disqualification counsel is collaterally estopped from re-litigating issue of his breach of an ethical violation that had already been decided by court that ordered the disqualification


-disqualification order not appealable in the grand jury context

In re Grand Jury Investigation (9th Cir. 1999) 182 F.3d 668

See How to Use This Index, supra, p. i
CONFLICT OF INTEREST

-From pre-trial order denying motion to disqualify counsel for conflict of interest
  --standard requires showing on appeal that order affected outcome of case
-Order disqualifying the firm from the litigation is reversed and remedied where disqualified attorney departs from mega-firm during pendency of appeal
-Standing to challenge disqualification

Arbitration

-Panel's denial of a motion to disqualify opposing counsel for conflict of interest was open to collateral attack

Attorney-client relationship

-Attorney-client relationship
  -Associate who worked on plaintiff's case is brother-in-law to presiding judge
    Mangini v. U.S. (9th Cir. (Mont.) 2003) 314 F.3d 1158
  -Disqualification denied where court found that new partner who switched sides had no involvement in the instant action and had not disclosed the action with the attorneys at the new law firm and where the firm had not used the new partner's services relating to the instant action

Disqualification despite technicality of no attorney-client relationship


Disqualification may not be available when an attorney-client relationship never existed between the party and the attorney sought to be disqualified

Lynn v. George (2017) 15 Cal.App.5th 630 [223 Cal.Rptr.3d 407]

In re Marriage of Mutchison (2016) 245 Cal.App.4th 847 [199 Cal.Rptr.3d 800]


In re Lee G. (1991) 1 Cal.App.4th 17 [1 Cal.Rptr.2d 375]


-Disqualification not proper unless an attorney-client relationship existed
  In re Marriage of Murchison (2016) 245 Cal.App.4th 847 [199 Cal.Rptr.3d 800]

Attorney disqualified for an ethical violation generally not entitled to fees


Attorney general – denied


Attorney's former joint representation of parties justified disqualification from representing one against the other


Western Continental Operating Co. v. Natural Gas Corp. (1989) 212 Cal.App.3d 752 [261 Cal.Rptr. 100]

Based on incident involving disk contact and completely unrelated business transaction

Cohn v. Rosenberg (9th Cir. 1984) 733 F.2d 625, 631

Based on receipt of confidential information from a non-client


Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]


Based on relationship between class action counsel and class representative


Between the party and the attorney sought to be disqualified


Burden on client

Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100


“Case-by-case” approach must be used by trial courts


CONFLICT OF INTEREST

choice of counsel of non-moving party must be taken into consideration
city attorney
- city attorney disqualified from representing city in matter related to prior representation of private company
City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]
-criminal prosecution and defense of city arising out of same incident
People v. Municipal Court (Byars) (1978) 77 Cal.App.3d 234 [143 Cal.Rptr. 481]
city councilman as defense counsel in criminal action
class action representatives may waive conflicts of interest on behalf of potential class members
-co-counsel
-case law does not support "double imputation" when lawyer is two steps removed from attorney who has confidential information about a client
-imputed knowledge to
Panduit Corp. v. All States Plastic Mfg. Co. (7th Cir. 1984) 744 F.2d 1564, 1578
In re Airport Car Rental Antitrust Litigation (N.D. Cal. 1979) 470 F.Supp. 495, 501
--to all in firm
LA 377 (1978)
concurrent representation of clients with adverse interests
-client’s consent to dual representation must be based on disclosure of all material facts the attorney knows and can reveal
-If an attorney simultaneously represents two clients with adverse interests, disqualification is automatic
-with few exceptions, there is a per se rule requiring disqualification of an attorney or a law firm when there is a conflict of interest based upon concurrent representation of multiple clients
confidential information delivered to opposing party’s counsel
Cooke v. Superior Court (1978) 83 Cal.App.3d 582, 590-592 [147 Cal.Rptr. 915]
conflict occurs when prosecution calls as witness former co-defendant with whom defense attorney had an attorney-client relationship under a joint defense agreement
United States v. Henke (9th Cir. 2000) 222 F.3d 633

conflicting liabilities between insurers and insured
consultation with an independent attorney regarding the client’s case may prevent the consulted attorney from representing the party adverse to the client
SD 1996-1
county counsel not in conflict of interest when separate branches of the office represents potentially adverse interests
In re Lee G. (1991) 1 Cal.App.4th 17 [1 Cal.Rptr.2d 375]
criminal proceeding
-public defender’s workload so excessive to warrant removal
Cumis counsel does not have attorney-client relationship with insurer for purpose of disqualification
defense counsel need not be disqualified where expert for plaintiff was former client of defense counsel but gives unqualified waiver
Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]
denied following attorney’s waiver of interest in case
denied when the persons who are personally interested in the conflict filed written declarations waiving the conflict
dependency proceedings
-actual conflict amongst multiple siblings requires disqualification from joint representation
-factors determining whether disqualification of appointed counsel and entire public law office is required in substantially related successive representations
In re Chandler, C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
discussion with party concerned fees only
Hicks v. Drew (1897) 117 Cal. 305, 307-308 [49 P. 189]
disqualification denied where attorney received information from plaintiff’s former co-worker who was litigant in unrelated case
disqualification denied where former legal secretary of defendant became a client, not an employee of attorney for plaintiff
disqualification granted where family entanglements, potential misuse of confidential information, near certain prospect that counsel would testify, and preservation of integrity of the judicial system would require it
Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]
disqualification may not be available when an attorney-client relationship never existed between the party and the attorney sought to be disqualified


- attorney-client relationship not always required for a party to have standing to bring a motion to disqualify


DCH Health Services Corp. (2002) 95 Cal.App.4th 829 [115 Cal.Rptr.2d 847]

disqualification not necessary where contract with city merely set forth a “framework” for representation and did not, by itself, create an attorney-client relationship


- Banning Ranch distinguished


disqualification of attorney and attorney general denied where moving party had no reasonable expectation that confidential information shared with opposing party and party was advised and consented to disclosure


- disqualification of attorney not required even if attorney received confidential information about defendant, did not meet burden of showing the information could give plaintiff an unfair advantage or affect outcome of litigation


- disqualification of attorney not required from representing executor against beneficiary and law firm that drafted will


Dieter v. Regents of the University of California (E.D. Cal. 1997) 963 F.Supp. 908


disqualification of attorney not required where firm-switching attorney’s relationship with client at former firm was peripheral or attenuated and documents relating to case that attorney accessed contained no confidential information


disqualification of attorney not required where no confidential information was disclosed


La Jolla Cove Motel and Hotel Apartments Inc. v. Superior Court (2004) 121 Cal.App.4th 773 [17 Cal.Rptr.3d 467]

- disqualification of attorney not required where record does not create reasonable probability that confidential information was divulged – attorney dating opposing firm’s secretary


- disqualification of attorney required where attorney actually possessed confidential information despite the fact that substantial relationship is not shown

Costello v. Buckley (2016) 245 Cal.App.4th 748 [199 Cal.Rptr.3d 891]

- disqualification of law firm not required where attorney who handled adverse party’s prior matter has left firm and there is no evidence confidential information was exchanged


- disqualification when the misconduct or status has a continuing effect on judicial proceedings

Cal Pak Delivery, Inc. v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 Cal.Rptr.2d 207]

- district attorney

Penal Code section 1424

- abuse of discretion found, where trial court failed to hold evidentiary hearing to determine whether prosecutor’s personal involvement in the case warranted recusal

Packer v. Superior Court (2014) 60 Cal.4th 685 [181 Cal.Rptr.3d 276]

- based on private party influence on the impartiality of the district attorney


- common interest between prosecutor’s office and agency that funded a nuisance abatement specialist position in prosecutor’s office does not in itself create a conflict


- conflict of interest requires a showing that the district attorney’s discretionary decision-making has been placed within the influence and control of a private party with a particular interest in the prosecution of the defendant

People v. Snow (2003) 30 Cal.4th 43 [132 Cal.Rptr.2d 271]

Hambarian v. Superior Court (2002) 27 Cal.4th 826 [118 Cal.Rptr.2d 725]

People v. Eubanks (1996) 14 Cal.4th 580, 599 [59 Cal.Rptr.2d 260]


- defendant may not disqualify prosecutor on ground that defendant had some degree of relationship with prosecutor’s children at some point in time


- disqualification not required where prosecutor published novel containing factual similarities to underlying case

Haraguchi v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 250]

- district attorney’s office cannot be recused from case where alleged conflict was speculative and did not show actual unfairness


- financial assistance to prosecutor’s office did not disqualify district attorney

Hambarian v. Superior Court (2002) 27 Cal.4th 826 [118 Cal.Rptr.2d 725]

CONFLICT OF INTEREST

-financial assistance to prosecutor’s office disqualified district attorney

People v. Eubanks (1996) 14 Cal.4th 580 [59 Cal.Rptr.2d 200]
-prosecution of defendant for crimes not precluded by virtue of representation of defendant’s child re ward of

People v. Superior Court (Martin) (1979) 98 Cal.App.3d 515, 520-522 [159 Cal.Rptr. 625]
-recusal denied when motion is solely based on public perception that prosecutor seeks death penalty to fulfill a campaign promise

-recusal of entire office

People v. Superior Court (Humberto) (2008) 43 Cal.4th 737 [76 Cal.Rptr.3d 276]
-Haraguchi v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 250]

People v. Vasquez (2006) 39 Cal.4th 47 [45 Cal.Rptr.3d 372]

People v. Snow (2003) 30 Cal.4th 43 [132 Cal.Rptr.2d 271]
-Hamberian v. Superior Court (2002) 27 Cal.4th 826 [118 Cal.Rptr.2d 725]

People v. Eubanks (1996) 14 Cal.4th 580 [59 Cal.Rptr.2d 200]


People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]

People v. Connedy (2009) 176 Cal.App.4th 1474 [98 Cal.Rptr.3d 598]


People v. Parmar (2001) 86 Cal.App.4th 781 [104 Cal.Rptr.3d 93 [146 Cal.Rptr.3d 742]


--district attorney’s office cannot be recused from case where alleged conflict was speculative and did not show actual unfairness

--erroneous denial of recusal motion is harmless error if it does not involve due process violation

People v. Vasquez (2006) 39 Cal.4th 47 [45 Cal.Rptr.3d 372]


People v. Superior Court (2008) 43 Cal.4th 721 [76 Cal.Rptr.3d 264]

People v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 250]

People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]


Younger v. Superior Court (1978) 77 Cal.App.3d 892, 894-897 [144 Cal.Rptr. 34]

People v. Lepe (1985) 164 Cal.App.3d 685
-recusal of entire office unnecessary when defendant and victim exchange roles in concurrent cases


People v. Superior Court (2008) 43 Cal.4th 721 [76 Cal.Rptr.3d 264]
-duty of loyalty does not apply where defense counsel previously had represented expert for plaintiff and where expert waives conflict

Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]
CONFLICT OF INTEREST

CAL 1998-152
LA 501 (1999)

-city attorney and entire office disqualified from representing city in matter related to city attorney’s prior representation of private company

City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]

-disqualification of attorney from representing debtor is not attributable to his firm under bankruptcy code

In re S.S. Retail Stores Corp. (9th Cir. 2000) 216 F.3d 882 [36 Bankr.Ct.Dec. 79]

-limited exception where the tainted lawyer can show that there was no opportunity for confidential information to be divulged within the firm


-no automatic various disqualification of law firm when tainted attorney is properly screened


-not required when attorney at law firm covered depositions for independent counsel


-not required when attorney, while at another firm, represented current firm’s opposing party’s insurer and effectively screened from involvement in the current litigation


-not required when tainted attorney leaves firm and there’s evidence that no one other than the departed attorney had any dealings with the client or obtained confidential information


-not required where firm-switching attorney’s relationship with client at former firm was peripheral or attenuated and documents relating to case that attorney accessed contained no confidential information


-not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office

People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]

-preemption of shared confidences rebutted by evidence of the timely and effective screening of the tainted attorney

County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990
Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100

In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]

-failure to file notice of appeal and subsequent defense of that action

In re Fountain (1977) 74 Cal.App.3d 715, 719

-former clients, subject to confidential settlement, as witnesses in pending action


former state-employed attorney in law firm employed by plaintiff to sue state


immigration matters

-representation adverse to former corporate client’s employees and officers in immigration matters


-marital relationship insufficient to deprive party of choice of counsel

DCH Health Services Corp. v. Waite (2002) 95 Cal.App.4th 829 [115 Cal.Rptr.2d 847]

mediator is generally not disqualified from litigating later cases against the same party


-mere exposure to confidences of an adversary does not, standing alone, warrant disqualification


Cooke v. Superior Court (1978) 83 Cal.App.3d 582, 590 [147 Cal.Rptr. 915]

-prior representation of opposing party’s insurer


-non-lawyer employee “switches sides”


-not automatic where previous representation did not expose attorney to confidential information material to the current representation


-not required

-marital relationship or “appearance of impropriety” insufficient to deprive party of choice of counsel

DCH Health Services Corp. v. Waite (2002) 95 Cal.App.4th 829 [115 Cal.Rptr.2d 847]

-not required when only “blue sky” work done by underwriter’s counsel, no attorney-client relationship created


-not required where firm-switching attorney’s relationship with client at former firm was peripheral or attenuated and documents relating to case that attorney accessed contained no confidential information


-not warranted where expert witness, initially retained by defendant and later designated as a potential witness for plaintiff, disclosed no confidential information from defendant to plaintiff’s counsel

CONFlict of interest

“of counsel” to defendant’s firm becomes “of counsel” to plaintiff’s firm

Atasi Corp. v. Seagate Technology (9th Cir. 1988) 847 F.2d 826

party of moving for disqualification of counsel absent an attorney-client relationship generally does not have standing to assert conflict of interest

-office of non-client was no vicarious standing among members of entity in non-derivative suit


prejudice to non-moving party found to be, extreme where counsel had been long term counsel for non-moving and motion was brought in the middle of the case


prior relationship with opposing party

Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354


Wutchumna Water Co. v. Bailey (1932) 216 Cal. 564, 574 [155 P.2d 505]


Western Continental Operating Co. v. Natural Gas Corp. (1969) 212 Cal.App.3d 752 [261 Cal.Rptr. 100]

-disqualifying conflict may arise, with regard to an adverse non-client, by virtue of representing non-client’s attorney


prior representation of co-defendant


-in related matter


prior representation of opposing party

Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354

Damron v. Herzog Jr. (9th Cir. 1995) 67 F.3d 211

Trone v. Smith (9th Cir. 1980) 621 F.2d 994


Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1996) 195 B.R. 740

In re Airport Car Rental Antitrust Litigation (N.D. Cal. 1979) 470 F.Supp. 495, 499

In re Charlisse G. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]

Flatt v. Superior Court (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537]


Knight v. Ferguson (2007) 149 Cal.App.4th 1207 [57 Cal.Rptr.3d 823]


Metro-Goldwyn-Mayer, Inc. v. Tracinda Corp. (1995) 36 Cal Rptr.3d 771


In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735

CAL 1998-152, CAL Bar Ct. Rptr. 735


People v. Superior Court (Humberto) (2008) 43 Cal.4th 916 [155 Cal.Rptr.3d 532]


-no automatic where previous representation did not expose attorney to confidential information material to the current representation


-representation of attorney/client against former attorney/client

LA 418 (1983), SD 1984-1

-substantial relationship to current matter not found


prior representation of plaintiff’s expert witness does not require disqualification where expert waives conflict

Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

prosecutor’s recusal not required where prosecutor advocates but does not formally represent the interests of third party

People v. Superior Court (Humberto) (2008) 43 Cal.4th 737 [76 Cal.Rptr.3d 276]

-public defender

-where witness had been represented by former member of public defender’s office and where current defendant was represented by the public defender’s office and where no confidential information of witness was found, there was no conflict of interest


raised on appeal from the final judgment

related matter, substantial relationship

Panduit Corp. v. All States Plastic Mfg. Co., Inc. (7th Cir. 1984) 744 F.2d 1564, 1576


Knight v. Ferguson (2007) 149 Cal.App.4th 1207 [57 Cal.Rptr.3d 823]


-disqualification of attorney where same attorney was previously disqualified in a related case


-no automatic where previous representation did not expose attorney to confidential information material to the current representation


-vicarious disqualification of a firm not required because of the timely and effective screening of the tainted attorney

County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2003) 153 F.3d 990

--public law office

In re Charisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]

-vicarious disqualification of entire city attorney’s office where in related matter city attorney previously represented private company

City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 639 [43 Cal.Rptr.3d 771]


sibling relationship between a lawyer and the opposing party’s physician is insufficient, standing alone, to preclude the lawyer from representing her client


standards

-difference for subsequent representation than for simultaneous

Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

standing to assert

-absent an attorney client relationship, party moving for disqualification generally does not have standing to assert a conflict of interest

In re Marriage of Murchison (2016) 245 Cal.App.4th 847 [199 Cal.Rptr.3d 800]


CONFLICT OF INTEREST

-no vicarious standing where action brought by member of entity against entity and its only other member is not a derivative action


-vicarious standing among members of Limited Liability Company


temporary judge lacks authority to order disqualification of lawyer


timeliness of Marsden motion


timeliness of motion to disqualify

CRS Recovery, Inc. v. Laxton (9th Cir. 2010) 600 F.3d 1138


Earl Scheib, Inc. v. Superior Court (1967) 253 Cal.App.2d 703, 707-710 [61 Cal.Rptr. 386]

trial court must determine if there is a substantial relationship between the prior and current representation based on facts, legal issues, and the nature and extent of the attorney's involvement


Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100


Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]

Pound v. DeMera DeMera Cameron (2005) 135 Cal.App.4th 902 [89 Cal.Rptr.3d 922]


standards

-difference for subsequent representation than for simultaneous

Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

standing to assert

-absent an attorney client relationship, party moving for disqualification generally does not have standing to assert a conflict of interest

In re Marriage of Murchison (2016) 245 Cal.App.4th 847 [199 Cal.Rptr.3d 800]

CONFLICT OF INTEREST

trial court’s power
unrelated matter
Cohn v. Rosenfeld (9th Cir. 1984) 733 F.2d 625
Flatt v. Superior Court (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537]
Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]
--expert witness in unrelated matter
--where plaintiff’s expert was previously represented by defense counsel and where expert waives conflict, removal of expert not required and disqualification of defense counsel not required
Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]
--simultaneous representation of defendant and plaintiff’s expert witness in an unrelated matter

vicarious disqualification of a firm not required because of the timely and effective screening of the tainted attorney
County of Los Angeles v. United States District Court (Convey) (2000) 22 Cal.Rptr.3d 890
Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100

vicarious disqualification of a firm not required where attorney who handled adverse party’s prior matter has left firm and there is no evidence confidential information was exchanged

vicarious disqualification of a firm not required where firm-switching attorney’s relationship with client at former firm was peripheral or attenuated and documents relating to case that attorney accessed contained no confidential information

vicarious disqualification of city attorney’s office not required when attorney representing party took job in city attorney’s office which was adverse to the attorney’s former client and where screening measures were timely and effective

vicarious disqualification of plaintiff’s law firm required despite screening of former counsel for defendant who moves to and later leaves plaintiff’s firm

vicarious disqualification required despite screening measures when attorney switches sides and the attorney is not a former government attorney moving to private practice

vicarious disqualification where “of counsel” attorney and law firm represented opposing parties and where “of counsel” attorney obtained confidential information and provided legal services to client
withdrawal from representation of one client in the course of concurrent representation of adverse clients in separate matters may not avoid disqualification sought by the ousted client
Flatt v. Superior Court (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537]

District attorney common interest between prosecutor’s office and agency that funded a nuisance abatement specialist position in prosecutor’s office does not in itself create a conflict

conflict of interest requires a showing that the district attorney’s discretionary decision making has been placed within the influence and control of a private party with a particular interest in the prosecution of the defendant
People v. Snow (2003) 30 Cal.4th 43 [132 Cal.Rptr.2d 271]
Hambarian v. Superior Court (2002) 27 Cal.4th 826 [118 Cal.Rptr.2d 725]
People v. Ebanks (1996) 14 Cal.4th 580, 599 [59 Cal.Rptr.2d 200]
defendant may not disqualify prosecutor on ground that defendant had some degree of relationship with prosecutor’s children at some point in time
dispute between district attorney and county sheriff prevented county counsel from representing either party since the two were county public officers, thus, requiring independent counsel for sheriff
Rivero v. Lake County Board of Supervisors (2014) 232 Cal.App.4th 1187 [181 Cal.Rptr.3d 769]
district attorney’s office cannot be recused from case where alleged conflict was speculative and did not show actual unfairness

entire office
People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]

former
--in criminal matters

Business and Professions Code section 6131
LA(I) 1958-9
former attorney now district attorney and issue based on same facts as prior proceeding

formerly employed as private counsel for co-defendant

formerly represented defendant as private counsel
People v. Lepe (1985) 164 Cal.App.3d 685 [211 Cal.Rptr. 432]
moved to bailiff
CAL 1987-93

personal animosity of district attorney towards co-defendant
*People v. Battin (1978) 77 Cal.App.3d 635, 670-672 [143 Cal.Rptr. 731]
police officer assigned to the district attorney’s office related to informant
People v. McPartland (1988) 243 Cal.Rptr. 752

proceedings to have child of defendant in criminal case declared ward of court
People v. Superior Court (Martin) (1979) 98 Cal.App.3d 515 [159 Cal.Rptr. 625]

recusal of entire office
Penal Code section 1424
People v. Superior Court (Humberto) (2008) 43 Cal.4th 737 [76 Cal.Rptr.3d 276]
People v. Vasquez (2006) 39 Cal.4th 47 [45 Cal.Rptr.3d 372]
People v. Snow (2003) 30 Cal.4th 43 [132 Cal.Rptr.2d 271]

Hambarian v. Superior Court (2002) 27 Cal.4th 826 [118 Cal.Rptr.2d 725]
People v. Eubanks (1996) 14 Cal.4th 580 [59 Cal.Rptr.2d 200]
People v. Conner (1983) 34 Cal.3d 141
People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]
*Younger v. Superior Court (1978) 77 Cal.App.3d 892 [144 Cal.Rptr. 34]

based on private party influence on the impartiality of the district attorney
defendant may not disqualify prosecutor on ground that defendant had some degree of relationship with prosecutor’s children at some point in time

erroneous denial of recusal motion is harmless error if it does not involve due process violation
People v. Vasquez (2006) 39 Cal.4th 47 [45 Cal.Rptr.3d 372]

improper absent evidence that prosecutor would employ discretionary powers to deprive defendant of fair trial
People v. McPartland (1988) 243 Cal.Rptr. 752

- not necessary when defendant and victim exchange roles in concurrent cases

- not required where ethical wall would be effective alternative

- not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office
People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]

- prosecutor’s recusal not required where prosecutor advocates but does not formally represent the interests of a third party
People v. Superior Court (Humberto) (2008) 43 Cal.4th 737 [76 Cal.Rptr.3d 276]

relative of crime victim employed in district attorney’s office
*People v. Superior Court (Greer) (1977) 19 Cal.3d 255

representation of county and private citizen
representation of county by district attorney at welfare hearing permitted even if county has a county counsel
representation of criminal defendant by member of firm acting as city prosecutor
LA 453

retired district attorney wishing to associate with law firm holding county contract to act as public defender
CAL 1977-45

threats of possible prosecution against defense counsel and unlicensed investigator by district attorney, although serious, did not prejudice defendant

Divorce
community property, contingent fee
CAL 1983-72

post-nuptial agreement enforceable despite law firm’s dual representation of husband and wife on estate plan
In re Marriage of Friedman (2002) 100 Cal.App.4th 65 [122 Cal.Rptr.2d 412]

represent
- both parties
Klemm v. Superior Court (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509]
Ishmael v. Millington (1966) 241 Cal.App.2d 520 [50 Cal.Rptr. 592]

-- after consulting with other about divorce
SD 1975-1
-- client’s spouse in
LA 207 (1953), LA 192 (1952)
-- former client’s spouse in
LA(I) 1971-8
-- later other in related action
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-- one party
--- after acting for marital union
LA(I) 1958-5, LA(I) 1947-1
--- after consulting with both about divorce
LA(I) 1947-1
-- party in and receiver
LA 51 (1927)
-- settlement
SD 1984-2

CONFLICT OF INTEREST
CONFLICT OF INTEREST

--successive wives of same husband
LA(I) 1963-6
-prior representation of family corporation
-prior representation of other spouse
SD 1984-2
violation of rule 3-310 of the Rules of Professional Conduct
may render a post-nuptial agreement unenforceable
In re Marriage of Friedman (2002) 100 Cal.App.4th 65 [122 Cal.Rptr.2d 412]

Draft, military, member of selective service appeal board
represents appellants before other boards
LA(I) 1989-8
Dual capacity

attorney acting as both advocate and advisor to decision maker
attorney acting as expert witness against former client
attorney acting as Federal Rule 30(b)(6) spokesperson
attorney as director and as attorney for organization
OC 2011-02
attorney for plaintiff formerly had borrower-lender relationship with defendant
lobbyist and legal counsel for a state agency may be permissible
Dual professions
CAL 1982-69
SD 1992-1
85 Ops. Cal. Atty. Gen. 115 (6/7/02; No. 01-1107)

Dual representation
absence of litigation or contemplated litigation
actual conflict amongst multiple siblings requires disqualification of appointed counsel from joint representation
actual conflict between Limited Liability Company and LLC member
Administrative Procedure Act does not prohibit state agency attorney from acting as an agency prosecutor in one case and concurrently acting as agency advisor in unrelated case

attorney acts as both advocate and advisor to decision maker
Quintero v. City of Santa Ana (2003) 114 Cal.App.4th 810 [7 Cal.Rptr.3d 696]
Howitt v. Superior Court of Imperial County (1992) 3 Cal.App.4th 1575
attorney acts as mediator to both parties but favors one over the other due to attorney-client relationship

attorney general may represent board where another state agency in the underlying proceeding retains separate counsel to avoid prohibited dual representation conflict
buyer and seller in real estate transaction
CAL 1969-69
SF 1973-22
by counsel
clients each demand the original file
LA 493 (1998)

co-defendants in criminal case
Lockhart v. Terhune (9th Cir. 2001) 250 F.3d 1223
People v. Cook (1975) 13 Cal.3d 663, 670-673 [119 Cal.Rptr. 532 P.2d 148]
People v. Amaya (1986) 180 Cal.App.3d 1 [225 Cal.Rptr. 313]

attorney's representation of two defendants, one of whom paid the legal fees for both, was not adversely affected, even though payment by one defendant created a theoretical division of loyalty
U.S. v. Wells (9th Cir. (Mont.) 2005) 394 F.3d 725

concurrent representation of adverse parties in separate matters is not cured by ending relationship with previous client
Flatt v. Superior Court (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537]
*Santa Clara County Counsel Attorneys Assn v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]
CAL 2003-163

concurrent representation of adverse parties in separate matters may be permissible if cases are totally unrelated
Abbott v. United States IRS (9th Cir. 2005) 399 F.3d 1083

lawyer may concurrently represent both creditor and debtor in unrelated matters without written consent when debtor-client is adequately prescreened through a pro bono program
CAL 2014-191

consent to potential conflict
In re Shared Memory Graphics (9th Cir. 2011) 659 F.3d 1336
Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100
In re Marriage of Friedman (2002) 100 Cal.App.4th 65 [122 Cal.Rptr.2d 412]
SD 2017-1
corporation and board of directors in derivative suit
LA 397 (1982)
corporation and director of corporation as co-defendants
Havasu Lakeshore Investments, Inc., LLC v. Fleming
(2013) 217 Cal.App.4th 770 [158 Cal.Rptr.3d 311]
CAL 1999-153, LA 471 (1992)
corporation and directors
Cal.App.4th 237 [190 Cal.Rptr.3d 644]
Havasu Lakeshore Investments, Inc., LLC v. Fleming
(2013) 217 Cal.App.4th 770 [158 Cal.Rptr.3d 311]
PrediWave Corp. v. Simpson Thacher & Bartlett, LLP
(2009) 179 Cal.App.4th 1204 [102 Cal.Rptr.3d 245]
Cal.Rptr.2d 857]
SD 2017-1
corporation and officers
Cal.Rptr.3d 836]
Cal.App.4th 237 [190 Cal.Rptr.3d 644]
Cal.Rptr.2d 90]
CAL 1999-153, SD 2017-1
dependency proceedings
-no separate counsel needed where attorney represented
two siblings with different plans. In this case, even if
separate counsel had been appointed, the result would
have been the same.
In re T.C. (2011) 191 Cal.App.4th 1387 [120
Cal.Rptr.3d 569]
-separate counsel must be appointed when actual conflict
exists among minor clients or when there is a reasonable
probability that a potential conflict will become actual
In re Celine R. (2003) 31 Cal.4th 45 [1 Cal.Rptr.3d 432
[124 Cal.Rptr.2d 891]
franchisee law firms of franchisor group representing multiple
clients
LA 471 (1992), LA 423 (1983)
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-insured
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-party adverse to insurer
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--Cumis counsel does not have attorney-client
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client relationship with the co-defendant
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of general and limited partners in partnership
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preparing answer for in propria persona defendant while
representing plaintiff on same matter
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Cal.Rptr.3d 867]
Cal.Rptr.3d 823]
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--offers to prepare claims for creditors of state for fee
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--own partnership
LA 219 (1954)
--referral fee from broker listing estate property
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--represents
--person in determination of heirship
LA(I) 1965-8
--reopened estate against
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-beneficiary as
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--beneficiaries in contest over heirship
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-disqualification of attorney not required from representing executor against beneficiary and law firm
that drafted will
law firm’s dual representation of husband and wife in estate plan did not create a conflict of interest that
voided post-nuptial agreement, in which law firm only represented husband
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--member, trustee
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for malpractice and there is no conflict of interest arising from the duty of loyalty or confidentiality in
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trustee
--beneficiary as
LA 219 (1954)
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may render a post-nuptial agreement unenforceable
In re Marriage of Friedman (2002) 100 Cal.App.4th 65 [122 Cal.Rptr.2d 412]
False arrest cases on retainer for police officers/represent clients who might raise issue of false arrest
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--contingency fee agreements distinguished
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Conservatorship of Chilton (1970) 8 Cal.App.3d 34, 43 [86 Cal.Rptr. 860, 866]

- prosecution’s witness’ offer to pay for criminal defendant’s legal fees impaired defense counsel’s ability to impeach witness

Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

defense of city employees pursuant to Gov. Code § 995 et seq. - city is not obligated to provide for defense of employees separate from that retained to jointly represent the city and the employees


dispute does not create LA 521 (2007)

government
- city is not obligated to provide for defense of employees separate from that retained to jointly represent the city and the employees


insurance cases
- insurer’s ability to recover attorney fees from insured Hartford Casualty Ins. Co. vs. J.R. Marketing LLC (2015) 61 Cal.4th 988 [190 Cal.Rptr.3d 599]

paid by co-defendant
- attorney’s representation of two defendants, one of whom paid the legal fees for both, was not adversely affected, even though payment by one defendant created a theoretical division of loyalty

U.S. v. Wells (9th Cir. (Mont.) 2005) 394 F.3d 725

paid by third party


-by co-defendant in separate trial U.S. v. Wells (9th Cir. (Mont.) 2005) 394 F.3d 725

-by corporation to minority shareholder’s attorney

Strolrow v. Strolrow, Inc. (9th Cir. 1987) 813 F.2d 997

-by insurer of client


LA 439 (1986), LA 352 (1976)
-by prosecution’s witness who testified against criminal defendant

Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

-estate attorney charging personal representative personally for services performed LA 347 (1975)

-public agency attorney participation in a bonus program tied to savings by the agency

SD 1997-2
-union pays for representation of potential class members


referred
- paid to an attorney by client in an unrelated matter

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represent
- in settlement when fee paid out of settlement

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when in client’s best interest to settle although no recovery of fees


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Fiduciary duty

attorney acting as director and as attorney for organization

OC 2011-02

attorney as executor of estate

Probate Code section 10804 - substitution into litigation

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attorney represents estates and deceased attorney’s former client

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can exist even absent express attorney-client relationship

Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1996) 195 B.R. 740


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CAL 1993-132, CAL 1981-63

-not created by receipt of private information from potential client via an unsolicited email

SD 2006:1

presumption of undue influence


Ball v. Posey (1986) 176 Cal.App.3d 1209 [222 Cal.Rptr. 746]

self-dealing of attorney/trustee

Lyders v. State Bar (1938) 12 Cal.2d 261, 264-265 [83 P.2d 500]

Financial advice

46 Ops. Cal. Atty. Gen. 74 (10/14/65; No. 64-65)

Financial interest

Government Code section 1099
- city council may not contract with a law firm to represent the city when a member of the city council is also a member of the firm, even where the firm will receive no fees for the representation


“noninterest” when city council, a member of which is a deputy county counsel, enters into contract for law enforcement services if interest is disclosed to city council and noted in official records and deputy county counsel-city council member may participate in the negotiations

85 Ops. Cal. Atty. Gen. 115 (6/7/02; No. 01-1107)

of lawyer

-in corporation -- about which the client desires legal advice

LA 57 (1928)

Foreclosure

represent

-plaintiff’s purchase real property involved

LA 262 (1963)

Former client

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-adverse to
--knowledge of former clients’ property and property rights involved in action
LA 31 (1925)

business transaction with former client

- no violation of rule 3-300 found in disciplinary action where attorney did not comply with rule regarding the transaction with former client
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- co-defendant in present criminal proceeding

- estate plan for husband and wife, and subsequent agreement for husband
LA 448 (1987)

expert witness in former client of attorney
LA 513 (2005)

insurer of current opposing party

prior representation of murder victim by defense attorney
taking business clientele from

witness against

- attorney as
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- present client
United States v. Henke (9th Cir. 2000) 222 F.3d 633

- witness in related case

Former office represents client

Franchisee law firms of franchise group
LA 423 (1983)

Gifts to attorney

attorney/beneficiary drafts gift instrument
Probate Code sections 15687, 21350 et seq.


inducing client to offer of free use of client’s vacation property
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attorney general may represent board where another state agency in the underlying proceeding retains separate counsel to avoid prohibited dual representation conflict
city attorney

-city attorney disqualified from representing city in matter related to prior representation of private company
City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]

prosecutor’s entire office not disqualified where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office
People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]

state agency’s mere payment of license fee for professional employees does not necessarily bar employees from rendering professional services to others for compensation

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outside contractor attorney may be treated as an employee

Grand jury

Sixth Amendment right to counsel of one’s choice does not apply
In re Grand Jury Investigation (9th Cir. 1999) 182 F.3d 668

Guardian

attorney for
-deemed to represent minor
CAL 1988-96

-former represents against as counsel for wife of deceased ward
LA(I) 1962-5

Homeowner’s association – where attorney is member of association and represents plaintiffs against association
LA 397 (1962)

Immigration matters

representation adverse to former corporate client’s employees and officers in immigration matters

Impropriety, appearance of
can exist even absent express attorney-client relationship
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Ineffective assistance of counsel

attorney’s performance unaffected by fee arrangement whereby attorney’s fees were paid by the defendant
U.S. v. Wells (9th Cir. (Mont.) 2005) 394 F.3d 725

no ineffective assistance of counsel unless attorney’s performance was adversely affected by the conflict of interest
Campbell v. Rice (9th Cir. 2005) 408 F.3d 1166

See How to Use This Index, supra, p. i

155 2019 (updated entries through 12/31/2018)
CONFLICT OF INTEREST

Insurance cases


Civil Code section 2860


McGee v. Superior Court (1985) 176 Cal.App.3d 221, 227 [221 Cal.Rptr. 421]


LA 501 (1999)

"Cumis counsel" fee dispute requires mandatory arbitration


-obligation of counsel to exchange information does not sanction disclosure of client confidences


-Statute partially changed the rule of the Cumis case


-Apportioning fees where conflict between insurer and insured

LA 424 (1984)

Attorney's duty to act competently requires that decision making control over client's litigation be given to client despite contrary instructions from client's insurer

CAL 1995-139

LA 464 (1991)

Conflict of interest does not arise every time the insurer proposes to provide a defense under a reservation of rights...insurer's right to independent counsel "depends upon the nature of the coverage issue, as it relates to the underlying case."


Cumis counsel does not have attorney-client relationship with insurer for purposes of disqualification


Cumis representation is based on ethical standards, not insurance concepts


Dispute between insurer and insured as to policy coverage entitled to obtain counsel for third party claim at insurer's expense


Disqualifying conflict of interest between insurer and insured ceased to exist, therefore, insurer did not have a duty to continue to provide and pay for Cumis counsel


Duty owed to insured and insurer

MGIC Indem. Corp. v. Weissman (9th Cir. 1986) 803 F.2d 500


multiple representation of a claimant and the compensation insurance carrier against whom the claim is being made
Smiley v. Director, Office of Workers’ Compensation Programs (9th Cir. 1992) 973 F.2d 1463
obligation of counsel to exchange information does not sanction disclosure of client confidences
LA 526 (2017)
reinsurer did not have attorney-client relationship with counsel retained by the previous insurer to defend the insured in the absence of an express agreement
representation of both insurer and insured to defeat third-party claim
Holmgen v. State Farm Mutual Automobile Insurance Company (9th Cir. 1992) 976 F.2d 573
representation of both insurer and insured to defeat third-party claim

CONFLICT OF INTEREST

See How to Use This Index, supra, p. i 157 2019 (updated entries through 12/31/2018)
CONFLICT OF INTEREST

withdrewal
Insured’s consent required for prior counsel to maintain role in case on behalf of insurer
SD 1987-1
Issues, attorney argues inconsistent positions
Pael v. Davis (2008) 166 Cal.App.4th 1608 [83 Cal.Rptr.3d 745]
CAL 1989-108
Joint powers arrangement
Government Code section 6500 et seq.
60 Ops. Cal. Atty. Gen. 206, 212-213 (7/7/77; No. CV 76-14)
Joint Powers Act
Joint representation of clients in the same matter
corporation and corporate director as co-defendants
LA 471 (1992)
Joint venture
LA 412 (1983)
Judge
attorney appearing before judge is also the personal counsel of the judge
In re Georgetown Park Apartments (9th Cir.1992) 143 B.R. 557
failure of judge to disqualify himself after having previously represented one party as attorney was not reviewable on appeal following appellant’s earlier failure to seek writ review
vicarious disqualification of a firm does not automatically follow the personal disqualification of the tainted attorney, a former settlement judge
County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990

Literary rights
LA 451, LA 409 (1983)
actual conflict of interest required to establish violation of 6th Amendment rights when attorney contracts to write book about trial
attorney contract for publication rights about trial
United States v. Hearst (N.D. Cal. 1978) 466 F.Supp. 1068
attorney’s literary rights to trial adverse to client’s interests
“life story” fee agreement all right if accused knowingly and intelligently waives potential conflicts
literary rights agreement not found neither prior to nor during actual trial
publication of fictional account of crime did not create disqualifying conflict for prosecutor or district attorney’s office
Haraguchi v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 250]
without showing of conflict, censure or sanctions appropriate where prosecutor involved in making of film about capital murder case
Lobbying firm
dual capacity of a lobbyist and legal counsel for a state agency may be permissible
Maintaining independence of professional judgment
Rule 1-600, Rules of Professional Conduct
Rule 3-310(F), Rules of Professional Conduct (operative as of September 14, 1992)

LA 500 (1999)
Malpractice case based, in part, on claimed breach of loyalty

Marvin agreement
representation of husband and wife on estate plan, later husband on Marvin agreement with another woman
LA 448 (1987)
May arise from an attorney relationship with a non-client if attorney owes duty of fidelity
101 Ops. Cal. Atty. Gen. 1 (04/03/18; No. 14-301)
CAL 1993-132

Mediator
attorney acts as mediator to both parties but favors one over the other due to attorney-client relationship
attorney who mediates one case is generally not disqualified from litigating later cases against the same party

Minor’s counsel
no ineffective assistance where counsel informed the court of the conflict between minor’s stated interest and what counsel believed was minor’s best interests
In re Kristen B. (2008) 163 Cal.App.4th 1535 [78 Cal.Rptr.3d 495]

Motion to vacate a foreign state judgment on the basis of the existence of a conflict of interest

Multiple representation

Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp. 2d 1100

CAL 2011-182, CAL 1993-132
SD 2017-1
SF 1973-26, SF 1973-15
absent an actual conflict between an opposing attorney’s clients, a party should not be able to create one by merely filing a meritless cross-complaint
-Fiduciary and mortgage
actual versus potential conflict
LA 471 (1992), LA 427 (1984), SD 2013-1
administrative proceeding
advance waiver of potential future conflict contained in a joint defense agreement found enforceable
In re Shared Memory Graphics (9th Cir. 2011) 659 F.3d 1336
assistant district attorney representing county and private citizen

Dettamanti v. Lompoc Unions District (1956) 143 Cal.App.2d 715 [300 P.2d 78]

attorney acts as both advocate and advisor to decision maker


Quintero v. City of Santa Ana (2003) 114 Cal.App.4th 810 [7 Cal.Rptr.3d 896]

-Administrative Procedure Act does not prohibit state agency attorney from acting as an agency prosecutor in one case and concurrently acting as agency advisor in unrelated case


attorney for former business associates later represents one of those clients against the others in a matter directly related to earlier representation

*Croce v. Superior Court (1937) 21 Cal.App.2d 18, 19 [68 P.2d 369]

attorney partner in a partnership arrangement acting as counsel for both sides in a leasing transaction

Olivet v. Frischling (1980) 104 Cal.App.3d 831 [164 Cal.Rptr. 87]

attorney representing conflicting issues in litigation


McClure v. Donovan (1947) 82 Cal.App.2d 664, 666 [186 P.2d 718]

attorney represents two insureds with potentially divergent interests

Spindle v. Chubb/Pacific Indemnity Group (1979) 89 Cal.App.3d 706, 713 [152 Cal.Rptr. 776]

LA 395 (1982)

attorney’s former joint representation of parties did not require disqualification where valid waiver found


attorney’s former joint representation of parties justified disqualification from representing one against the other

Western Continental Operating Co. v. Natural Gas Corp. (1989) 212 Cal.App.3d 752 [261 Cal.Rptr. 100]

both sides

Olivet v. Frischling (1980) 104 Cal.App.3d 831 [164 Cal.Rptr. 87]

SD 1976-16

business firm and clients of business

-WHEN ATTORNEY IS PARTNER IN BUSINESS

CAL 1969-18

class action representatives may waive conflicts of interest on behalf of potential class members


clients each demand the original file

Flatt v. Superior Court (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537]


LA 493 (1998)

CONFLICT OF INTEREST

concurrent representation of adverse parties in separate matters may be permissible if cases are totally unrelated

Abbott v. United States IRS (9th Cir. 2005) 399 F.3d 1083

-lawyer may concurrently represent both creditor and debtor in unrelated matters without written consent when debtor-client is adequately prescreened through a pro bono program

CAL 2014-191

concurrent representation of clients with adverse interests


In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774

CAL 2003-163

LA 528 (2017)

consent of all parties

Visa U.S.A., Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100


In the Matter of Wyshak (Review Dep't. 1999) 4 Cal. State Bar Ct. Rptr. 70

In the Matter of Aguiluz (Review Dep't. 1994) 2 Cal. State Bar Ct. Rptr. 32

In the Matter of Fonte (Review Dep't. 1994) 2 Cal. State Bar Ct. Rptr. 752

LA 22 (1923), SD 1976-1, SD 1974-22

-in house counsel represented employer and employee concurrently (to the employee's detriment) without obtaining informed consent


consultation with attorney, evidence of relationship

[See Attorney-Client Relationship, Consultation with, prima facia case of existence of.]

Corporate director/attorney representing client in transaction with corporation

CAL 1993-132

Corporation and board of directors on derivative suit

LA 397 (1982)

corporation and directors


In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 528

CAL 2003-163

LA 528 (2017)

Corporation and officers


See How to Use This Index, supra, p. i 2019 (updated entries through 12/31/2018)
CONFLICT OF INTEREST

Pringle v. La Chappelle (1999) 73 Cal.App.4th 1000 [87 Cal.Rptr.2d 90]
CAL 1999-153, SD 2017-1
county counsel represents a department of the county and an individual
In re Lee G. (1991) 1 Cal.App.4th 17 [1 Cal.Rptr.2d 375]
LA 459 (1990)
creating a conflict by the mere filing of a meritless cross-complaint should not establish a conflict between opposing attorney’s clients where no previous conflict existed
criminal defendants by public defender’s office
59 Ops. Cal. Atty. Gen.27, 28 (1/15/76; No. CV 72-278)
criminal proceeding
People v. Amaya (1986) 180 Cal.App.3d 1 [225 Cal.Rptr. 313]
criminal prosecution
-co-defendants entitled to separate representation
United States v. Moore (9th Cir. 1998) 159 F.3d 1154
People v. Mroczko (1983) 35 Cal.3d 86 [197 Cal.Rptr. 52]
-privately retained counsel representing co-defendants
People v. Cook (1975) 13 Cal.3d 663, 670-673 [119 Cal.Rptr. 500, 532 P.2d 148]
People v. Amaya (1986) 180 Cal.App.3d 1 [225 Cal.Rptr. 313]
Dependency Court Legal Services may represent multiple parties with adverse interests
dependency proceeding
-actual conflict amongst multiple siblings requires disqualification of appointed counsel from joint representation
-no separate counsel needed where attorney represented two siblings with different plans. In this case, even if separate counsel had been appointed, the result would have been the same.
In re T.C. (2011) 191 Cal.App.4th 1387 [120 Cal.Rptr.3d 569]
-sanctions imposed against attorney for bringing frivolous conflict motions
-separate counsel must be appointed when actual conflict exists among minor clients or when there is a reasonable probability that a potential conflict will become actual
In re Celine R. (2003) 31 Cal.4th 45 [1 Cal.Rptr.3d 432]
disqualification order not appealable in the grand jury context
In re Grand Jury Investigation (9th Cir. 1999) 182 F.3d 668
dissolution of marriage
Ishmael v. Millington (1966) 241 Cal.App.2d 520 [50 Cal.Rptr. 592]
divorce action
-party and receiver appointed in same action
LA 52 (1927)
-post-nuptial agreement enforceable despite law firm’s dual representation of husband and wife in estate plan
In re Marriage of Friedman (2002) 100 Cal.App.4th 65 [122 Cal.Rptr.2d 412]
employer and employee-alien in an immigration matter
LA 465 (1991)
estate planning matter
-representation of testator and beneficiary
SD 1990-3
franchise group of law firms
LA 423 (1983)
husband and ex-wife in tax proceedings
Devore v. Commissioner of Internal Revenue Service (9th Cir. 1992) 963 F.2d 288
husband and wife in dissolution of marriage
In re Marriage of Espejo (2001) 88 Cal.App.4th 17 [105 Cal.Rptr.2d 518]
Klemm v. Superior Court (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509]
husband and wife in estate plan, and subsequent agreement for husband only
LA 448 (1987)
in-house counsel for organization represents outside company in merger with organization
LA 353
insurance company
-and insured
MGIC Indem. Corp. v. Weisman (9th Cir. 1986) 803 F.2d 500
LA 528 (2017)
--actual conflict
LA 528 (2017)
--and another party
Hammett v. McIntyre (1952) 114 Cal.App.2d 148 [249 P.2d 885]
--attorney must withdraw if attorney obtains information from insured that could be provide basis for insurance carrier to deny coverage
LA 528 (2017)
--attorney who is director subject to same conflicting interests as attorney for carrier
SF 1979-2

See How to Use This Index, supra, p. i
--Cumis counsel does not have attorney-client relationship with insurer for purposes of disqualification

--disqualifying conflict of interest between insurer and insured counsel ceased to exist, therefore, insurer did not have a duty to continue to provide and pay for Cumis counsel

--withdrawal
-and party adverse to insurer
Anderson v. Eaton (1930) 211 Cal. 113 [293 P. 788]
-no actual conflict
--providing courtesy defense
--insurer that voluntarily provided courtesy defense but no indemnification had duty to defend uninsured as if they had been insured
limited and general partnerships
LA 461 (1990)
malpractice found where attorney failed to advise elder client of conflict where attorney also represented another person claiming to be the nephew of the elder in obtaining a loan against property owned by elder client's trust
minor and guardian
CAL 1988-96
no joint representation, where parties have simply overlapping interests
non-profit legal corporation created by a county board of supervisors does not give rise to a conflict of interest even if the corporation represents multiple parties with adverse interest
Castro v. Los Angeles County Board of Supervisors (1991) 232 Cal.App.3d 1432 not found where attorney had a “framework” contract with former client for “as requested” future representation, but did not currently represent the client
of executor
- in individual capacity against co-executor
LA 72 (1934)
permanency hearing where one attorney represents two brothers creates conflict when court is considering post-termination sibling visitation issues
preparation of answer for opposing party
LA 432 (1984)
privilege held between co-client
Evidence Code section 962
probate matter
-representation of decedent’s spouse and executor
LA 23 (1923)

CONFLICT OF INTEREST

-withdrawal from
--when lawyer represents executor being sued by beneficiary
LA 23 (1923)
representation of corporation and controlling shareholders
representation of corporation and officer, in a separate matter, may require withdrawal from representation where corporation may be liable for officer's action
CAL 2003-163
sale and purchase of stock of corporation
SF 1973-10
unauthorized representation
without consent of client
*In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664
workers' compensation insurance carrier and a claimant making a claim against one of the carrier's insureds
Smiley v. Director, Office of Workers' Compensation (9th Cir. 1992) 973 F.2d 1483
Obtaining loan from client
disclosure and written consent required
Of counsel
Atasi Corp. v. Seagate Technology (9th Cir. 1998) 847 F.2d 826
firm’s acceptance of client adverse to of counsel’s client
CAL 1993-129
LA 516 (2006)
SF 1985-1(F)
vicarious disqualification where “of counsel” attorney and law firm represented opposing parties and where “of counsel” attorney obtained confidential information and provided legal services to client
Office share
CAL 1979-50, LA 216
represent opposing sides
SD 1972-15
Opposing counsel
joins partnership
LA(I) 1962-2
Opposing party
represent
-client against after obtaining information from
LA 193 (1952)
Ordinance violation
city council member represents in
LA 273 (1962), SD 1969-1
Outside counsel or providers of outsourced legal services, use of
CAL 2004-165
LA 518 (2006)
Paid by third party
LA 510 (2003)
Partnership
attorney for
In the Matter of McCarthy (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364
CAL 1994-137
CONFLICT OF INTEREST

-does not necessarily have an attorney-client relationship with an individual partner for purposes of conflict of interest rules

Lynn v. George (2017) 15 Cal.App.5th 630 [223 Cal.Rptr.3d 407]

-represents all partners

LA(I) 1967-11
member of partnership acting as counsel for partnership and another party transacting business with partnership

Olivet v. Frischling (1980) 104 Cal.App.3d 831 [164 Cal.Rptr. 87]

no conflict exists for attorney in representation when client partners pursue a common business goal


opposing counsel joins

LA(I) 1962-2 practices

-prosecutor
LA 377 (1978)

-when member is
--city attorney
LA(I) 1975-4
--city council member
CAL 1981-63, CAL 1977-46
LA(I) 1975-4
--prosecutor
LA 377 (1978)

prior representation re partnership agreement held not conflict in subsequent litigation covering partnership asset

Quaglino v. Quaglino (1979) 88 Cal.App.3d 542 [152 Cal.Rptr. 47]

representation of both general and limited partners in partnership


LA 461 (1990)
representation of partner against another when represents partnership

LA 412 (1983)

represents

-against
--when associate before joining acted for other side
LA 363 (1976)
-custody proceedings
CAL 1976-37
-estate
--member against relative of client
LA(I) 1956-8
--member-executor/trustee
LA 219 (1954)
--when member before joining acted for other side
LA 269 (1960), LA 252 (1958), LA 246 (1957)
-in civil matter
--against city
---when member is city councilor
CAL 1981-63
-in criminal matter
--when member is
---city attorney
LA(I) 1975-4
---city councilor
CAL 1977-46
LA(I) 1975-4
--prosecutor
LA 377 (1978)

undertaking partnership with opposing counsel compromises client's interest and constitutes breach of fiduciary duty


Partnership, business

regarding divorce

regarding termination agreement drafted by other counsel
LA(I) 1963-9

Personal interest in client's case

LA(I) 1974-8

Personal relationship between counsel

Rule 3-320, California Rules of Professional Conduct (operative as of May 27, 1989)

CAL 1984-83

Personal relationship with client


LA 1978-92

Physician

represent
--client's physician against client for unpaid witness's fee
LA(I) 1931-1

Police officer
also lawyer
LA 94 (1936)
defends criminal cases
LA 94 (1936)

Potential conflict

CAL 1988-9(I)
civil litigation


Klemm v. Superior Court (1977) 75 Cal.App.3d 893, 899 [142 Cal.Rptr. 509]
civil proceedings

criminal proceeding

-between co-defendants
CAL 1970-22
dissolution of marriage

Prior representation

as corporate counsel for family corporation

of former client
-attorney seeks to become party adverse to former client in the same matter in which he had represented that client
of opposing party's insurer
sufficiency

Quaglino v. Quaglino (1979) 88 Cal.App.3d 542, 549 [152 Cal.Rptr. 47]

Prosecuting attorney [See Conflict of interest, attorney general; commonwealth's attorney; district attorney.]
employer of, practice by
LA 377 (1978)
partner of
-practice by
LA 377 (1978)
-represents
--in criminal cases
Business and Professions Code section 6131
LA 377 (1978)

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CONFLICT OF INTEREST

law firm holding county contract to provide public defender wishes to associate retired district attorney
multiple representation
-separate counsel must be appointed when actual conflict exists among minor clients or when there is a reasonable probability that a potential conflict will become actual
In re Celine R. (2003) 31 Cal.4th 45 [1 Cal.Rptr.3d 432]
prior representation of witness by former member of public defender’s office where another public defender currently represents defendant and where the office had received no confidential information of the witness, no conflict of interest
removal of public defender was proper where defendant made credible death threat against counsel
representation of criminal defendant by separate division within office does not alleviate conflict
59 Ops. Cal. Atty. Gen. 27 (1/15/76; No. CV 72-278)
withdrawal

Public office
duality of
38 Ops. Cal. Atty. Gen. 121, 123 (10/9/61; No. 61-91)
Government Code section 1090
-city council may not contract with a law firm to represent the city when a member of the city council is also a member of the law firm, even where the firm will receive no fees for the representation
101 Ops. Cal. Atty. Gen. 1 (04/03/18; No. 14-301)
Publication of article regarding client’s case
no conflict found
LA 451 (1988)

Purpose of rule 3-300
*Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]
SF 1997-1

Purpose of rule 3-310
*Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]
Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]

See How to Use This Index, supra, p. i
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CONFLICT OF INTEREST


Purpose of rule 3-600


Real estate transactions [See Conflict of interest, foreclosure; title.]

Real estate transactions [See Conflict of interest, foreclosure; title.]

deed of trust on client’s property through use of wife of attorney


represent

-buyer and seller/later one against other

LA 471

-SF 1973-22

-client in donating property to another client later same client in attempt to secure return of property

LA(I) 1970-10

Recusal of district attorney

People v. Vasquez (2006) 39 Cal.4th 47 [45 Cal.Rptr.3d 372]


Williams v. Superior Court (1988) 198 Cal.App.3d 960 [244 Cal.Rptr. 88]


*Younger v. Superior Court (1978) 77 Cal.App.3d 592 [144 Cal.Rptr. 34]

erroneous denial of recusal motion is harmless error if it does not involve due process violation

People v. Vasquez (2006) 39 Cal.4th 47 [45 Cal.Rptr.3d 372]

not required where ethical wall would be effective alternative


prior representation as private attorney and necessity for making claim timely


prior representation in criminal matters now prosecuting

People v. Lepe (1985) 164 Cal.App.3d 685 [211 Cal.Rptr. 432]

relative of crime victim employed in district attorney’s office

*People v. Superior Court (Greer) (1977) 19 Cal.3d 255 [137 Cal.Rptr. 476, 561 P.2d 1164]


witness victim was former non-attorney employee in DA’s office

People v. Garnache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]

Related matter


City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]


Relationship with opposing counsel

Rule 3-320, Rules of Professional Conduct

Manley v. Fireman’s Fund Insurance Co. (9th Cir. 1989) 883 F.2d 747


34 Santa Clara L.Rev. 1157 (1994)

CAL 1984-83, SD 1989-4, SD 1976-12, OC 2012-1

disqualification of attorney where same attorney was previously disqualified in a related case


Relationship with previously disqualified counsel and law firm


Relative

partnership represents member against relative of client

LA(I) 1956-8

represent

-against client’s relative

LA(I) 1956-8

-daughter against son-in-law

SF 1973-6

spouse

represent

--client’s in divorce

LA 207 (1953), LA 192 (1952)

--former client’s in divorce

LA(I) 1971-8

Remedies of former clients


Remedy


Represent

both client A in suit A v. B, and client B in suit B v. C

Rule 3-310(C)(3), California Rules of Professional Conduct

Abbott v. United States IRS (9th Cir. 2005) 399 F.3d 1083

Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100

Flatt v. Superior Court (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537]


CAL 2014-191, CAL 2017-2

both guardian and minor

CAL 1988-96, SD 2017-2

both interests of child and state

-cal in welfare proceeding

CAL 1977-45

both sides

SF 1973-15

See How to Use This Index, supra, p. i
Right to effective counsel

attorney's literary rights to trial interfered with duty of
undivided loyalty to client
[145 Cal.Rptr. 894]
multiple representation as violation of Sixth Amendment
Cuyler v. Sullivan (1980) 446 U.S. 335, 348 [100 S.Ct. 1708, 64 L.Ed. 2d 333]
United States v. Moore (9th Cir. 1998) 159 F.3d 115
public defender refused to participate but no actual prejudice resulted
People v. McKenzie (1983) 34 Cal.3d 616 [194 Cal.Rptr. 462, 668 P.2d 769]
publication rights in trial
United States v. Hearst (9th Cir. 1981) 638 F.2d 1190
Sixth amendment rights not violated where co-defendant raised conflict of interest based on a mere theoretical division of loyalty
People v. Wells (9th Cir. (Mont.) 2005) 394 F.3d 725

there is no constitutional right to pay for counsel with money that is subject to a valid prior claim by a third party
Brothers v. Kern (2007) 154 Cal.App.4th 126, 64 Cal.Rptr.3d 239]

Rules developed for private sector may not squarely fit realities of public attorney's practice
In re Lee G. (1991) 1 Cal.App.4th 17 [1 Cal.Rptr.2d 375]
CAL 2002-158

Salaries

Self-dealing attorney as trustee
Lyders v. State Bar (1938) 12 Cal.2d 261, 264-265

attorney purchasing real property subject of representation of client
Tomblin v. Hill (1929) 206 Cal. 689 [275 P. 941]

Settlement
SD 2013-1

attorney's receipt of confidential information as settlement officer would bar attorney's firm from representing the opposing party (employer)

conflicting instructions from insurer and insured
LA 344 (1974)

general antagonisms between lawyer and client, specifically, regarding settlement are not necessarily "tangible conflicts"

represent - in when fee owed by client comes out of proceeds of
SD 1975-4

vicarious disqualification of a firm does not automatically follow the personal disqualification of the tainted attorney, a former settlement judge
County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990

Sexual relations with client
Rule 3-120, California Rules of Professional Conduct
Business and Professions Code Sections 6106.8 and 6106.9
CAL 1987-92, OC 2003-02

defense attorney's "intimate" relationship with client found not to be a conflict
Earp v. Ornoski (9th Cir. 2005) 431 F.3d 1158

Sharing of office space with another attorney
People v. Pastrano (1997) 52 Cal.App.4th 610 [60 Cal.Rptr.2d 620]
CAL 1997-150, CAL 1986-90, CAL 1979-50

LA 344 (1974)

represent opposing sides
SD 1972-15

Special counsel appointed by bankruptcy court to represent bankruptcy trustee of debtor may have a conflict as a result of duties owed to the debtor's principals
In re Westwood Shake & Shingle, Inc. (9th Cir. 1992) 971 F.2d 387

Special office
created to avoid conflicts
59 Ops. Cal. Atty. Gen. 27 (1/15/76; No. CV 72-278)

Specially appearing attorneys
CAL 2004-165

Standing to assert
Lynn v. George (2017) 15 Cal.App.5th 630 [223 Cal.Rptr.3d 407]

See How to Use This Index, supra, p. i
CONFLICT OF INTEREST

DCH Health Services Corp. v. Waite (2002) 95 Cal.App.4th 829 [115 Cal.Rptr.2d 847]
Mc Gee v. Superior Court (1985) 176 Cal.App.3d 221 [221 Cal.Rptr. 421]
101 Ops. Atty Gen. 1 (04/03/18; No. 14-301)

where an attorney’s continued representation threatens an opposing litigant with cognizable injury or would undermine the integrity of the judicial process, the trial court may grant a motion for disqualification, regardless of whether motion is brought by present or former client

Kennedy v. Elibridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]

Substantial relationship

Employers Insurance of Wausau v. See no (N.D. Cal. 1998) 692 F.Supp. 1150
Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1996) 195 B.R. 740
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
Knight v. Ferguson (2007) 149 Cal.App.4th 1207 [57 Cal.Rptr.3d 832]

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735
CAL 1998-152
LA 501 (1999)
applicable to determine whether information law firm received as “monitoring counsel” for corporate parent’s insurance underwriters disqualified firm from representing a party against corporate subsidiary

avorney seeks to substitute into appeal as the party adverse to his former client in the same matter in which he had originally represented that client

between representation of current client(s) and primary representation of opposing party

Damron v. Herzog (9th Cir. 1995) 67 F.3d 211
Merle Norman Cosmetics, Inc. v. U.S. District Court (9th Cir. 1988) 856 F.2d 98

See How to Use This Index, supra, p. i
CONFLICT OF INTEREST

- dependency proceeding
  -- factors determining whether disqualification of appointed counsel and entire public law office is required in substantially related successive representations
  In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]

modified substantial relationship test

- alleged protected activity under Anti-SLAPP statute (C.C.P. § 425.16) found to be incidental to conflict of interest

no automatic where previous representation did not expose attorney to confidential information material to the current representation

no substantial relationship found
Merle Norman Cosmetics, Inc. v. United States District Court (9th Cir. 1988) 856 F.2d 98

substantial relationship test inapplicable
- where disqualification for former representation would be futile
Christensen v. United States District Court (9th Cir. 1988) 844 F.2d 694
- where former client, now expert witness for adverse party, waives conflict
Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

vicarious disqualification of a firm not required because of the timely and effective screening of the tainted attorney
County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990

vicarious disqualification of entire city attorney’s office where in related matter city attorney previously represented private company
City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 777]

vicarious disqualification of public law office
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
where criminal defendant’s proposed substitute counsel had represented defendant’s brother on prior rape charges
where law firm had previously represented opposing party’s father, and opposing party had been a witness in that prior matter, and law firm now represents a current client adverse to opposing party in a new matter
Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]

Substitution of counsel
- court abused discretion in denying criminal defendant’s motion to appoint substitute counsel without first conducting proper inquiry
U.S. v. Adelzo-Gonzalez (9th Cir. 2001) 268 F.3d 772
- court discretion in denying criminal defendant’s motion to appoint substitute counsel after learning counsel would not allow a plea of not guilty by reason of insanity

Successive representation
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]
Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]

against former client as the adverse party in the same matter in which the attorney had represented that client

dependency proceeding
- factors determining whether disqualification of appointed counsel and entire public law office is required in substantially related successive representations
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]

prior representation of government witness impaired defense counsel’s duty to fully cross examine witness
Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

Suit against client
*Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]

Support action, represent wife, former client in divorce, after representing former husband in unrelated matter
SF 1973-19

Tactical abuse of disqualification proceeding

*County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990


Taking business clientele of a former client

Three strikes cases
SD 1995-1

Thrust upon conflict defined
OC 2012-1

Undue influence
absent independent legal advice in attorney/client transaction
advantage to attorney when client disadvantaged
Pixweve Aircraft Co. v. Greenwood (1943) 61 Cal.App.2d 21 [141 P.2d 933]
attorney as trustee, client as beneficiary
Probate Code sections 15687, 16002, 16004, 21350 et seq.
attorney beneficiary of trust
attorney beneficiary of will

burden on attorney
-to enforce fee agreement
Ferrara v. La Sala (1960) 186 Cal.App.2d 263 [9 Cal.Rptr. 179]
-to prove arm's length transaction
-to show transaction fair
Estate of Witt (1926) 198 Cal. 407 [245 P.2d 197]
Clark v. Millsap (1926) 197 Cal. 765, 783 [242 P.2d 918]
McDonald v. Hewlett (1951) 102 Cal.App.2d 680 [228 P.2d 83]

business dealings invalid

business dealings with
Felon v. Le Breton (1891) 92 Cal. 457, 469 [28 P. 490]
-court's view attorney/client transactions with suspicion
Stiegelitz v. Settle (1920) 50 Cal.App. 581 [195 P. 705]
-must fully inform client
-must show validity of contract
Swanson v. Hempstead (1944) 64 Cal.App.2d 681 [149 P.2d 404]
-unequal relationship with

confidence and trust in attorney induced client to sell real property at disadvantageous price

contingent fee contract entered under free will
Rader v. Thrasher (1962) 57 Cal.2d 244 [18 Cal.Rptr. 736, 368 P.2d 360]

contract without consideration to client

CONFLICT OF INTEREST
dependency proceeding
-factors determining whether disqualification of appointed counsel and entire public law office is required in substantially related successive representations
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
-inducing client to offer of free use of client's vacation property
CAL 2011-180
-overreaching due to client's ignorance of legal matters
-use of confession of judgment against client
Hulland v. State Bar (1972) 8 Cal.3d 440, 450 [105 Cal.Rptr. 152, 503 P.2d 608]
-preservation of undue influence is evidence
Ball v. Posey (1986) 176 Cal.App.3d 1209, 1214 [222 Cal.Rptr. 746]

prima facie case
Metropolis, etc. Savings Bank v. Monnier (1915) 169 Cal. 592, 598 [147 P. 265]
-profits from transaction with client
-recording deed

unfair advantage to attorney
Carlson v. Lantz (1929) 208 Cal. 134 [280 P. 531]

where city council member who is also a member of a law firm which seeks to represent the city raises the possibility that the member's personal considerations may conflict with the exercise of official judgment or discretion (Government Code section 1080)
86 Ops. Atty. Gen. 137 (7/24/2003; No. 03-302)

Vicarious disqualification of entire law firm [See Disqualification.]
Atasi Corp. v. Seagate Technology (9th Cir. 1988) 847 F.2d 826
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]

See How to Use This Index, supra, p. i 169 2019 (updated entries through 12/31/2018)
CONFLICT OF INTEREST

City attorney and entire office disqualified from representing city in matter related to city attorney’s prior representation of private company

City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]

District attorney

- recusal of entire office
  -- not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office
  People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]

Double imputation of confidential knowledge


Hardship to client

City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]

Voluntary withdrawal


Prior relationship with adverse party

Quaglini v. Quaglini (1979) 88 Cal.App.3d 542, 550 [152 Cal.Rptr. 47]

Waiver of

Advance waiver of potential future conflict contained in a joint defense agreement found enforceable even though the waiver does not specifically state the exact nature of the future conflict

In re Shared Memory Graphics (9th Cir. 2011) 659 F.3d 1336

Both confidentiality and conflict of interest

Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1996) 195 B.R. 740


CAL 1998-152, CAL 1989-115

- not found


By criminal defendant


- client must be advised of the full range of the dangers and possible consequences of the conflicted representation and he must understand the ramifications of his waiver

Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

- court has discretion to deny substitution because of serious potential conflict


- court has latitude to remove counsel where potential conflict exists, over objection by defendant


- no valid waiver found


-- no evidence that defendant understood any of the specific ramifications of his waiver

Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989


- valid waiver found

Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100


- not required where firm-switching attorney’s relationship with client at former firm was peripheral or attenuated and documents relating to case that attorney accessed contained no confidential information


Where “of counsel” attorney and law firm represented opposing parties and where “of counsel” attorney obtained confidential information and provided legal services to client


Will

Attorney as beneficiary of trust


Attorney beneficiary of holographic will

Maltaman v. State Bar (1987) 43 Cal.3d 924
attorney drafts will making secretary executor, then represents executor for fee
LA 382 (1979)
attorney who drafted was later employed as attorney for executor
Will drafting
attorney as beneficiary under terms of gift instrument
Probate Code sections 15687, 21350 et seq.
attorney drafts will making secretary executor, then represents executor for fee
LA 382 (1979)
counsel for organization drafts for those leaving money to organization
LA(I) 1966-17, LA 428 (1984)
draft
when named beneficiary, executor, etc.
LA(I) 1963-4
prosecution witness is former client of attorney
SD 1974-15
Withdrawal [See Withdrawal.]
client prevents exercise of independent professional judgment
SD 1972-1
probate matter, from
where lawyer defends executor in action brought by decedent’s spouse to whom lawyer also giving legal advice
LA 23 (1923)
reasons for
representation of co-defendants
CAL 1970-22
Witness
attorney acting as
Milicevic v. Fletcher Jones Imports, Ltd. (9th Cir. (Nev.) 2005) 402 F.3d 912
Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]
against former client
LA 75 (1934)
anticipated testimony may be sufficient to disqualify attorney and/or law firm
Comden v. Superior Court (1978) 20 Cal.3d 906 [145 Cal.Rptr. 9, 576 P.2d 971]
called by defense while member of district attorney’s or attorney general’s staffs
*People v. Superior Court (Hollenbeck) (1978) 84 Cal.App.3d 491 [148 Cal.Rptr. 704]
--consent of client
Reynolds v. Superior Court (1986) 177 Cal.App.3d 1021 [223 Cal.Rptr. 258]
called by opposition, testimony not prejudicial to client

CONSERVATORSHIP PROCEEDINGS

Rule 5-210, Rules of Professional Conduct (operative as of May 27, 1989)
Graphic Process Co. v. Superior Court (1979) 95 Cal.App.3d 43 [156 Cal.Rptr. 841]
--United States Attorney's staff
U.S. v. Prantl (1985) 756 F.2d 759
--for impeachment purposes
client
--former
--against present client
in criminal proceeding
Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989
--witness
--against present client
LA 513 (2005)
--in criminal proceeding
CAL 1980-52
--witness
--against present client
--in criminal proceeding
CAL 1979-49
--former co-defendant as key witness for the prosecution
United States v. Henke (9th Cir. 2000) 222 F.3d 633
criminal case
--no conflict found where defense counsel previously represented wife of prosecution witness
People v. Cornwell (2005) 37 Cal.4th 50 [33 Cal.Rptr.3d 827]
defense attorney consults in confidence one defendant who becomes witness against other co-defendants
--attorney may not represent other co-defendants
LA 366 (1977)
expert witness for plaintiff previously represented by defense counsel, need not be removed and defense counsel need not be disqualified where expert waives conflict
Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

CONSERVATORSHIP PROCEEDINGS

Attorney initiated conservatorship proceedings, absent client consent
Attorney owes no duty to beneficiaries to evaluate and ascertain client’s testamentary capacity to draft or amend a will
CONSULTATION WITH CLIENT

Attorney plays greater role for making fundamental choices for client once court has raised competency of criminal defendant


Authority to bind conservatee-client who requests not to be present at hearing

In re Conservatorship of the Person of John L. (2010) 48 Cal.4th 131 [105 Cal.Rptr.3d 424]

Compared with child dependency proceedings

LA 504 (2000)

Conservatee cannot obligate conservatorship estate for payment of attorney’s fees

Young, etc. v. Thomas (1989) 210 Cal.App.3d 812 [258 Cal.Rptr. 574]

Constructive attorney-client relationship not formed between conservatee and her conservator’s designated attorney

In re Lee G. (1991) 1 Cal.App.4th 17 [1 Cal.Rptr.2d 375]

Fees

value of an estate in an elder abuse case is a factor in setting fees and is consistent with rule 4-200

Conservatorship of Levitt (2001) 93 Cal.App.4th 544 [113 Cal.Rptr.2d 294]

Reestablishing conservatorship by stipulation filed by conservatee’s attorney

In re Conservatorship of Deidre B. (2010) 180 Cal.App.4th 1306 [103 Cal.Rptr.3d 825]

Right of prospective conservatee to effective assistance of counsel


CONSULTATION WITH CLIENT [See Attorney-client relationship.]

CONTACT WITH JURORS

Rule 7-106, Rules of Professional Conduct (operative until May 26, 1989)

Rule 5-320, Rules of Professional Conduct (operative as of May 27, 1989)


CONTACT WITH OFFICIALS [See Judges. Judicial officials.]

Communications with

Rules 7-103 and 7-108, Rules of Professional Conduct (operative until May 26, 1989)

Rules 2-100 and 5-300, Rules of Professional Conduct (operative as of May 27, 1989)

CONTACT WITH WITNESSES [See Witnesses, contact with.]

Rule 7-107, Rules of Professional Conduct (operative until May 26, 1989)

Rule 5-310, Rules of Professional Conduct (operative as of May 27, 1989)

With treating physician of opposing party

CAL 1975-33, SD 1983-9

CONTEMPT OF COURT

Code of Civil Procedure sections 178, 1209

Code of Civil Procedure sections 1211

In re Ringgold (2006) 142 Cal.App.4th 1001 [48 Cal.Rptr.3d 507]

Attorney misbehavior in office

Code of Civil Procedure section 1209, par. 3

Criminal attorney held in

In re the Matter of Koven (2005) 134 Cal.App.4th 262 [35 Cal.Rptr.3d 917]

-judge other than one bringing charges must try

In re Martin (1977) 71 Cal.App.3d 472 [139 Cal.Rptr. 451]

-notice to attorney required


Due process requires that reasonable notice be given as to the charges and the opportunity to be heard

Little v. Kern County Superior Court (9th Cir. 2002) 294 F.3d 1075

In re Koehler (2010) 181 Cal.App.4th 1153 [104 Cal.Rptr.3d 877]

Impugning integrity of prosecutor and legal profession

Hanson v. Superior Court of Siskiyou County (2001) 91 Cal.App.4th 75 [109 Cal.Rptr.2d 782]

Inclusion of contemptuous statements in a document filed in a court is contempt committed in the immediate presence of the court and thus constitutes direct contempt of court

In the Matter of Koven (2005) 134 Cal.App.4th 262 [35 Cal.Rptr.3d 917]

Judicial officers

power to punish for contempt

Code of Civil Procedure section 178


Mitigation

apology


apology to the court was insufficient to excuse or to purge attorney of contempt of court

In the Matter of Koven (2005) 134 Cal.App.4th 262 [35 Cal.Rptr.3d 917]

No penalty for advising client-witness to refuse to produce material demanded by a subpoena duces tecum based on 5th Amendment


Procedures differ for punishing direct, hybrid and indirect contempt

In re Koehler (2010) 181 Cal.App.4th 1153 [104 Cal.Rptr.3d 877]

CONTINGENCY FEE [See Fee.]

Business and Professions Code section 6147

“Additional fees” authorization could not be a contingency fee agreement because of failure to comply with Business and Professions Code section 6147, subdivision (a)

In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252

Adequacy of consideration is to be determined at time of contract formation

Rader v. Thrasher (1962) 57 Cal.2d 244, 252 [18 Cal.Rptr. 736, 368 P.2d 360]

Advancement of funds

Rule 4-210, California Rules of Professional Conduct (operative as of May 27, 1989)

LA 499 (1999), LA 106 (1937)

Alimony, overdue

LA 275 (1963), LA 263 (1959), LA(I) 1969-1, SF 1971-1

Attorney's fees paid in tort-based action were excludable from client’s gross income

Banatis v. Commissioner of Internal Revenue (9th Cir. 2003) 340 F.3d 1074

Award of attorney fees statutes may not allow a computation which increases the award to account for the client’s retention of attorneys on a contingent fee basis


Bankruptcy court’s award of fees based on a pre-approved contingent fee agreement

In re Reimers (9th Cir. 1992) 97 F.2d 1127

Charging liens

contingency fee agreements distinguished from hourly fee agreements


CAL 2006-170

created by contract


Child support, overdue

CAL 1983-72

LA 275 (1963), LA 263 (1959)
Compensation for actual, necessary services under bankruptcy law

**Civil rights**
fee arrangement allowed providing fees in excess of court awarded fee

Client discharges attorney
quantum meruit

**Collectors**
LA 275 (1963), LA 263 (1959)
percentage of amount charged creditor
LA 4 (1917)

**Compensation for actual, necessary services under bankruptcy law**

**Civil rights**
ambiguity is a question of law

**client abandonment of case**
-quantum meruit

**Lawyer may pay litigation costs for clients if representing on a charitable basis**
SF 1974-3

**between city and private attorney**
County of Santa Clara v. Superior Court (2010) 50 Cal.4th 35 [112 Cal.Rptr.3d 697]

People ex rel. Clancy v. Superior Court (1985) 39 Cal.3d 740 [218 Cal.Rptr. 24]

**Business and Professions Code section 6147 applies only to fee agreements with litigation plaintiffs and not to clients generally who have non-litigation matters**

- statement that fee is negotiable required under Business and Professions Code section 6147(b)(4) applies to certain non-litigation matters

city attorney, private contingency contract
People ex rel. Clancy v. Superior Court (1985) 39 Cal.3d 740 [218 Cal.Rptr. 24]

**contingency lawyer may negotiate a fee contract that gives first proceeds to the lawyer and imposes on client greater risk of non-payment**
LA 526 (2015)

**contract formation is governed by objective manifestations, not subjective intent of parties**

**County attorney, private contingency fee contract**
County of Santa Clara v. Superior Court (2010) 50 Cal.4th 35 [112 Cal.Rptr.3d 697]

discharged attorney limited to quantum meruit, premise

evaluated as of time of making

In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
CAL 2007-170, CAL 1994-135

**hybrid, hourly and contingent**
SF 1998-1

**hybrid, reverse contingency**

**Costs**
LA 517 (2006)
recovery of
LA 495 (1998)

**Court award rebate to client**

**Court not bound by contract for**

**Deceased attorney**
Estate of Linnick (1985) 171 Cal.App.3d 752 [217 Cal.Rptr. 552]

**Determination of**
based on offset recovery which client does not actually receive
LA 458

**Discharge**
entitled to recover reasonable value of services rendered
The judgment is appealable

**interest charged on advanced costs from payment until billing**
LA 499 (1999)

**lenders to attorneys for percentage of settlement**
SF 1981-1

**offset recovery not actually received by client**
LA 458

**offset recovery is in the form of an annuity**
CAL 1987-94

**-attorney entitled to percentage of periodic payments**
Sayble v. Feinman (1978) 76 Cal.App.3d 509 [142 Cal.Rptr. 895]

**-attorney entitled to percentage of present value of periodic payments**
award best represented by cost of annuity

**medical malpractice action under Business and Professions Code section 6146**

**-medical malpractice action under Business and Professions Code section 6146**

**recoverable only in event of favorable settlement**
SF 1985-2

**recovery of, based upon occurrence of contingency**

**strictly construed against attorney**

**In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944**

**In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668**

**voidable at option of client if Business and Professions Code section 6147(b) not complied with**

**City attorney, private contingency contract**
People ex rel. Clancy v. Superior Court (1985) 39 Cal.3d 740 [218 Cal.Rptr. 24]

**contingency lawyer may negotiate a fee contract that gives first proceeds to the lawyer and imposes on client greater risk of non-payment**
LA 526 (2015)

**contract formation is governed by objective manifestations, not subjective intent of parties**

**county attorney, private contingency fee contract**
County of Santa Clara v. Superior Court (2010) 50 Cal.4th 35 [112 Cal.Rptr.3d 697]

**discharged attorney limited to quantum meruit, premise**

**evaluated as of time of making**

In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
CAL 2007-170, CAL 1994-135

**hybrid, hourly and contingent**
SF 1998-1

**hybrid, reverse contingency**
CONTINGENCY FEE

Divorce
award of legal fees tied to division of community property
discipline not imposed for attorney entering into
not violative of public policy
  Krieger v. Bulsitt (1953) 40 Cal.2d 97 [251 P.2d 673]
  In re Marriage of Gonzales (1975) 51 Cal.App.3d 340 [124 Cal.Rptr. 278]
  CAL 1983-72
void as against public policy
  Hill v. Hill (1943) 23 Cal.2d 82, 92 [142 P.2d 417, 421]
  Newman v. Freitas (1900) 129 Cal. 283 [61 P. 907]
  Ayres v. Lipschutz (1924) 68 Cal.App. 134, 139 [228 P. 720]
  SF 1971-1, LA 188 (1952)
  when no other recovery
Effect of discharge or withdrawal
Estate
  LA 144 (1943)
Failure to comply with Business and Professions Code section
  6147, subdivision (a) prevented an authorization for "additional
  fees" from being a contingency fee agreement
  In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252
Favored in California
  Newman v. Freitas (1900) 129 Cal. 283, 292 [61 P. 907]
Fees received before contingency fee reduced to a writing
  In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196
Fifty percent of recovery contingency fee
  In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
  In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196
Filiation action
  void as against public policy
  Kyne v. Kyne (1943) 60 Cal.App.2d 326 [140 P.2d 886]
  For public defender
  Former shareholder of law firm has no right on interpleader to
  contingency fee from cases which shareholder settled while
  working for firm
  From insurer, based on medical expenses recovered, for
  protecting insurer’s lien on recovery of its expenses
  LA 352 (1976)
Governmental entities
  contingency fee contract allowed where the government
  agency’s case is brought on its own behalf, and not in the
  name of the public, to recover compensatory damages that
  the agency incurred for investigation and remediation costs
  Orange County Water District v. Arnold Engineering
  Company et al. (2011) 196 Cal.App.4th 1110 [127 Cal.Rptr.3d 328]
contingency fee contracts not allowed where, like criminal
  cases, neutrality of counsel is of critical concern when
  important constitutional liberty interests are at stake
  Orange County Water District v. Arnold Engineering
Health care provider
  priority of attorney lien for fees and costs of litigation in
  relation to contractual medical lien
  representing person seeking damages against
  Business and Professions Code section 6146
Hybrid, hourly and contingent
  SF 1999-1
  non-litigation matters
  Insist upon
  LA(l) 1970-11
  Lay person hired on basis of
  expert
  LA 45 (1927)
  paralegal receives bonuses
  LA 457
  secretary
  LA 222 (1954), LA 190 (1952)
Malpractice
  Salisbury v. County of Orange (2005) 131 Cal.App.4th 756 [31 Cal.Rptr.3d 831]
  attorney's failure to comply with legislative mandates under
  Business and Professions Code section 6146 et seq. may
  give rise to a cause of action for professional negligence
  In the Matter of Harney (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 266
Medical injury tort claims
  Business and Professions Code section 6146
  attorney not automatically entitled to the maximum
  contingency percentages under § 6146, which establishes
  caps on the recovery, not guarantees of the attorney’s fees
  periodic payments to plaintiff
  -attorney entitled to percentage of present value of periodic
  payments award best represented by cost of annuity
Medical malpractice action
  limitation on amount
  -Business and Professions Code section 6146
    --attorney not automatically entitled to the maximum
    contingency percentages under § 6146, which establishes
    caps on the recovery, not guarantees of the attorney’s fees
  -federal tort claims act preempts California Business and
  Professions Code section 6146 fee limitation
  Jackson v. United States (9th Cir. 1989) 881 F.2d 707
  -CAL 1987-94
  -fee in excess of MICRA limitations may be pursued if
  MICRA causes of action are brought together with non-
  MICRA causes of action
  Waters v. Bourhis (1985) 40 Cal.3d 424
  Barris v. County of Los Angeles (1997) 60 Cal.App.4th 471 [70 Cal.Rptr.2d 281]
  *Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266
CONTINGENCY FEE

Probate attorney's lien for fees based on settlement obtained on behalf of deceased client in probate case

extraordinary attorney’s fees for settlement of claims against estate of decedent under a contingency fee agreement must be approved by the court after noticed hearing

Public entities
could contract with private attorneys on contingency fee basis under certain circumstances, supervision by neutral governmental attorneys who retain control
County of Santa Clara v. Superior Court (2010) 50 Cal.4th 35 [112 Cal.Rptr.3d 697]

Quantum meruit

Fraclasse v. Brent (1972) 6 Cal.3d 784 [100 Cal.Rptr. 385, 494 P.2d 9]

Gutierrez v. Girlandi (2011) 194 Cal.App.4th 925 [125 Cal.Rptr.3d 216]


SF 1989-1
determination of reasonable fee
- trier of fact may not consider contingency nature of fee in determination of quantum meruit


division of fees when amount allowed is insufficient for quantum meruit claims of past and existing counsel


expert witness testimony permitted


incapacitation of attorney who was associated (became judge) entitles firm to quantum meruit fees (formula for determination of fees)


precise calculations of an attorney’s time spent on a client’s matters are not required to support a claim for attorney fees; fair approximations based on personal knowledge will suffice


voluntary withdrawal of counsel without cause


Estate of Falco (1986) 188 Cal.App.3d 1004 [233 Cal.Rptr. 807]

Reasonableness of

Crawford v. Astrue (9th Cir. 2009) 586 F.3d 1142

People v. Millard (2009) 175 Cal.App.4th 7 [95 Cal.Rptr.3d 751]

under 42 U.S.C. § 406(b) (social security benefits)


Parrish v. Commissioner of Social Sec. Admin. (9th Cir. 2012) 698 F.3d 1215

Crawford v. Astrue (9th Cir. 2009) 586 F.3d 1142


See How to Use This Index, supra, p. i 175 2019 (updated entries through 12/31/2018)
under California Rules of Court, rule 7.955, a 10% attorney’s fee was not reasonable for trial court to award because it failed to look at other factors, such as one attorney had 47 years of experience in aviation accidents and both attorneys had many years of experience as pilots.


Reasonableness of in light of legislative activity

Salton Bay Marina, Inc. v. Imperial Irrigation Dist. (1985) 172 Cal.App.3d 914, 952 [218 Cal.Rptr. 839]

Referral fee, duty to pay on occurrence of contingency

Mason v. Levy & Van Bourg (1978) 77 Cal.App.3d 60 [143 Cal.Rptr. 389]

Settlement attorney may not sue client who decides on a “walk away” settlement, even when client promised to take case to trial or settlement to ensure attorney is paid for legal representation, because client cannot be constrained to pursue a lawsuit he wishes to abandon.


Strictly construed against the attorney

In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
LA 499 (1999)

Structured settlement

Sayble v. Feinman (1978) 76 Cal.App.3d 509 [142 Cal.Rptr. 895]
CAL 1987-94

medical malpractice action under Business and Professions Code section 6146


Validity

Estate of Kerr (1966) 63 Cal.2d 875 [48 Cal.Rptr. 707, 409 P.2d 931]
Estate of Raphael (1951) 103 Cal.App.2d 792 [230 P.2d 436]
Estate of Schnell (1947) 82 Cal.App.2d 170 [185 P.2d 854]
Swanson v. Hempstead (1944) 64 Cal.App.2d 681 [149 P.2d 404]
evaluated as of time of making

CAL 1994-135

Voidable

at option of plaintiff where provisions of Business and Professions Code section 6147 not complied with

Business and Professions Code section 6147(b)


-statement that fee is negotiable required under Business and Professions Code section 6147(a)(4) applies to certain non-litigation matters


Workers’ compensation cases

exempted from provisions for written fee contract

Business and Professions Code section 6147(c)

SD 1983-6

Client must understand

Denton v. State Bar (1951) 101 Cal.2d [226 P.2d 723]
In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196

Client waiver of attorney violation of Rules of Professional Conduct

CAL 1988-105

Construe contract for prospective client of corporations when attorney acting as business agent for corporation

CAL 1988-13

Contract making material changes to existing contingency fee contract must comply with Business and Professions Code § 6147


Damages in contract causes of actions between partners of a dissolved partnership equitable maxim to “do equity” does not preclude the recovery of damages


Draft for both parties

SF 1973-26

transaction between son and other party

SF 1973-26

Effect on contingent fees of attorney withdrawal


For reporter’s services no intention to pay

CAL 1979-48

Implied-in-fact

CAL 2003-161

Plain language reference to whether an attorney-client relationship is formed where potential client submits legal question via website

CAL 2005-168

relationship not created based on receipt of private information from potential client via an unsolicited email

SD 2006-1

CONTRACT ATTORNEY

Compensation paid to non-employee attorney hired to render services to firm’s client

CAL 1994-138

out-of-state attorney who merely assists California lawyer may recover attorney fees

Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815

Costs

LA 518 (2006)

Ghostwriting by OC 2014-1
Non-lawyers compensated for placing “temporary” attorneys with law firm
[CAL 1992-126]
Outsourcing legal services
LA 518 (2006)
Use of contract attorney, disclosure to client
ghostwriting
OC 2014-1

CONTRACT FOR EMPLOYMENT
[See Attorney-client relationship.]

Business and Professions Code sections 6068(h), 6146, 6147
Code of Civil Procedure section 1021
Rule 2-107, Rules of Professional Conduct (operative until May 26, 1989)
Rule 4-200, Rules of Professional Conduct (operative as of May 27, 1989)
Bradner v. Vasquez (1951) 102 Cal.App.2d 338 [227 P.2d 559]
LA 226 (1955)

Absent retainer agreement, quantum meruit
Agency relationship
Agreement evidenced parties’ intent to establish an ongoing attorney-client relationship of an open-ended nature, terminable only by specific methods described in the agreement and under conditions that included attorney’s return of all property and funds to the client
Agreement providing that attorney waives specified fees if client agrees not to accept a confidentiality clause in any settlement permitted if client retains the authority to settle the case without the lawyer’s consent
LA 505 (2000)
Agreement to divide statutory award of attorney’s fees between attorney and client
LA 523 (2009)
Agreement to limit personal professional liability prohibited
Rule 6-102, Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-400, Rules of Professional Conduct (operative effective May 27, 1989)
damages limitation also prohibited
LA 489 (1997)
Appointment by court not a contract
Armelle v. City and County of San Francisco (1983) 141 Cal.App.3d 693 [190 Cal.Rptr. 490]
Arbitration fee binding
- client contract conditioned on
[May 26, 1989]
[1981-56]

binding private arbitration clause in attorney-client fee agreement may be enforced under the California Arbitration Act (CAA) once the MFAA arbitration process is over
Schatz v. Allen Matkins Leck Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]

binding private arbitration clause in attorney-client fee agreement not effective where client requested mandatory arbitration pursuant to State Bar rules for fee disputes
if an otherwise enforceable arbitration agreement is contained in an illegal contract, a party may avoid arbitration altogether

Arbitration for professional liability of lawyer
LA 489 (1997)
client contract conditioned on
CAL 1989-116, CAL 1977-47
no duty to separately explain arbitration agreement when attorney changes firms and client signs new fee agreement when client is a sophisticated businessperson


Authorization for attorney to keep any extra sums resulting from a compromise of the claims of medical care providers
In re Silvertown (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]

Bankruptcy
In re Dick Cepek, Inc. (9th Cir. BAP 2006) 339 B.R. 730
In re Connolly (9th Cir. BAP 1999) 238 B.R. 475 [34 Bankr.Ct.Rptr. 1219]
In re Hines (9th Cir. BAP 1998) 198 B.R. 769

Business and Professions Code sections 6147 and 6148 may not contemplate the wide variety of possible fee arrangements between attorneys and clients but any revision or expansion of statutes should be left to the legislature and not the courts

Charging liens

contingency fee agreements distinguished from hourly fee agreements
CAL 2006-170

-not adverse interest requiring disclosure to client

Classic retainer distinguished from “framework” contract
Banning Ranch Conservancy v. Superior Court (2011) 193 Cal.App.4th 903 [133 Cal.Rptr.3d 348]

Contingent attorney’s fee charging liens

-contingency fee agreements distinguished from hourly fee agreements
CAL 2006-170

contingency lawyer may negotiate a fee contract that gives first proceeds to the lawyer and imposes on client greater risk of non-payment
LA 526 (2015)
domestic relations matter, discipline not imposed
evaluated as of time of making
CAL 2006-170, CAL 1994-135

fees received before contingency fee reduced to a writing
In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196

See How to Use This Index, supra, p. i 177
2019 (updated entries through 12/31/2018)
fifty percent of recovery contingency fee
In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196
hybrid, hourly and
SF 1999-1
hybrid, reverse contingency
not violative of public policy
In re Marriage of Gonzales (1975) 51 Cal.App.3d 340 [124 Cal.Rptr. 278]
-privilege has no funds to pay
Krieger v. Buipit (1953) 40 Cal.2d 97 [251 P.2d 673]
-percentage of recovery for spouse in divorce action
strictly construed against the attorney
In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
LA 499 (1999)
to represent plaintiff
-terms of
Business and Professions Code section 6147(a)
-voidable at option of plaintiff where Business and Professions Code section 6147 not complied with
Business and Professions Code section 6147(b)
void as against public policy
SF 1971-1
-divorce case
Newman v. Freltas (1900) 129 Cal. 283 [61 P. 907]
Ayres v. Lipschutz (1924) 68 Cal.App. 134, 139 [228 P. 720]
-examine factual background of each case
Hill v. Hill (1943) 23 Cal.2d 82, 92 [142 P.2d 417, 421]
-however, attorney entitled to reasonable value of his services
voidable
-at option of plaintiff where provisions of Business and Professions Code section 6147 not complied with
Business and Professions Code section 6147(b)
--failure to include provision that fee is negotiable

Costs

attorney may agree to advance the reasonable expenses of prosecuting and defending client’s matter and waiving the right to repayment by the client if there is no recovery
LA 517 (2006)
contract provision may require that the attorney advance all reasonable necessary costs
In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196
interest charged on advanced costs from payment until billing
LA 499 (1999)
Criminal defense services
Evidence of value of attorney’s services
Fees may not be raised by a law firm without notification to clients

Formal contract
Jackson v. Campbell (1932) 215 Cal. 103 [8 P.2d 845]
additional compensation must not be too vague
construe liberally in favor of client
discharged attorney
formed after attorney-client relationship established
Preston v. Heminghaus (1930) 211 Cal. 1 [292 P. 953]
implied contract to exercise due care, skill, and knowledge
promissory note was not valid contract for payment of legal services rendered absent valid underlying attorney-client agreement
strictly construed against the attorney
Leighton v. Forster (2017) 8 Cal.App.5th 467 [213 Cal.Rptr.3d 899]
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
-without specific agreement to do a major adjustment, agreement based on fixed hourly rate which provides for possible increase is valid, but only authorizes minor adjustments
unconscionable contract
Swanson v. Hempstead (1944) 64 Cal.App.2d 681 [149 P.2d 404]
OC 99-001
-arbitration provision within law firm employment agreement
Davis v. O’Melveny & Myers (9th Cir. 2007) 485 F.3d 1066
“Framework” contract, where attorney and client provide a structure for future “as requested” representation, does not create a current attorney client relationship
Banning Ranch distinguished
Government contract
requiring attorney’s clients to waive attorney-client and work product privileges
LA 435 (1985)
those contracting with a municipality are presumed to know the extent of its authority regarding the constitutional municipal debt limitation and must bear the risk of a shortfall in current year’s revenues
Hybrid, hourly and contingent
OC 99-001, SF 1999-1
agreement based on fixed hourly rate which provides for possible increases based on performance is valid, but without specific agreement to do a major adjustment only authorizes minor adjustments
on-litigation matters
Hybrid, reverse contingency
Illegal contract
attorney sharing in award from dissolution
client compromising suit without consent of attorney
Calvert v. Stoner (1948) 33 Cal.2d 97 [199 P.2d 297]
LA 505 (2000)
contract with minor
quantum meruit upon recovery
Rosenberg v. Lawrence (1938) 10 Cal.2d 590 [75 P.2d 1082]
when void, implied contract arises
Imputation of agency relationship
Indigent defendant constitutionally entitled to counsel’s best argument for appeal before court rules on withdrawal
United States v. Griffy (9th Cir. 1990) 895 F.2d 561
Indigent, non-contractual is statutory
Amelle v. City & County of San Francisco (1983) 141 Cal.App.3d 693 [190 Cal.Rptr. 490]
Informal contract
ambiguity in contract construction
Miller v. Lantz (1937) 9 Cal.2d 544 [71 P.2d 585]
equitable lien created if fee not stated
Wagner v. Sariotti (1943) 56 Cal.App.2d 693
extrinsic evidence to establish fee
intention of parties
Houge v. Ford (1955) 44 Cal.2d 706
interpretation of agreement
Benjamin v. Frenke (1940) 40 Cal.App.2d 736 [105 P.2d 591]
motivation of agreement
promise note was not valid contract for payment of legal services rendered absent valid underlying attorney-client agreement
terms not in written agreement
McKee v. Lynch (1940) 40 Cal.App.2d 216

Invalid agreement
advertising legal services for reduced rates
SD 1975-13
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Calvert v. Stoner (1948) 33 Cal.2d 97, 104 [199 P.2d 297]
fixed fee if suit dismissed
Hall v. Orloff (1920) 49 Cal.App. 745, 749 [194 P.2d 296]
Law firm employment agreements
arbitration provision
Davis v. O'Melveny & Myers (9th Cir. 2007) 485 F.3d 1066
Modification of contract
Baron v. Mare (1975) 47 Cal.App.3d 304 [120 Cal.Rptr. 675]
LA 499 (1999), LA 479 (1994)
authorization for “additional fees” could not be a contingency fee agreement because of failure to comply with Business and Professions Code section 6147, subdivision (a)
In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252
lien against recovery in unrelated matter to secure fees owed
LA 496 (1998)
modified fee agreement that lacked attorney’s signature, contingency rate and costs, and provision stating that fees were negotiable and not established by law is voidable by client
must be in writing
In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
no duty to separately explain arbitration agreement when attorney changes firms and client signs new fee agreement when client is a sophisticated businessperson
virtual law office (VLO) representation may require modification when services can no longer be provided via VLO, due to complexity or inability to provide services except in a traditional setting
CAL 2012-184
without specific agreement to do a major adjustment, agreement based on fixed hourly rate which provides for possible increase is valid, but only authorizes minor adjustments
Ooral agreements
Thomson v. Casaudoumecq (1962) 205 Cal.App.2d 549, 551 [23 Cal.Rptr. 189]
Hardy v. San Fernando Valley Chamber of Commerce (1953) 119 Cal.App.2d 523 [259 P.2d 728]
Harvey v. Ballagh (1940) 38 Cal.App.2d 348 [101 P.2d 147]
tween attorney and beneficiary
discretion of trial court
Kendrick v. Gould (1921) 51 Cal.App. 712 [197 P. 681]
reasonable value of services rendered
Stuart v. Preston (1934) 2 Cal.App.2d 310 [38 P.2d 155]
trial court has wide discretion in fixing fee
CONTRACT FOR EMPLOYMENT

Power of attorney clause
improper for attorney to routinely request from clients
LA 393 (1981)

Private attorney with governmental agency
County of Santa Clara v. Superior Court (2010) 50 Cal.4th 35 [112 Cal.Rptr.3d 697]
Priceline ex rel. Clinton v. Superior Court (1985) 39 Cal.3d 740 [218 Cal.Rptr. 24]

Promissory note was not valid contract for payment of legal services rendered absent valid underlying attorney-client agreement

Providing for consequences of third-party funding of lawsuit
LA 500 (1999)

Providing for court awarded attorney fees
absent agreement, fees awarded pursuant to California FEHA belong to attorneys who labored on case and not to client
LA 523 (2009)

attorney fees awarded under contract to law firm seeking to collect unpaid legal bills
district court had authority to award attorney fees for work done outside confines of litigation before court
Wininger v. Sl Management, L.P. (9th Cir. 2002) 301 F.3d 1115

except for fees specifically provided by statute, the measure and mode of compensation of attorneys is left to the agreement, express or implied of the parties (Code of Civil Procedure 1021)
vacation of judgment as part of post-judgment settlement effectively eliminates fee award

Providing for disposition of client files upon termination
LA 493 (1998)

Providing for repayment of costs of litigation
LA 495 (1998)
prevailing defendant cannot be awarded costs under Federal Debt Collection Practice Act (FDCPA) unless plaintiff brought the action in bad faith and for purpose of harassment
Hall v. Orloff (1920) 49 Cal.App. 745

Boardman v. Christin (1924) 65 Cal.App. 413 [224 P.2d 97]

Scope of representation

Severability of contract
doctrine of severance inapplicable where the attorney’s services in business transactions with his client could not be separated into lawful and unlawful activities
Fair v. Bakhtiar et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]

Sports Service Contracts
Business and Professions Code section 6106.7

Substitution of attorney clause included by attorney
LA 371 (1977)

Term void as against public policy
agreement providing that attorney waived specified fees if client agrees not to accept a confidentiality clause in any settlement permitted if client retains the authority to settle the case without the lawyer’s consent
Hall v. Orloff (1920) 49 Cal.App. 745

minor may disaffirm
Spencer v. Collins (1909) 156 Cal. 298 [104 P.2d 320]

not in writing
-action will generally lie upon a common count for quantum meruit
-attorney entitled to reasonable value of services where there is no written fee contract

not signed by any party
Leighton v. Forster (2017) 8 Cal.App.5th 467 [213 Cal.Rptr.3d 898]

Use of "Contract Attorney Services"
CAL 2004-165
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OC 2014-1

Void if consideration is unlawful
Voidable agreement voided where the attorney failed to disclose to the client material terms of their business transactions and to obtain the client’s written consent, as required under rule 3-300.

Fair v. Bakhtiar et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]

contingent attorney’s fee agreement to represent plaintiff -at option of plaintiff where provisions of Business and Professions Code section 6147 not complied with Business and Professions Code section 6147(b)


if violates attorney’s ethical duties

Hulland v. State Bar (1978) 8 Cal.3d 440, 448

modified fee agreement that lacked attorney’s signature, contingency rate and costs, and provision stating that fees were negotiable and not established by law is voidable by client


written contingent fee contract -agreement not given to client in violation of Business and Professions Code sections 6068 (a) & 6147

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1

written retainee agreement -failure to comply with Business & Professions Code section 6148

Leighton v. Forster (2017) 8 Cal.App.5th 467 [213 Cal.Rptr.3d 899]


-failure to enter into with client is in violation of Business and Professions Code, sections 6068 (a) and 6148 (a)

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1

CORPORATION [See Attorney-client relationship.]

Rule 3-600, Rules of Professional Conduct (operative as of May 27, 1989)

Corporations Code section 15634


Berti v. Santa Barbara Beach Properties et al. (2006) 145 Cal.App.4th 70 [51 Cal.Rptr.3d 364]

LA 389 (1981), LA 185 (1955)

Agent for, attorney acting as, to solicit athletic contracts

CAL 168-13

Corporation may withhold from director documents that were generated in defense of a lawsuit that director filed against the corporation

Tritek Telecom Inc. v. Superior Court (2009) 169 Cal.App.4th 1385 [87 Cal.Rptr.3d 455]

Counsel for

brings suit against shareholder in unrelated matter

SD 1978-11

communications with general counsel when suing subsidiary represented by local counsel

SD 1968-2

-owe fiduciary duties to all directors claiming funds held on behalf of the corporation

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576

discloses unlawful act of officers or executives

U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148

LA 353 (1976)

-CORPORATION

-advise officer that his conduct was illegal

U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148

dissolution


duty to prevent client’s communications with opposing party

LA(I) 1966-16

-former -represents

--against corporation

LA(I) 1936-1

--against officers

LA 139 (1941)

in-house attorneys come within the mandatory relief from default or dismissal provision of CCP § 473


in-house counsel entitled to award of reasonable fees under

Civil Code section 1717

PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084 [95 Cal.Rptr.2d 198], as modified (June 2, 2000)

inform directors of criminal record of a director

LA(I) 1965-14

may be sued for malpractice by bankruptcy trustee of “sham” corporation

Loyd v. Paine Webber, Inc. (9th Cir. 2000) 208 F.3d 755

must raise privilege for communications with client before merger


no automatic attorney-client relationship between corporate counsel and corporate directors


propriety of being -represents

--corporation against director

LA(I) 1966-14

--employees

SD 1972-3

relationship between corporate employee and corporate counsel

U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148

rendering legal services to corporation employees

SD 1975-18

role of attorney as


shareholder derivative suit

LA 397 (1982)

-prevailing party awarded attorney’s fees under Corporations Code section 800


subsidiary also represented by corporate counsel

SD 1976-6

suspended corporation -duty to inform the court of corporation’s status


LA 408 (1982)

Director represents stockholder against corporation

LA(I) 1955-2

Enjoy attorney-client privilege


United States v. Rowe (9th Cir. 1996) 96 F.3d 1294

Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]

Tritek Telecom Inc. v. Superior Court (2009) 169 Cal.App.4th 1385 [87 Cal.Rptr.3d 455]
CORPORATION COUNSEL


discharged managers in merger may not assert the privilege over the wishes of current managers

investigate activities by in-house counsel that do not involve legal advice may not be covered by the privilege
privilege extends to opinion letter by outside counsel to corporate counsel which court could not require in camera disclosure for ruling on claim of privilege
Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]
relationship between corporate employee and corporate counsel
U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
shareholder derivative action against corporation does not entitle shareholders to attorney-client privilege
Timtas v. Superior Court of Orange County (2001) 87 Cal.App.4th 738 [104 Cal.Rptr.2d 803]
shareholder's derivative action against corporation's outside counsel cannot proceed because attorney-client privilege precludes counsel from mounting a confidential defense

minority, not deemed represented by counsel for corporation


Subsidiary

costs

Rule 5-104, Rules of Professional Conduct (operative as of May 26, 1989).

Rule 4-210, Rules of Professional Conduct (operative as of May 27, 1989).

Advance
In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196
CAL 1976-38

LA 517 (2006), LA 379 (1979)

Advanced costs by a law firm per terms of contingency fee agreement deductible as business expenses

Boccardo v. Commissioner of Internal Revenue (9th Cir. 1995) 56 F.3d 1016

Apportioning costs between insurer and insured
LA 424 (1984)

Arbitration
law firm required to pay arbitration cost of former clients who sued firm, where client is of limited economic means


Assigned counsel’s duty with respect to LA 379 (1979)

Attorney’s fees as costs
Scott Co. of California v. Blount Co. (1999) 20 Cal.4th 1103 [86 Cal.Rptr.2d 614]
Attorney's fees do not include expert witness fees
Billing for costs and expenses
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
LA 499 (1999), SD 2013-3
Contract attorney
outsourcing of legal services
LA 518 (2006)
Costs incurred by the State Bar may be imposed on respondents under Business and Professions Code section 6086.10
In re Findley (9th Cir. 2010) 493 F.3d 1048
Gadda v. State Bar (9th Cir. 2007) 511 F.3d 933
In re Teegart (2001) 249 F.3d 987
In the Matter of Mackenzie (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56
In the Matter of Chen (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571
In the Matter of Respondent J (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273
payment of costs to State Bar under 2003 amendments to Business and Professions Code § 6086.10 are not dischargeable
In re Findley (9th Cir. 2010) 493 F.3d 1048
retroactive application of amended statute
Gadda v. State Bar (9th Cir. 2007) 511 F.3d 933
Criminal proceedings
assignment of costs and fees against criminal defendant requires notice, hearing, and evidence of actual costs
Donation of legal services and costs as prize
LA 434 (1984)
Error in awarding costs
district court erred in allowing for award of pro hac vice fees as taxable costs and costs for editing and synchronizing deposition video tapes
Kalitta Air L.L.C. v. Central Texas Airborne System Inc. (9th Cir. 2013) 741 F.3d 955
family law court erred in accepting commissioner’s findings as to attorney fees and costs where commissioner provided no notice to affected attorney and had recused himself for bias
prevailing defendant cannot be awarded costs under Federal Debt Collection Practice Act (FDCPA) unless plaintiff brought the action in bad faith and for purpose of harassment
Rouse v. Law Offices of Rory Clark (9th Cir. 2010) 603 F.3d 699
Expert witness fees cannot be included as attorney fees or recovered as “necessary expense” under contract unless properly pled and proved
Expert witnesses obtained through a medical-legal consulting firm
Ojeda v. Sharp Cabrillo Hospital (1992) 8 Cal.App.4th 1
Failure to hold advance costs in client trust account
Arabin v. State Bar (1990) 52 Cal.3d 276
Silva-Vidor v. State Bar (1989) 49 Cal.3d 1071
Failure to refund unused advanced costs
In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615
Filing fee
client’s inability to pay
Alexander v. Carson Adult High School (1993) 9 F.3d 1448
Flat periodic fee or lump sum to cover disbursements may be allowed if not unconscionable and client consents
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
Interest charged on advanced costs from payment until billing
LA 499 (1999)
IRS pre-litigation activities in tax assessment case did not warrant litigation costs to taxpayer
Estate of Merchant v. Commissioner Internal Revenue Service (9th Cir. 1991) 947 F.2d 1390
Paid by lawyer
LA 499 (1999), LA 379 (1979), LA 149 (1944)
SF 1974-4
Pro bono representation
LA 379 (1979)
Reasonable expenses recoverable by an attorney exonerated of all charges in a disciplinary proceeding
In the Matter of Wu (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263
Recovery of, by party
cost of preparing administrative record may be recovered when reasonable and necessary
Ottay Ranch, L.P. v. County of San Diego (2014) 230 Cal.App.4th 60 [178 Cal.Rptr.3d 346]
cost of typing briefs for photocopying recoverable
neccessarily incurred traveling expenses recoverable
Recovery of, defending a frivolous civil action
Kobzoff v. Los Angeles County Harbor/UCLA Medical Center (1998) 19 Cal.4th 851 [80 Cal.Rptr.2d 803]
Recovery of, upon occurrence of contingency
LA 495 (1998)
SF 1985-2
Reimbursing public entity for costs in paying subpoenaed peace officers is the responsibility of litigant and litigant’s counsel
Maddox v. City of Costa Mesa (2011) 193 Cal.App.4th 1098 [122 Cal.Rptr.3d 629]
Rules 460-462, Rules of Procedure of the State Bar
In the Matter of Respondent J (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273
Trial transcript cost not recoverable by an attorney exonerated of all charges in a disciplinary proceeding
In the Matter of Wu (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263
COURT [See Broadcasting, Candor. Judge.]
Abuse of discretion
bankruptcy court abused its discretion by reducing documented fees without explanation
Fry v. Dinan (9th Cir. BAP 2011) 448 B.R. 775
bankruptcy court abused its discretion by using its § 105(a) inherent powers as alternative authority for sanctioning attorney
Eskanos & Adler, P.C. v. Leetien (9th Cir. 2002) 309 F.3d 1210
Abuse of judicial process
Standing Com. on Dis. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1172
Appointment of defense attorney for criminal defendant
Attorney’s acts under Civil Code section 47(2) not privileged where damages do not stem directly from those acts
Attorney’s deception in collection of debt not protected by judicial process’ absolute privilege under Civil Code section 47


Authority
Code of Civil Procedure section 128

appellate court


LA 88 (1935)

attorney’s pattern of inability to practice law in an unethical and orderly manner, including pending disciplinary proceedings and lack of candor supports court’s rejection of pro hac vice application in criminal case

Bundy v. U.S. District Court of Nevada (9th Cir. 2016) 840 F.3d 1034

to disqualify law firm


to impose sanctions

Lahiri v. Universal Music and Video (9th Cir. 2010) 606 F.3d 1216

Fink v. Gomez (9th Cir. 2001) 239 F.3d 989

Standing Com. on Disc. of United States v. Ross (9th Cir. 1994) 735 F.2d 1169, 1170-1173

court cannot sanction pro hac vice attorney for bad faith misconduct in a manner that a California attorney could not be sanctioned


court had no authority to award costs of future depositions as monetary sanction for coaching plaintiff during deposition where those costs had not yet been incurred


court has no statutory authority to impose monetary sanctions against pro hac vice attorney for bad faith misconduct


-for delay

In re Silberkraus (9th Cir. 2003) 336 F.3d 864

In re DeVille (9th Cir. BAP 2002) 280 B.R. 483


to order ancillary criminal defense services


to order second defense counsel


Bankruptcy court’s jurisdiction to amend award of attorney’s fees under CCP § 187 and the inherent power of federal courts

In re Levander (9th Cir. 1999) 180 F.3d 1114


Chooses not to speak on ethical issues

United States v. Springer (7th Cir. 1971) 460 F.2d 1344, 1354

Client’s cross-examination of witnesses

People v. Davis (1984) 161 Cal.App.3d 796, 802-804

Discretion

court has discretion to take into consideration a criminal defendant’s desire to have a particular attorney appointed at the public’s expense


unreasonable application of clearly established federal law

Howard v. Clark (9th Cir. 2010) 608 F.3d 563

Discretion with respect to attorney-client relationship

People v. Davis (1984) 161 Cal.App.3d 796, 802

Duty to determine presence of coercive element in plea bargaining

In re Ibarra (1983) 34 Cal.3d 277 [193 Cal.Rptr. 538, 666]

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Duty to inform

aid court in avoiding error


Furlong v. White (1921) 51 Cal.App. 265, 271

attorney ghostwriter’s involvement

OC 2014-1

by witness

SD 1983-8

of a known misrepresentation


of perjury by the client

CAL 1983-74

Electronic devices in courtroom

Rule 1.15, California Rules of Court

Failure to take judicial notice of statute pursuant to Evidence Code section 451 is trial court error


Federal courts

district court’s reliance upon distinction that State Bar makes between active and inactive members to limit practice of inactive attorneys is not improper exercise of court’s rulemaking authority

In re North (9th Cir. 2004) 383 F.3d 871

have inherent and broad regulatory authority to make rules respecting admission, practice, and discipline of attorneys appearing in those courts

Russell v. Hug (9th Cir. 2002) 275 F.3d 812

Cohn v. Rosenfield (9th Cir. 1974) 733 F.2d 625, 631

new district court rule requiring that attorneys appearing before it must be members of that jurisdiction does not deprive attorney of his constitutionally-protected property interest in his license to practice law

Gallo v. U.S. District Court of Arizona (2003) 349 F.3d 1169

Fraud on the court must harm the integrity of the judicial process

In re Levander (9th Cir. 1999) 180 F.3d 1114

Indigent defendant constitutionally entitled to counsel’s best argument for appeal before court rules on withdrawal

United States v. Griffy (9th Cir. 1990) 895 F.2d 561

Information disclosed to LA(I) 1972-3

Informed about fee agreement

LA 261 (1959)

Information disclosed to

Informed about fee agreement

LA(I) 1972-3

Jurisdiction

California Code of Civil Procedure 1008

-circumscribes courts’ jurisdiction over applications to reconsider, orders to revisit an earlier ruling

California may exercise personal jurisdiction over out-of-state law firm that employs California member performing legal services governed by California law


court’s reservation of jurisdiction over the enforcement of a settlement agreement extends to attorneys who represent class members other than as class counsel


refusal of a California court to give foreign state judgment full faith and credit where a party to the Arizona proceeding was denied due process under the Fifth and Fourteenth Amendments due to attorney’s conflict of interest


Powers

attorney attire in courtroom


court has no statutory power to discipline pro hac vice attorney; that power rests exclusively with the Supreme Court and with the State Bar


Reciprocity admission

Arizona Supreme Court rule allowing admission on motion (AOM) for out of state attorneys is constitutional because it does not discriminate against non-residents

National Association for the Advancement of Multijurisdiction Practice v. Berch (9th Cir. 2014) 773 F.3d 1037

Responsibility, to ensure high standards of ethics

Cornmen v. Superior Court (1978) 20 Cal.3d 906, 912 [145 Cal.Rptr. 971]

Unification of municipal and superior courts not intended to fundamentally alter existing rights and procedures or parity of treatment of the parties


COURT REPORTER

Duty to pay court reporter

CAL 1979-48

Improper to condition delivery of deposition transcripts on the former client’s paying the reporter’s fees

LA 425 (1984)

Ministerial officers of the court subject to the court’s inherent authority over judicial proceedings

Serrano v. Stefan Merli Plastering Co., Inc. (2011) 52 Cal.4th 1018 [132 Cal.Rptr.3d 358]

CRITICAL CARD

[See Fee, financing of.]

Borrowing money without intent to repay it

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231

CREDITOR

[See Collections. Conflict of interest, creditor.]

INALICIT ASSISTANCE OF COUNSEL. Prosecutorial misconduct.

Abandonment

Brooks v. Yates (9th Cir. 2016) 818 F.3d 532

Foley v. Biter (9th Cir. 2015) 793 F.3d 998


by appellate counsel was good cause for substantial delay in filing of habeas petition

In re Sanders (1999) 21 Cal.4th 697 [87 Cal.Rptr.2d 899]

Adequacy of appointed counsel

People v. Mendez (2008) 161 Cal.App.4th 1362 [75 Cal.Rptr.3d 162]

People v. Mejia (2008) 159 Cal.App.4th 1081 [72 Cal.Rptr.3d 76]

Appeal

California use of Wendt no-issue briefs is acceptable procedure for protecting indigent defendant when appointed attorney concludes that appeal would be without merit and otherwise frivolous


Appointment of deputy public defender by court to serve as “stand-by counsel” in the event defendant cannot continue with self-representation is impermissible under Government Code section 27706


Communication with a represented party

rule prohibiting ex parte communications does not bar discussions initiated by employee of defendant corporation with government attorney for the purpose of disclosing that corporate officers are attempting to suborn perjury and obstruct justice

United States v. Talao (9th Cir. 2000) 222 F.3d 1133

Defense counsel must turn over to law enforcement cash received from a client which are the actual bills used in a crime

United States v. Kellington (9th Cir. (Or.) 2000) 217 F.3d 1084

LA 466 (1991)

Defense counsel’s declarations regarding informant


Facts surrounding a violation of Insurance Code section 750, subdivision (a) involved moral turpitude

In the Matter of Duxbury (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61

Habeas petition

federal habeas petition based on alleged ineffective assistance of counsel

Jones v. Ryan (9th Cir. 2012) 691 F.3d 1093

tolling of habeas petition deadline when prisoner did not have access to file

Lott v. Mueller (9th Cir. 2002) 304 F.3d 918

Indigent defendant constitutionally entitled to counsel’s best argument for appeal before court rules on withdrawal

Delgado v. Lewis (9th Cir. 2000) 223 F.3d 976

United States v. Griffy (9th Cir. 1990) 895 F.2d 561

Negotiation of private agreement to compromise civil claim arising from crime

CAL 1986-89

Negotiation of private agreement to prosecute crime

CAL 1986-89

Private prosecution

California law does not permit private prosecution of criminal case without presence of public prosecutor

People v. Dehle (2008) 166 Cal.App.4th 1380 [83 Cal.Rptr.3d 461]

Represent

defendant

- after representing party who is now prosecution witness

LA 366 (1977)

- defendant’s right to conflict free counsel required that new appointed counsel be present before conducting further proceedings in open court to hear PD’s request to be re-appointed


when client is complaining witness

SD 1974-15

Right of criminal defendant to consult privately with counsel

People v. Torres (1990) 218 Cal.App.3d 700 [267 Cal.Rptr. 213]

Right to ancillary defense services under Penal Code section 987.9

CROSS REFERENCE TABLES

Right to counsel

U.S. v. Yamashiro (9th Cir. 2015) 788 F.3d 1231
U.S. v. Walters (9th Cir. 2002) 309 F.3d 589
United States v. Edward E. Allen (9th Cir. 1998) 157 F.3d 661

People v. Clemmong (1990) 224 Cal.App.3d 1500
court has latitude to remove counsel where potential conflict
exists, over objection by defendant

defendant has right to counsel of choice and includes right
to discharge retained counsel

U.S. v. Brown (9th Cir. 2015) 785 F.3d 1337
People v. Lara (2001) 86 Cal.App.4th 139 [103 Cal.Rptr.2d 201]
defendant’s right to conflict free counsel required that new
appointed counsel be present before conducting further
proceedings in open court to hear PD’s request to be re-
appointed after being relieved for a conflict of interest

does not attach at arrest or at an extradition hearing

Anderson v. Almeida (9th Cir. 2005) 397 F.3d 1175
includes criminal defendant’s Sixth Amendment right to use
her own “innocent” assets (those not traceable to a criminal
offense) to pay a reasonable fee for the assistance of counsel

may not be forfeited without defendant’s voluntary, knowing
intelligent waiver

People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
no abuse discretion found where court denied motion to
substitute retained counsel; based on a conflict that was not
properly waived

Sixth Amendment right not violated when jail officials
improperly read privileged materials but defendant fails to
prove it was actually communicated to prosecutors

People v. Ervins (2009) 47 Cal.4th 745 [102 Cal.Rptr.3d 786]
Sixth Amendment right to conflict-free representation

U.S. v. Walter-Erze (9th Cir. 2017) 869 F.3d 891
Daniels v. Woodford (9th Cir. 2005) 428 F.3d 1181
People v. Henning (2009) 178 Cal.App.4th 388 [100 Cal.Rptr.3d 419]
Sixth Amendment right violated when counsel not present
during the allocution phase of sentencing proceeding

U.S. v. Yamashiro (9th Cir. 2015) 788 F.3d 1231
under 18 U.S.C. § 3005

- defendant not entitled to second court-appointed counsel
when death penalty not sought

U.S. v. Wagnoner (9th Cir. (Ariz.) 2003) 339 F.3d 915
waiver of right must be knowing and intelligent

U.S. v. Gerritsen (9th Cir. 2009) 571 F.3d 1001

CROSS REFERENCE TABLES

History of Rules of Professional Conduct of the State Bar of California

[See part III.D. of this Compendium.]
State Bar Act of 1939
[See part I.A. to this Compendium at “Cross Reference Table.”]

DAMAGES

Damages in tort and contract causes of actions between
partners of a dissolved partnership

equitable maxim to “do equity” does not preclude the
recovery of damages

Data processing, information about cases given for purpose of

CAL 1971-25
LA 374 (1978)

Recovery of emotional suffering damages

DEBTOR
[See Collections.]

DECEASED LAWYER

Business and Professions Code section 6180 et seq.

Division of fees with estate of, spouse of
Rule 3-102(A)(1), Rules of Professional Conduct (operative
until May 26, 1989)

Rule 1-320, Rules of Professional Conduct (operative as of
May 27, 1989)

Little v. Caldwell (1894) 101 Cal. 553, 561 [86 P. 107]

Estate of Linnick (1985) 171 Cal.App.3d 752 [217 Cal.Rptr. 552]
CAL 1975-34
LA 361 (1976), LA 162 (1947), LA(l) 1974-15
SD 1969-4, SD 1968-5

File of, buy
LA 361 (1976)

Law practice, sale of
Rule 2-300, California Rules of Professional Conduct
[See Practice of Law.]

Name
firm name, continue use of
CAL 1986-90

letterhead
LA(l) 1962-5

-use of deceased or retired attorneys on
CAL 1986-90

used
-by sole survivor
LA 265 (1959)

-in partnership’s name

Practice
maintain for widow of
SD 1969-4

sale of
Rule 2-300, California Rules of Professional Conduct
SD 1968-5

transfer of
LA 361 (1976), SD 1968-5

DEGREES
[See Advertising, academic degrees.]

DELAY IN HANDLING CASE
[See Competence. Misconduct. Trial conduct.]

Trial conduct.
Rule 6-101, Rules of Professional Conduct (operative until
May 26, 1989)

Rule 3-110, Rules of Professional Conduct (operative as of
May 27, 1989)

Spindell v. State Bar (1975) 13 Cal.3d 253 [118 Cal.Rptr. 480,
530 P.2d 168]

In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct.
Rule 263

In the Matter of Dahlgren (Review Dept. 2001) 4 Cal. State Bar Ct.
Rptr. 269

In the Matter of Bach (Review Dept. 1999) 4 Cal. State Bar Ct.
Rptr. 631

For attorney's gain
Business and Professions Code section 6128(b)

Until fees are paid
CAL 1968-16

SD 1973-3

DISABLED LAWYER
[See Deceased lawyer. Substitution of counsel. Withdrawal.]

Business and Professions Code section 6180 et seq.

Associate’s duties with respect to practice of
LA 348 (1975)

DISBARMENT
[See Disciplinary Action. Resignation. Suspension.]

Based on severity of offense
In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State
Bar Ct. Rptr. 70
California attorney is disbarred for practicing law in other states by settling consumer debt matters
In the Matter of Lenard (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250
Conviction of crime need not be in California
People v. Davis (1985) 166 Cal.App.3d 760, 764 fn.2 [212 Cal. Rptr. 673]
In the Matter of Lenard (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250
Disbarment by state court is entitled to high respect but it is not conclusively binding on federal court, and disbarment by federal court does not automatically flow from disbarment by state court
Disbarment recommendation does not retroactively require involuntary inactive enrollment
In the Matter of Phillips (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 47
Disregard for obligations to clients and profession
In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416
In the Matter of Freyd (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349
Duties of disbarred lawyer
Rule 9.20, California Rules of Court
Bercovich v. State Bar (1990) 50 Cal.3d 116 [239 Cal.Rptr. 616, 739 P.2d 927]
In the Matter of Rose (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646
Effect on application for licensure by other agencies rejection by the Department of Real Estate for application for a license was based on applicant’s previous disbarment as an attorney and his underlying fraud judgment
Excessive and punitive, where the most compelling mitigating circumstances clearly predominate
In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239
Failure to report charge of crime involving moral turpitude
In the Matter of Sullivan II (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189
Federal court
In the Matter of Ruffalo (1968) 390 U.S. 544 [88 S.Ct. 1222]
In the Matter of Ruffalo (1968) 390 U.S. 544 [88 S.Ct. 1222]
disbarment from state does not result in automatic disbarment from Federal Court
In the Matter of Ruffalo (1968) 390 U.S. 544 [88 S.Ct. 1222]
must afford due process before disbarment of attorney based on state court disciplinary adjudication
In the Matter of Ruffalo (1968) 390 U.S. 544 [88 S.Ct. 1222]
In re Kramer (9th Cir. 1999) 193 F.3d 1131
-disbarment by state court is entitled to high respect but it is not conclusively binding on federal court, and disbarment by federal court does not automatically flow from disbarment by state court
Judge systematically and routinely sold his office and his public trust
In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157
Many violations surrounded by serious, extensive aggravation
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
Misappropriation generally warrants disbarment unless clearly extenuating circumstances are present
In the Matter of Freyd (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349
Multiple acts involving moral turpitude and dishonesty warrant disbarment
In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141
In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70

DISCIPLINARY ACTION

Necessary when attorney was previously disbarred for serious misconduct
In re Silverton (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]
Not reserved for attorneys with prior disciplinary record
In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70
Offenses concerning the administration of justice are serious
In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70
Reciprocal disbarment
In re Kramer (9th Cir. 2002) 282 F.3d 721
Reinstatement
Calaway v. State Bar (1986) 41 Cal.3d 743
In the Matter of Bodei (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459
In the Matter of Salant (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1
In the Matter of Ainsworth (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894
In the Matter of McCray (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373
Summary disbarment
attempted child molestation
In re Lesansky (2001) 25 Cal.4th 11 [104 Cal.Rptr.2d 409, 17 P.3d 764]
Business and Professions Code section 6102(c) cannot be applied retroactively to summarily disbar an attorney for felony convictions
In the Matter of Curtis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601
In the Matter of Jebra (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51
+In the Matter of Paguirigan (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 936
In the Matter of Jolly (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740
In the Matter of Salameh (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729
In the Matter of Segall (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71
deserved for only those crimes which inherently involved moral turpitude
In re Onbe (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920
forgery
In re Paguirigan (2001) 25 Cal.4th 1 [104 Cal.Rptr.2d 402, 17 P.3d 758]
no evidentiary hearing
In re Lesansky (2001) 25 Cal.4th 11 [104 Cal.Rptr.2d 409, 17 P.3d 764]
In re Paguirigan (2001) 25 Cal.4th 1 [104 Cal.Rptr.2d 402, 17 P.3d 758]

DISCIPLINARY ACTION

See Misconduct. Moral Turpitude.

Business and Professions Code sections 6075-6087
Rules 1-100 and 9-101, Rules of Professional Conduct (operative until May 26, 1989)
Rules 1-100 and 1-110, Rules of Professional Conduct (operative as of May 27, 1989)
Abandonment of client
In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
Acts committed by attorney outside of professional capacity attorney can be disciplined for
Segal v. State Bar (1988) 44 Cal.3d 1077 [245 Cal.Rptr. 404]
In the Matter of Jensen (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283
DISCIPLINARY ACTION

Administrative in nature and not governed by criminal procedure rules

In re Crooks (1990) 51 Cal.3d 1090


Admonishment considered appropriate discipline in light of extenuating circumstances and mitigation

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439

Aggravating circumstances

absence of remorse
In re Silverton (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]

Conroy v. State Bar (1990) 51 Cal.3d 795

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70

conflicts of interest

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774

dishonesty and concealment

In the Matter of Downey (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151

dishonesty to State Bar


In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

In the Matter of Dahiz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126

disobedience of probation condition

Conroy v. State Bar (1991) 53 Cal.3d 495

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349

disregard for obligations to profession and clients

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416

In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349

extensive disciplinary record

Phillips v. State Bar (1989) 49 Cal.3d 944

Blair v. State Bar (1989) 49 Cal.3d 762

In the Matter of Lenard (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

failure to abide by probationary conditions

Phillips v. State Bar (1989) 49 Cal.3d 944

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219

failure to accept responsibility for or understand wrongfulness of actions

Gadda v. State Bar (1990) 50 Cal.3d 344 [787 P.2d 95]
Bernstein v. State Bar (1990) 50 Cal.3d 221 [786 P.2d 352]

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

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In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70

failure to cooperate with disciplinary investigation

In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349

failure to disclose misdemeanor on moral character application

In the Matter of Pasyanos (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746

failure to file timely pre-trial statement

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112

failure to make restitution

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920

failure to report criminal charges or convictions to bar

In the Matter of Sullivan II (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189

failure to return unearned fees

Bernstein v. State Bar (1990) 50 Cal.3d 221 [786 P.2d 352]

Phillips v. State Bar (1989) 49 Cal.3d 944

harm to the administration of justice

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 315

indifference to rectifying consequences of misconduct

In re Loftus (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 774

Wolff v. State Bar (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 747

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231
in the matter of lantz (review dept. 2000) 4 cal. state bar ct. rptr. 126
lack of candor in disciplinary proceeding
in the matter of conner (review dept. 2008) 5 cal. state bar ct. rptr. 93
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in the matter of phillips (review dept. 2001) 4 cal. state bar ct. rptr. 315
in the matter of dahlz (review dept. 2001) 4 cal. state bar ct. rptr. 269
in the matter of johnson (review dept. 2000) 4 cal. state bar ct. rptr. 179
in the matter of chestnut (review dept. 2000) 4 cal. state bar ct. rptr. 166
lack of insight into the seriousness of misconduct
in the matter of sullivan ii (review dept. 2010) 5 cal. state bar ct. rptr. 189
in re casey (review dept. 2008) 5 cal. state bar ct. rptr. 117
significant weight assigned to respondent’s lack of insight because it suggests that his misconduct may recur
in the matter of swazi elkanzi taylor (review dept. 2012) 5 cal. state bar ct. rptr. 221
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in the matter of swazi elkanzi taylor (review dept. 2012) 5 cal. state bar ct. rptr. 221
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multiple acts of misconduct
in re silverton (2005) 36 cal.4th 81 [29 cal.rptr.3d 766]
in the matter of lawrence (review dept. 2013) 5 cal. state bar ct. rptr. 239
in the matter of swazi elkanzi taylor (review dept. 2012) 5 cal. state bar ct. rptr. 221
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in the matter of phillips (review dept. 2001) 4 cal. state bar ct. rptr. 315
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in the matter of maloney and virsik (review dept. 2005) 4 cal. state bar ct. rptr. 774
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in the matter of kauffman (review dept. 2001) 4 cal. state bar ct. rptr. 213
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in re oheb (review dept. 2006) 4 cal. state bar ct. rptr. 920
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in the matter of sullivan ii (review dept. 2010) 5 cal. state bar ct. rptr. 189
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in the matter of lais (review dept. 2000) 4 cal. state bar ct. rptr. 112
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in re silvertor (2005) 36 cal.4th 81 [29 cal.rptr.3d 766]
in the matter of lawrence (review dept. 2013) 5 cal. state bar ct. rptr. 239
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in the matter of laden (review dept. 2004) 4 cal. state bar ct. rptr. 678
in the matter of gadda (review dept. 2002) 4 cal. state bar ct. rptr. 416
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in the matter of taggart (review dept. 2001) 4 cal. state bar ct. rptr. 302
in the matter of dahlz (review dept. 2001) 4 cal. state bar ct. rptr. 269
in the matter of johnson (review dept. 2000) 4 cal. state bar ct. rptr. 179
in the matter of chestnut (review dept. 2000) 4 cal. state bar ct. rptr. 166
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in the matter of gorman (review dept. 2003) 4 cal. state bar ct. rptr. 567
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in the matter of kauffman (review dept. 2001) 4 cal. state bar ct. rptr. 213
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In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220
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In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 136
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contact State Bar Office of Investigations

(800) 843-9053

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Attorney retained by insurer to represent insured has attorney-client relationship with insurer for purposes of

Attorney-client relationship must have existed before disqualification is proper
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Confidences of adversary
Concurrent representation of clients with adverse interests

- less favored client who explicitly refuses to consent
- matters is not cured by withdrawal from representation of the
where the conflict arises between members of different classes in different cases and seriously threatens the policy concerns underlying the duty of loyalty–a client’s right to be
represented by counsel whose interests are not encumbered—the automatic disqualification rule applies


Concurrent representation of adverse parties in separate
class action
representation of unnamed class member who would appear as witness in concurrent class action warranted disqualification


where the conflict arises between members of different classes in different cases and seriously threatens the policy concerns underlying the duty of loyalty–a client’s right to be
represented by counsel whose interests are not encumbered—the automatic disqualification rule applies


Concurrent representation of adverse parties in separate
matters is not cured by withdrawal from representation of the

Disclosure of confidences of the client
Non-client, by virtue of representing non-client’s attorney

disqualification may arise, with regard to an adverse non-client, by virtue of representing non-client’s attorney


- client as witness in another client’s case


Confidences of adversary
confidentiality denied where attorney received information from plaintiff’s former coworker who was litigant in unrelated
case

Roush v. Seagate Technology, LLC (2007) 42 Cal.4th 807 [68 Cal.Rptr.3d 758]

- with few exceptions, there is a per se rule requiring
- disqualification of an attorney or a law firm when there is a
- conflict of interest based upon concurrent representation of multiple clients


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- documents improperly taken by employee, from employer, in violation of non-disclosure agreement, were attorney-client
- privileged documents and were improperly reviewed by counsel for the employee

Clark v. Superior Court (2011) 196 Cal.App.4th 37 [125 Cal.Rptr.3d 361]

inadvertent disclosure requires disqualification

McDermott Will & Emery, LLP v. Superior Court (Hausman) (2017) 10 Cal.App.5th 1083 [217 Cal.Rptr.3d 47]

mere exposure to does not, standing alone, warrant disqualification


- where attorney for plaintiff formerly had borrower-lender relationship with defendant


Confidences of the client
actual possession need not be proven – test

Knight v. Ferguson (2007) 149 Cal.App.4th 1207 [57 Cal.Rptr.3d 823]


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Costello v. Buckley (2016) 245 Cal.App.4th 748 [199 Cal.Rptr.3d 381]

disqualification of counsel not required when based on counsel’s familiarity with claims procedures from a prior representation of the moving party that was not substantial


inadvertent disclosure requires disqualification

Rico v. Mitsubishi (2007) 42 Cal.4th 807 [68 Cal.Rptr.3d 758]

- documents improperly taken by employee, from employer, in violation of non-disclosure agreement, were attorney-client privileged documents and were improperly reviewed by counsel for the employee

Clark v. Superior Court (2011) 196 Cal.App.4th 37 [125 Cal.Rptr.3d 361]

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County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990

- vicarious disqualification where “of counsel” attorney and law firm represented opposing parties and where “of counsel” attorney obtained confidential information and provided legal services to client


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Marital relationship or “appearance of impropriety” insufficient to deprive party of choice of counsel
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Mediator is generally not disqualified from litigating later cases against the same party
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Motion to disqualify attorney-client relationship not always required for a party to have standing to bring a motion to disqualify
disqualification may not be available when an attorney-client relationship never existed between the moving party and the attorney so sought to be disqualified
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Non-client litigant has no standing to assert conflict and no expectation of confidentiality
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Non-client litigant may have standing to move for disqualification of counsel in cases where they have a sufficient personal stake

Non-client litigant must establish a personal stake in a motion to disqualify

Not required even if attorney received confidential information about defendant because defendant did not meet burden of showing that the information could give plaintiff an unfair advantage or affect outcome of litigation

Not required where no confidential information disclosed by current directors when their separate counsel had given permission for adverse counsel’s communication with them
La Jolla Cove Motel and Hotel Apartments Inc. v. Superior Court (2004) 121 Cal.App.4th 773 [17 Cal.Rptr.3d 467]

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Presumption of shared confidences

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Non-client litigant has no standing to assert conflict and no expectation of confidentiality
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Non-client litigant may have standing to move for disqualification of counsel in cases where they have a sufficient personal stake

Non-client litigant must establish a personal stake in a motion to disqualify

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Prior representation of plaintiff’s expert witness does not reveal disqualification where expert waives conflict
Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]
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juvenile court had no power to remove public defender absent a showing that minor was not indigent or a conflict existed
prior representation of witness by former member of public defender’s office where another public defender currently represents defendant and where the office had received no confidential information of the witness, no conflict of interest
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Required when attorneys change sides in factually related cases
Trone v. Smith (9th Cir. 1980) 621 F.2d 994, 1000-1001
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County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990
vicarious disqualification where “of counsel” attorney and law firm represented opposing parties and where “of counsel” attorney obtained confidential information and provided legal services to client
Services never performed for former client of attorney’s former firm
Dieter v. Regents of the University of California (E.D. Cal. 1997) 156 F.Supp. 308
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no right to counsel of one’s choice in a grand jury investigation
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* Bradley v. Henry (9th Cir. 2005) 428 F.3d 811
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CAL 1986-152 attorney and associates involved in matters
city attorney and entire office disqualified from representing city in matter related to city attorney’s prior representation of private company
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- recusal of entire office
--not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office
People v. Delug (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]
hardship to client
not automatic
County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990
not required, when attorney representing party took job in city attorney’s office if not adverse to former client and where screening measures were timely and effective
not required, when firm-switching attorney’s relationship with client at former firm was peripheral or attenuated and documents relating to case that attorney accessed contained no confidential information
where attorney at law firm covers depositions for independent counsel

where “of counsel” attorney and law firm represented opposing parties and where “of counsel” attorney obtained confidential information and provided legal services to client
When attorney acts as witness
Comden v. Superior Court (1978) 20 Cal.3d 906, 914 fn. 4 [145 Cal.Rptr. 9, 576 P.2d 971]
When misconduct or status has a continuing effect on judicial proceedings
Cal Pak Delivery, Inc. v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 Cal.Rptr.2d 207]

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Misconduct by [See Prosecutorial misconduct.]

DIVISION OF FEES [See Fee. Lay intermediaries. Partnership.]

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LA 523 (2009)
Attorney as partner or employee of two law firms
LA 511 (2003)
Attorneys’ oral agreement to form joint venture to share legal fees held enforceable notwithstanding argument that such arrangement may have violated rules of professional conduct requiring clients’ consent to share fees and waiver of conflict of interest
Jorgensen v. Cassidy (9th Cir. 2003) 320 F.3d 906

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association of outside counsel not a basis for exemption from 2-200 requirements


attorney’s fees may be awarded to attorneys who represent each other in fee dispute with client that attorneys jointly represented

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between class counsel

Carder v. Patten (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]

between franchisee law firms

LA 423 (1983)

between law firm and outside lawyers or providers of outsourced legal services

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between subleasing attorneys and landlord-attorney

LA 486 (1995)

bonus to an “of counsel” attorney

LA 470 (1992)

contingent referral fee

-duty of successor attorney to pay matures upon occurrence of contingency

Mason v. Levy and Van Bourq (1978) 77 Cal.App.3d 60 [143 Cal.Rptr. 389]

contract to divide


contract to divide


foreign

LA 35 (1927)

former partner associated on a particular case


if illegal, is void


-attorney may not prevent law firm from obtaining client consent in order to render contract non existent


-attorney’s failure to disclose fee-splitting agreement to court before obtaining approval of attorney’s fees in class action settlement barred later enforcement of the agreement


-failure to comply with rule 2-200 does not preclude a quantum meruit recovery for services rendered in reliance on an unenforceable fee-sharing agreement


--attorney precluded from recovering from client


--failure to comply with rule 3-300 which disallows a quantum meruit recovery

Fair v. Bakhtiari et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]

--terminated attorney could not recover attorney’s fees in quantum meruit from former co-counsel notwithstanding compliance with rule 2-200


-court appearances

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enforceable despite difference between agreement and actual division of labor

Breckler v. Thaler (1978) 87 Cal.App.3d 189 [151 Cal.Rptr. 50]

failure to comply with rule 2-200 does not preclude a quantum meruit recovery for services rendered in reliance on an unenforceable fee-sharing agreement


--attorney precluded from recovering from client


--failure to comply with rule 2-200 but still permitting a quantum meruit recovery distinguished from failure to comply with rule 3-300 which disallows a quantum meruit recovery

Fair v. Bakhtiari et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]

failure to comply with rule 2-200 violated policy consideration and an oral agreement is unenforceable


if illegal, is void


independent contract attorney

LA 503 (2000)

merits of a declaratory relief action must be resolved in the trial court’s discretion

Carder v. Patten (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]

minor’s compromise

DIVISION OF FEES

partner
- former
  LA(I) 1979-1
- interstate partnership
  LA 385 (1980), LA 325 (1972)

partner leaves firm
  CAL 1985-86
  - allocation of fees for unfinished cases taken by departing attorney

partnership dissolution
  CAL 1985-86
  - allocation of income from unfinished business
    Heller Ehrman LLP v. Davis Wright Tremaine LLP (2018) 4 Cal.5th 57 [229 Cal.Rptr.3d 371]
  - dissolved law firm had no interest in the fees or profits associated with unfinished hourly fee matters
    Heller Ehrman LLP v. Davis Wright Tremaine LLP (2018) 4 Cal.5th 47 [229 Cal.Rptr.3d 371]

post-dissolution profits from unfinished partnership business
  - right to share in proceeds from future business of new partnership

referral of legal business
  SD 1992-1, SD 1984-6
  - fee-splitting agreement is enforceable even if referring attorney had improper fee splitting agreement with another, non-attorney; unclean hands doctrine does not apply
  - foreign lawyer
    LA 35 (1927)
  - suspended lawyer
    LA(I) 1937-1

shareholder leaves firm
  - has no ownership or lien interest upon fees owed to firm by client
    successor attorney’s obligation to notify prior attorney of the existence of a settlement
    CAL 2008-175

where an outside lawyer functions on a particular matter essentially on the same basis as an employee, the outside lawyer is an associate for purposes of rule 2-200

with dead lawyer’s widowed spouse and estate
  Rule 3-102(a)(1), Rules of Professional Conduct (operative until May 26, 1989)
  Rule 1-200(A)(1), Rules of Professional Conduct (operative effective May 27, 1989)
  Estate of Cartwright v. Commissioner of Internal Revenue (9th Cir. 1999) 183 F.3d 1034
  Little v. Caldwell (1894) 101 Cal. 553, 561 [114 P. 361]
  CAL 1975-34

with foreign attorney
  LA 426 (1984)
  with former employer for work done after termination
  Moncharsh v. Heily & Blase (1992) 3 Cal.4th 1
  SD 1976-13
  with lawyer who is not partner, associate, or shareholder of the law firm

with lay entity
  - insurance company
  - lawyer referral service
    SD 1978-5
  - non-profit organization
    SF 1973-27
  - to attorney for percentage of contingency fee
    SF 1981-1
  - with out-of-state lawyer

Bonus
  - to lay employee
    LA 457

Class action
  - attorney may not prevent class consent to fee-splitting agreement pursuant to rule 2-200
  - dispute among class counsel
    Carder v. Patten (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]

Definition of term “associate” for purposes of rule 2-200
  LA 511 (2003)
  - sharing in fees as partner or employee of two law firms
    LA 511 (2003)

Definition of term “partner” and “partnership” for purposes of rule 2-200

Disclosure to client

SD 1978-2
  failure to obtain client’s written consent in compliance with rule 2-200 does not preclude a quantum meruit recovery for services rendered in reliance on an unenforceable fee-sharing agreement

See How to Use This Index, supra, p. i
-attorney precluded from recovering from client

rule 2-200 requires that client consent be obtained prior to a
division of fees, but does not require that such consent be
obtained prior to lawyers entering into a fee-splitting
arrangement or the commencement of work on the client’s
matter
  where an outside lawyer functions on a particular matter
essentially on the same basis as an employee, the outside
lawyer is an associate for purposes of rule 2-200

Disclosure to court
  attorney’s failure to disclose fee-splitting agreement to court
before obtaining approval of attorney’s fees in class action
settlement barred later enforcement of the agreement

Non-lawyers
  collection agencies

Outsourcing legal services
  LA 518 (2006)
  Paralegal fees under 42 USC 1997(e), 42 USC 1988, and 18
USC 3006A are subject to the same cap as attorney fees under
Prison Litigation Reform Act
  Perez v. Cate (9th Cir. 2011) 632 F.3d 553

Partnership dissolution
  CAL 1985-86
  division of post-dissolution profits from unfinished partnership
  business

Quantum meruit
  discharged attorney attempts to enforce contingent fee
contract made with substituted counsel
  discharged attorney attempts to enforce division of fees
agreement with former co-counsel
  discharged attorney entitled to reasonable value of services
  Fracasse v. Brent (1972) 6 Cal.3d 784, 792 [100 Cal.Rptr. 385, 494 P.2d 9]
  division of fees when amount allowed is insufficient for
quantum meruit claims of past and existing counsel
  [204 Cal.Rptr. 531]
  failure to comply with rule 2-200 but still permitting a
quantum meruit recovery distinguished from failure to comply with rule 3-300 which disallows a quantum meruit
recovery
  partnership entitled to
  -for unfinished cases taken by departing partner
  -succession attorney’s duty to advise client concerning prior
attorney’s quantum meruit claim
  SF 1989-1
  succeeding attorney’s duty to honor withdrawing attorney’s
lien
  successor attorney’s obligation to notify prior attorney of the
existence of a settlement
  CAL 2008-175
  terminated attorney could not recover attorney’s fees in
quantum meruit from former co-counsel notwithstanding
compliance with rule 2-200
  under contingent fee contract, discharged attorney limited to
quantum meruit recovery
  [204 Cal.Rptr. 531]
  under occurrence of contingency, discharged attorney entitled to
quantum meruit recovery for reasonable value of services
  -attorney precluded from recovering from former co-counsel

voluntary withdrawal without cause forfeits recovery
  Cal Pak Delivery, Inc. v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 Cal.Rptr. 2d 207]
  Estate of Falco (1986) 188 Cal.App.3d 1004 [233 Cal.Rptr. 807]

Rationale underlying fee splitting prohibition
  Queda v. Sharp Cabrillo Hospital (1992) 8 Cal.App.4th 1

Referral fee
  Dietz v. Meisnerhaier et al. (2009) 177 Cal.App.4th 771 [177 Cal.Rptr.3d 464]
  Dietz v. Meisnerhaier et al. (2009) 177 Cal.App.4th 771 [177 Cal.Rptr.3d 464]
  acceptance by attorney of “take it or leave it” referral fee
constitutes accord and satisfaction
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acceptance of where firm represents carrier represents a conflict of interest
SD 1987-2
gift or gratuity
LA 503 (2000)
paid to attorney for executor from broker listing estate property
SD 1989-2
paid to attorney from doctor for referral of clients for medical services
LA 443 (1988)
referral of legal business, fee-splitting agreement is enforceable even if referring attorney had improper fee-splitting agreement with another, non-attorney; unclean hands doctrine does not apply
requires written disclosure to client and client’s written consent
where an outside lawyer functions on a particular matter essentially on the same basis as an employee, the outside lawyer is an associate for purposes of rule 2-200, and no case referral is involved
Void under Business and Professions Code section 16600
Muggill v. Reuben H. Donnelley Corp. (1965) 62 Cal.2d 239

With franchisor
LA 423 (1983)

With lay entity
barter organization
CAL 1981-60, CAL 1977-44
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Rule 2-102(A), Rules of Professional Conduct (operative until May 26, 1989)
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LA 431 (1984)
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LA 522 (2009), LA 36 (1927)
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SF 1973-27
dead lawyer’s estate
Estate of Cartwright v. Commissioner of Internal Revenue (9th Cir. 1999) 183 F.3d 1034
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LA(I) 1976-5
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LA 372 (1978)
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Rule 1-600(A), Rules of Professional Conduct (operative as of May 27, 1989)
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-law who is not a partner, associate or shareholder
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lay entity’s for referral of business
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SF 1981-1
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LA 488 (1996)
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Ojeda v. Sharp Cabrillo Hospital (1992) 8 Cal.App.4th 1 membership organization
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LA 461 (1990)
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LA 446 (1987)
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voluntary legal services organization
Rule 2-102(A), Rules of Professional Conduct (operative until May 26, 1989)
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With non-lawyers
In re Arzoff (1976) 22 Cal.3d 740, 745 [150 Cal.Rptr. 479, 586 P.2d 960]
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LA 510 (2003), LA(I) 1972-19
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Gassman v. State Bar (1976) 18 Cal.3d 125, 130 [132 Cal.Rptr. 675]

attorney, not licensed at time services performed
-may not be entitled to legal fees

bonuses to lay employee
LA 457

business associate
Alpers v. Hunt (1890) 86 Cal. 78, 87 [24 P. 846]

client
LA 523 (2009), LA 461 (1990)
-difference between original contingency fee and larger court award of fees
LA 447 (1987)
-refund of an overpayment
LA 515 (2005)

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LA 437 (1985)

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LA 522 (2009)

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LA 510 (2003)

dead lawyer’s widowed spouse or estate
Estate of Cartwright v. Commissioner of Internal Revenue (9th Cir. 1999) 183 F.3d 1034
Little v. Caldwell (1894) 101 Cal. 553, 561 [36 P. 107]
debt collection matter solicited in person by non-lawyer
LA 96 (1936)
disbarred attorney
Crawford v. State Bar (1960) 54 Cal.2d 659, 665 [7 Cal.Rptr. 746]
doctor
LA 443

employee
LA 222 (1954), LA 190 (1952)

employer
LA 510 (2003)

employment agency
CAL 1992-126

expert witnesses provided by consulting service
CAL 1984-79

fee rebate to client

fee sharing agreement unenforceable under doctrine of illegality of contract

financial planning company
LA 510 (2003)

heir hunter
Utz v. State Bar (1942) 21 Cal.2d 100, 107

independent contractor
In the Matter of Bragg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615

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investigator
-employed by attorney
--based upon contingent recovery of unsatisfied judgment proper unless division of fees
LA 89 (1936)

investment/portfolio manager
CAL 1999-154

lawyer referral service
Hildebrand v. State Bar (1950) 36 Cal.2d 504, 512 [255 P.2d 508]

living trust marketer
CAL 1997-148

management company
LA 488 (1996)

medical liaison
CAL 1995-143

medical-legal consulting services
Ojeda v. Sharp Cabrillo Hospital (1992) 8 Cal.App.4th 1
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outsourced legal services
LA 518 (2006)

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In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
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-Prison Litigation Reform Act does not set a separate benchmark rate for paralegal fees
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private investigator

professionals, other
-participating in service exchange
CAL 1981-60, CAL 1977-44, LA(I) 1965-18

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Provisor v. Haas Realty, Inc. (1967) 256 Cal.App.2d 850, 856 [64 Cal.Rptr. 509]
LA 384 (1980), LA 19 (1922)

-tax consultant
Crawford v. State Bar (1960) 54 Cal.2d 659, 665 [7 Cal.Rptr. 746]

tax specialist
-employed by attorney
--to assist clients
LA 86 (1935)

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LA 44 (1927)

resigned attorney
In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920

-with charges pending

service exchange
CAL 1981-60, CAL 1977-44, LA(I) 1965-18

spouse in marital dissolution
In re the Marriage of Foley (2010) 189 Cal.App.4th 521 [117 Cal.Rptr.3d 162]

tax consultant
Crawford v. State Bar (1960) 54 Cal.2d 659, 665 [7 Cal.Rptr. 746]

tax specialist
-employed by attorney
--to assist clients
LA 86 (1935)

DIVORCE

See How to Use This Index, supra, p. i


Award of attorney’s fees
tied to division of community property
when other spouse is able to pay

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Completion and filing of selected forms by divorce center
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DONATIONS
Contingent fee for [See Contingent fee, divorce.]
CAL 1983-72, LA 188 (1952)
Counsel for one party holding trust fund executes against other’s
share for back child support
LA(I) 1971-15
In propria persona
advise legal aid client how to obtain
SD 1972-6

LITIGATION PRIVILEGE
absolutely protects attorney from derivative tort actions
based on statements made in the context of dissolution
proceedings
Silberg v. Anderson (1990) 50 Cal.3d 205

No fault, communicate with other in
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OPPOSING PARTY
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LA 226 (1955)
Represent
client’s spouse
LA 207 (1953), LA 192 (1952)
family corporation formerly
Cal.Rptr. 185]
former client’s spouse in
LA(I) 1971-8
one party
-after acting for marital union
LA(I) 1958-5, LA(I) 1947-1
-after consulting with both about divorce
LA(I) 1947-1, SD 1977-6
-after consulting with both about divorce
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SD 1984-2
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LA 231 (1955), LA(I) 1968-8
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LA 51 (1927)
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CAL 1982-65
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before other boards
LA(I) 1961-8

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DUAL PROFESSIONS [See Advertising. Conflict of interest.
Law office. Practice of law.]

DUTIES OF ATTORNEY [See Candor. Professional liability.
Withdrawal from employment.]
Business and Professions Code sections 6068, 6077, 6103
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Abide by Rules of Professional Conduct, the American Bar
Association, and applicable court decisions
Standing Comm. on Dis. of United States v. Ross (9th Cir.
1984) 735 F.2d 1168, 1170
Accept ruling of the court

Action
encouraging commencement or continuation from corrupt
motive
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Canatella v. California (9th Cir. 2002) 304 F.3d 843
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Canatella v. California (9th Cir. 2002) 304 F.3d 843
legal or just
-duty to counsel or maintain only
Business and Professions Code section 6068(c)
In the Matter of Scott (Review Dept. 2002) 4 Cal.
State Bar Ct. Rptr. 446
LA 464 (1991)
Address maintained on official records
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Adequacy and effectiveness of counsel
In the Matter of Johnson (Review Dept. 2000) 4 Cal. State
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specially appearing attorney owes a duty of care to the
litigant
[82 Cal.Rptr.2d 193]
Adequately research and know the law
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257]
Adequately research triable issues of fact
818]
no duty to consult medical specialist unless such
consultations recommended by other doctors
Cal.Rptr.2d 637]
Adequately supervise [See Competence, Failure to ade-
quately supervise. Employee.]
Adhere to Rules of Professional Conduct
265]
Advance no fact prejudicial to honor or reputation of a party or
witness, unless required by the justice of the cause
Business and Professions Code section 6068(f)
-appplies to the advance of prejudicial facts, but perhaps
not prejudicial intimations
In the Matter of Torres (Review Dept. 2000) 4 Cal.
State Bar Ct. Rptr. 138

Adverse parties
duty to client requires attorney to take steps to ensure
agreement will be enforceable and the best assurance of
enforceability is independent representation for both parties
In re Marriage of Bonds (2000) 24 Cal.4th 1 [99
Cal.Rptr.2d 252]
no duty of care
36 [1 Cal.Rptr.3d 472]
In re Complex Asbestos Litigation (1991) 232 Cal.App.3d
572 [283 Cal.Rptr. 732]
Cal.App.3d 692, 703 [282 Cal.Rptr. 627]
365]
Cal.Rptr. 902]
DUTIES OF ATTORNEY

Artifice
never seek to mislead judge or judicial officer with
Business and Professions Code section 6068(d)

Rule 5-200(B), Rules of Professional Conduct

Associate’s duties run to client
LA 383 (1979)

Attempt to effectuate settlement where standards of professional care compel that most reasonable manner of disposing of action is settlement

Attorney’s liability for fraud extends to non-clients


attorney’s signature block on contract stating approval as to form and content not actionable misrepresentation


Avoid involving client in murky areas of law when alternatives are available


Candor
client’s absence from court, attorney may not answer court’s inquiry if harmful to client
SD 2011-1
do not advise that represents class also employs an attorney who serves as class representative

In re Aguilar and Kent (2004) 34 Cal.4th 386 [18 Cal.Rptr.3d 874]

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

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while attorney served on civil jury

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

distortions of record

Amstar Corp. v. Envireotech Corp. (C.A. Fed 1984) 730 F.2d 1476
electronic data, concealing in violation of law

SD 2012-1
do not disclose assistance to an in propria persona


quotations containing deletions

Amstar Corp. v. Envireotech Corp. (C.A. Fed. 1984) 730 F.2d 1476

withdrawal from representation of a minor child

LA 504 (2000)

Care

attorney owed a duty, post certification, to advise clients of other claims related to but outside the scope of the representation

as mod. (August 9, 1999 and September 8, 1999)


especially appearing attorney owes a duty of care to the litigant

Class action

conflict of interest based on divided loyalties when law firm that represents class also employs an attorney who serves as class representative


See How to Use This Index, supra, p. i 215 2019 (updated entries through 12/31/2018)
DUTIES OF ATTORNEY

Counsel owed a duty, post certification, to advise clients of other claims related to but outside the scope of the representation

counsel owed a duty, post-judgment, to pursue classic claims through enforcement of judgment


Commence remedial action


Communicate with clients

Business and Professions Code section 6068(m)

Rule 3-500, Rules of Professional Conduct

- failure to disclose to client that another attorney would represent her at a creditors’ meeting and to obtain client’s prior consent

Price v. Lehtinen (In re Lehtinen) (9th Cir. BAP 2005) 332 B.R. 404

Foley v. Biter (9th Cir. 2015) 793 F.3d 998

Lai v. State of California (9th Cir. 2010) 610 F.3d 518

Summerlin v. Schirrg (9th Cir. 2005) 427 F.3d 623

U.S. v. Leoniti (9th Cir. 2003) 326 F.3d 1111

Conroy v. State Bar (1991) 53 Cal.3d 495

Borre v. State Bar (1991) 52 Cal.3d 1047

Harford v. State Bar (1990) 52 Cal.3d 93

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Wolff v. State Bar (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1

In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

In the Matter of Dahlg (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269

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In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831

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In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47

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In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652

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In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439

CAL 2014-190, CAL 2011-182, CAL 2008-175, CAL 2003-163

OC 2011-01, SF 2011-1

Attorneys may give legal advice and assistance limited to activities permissible under California state law provided the client is advised of possible liability under federal law and other potential adverse consequences

LA 527, SF 2015-1 basis for calculating fees

OC 99-001

client/plaintiff overpaid by defendant under settlement agreement

LA 520 (2007)

counsel must consult defendant about appeal when either a rational defendant would appeal or defendant shows interest in appealing


counsel testator regarding the nature and consequences of a gift to disqualified person under Probate Code section 21350


digitally stored document preservation obligations, litigation hold

SD 2012-1
discovery sanctions against the attorney and client may be a significant development which should be communicated to the client

CAL 1997-151

failure to advise or inform client whether to accept plea bargain


failure to communicate due to assigned associates inability to speak Spanish

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354

failure to communicate for two and a half years does not reasonably mean that client should have known that attorney had withdrawn or abandoned the case for purposes of tolling the statute of limitations on filing a malpractice action


failure to communicate with board of corporation

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
gross negligence in failing to communicate may be deemed abandonment

Mackey v. Hoffman (9th Cir. 2012) 682 F.3d 1247

In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

may supersede an attorney’s right to claim work product privilege as to material the attorney knows is relevant to former client’s defense

SD 2004-1

misleading client deliberately and depriving client of opportunity to preserve rights

Community Dental Services v. Tani (2002) 282 F.3d 1164

do not to separately explain arbitration agreement when attorney changes firms and client signs new fee agreement when client is a sophisticated businessperson


no duty, as an element of malpractice action, to disclose to client that law firm had hired law clerk of judge before whom law firm was appearing in pending matter

First Interstate Bank of Arizona v. Murphy, Weir & Butler (9th Cir. 2000) 210 F.3d 983

on any matter which requires client understanding, the attorney must take all reasonable steps to insure that the client comprehends the legal concepts involved and advice given

LA 504 (2000)
potential malpractice claim, facts related to

CAL 2009-178

prohibited from advising a debtor to incur more debt because the debtor is filing for bankruptcy, rather than for a valid purpose. However, attorneys may talk fully and candidly about the insolvency of debt in contemplation of filing a bankruptcy case. The inhibition of frank discussion serves no conceivable purpose within the statutory scheme.


radio call-in show format is unlikely to support a reasonable expectation of confidentiality, loyalty or competence

CAL 2003-164

“reasonable status inquiry” for purpose of B&P § 6068(m)

In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907

settlement offers

which include fee-waiver provisions under fee shifting statutes

CAL 2009-176

use of outside lawyers or outsourcing legal services

CAL 2004-165, CAL 1994-138

OC 2014-1

SD 2007-1

use of specially appearing attorney

CAL 2004-165

use of technology via virtual law office (VLO) may require additional reasonable steps to ensure that client comprehended legal concepts and advice given

CAL 2012-184

Compelled to deal directly with opposing party


CAL 1987-93, CAL 1984-83

Competence

Rule 6-101, Rules of Professional Conduct (operative until May 26, 1989)

Rule 3-110, Rules of Professional Conduct (operative as of May 27, 1989)

OC 2011-01, SF 2011-1

conservatorship proceedings

-duty of counsel to perform in an effective and professional manner is implicit in statute (Welf. & Inst. Code § 5365) providing for appointment of attorney for proposed conservatee


obligation to anticipate reasonably foreseeable risks


Comply with and be familiar with standards of professional conduct required of members of the State Bar of California, Civil Local Rule 11-4

CRS Recovery, Inc. v. Laxton (9th Cir. 2010) 600 F.3d 1138

Comply with State Bar reporting requirements

Business and Professions Code section 6068(j)

California Rule of Court 9.20

Rule 1-311, Rules of Professional Conduct (operative as of May 27, 1989)

In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920

Condone violation of duties, violates public policy


Confidences of client

OC 2011-01

client’s absence from court, attorney may not answer court’s inquiry if harmful to client

SD 2011-1

duty to follow a minor client’s instruction not to disclose confidential information

LA 504 (2000)

duty to maintain inviolate

Business and Professions Code section 6068(e)

LA 519 (2006)

duty to maintain where client comes to attorney to discuss concerns regarding co-counsel

SF 2011-1

duty to preserve client confidence and trust in attorney

Oasis West Realty, LLC v. Goldman (2011) 51 Cal.4th 811 [124 Cal.Rptr.3d 256]


LA 506 (2001)

-after termination of the attorney-client relationship

LA 519 (2006)

duty to protect client confidences and secrets

-after death of client


LA 414 (1983)

-after termination of attorney-client relationship


fundamental ethical obligation not changed by court appointment to represent minor in dependency proceeding

LA 504 (2000)

Conflict of duties may require withdrawal

CAL 2003-163

Conform to professional standards of attorney in whatever capacity


Crawford v. State Bar (1960) 54 Cal.2d 659, 668 [7 Cal.Rptr. 746, 355 P.2d 490]


In the Matter of McCarthy (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70

California Rules of Professional Conduct do not apply only to lawyers who are acting in their roles as advocates for others

In re Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160

conflicts of interest may arise where an attorney assumes a role other than as an attorney adverse to an existing client


rendering legal and non-legal services to a single client

Kelly v. State Bar (1991) 53 Cal.3d 509

Layton v. State Bar (1990) 50 Cal.3d 889


In the Matter of Piams (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824

CAL 1999-154

Constitution, support of United States and California Business and Professions Code section 6068(a)

LA 527 (2015)
DUTIES OF ATTORNEY

- attorneys may give legal advice and assistance limited to activities permissible under California state law provided the client is advised of possible liability under federal law and other potential adverse consequences
- no discipline for a negligent mistake made in good faith
- Consult governing legal authorities and make a reasonable determination of the amount attorney is entitled to receive

LA 527, SF 2015-1

Control communications of employees under attorney’s letterhead and signature
- Cooperate in disciplinary proceeding
- Deal honestly and fairly with adverse party and counsel

Business and Professions Code section 6068(i)

Rule 3-200(A), Rules of Professional Conduct

Costs
- no duty to advance for pro bono client

LA 379 (1979)

Counsel or maintain such actions, proceedings, or defenses only as appear legal or just
- Cooperate in disciplinary proceeding
- Consult governing legal authorities and make a reasonable determination of the amount attorney is entitled to receive

CAL 2009-177

Courts of justice
- maintain respect for

Business and Professions Code section 6068(b)

respectfully yield to rulings of court, whether right or wrong


Deal honestly and fairly with adverse party and counsel


In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269

CAL 2013-189

Defend client
- American Home Assurance Co. v. Miller (9th Cir. 1983) 717 F.2d 1310

Defense counsel
- People v. Fatone (1985) 165 Cal.App.3d 164 [211 Cal.Rptr. 228]


Defenseless, cause of
duty not to reject for personal considerations
- Business and Professions Code section 6068(h)

Penal Code section 11165

Dependency proceeding
- factors determining whether disqualification of appointed counsel and entire public law office is required in substantially related successive representations

In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]

representation of a minor client
LA 504 (2000)

Depositions, representing client at
- instructions not to answer sanctionable


reconciling potentially divergent duties
LA 497 (1999)

Disclose
- CAL 1969-19
SD 1983-8
- altered evidence to opponent
SD 1983-3
- death of client to opposing party
LA 300 (1967)

identity of informant to defendant


legal authority in the controlling jurisdiction which is adverse to client

Southern Pacific Transportation v. P.U.C. of the State of California (9th Cir. 1982) 716 F.2d 1285, 1291


violation of court order by third party
LA 394 (1982)

Dispute conflict of interest not created by
CAL 2009-178

District attorney

Document review, use and understanding of technology assisted review (TAR)

SD 2013-5

Duty to preserve client confidence/trust in attorney


In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179

CAL 2016-195, CAL 1987-92
OC 2012-1

Duty to report impropriety of another attorney
- Business and Professions Code section 6100 et seq.

LA 440 (1986)

SD 1992-2, SF 1977-1

Duty to supervise non-attorney employees
- performed all legal services and attorney was not involved in any case unless the staff consulted him

In re Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

-permitted investigator to obtain search warrants in violation of court order

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

Employ means consistent with truth
- Business and Professions Code section 6068(d)

Rule 5-200, Rules of Professional Conduct


In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179

Employee duties to employer
- Labor Code section 2650

Estate executor and beneficiary

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See How to Use This Index, supra, p. i
Exercise independent professional judgment in best interest of clients
Beck v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]
Saunders v. Weissburg & Aronson (1999) 74 Cal.App.4th 869 [87 Cal.Rptr.2d 405], as modified (August 9, 1999 and September 8, 1999)
LA 383 (1997)
Fiduciary
outourcing legal services
LA 518 (2006)
Failure to appear in numerous matters
Wolff v. State Bar (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1
Failure to communicate status of case to client
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688
Failure to communicate with client severs principal-agent relationship
Foley v. Biter (9th Cir. 2015) 793 F.3d 998
Failure to communicate, to preserve client’s ability to appeal, and to withdraw from the case constitutes abandonment
Fifty N. Biter (9th Cir. 2015) 793 F.3d 998
Failure of counsel to investigate and file a federal tort claim imputed to client
Failure to disclose expert witness notes
Failure to perform duties
Rossman v. State Bar (1985) 39 Cal.3d 539 [216 Cal.Rptr. 919]
In the Matter of Freyd (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269
attorney neither pursued client’s action nor took active steps to withdraw
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
specially appearing attorney owes a duty of care to the litigant
Fairness to opposing counsel
CAL 1984-78
False statement of fact or law
never seek to mislead judge or judicial officer with
Business and Professions Code section 6068(d)
Rule 5-200, Rules of Professional Conduct
In re Aguilar and Kent (2004) 34 Cal.4th 386 [18 Cal.Rptr.3d 874]
Fidelity to client
80 Ops. Cal. Atty. Gen. 36 (2/7/97; No. 96-301)
Anderson v. Eaton (1930) 211 Cal. 113
CAL 1987-93, CAL 1981-83
Fidelity to non-client
Fiduciary
Read v. State Bar (1991) 53 Cal.3d 394, modified at 53 Cal.3d 1009
Hartford v. State Bar (1990) 50 Cal.3d 1139

DUTIES OF ATTORNEY

Ball v. Posey (1986) 176 Cal.App.3d 1209, 1214 [222 Cal.Rptr. 746]
In the Matter of Gillis (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387
In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234
In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. 198 actions based on breach of duties owed to client are not SLAPP suits

adverse party
Sternlieb v. State Bar (1990) 52 Cal.3d 317
Guzzetta v. State Bar (1987) 43 Cal.3d 962 [239 Cal.Rptr. 675]
Crooks v. State Bar (1970) 3 Cal.3d 346
Johnstone v. State Bar (1966) 64 Cal.2d 153 [49 Cal.Rptr. 97]
In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17
-attorney seeks to become party adverse to former client in the same matter in which he had represented that client

adverse party or non-client
In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17
-attorney breached duty as escrow holder
-disbursement of assets in dissolution without consent of parties
In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456
attorney acting as director and as attorney for organization
OC 2011-02
attorney’s purchase of judgment from adverse party and his attempt to enforce that judgment against former client in the same matter was a violation of the confidential relationship between attorney and client
breach of duty to a former client
Oasis West Realty, LLC v. Goldman (2011) 51 Cal.4th 811 [124 Cal.Rptr.3d 256]
civil judgment for fraud and breach of fiduciary duty establishes moral turpitude
In the Matter of Kittrell (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195
DUTIES OF ATTORNEY

Files  [See Files.]

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Fraud

civil judgment for fraud and breach of fiduciary duty establishes moral turpitude

In the Matter of Kittrell (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195

false representation that attorney had received escrow funds and was holding in trust

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70

non-fiduciary who commits actual fraud in his dealings with a third party in the course of a business negotiation is not relieved of liability even if non-fiduciary does so in his capacity as attorney for a client


Gross negligence in failing to communicate may be deemed abandonment

Brooks v. Yates (9th Cir. 2016) 818 F.3d 532

Honesty

deception and concealment amounting to moral turpitude

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

dishonesty to court

In re Aguilar and Kent (2004) 34 Cal.4th 386 [18 Cal.Rptr.3d 874]

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179

-misrepresentation to judge while attorney served on a jury

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

fundamental rule of ethics, common honesty

Gaddia v. State Bar (1990) 50 Cal.3d 344 [787 P.2d 95]


Alkow v. State Bar (1952) 38 Cal.2d 257, 264 [239 P.2d 871]

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

- stock pledged by third party creates fiduciary duty under Business and Professions Code section 6086(a)

Hartford v. State Bar (1990) 50 Cal.3d 1139

Improve and enhance the rule of law


Indigent

duty to represent

Cunningham v. Superior Court (1986) 177 Cal.App.3d 336 [222 Cal.Rptr. 854]

SD 1968-4

private employment contract with

SD 1968-4

Inform court [See Court.]

correct known misrepresentation


[87 Cal.Rptr.2d 719]

non-party witness perjury

SD 1983-8

of client perjury

CAL 1963-74

Insist that trustee receivers keep accurate records

Southwestern Media, Inc. v. Rau (9th Cir. 1983) 708 F.2d 419
DUTIES OF ATTORNEY

Instruct client with respect to communications with opposing party
SD 1983-2

Insured’s attorney owes no duty of good faith and fair dealing to insurer

Insured’s attorney owes no duty to insurer to turn over portions of third-party recoveries made on behalf of client

Insurer’s attorney has duty to include insured’s independent counsel in settlement negotiations and to fully exchange information

Investigate financial affairs of clients

- attorney not permitted to be willfully ignorant on how the attorney’s fees were paid when attorney was objectively on notice that the fees might have been derived from a pool of frozen assets

- Federal Trade Commission v. Network Services Depot, Inc., et al. (9th Cir. 2010) 617 F.3d 1127
- impractical and would unduly interfere with duties to clients
- In re: Emery (9th Cir. 2003) 317 F.3d 1064 [40 Bankr.Ct.Deb. 259]

Investigate potential securities fraud

- Federal Deposit Insurance Corporation v. O’Melveny & Myers (9th Cir. 1992) 969 F.2d 744

Investigate prior to filing lawsuit

- Johnson v. Baldwin (9th Cir. 1997) 114 F.3d 835
- In the Matter of Brang (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615

Investigate statements made by own client

- United States v. Kellington (9th Cir. (Or.) 2000) 217 F.3d 1084
- In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196
- VLO practice may require particular caution in verifying client’s identity and that the type of case can be handled in a VLO setting
- CAL 2012-184

Joint ventures


Judge

- never to mislead with artifice or false statement
- Business and Professions Code section 6068(d)
- Rule 5-200(B), Rules of Professional Conduct

Judicial office

- maintain respect due
- Business and Professions Code section 6068(b)

Keep accurate records


Laws, support of United States and California

- Business and Professions Code section 6068(a)
- attorneys may give legal advice and assistance limited to activities permissible under California state law provided the client is advised of possible liability under federal law and other potential adverse consequences
- LA 527, SF 2015-1

no discipline for a negligent mistake made in good faith
In the Matter of Respondent P (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 631

Loyalty

- Flatt v. Superior Court (1994) 9 Cal.4th 275, 284 [36 Cal.Rptr.2d 537]
- Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]
- CAL 2011-182, SD 2013-1, OC 2012-1

attorney’s duty of loyalty to client assignee for the benefit of creditors cannot be divided or diluted by a duty owed to the class of creditors

- bonus program for public agency attorneys tied to savings by other potential adverse consequences
- SD 1997-2

breach may arise even if adversity involves attorney's own personal actions rather than another client’s representation

- Oasis West Realty, LLC v. Goldman (2011) 617 F.3d 1124
- client’s absence from court, attorney may not answer court’s inquiry if harmful to client
- SD 2011-1
DUTIES OF ATTORNEY

conflict of interest based on divided loyalties when law firm that represents class also employs an attorney who serves as class representative

does not extend to a party that claims third-party beneficiary status and whose interests are potentially adverse to those of the client

may require attorney’s limited response to judge’s questions absent an affirmative duty to inform the court

OC 95-001
may supersede an attorney’s right to claim work product privilege as to material the attorney knows is relevant to former client’s defense

SD 2004-1
no fiduciary duty owed to co-counsel where no collateral duties may interfere with duty of undivided loyalty and total devotion to client’s best interest

Bek v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]
owed to one client does not consume that owed the other client

personal duty not delegable

Baum v. Duckor, Spradling & Metzger (1999) 92 Cal.App.4th 54 [84 Cal.Rptr.2d 703]
self-interest of attorney does not interfere with duty to client where attorney seeks indemnification from co-counsel in malpractice action

Musser v. Provencher (2002) 28 Cal.4th 274 [121 Cal.Rptr.2d 373]
LA 506 (2001)
Maintain

contact with informants

involve confidences and secrets of client

Business and Professions Code section 6068(e)

-outlasts employment

LA 389 (1981)
Make available client files on withdrawal

CAL 1994-134
SD 1997-1, SD 1984-3, SD 1977-3
SF 1996-1
exception: Penal Code 1054.2 requires court consent before release of address or telephone number of a victim or witness

Penal Code 1054.2
exception: Penal Code 1054.10 requires court consent before release of copies of child pornography

Penal Code 1054.10
Mandatory bar membership

Morrow, et al. v. State Bar (9th Cir. 1999) 188 F.3d 1174
MCLE (Minimum Continuing Legal Education)

Warden v. State Bar (1999) 21 Cal.4th 628
Mediator

attorney acting as a mediator assumes duty to disclose to the parties any information that might reasonably cause doubt in the attorney’s impartiality


Medical marijuana attorneys may give legal advice and assistance limited to activities permissible under California state law provided the client is advised of possible liability under federal law and other potential adverse consequences

LA 527, SF 2015-1
Misappropriation of funds

In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349
In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70
Misleading judge or judicial officer

court responsible for ascertaining attorney’s role in preparation and presentation of sham evidence

duty not to mislead by an artifice or false statement of fact or law

Business and Professions Code section 6068(d)

Rule 5-200(B), Rules of Professional Conduct

In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166
OC 95-001
duty to report possible violation of court order

LA 394 (1982)
while attorney served on a jury

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141
No constitutional right to every defense

counsel need not raise every non-frivolous claim


No duty to consult medical specialist unless such consultations


Not required to make futile objections


Not to encourage actions brought from a corrupt motive of passion or interest

Rule 3-200(A), Rules of Professional Conduct

Sorensen v. State Bar (1991) 52 Cal.3d 1036
Obey court orders

Business and Professions Code section 6103

Barnum v. State Bar (1990) 52 Cal.3d 104

In re Ringgold (2006) 142 Cal.App.4th 1001 [48 Cal.Rptr.3d 507]

In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 20

CAL 2015-192
disregard of order by a workers’ compensation judge

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126
filing quiet title action in spite of injunction not to do so

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966
law firm violated injunction by depositing client’s check into client trust account

Commodity Futures Trading Commission v. Co. Petro Mktg. (9th Cir. 1982) 700 F.2d 1269, 1284
lender failed to serve answer as ordered by court

Community Dental Services v. Tani (2002) 282 F.3d 1164
monetary sanctions not warranted for premature departure from courthouse and returning late from lunch

Wehrli v. Pagliotti (9th Cir. 1991) 947 F.2d 1424

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DUTIES OF ATTORNEY

no penalty of contempt for advising client-witness not to produce incriminating material based on 5th Amendment
Obey oath
Of discharged attorney
to sign settlement draft/check to facilitate former client’s receipt of settlement proceeds
In the Matter of Fieldsott (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 754
In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509
CAL 2009-177
Of succeeding attorneys
honoring precedency attorneys’ liens
In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234
Offensive personality, duty to abstain from
Business and Professions Code section 6068(f)
Officer of court
attorneys, by virtue of their professional position, must undertake certain special duties to avoid conduct that undermines the integrity of the adjudicative process
Federal Trade Commission v. Network Services Depot, Inc. et al. (9th Cir. 2010) 617 F.3d 1127
On withdrawal not affected by who terminates the relationship
Opposing counsel
disclose death of client during settlement negotiation
LA 300 (1967)
dishonestly to
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
In the Matter of Dahiz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269
-attorney’s signature block on contract stating approval as to form and content not actionable misrepresentation
making settlement offers which include fee-waiver provisions under fee shifting statutes
CAL 2009-176
Opposing party
attorney by purchasing judgment against client seeks to become the party adverse to former client in the appeal on the same matter in which he had originally represented that client
attorney has duty to avoid knowingly making false statements and misrepresentations to non-clients
attyor may be liable to a non-client if the attorney’s actions went beyond his role as legal representative
disbursement of funds to client and attorney when funds held for the benefit of client and the adverse party without knowledge or consent of the adverse party and opposing counsel
In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456
litigation privilege
- is absolute and protects attorney from tort actions based on misleading statements made to opposing side
--dissolution proceedings
Silberg v. Anderson (1990) 50 Cal.3d 205
--in all torts except malicious prosecution
--settlement negotiation
-justifies dismissal of defamation action against law firm
Argentieri v. Zuckerberg (2017) 8 Cal.App.5th 768 [214 Cal.Rptr.3d 358]
Dove Audio Inc. v. Rosenfeld, Meyer and Susman (1996) 47 Cal.App.4th 777 [54 Cal.Rptr.2d 830]
-letter of warning to prospective customers of former company employee who was alleged to have misappropriated trade secrets was not only protected by the litigation privilege but also protected under the anti-SLAPP statute
-protects attorney conduct which is communicative in nature
-should not be extended to litigating in the press
o no California authority allows an attorney to disclose attorney-client communications or confidential information in defense of a lawsuit by a third party
LA 519 (2006)
no duty of care owed
to advise regarding opposing party’s mistake of law affecting settlement
LA 380 (1979)
Oppressed, cause of duty not to reject for personal considerations
Business and Professions Code section 6068(h)
Outlast employment
LA 389 (1961)
do not dissolve when attorney is discharged
duties to client extend beyond the closing of the client file
In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175
Owed to third parties [See Profesional liability, duty owed to third parties.]
attorney for corporation owes no duty to shareholders
DUTIES OF ATTORNEY

attorney owes no duty to beneficiaries to evaluate and ascertain client’s testamentary capacity to draft or amend a will


attorney’s representation of assignee for the benefit of creditors does not give rise to a duty owed to the class of creditors

non-fiduciary who is asked for or volunteers information in the course of a business negotiation must be truthful to non-client

settlement negotiations
CAL 2015-194

Partnership dissolution
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
CAL 2014-190, CAL 1985-86

fiduciary duty owed by partners of a dissolved partnership to complete the partnership’s unfinished business and to act in the highest good faith

Party
honor of
- advance no fact prejudicial to
Business and Professions Code section 6068(f)
reputation of
- advance no fact prejudicial to
Business and Professions Code section 6068(f)

Pay court reporter fees
CAL 1979-48

Perform services for client
Butler v. State Bar (1986) 42 Cal.3d 323
McMorris v. State Bar (1983) 35 Cal.3d 78
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179

Personal considerations, not to reject cause of defenseless or oppressed for
Business and Professions Code section 6068(h)
LA 445 (1987)

Power of attorney, on advice of attorney
Civil Code section 2421(3)(2)

Preserve confidences and secrets
Business and Professions Code section 6068(e)

Pro bono client
Brisker v. U.S. Dist. Court (9th Cir. 1984) 742 F.2d 515, 518-519
Segal v. State Bar (1988) 44 Cal.3d 1077 [245 Cal.Rptr. 404]

Proceeding
encouraging commencement or continuance from corrupt motive of passion or interest
Business and Professions Code section 6068(g)
legal or just
- duty to counsel or maintain only
Business and Professions Code section 6068(c)

Professionalism
LA 339 (1973), LA 272 (1962)
Prosecutor
People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]

People v. Eubanks (1996) 14 Cal.4th 580 [59 Cal.Rptr.2d 200 927 P.2d 310] (mod. at 14 Cal.4th 1282D)
People v. Conner (1983) 34 Cal.3d 141 [193 Cal.Rptr. 148, 666 P.2d, 5]
People v. Manson (1976) 61 Cal.App.3d 102, 164
duty to seek justice, not merely to convict

Protect a client in every possible way
Federal Deposit Insurance Corporation v. O’Melveny & Myers (9th Cir. 1992) 969 F.2d 744

Public agency attorneys
participation in bonus program tied to savings by agency
SD 1997-2

Public defender
acts of privately retained counsel and publicly appointed counsel should be measured by the same standards of care, except as otherwise provided by statute

Radio call-in show formal is unlikely to support reasonable expectation of confidentiality, loyalty, or competence.
no duty of confidentiality, loyalty, competence
CAL 2003-164

Refer client to specialist

Reject for personal considerations
cause of defenseless or oppressed
Business and Professions Code section 6068(h)
Cunningham v. Superior Court (1986) 177 Cal.App.3d 336
CAL 1981-64

Report
child abuse
Penal Code section 11165 et seq.
LA 504 (2000)
crime discovered
SF 1975-2

impropriety of another attorney
Business and Professions Code section 6100 et seq.
LA 440 (1986)
SD 1992-2, SF 1977-1
to the IRS
-cash receipts from any one transaction (or two related transactions) of $10,000 or more during one year
In the Matter of Curtis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601

Internal Revenue Code section 6050(l)
to the State Bar
-address of attorney
Business and Professions Code section 6002.1
-civil judgment for fraud, misrepresentation and breach of fiduciary duty in a professional capacity
In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483

-conviction of attorney
Business and Professions Code section 6068(c)(5)
In the Matter of Sullivan II (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189

-imposition of discipline
Business and Professions Code section 6068(c)(6)
-indictment or information
Business and Professions Code section 6068(c)(4)
In the Matter of Sullivan II (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189

-judgment against attorney for moral turpitude
Business and Professions Code section 6068(c)(2)
In the Matter of Sullivan II (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189

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**DUTIES OF ATTORNEY**

Return records mistakenly delivered to sender
SD 1987-3

Reveal
**United States v. Kellington** (9th Cir. (Or.) 2000) 217 F.3d 1084
client perjury in a civil non-jury trial
**CAL** 1983-74
the fruits of crime in his possession to the prosecutor
**CAL** 1984-76, LA 466

Secrets of client
duty to preserve
**Business and Professions Code section 6068(e)**
duty to supervise [See Employee.]

Serve indigent client without compensation

Settlement
attempt to effectuate settlement where standards of professional care compel that reasonable manner of disposing of action is settlement
**Lyick v. Walcom** (1968) 258 Cal.App.2d 136, 156
settlement check issued only to client, but delivered to attorney who has a lien
OC 99-002
successor attorney’s obligation to notify prior attorney of the existence of a settlement
**CAL** 2008-175

Special obligation to obey the law
**Standing Com. on Disc. of United States v. Ross** (9th Cir. (1984) 735 F.2d 1168, 1171
Statutory duty to assist indigent
**Arnelle v. City and County of San Francisco** (1983) 141 Cal.App.3d 693 [190 Cal.Rptr. 490]

Statutory requirement for service on attorney

Supervise client trust account
**Copcock v. State Bar** (1988) 44 Cal.3d 665 [244 Cal.Rptr. 462]

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308
LA 488 (1996)

responsibility to monitor client trust account is nondelegable, notwithstanding even reasonable reliance on partner, associate, or responsible employee
**In the Matter of Blum** (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403

Supervise employees
**Gadda v. State Bar** (1990) 50 Cal.3d 344 [787 P.2d 95]
**Bernstein v. State Bar** (1990) 50 Cal.3d 221 [786 P.2d 352]
**Palomo v. State Bar** (1984) 36 Cal.3d 785
**Crane v. State Bar** (1981) 30 Cal.3d 117, 122
**Black v. State Bar** (1972) 7 Cal.3d 676, 692
**Moore v. State Bar** (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161, 396 P.2d 577]
**In the Matter of Guzman** (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 827

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708

In the Matter of Hindin (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657

In the Matter of Sullivan, II (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 7

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354
**CAL** 1997-150, **CAL** 1988-103
DUTIES OF ATTORNEY

LA 522 (2009), LA 488 (1996)
OC 94-002

attorney employees
Bernstein v. State Bar (1990) 50 Cal.3d 221, 231
In the Matter of Hindin (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657
-pattern of similar constitutional violations by untrained employees was necessary to demonstrate deliberate indifference for purposes of failure to train, where exculpatory evidence was not produced as requested under Brady
outside lawyers or providers of outsourced legal services CAL. 2004-165, CAL. 1994-138
LA 518 (2006)
SD 2007-1
paralegal
Pincav v. Andrews (9th Cir. 2004) 389 F.3d 853
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
LA 454
OC 94-002
-no discipline for a negligent mistake made in good faith and other potential adverse consequences
responsibility for calendaring error falls on attorney regardless of whether the error was made by the attorney or paralegal
Pincav v. Andrews (9th Cir. 2004) 389 F.3d 853

Support of United States and California Constitution and Laws

Business and Professions Code section 6068(a)
-attorneys may give legal advice and assistance limited to activities permissible under California state law provided the client is advised of possible liability under federal law and other potential adverse consequences
LA 527, SF 2015-1
-no discipline for a negligent mistake made in good faith
Silberg v. Anderson (1990) 50 Cal.3d 205
In the Matter of Respondent P (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 631

Take reasonable measures to determine law at time of action
no duty to foresee changes in law
*Sharpe v. Superior Court (1983) 143 Cal.App.3d 469 [192 Cal.Rptr. 16]
Third party
duty to intended beneficiaries of a testamentary instrument
Harrigfield v. Hancock (9th Cir. (Idaho) 2004) 364 F.3d 1024
estate planning
-duty to act with due care as to the interests of the intended beneficiary
-no duty owed to non-client potential beneficiary absent testator's express intent to benefit non-client
no duty to insuror to turn over portions of third-party recoveries made on behalf of client
no duty to third party
In re Emery (9th Cir. 2003) 317 F.3d 1064 [40 Bankr.Ct.Cl. Dec. 259]

non-fiduciary who is asked for or volunteers information in the course of a business negotiation must be truthful to non-client

not to convert funds
Johnstone v. State Bar (1966) 64 Cal.2d 153 [49 Cal.Rptr. 97, 410 P.2d 617]
PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP (2007) 150 Cal.App.4th 384 [58 Cal.Rptr.3d 516]
LA 454
reasonable duty to communicate with a lienholder as to the subject of the fiduciary obligation
In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196

To adverse party

To clients
In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252
In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 173
advice attorney to in propria persona litigants
LA 502 (1999)
breach warrants discipline
Alberton v. State Bar (1984) 37 Cal.3d 1, 14-15

class action
-counsel owed a duty, post certification, to advise clients of other claims related to but outside the scope of the representation
counsel owed a duty, post-judgment, to pursue class claims through enforcement of judgment
duty owed to client, not to potential beneficiary
good faith and fiduciary duty owed to clients
Van Sloten v. State Bar (1989) 48 Cal.3d 921 [258 Cal.Rptr. 235, 771 P.3d 1323], mod. 49 Cal.3d 38a
Gassman v. State Bar (1976) 18 Cal.3d 125, 130
In the Matter of Gillis (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387
In the Matter of Kittrell (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195
specially appearing attorney owes a duty of care to the litigant

To client’s prior attorney
successor attorney’s obligation to notify prior attorney of the existence of a settlement
CAL. 2008-175

To co-clients

To co-counsel
specially appearing attorney undertakes a limited association with the litigant’s attorney of record
LA 454
To communicate
McMorris v. State Bar (1983) 35 Cal.3d 78
policy limits to client
LA 350 (1975)
with client
In the Matter of Freydl (Review Dept. 2001) 4 Cal. State
Bar Ct. Rptr. 345
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State
Bar Ct. Rptr. 315
In the Matter of Dahlin (Review Dept. 2001) 4 Cal. State
Bar Ct. Rptr. 269
CAL 1983-77
-basis for calculating fees
OC 99-001
To former client’s insurer
San Gabriel Basin Water Quality Authority v. Aerojet-General
Corp. (C.D. Cal. 2000) 105 F.Supp.2d 1095
To honor medical lien when client consents
Cooper v. State Bar (1987) 43 Cal.3d 1016, 1020 [239
Cal.Rptr. 709, 741 P.2d 206]
To insured when retained by insurer
59, 76 [203 Cal.Rptr. 524]
no duty to turn over portions of third-party recoveries made
on behalf of client
Farmers Insurance Exchange et al. v. Smith (1999) 71
Cal.App.4th 660 [83 Cal.Rptr.2d 911]
To non-clients
Silberg v. Anderson (1990) 50 Cal.3d 205
Sodikoff v. State Bar (1975) 14 Cal.3d 422 [121 Cal.Rptr.
467, 535 P.2d 331]
Cal.Rptr.3d 758]
Cal.Rptr.3d 405]
154]
Cal.Rptr.2d 806]
Cal.Rptr.2d 691]
Morrison Knudsen Corp. v. Hancock, Rothert & Bunshoft,
Cal.Rptr.2d 335]
Pierce v. Lyman (1991) 1 Cal.App.4th 1093
Cal.App.3d 692, 703 [282 Cal.Rptr. 627]
In the Matter of Wyskah (Review Dept. 1999) 4 Cal. State
Bar Ct. Rptr. 707
accepting non-client funds/securities to secure client fees
598]
Guzzetta v. State Bar (1987) 43 Cal.3d 962 [239
Cal.Rptr. 675, 741 P.2d 172]
774, 739 P.2d 134]
attorney acting as a mediator assumes duty to disclose to
the parties any information that might reasonably cause
doubt in the attorney’s impartiality
357]
attorney for corporation owes no duty to shareholders
Cal.App.3d 692, 703 [282 Cal.Rptr. 627]
attorney may be liable to a non-client if the attorney’s actions
went beyond his role as legal representative
Panoutsopoulos et al. v. Chambless et al. (2007) 157
Cal.App.4th 297 [68 Cal.Rptr.3d 647]
attorney who overstates his client’s rights or position violates
no independent duty of care to the client’s adversary
Panoutsopoulos et al. v. Chambless et al. (2007) 157
Cal.App.4th 297 [68 Cal.Rptr.3d 647]
attorney’s representation of assignee for the benefit of
creditors does not give rise to a duty owed to the class of
creditors
(2005) 131 Cal.App.4th 802 [32 Cal.Rptr.3d 325]
duty to intended beneficiaries of a testamentary instrument
Harrigfeld v. Hancock (9th Cir. (Idaho) 2004) 364 F.3d
1024
estate planning
-attorney has duty to act with due care as to the interests of
the intended beneficiary
[27 Cal.Rptr.3d 246]
-attorney has no duty of care to non-client potential
beneficiary absent testator’s express intent to benefit non-client
Cal.Rptr.3d 758]
joint venture
Cal.Rptr.2d 252]
limitations on liability do not apply to liability for fraud
-non-fiduciary’s active concealment or suppression of facts
during a business negotiation is the equivalent of false
representation and non-fiduciary therefore is held liable
Cal.Rptr.3d 26]
no duty to third-party absent an intent to benefit third party
Cal.App.4th 998 [55 Cal.Rptr.3d 911]
no obligation to indemnify agent when no attorney-client
relationship established between client’s attorney and client’s
agency who negotiated a contract concurrently on behalf of
their mutual client
1116 [79 Cal.Rptr.2d 613]
unrepresented party to pre-marital agreement negotiation,
duty to client requires attorney to take steps to ensure
agreement will be enforceable and the best assurance of
enforceability is independent representation for both parties
In re Marriage of Bonds (2000) 24 Cal.4th 1 [99
Cal.Rptr.2d 860]
wife, an attorney, was advised of potential conflict of interest
orally and twice in writing, and wife voluntarily entered into
the post-nuptial agreement while acting as her own attorney
In re Marriage of Friedman (2002) 100 Cal.App.4th 65
[122 Cal.Rptr.2d 412]
To refrain from acquiring pecuniary interest adverse to former
client
Cal.App.3d 884 [250 Cal.Rptr. 339]
To third parties
estate planning
-attorney has duty to act with due care as to the interests of
the intended beneficiary
Cal.Rptr.3d 167]
Truth, employ means only consistent with
Business and Professions Code section 6068(d)
Rule 5-200, California Rules of Professional Conduct
In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State
Bar Ct. Rptr. 166
LA 504 (1991)
LA 434 (1991)
LA 248 (1994)
Truthfulness
advice to client to terminate co-counsel
SF 2011-1
Undivided loyalty to client
Commercial Standard Title Co. v. Superior Court (1979) 92
Cal.App.3d 934, 945 [155 Cal.Rptr. 393]
LA 428 (1984)
EDUCATIONAL ACTIVITY

Unpaid settlement negotiations do not require attorney to withdraw
CAL 2009-178
Use such skill and diligence as others in the profession commonly used
Violations of California Rules of Professional Conduct
SD 1992-2, LA 440 (1986), SF 1977-1
Withdrawal [See Conflict of interest. Substitution. Withdrawal.]
forseeable prejudice to client's rights
CAL 2014-190
reasonable steps to avoid reasonably foreseeable prejudice to client's rights
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269
-attorney's active steps to prejudice client's rights
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
violation of professional responsibility
Witness honor of
-advance no fact prejudicial to Business and Professions Code section 6068(f)
reputation of
-advance no fact prejudicial to Business and Professions Code section 6068(f)
EDUCATIONAL ACTIVITY [See Broadcasting. Business activity. Publication.]
Lectures, seminars, teaching, etc.
Belli v. State Bar (1974) 10 Cal.3d 624
Warden v. State Bar (1999) 21 Cal.4th 628
CAL 1972-29
SD 1974-21, SD 1974-16, SD 1969-8, SD 1969-6
ELECTIONS [See Political activity.]
ELECTRONIC SURVEILLANCE [See Recording.]
EMBEZZLEMENT [See Client trust fund, misappropriation. Misappropriation. Misconduct.]
EMPLOYEE [See Fee, lay person. Lay employee. Unauthorized Practice of Law.]
Disclosure of client confidences [See Confidences of the client.]
CAL 1979-50
Duty of attorney
- to adequately supervise
Pinca v. Andrews (9th Cir. 2004) 389 F.3d 853
-attorney is responsible for calendaring error regardless of whether the error was made by the attorney or paralegal
Black v. State Bar (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288, 496 P.2d 968]
-pinca v. andrews (9th cir. 2004) 389 f.3d 853
-attorney liable for overdrawn bank account
Casol v. State Bar (1973) 8 Cal.3d 725, 725 [104 Cal.Rptr. 247, 501 P.2d 727]
-pinca v. andrews (9th cir. 2004) 389 f.3d 853
-attorney unaware collection procedures already initiated
Vaugn v. State Bar (1972) 6 Cal.3d 847, 857-858 [100 Cal.Rptr. 713, 494 P.2d 1257]
-calendaring paralegal
Pinca v. Andrews (9th Cir. 2004) 389 F.3d 853
-employees' repeated neglect of client's case
Moore v. State Bar (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161, 396 P.2d 577]
-improper correspondence sent by staff
-lapses in office procedure deemed willful
Trousil v. State Bar (1985) 38 Cal.3d 337, 342 [211 Cal.Rptr. 525]

-negligent office management
In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 505
-regarding client trust account
--no intent to defraud need be shown
-secretary's negligent management of client trust account
Gassman v. State Bar (1976) 18 Cal.3d 125 [132 Cal.Rptr. 675]
to instruct concerning preserving confidences and secrets of clients
CAL 1979-50
Duty to employer
Labor Code section 2650
Public agency attorney may be compelled, under threat of job discipline, to answer questions about the employee's job performance, so long as the employee is not required to waive the constitutional protection against criminal use of those answers
Spiegelbauer v. County of Santa Clara (2009) 45 Cal.4th 704 [88 Cal.Rptr.3d 590]

EMPLOYEE ASSOCIATION [See Labor union.]
EMPLOYMENT [See Acceptance of employment. Attorney-client relationship. Confidences of the client. Conflict of interest.]
Of attorney by office secretary
SD 1972-3
EMPLOYMENT AGENCY
CAL 1992-126
Accept employment from
committee of accident victims
LA 165 (1947)
customers of own business
LA 205 (1953), LA(I) 1977-2, LA(I) 1976-9, LA(I) 1976-7
group of property owners
LA 257 (1959)
lay person or entity to serve customers of
SD 1974-20
-employees of
SD 1972-3
-members of client association
LA(I) 1974-14, LA(I) 1947-8
-participants in educational activity
CAL 1972-29
-party when criticized work of counsel of
LA 313 (1969)
-pro bono clients
LA(I) 1975-6
-viewers of television program
LA 318 (1970)
Except when selected from list prepared by insurance agent
LA(I) 1964-3
ENVELOPE [See Advertising. Solicitation.]
ESCROW [See Real estate transaction.]
Agent
represents against grantor
LA 266 (1959)
-one party in dispute over escrow
LA(I) 1955-6
returns client's deposit after discovery that client was fraudulently induced into agreement
LA(I) 1957-1
Lawyer employee for escrow company prepares escrow documents for customers of employer
LA 205 (1953)
Sue client for damages while holding client’s stock in
LA 266 (1959)

ESTATE  [See Conflict of interest, estate.  Fee.  Will.]
Administrator
beneficiary under will
Probate Code section 21350 et. seq.
own employee for opponent’s estate
LA 341 (1973)
Administrator’s attorney
buys property for estate
LA 238 (1956)
extraordinary attorney’s fees for settlement of claims
against estate of decedent under a contingency fee
agreement must be approved by the court after noticed
hearing
Cal.Rptr.3d 573]
represents administrator in that capacity and in capacity as
heir
CAL 1976-41
LA 237 (1956), LA 193 (1952), LA 144 (1943),
LA 72 (1934), LA(I) 1967-6
takes assignment of administrator’s interest in estate to
secure loan
LA 228 (1955)
Attorney as beneficiary of trust
Bank of America v. Angel View Crippled Children’s
Attorney for conservatee owes no duty to beneficiary of
conservatee’s estate
Cal.Rptr.3d 629]
Attorney-client relationship does not extend to beneficiaries
Cal.Rptr.3d 758]
trust attorney owes no duty to non-client potential
beneficiary absent testator’s expressed intent to benefit
non-client
Cal.Rptr.3d 758]
Executor
beneficiary as
LA 219 (1954)
commission for sale of estate property
LA 317 (1970)
employs own lawyer employer as executor’s attorney
LA 382 (1979)
in individual capacity against co-executor
LA 72 (1934)
lawyer’s secretary as
LA 382 (1979)
represents
-beneficiaries in contest over heirship
LA(I) 1956-2
will contents revealed to after incompetency of client
LA 229 (1955)
Executor’s attorney
acts as real estate broker in the sale of estate property
SD 1992-1
attorney-client relationship extends only to the executor not
to the beneficiaries
Lasky, Haas, Cohler & Munter v. Superior Court (1985)
172 Cal.App.3d 264 [218 Cal.Rptr. 205]
SD 1990-2
commission for sale of estate property
LA 317 (1970), SD 1992-1
fee for doing executor’s work
Probate Code sections 10804 and 15687
LA 382 (1979), LA 347 (1975)
fees for services rendered to executor in individual capacity
Miller v. Campbell, Warburton, Fitzsimmons, Smith,
Cal.Rptr.3d 649]
offer to prepare claims of creditors of estate for fee
LA(I) 1961-6
own partnership
LA 219 (1954)
referral fee from broker listing estate property
SD 1989-2
represents beneficiaries against reopened estate
LA 269 (1960)
-estate as contestant in probate
LA 193 (1952)
-person in determination of heirship
LA 193 (1952), LA(I) 1965-8
-re-opened estate against
LA 269 (1960)
Independent review required under Probate Code section 21350
Cal.Rptr.3d 167]
Liability to intended beneficiaries of amended trust resulting from
attorney’s failure to deliver amendment to trustee prior to death
of settlor
Cal.Rptr.2d 691]
Liability to intended beneficiary where attorney failed to advise
client regarding requirements governing presumptively
disqualified donees, resulting in damage to intended beneficiary
Cal.Rptr.3d 167]
Cal.Rptr.3d 246]
Partnership
represents member-executor/trustee
LA 219 (1954)
Personal representative
attorney for heir bills for services covered by statutory fees to
be paid from estate
LA(I) 1956-7
Reasonableness of fees in trust administration, inefficient and
duplicative not permitted
Cal.Rptr.3d 723]
Successor fiduciary has the same powers and duties as the
predecessor including the power to sue attorney for malpractice
Cal.Rptr.3d 735]
Successor in interest may be liable for award of attorney’s fees
under a contract entered into by decedent
Cal.Rptr.3d 409]
Trustee
as beneficiary
LA 219 (1954)
attorney-client relationship does not extend to beneficiaries
Wells Fargo Bank v. Superior Court (Boltwood) (2000) 22
Cal.4th 201 [901 Cal.Rptr.2d 716]
(2005) 131 Cal.App.4th 802 [32 Cal.Rptr.3d 325]
Fletcher v. Superior Court (1990) 44 Cal.App.4th 773 [52
Cal.Rptr.2d 65]
Lasky, Haas, Cohler & Munter v. Superior Court (1985)
172 Cal.App.3d 264, 282
-successor fiduciary has the same powers and duties as the
predecessor including the power to sue attorney for malpractice
Cal.Rptr.3d 735]
attorney’s fees
-denied where a trustee voluntarily becomes a party to
a contest between the beneficiaries over who should
control and benefit from the trust
Cal.Rptr.2d 742]
-trust beneficiaries are entitled to attorney fees from trustee whose opposition to the contest was without reasonable cause and in bad faith
  
  Leader v. Cords (2010) 182 Cal.App.4th 1588 [107 Cal.Rptr.3d 505]  
  
  mishandling of estate  
  
  
  
  partnership represents when member is LA 219 (1954)  
  
  trust obligations between the United States and Indian tribes are defined by statute and are not comparable to a private trust relationship  
  
  
  Will  
  
  will depository, Probate Code sections 700 et seq. provide will depository, Probate Code sections 700 et seq. provide  
  
  a commercial will depository without client consent CAL 2007-173  
  
  will registry, attorney may register certain identifying information about a client’s will or estate documents if the attorney can determine, based on knowledge of client, that disclosure will not be detrimental to the client and will advance the client’s interests  
  
  CAL 2007-173  
  
  ETHICS COMMITTEES  
  
  State Bar of California:  
  
  Committee on Professional Responsibility and Conduct  
  State Bar of California  
  180 Howard Street  
  San Francisco, California 94105  
  Telephone: (415) 538-2107  
  Los Angeles County:  
  
  Professional Responsibility and Ethics Committee  
  Los Angeles County Bar Association  
  P. O. Box 55020  
  Los Angeles, California 90055  
  Telephone: (213) 627-2727  
  Orange County:  
  
  Professionalism and Ethics Committee  
  Orange County Bar Association  
  P.O. Box 6130  
  Newport Beach, CA 92658  
  Telephone: (949) 440-6700  
  San Diego:  
  
  Legal Ethics and Unlawful Practice Committee  
  San Diego County Bar Association  
  401 W. A. Street, Suite 1100  
  San Diego, California 92101  
  Telephone: (619) 231-0781  
  San Francisco:  
  
  Legal Ethics Committee  
  Bar Association of San Francisco  
  301 Battery Street  
  San Francisco, California 94111  
  Telephone: (415) 902-1600  
  EVIDENCE  
  
  Adverse credibility determination in a disciplinary proceeding  
  In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166  
  
  Affirmative duty to reveal “fruit of crime” evidence to prosecution  
  United States v. Kellington (Or. Cir. 2000) 217 F.3d 1084  
  LA 466 (1991)  
  
  Attorney-client privilege survives client’s death  
  
  Attorney-client privilege survives corporate merger  
  
  CONCLUSIONS  
  
  Conclusive weight given to disciplinary proceedings in Michigan despite lower standard of proof where the Michigan Supreme Court found the evidence of misconduct overwhelming  
  In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157  
  
  Conclusiveness of a final disciplinary order in another jurisdiction unless the misconduct in that jurisdiction would not warrant discipline in California or unless the disciplinary proceeding in that jurisdiction lacked fundamental constitutional protection  
  In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349  
  
  Discovery of critical evidence and improper vouching by federal prosecutor  
  United States v. Edwards (9th Cir. 1998) 154 F.3d 915  
  
  Duty to disclose altered evidence to opposing counsel  
  SD 1983-3  
  
  Immaterial that evidence used is embarrassing to opponent  
  Rule 5-220, Rules of Professional Conduct  
  LA 208 (1953)  
  
  Inadequate evidence to determine conflict of interest  
  Pringle v. La Chappelle (1999) 73 Cal.App.4th 1000 [87 Cal.Rptr.2d 90]  
  
  Intervention by non-party holder of privilege is not necessary or required to assert Evidence Code section 954 privilege  
  
  No error in excluding evidence of attorney’s willingness to stipulate to reasonable discipline  
  In the Matter of Silver (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902  
  
  Objections must be timely and specific  
  In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315  
  
  State rule of professional conduct cannot provide an adequate basis for a federal court to suppress evidence that is otherwise admissible  
  United States v. Ruehle (9th Cir. 2009) 583 F.3d 600  
  
  Substantial evidence in a standard 1.4(c)(ii) proceeding  
  In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289  
  
  Waiver of a constitutional due process and equal protection argument against the application of B&P Code section 6049.1  
  
  respondent failed to argue before the hearing department or in his briefs that culpability in a Michigan disciplinary proceeding required proof only by a preponderance of the evidence  
  In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349  
  
  EX PARTE COMMUNICATION WITH JUDGE  
  
  See Judge, Communication with judicial officers]  
  
  Rule 5-300, Rules of Professional Conduct (operative as of May 27, 1989)  
  In re Freeman (2006) 38 Cal.4th 630 [42 Cal.Rptr.3d 850]  
  SD 2013-2  
  
  “Judge” defined  
  
  CAL 1994-82  
  
  Judge engaged in improper ex parte conversations with parties and counsel about matters coming before him as a judge  
  In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157  
  
  Publication of article regarding pending case  
  
  Regarding matter on appeal CAL 1984-78
binding private arbitration clause in attorney-client fee agreement may be enforced under the California Arbitration Act (CAA) once the MFAA arbitration process is over.


Binding contract provision

CA 1981-56

Binding private arbitration clause in attorney-client fee agreement may be enforced under the California Arbitration Act (CAA) once the MFAA arbitration process is over.

Schatz v. Allen Matkins Leck Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]


Binding private arbitration clause in attorney-client fee agreement not effective where client requested mandatory arbitration pursuant to State Bar rules for fee disputes.


Client waiver of arbitration rights


Client’s fee guarantor entitled to arbitrate fee dispute

Correction of arbitration award

Insurer is not a “client” for purposes of mandatory fee arbitration and may not demand an arbitration of attorney’s fees incurred on behalf of an insured client.


Notice of client’s right to arbitrate a dispute must be given after dispute has arisen.


OC 99-002

dismissal is not automatic after attorney fails to give client arbitration right notice in fee dispute action.


Public policy
Schatz v. Allen Matkins Leck Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]


Schatz v. Allen Matkins Leck Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]


Untimely request for trial following an arbitration conducted pursuant to the mandatory fee arbitration act.


FEES

Business and Professions Code sections 6147-6149

Rule 2-107, Rules of Professional Conduct (operative until May 26, 1989)
Actions for recovery of compensation were not effective where client requested mandatory arbitration pursuant to State Bar rules for fee disputes.

billing practices

charges lien

- contingency fee agreements distinguished from hourly fee agreements

CAL 2006-170

confidential nature of Business and Professions Code section 6149

contract formation is governed by objective manifestations, not subjective intent of parties

court informed of

LA 281 (1959)
divorce

In re Marriage of Erickson and Simpson (2006) 141 Cal.App.4th 707 [46 Cal.Rptr.3d 253]
LA 261 (1959), LA 226 (1955)
evaluated at time of making

CAL 2006-170

fee provision in security agreement did not serve as ground for awarding fees and costs to oversecured creditor following its successful defense of adversary preference proceeding in bankruptcy matter

In re Connolly (9th Cir. BAP 1999) 238 B.R. 475 [34 Cal.Rptr.3d 160]

handle probate matter

- for less than statutory fee

LA 102 (1936)

hybrid, hourly and contingent

SF 1999-1

hybrid, reverse contingency


prepayment required

LA 360 (1976), LA(I) 1966-4

presumption of undue influence

- contract between attorney and client giving attorney interest in subject matter of representation

Cooley v. Miller & Lux (1914) 168 Cal. 120 [142 P. 83]

- fee contract with client after creation of attorney-client relationship – attorney carried burden to demonstrate fairness


- lien agreement assigning anticipated statutory fees in one case to satisfy fees incurred in another unrelated case does not give rise to

LA 496 (1998)

- presumption does not attach where fee agreement reached before or at creation of attorney-client relationship


- presumption of overreaching is rebuttable

Estate of Raphael (1951) 103 Cal.App.2d 792, 796 [230 P.2d 436]

- presumption that contract is without sufficient consideration

Lady v. Worthingham (1943) 57 Cal.App.2d 557, 560 [135 P.2d 205]

statutory clauses required

strictly construed against attorney
In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
-without specific agreement to do a major adjustment, agreement based on fixed hourly rate which provides for possible increase is valid, but only authorizes minor adjustments
to divide statutory award of attorney’s fees between attorney and client
LA 523 (2009)
Appeal of dismissal required to obtain appellate ruling
Mitchell v. City of Los Angeles (9th Cir. 1984) 741 F.2d 281
Appeal of order denying fees
on the basis of excusable negligence
order denying attorney’s fees under Civil Code section 2424.12 is not appealable
order denying award of attorney fees to plaintiff who successfully opposes an anti-Slapp motion is not immediately appealable
Appeal renders award not final
Christensen v. Stevedoring Services of America, Inc. (9th Cir. (Or.) 2005) 430 F.3d 1032
Appellate court has no jurisdiction to review an award of attorney fees made after entry of judgment unless the order awarding fees is separately appealed
Appointment of counsel
additional fees not available when case is not extended or complex
billing for services rendered prior to appointment
In re Russell John Larson (9th Cir. 1994) 174 B.R. 797
Apportionment between attorneys
SD 1969-4
Apportionment between clients
LA 424 (1984)
Apportionment of fee award between successful and unsuccessful claims
Arbitration [See Fee Arbitration.]
Business and Professions Code section 6200 et seq.
Schatz v. Allen Matkins Leck, Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]

See How to Use This Index, supra, p. i

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Aguilar v. Lerner (2004) 32 Cal.4th 974 [12 Cal.Rptr.3d 287]
arbitration award becomes binding 30 days after notice of award
Giorgianni v. Crowley (2011) 197 Cal.App.4th 1462 [129 Cal.Rptr.3d 546]
binding agreement
-arbitration in accordance with Business and Professions Code section 6200 et seq. is non-binding unless parties agree in writing to make it binding
Glaser, Weil, Fink, Jacobs and Shapiro, LLP v. Goff (2011) 194 Cal.App.4th 423 [125 Cal.Rptr.3d 26]
clarification of award suggested that attorney’s fees were not included
clause in retainer agreement
Schatz v. Allen Matkins Leck, Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]
CAL 1981-66
failure to comply with 6201(a) does not compel court to dismiss action
fee guarantor entitled to arbitrate fee dispute
initiation of a State Bar-sponsored fee arbitration proceeding is protected petitioning activity covered by the anti-SLAPP statute
insurer is not a “client” for purposes of mandatory fee arbitration and may not demand an arbitration of attorney’s fees incurred on behalf of an insured client
notice of client’s right to arbitrate a dispute must be given after dispute has arisen
LA 521 (2007), OC 99-002
Fees

public policy
Schatz v. Allen Matkins Leck Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]
--arbitration agreement is invalid and unenforceable if it is made as part of a contract that was invalid and unenforceable because it violated public policy

trial court ordered to either assign the two attorneys the same rate of compensation or to articulate a reasonable basis for any difference

trial de novo after award of fees by arbitrator not preserved by client's filing of malpractice action

untimely request for trial following an arbitration conducted pursuant to the mandatory fee arbitration act
Aguilar v. Lerner (2004) 32 Cal.4th 974 [12 Cal.Rptr.3d 287]
vacation of arbitration award where arbitrator refused to hear evidence that an issue material to the controversy had previously been resolved and where the arbitrator's refusal substantially prejudiced the party seeking to introduce such evidence

Arrangement not subject to attorney-client privilege, no revelation of confidential information
Tornay v. U.S. (9th Cir. 1988) 840 F.2d 1424
Phaksuan v. U.S. (9th Cir. 1984) 722 F.2d 591, 594

Assigned counsel's private arrangement with client

SD 1969-9

Attempt to collect
Federal Savings and Loan Insurance Corporation v. Ferrante (9th Cir. 2004) 364 F.3d 1037
accrued interest on balance due

confidences divulged in collection effort
LA 452 (1988)


- contingent [See Fee, attempt to collect, discharge, quantum meruit.]
--attorney properly discharged for cause entitled to enforce lien to extent of reasonable value of services performed to date of discharge
Salopek v. Schoenmann (1942) 20 Cal.2d 150, 153 [124 P.2d 21]
--discharged attorney entitled only to reasonable value of services performed before discharge
--right of discharged attorney to sue for agreed fee does not arise until recovery through services of the substituted attorney
Ahlin v. Superior Court (1939) 13 Cal.2d 368, 375-376 [90 P.2d 63]
quantum meruit [See Liens.]
--attorney discharged with or without cause entitled to recover only reasonable value of services rendered prior to discharge
Fracasse v. Brent (1972) 6 Cal.3d 784, 792 [100 Cal.Rptr. 385, 494 P.2d 9]
--discharged attorney entitled to quantum meruit recovery for reasonable value of services, upon occurrence of contingency

--discharged attorney refuses to accept offer of reasonable value of services from substituted attorney
--pro rata formula used where contingent fee insufficient to meet quantum meruit claims of both discharged and existing counsel

-duty of succeeding attorney
--action to recover
LA 109 (1937)

--award of attorney fees based on expert testimony fixing reasonable value of services
Mayock v. Splane (1943) 56 Cal.App.2d 563, 573 [132 P.2d 627]

--award of attorney fees based on reasonable value of services supported by expert testimony

--by associate attorney

"*Civil Code section 2235 dealing with the presumption of invalidity in contracts between trustee and beneficiary does not apply to attorney/client contracts (Civil Code section 2235 was repealed 7/1/87)
Probate Code sections 16002 and 16004

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838

--contracts between attorney-client; client cannot escape full payment of fees merely because attorney's services prove less valuable than contemplated


determination of reasonable attorney fees primarily a question of fact for trial court; expert testimony unnecessary


discretion of trial court in setting value of services and in considering expert testimony; review by appeals court
Libby v. Kipp (1927) 840 F.2d 1424 [326 P.2d 68]

--effect of express contract on fees where attorney performs additional services beyond contract

--evidence considered in determining attorney fees
- expert opinion by attorney on value of services questions of fact for jury; overhead office expenses may be considered in fixing value of services


- expert testimony on value of services admissible, but not essential

Spencer v. Collins (1909) 156 Cal. 298, 306-307 [104 P. 320]

- factors considered by court in determining reasonable value of attorney fees; when appeals court may modify award


- fee arbitration

Business and Professions Code §§ 6200-6206

- power of jury to use independent judgment in fixing value of attorney services irrespective of expert testimony

Lady v. Ruppe (1931) 113 Cal.App. 606, 608 [298 P. 859]

- suit for reasonable value of services under oral contract; trial court's power to determine value independently


- trial court determines what constitutes reasonable attorney fees; factors considered


- where no finding of fact made as to reasonable value of services by trial court, but evidence exists in records, Supreme Court will enter finding


from trustee in bankruptcy

- post-petition services

In re Alcala (9th Cir. 1990) 918 F.2d 99

judgment debtor was entitled to notice of judgment creditor's post-judgment fee application


post-judgment interest on attorney fees


- where no finding of fact made as to reasonable value of services by trial court, but evidence exists in records, Supreme Court will enter finding


quantum meruit

- attorney's lien not payable in circumvention of the Bankruptcy Code


- legal services rendered to executor in individual capacity


reasonable value of services

- attorney not entitled to lodestar multiplier in divorce action where seeking the reasonable value of his services and where there was no risk that attorney would not receive compensation under a contingency fee agreement


- effect of contract for attorney fees made after attorney-client relationship exists

Estate of Mallory (1929) 99 Cal.App. 96, 103 [278 P. 488]

Countryman v. California Trona Co. (1917) 35 Cal.App. 728, 735 [170 P. 1069]

- under invalid contingent fee contract, attorney entitled to reasonable value of services

Calvert v. Stoner (1948) 33 Cal.2d 97, 104-105 [199 P.2d 297]

- under invalid contract with client, attorney may secure reasonable value of services

Hall v. Orloff (1920) 49 Cal.App. 745, 749-750 [194 P. 296]

Attorney

- applies to all causes of action arising from malpractice claim

Waters v. Bournis (1985) 40 Cal.3d 424 [220 Cal.Rptr. 666]

- illegal

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220

Attorney obliged to do their best for their clients whatever the fee arrangement and are duty bound to maximize results and expedite resolution; anything less would be unethical and dishonorable


Attorney sued for malpractice is entitled to indemnification from law firm employer for costs of defending lawsuit arising from claims made by a former client


Attorney's fees agreed to by contract


agreement based on fixed hourly rate but provides for possible increase found valid


allowed to oversecured creditor

In re Salazar (9th Cir. BAP 1988) 62 B.R. 538

authorization for attorney to keep any extra sums resulting from a compromise of the claims of medical care providers

In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252

contract formation is governed by objective manifestations, not subjective intent of parties


contract formation is governed by objective manifestations, not subjective intent of parties


corporate in-house counsel entitled to reasonable fees under Civil Code section 1717

PLCM Group, Inc. v. Dreker (2000) 22 Cal.4th 1084 [95 Cal.Rptr.2d 198] as modified (June 2, 2000)

vacation of judgment as part of post-judgment settlement effectively eliminates court awarded fees based on contract


Attorney/client interests

so great as to make both parties on appeal for attorney's feesтерred

Kordich v. Marine Clerks Association (9th Cir. 1983) 715 F.2d 1392

Attorney's fees should be adequate to promote consumer class action


Authority of arbitrator


Authority of arbitrator to award fees under the terms of the controlling arbitration agreement


Authority of attorney

attorney had no right to file proposed fee order after discharge and substitution out of case

In re Marriage of Read (2002) 97 Cal.App.4th 476 [118 Cal.Rptr.2d 497]

Authority of court to compensate counsel

court may appoint counsel, but may not compensate without statutory authorization

San Diego County Dept. of Social Services v. Superior Court (2005) 134 Cal.App.4th 761 [36 Cal.Rptr.3d 294]
FEES

Award of attorney’s fees

Civil Code section 51 (Unruh Civil Rights Act)
Civil Code section 54 et seq. (Disabled Persons Act)

absent a contract determining a different disposition, attorney fees awarded under Labor Code section 1194, should be made payable directly to the attorney

absent agreement, fees awarded pursuant to California FEHA belong to attorneys who labored on case and not to client

against government
Lefemine v. Wideman (2012) 58 U.S. 1 [133 S.Ct. 9]
Gerling Global Reinsurance Corp. of America v. Garamendi (9th Cir. 2005) 400 F.3d 803

--CCP § 1038 does not authorize imposition of defense costs against the plaintiff’s attorney

--defense fees and costs awarded to public entity under CCP § 1038
Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150 [80 Cal.Rptr.3d 812]

--Anti-Assignment Act voids claimants’ assignment of attorney fees to their attorney but attorney retains lien interest
U.S. v. Kim (9th Cir. 2015) 797 F.3d 696

See How to Use This Index, supra, p. i
--denied where Attorney General, although the prevailing party, is the branch of government whose function is to represent the general public and to enforce proper enforcement  
People ex rel. Brown v. Tehama County Board of Supervisors (2007) 149 Cal.App.4th 422 [56 Cal.Rptr.3d 582]  
--fees should sometimes be awarded even where litigant's own benefits exceed its' actual costs  
--must be successful party  
Samantha C v. State Department of Developmental Services (2012) 207 Cal.App.4th 71 [142 Cal.Rptr.3d 625]  
--suspended corporation is not entitled to attorney fees  
City of San Diego v. San Diegans for Open Government (2016) 3 Cal.App.5th 568 [207 Cal.Rptr.3d 703]  
--trial court is not permitted to use a public entity's status to negate a lodestar that would otherwise be appropriate  
--under Equal Access to Justice Act  
Decker v. Berryhill (9th Cir. 2017) 856 F.3d 659  
Tobeler v. Colvin (9th Cir. 2014) 749 F.3d 830  
Citizens for Better Forestry v. U.S. Dept. of Agriculture (9th Cir. 2009) 567 F.3d 1128  
Le v. Astrue (9th Cir. 2016) 829 F.3d 1200  
U.S. v. Maroll (9th Cir. 2002) 277 F.3d 1156  
U.S. v. One 1997 Toyota Land Cruiser (9th Cir. 2001) 248 F.3d 899  
U.S. v. Real Property Known as 22249 Dolorosa Street (9th Cir. 2000) 190 F.3d 977  
--award of fees should indicate exactly what fees are traceable to the government's bad faith litigation conduct  
Rodriguez v. US (9th Cir. 2008) 542 F.3d 704  
--fees awarded when reckless conduct is combined with and additional factor, such as frivolousness, harassment, or improper purpose  
Rodriguez v. US (9th Cir. 2008) 542 F.3d 704  
--under Government Code § 12989.2  
--fees denied to prevailing defendants in housing discrimination action brought by non-party regulatory agency because Government Code § 12989.2 disallows an award of fees to or against the state  
Department of Fair Employment and Housing v. Mayr et al. (2011) 192 Cal.App.4th 719 [120 Cal.Rptr.3d 938]  
--under Hyde Amendment (18 U.S.C. § 3006A)  
U.S. v. Hristov (9th Cir. (Nev.) 2005) 396 F.3d 1044  
U.S. v. Manchester Farming Partnership (9th Cir. (Mont.) 2003) 315 F.3d 1176  
--under U.S.C.A. § 7430  
Morrison v. Commissioner of Internal Revenue (9th Cir. 2009) 565 F.3d 658  
Pacific Fisheries Inc. v. U.S. (9th Cir. (Wash.) 2007) 484 F.3d 1103  
against party, not attorney, for "costs of proof" in discovery requests for admission  
Estate of Manuel (2010) 187 Cal.App.4th 400 [113 Cal.Rptr.3d 448]  

agreement providing that trial court will determine prevailing party and award of attorney fees is valid and enforceable  
--Indian tribe sovereign immunity argument used in construction contract fee dispute  
allocation of fees  
--not required where attorney also represented other parties who had no written contracts because work pertained to legal issues common to all the parties and separation of attorney’s activities into compensable and non-compensable time units was impossible  
--American Rule” that each party must bear its own legal fees  
--city manager, analogous to a corporate employee, not liable for attorney's fees based upon conduct on behalf of employer  
--does not apply where each parties have agreed to allocate attorney fees by contract  
--exceptions  
Abouab v. City and County of San Francisco (2006) 141 Cal.App.4th 643 [46 Cal.Rptr.3d 206]  
--public interest and substantial benefit doctrine  
--doctrine does not require a fee award merely because the litigation produced changes which were relatively minor and had no actual or concrete impact on the actions taken by the adverse party  
Pipefitters Local No. 636 v. Oakley, Inc. (2010) 180 Cal.App.4th 1542 [104 Cal.Rptr.3d 78]  
--Labor Code § 218.5’s award of attorney’s fees not applicable to claims brought by former employees for failure to provide statutorily mandated meal and rest periods  
--no equitable exception where party prevailed in showing that written contract was voided for lack of mutual assent  
Golden Pisces, Inc. v. Wahl Marine Construction (9th Cir. 2007) 495 F.3d 1078  
--rule applies to regents of defendant university who are constitutionally immune from the statutory fee-shifting provision of Labor Code § 218.5  
--statutory authority for  
"third-party tort" exception  
In re Bertola (9th Cir. BAP 2004) 317 B.R. 95  
Schneider, Friedman, Collard, Poswell & Virga (1991) 232 Cal.App.3d 1276
FEES

Americans with Disabilities Act
-district court could not deny fees based on a finding that prevailing party had unreasonably prolonged the litigation, but the court could consider prevailing party’s actions in reducing fees
   Jankey v. Prop Deck (9th Cir. 2008) 537 F.3d 1122
   -fees awarded to defendant required to defend against plaintiff’s groundless state court claim following dismissal of federal court case
   -fees denied to prevailing defendant where such award under state law is pre-empted by federal law
   Hubbard v. Sobreck, LLC (9th Cir. 2009) 554 F.3d 742
   -fees granted where plaintiff enters into legally enforceable settlement agreement with defendant
   Richard S. v. Department of Developmental Services of State of California (9th Cir. 2003) 317 F.3d 1080
Anti-SLAPP (Strategic Lawsuits Against Public Participation)
   -arising out of malicious prosecution action
     Daniels v. Robbins et al. (2010) 182 Cal.App.4th 204 [105 Cal.Rptr.3d 683]
     -defined
     --court that lacks subject matter jurisdiction over a claim may grant motion to strike the claim under CCP § 425.15 and award attorney’s fees to the defendant
     Barry v. State Bar (2017) 2 Cal.5th 318 [212 Cal.Rptr.3d 124]
     --mandatory award may be based on attorney’s declarations instead of time records
     Raining Data Corp. v. Barreneschea (2009) 175 Cal.App.4th 1363 [97 Cal.Rptr.3d 196]
     --the issue in an Anti-SLAPP motion (to strike) is whether the challenged action was one arising from an activity protected by the anti-SLAPP statute CCP § 426.16 (i.e. public interest, protected speech or petitioning activity)
   --complaint did not arise from protected speech or petitioning activities, but from the nonpayment of a bill
   Personal Court Reporters, Inc. v. Rand (2012) 205 Cal.App.4th 182 [140 Cal.Rptr.3d 301]
   appeal renders award not final
   Christensen v. Stevedoring Services of America, Inc. (9th Cir. (Or.) 2005) 430 F.3d 1032
   -appeal review of order fixing amount of attorney fees not available until entry of final judgment

appellate work
   -reduction in number of hours as duplicative unjustified where the court failed to take into account the differences between trial court and appellate work, which entails rigorous original work in its own right and which receives greater judicial scrutiny
   Center for Biological Diversity et al. v. County of San Bernardino (2010) 188 Cal.App.4th 803 [115 Cal.Rptr.3d 762]
apportionment of fees
   -not required if successful and unsuccessful claims are interrelated
arbitration cases
   --arbitration award may be modified where arbitrator inadvertently failed to rule on prevailing party’s claim to attorney’s fees and costs
   --arbitrator’s denial of attorney’s fees was not subject to judicial review where issue of fees was within scope of matters submitted for binding arbitration
   Moore v. First Bank of San Luis Obispo (2000) 22 Cal.4th 782 [94 Cal.Rptr.2d 603]
   --arbitrator’s determination of prevailing party is subject to appellate review
   --arbitrator’s failure to apply contract definition of prevailing party not subject to judicial review where determination of prevailing party was within scope of issues submitted for arbitration
   --authority of arbitrator to amend or correct a final award
   --arbitrator’s determination of prevailing party is subject to appellate review
   --authority of arbitrator to amend or correct a final award
   --authority of arbitrator to award fees
   --pursuant to Civil Code section 1717
   --court properly corrected award and remanded to arbitrator to determine reasonable fees and costs
FEES

See How to Use This Index, supra, p. i

2019 (updated entries through 12/31/2018)
FEES

-attorney’s fees incurred during litigation after the confirmation of a Chapter 11 bankruptcy plan were discharged by that bankruptcy

In re Castellino Villas, A. K. F., LLC (9th Cir. BAP 2016) 836 F.3d 1028

-attorney’s fees recoverable under sections of the Bankruptcy Code regarding discharge exceptions for fraud, provided that successful plaintiff could recover such fees in non-bankruptcy court

In re Bertola (9th Cir. BAP 2004) 317 B.R. 95

-authority of bankruptcy court to award fee enhancements

In re Pilgrim’s Pride Corp., (5th Cir. (Texas) 2012) 690 F.3d 650

-automatic stay of proceedings

In re Jastrem (9th Cir. 2001) 253 F.3d 438 [37 Bankr.Ct.Dec. 275]

-award of fees is void when underlying claim is in violation of stay

In re Miller (9th Cir. (Mont.) 2005) 397 F.3d 726

-award of fees to unsecured creditor incurred post-petition, but based on a pre-petition contract

In re SNTL Corp. (9th Cir. BAP 2007) 380 B.R. 204

-bankruptcy court did not abuse its discretion in declining to decide post-dismissal motion to enforce fee agreement between debtor and attorney

In re Elias (9th Cir. BAP 1999) 188 F.3d 1160 [34 Bankr.Ct.Dec. 1229]

-bankruptcy court erred in awarding debtor’s attorney fees and costs under statute

In re Faitalia (9th Cir. BAP 2016) 561 B.R. 767

-bankruptcy court erred in discharging unpaid attorney fees when debtor agreed in writing to personally pay fees upon completion of plan payments

In re LCO Enterprises, Inc. (9th Cir. BAP 2006) 344 B.R. 104

-bankruptcy court’s authority to order disgorgement of debtor’s counsel’s prepetition security retainer

In re Dick Cepek, Inc. (9th Cir. BAP 2006) 339 B.R. 730

-chapter 7 debtor’s attorney may receive professional fees from bankruptcy estate for post-petition services

In re Jastrem (9th Cir. 2001) 253 F.3d 438 [37 Bankr.Ct.Dec. 275]

-chapter 11 debtor’s counsel entitled to attorney’s fees only for services benefitting the estate

In re Xebec (9th Cir. 1992) 147 B.R. 518

-claims for attorney’s fees and costs incurred in post-petition are not discharged where post-petition, the debtor voluntarily commences litigation or otherwise voluntarily returns to the fray

In re Ybarra (9th Cir. 2005) 424 F.3d 1018

-contingent fee agreement, pre-approved by the bankruptcy court, should control the amount of compensation awarded unless it is determined that the agreement was “improvident” in light of unforeseeable developments

In re Reimers (9th Cir. 1992) 972 F.2d 1127

-court may enhance fee in exceptional circumstance

In re Manoa Finance Company (9th Cir. 1988) 853 F.2d 687

-creditor may recover attorney’s fees via proof of claim without need to file application for compensation

In re Atwood (9th Cir. BAP (Nev.) 2003) 293 B.R. 227

-creditor’s efforts to recover post-judgment attorney’s fees incurred to enforce a judgment


-debtor awarded appellate attorney’s fees pursuant to 11 USCA § 362(k)

In re Schwartz-Tallard (9th Cir. 2014) 765 F.3d 1096

-discharge applies to attorney fees and costs awarded against a debtor in an unsuccessful post-petition state court suit based on pre-petition causes of action

In re Ybarra (9th Cir. BAP 2003) 295 B.R. 609

-dischargeability of a contempt judgment

Suarez v. Barrett (9th Cir. 2009) 400 B.R. 732

-disgorgement of attorney fees against firm and attorney employee is proper

Bankruptcy of Sandoval (9th Cir. 1995) 186 B.R. 490

-disgorgement of attorney fees against firm not proper where law firm representation was approved by court

In re S.S. Retail Stores (9th Cir. 2000) 216 F.3d 882 [36 Bankr.Ct.Dec. 79]

-disgorgement of attorney fees is allowed after violation of bankruptcy code and rules

Bankruptcy of Basham (9th Cir. 1997) 208 B.R. 926

-emergency nature of legal services provided before court appointment justifies fee award to former counsel

Bankruptcy of Larson (9th Cir. 1994) 174 B.R. 797

-expenses incurred by petitioning creditors in connection with filing an involuntary bankruptcy petition may be reimbursed by debtor’s estate

In re Wind N’ Wave (9th Cir. 2007) 509 F.3d 938

-failure to seek relief from the bankruptcy court to characterize fees owing in a family law matter as non-dischargeable resulted in a dischargeable debt


-fee provision in security agreement did not serve as ground for awarding fees and costs to oversecured creditor following its successful defense of adversary preference proceeding

In re Connolly (9th Cir. BAP 1999) 238 B.R. 475 [34 Bankr.Ct.Dec. 1219]

-fees incurred in opposing objections to final fee application for winding up estate properly disallowed

In re Riverside-Linden Investment Co., (9th Cir. 1991) 945 F.2d 320

-fees recoverable if they are linked to litigation seeking to enforce a contract


-in accordance with state law

In re Coast Trading Co., Inc. (9th Cir. 1984) 744 F.2d 686, 693

-involuntary, debtors entitled to fees, costs and punitive damages in obtaining dismissal under 11 U.S.C. 362(k), though not for post-dismissal motions themselves

In re Southern California Sunbelt Developers, Inc. (9th Cir. 2010) 608 F.3d 456

-not awarded to alleged tortfeasor who was wholly exonerated and sought attorney fees from co-defendant on theory of implied indemnity under CCP § 1021.6


-open book accounting attorney’s fees claim not barred by statute of limitations

In re Robert Farms, Inc. (9th Cir. 1992) 980 F.2d 1248

-prevailing party may recover attorney fees in state court following dismissal of bankruptcy proceeding


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See How to Use This Index, supra, p. i
-“reasonable attorneys’ fees” calculated by court only a small fraction of actual amount charged by plaintiff’s attorneys

-request must be scaled to expected recovery

In re Kitchen Factors, Inc. (9th Cir. 1992) 143 B.R. 560

Unsecured Creditors’ Committee v. Puget Sound Plywood (9th Cir. 1991) 924 F.2d 955
-right to based on contract


In re Coast Trading Co., Inc. (9th Cir. 1984) 744 F.2d 686, 693-694

-self-appointed monitor of appellate proceedings by creditor not entitled to fees on the grounds that the validity of creditor’s liens and the prospect of full payment were never at issue

In re Hoopai (9th Cir. BAP 2007) 369 B.R. 506
-totality of circumstance test applied when awarding attorney’s fee

Higgins v. Vortex Fishing Systems Inc. (9th Cir. 2004) 379 F.3d 701
-trustee fees not proper for duties that are not practice of law

In re Garcia (9th Cir. BAP 2005) 335 B.R. 717
-waiver of fees and costs
--entitlement to fees and costs upon dismissal of an involuntary bankruptcy petition may be waived if all parties consent or if debtor waives relief

In the Matter of Maple-Whitworth (9th Cir. 2009) 556 F.3d 742

based on bad faith actions

Hyde v. Midland Credit Management, Inc. (9th Cir. 2009) 567 F.3d 1137

McElwaine v. US West, Inc. (9th Cir. (Ariz.) 1999) 176 F.3d 1167

Association of Flight Attendants, AFL-CIO v. Horizon Air Industries, Inc. (9th Cir. 1992) 976 F.2d 541


Brandt v. Superior Court (1985) 37 Cal.3d 813 [210 Cal.Rptr. 211]


-bad faith cannot be inferred from fact that party was unsuccessful


-Fair Debt Collection Practice Act (FDCPA), does not authorize award of attorney’s fees against attorneys representing debtors

Hyde v. Midland Credit Management, Inc. (9th Cir. 2009) 567 F.3d 1137

-injured third party who had been assigned insured’s bad faith action against liability insurer was entitled to recover attorney fees incurred in recovering policy benefits wrongfully withheld


based on underlying suit

Stanwood v. Green (9th Cir. 1984) 744 F.2d 714

basis for court decision

-attorney conduct
--justified by the vexatious, oppressive, obdurate, and bad faith conduct of litigation

Landsberg v. Scrabble Crossword Game Players, Inc. (9th Cir. 1984) 736 F.2d 485

Kinney v. Clark (2017) 12 Cal.App.5th 724 [219 Cal.Rptr.3d 247]
--limits zealous advocacy

Lone Ranger Television v. Program Radio Corp. (9th Cir. 1984) 740 F.2d 718, 727

-attorney’s fees may be reduced if prevailing defendant in anti-SLAPP action claims work not related to the motion to strike

-condition precedent must be met

-court may award costs and reasonable attorney fees in a judicial proceeding to confirm or vacate an arbitration award

-court misapplied the factors on which it focused while omitting analysis of other factors that may have allowed award of attorney fees

Glacier Films (USA), Inc. v. Turchin (9th Cir. 2018) 896 F.3d 1033
-court must articulate factors used to calculate award

Ferland v. Conrad Credit Corp. (9th Cir. 2001) 244 F.3d 1145

Beatty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607


--no general rule requiring trial courts to explain their decisions on motions seeking attorney fees


-denial of attorney’s fees in second case where primary benefit already conferred upon client in first case

Kerr v. Screen Extras Guild, Inc. (9th Cir. 1975) 526 F.2d 67; Cert. denied 425 U.S. 951 [96 S.Ct. 1726]
-distict court erred by reducing attorney fee award by almost 37% without sufficiently explaining its reason for the reduction

Carter v. Caleb Brett LLC (9th Cir. 2014) 757 F.3d 896

-distict court presiding over settlement fund had equitable power to award attorney fees for work outside litigation immediately before court where that work helped create settlement fund

Wingenier v. SI Management, L.P. (9th Cir. 2002) 301 F.3d 1115

-explanation required of trial court’s calculation in order to withstand review

United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 896 F.2d 403

See How to Use This Index, supra, p. i
- in action to expunge a lis pendens, court has discretion to award attorney fees based on several considerations: which party would have prevailed on the motion, whether lis pendens claimant acted justifiably in withdrawing the lis pendens, or whether the imposition of fees would be unjust
  - in dissolution matter, award of post-judgment interest on attorney fees
- in dissolution matter, denial of attorney's fees under CC § 4370 (Family Law Act)
  - in dissolution matter, denial of attorney's fees under Family Code § 2030
  - In re the Marriage of Tharp (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 375]
    - plaintiff obtains some relief on merits of claim and is thus entitled to attorney's fees
  - Gerling Global Reinsurance Corp. of America v. Garamendi (9th Cir. 2005) 400 F.3d 803
    - sufficient evidence supported court's decision to reduce prevailing party's award of attorney fees in anti-SLAPP motion
  - 569 East County Boulevard LLC v. Backcountry Against the Dump, Inc. (2016) 6 Cal.App.5th 426 [212 Cal.Rptr.3d 304]

basis of computation
  - Carter v. Caleb Brett LLC (9th Cir. 2014) 757 F.3d 866
  - Christensen v. Stevedoring Services of America (9th Cir. 2009) 557 F.3d 1049
  - Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106
  - Tutor-Saliba Corp. v. City of Hailey (9th Cir. 2006) 452 F.3d 1055
  - McElwaine v. US West, Inc. (9th Cir. (Ariz.) 1999) 176 F.3d 1167
  - Jones v. Espy (9th Cir. 1993) 10 F.3d 690
  - State of Florida v. Dunne (9th Cir. 1999) 915 F.2d 542
  - D’Emanuele v. Montgomery Ward & Co. (9th Cir. 1990) 904 F.2d 1379
  - United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 896 F.2d 403
  - People v. Millard (2009) 175 Cal.App.4th 7 [95 Cal.Rptr.3d 751]
    - award may be based on attorney’s declarations instead of time records
  - burden is on attorney fee applicant to produce satisfactory evidence of relevant market rate (in workers’ compensation case)
  - Van Skike v. Director, Office of Workers’ Compensation Programs (2009) 557 F.3d 1041

- consideration of indigent losing party’s financial condition
- court must articulate factors used to calculate award
  - Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973
  - Tutor-Saliba Corp. v. City of Hailey (2006) 452 F.3d 1055
  - Wininger v. SI Management, L.P. (9th Cir. 2002) 301 F.3d 1115
  - Feltrand v. Conrad Credit Corp. (9th Cir. 2001) 244 F.3d 1145
  - Beatty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607
    - no general rule requiring trial courts to explain their decisions on motions seeking attorney fees
- degree of success achieved by civil rights plaintiff a critical factor in determining the proper amount of attorney’s fees
- district court erred by reducing attorney fee award by almost 37% without sufficiently explaining its reason for the reduction
  - Carter v. Caleb Brett LLC (9th Cir. 2014) 757 F.3d 866
  - district court may cut the hours where lawyer does unnecessary duplicative work
  - Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106
- extent of plaintiff's success
  - Cinevision Corp. v. City of Burbank (9th Cir. 1984) 754 F.2d 560, 581
- fees awards in federal securities fraud actions must be reasonable in relation to plaintiffs’ recovery
  - Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249
- hours that are not properly billed to one’s client are also unnecessary duplicative work
  - Association of California Water Agencies v. Evans (9th Cir. 2004) 386 F.3d 879
- in Title VII action
  - Porter v. Winter (9th Cir. 2010) 603 F.3d 1113
  - Maldonado v. Lehman (9th Cir. 1987) 811 F.2d 1341
- marital dissolution cases
  - In re the Marriage of Tharp (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 375]
  - negative multiplier decreasing the lodestar is justified where amount of time attorney spent on class action case was unreasonable and duplicative
- prevailing market rate in relevant community
  - negative multiplier decreasing the lodestar is justified where amount of time attorney spent on class action case was unreasonable and duplicative
- prevailing market rate in relevant community
--award may exceed actual hourly rate
--under USCS section 928 (Longshore and Harbor Workers’ Compensation Act)
Shirrod v. Director, Office of Workers’ Compensation Programs (9th Cir. 2015) 809 F.3d 1082
Christensen v. Stevedoring Services of America (9th Cir. 2009) 557 F.3d 1049
-rule of practice, generally requires filing of cross-appeal to increase award
Mahach-Watkins v. Depes (9th Cir. 2010) 593 F.3d 1054
--lodestar methodology not applicable where fees are not shifted to the losing party
Crawford v. Astrue (9th Cir. 2009) 586 F.3d 1142
--trial court must adequately explain the basis for the award in a federal securities fraud action
Powers v. Icenh (9th Cir. 2000) 229 F.3d 1249
--under 18 U.S.C. § 3663A, bank fraud victim entitled to restitution of attorney’s fees not limited to those incurred to participate in law enforcement’s investigation and prosecution of a defendant but also including those incurred as direct and foreseeable result of the defendant’s wrongful conduct
U.S. v. Eyraud (9th Cir. 2015) 809 F.3d 462
--under Penal Code § 1202.4(f)(3), victim of convicted drunk driver was entitled to restitution for attorney services incurred to recover both economic and noneconomic damages
People v. Taylor (2011) 197 Cal.App.4th 757 [128 Cal.Rptr.3d 399]
People v. Millard (2009) 175 Cal.App.4th 7 [95 Cal.Rptr.3d 751]
--value of an estate is a factor in setting fees in elder abuse cases
Conservatorship of Levitt (2001) 93 Cal.App.4th 544 [113 Cal.Rptr.2d 294]
--where both frivolous and non frivolous claims are closely intertwined
Tutor-Saliba Corp. v. City of Hailey (9th Cir. 2006) 452 F.3d 1055
--“benchmark” fee calculation
Brown Act
--court has discretion to award attorney fees where it found that legislative body of a local agency has violated the Brown Act
--defendant must show that special circumstances exist to make award unjust
Los Angeles Times Communications v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1313 [5 Cal.Rptr.3d 776]
catalyst theory
civil rights cases
Civil Code section 51 (Unruh Civil Rights Act)
--fees denied where prevailing defendant intertwined its claims under two related but different code sections that permitted fee awards only to prevailing plaintiffs
Lefemine v. Wideman (2012) 568 U.S. 1 [133 S.Ct. 9]
Kimbrough v. California (9th Cir. 2010) 609 F.3d 1027
Guy v. City of San Diego (9th Cir. 2010) 606 F.3d 582
Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106
Aquirre v. Los Angeles Unified School District (9th Cir. 2009) 466 F.3d 1114
Gerling Global Reinsurance Corp. of America v. Garamendi (9th Cir. 2005) 400 F.3d 803
Stewart v. Gates (9th Cir. 1993) 987 F.2d 1450
--awards of fees in excess of damages justified where successful litigation causes conduct to be exposed and corrected
--consent decree’s silence as to attorney’s fees not waiver for prevailing party
Muckleshoot Tribe v. Puget Sound Power & Light Co. (9th Cir. 1989) 875 F.2d 695
--costs or out-of-pocket expenses are recoverable only with respect to claims for which attorney’s fees are recoverable
Harris v. Maricopa County Superior Court et al. (9th Cir. 2011) 631 F.3d 963
--court erred in granting fees to prevailing defendant by dividing general fees equally across both frivolous and non-frivolous claims and by attributing a pro-rata share of the total fees to frivolous civil rights claims
Harris v. Maricopa County Superior Court et al. (9th Cir. 2011) 631 F.3d 963
--denial of fees based on special circumstances under traditional prevailing party analysis
San Francisco N.A.A.C.P. v. San Francisco Unified School District (9th Cir. 2002) 284 F.3d 1163
--district court’s enhancing the lodestar figure was justified when it found plaintiff’s counsel achieved excellent results for clients under extreme pressure and with limited response
Kelly v. Wegner (9th Cir. 2016) 822 F.3d 1085
--fees denied where plaintiff prevailed on some of the claims in the lawsuit, but did not prevail on other claims that provided for attorney’s fees
--fees granted for litigating a separate case in which defendants were not parties, but where the issue was central to both actions affecting state prisoners and parolees
Armstrong v. Davis (9th Cir. 2003) 318 F.3d 965
--fees paid directly to plaintiff’s counsel by defendant pursuant to ADEA’s fee-shifting provision is taxable income to plaintiff
Sinyard v. Commissioner of Internal Revenue (9th Cir. 2001) 268 F.3d 756
--lump sum settlement offer that includes attorney’s fees may violate plaintiff’s implied federal right to contract with an attorney for the right to seek statutory attorney’s fees
Bernhardt v. Los Angeles County (9th Cir. 2003) 339 F.3d 920

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FEES

-no basis for a bright-line prohibition on awarding fees to successful civil rights plaintiffs who are represented by their attorney-spouses

Rickley v. County of Los Angeles (9th Cir. 2011) 654 F.3d 950

-party that won consent decree but was later unsuccessful in defending decree in a separate action not entitled to award of fees and costs

San Francisco N.A.A.C.P. v. San Francisco Unified School District (9th Cir. 2002) 284 F.3d 1163

-party who wins nominal damages for violation of their civil rights may be denied attorney's fees from those they sue


--three factors test

Mahach-Watkins v. Depes (9th Cir. 2010) 593 F.3d 1054

-party who wins nominal damages may receive attorney's fees with showing that lawsuit achieved other tangible results

Klein v. City of Laguna Beach (9th Cir. 2016) 810 F.3d 693

--proportionality of a fees award to the amount of damages recovered not an issue where plaintiff is able to isolate the time spent on successful claim or claims


-settlement offers containing a fee-waiver provision under fee shifting statutes

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-spouse, attorney who represents spouse entitled to fees

Rickley v. County of Los Angeles (9th Cir. 2011) 654 F.3d 950

-waiver of

Wakefield v. Mathews (9th Cir. 1988) 852 F.2d 482

claim for legal fees in Chapter 11 matter not time barred

In re Robert Farms, Inc. (9th Cir. 1992) 980 F.2d 1248

class action


In re FPI/Agretech Securities Litigation (9th Cir. 1997) 105 F.3d 469

Sneed v. CBoy (1994) 856 F.Supp. 526


LA 445 (1987)

-absent class members not liable for employer's attorney's fees in overtime dispute


-amount of fees determined to be reasonable in light of quantity and quality


-airtorney's fees approved by the trial court in a class action settlement are presumed to be reasonable where defendant agreed not to oppose award of certain amount to class counsel

In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]

--attorney's fees for securities class action suits should be based on individual case risk

In re Quantum Health Resources, Inc. (C.D. Cal. 1997) 962 F.Supp. 1254

--award of attorney's fees denied where shareholder's class action against corporation did not confer sufficient benefits to shareholders under the substantial benefit doctrine and where plaintiff did not engage in reasonable effort to resolve dispute prior to litigation

Pipefitters Local No. 636 v. Oakley, Inc. (2010) 180 Cal.App.4th 1542 [104 Cal.Rptr.3d 78]

--awarded pursuant to Civil Code section 1717


--basis of award to an unnamed member of putative class who defeats class certification is not entitled to attorney's fees


--court could not rely upon in camera review of time sheets and billing records that were not disclosed to opposing party in awarding attorney fees and costs


--extra award allowed lawyer who creates common fund

Paul v. Graufy (9th Cir. 1989) 886 F.2d 268

--fee allocation among co-counsel subject to court approval

In re FPI/Agretech Securities Litigation (9th Cir. 1997) 105 F.3d 469

--fees paid directly to plaintiff's counsel by defendant pursuant to ADEA's fee-shifting provision is taxable income to plaintiff

Sivard v. Commissioner of Internal Revenue (9th Cir. 2001) 268 F.3d 756

--lodestar multiplier method

--adjustment based on benefit conferred on class by class counsel

In re Bluetooth Headset Products Liability Litigation (9th Cir. 2011) 654 F.3d 933

Wininger v. SSI Management, L.P. (9th Cir. 2002) 301 F.3d 1115


--court failed to identify and consider the relevant community when determining the prevailing hourly rate for similar services by lawyers of comparable skill and experience

Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973

--reduction is justified where amount of time attorney spent on case was unreasonable and duplicative


--settlement shall not include attorney fees as portion of common fund established for benefit of class

In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]

--trial court acted within its discretion in awarding attorney's fees

Rickley v. County of Los Angeles (9th Cir. 2011) 654 F.3d 950
-no abuse of discretion where district court failed to increase the fee award to account for the class members' view of the requested fee award because there was an early settlement; the court used the lodestar method and applied a 1.5 multiplier for counsel's 100% success rate.

Fischel v. Equitable Life Assurance Society of the U.S. (9th Cir. 2002) 307 F.3d 997

-practice of setting the deadline for class members to object to fee awards before the actual motion for fees borders on denial of due process in that the class is denied the full and fair opportunity to examine and oppose the motion.

In re Mercury Interactive Corp. (9th Cir. 2010) 618 F.3d 988

-standing of objecting class member in securities fraud settlement is not needed for reconsideration and reduction of attorney fees award to class.

Zucker v. Occidental Petroleum (9th Cir. 1999) 192 F.3d 1323

-standing to appeal awards of

Lobatz v. U.S. West Cellular (9th Cir. 2000) 222 F.3d 1142

-class member lacks standing to object to attorney's fees and costs because attorney failed to demonstrate how the award adversely affected that member or the class.

Glasser v. Volkswagen of America, Inc. (9th Cir. 2011) 643 F.3d 1084

-standing to pursue an award of fees

--attorneys lack

Churchill Village LLC v. General Electric (9th Cir. 2004) 361 F.3d 566

--standing to pursue claim for interest on award of attorney's fees


-trial court has no inherent authority to sanction pro hac vice attorney for bad faith conduct by requiring payment of fees to opposing counsel


-when risk was slight


clear sailing agreements

In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]

-client may not keep fees which are measured by and paid on account of attorney's services

Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354

-client security fund

--assisting applicant


collections

LA 522 (2009)

common fund/equitable apportionment doctrine

Winingen v. SI Management, L.P. (9th Cir. 2002) 301 F.3d 1115

State of Florida ex rel. Butterworth v. Exxon Corp. (9th Cir. 1997) 109 F.3d 602

City and County of San Francisco v. Sweet (1995) 12 Cal.4th 105, 110, 115-117


Abouab v. City and County of San Francisco (2006) 141 Cal.App.4th 643 [46 Cal.Rptr.3d 206]


-fees and costs because attorney failed to demonstrate how the award adversely affected that member or the class.


-positive beneficiary


-computation of under Code of Civil Procedure 998 offer


constitutional immunity

-regents of defendant university, as an arm of the state, are immune from the fee-shifting provision of Labor Code § 218.5


-contingency fee, court not limited to


-contract for


-agreement based on fixed hourly rate but provides for possible increase found valid


-attorney fees awarded under contract to law firm seeking to collect unpaid legal bills


-award of attorney fee provision in contract applies to third-party beneficiary

Cargill Inc. v. Souza (2011) 201 Cal.App.4th 962 [134 Cal.Rptr.3d 38]


-basis for


-complete mutuality of remedy when contract purports to make recovery of attorney fees available to one or more parties


-defendant-sellers in real estate case are not required to seek mediation prior to recovery of attorney fees


-did not provide for entitlement to fees award for either party under such facts


-governed by equitable principles


-reciprocal provision


-recovery of attorney's fees may be awarded notwithstanding an invalid contract


-except when parties are in pari delicto

FEES

- resolving ambiguity in contracts or insurance
  - state reciprocity rule for attorney’s fees by contract applies to damages based on federal law
    United States v. Callahan (9th Cir. 1989) 884. F.2d 1780
  - third-party claimant who was not intended beneficiary of attorney fee clause in contract denied award
- vacation of judgment as part of post-judgment settlement effectively eliminates fee award based on contract

contractual

Nicholas Laboratories, LLC v. Chen (2011) 199 Cal.App.4th 1240 [132 Cal.Rptr.3d 223]

Nicholas Laboratories, LLC v. Chen (2011) 199 Cal.App.4th 1240 [132 Cal.Rptr.3d 223]

- attorney’s fees may be awarded to attorneys who represent each other in fee dispute with client that attorneys jointly represented
  Farmers Insurance Exchange v. Law Offices of Conrado Joe Sayas, Jr. (9th Cir. 2001) 250 F.3d 1234

- available for successfully defending or prosecuting an appeal
- award may be proper under broadly-worded attorney fee provision even where claim did not arise out of the agreement
- award of fees to legal aid foundation pursuant to contract, not by statute or common law right, does not violate ban on awards to recipients of Legal Services Corporation funding under 45 C.F.R. § 1642.2
- broadly worded attorney fee provision construed against drafting party
- claim for attorney’s fees on a breach of contract action must be based on a specific right agreed to by the contracting parties
- condition precedent must be met to recover attorney fees
- denial of attorney fees where party is non-signatory under contract and denied third-party beneficiary status
- denial of fees where party prevailed in enforcing contract that contained no attorney’s fees provision while losing party championed another contract with a fees provision
- did not provide for entitlement to fees award for either party under such facts
- fees set by contract not binding where contract was deemed to have been drafted to circumvent court’s authority to fix compensation under Labor Code § 4906
- law firm not entitled to attorney fees incurred in suit to recover unpaid fees from client, who had already paid entire contractual debt to firm before trial
- members of dissolved LLC are liable for attorney fees up to amount distributed upon dissolution for breach of contract by LLC
- memorandum of costs not required where party seeking contractual attorney fees pursuant to Civil Code section 1717 and Code of Civil Procedure section 1033.5
-party refusing to mediate where contract provision conditioning recovery of attorney’s fees upon acceptance of mediation is barred from recovering such fees
  
  
  
  -prevailing defendant not entitled to award of attorney fees where case brought under anti-hate crime statute
    
  
  -prior settlement agreement allowing recovery of attorney’s fees over statutorily permitted amount in subsequent action to enforce settlement
    
    **County of Sacramento v. Sandison** (2009) 174 Cal.App.4th 646 [95 Cal.Rptr.3d 30]
  
  -recovery of attorney’s fees may be awarded notwithstanding an invalid contract
    
  
  -under CC § 1717, provision for attorney’s fees may be awarded even if contract is invalid or unenforceable
    
    
    **Wood v. Santa Monica Escrow Co.** (2007) 151 Cal.App.4th 1186 [60 Cal.Rptr.3d 597]
    
  
  --party that prevails is entitled to attorney’s fees only if it can prove it would have been liable for such fees if the opposing party had prevailed
    
  
  -under CC § 1717, provision for attorney’s fees must be applied mutually and equally to all parties even if written otherwise
    
    **Burkhalter Kessler Clement & George LLP v. Hamilton** (2016) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]
    
    
    **Kandy Kiss of California, Inc. v. Tex-Ellent, Inc.** (2012) 209 Cal.App.4th 604 [146 Cal.Rptr.3d 899]
    
    
    
    **Silver Creek, LLC v. Blackrock Realty Advisors, Inc.** (2009) 173 Cal.App.4th 1533 [93 Cal.Rptr.3d 864]
    
    
    **--no ‘prevailing party’ fees for debtor when creditor voluntarily dismisses its own fee claim against debtor**
    
    **In re Brosio** (9th Cir. BAP 2014) 505 B.R. 903
    
    -vacation of judgment as part of post-judgment settlement effectively eliminates fee award based on contract
    
  
  -where attorney’s fees clause in contract is phrased broadly enough, it may support an award of fees to prevailing party in an action alleging both contractual and tort claims
    
    
    **Cruz v. Ayromloo** (2007) 155 Cal.App.4th 1270 [66 Cal.Rptr.3d 725]
  
  -where the attorney fee provision of a release agreement is narrowly drawn to actions to enforce the terms of a release, the provision cannot be extended to tort claims
    
    
  -where written contract was found to be voided for lack of mutual assent, attorney fees not available to prevailing party
    
    **Golden Pisces, Inc. v. Wahl Marine Construction (9th Cir. 2007) 495 F.3d 1078**
    
    --contractual versus statutory
    
    
    **Wong v. Thrifty Corp.** (2002) 97 Cal.App.4th 261 [118 Cal.Rptr.3d 276]
    
    **Loube v. Loube** (1998) 64 Cal.App.4th 421 [74 Cal.Rptr.2d 908]
    
    --attorney who acted pro se who litigates an anti-SLAPP motion on his own behalf may not recover attorney fees
    
    
    --attorney’s fees may be awarded to attorneys who represent each other in fee dispute with client that attorneys jointly represented
    
    **Farmers Insurance Exchange v. Law Offices of Conrado Joe Sayas, Jr.** (9th Cir. 2001) 250 F.3d 1234
    
    **Dzownikowski v. Spinella** (2011) 200 Cal.App.4th 930 [133 Cal.Rptr.3d 274]
    
    --award on contract claims in accordance with Civil Code § 1717
    
    **In re Penrod** (9th Cir. 2015) 802 F.3d 1084
    
    **Burkhalter Kessler Clement & George LLP v. Hamilton** (2018) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]
    
    **Hjelm v. Prometheus Real Estate Group, Inc.** (2016) 3 Cal.App.5th 1155 [208 Cal.Rptr.3d 394]
    
    
    **Kandy Kiss of California, Inc. v. Tex-Ellent, Inc.** (2012) 209 Cal.App.4th 604 [146 Cal.Rptr.3d 899]
    
    
    **SCI California Funeral Services Inc. v. Five Bridges Foundation** (2012) 203 Cal.App.4th 549 [137 Cal.Rptr.3d 693]
    
    **Silver Creek, LLC v. Blackrock Realty Advisors, Inc.** (2009) 173 Cal.App.4th 1533 [93 Cal.Rptr.3d 864]
    
    
--attorney fees may be awarded to more than one prevailing party in a breach of contract dispute
Burkalster Kessler Clement & George LLP v. Hamilton (2016) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]
--attorney's representation by associates of his firm precluded recovery of attorney fees after winning case against former client
--does not allow firm to recover fees incurred in suit to recover unpaid fees from client when client had already paid entire contractual debt owed to firm before trial
--does not bar recovery of attorney's fees for non-contract claims voluntarily dismissed by the plaintiff if attorney's fees clause is broad enough to encompass non-contract claims
--generally applies in favor of the party prevailing on a contract claim whenever that party would have been liable under the contract for attorney fees had the other party prevailed
Hjelm v. Prometheus Real Estate Group, Inc. (2016) 3 Cal.App.5th 1155 [208 Cal.Rptr.3d 394]
--no apportionment of fees between co-defendants is necessary when calculating attorney fees because same defenses applied to both of them
--no 'prevailing party' fees for debtor when creditor voluntarily dismisses its own fee claim against debtor
In re Bremo (9th Cir. BAP 2014) 505 B.R. 903
--party that prevails is entitled to attorney's fees only if it can prove it would have been liable for such fees if the opposing party had prevailed
--plaintiffs who were assigned developer's express indemnity cross-action against subcontractor were liable for attorney fees to subcontractor who prevailed in trial
--prevailing party status irrelevant when defendant was not a party to the underlying contract
--vacation of judgment as part of post-judgment settlement effectively eliminates fee award based on contract

-computation of under CCP § 998 offer
Scott Co. of California v. Blount Co. (1999) 20 Cal.4th 1103 [86 Cal.Rptr.2d 2d 614]
--when a Section 998 offer is silent on costs and fees, the prevailing party is entitled to costs and fees, the prevailing party is entitled to costs and fees, if authorized by statute or contract
--corporate in-house counsel entitled to reasonable fees under Civil Code section 1717
PLCM Group, Inc. v. Drelexer (2000) 22 Cal.4th 1084 [95 Cal.Rptr.2d 198] as modified (June 2, 2000)
--effect of voluntary dismissal upon recovery of non-contractual causes of action
--Family Code section 272, subdivision (a), authorizes the court, in its discretion, to order one spouse to pay other spouse’s attorney fees directly to attorney
In re Marriage of Erickson and Simpson (2006) 141 Cal.App.4th 707 [46 Cal.Rptr.3d 253]
--fees set by contract not binding where contract was deemed to have been drafted to circumvent court’s authority to fix compensation under Labor Code § 4906
--indemnification agreement enforced
City of Watsonville v. Corrigan (2007) 149 Cal.App.4th 1542 [58 Cal.Rptr.3d 458]
--limitation on contingency contract under MICRA as codified in Bus. & Prof. Code § 6146
In re Brosgol (9th Cir. BAP 2014) 505 B.R. 903
--misuse of attorney fee claims sometimes leads to protracted litigation that consumes judicial resources and client money, serves no public purpose, and impair image of legal profession
--party that scored procedural victory not deemed to be prevailing party
In re Estate of Drummond (2007) 149 Cal.App.4th 466 [56 Cal.Rptr.3d 691]
prevailing party entitled to attorney’s fees under Civil Code section 1717 if opposing party has sought attorney’s fees under it


prevailing party entitled to fees under Code of Civil Procedure section 1032 even where no net recovery by prevailing party


prior settlement agreement allowing recovery of attorney’s fees over statutorily permitted amount in subsequent action to enforce settlement


-statute containing a unilateral fee shifting provision controls where all causes of action arise out of one transaction, notwithstanding a contract containing a fee award to prevailing attorney


Corporations Code section 800


-section 800 is a bond or security statute, not a liability statute, and as such, prevailing defendant was precluded from recovering fees and costs in excess of the posted bond


cost of litigation includes attorney fees and expert witness fees for purposes of applying automatic stay provisions


court could not rely upon camera review of time sheets and billing records that were not disclosed to opposing party in awarding attorney fees and costs


court erred in awarding attorney fees to prevailing defendant on malicious prosecution claim when claim was not frivolous

Fabbri v. City of Dunsmuir (9th Cir. 2011) 631 F.3d 1299

court has discretion to consider the success or failure of the litigation as one factor in assessing attorney fees

Beaty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607


court may require declaration before ordering


-depends upon whether plaintiff is entitled to fees and whether court has discretion

Powell v. United States Dept. of Justice (N.D. Cal. 1983) 569 F.Supp. 1192

court of appeal will not disturb trial court’s decision on a party’s request for attorney fees unless it is clearly an abuse of discretion


-trial judge in best position to evaluate value of attorney’s services in courtroom


criminal law

-under Penal Code § 1202.4(f)(3)


allows restitution only for that portion of attorney fees attributable to the victim’s recovery of economic damages

People v. Millard (2009) 175 Cal.App.4th 7 [95 Cal.Rptr.3d 751]

People v. Fulton (2002) 99 Cal.App.4th 1292 [121 Cal.Rptr.2d 528]

--victim’s comparative negligence may reduce amount of restitution for economic losses

People v. Millard (2009) 175 Cal.App.4th 7 [95 Cal.Rptr.3d 751]

Davis-Stirling Common Interest Development Act

determination of reasonable attorney’s fees and costs


decedent’s successor in interest may be liable for attorney’s fees under a contract entered into by decedent


default judgment

--attorney’s fees not required to be specified in a complaint where the prevailing party could not have predicted the amount of fees it would incur after the litigation commenced and prior to the court awarding terminating sanctions against the adverse party


defendant awarded attorney fees for defending voluntarily dismissed claims when dismissal is based on plaintiff’s poor reasoning


defendant employer’s aborted appeal allows employee who prevailed in administrative hearing to recover attorney’s fees


defense attorney and expert witnesses fees for purposes of applying automatic stay provisions


court could not rely upon review of time sheets and billing records that were not disclosed to opposing party in awarding attorney fees and costs

Christensen v. Stevedoring Services of America (9th Cir. 2009) 557 F.3d 1049

delay in payment should be considered in determining award

Fischel v. Equitable Life Assurance Society of the U.S. (9th Cir. 2002) 307 F.3d 997

despite party’s failure to file noticed motion


delay enhancement


delay in payment should be considered in determining award

Christensen v. Stevedoring Services of America (9th Cir. 2009) 557 F.3d 1049

delay in payment should be considered in determining award

Fischel v. Equitable Life Assurance Society of the U.S. (9th Cir. 2002) 307 F.3d 997

despite party’s failure to file noticed motion


Disabled Persons Act (Civil Code section 54 et seq)


discretion of appellate court


discretion of arbitrator to award fees


discretion of district court

-bias where quality of representation was used to reduce lodestar amount

Van Gerwin v. Guarantee Mutual Life Co. (9th Cir. 2000) 214 F.3d 1041

-court failed to identify and consider the relevant community when determining the prevailing hourly rate for similar services by lawyers of comparable skill and experience

Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973
 discretion of trial court
-court failed to identify and consider the relevant community when determining the prevailing hourly rate for similar services by lawyers of comparable skill and experience
Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973
-court may appoint counsel, but may not compensate without statutory authorization
San Diego County Dept. of Social Services v. Superior Court (2005) 134 Cal.App.4th 761 [36 Cal.Rptr.3d 294]
-court may award costs and reasonable attorney fees in a judicial proceeding to confirm or vacate an arbitration award
-court may determine need of spouse for award of attorney's fees -- abuse of discretion where court exceeds bounds of reason
-court may order one spouse to pay other spouse's attorney fees directly to attorney even after substitution form filed
In re Marriage of Erickson and Simpson (2006) 141 Cal.App.4th 707 [46 Cal.Rptr.3d 253]
de minimus damages award merits de minimus fee award
Chavez v. County of Orange (2001) 86 Cal.App.4th 312 [103 Cal.Rptr.2d 339]
district court abused its discretion when it denied attorney's fees based in part on court's exasperation with other, similar but unrelated suits
Glacier Films (USA), Inc. v. Turchin (9th Cir. 2018) 896 F.3d 1033
-FEHA matter
Chavez v. City of Los Angeles (2010) 47 Cal.4th 970 [104 Cal.Rptr.3d 710]
--court denied plaintiff attorney fees even though plaintiff suffered adverse employment decision in which discrimination was a motivating factor
-filing deadline for fee award is not triggered by an order granting summary judgment
-to award fees, but only when just
-trial judge in best position to evaluate value of attorney's services in courtroom
-trial judge's discretion to issue a fee reduction
-value of legal services a matter in which the trial court has its own expertise
PLMC Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1096
Conservatorship of Levitt (2001) 93 Cal.App.4th 544 [113 Cal.Rptr.2d 294]
-dissolution proceedings
district court required to consider twelve factors
Laborers' Clean-up Contract v. Uriarte Clean-up Service (9th Cir. 1984) 736 F.2d 516, 525
fees denied officers and directors who were not parties to a licensing agreement
each party is expected to pay own fees
effect of an appeal on
elder abuse by attorney
elder abuse cases
-fees denied where plaintiffs failed to prove causation by clear and convincing evidence
-value of an estate is a factor in setting fees
Conservatorship of Levitt (2001) 93 Cal.App.4th 544 [113 Cal.Rptr.2d 294]
-enforcement of foreign judgment
-entitlement
-based on contract or statute
Riverside Sheriff's Ass'n v. County of Riverside (2007) 152 Cal.App.4th 414 [61 Cal.Rptr.3d 295]
-entitlement to attorney's fees, but not the amount of the fee award is interlocutory. An appeal from a post judgment order awarding attorney's fees may be reviewed as to the entitlement and the amount of the fees awarded.
PR Burke Corp. v. Victor Valley Wastewater Reclamation Authority (2002) 98 Cal.App.4th 1047 [120 Cal.Rptr.2d 96]
-party is entitled to compensation for attorney's fees if opposing party would have been entitled to them

Equal Access to Justice Act
Decker v. Berrymill (9th Cir. 2017) 856 F.3d 659
Tobeler v. Colvin (9th Cir. 2014) 749 F.3d 830
Le v. Astrue (9th Cir. 2008) 529 F.3d 1200
U.S. v. Real Property at 2659 Roundhill Drive, Alamo, California (9th Cir. 2002) 283 F.3d 1146
U.S. v. Marolf (9th Cir. 2002) 277 F.3d 1156
U.S. v. One 1997 Toyota Land Cruiser (9th Cir. 2001) 248 F.3d 899
United States v. Rubin (9th Cir. 1996) 97 F.3d 373
Holt v. Shalala (9th Cir. 1994) 35 F.3d 376

-allow fee where ERISA matter
-ERISA

-opposing party would have been entitled to compensation

-arrangement

-would not receive compensation under a contingency fee arrangement

-and inequitable where there was no risk that attorney would not receive compensation under a contingency fee arrangement


-allow fee where ERISA matter

-see excessive matter


-see excessive matter


-see excessive matter


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family law court fee awards must be reasonable and based on factual showings

In re Marriage of Keech (1999) 75 Cal.App.4th 860 [89 Cal.Rptr.2d 525]
fee arbitration

fee award for appeal proper after paternity adjudication

FEHA matter

-courts discretion to deny attorney fees
Chavez v. City of Los Angeles (2010) 47 Cal.4th 970 [104 Cal.Rptr.3d 710]
-prevailing defendant under this statute can only recover fees upon a showing that the plaintiff's action was frivolous, unreasonable, or without foundation
Lopez v. Routt (2017) 17 Cal.App.5th 1006 [225 Cal.Rptr.3d 851]

final judgment determining the prevailing party is a prerequisite for the district court to have jurisdiction to rule on a petition for fees

Scalion v. Sullivan (9th Cir. 1992) 974 F.2d 107
final judgment for purposes of an order to pay attorney fees refers to a final determination made at trial

-vacation of judgment as part of post-judgment settlement effectively eliminates fee award based on contract

for number of hours worked

White v. City of Richmond (N.D. Cal. 1982) 559 F.Supp. 127, 131
frivolous appeal

genral right to

In re Coast Trading Co., Inc. (9th Cir. 1984) 744 F.2d 686, 693
Handicapped Children's Protection Act
-retroactive application of attorney's fees recovery permissible
Abu-Sayyev v. Palo Alto Unified School District (9th Cir. 1988) 843 F.2d 1250
if party prevails against the United States
in anti-trust cases

Sealy Inc. v. Easy Living, Inc. (9th Cir. 1984) 743 F.2d 1378
award goes to successful plaintiff, not to plaintiff's counsel
Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354
in bankruptcy proceedings permitted unless court abused discretion or erroneously applied the law
In re Intern. Environmental Dynamics, Inc. (9th Cir. 1983) 718 F.2d 322
-interest in post-petition attorney fees
In re Riverside-Linden Investment Co. (9th Cir. BAP 1990) 111 B.R. 298

in collective bargaining contract arbitration case preempted by federal law

inappropriate when opponent lacked notice
Mayer v. Wedgewood Neighborhood Coalition (9th Cir. 1983) 707 F.2d 1020
-amended party must be given opportunity to respond and contest personal liability before judgment is entered against him

indemnification clause
-fees denied where clause makes no reference to attorney's fees which were incurred under circumstances not addressed in the agreement


Indian tribal law

Individuals with Disabilities Education Act

Irvine Unified School District v. K.G. (9th Cir. 2017) 853 F.3d 1087
T.B. ex rel. Brennise v. San Diego Unified School District (9th Cir. 2015) 806 F.3d 451
Weissburg v. Lancaster School District (9th Cir. 2010) 581 F.3d 1235
Aguirre v. Los Angeles Unified School District (9th Cir. 2006) 461 F.3d 1114

inherent power of federal court to amend

In re Levander (9th Cir. 1999) 180 F.3d 1114

INS matter

Commissioner, INS v. Jean (1990) 110 S.Ct. 2316
-entitled to fees and costs if litigant is prevailing party; the government fails to show its position was substantially justified; and the requested fees are reasonable
Carbonell v. I.N.S. (9th Cir. 2005) 429 F.3d 894

insurance cases

Allstate Insurance Co. v. Superior Court (2007) 60 Cal.Rptr.3d 762
interest on award of attorney’s fees pursuant to statutes governing post-judgment interest

interest on fees, attorney has standing to seek

in interest on prejudgment award of fees begins to accrue upon entry of judgment


interpleader funds

-award of attorney’s fees from interest accrued on interpleader funds statutorily prohibited by Code of Civil Procedure section 386.6


IRS matter

Morrison v. Commissioner of Internal Revenue (9th Cir. 2009) 565 F.3d 658
Estate of Cartwright v. Commissioner of Internal Revenue (9th Cir. 1999) 183 F.3d 1034
United States v. Blackman (9th Cir. 1995) 72 F.3d 1418
Smith v. Brady (9th Cir. 1992) 972 F.2d 1095
Huffman v. Commissioner of Internal Revenue (U.S. Tax Ct. 1992) 978 F.2d 1139
Bertolini v. Commissioner Internal Revenue Service (9th Cir. 1991) 930 F.2d 759

See How to Use This Index, supra, p. i
jurisdiction of court
- trial attorney fees after motion to quash granted for lack of personal jurisdiction

labor management dispute
- denial of fees where district court erred in remanding case to state court

Dahl v. Rosenfield (9th Cir. 2003) 316 F.3d 1074

landlord-tenant cases

lodge fee rates for attorney fees after motion to quash granted for lack of trial court has jurisdiction to rule on defendant’s motion to remand

[50 Cal.Rptr.3d 273]


Cal.App.4th 278 [106 Cal.Rptr.3d 265]

Cal.App.4th 140 [50 Cal.Rptr.3d 273]


- adjustment of a lodestar figure serves to fix the attorney’s fee at the fair market value for the particular action


- basic fee for comparable legal services in the community may be adjusted after consideration of several factors

People v. Millard (2009) 175 Cal.App.4th 7 [95 Cal.Rptr.3d 751]


- burden is on attorney fee applicant to produce satisfactory evidence of relevant market rate (in workers’ compensation case)

Van Skike v. Director, Office of Workers’ Compensation Programs (2009) 557 F.3d 1041

- court abused discretion in using cost-plus method of determining attorney fees where the lodestar method was the appropriate method


- court could not rely upon in camera review of time sheets and billing records that were not disclosed to opposing party in awarding attorney fees and costs


- court improperly considered an out-of-town attorney’s higher rates as the basis for a fee multiplier without an adequate evidentiary showing that hiring local counsel was impracticable


- court must articulate factors used to calculate award

Gonzalez v. City of Maywood (9th Cir. 2013) 729 F.3d 1196

Ferland v. Conrad Credit Corp. (9th Cir. 2001) 244 F.3d 1145


- detailed billing statements are not always necessary to support award of attorney fees under lodestar method


- district court erred by awarding an inconsistent fee based on the lodestar and a flat fee method

Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973

- even though prevailing party was charged a reduced rate

FEES

-federal district court in calculating lodestar amount for ERISA attorney fee, was required to explain its reduction in hourly rate
Welch v. Metropolitan Life Ins. Co. (9th Cir. 2007) 480 F.3d 942

-increase in fees
--superior performance in appropriate civil rights cases may allow for increase in fees beyond amount determined by lodestar calculation

-limited success

-lodestar enhancement is discretionary, not mandatory

-lodestar methodology not applicable where fees are not shifted to the losing party
Crawford v. Astre (9th Cir. 2009) 586 F.3d 1142

-propriety of a multiplier is based on contingent risk and the amount of the multiplier is an open question entrusted to the court's discretion
Center for Biological Diversity et al. v. County of San Bernardino (2010) 188 Cal.App.4th 603 [115 Cal.Rptr.3d 762]

-reduction in fees
Welch v. Metropolitan Life Ins. Co. (9th Cir. 2007) 480 F.3d 942

Van Gerwin v. Guarantee Mutual Life Co. (9th Cir. 2000) 214 F.3d 1041


--court instructions not necessary

--no fees for counsel's work on unsuccessful or unrelated claims to the claim on which he succeeded

--reduction of fees by 90% where court found prevailing litigant had unnecessarily prolonged the litigation and counsel's time was not reasonably incurred

--trial court erred in reducing of attorney's fees and costs in party's refusal to accept an unreasonable or invalid offer under CCP § 998

--victim's comparative negligence may reduce amount of restitution for economic losses
People v. Millard (2009) 175 Cal.App.4th 7 [95 Cal.Rptr.3d 751]

-related/unrelated claims

-trial court is not permitted to use a public entity's status to negate a lodestar that would otherwise be appropriate
Rogel v. Lynnwood Redevelopment Agency (2011) 194 Cal.App.4th 1319 [125 Cal.Rptr.3d 267]

malpractice action

-alleged malpractice of attorney appointed by insurer did not render attorney liable for insurer's fees for independent counsel

-denial of fees where district court erred in remanding case to state court
Dahl v. Rosenfield (9th Cir. 2003) 316 F.3d 1074

market rate prevailing in relevant community used to determine award of attorney's fees
Gonzalez v. City of Maywood (9th Cir. 2013) 729 F.3d 1196

Christensen v. Stevedoring Services of America (9th Cir. 2009) 557 F.3d 1049

Camach v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973

United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 896 F.2d 403

Center for Biological Diversity et al. v. County of San Bernardino (2010) 188 Cal.App.4th 603 [115 Cal.Rptr.3d 762]

--corporate in-house counsel entitled to reasonable fees under Civil Code section 1717
PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084 [95 Cal.Rptr.2d 198] as modified (June 2, 2000)

may be imposed when the lawsuit is frivolous, unreasonable, or without foundation
Gibson v. Office of the Attorney General (9th Cir. 2009) 561 F.3d 920

Tutor-Saliba Corp. v. City of Hailey (9th Cir. 2006) 452 F.3d 1055


--court may award attorneys' fees in excess of $25,000


Linsley v. Twentieth Century Fox Films Corp. (1999) 75 Cal.App.4th 762 [89 Cal.Rptr.2d 429]

--attorney fees may not be awarded as a sanction to an attorney representing himself
Musaedian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]

may include fees for appellate and post-remand services

--court instructions not necessary
Newhouse v. Roberts' Ilima Tours, Inc. (9th Cir. 1983) 708 F.2d 436, 441

Med-pay

memorandum of costs not required where party seeking contractual attorney fees pursuant to Civil Code section 1717 and Code of Civil Procedure section 1033.5

“more favorable judgment” test determines whether an appellant is “unsuccessful in the appeal”
Smith v. Rae-Venter Law Group (2014) 757 F.3d 1049

[242 Cal.Rptr.3d 35]

“more favorable judgment” test determines whether an appellant is “unsuccessful in the appeal”
Smith v. Rae-Venter Law Group (2014) 757 F.3d 1049

court may award attorneys’ fees in excess of $25,000 jurisdictonal amount

must be reasonable
Sealy Inc. v. Easy Living, Inc. (9th Cir. 1984) 743 F.2d 1378, 1385

-district court may review attorney’s “billing judgment” and reduce fees if some tasks should have been delegated to associate or paralegal
  Gonzalez v. City of Maywood (9th Cir. 2013) 729 F.3d 1196
-fee awards in federal securities fraud actions must be reasonable in relation to plaintiffs’ recovery
  Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249
-it is not unreasonable for amount of attorney fees to exceed amount of client’s recovery
  Gonzalez v. City of Maywood (9th Cir. 2013) 729 F.3d 1196
mutuality of remedy when contract permits recovery of attorney fees
needy spouse when other spouse is able to pay
  negligence of plaintiff’s attorney does not entitle defendant’s attorney to award
no fees where plaintiff did not seek fees in requesting default judgment
  no prevailing defendant when plaintiff dismissed all claims against defendants before motion to strike was filed by defendants
  no recovery of attorney’s fees incurred against another judgment creditor as to priority of judgments against judgment debtor where judgment debtor did not challenge judgment creditor’s rights
  no recovery of attorney’s fees unless contractual condition precedent is met
  no recovery of attorney’s fees unless they are specifically authorized by contract, statute, or law
  Riverside Sheriff’s Ass’n v. County of Riverside (2007) 152 Cal.App.4th 414 [61 Cal.Rptr.3d 295]
no recovery of attorney’s fees where petitioner fails to provide pre-lawsuit notification
  Abouab v. City and County of San Francisco (2006) 141 Cal.App.4th 643 [46 Cal.Rptr.3d 206]
nominal damages, no entitlement to attorney fees where only
not imposed when plaintiff presents a colorable claim and adverse jury verdict is less than unanimous
not limited by terms of contingency fee contract
  Clark & Bunker v. City of Los Angeles (9th Cir. 1986) 803 F.2d 987

not recoverable beyond surety’s penal sum
not recoverable unless they are specifically authorized by contract, statute, or law
isuance abatement actions
  City of Monte Sereno v. Padgett (2007) 149 Cal.App.4th 1530 [58 Cal.Rptr.3d 218]
out-of-state attorney
  -out-of-state attorney who merely assists California lawyer may recover attorney fees
    Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2005) 556 F.3d 815
  paid by surety
party awarded nominal damages not entitled to attorney fees where statute provided award of fees for actions to recover damages to personal or real property
pension cases
  Smith v. CMTA-IAM Pension Trust (9th Cir. 1984) 746 F.2d 587
periodic payment
  -attorney’s fees not subject to
petition for relief from fee judgment permitted if underlying merits of judgment is reversed and party has paid adversary’s attorney’s fees
  California Medical Association v. Shalala (9th Cir. 2000) 207 F.3d 575
pleading and proof required
plus cost
  Smith v. CMTA-IAM Pension Trust (9th Cir. 1984) 746 F.2d 587
prevaling defendant in SLAPP action despite plaintiff’s voluntary dismissal with prejudice
  -defendants denied recovery when anti-SLAPP motion filed after plaintiff’s voluntary dismissal of entire action without prejudice
prevaling defendant not entitled to award of attorney fees where case brought under anti-hate crime statute
prevailing defendant-attorneys on an anti-SLAPP motion are not entitled to attorney fees because they represented themselves
prevailing parties
-defined
Lefemine v. Wideman (2012) 568 U.S. 1 [133 S.Ct. 9]
Glacier Films (USA), Inc. v. Turchin (9th Cir. 2018) 896 F.3d 1033
Richardson v. Continental Grain Co. (9th Cir. 2003) 336 F.3d 1103
--Labor Code § 218.5's award of attorney's fees not applicable to claims brought by former employees for failure to provide statutorily mandated meal and rest periods
--party is a prevailing party under section 218.5 when the party prevails on a claim for unpaid wages, even when such a claim is made with other claims on which attorney fees are not recoverable
--attorney whose writ of mandate and complaint against defendant university ended in a favorable settlement was not considered to be an action within the meaning of Labor Code § 218.5 nor was the attorney considered to be the prevailing party
--plaintiff in an ADA (Americans with Disabilities Act) claim is the prevailing party if he achieves a material alteration of the legal relationship between the parties and that alteration is judicially sanctioned
Jankey v. Poop Deck (9th Cir. 2008) 537 F.3d 1122
--when trial court renders a simple, unqualified decision in favor of defendant on the only contract claim in the action, the defendant is the party prevailing on the contract as a matter of law and therefore entitled to reasonable attorney fees under section 1717
--Attorney General may appeal attorney fees in a settlement under Proposition 65
--attorney's fees can only be recovered against opposing parties
--advocacy groups filing amicus briefs are not opposing parties within meaning of section 1021.5 and therefore not liable for attorney fees

See How to Use This Index, supra, p. i
--supplemental fees request based on greater success on appeal

Center for Biological Diversity et al. v. County of San Bernardino (2010) 188 Cal.App.4th 603 [115 Cal.Rptr.3d 762]

-denyed on the grounds that in pro per party’s petition for fees was untimely

Esther B. v. City of Los Angeles et al. (2008) 158 Cal.App.4th 1093 [70 Cal.Rptr.3d 596]

-discovery may be allowed by the trial court

Save Open Space Santa Monica Mountains v. Superior Court (County of Los Angeles) (2000) 84 Cal.App.4th 235 [100 Cal.Rptr.2d 725]

--effect of Budget Act on


-entitled to fees because action resulted in enforcement of an important right affecting the public interest

Riverwatch v. County of San Diego Dept of Environmental Health (2009) 175 Cal.App.4th 768 [96 Cal.Rptr.3d 362]
Choi v. Orange County Great Park Corporation (2009) 175 Cal.App.4th 524 [96 Cal.Rptr.3d 90]

--fees denied where litigant had done nothing to curtail a public right other than to raise an issue in private litigation that resulted in an important legal precedent

Adoption of Joshua S. (2008) 42 Cal.4th 945 [70 Cal.Rptr.3d 372]

--family law

--fees denied where litigant sought a judgment to settle only her private rights and those of her children notwithstanding the public benefit to others whose adoptions were validated by the litigation

Adoption of Joshua S. (2008) 42 Cal.4th 945 [70 Cal.Rptr.3d 372]

--fees


--fees allowed where court held that proceedings involving modification of a permanent injunction were not “final judgments” that would trigger time limits for attorney fees


--jurisdiction of trial court is retained to award costs and fees despite filing of compromise agreement by the parties


--no award of attorney’s fees under Code of Civil Procedure section 1021.5 where pecuniary interest of public entity outweighed burden of litigation


--no important right is vindicated


-standard for

Conservatorship of Whiteley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]

Riverwatch v. County of San Diego Dept of Environmental Health (2009) 175 Cal.App.4th 768 [96 Cal.Rptr.3d 362]
Choi v. Orange County Great Park Corporation (2009) 175 Cal.App.4th 524 [96 Cal.Rptr.3d 90]


--fees denied where litigant had done nothing to curtail a public right other than to raise an issue in private litigation that resulted in an important legal precedent

Adoption of Joshua S. (2008) 42 Cal.4th 945 [70 Cal.Rptr.3d 372]

-Supreme Court’s exclusive discretion to fashion equitable awards of attorney fees

Ketchum v. Moses (2001) 24 Cal.4th 1122 [104 Cal.Rptr.2d 377]
Serrano v. Priest (1977) 20 Cal.3d 24 [141 Cal.Rptr. 315, 569 P.2d 1303]

-test

Conservatorship of Whiteley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]

--fees denied where litigant had done nothing to curtail a public right other than to raise an issue in private litigation that resulted in an important legal precedent


--unnamed member of putative class who defeats class certification


pro bono fee arrangement did not preclude award of fees under C.C.P. § 425.16


pro bono organization is entitled to an award of fees in child support cases


pro bono-type representation, even by a law firm with financial resources to absorb the cost of litigation, does not necessarily justify a reduction in fees award


pro se attorney litigant with an assisting counsel


probate matters

-discharged attorney not entitled to recover the reasonable value of services rendered up to discharge where probate court approval of fees was required, but not obtained

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
-fees denied where a trustee voluntarily becomes a party to a contest between the beneficiaries over who should control and benefit from the trust  
-includes work reasonably performed by attorney to establish and defend own fee claim  
  Estate of Trynin (1989) 49 Cal.3d 868
-no written fee contract necessary to pay statutory attorney fees out of probate estate for services rendered to personal representative  
  In re Estate of Wong (2012) 207 Cal.App.4th 366 [143 Cal.Rptr.3d 342]
-party that prevailed on change in forum from probate court to another court to hear petition for fees not deemed prevailing party  
  In re Estate of Drummond (2007) 149 Cal.App.4th 46 [56 Cal.Rptr.3d 691]
-probate court has equitable power to charge attorney fees against beneficiaries who instigate unfounded proceeding against trustee  
-trust beneficiaries are entitled to attorney fees from trustee whose opposition to the contest was without reasonable cause and in bad faith  
-under Probate Code section 17211(b)  

probation  
-trial court may not require reimbursement for attorneys' fees as a condition of probation  
proper despite party's failure to file noticed motion  

purpose of the cost-shifting settlement  
-offer statute is to encourage the settlement of litigation without trial, by punishing the party who fails to accept a reasonable settlement offer from its opponent  

purpose of the statute  
qui tam action  
-denial of attorney's fees where government's litigation position, although substandard, was not vexatious, frivolous, or pursued in bad faith  
  U.S. v. Manchester Farming Partnership (9th Cir. (Mont.) 2003) 315 F.3d 1176

reasonableness of  
-certain non-taxable costs, such as clerk and docketing fees, copying costs, can be awarded as part of a reasonable attorney’s fees under 15 USCA § 1681o(a)(2); 28 U.S.C.A. § 1920 (the Fair Credit Reporting Act)  
  Grove v. Wells Fargo Financial California, Inc. (9th Cir. 2010) 606 F.3d 577
-compensation sought by creditor’s attorney in connection with an involuntary bankruptcy was permissible so long as the creditor met the statutory standard  
  In re Wind N’ Wave (9th Cir. 2007) 509 F.3d 938
-consideration of indigent losing party’s financial condition  
-corporate in-house counsel entitled to reasonable fees under Civil Code section 1717  
  PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084 [95 Cal.Rptr.2d 198] as modified (June 2, 2000)
-court improperly considered an out-of-town attorney’s higher rates as the basis for a fee multiplier without an adequate evidentiary showing that it was impracticable to hire local counsel  
-court should look first to the contingent fee agreement, then test it for reasonableness  
  Crawford v. Astrue (9th Cir. 2009) 586 F.3d 1142
-district court could not deny fees based on a finding that prevailing party had unreasonably prolonged the litigation, but the court could consider prevailing party’s actions in reducing fees  
  Jankey v. Poop Deck (9th Cir. 2008) 537 F.3d 1122
-district court may review attorney’s “billing judgment” and reduce fees if some tasks should have been delegated to associate or paralegal  
-district court must provide a concise but clear explanation of its reasons for the fee award, even though it has discretion to determine a reasonable fee  
  Crawford v. Astrue (9th Cir. 2009) 586 F.3d 1142
-district court must provide more specific reasons for making such a significant reduction in fees (37%)  
  Carter v. Caleb Brett LLC (9th Cir. 2014) 757 F.3d 866

-fee awards in federal securities fraud actions must be reasonable in relation to plaintiffs' recovery  
  Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249
-fees award that was three times the compensatory damages awarded to plaintiff not necessarily a consideration in determining a reasonable fee  

-medical malpractice cases  
-monitoring state officials’ compliance with settlement  
  Prison Legal News v. Schwarzenegger (9th Cir. 2010) 608 F.3d 446
-no abuse of discretion found where court awarded fees even though attorney had about three years of experience mainly in another area of law  
-rate determined by current rates where there was delay, rather than by adding interest, and hourly rates were based on relevant community of attorneys engaged in similar complex litigation was not abuse of discretion  
  Prison Legal News v. Schwarzenegger (9th Cir. 2010) 608 F.3d 446
-rate determined by lodestar calculation reasonable even where may have exceeded actual hourly rate  
-reduction of fees by 90% where court found prevailing
litigant had unnecessarily prolonged the litigation and
counsel’s time was not reasonably incurred
Cal.App.4th 770 [75 Cal.Rptr.3d 902]
-reduction of fees by trial court without identifying which
factors made the requested hourly rates unreasonable
Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008)
523 F.3d 973
-trial court erred in reducing of attorney’s fees and costs
in party’s refusal to accept an unreasonable or invalid
offer under CCP § 998
[242 Cal.Rptr.3d 35]
-trial judge in best position to determine value of
services
Cal.App.4th 1223 [138 Cal.Rptr.3d 192]
Gorman v. Tassajara Development Corp. (2009) 178
Cal.App.4th 44 [100 Cal.Rptr.3d 152]
-under 42 U.S.C. § 406(b) (social security benefits)
S.Ct. 1817, 152 L.Ed.2d 996]
Parrish v. Commissioner of Social Sec. Admin. (9th
Cir. 2012) 698 F.3d 1215
Crawford v. Astrue (9th Cir. 2009) 586 F.3d 1142
-rebate portion to client
-recoverable even where documents at issue not proven
under the statute
Tract 19051 Homeowners Assn. v. Kemp (2015) 60
Cal.4th 1135 [184 Cal.Rptr.3d 701]
-recovery of costs and fees under a sister state judgment
not prohibited under California law
Aspen International Capital Corporation v. Marsch
(1991) 235 Cal.App.3d 1199
-reviewable on appeal
Cal.Rptr.3d 534]
Cal.Rptr. 461]
Cal.App.3d 1009, 1012
Cal.App.3d 728, 738-739
- appellate court has no jurisdiction to review an award
of attorney fees made after entry of judgment unless the
order awarding fees is separately appealed
Cal.Rptr.3d 247]
-award of attorney fees may be modified where arbitrator
inadvertently failed to rule on prevailing party’s claim
to attorney’s fees and costs
Century City Medical Plaza v. Sperling, Issacs &
Cal.Rptr.2d 605]
-arbitrator’s denial of attorney’s fees was not subject to
judicial review where issue of fees was within scope of
matters submitted for binding arbitration
Moore v. First Bank of San Luis Obispo (2000) 22
Cal.4th 782 [94 Cal.Rptr.2d 603]
Moshonov v. Walsh (2000) 22 Cal.4th 771 [94
Cal.Rptr.2d 597]
-arbitrator’s determination of prevailing party is not
subject to appellate review
Cal.Rptr.2d 553]
-arbitrator’s failure to apply contract definition of
prevailing party not subject to judicial review where
determination of prevailing party was within scope of
issues submitted for arbitration
Safari Associates v. Superior Court (Tarlov) (2014)
231 Cal.App.4th 1400 [182 Cal.Rptr.3d 190]
-authority of arbitrator to amend or correct a final
award
Cal.Rptr.2d 663]
-risk factor analysis
Fischel v. Equitable Life Assurance Society of the U.S.
(9th Cir. 2002) 307 F.3d 997
Center for Biological Diversity et al. v. County of San
Bernardino (2010) 198 Cal.App.4th 603 [115 Cal.Rptr.3d
762]
-risk should be assessed when an attorney determines that
there is merit to claim, likely before lawsuit is filed
Fischel v. Equitable Life Assurance Society of the U.S.
(9th Cir. 2002) 307 F.3d 997
-sanctions for delay
Thompson v. Tega-Rand Intern. (9th Cir. 1984) 740 F.2d
762, 764
Cal.Rptr.2d 553]
-attorney fees may not be awarded as a sanction to an
attorney representing himself
Musaelian v. Adams (2009) 45 Cal.4th 512 [87
Cal.Rptr.3d 475]
-award of “reasonable expenses” as sanction under CCP
§ 437(c) does not include authority to include attorney’s
fees
Collins v. State Department of Transportation (2004)
114 Cal.App.4th 859 [8 Cal.Rptr.3d 132]
-sanctions imposed and expanded prefiling order on
vexatious litigant and their attorney for filing frivolous appeals
Cal.Rptr.3d 247]
-sanctions order reversed where trial court improperly awards
full compensation of all attorney fees as a sanction for
violating a Rule of Court
Cal.App.4th 688 [149 Cal.Rptr.3d 868]
sanctions where conduct frustrates a settlement and
increases the cost of litigation
In re the Marriage of Tharp (2010) 188 Cal.App.4th 1295
[116 Cal.Rptr.3d 375]
-settlement agreement
Richard S. v. Department of Developmental Services of
State of California (9th Cir. 2003) 317 F.3d 1080
-agreement providing that trial court will determine
prevailing party and award of attorney fees is valid and
enforceable
Jackson v. Homeowners Association Monte Vista
Estates-East (2001) 93 Cal.App.4th 773 [113
Cal.Rptr.2d 343]
-award of fees to prevailing plaintiff in an action brought
by the Consumer Legal Remedies Act is mandatory, even
where the litigation was resolved by a pretrial settlement
agreement
Cal.App.4th 170 [56 Cal.Rptr.3d 780]
-CCP § 998 offer invalid if settlement is conditioned on
confidentiality
[101 Cal.Rptr.2d 167]
-fees denied where the terms of the settlement
agreement failed to establish that plaintiff was the
prevailing party on the claims for which fees were sought
1254 [123 Cal.Rptr.3d 414]
-parties to settlement agreement can validly specify a
prevailing party
Khavarian Enterprises Inc. v. Commline Inc. (2013)
216 Cal.App.4th 310 [156 Cal.Rptr.3d 657]
-settlement offer did not specify a particular amount of
fees did not render it unenforceable
Cal.App.4th 263 [14 Cal.Rptr.3d 184]
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- statutory rule that there is no prevailing party where action is dismissed does not bar a fee award where prevailing party’s right to recover fees arises under a fee-shifting statute


- trial court erred by modifying existing settlement agreement by reducing award of attorney fees and costs without parties mutual consent


- which include fee-waiver provisions under fee shifting statutes

CAL. 2009-176

settlement of class actions

In re Bluetooth Headset Products Liability Litigation (9th Cir. 2011) 654 F.3d 935

shareholder derivative action


SLAPP action


- arising out of malicious prosecution action

Daniels v. Robbins et al. (2010) 182 Cal.App.4th 204 [105 Cal.Rptr.3d 683]

- attorney who acted pro se who litigates an anti-SLAPP motion on his own behalf may not recover attorney fees


- law firm may not recover attorney fees after winning anti-SLAPP motion, even though it used ‘contract attorney’ to work on that motion


- attorney’s fees may be reduced if prevailing defendant in anti-SLAPP action claims work not related to the motion to strike


- burden of proving fees were covered by award following successful motion


- defendant who brings a successful motion to strike under the anti-SLAPP statute is entitled to mandatory attorney fees


- defendants not entitled to attorney fees when plaintiff dismissed all claims against defendants prior to motion to strike


- defendants who fail to file an anti-SLAPP motion before the voluntary dismissal of all causes of actions against them cannot recover fees or costs


- defendant’s motion to strike under the anti-SLAPP statute was frivolous, thus the granting of plaintiff’s attorney fee request was not an abuse of discretion


- denied where litigant failed to show anti-SLAPP motion was frivolous or was intended to cause unnecessary delay


- despite plaintiff’s voluntary dismissal with prejudice


- does not preclude recovery of appellate attorney fees by prevailing defendant-respondent on appeal


- fees awarded to defendant following plaintiff’s failure to perfect an appeal from the judgment in favor of defendant


- litigant who is only partially successful on anti-SLAPP motion entitled to recover attorney fees


- mandatory award may be based on attorney’s declarations instead of time records


- plaintiff mandatorily entitled to fees where defendant’s anti-SLAPP motion failed to meet threshold burden of establishing the challenged cause of action arose from protected activity and motion was found to be frivolous

Personal Court Reporters, Inc. v. Rand (2012) 205 Cal.App.4th 182 [140 Cal.Rptr.3d 301]


- sufficient evidence supported court’s decision to reduce prevailing party’s award of attorney fees in anti-SLAPP motion

569 East County Boulevard, LLC v. Backcountry Against the Dump, Inc. (2016) 6 Cal.App.5th 426 [212 Cal.Rptr.3d 304]

- time limits for filing motion for attorney’s fees do not commence to run until entry of judgment at the conclusion of litigation


- will revision considered protected activity for anti-SLAPP motion purposes


“SLAPPback”

- fees not recoverable


small claims court


social security

- determination

Crawford v. Astrue (9th Cir. 2009) 586 F.3d 1142

- determination of “reasonable fee” to attorney out of prevailing claimant’s recovery


- fees awarded in successful social security claims reversed and affirmed for various reasons

Straw v. Bowen (9th Cir. 1989) 866 F.2d 1169

- limit on the award of attorney’s fees at court hearings under 42 U.S.C. § 406(b) is not applicable to hearings before the Administration

Clark v. Astrue (9th Cir. 2008) 529 F.3d 1211

special hearing required under FOIA

Church of Scientology v. U.S. Postal Service (9th Cir. 1983) 700 F.2d 486, 494

spousal support, subsequent proceedings

Civil Code section 4370
statutory authority for

- SLAPP action
- family law
- False Claims Act provides for award of fees under rare dismissal with prejudice

CAL 532 [111 Cal.Rptr.2d 891]

Andre v. City of West Sacramento (2001) 92 Cal.App.4th 915 [104 Cal.Rptr.3d 673]


In re Marriage of Erickson and Simpson (2006) 141 Cal.App.4th 707 [46 Cal.Rptr.3d 253]


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-bail bond forfeiture proceedings

-- motion of fees denied where there is no provision in the relevant statute to recover fees as costs


-defendant in SLAPP action despite plaintiff's voluntary dismissal with prejudice


-False Claims Act provides for award of fees under rare and special circumstances


-family law

In re Marriage of Fossum (2011) 192 Cal.App.4th 336 [121 Cal.Rptr.3d 195]

-fees awarded pursuant to a city council resolution


- SLAPP action

Jarrow Formulas, Inc. v. LaMarche (2003) 31 Cal.4th 728 [3 Cal.Rptr.3d 636]

Ketchum v. Moses (2001) 24 Cal.4th 1122 [104 Cal.Rptr.2d 377]

Barry v. State Bar (2017) 2 Cal.5th 318 [212 Cal.Rptr.3d 124]


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-statutory basis for

Gerling Global Reinsurance Corp. of America v. Garamendi (9th Cir. 2005) 400 F.3d 803

Jacobson v. Delta Airlines, Inc. (9th Cir. 1984) 742 F.2d 1202

Timms v. United States (9th Cir. 1984) 742 F.2d 489

Smith v. Rae-Venter Law Group (2002) 29 Cal.4th 345 [127 Cal.Rptr.2d 516]

Lolley v. Campbell (2002) 28 Cal.4th 367 [121 Cal.Rptr.2d 571]


CAL 2009-176

-statutory to prevailing party

-statutory threshold required to establish eligibility for fees

-statutory limit

-award of attorney fees in an action to enforce any provision of a contract under CC § 1717 does not extend to tort claims


-in excess of


-prevailing party in a derivative action precluded from recovering fees and costs in excess of the bond posted pursuant to Corporations Code § 800


-reasonably necessary


In re Marriage of Newport (1984) 154 Cal.App.3d 915, 918 [201 Cal.Rptr. 647]

-under 42 U.S.C. § 406(b) (social security benefits)

Parrish v. Commissioner of Social Sec. Admin. (9th Cir. 2012) 698 F.3d 1215

Crawford v. Astrue (9th Cir. 2009) 586 F.3d 1142

Clark v. Astrue (9th Cir. 2008) 529 F.3d 1211

--courts should review the contract to ensure that its fee provisions do not exceed the limit


Crawford v. Astrue (9th Cir. 2009) 586 F.3d 1142

statutory threshold required to establish eligibility for fees


-statutory to prevailing party

Labostest, Inc. v. Bonta (9th Cir. 2002) 297 F.3d 892

Oregon Natural Resources Council v. Madigan (1992) 980 F.2d 1330


--attorney fees incurred in enforcement of anti-SLAPP judgment recoverable


--standing to assert

Willard & Mitchell v. City of Los Angeles (9th Cir. 1986) 803 F.2d 526

See How to Use This Index, supra, p. i
stipulations and settlements are controlling
Mitchell v. City of Los Angeles (9th Cir. 1984) 741 F.2d 281, 283
subtraction of hours for discovery was not abuse of discretion
Van Gerwin v. Guarantee Mutual Life Co. (9th Cir. 2000) 214 F.3d 1041
temporary order to award
Civil Code section 4370
third-party actions
award of attorney fee provision in contract applies to third-party beneficiary
Canjill Inc. v. Souza (2011) 201 Cal.App.4th 962 [134 Cal.Rptr.3d 39] [62 Cal.Rptr.3d 780]
et elitement to attorney fees based on workman’s compensation lien amount
Raisola v. Flower Street, Ltd. (1988) 205 Cal.App.3d 1004
under Code of Civil Procedure § 701.020 et seq.
-- fees denied to prevailing creditor in an independent creditor’s suit where there is no statutory authorization for such fees awarded
third-party claimant who was not intended beneficiary of attorney fee clause in contract denied award
award of attorney fee provision in contract applies to third-party beneficiary
Canjill Inc. v. Souza (2011) 201 Cal.App.4th 962 [134 Cal.Rptr.3d 39] [62 Cal.Rptr.3d 780]
third-party liability
judgment creditor entitled to recover fees and costs from third-party who helped judgment debtor hide assets
Cardinale v. Miller (2014) 222 Cal.App.4th 1020 [166 Cal.Rptr.3d 546]
third-party tortfeasor doctrine
Mega RV Corporation v. HWH Corporation (2014) 225 Cal.App.4th 1318 [170 Cal.Rptr.3d 861]
time limits
-fees allowed where court held that proceedings involving modification of a permanent injunction were not “final judgments” that would trigger time limits for attorney fees
-fees are recoverable where the prevailing party files a motion for attorney fees before a judgment is satisfied in full
timeliness for filing of fees
relief from default
to prevailing party
Maynard v. BTI Group, Inc. (2013) 216 Cal.App.4th 984 [157 Cal.Rptr.3d 148] [67 Cal.Rptr.3d 228]
Mejia v. City of Los Angeles (2007) 156 Cal.App.4th 151 [67 Cal.Rptr.3d 228]
-absent a contract determining a different disposition, attorney fees awarded under Labor Code section 1194, should be made payable directly to the attorney
-absent a definition of prevailing party under CCP § 405.38, court resorted to a practical approach by analyzing the extent to which each party realized its litigation objectives in determining which was the prevailing party
-absent agreement, fees awarded pursuant to California FEHA belong to attorneys who labored on case and not to client
--limited to cases where the parties do not have an agreement as to award of fees
-absent an express waiver of attorney’s fees & costs in a CCP section 998 offer, prevailing party is entitled to compensation of expenses incurred in the lawsuit
--action dismissed as part of post-judgment settlement effectively eliminates fee award based on contract
--action dismissed but fees awarded under contractual provision
--action for negligent performance of contractual duties
--action on contract
Valley Bible Center v. Western Title Ins. Co. (1983) 138 Cal.App.3d 931, 933 [188 Cal.Rptr. 335]
--abuse of discretion where the court held there was no prevailing party even though the result was lopsided in favor of the plaintiff
--ADEA matter
Sinyard v. Commissioner of Internal Revenue (9th Cir. 2001) 268 F.3d 756
--Americans with Disabilities Act
--district court could not deny fees based on a finding that prevailing party had unreasonably prolonged the litigation, but the court could consider prevailing party’s actions in reducing fees
Jarkey v. Poop Deck (9th Cir. 2008) 537 F.3d 1122
--anti-hate crime matter
anti-SLAPP suits
--arising out of malicious prosecution action
  Daniels v. Robbins et al. (2010) 182 Cal.App.4th 204 [105 Cal.Rptr.3d 683]
--defendant’s motion to strike under the anti-SLAPP statute was frivolous, thus the granting of plaintiff’s attorney fee request was not an abuse of discretion
--fees awarded to defendant following plaintiff’s failure to perfect an appeal from the judgment in favor of defendant
--protected activity, fees permitted
--will revision considered protected activity for anti-SLAPP motion purposes
--withdrawal of funds was not protected conduct because it was neither communicative nor connected with an issue of public interest
--apportionment not required if successful and unsuccessful claims are interrelated
--arbitration cases
--arbitration award may be modified when arbitrator inadvertently failed to rule on prevailing party’s claim to attorney’s fees and costs
--arbitration must be completed and prevailing party determined when awarding attorney fees on motion to compel arbitration
--arbitrator’s denial of attorney’s fees was not subject to judicial review where issue of fees was within scope of matters submitted for binding arbitration
  Moore v. First Bank of San Luis Obispo (2000) 22 Cal.4th 782 [94 Cal.Rptr.2d 603]
  Moshonov v. Walsh (2000) 22 Cal.4th 771 [94 Cal.Rptr.2d 597]
--arbitrator’s determination of prevailing party is not subject to appellate review
--court may award costs and reasonable attorney fees in a judicial proceeding to confirm or vacate an arbitration award
--prevailing party in action to forestall arbitration
--attorney represented by other members of his law firm is entitled to recover attorney fees where the representation involved the attorney’s personal interests and not those of the firm
--attorney who acted per se in contract action may recover reasonable attorney fees for legal services of assisting counsel
--attorney’s fees may be awarded to attorneys who represent each other in fee dispute with client that attorneys jointly represented
  Farmers Insurance Exchange v. Law Offices of Conrado Joe Sayas, Jr. (9th Cir. 2001) 250 F.3d 1234
--attorney’s fees may be awarded to taxpayer who incurred attorney’s fees even if initially paid by others
  Morrison v. Commissioner of Internal Revenue (9th Cir. 2009) 565 F.3d 658
--bankruptcy matter
--fees awarded to party who prevailed, not necessarily on all issues, but on “disputed main issue”
  In re Hoopai (9th Cir. BAP 2007) 369 B.R. 506
--bond not required to stay award pending an appeal
--California Public Records Act
--trial court abused its discretion by applying an inapposite decision to deny attorney fees without prior notice to the plaintiff
--class actions
--absent class members not liable for employer’s attorney’s fees in overtime dispute
--attorney’s fees for securities class action suits should be based on individual case risk
  In re Quantum Health Resources, Inc. (C.D. Cal. 1997) 962 F.Supp. 1254
--attorney’s fees should be adequate to promote consumer class action
--district court presiding over settlement fund had equitable power to award attorney’s fees for work outside litigation immediately before court where that work helped create settlement fund
  Wininger v. SI Management, L.P. (9th Cir. 2002) 301 F.3d 1115
FEES

--trial court acted within its discretion in awarding 33.33 percent of common fund as reasonable attorney fees

-Clean Water Act matter
  --fees incurred by defendant during its unsuccessful defense of a private party Clean Water Act lawsuit are not allowable as costs under the Federal Acquisition Regulation statute
  Southwind Marine, Inc. v. U.S. (9th Cir. 2008) 535 F.3d 1012

-Code of Civil Procedure 1987.2
  --plaintiff awarded attorney fees when non-party refused to comply with subpoena to produce electronically stored information
  Vasquez v. California School of Culinary Arts, Inc. (2014) 230 Cal.App.4th 35 [178 Cal.Rptr.3d 10]

--constitutional right to free exercise of religion at issue
  Friend v. Kolodzieczak (9th Cir. 1992) 965 F.2d 682

--construction contract fee provision not applicable to breach of limited partnership agreement

--contrary provision in lease contract

--corporate in-house counsel entitled to reasonable fees under Civil Code section 1717
  PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084 [95 Cal.Rptr.2d 198] as modified (June 2, 2000)

--court was obligated to determine which of the litigants was the prevailing party where the statutory language makes a fees award mandatory, even though the lawsuit was resolved by a settlement agreement

--Davis-Stirling Common Interest Development Act --determination of reasonable attorney’s fees and costs

--defendant entitled to reasonable attorney’s fees arising from defendant’s petition to compel arbitration of a dispute between the parties arising under a lease agreement

--defendant in SLAPP action despite plaintiff’s voluntary dismissal with prejudice

--defendant prevails in Title VII action brought by EEOC
  Equal Employment Opportunity Commission v. Bruno’s Restaurant (9th Cir. 1992) 976 F.2d 521

--defendants entitled to attorney’s fees even though plaintiffs dismissed appeal

--defendants who fail to file an anti-SLAPP motion before the voluntary dismissal of all causes of action against them cannot recover fees or costs

--definition of prevailing party under Code of Civil Procedure §§ 1032 et seq.
  deSaulles v. Community Hospital of the Monterey Peninsula (2016) 62 Cal.4th 1140 [202 Cal.Rptr.3d 429]

Goodman et al. v. Lozano et al. (2010) 47 Cal.4th 1327 [104 Cal.Rptr.3d 219]


--denied where litigant was unable to materially alter the legal relationship of the parties by judgment or by consent decree
  Kasza v. Whitman (9th Cir. (Nev.) 2003) 325 F.3d 1178

--district court may review attorney’s “billing judgment” and reduce fees if some task should have been delegated to associate or paralegal

--does not preclude recovery of appellate attorney fees by prevailing defendant-respondent on appeal

--employer entitled to attorney’s fees from employee suing for employment discrimination where employee initiated litigation following signing of general release of all claims
  Linsley v. Twentieth Century Fox Films Corp. (1999) 75 Cal.App.4th 762 [89 Cal.Rptr.2d 429]

--enforcement of foreign judgment

--environmental groups are not “prevailing parties” since they do not prevail against EPA
  Idaho Conservation League, Inc. v. Russell (9th Cir. 1991) 946 F.2d 717

--Equal Access to Justice Act
  Tolber v. Colvin (9th Cir. 2014) 749 F.3d 830

--entitled to fees and costs if litigant is prevailing party; the government fails to show its position was substantially justified; and the requested fees are reasonable
  Carbonell v. I.N.S. (9th Cir. 2005) 429 F.3d 894

--standing to contest an offset where attorney fees awarded to prevailing party not to attorney

--under 28 U.S.C.A. 2412(d)(1)(A)
  Parrish v. Commissioner of Social Sec. Admin. (9th Cir. 2012) 698 F.3d 1215

Citizens for Better Forestry v. U.S. Dept. of Agriculture (9th Cir. 2009) 567 F.3d 1128

--ERISA matter --computerized research may be recovered as attorney fees
  Trustees of the Construction Industry v. Summit Landscape Companies, Inc. (9th Cir. 2006) 460 F.3d 1253

--either party may recover, not just prevailing party; claimant must show some degree of success on the merits

--under 29 U.S.C. 1123(g)(1)
  Welch v. Metropolitan Life Ins. Co. (9th Cir. 2007) 480 F.3d 942

McElwaine v. US West, Inc. (9th Cir. (Ariz.) 1999) 176 F.3d 1167

Cann v. Carpenters’ Pension Trust Fund for Northern California (1993) 989 F.2d 313

Downey Community Hospital v. Wilson (9th Cir. 1992) 977 F.2d 470

Bogue v. Ampex Corporation (9th Cir. 1992) 976 F.2d 1319

--under 29 U.S.C. 1332(g)(1)
  Simonia v. Glendale Nissan/Infiniti Disability Plan (9th Cir. 2010) 608 F.3d 1118
-fee awards in federal securities fraud actions must be reasonable in relation to plaintiffs' recovery
  Powers v. Eichin (9th Cir. 2000) 229 F.3d 1249
-fee provision in settlement agreement did not serve as
  ground for awarding fees and costs to oversecured creditor following its successful defense of adversary preference proceeding
  In re Connolly (9th Cir. BAP 1999) 238 B.R. 475 [34 Bankr.Cl.Dec. 1219]
-fees awarded to plaintiff in anti-SLAPP motion where plaintiff showed a probability of prevailing on the merits and motion was found to be meritless
  Personal Court Reporters, Inc. v. Rand (2012) 205 Cal.App.4th 182 [140 Cal.Rptr.3d 301]
-fees denied where plaintiff prevailed on some of the claims in the lawsuit, but did not prevail on other claims that provided for attorney's fees
-fees granted for litigating a separate case in which defendants were not parties, but where the issue was central to both actions
  Armstrong v. Davis (9th Cir. 2003) 318 F.3d 965
-fees granted where plaintiff enters into legally enforceable settlement agreement with defendant
  Richard S. v. Department of Developmental Services of State of California (9th Cir. 2003) 317 F.3d 1080
-fees reduced by 90% where court found prevailing litigant had unnecessarily prolonged the litigation and counsels time was not reasonably incurred
-FEHA matter
  Beaty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607
  Chavez v. City of Los Angeles (2010) 47 Cal.4th 970 [104 Cal.Rptr.3d 710]
  Young v. Exxon Mobil Corp. (2008) 168 Cal.App.4th 1467 [86 Cal.Rptr.3d 507]
--prevailing defendant under this statute can only recover fees upon a showing that the plaintiff's action was frivolous, unreasonable, or without foundation
  Lopez v. Routt (2017) 17 Cal.App.5th 1006 [225 Cal.Rptr.3d 851]
-fee provision in settlement agreement did not serve as
  ground for awarding fees and costs to oversecured creditor following its successful defense of adversary preference proceeding
  In re Connolly (9th Cir. BAP 1999) 238 B.R. 475 [34 Bankr.Cl.Dec. 1219]
-fees awarded to plaintiff in anti-SLAPP motion where plaintiff showed a probability of prevailing on the merits and motion was found to be meritless
  Personal Court Reporters, Inc. v. Rand (2012) 205 Cal.App.4th 182 [140 Cal.Rptr.3d 301]
-fees denied where plaintiff prevailed on some of the claims in the lawsuit, but did not prevail on other claims that provided for attorney's fees
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-fees reduced by 90% where court found prevailing litigant had unnecessarily prolonged the litigation and counsels time was not reasonably incurred
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  Young v. Exxon Mobil Corp. (2008) 168 Cal.App.4th 1467 [86 Cal.Rptr.3d 507]
--prevailing defendant under this statute can only recover fees upon a showing that the plaintiff's action was frivolous, unreasonable, or without foundation
  Lopez v. Routt (2017) 17 Cal.App.5th 1006 [225 Cal.Rptr.3d 851]
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--“more favorable judgment” test determines whether an appellant is “unsuccessful in the appeal”

Smith v. Rae-Venter Law Group (2002) 29 Cal.4th 345 [127 Cal.Rptr.2d 516]

-law providing for fees and cost to prevailing plaintiff applies to either party


-legal malpractice matter


-lis pendens action


--absent a definition of prevailing party under CCP § 405.38, court resorted to a practical approach by analyzing the extent to which each party realized its litigation objectives in determining which was the prevailing party


-multiple prevailing parties


-no fees to prevailing party where planning committee did not have the authority to enact attorney fees as part of the CC&Rs


-no prevailing defendant when plaintiff dismissed all claims against defendants before motion to strike was filed by defendants


-no prevailing defendant where dismissal without prejudice by plaintiff in copyright case does not alter the legal relationship of the parties

Cadkin v. Loose (9th Cir. 2009) 569 F.3d 1142

-not entitled to award of attorney’s fees under CC § 1717 where party brings tort action on the grounds that the action was not an action to enforce the contract


-notice of appeal may subsume later order setting the amounts of the award


-out-of-state attorney who merely assists California lawyer may recover attorney fees

Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815

-partial pro bono fee arrangement did not preclude award of fees under C.C.P. § 425.16


-partially prevailing defendant not entitled following voluntary dismissal of entire action


-partially prevailing party subject to reduction in fees for counsel’s work on unsuccessful or unrelated claims to the claim on which he succeeded


-party entitled to costs on appeal may establish legal basis to recover attorney’s appellate fees


-party is a prevailing party under section 218.5 when the party prevails on a claim for unpaid wages, even when such a claim is made with other claims on which attorney fees are not recoverable


-party prevails if he was able to achieve most or all of his litigation objectives


-party refusing to mediate where contract provision conditioning recovery of attorney’s fees upon acceptance of mediation is barred from recovering such fees


-peer review lawsuit


-petition for relief from fee judgment permitted if underlying merits of judgment is reversed and party has paid adversary’s attorney fees

California Medical Association v. Shalala (9th Cir. 2000) 207 F.3d 575

-party not entitled to fees where request was not included in default judgment


-party not prevailing party entitled to attorney fees when successful on defendant’s appeal from denial of attorney fees


-party obtained some relief on merits of claim

Gerlino Global Reinsurance Corp. of America v. Garamendi (9th Cir. 2005) 400 F.3d 803

-pleadings


-prevailing defendant-attorneys on an anti-SLAPP motion are not entitled to attorney fees because they represented themselves


-prevailing party as defined by statute versus one defined by contract


-prevailing party is ascertained by pragmatic assessment of the parties’ ultimate positions vis à vis their litigation objectives, not by technicalities of pleading and procedure

In re Estate of Drummond (2007) 149 Cal.App.4th 46 [56 Cal.Rptr.3d 691]

-prevailing party may recover attorney fees in state court following dismissal of bankruptcy proceeding


-prevailing party status irrelevant when defendant was not a party to the underlying contract

Richardsen v. Continental Grain Co. (9th Cir. 2003) 336 F.3d 1103


-pro se attorney-defendant cannot recover statutory attorney fees as prevailing party in civil rights case

Elwood v. Drescher (9th Cir. 2006) 456 F.3d 943

See How to Use This Index, supra, p. i
-proper to award attorney fees to defendant attorney even though he was representing himself


--attorney fees may not be awarded as a sanction to an attorney representing himself

Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]

--proper where statute provides for fees in action to enforce documents, even where documents not proven under the statute

Tract 19051 Homeowners Assn. v. Kemp (2015) 60 Cal.4th 1135 [184 Cal.Rptr.3d 701]

--property owner is entitled to attorney’s fees as prevailing party in action to enforce inverse condemnation judgment against city


--reasonable fees under Davis-Stirling Common Interest Development Act


--real estate purchase agreement


--settlement agreement


--parties to settlement agreement can validly specify a prevailing party


--SLAPP action

Pacific Preferred Properties v. Moss (2002) 101 Cal.Rptr.3d 303

--partially successful motion constitutes prevailing party unless it has no practical benefit from bringing motion


--standard for awarding attorney’s fees under Endangered Species Act

Carson- Truckee Water Conservancy District v. Secretary of the Interior (9th Cir. 1984) 748 F.2d 523, 525-526

--catalyst theory applied

Association of California Water Agencies v. Evans (9th Cir. 2004) 386 F.3d 679

--standard for awarding attorney’s fees under Equal Access to Justice Act

Access to Justice Act 1717


Tobeler v. Cohn (9th Cir. 2014) 749 F.3d 830

Hatler v. United States, Dep’t of Agriculture (9th Cir. 2009) 567 F.3d 1128

U.S. v. Real Property at 2659 Roundhill Drive, Alamo, California (9th Cir. 2002) 283 F.3d 1146

U.S. v. Marolf (9th Cir. 2002) 277 F.3d 1156

U.S. v. One 1997 Toyota Land Cruiser (9th Cir. 2001) 248 F.3d 899

Beach v. Smith (9th Cir. 1984) 743 F.2d 1303, 1306-1307

McQuiston v. Marsh (9th Cir. 1983) 707 F.2d 1082, 1085

--summary judgment on complaint not appealable final judgment


--trial court has jurisdiction to rule on defendant’s motion for attorney fees after motion to quash granted for lack of personal jurisdiction


--trial court need not issue a statement of decision if record reflects lodestar or touchstone method was used


--under 18 U.S.C. § 3006(A)

U.S. v. Campbell (9th Cir. 2002) 291 F.3d 1169


Prison Legal News v. Schwarzenegger (9th Cir. 2010) 608 F.3d 446

Mahach-Watkins v. Depere (9th Cir. 2010) 593 F.3d 1054

--under 42 U.S.C. § 12205 (ADA)

--fees denied to prevailing defendant where such award under state law is pre-empted by federal law

Hubbard v. Sobreck, LLC (9th Cir. 2009) 554 F.3d 742

--under Business and Professions Code § 809.9


--under California Education Code § 44944(f)

--application of lodestar methodology in determining reasonable attorney’s fees


--under California Tort Claims Act

CCP § 1038 does not authorize imposition of defense costs against the plaintiff’s attorney


--under Civil Asset Forfeiture Reform Act

U.S. v. Kim (9th Cir. 2015) 797 F.3d 696

--under Civil Code section 798.85


--under Civil Code section 1354


--under Civil Code section 1717

In re Penrod (9th Cir. 2015) 802 F.3d 1084


--under Civil Code section 1354


SCI California Funeral Services Inc. v. Five Bridges Foundation (2012) 203 Cal.App.4th 549 [137 Cal.Rptr.3d 693]


--absent a contractual fees provision, a party cannot recover attorney’s fees, even if it prevails in litigation


--arbitration must be completed and prevailing party determined when awarding attorney fees on motion to compel arbitration


--attorney fees may be awarded to more than one prevailing party in a breach of contract dispute

Burkhalter Kessler Clement & George LLP v. Hamilton (2018) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]

--attorney fees may not be awarded to a prevailing attorney acting in pro se


--decedent’s successor in interest may be liable for attorney’s fees under a contract entered into by decedent


--denial of attorney fees where party is non-signatory under contract and denied third-party beneficiary status


--denied where action was voluntarily dismissed


--does not allow firm to recover fees incurred in suit to recover unpaid fees from client when client had already paid entire contractual debt to firm before trial


--no apportionment of fees between co-defendants is necessary when calculating attorney fees because same defenses applied to both of them


--no ‘prevailing party’ fees for debtor when creditor voluntarily dismisses its own fee claim against debtor

In re Broslid (9th Cir. BAP 2014) 505 B.R. 903

--prevailing party law firm not entitled to attorney fees when represented by their own counsel


--voluntary dismissal of one contract claim does not preclude recovery of attorney’s fees on another claim

CDF Firefighters v. Maldonado (2011) 200 Cal.App.4th 158 [132 Cal.Rptr.3d 544]

--under Civil Code section 1942.4


--under Civil Code section 1942.5


--under Civil Code section 3496


--under Code of Civil Procedure section 128.7

--attorney fees may not be awarded as a sanction to an attorney representing himself

Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]

--criteria for recovery of fees and costs in opposing motion for sanctions


--under Code of Civil Procedure section 340.1


--under Code of Civil Procedure section 405.38

--in lis pendens action, court resorted to a practical approach by analyzing the extent to which each party realized its litigation objectives in determining which was the prevailing party


--in lis pendens action, to challenge attorney fee award to prevailing party on motion to expunge, requires petition for writ of mandate, not appeal


--under Code of Civil Procedure section 425.16


Personal Court Reporters, Inc. v. Rand (2012) 205 Cal.App.4th 182 [140 Cal.Rptr.3d 301]

--defense attorney fees may be reduced if prevailing party is not the prevailing party


--in lis pendens action, to challenge attorney fee award to prevailing party on motion to expunge, requires petition for writ of mandate, not appeal


--attorney fees may be reduced if prevailing defendant in anti-SLAPP action claims work not related to the motion to strike


--defendant’s motion to strike under the anti-SLAPP statute was frivolous, thus the granting of plaintiff’s motion for sanctions was an abuse of discretion


--does not authorize an award of attorney fees against plaintiff’s counsel


--litigant who only partially successful on anti-SLAPP motion entitled to recover attorney fees

--sufficient evidence supported court's decision to reduce prevailing party's award of attorney fees in anti-SLAPP motion

569 East County Boulevard LLC v. Backcountry Against the Dump, Inc. (2016) 6 Cal.App.5th 426 [212 Cal.Rptr.3d 304]

--withdrawal of funds was not protected conduct because it was neither communicative nor an issue of public interest


- under Code of Civil Procedure section 527.6, defendant or plaintiff may recover


- under Code of Civil Procedure section 1021.5

Serrano v. Stefan Merli Plastering Co., Inc. (2011) 52 Cal.4th 1018 [132 Cal.Rptr.3d 358]

Conservatorship of Whiteley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]


La Mirada Ave. v. City of Los Angeles (2018) 22 Cal.App.5th 1149 [232 Cal.Rptr.3d 338]

Peoples v. Investeco Management & Development LLC (2016) 22 Cal.App.5th 443 [231 Cal.Rptr.3d 595]

San Diego Municipal Employees Association v. City of San Diego (2016) 244 Cal.App.4th 906 [198 Cal.Rptr.3d 355]


Riverwatch v. County of San Diego Dept. of Environmental Protection (2009) 175 Cal.App.4th 768 [96 Cal.Rptr.3d 362]

Choi v. Orange County Great Park Corporation (2009) 175 Cal.App.4th 524 [96 Cal.Rptr.3d 90]

Ramon v. County of Santa Clara (2009) 173 Cal.App.4th 915 [93 Cal.Rptr.3d 278]


Riverside Sheriff's Assn. v. County of Riverside (2007) 152 Cal.App.4th 414 [61 Cal.Rptr.3d 295]--advocacy groups filing amicus briefs are not opposing parties within meaning of section 1021.5 and therefore not liable for attorney fees


---exception when amicus brief advocates same position as asserted in another case in which amici is a party

Ramon v. County of Santa Clara (2009) 173 Cal.App.4th 915 [93 Cal.Rptr.3d 278]

--application of catalyst theory


--apportionment of attorney's fees may be appropriate under the statute if the court concludes that the successful litigant's reasonably expected financial benefits were sufficient to warrant placing part of the fee burden on the litigant

Collins v. City of Los Angeles (2012) 205 Cal.App.4th 140 [139 Cal.Rptr.3d 880]

--attorney's fees can only be recovered against opposing parties


--does not preclude award of such fees in a family law case


--litigant's personal non-pecuniary interest may not be used to deny litigant recovery of legal fees under the statute

Conservatorship of Whiteley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]

--must be successful party


--party may receive attorney's fees incurred in an administrative hearing

Edna Valley v. County of Santa Luis Obispo (2011) 197 Cal.App.4th 1312 [129 Cal.Rptr.3d 249]

--requires a full fee award unless special circumstances would render such award unjust


--right to attorney to intervene on own behalf in client's lawsuit to seek attorney's fees


--suspended corporation is not entitled to attorney fees

City of San Diego v. San Diegans for Open Government (2016) 3 Cal.App.5th 568 [207 Cal.Rptr.3d 703]

--trial court is not permitted to use a public entity's status to negate a lodestar that would otherwise be appropriate

Rogel v. Lyonwood Redevelopment Agency (2011) 194 Cal.App.4th 1319 [125 Cal.Rptr.3d 267]

--under Code of Civil Procedure section 1021.9


--under Code of Civil Procedure section 1032


--under Code of Civil Procedure section 1038

--CCP § 1038 does not authorize imposition of defense costs against the plaintiff's attorney


--no attorney fees are to be paid for successful defense of section 1983 claims, a federal civil rights law


--under Code of Civil Procedure section 1094.5

No Toxic Air Inc. v. Lehigh Southwest Cement Co. (2016) 1 Cal.App.5th 1136 [205 Cal.Rptr.3d 535]

--under Corporations Code section 800


--under Endangered Species Act

Association of California Water Agencies v. Evans (9th Cir. 2004) 386 F.3d 879

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FEES
- under Fair Credit Reporting Act
  -- certain non-taxable costs, such as clerk and
docketing fees, copying costs, can be awarded as part
of a reasonable attorney’s fees under 15 USCA §
1681o(a)(2); 28 U.S.C.A. § 1920 (the Fair Credit
Reporting Act)
  Grove v. Wells Fargo Financial California, Inc. (9th
Cir. 2010) 606 F.3d 577
- under Family Code section 272, subdivision (a),
authorizes the court, in its discretion, to order one spouse
to pay other spouse’s attorney fees directly to attorney
  In re Marriage of Erickson and Simpson (2006) 141
Cal.App.4th 707 [46 Cal.Rptr.3d 253]
- under Government Code section 800
  -- finding of arbitrary and capricious action against
school district
- under Health Care Decisions Law
  Humboldt County Adult Protective Services v.
Superior Court (2016) 4 Cal.App.5th 548 [208
Cal.Rptr.3d 666]
- under Labor Code § 218.5
[193 Cal.Rptr.3d 644]
556 [146 Cal.Rptr.3d 849]
  -- fees denied when prevailing party fails to request in
  initial complaint
  Shames v. Utility Consumers’ Action Network
(2017) 13 Cal.App.5th 29 [219 Cal.Rptr.3d 846]
  -- Labor Code § 218.5’s award of attorney's fees not
applicable to claims brought by former employees for
failure to provide statutorily mandated meal and rest
periods
Cal.4th 1244 [140 Cal.Rptr.3d 173]
  -- party is a prevailing party under section 218.5 when
the party prevails on a claim for unpaid wages, even
when such a claim is made with other claims on which
attorney fees are not recoverable
185 [193 Cal.Rptr.3d 644]
  -- salaried employee entitled to recover attorney’s fees
  in action for non-payment of wages
Cal.App.4th 1079 [57 Cal.Rptr.3d 698]
- under Labor Code § 1194
556 [146 Cal.Rptr.3d 849]
- under Labor Code § 4607
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894]
- under Lanham Act
  SunEarth Inc. v. Sun Earth Solar Power Co. (9th Cir.
2016) 839 F.3d 1179
  -- under Penal Code § 1202.4(f)(3), victim of convicted
drunk driver was entitled to restitution for attorney
services incurred to recover both economic and
noneconomic damages
  People v. Millard (2009) 175 Cal.App.4th 7 [95
Cal.Rptr.3d 751]
Cal.Rptr.2d 828]
- under Probate Code section 17211(b)
Cal.Rptr.3d 505]
- under Song Beverly Act
  Duale v. Mercedes-Benz USA, LLC (2007) 148
Cal.App.4th 718 [56 Cal.Rptr.3d 19]
- under Uniform Foreign Money Judgments Recognition Act
[86 Cal.Rptr.3d 177]
- under Uniform Trade Secrets Act
  Cytodyne, Inc. v. Amerimmune Pharmaceuticals, Inc.
- under Vehicle Leasing Act
[55 Cal.Rptr.3d 249]
- under Welfare and Institutions Code section 10962
Cal.Rptr.3d 916]
  - unsuccessful plaintiff
  McLarnand, Vazquez & Partners v. Downey Savings
Cal.Rptr. 828]
to prevailing party
Cal.Rptr.3d 427]
tort claims
  - award of attorney fees in an action to enforce any
provision of a contract under CC § 1717 does not extend to
tort claims
Cal.Rptr.3d 420]
  - insured’s assignment of a cause of action against an
insurance company for tortious bad faith was entitled to
recover attorney fees incurred in recovering policy
benefits wrongfully withheld
  Essex Insurance Co. v. Five Star Dye House Inc.
(2006) 38 Cal.4th 1252 [45 Cal.Rptr.3d 362]
  - under Code of Civil Procedure section 1038, the
California Torts Claims Act does not authorize attorney
fees for successful defense of section 1983 claims
  California Correctional Peace Officers v. Virga (2010)
181 Cal.App.4th 30 [103 Cal.Rptr.3d 699]
  - trial court need not issue a statement of decision if record
reflects lodestar or touchstone method was used
  Foster v. Tourtellotte (9th Cir. 1983) 704 F.2d 1109
tribal law may require tribal remedy exhaustion in contract
  disputes
  Findleton v. Coyote Valley Band of Pomo Indians
(2018) 27 Cal.App.5th 565 [238 Cal.Rptr.3d 346]
  - under 11 U.S.C. § 303
  In re Southern California Sunbelt Developers, Inc. (9th
Cir. 2010) 608 F.3d 456
  - under 11 U.S.C. § 330
  In the Matter of Maple-Whitworth (9th Cir. 2009) 556 F.3d
742
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Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973

under 15 U.S.C. § 1692k(a)(3)
Hyde v. Midland Credit Management, Inc. (9th Cir. 2009) 567 F.3d 1137

under 17 U.S.C. § 505 (Copyright Act)
Shame On You Productions, Inc. v. Banks (9th Cir. 2018) 893 F.3d 661

under 18 U.S.C. § 3006A (Hazardous Material Research and Development Act)
-denial of attorney’s fees where government’s litigation position, although substandard, was not vexatious, frivolous, or pursued in bad faith
U.S. v. Manchester Farming Partnership (9th Cir. (Mont.) 2003) 315 F.3d 1176

under 21 U.S.C. § 1291
Tashima v. Administrative Office of the United States Courts (9th Cir. 1991) 967 F.2d 1264

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Moore v. Permanente Medical Group, Inc. (9th Cir. 1992) 981 F.2d 443
-standard for awarding fees turns on the reasonableness of the case from state court to federal court
Gardner v. UIC (9th Cir. 2007) 508 F.3d 559

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Jones v. Espy (1993) 10 F.3d 690
Oregon Natural Resources Council v. Madigan (9th Cir. 1992) 980 F.2d 1330
-social security claimant timely files for attorney fees
Van v. Barnhart (9th Cir. 2007) 483 F.3d 600

under 29 U.S.C. § 621 et seq.
-fees paid directly to plaintiff’s counsel by defendant pursuant to ADEA’s fee-shifting provision is taxable income to plaintiff
Sinyard v. Commissioner of Internal Revenue (9th Cir. 2001) 268 F.3d 756

under 29 U.S.C. § 794 (Rehabilitation Act)
-claim for equal treatment in remedial programs for disabled inmates and parolees
Armstrong v. Davis (9th Cir. 2003) 318 F.3d 965

under 29 U.S.C. § 1132(g)(1)

under 31 U.S.C. § 3729(a)(1), False Claims Act
-court must provide detailed findings in support of any award
Pflingst v. Ronan Engineering Co. (9th Cir. 2002) 284 F.3d 999

under 33 U.S.C. § 921(d)
Christensen v. Stevedoring Services of America, Inc. (9th Cir. (Or.) 2005) 430 F.3d 1032

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Octane Fitness, LLC v. Icon Health & Fitness, Inc. (2014) ___ U.S. ___ [134 S.Ct. 1794]

under 42 U.S.C. § 406(a)
Clark v. Astrue (9th Cir. 2008) 529 F.3d 1211

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Prison Legal News v. Schwarzenegger (9th Cir. 2010) 608 F.3d 446
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Kimbrough v. California (9th Cir. 2010) 609 F.3d 1027
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Labotest, Inc. v. Bonta (9th Cir. 2002) 297 F.3d 892
Corder v. Gates (9th Cir. 1996) 104 F.3d 247
Thomas v. Bible (1993) 983 F.2d 152
[103 Cal.Rptr.2d 339]

-denied
Kimbrough v. California (9th Cir. 2010) 609 F.3d 1027
-lump sum settlement offer that includes attorney’s fees may violate plaintiff’s implied federal right to contract with an attorney for the right to seek statutory attorney’s fees
Barnhardt v. Los Angeles County (9th Cir. 2003) 339 F.3d 920

-plaintiff who wins state claim but loses federal claim not awarded attorney fees
-pro se attorney-defendant cannot recover statutory attorney fees as prevailing party in civil rights case
Elwood v. Drescher (9th Cir. 2006) 456 F.3d 943
-standing to pursue an award of fees, attorneys lack standing to pursue an award of fees
Churchill Village LLC v. General Electric (9th Cir. 2004) 361 F.3d 566
-superior performance in appropriate civil rights cases may allow for increase in fees beyond amount determined by lodestar calculation

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-fees award to legal foundation on the grounds that such awards violated the Legal Services Corporation Act cannot be challenged in private litigation; sole remedy is through an administrative complaint with Legal Services Corporation

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-release of EPA records pursuant to FOIA
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-prevaling party's conduct in unreasonably prolonging the litigation did not justify outright denial of fees
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-under 11 U.S.C.A. § 503(b)(4)
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-arbitration must be completed and prevailing party determined when awarding attorney fees on motion to compel arbitration
-represented by other members of his law firm is entitled to recover attorney fees where the representation involved the attorney's personal interests and not those of the firm
-attorney who acted pro se in contract action may recover reasonable attorney's fees for legal services of assisting counsel
-attorney's fees denied because prevailing party's tort action was not an action to enforce the contract
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Farmers Insurance Exchange v. Law Offices of Conrado Joe Sayas, Jr. (9th Cir. 2001) 250 F.3d 1234

-attorney's representation by associates of his firm precluded recovery of attorney fees after winning case against former client
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-no apportionment of fees between co-defendants is necessary when calculating attorney fees because same defenses applied to both of them
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-party that scored procedural victory not deemed to be prevailing party
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plaintiff not prevailing party entitled to attorney fees when successful on defendant’s appeal from denial of attorney fees
-precluded where plaintiff voluntarily dismisses unlawful detainer action sounding in contract
-trial court must determine if attorney-client relationship existed between co-plaintiffs before awarding attorney fees to pro se attorney in contempt proceedings
FEES

-vacation of judgment as part of post-judgment settlement effectively eliminates fee award based on contract

-where both contract and statute govern award of attorney’s fees, prevailing party may also be entitled to recovery of appellate fees

under Civil Code section 1780

-prevailing party entitled to fees where statutory language which provides for such fees is mandatory

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under Civil Code section 2981 (Rees-Levering Act)
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-denied because public entity is not entitled to attorney fees under stop notice laws
Tri-State, Inc. v. Long Beach Community College District (2012) 204 Cal.App.4th 224 [138 Cal.Rptr.3d 529]

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-claim to recover is a simple breach of contract claim and not a claim to recover a “retention,” therefore fees are not recoverable

under Civil Code section 3426 et seq. (Uniform Trade Secrets Act)

-deny of fees to defendant who prevailed against plaintiff’s claim of misappropriation of patents and trademarks as patents and trademarks are not trade secrets

-prevailing defendant may recover attorney fees if the plaintiff pursued an action with subjective bad faith, regardless of whether there was some evidence supporting plaintiff’s contentions

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-denial of fees based on special circumstances under traditional prevailing party analysis
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-denied when plaintiff did not establish violation of protected right
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-Beaty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607

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-mere fact defendant prevails does not automatically result in award of fees
Coverdell v. Dept. of Social & Health Services (9th Cir. 1987) 834 F.2d 758, 770

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United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 896 F.2d 403
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-nominal damages received by plaintiff
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--federal law, rather California law, applied to activist’s claim for attorney’s fees
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--party who wins nominal damages may receive attorney’s fees with showing that lawsuit achieved other tangible results
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Erdman v. Cochise County (9th Cir. 1991) 926 F.2d 877

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–attorney’s fees denied where opposing party’s claims were not frivolous, unreasonable, or without foundation
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Benigni v. City of Hemet (9th Cir. 1998) 853 F.2d 1519

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-Beaty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607

under Clayton Act § 4
Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354

under Code of Civil Procedure 128.7

–attorney fees may not be awarded as a sanction to an attorney representing himself
Musaeillian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]
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-criteria for recovery of fees and costs in opposing motion for sanctions


under Code of Civil Procedure 340.1


-under Code of Civil Procedure 386.6

-award of attorney’s fees from the interest accrued on interpleader funds statutorily prohibited


-fees denied where party failed to satisfy criteria for interpleader action


-under Code of Civil Procedure section 391.7 (vexatious litigant statute)

Kinney v. Clark (2017) 12 Cal.App.5th 724 [219 Cal.Rptr.3d 247]

-not authorized where complaint was dismissed for failure to post security bond


-sanctions imposed and expanded prefiling order on vexatious litigant and their attorney for filing frivolous appeals

Kinney v. Clark (2017) 12 Cal.App.5th 724 [219 Cal.Rptr.3d 247]

-under Code of Civil Procedure section 425.18

under Code of Civil Procedure section 473

Barry v. State Bar (2017) 2 Cal.5th 318 [212 Cal.Rptr.3d 124]


Summerfield v. Randolph (2011) 201 Cal.App.4th 127 [133 Cal.Rptr.3d 487]

Vargas v. City of Salinas (2011) 200 Cal.App.4th 1331 [134 Cal.Rptr.3d 244]


Doe v. Luster (2006) 201 Cal.App.4th 139 [51 Cal.Rptr.3d 403]


-defendants entitled to attorney’s fees even though plaintiffs dismissed appeal


-defendants who fail to file an anti-SLAPP motion before the voluntary dismissal of all causes of actions against them cannot recover fees or costs


-defendant’s motion to strike under the anti-SLAPP statute was frivolous, thus the granting of plaintiff’s attorney fee request was not an abuse of discretion


-does not authorize an award of attorney fees against plaintiff’s counsel


-litigant who only partially successful on anti-SLAPP motion entitled to recover attorney fees


-motion to strike found to be frivolous or solely intended to cause unnecessary delay


--claim did not arise from protected speech or petitioning activities, but from the nonpayment of a bill

Personal Court Reporters, Inc. v. Rand (2012) 205 Cal.App.4th 182 [140 Cal.Rptr.3d 301]

-party prevailing on an anti-SLAPP motion may seek fee award through three different avenues


-prevailing defendant attorneys are not entitled to attorney fees because they incurred no attorney fees in representing themselves


-trial court had jurisdiction to award anti-SLAPP fees in dismissing attorney’s challenge to State Bar discipline

Barry v. State Bar (2017) 2 Cal.5th 318 [212 Cal.Rptr.3d 124]

-withdrawal of funds was not protected conduct because it was neither communicative nor connected with an issue of public interest


-under Code of Civil Procedure section 425.18

-fees not recoverable


-under Code of Civil Procedure section 473

-under Code of Civil Procedure section 473

-attorney may not amend complaint during trial seeking more fees against former client


-untimely filing of motion for fees

--attorney’s fees recoverable where the court found that there was excusable neglect because counsel made an honest and reasonable mistake of law, which was held to be complex and debatable


See How to Use This Index, supra, p. i
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under Code of Civil Procedure section 527.6, defendant or plaintiff may recover


under Code of Civil Procedure section 580

- attorney's fees not required to be specified in a complaint where the prevailing party could not have predicted the amount of fees it would incur after the litigation commenced and prior to the court awarding terminating sanctions against the adverse party


under Code of Civil Procedure section 685.020 et seq.


- fees are recoverable where the prevailing party files a motion for attorney fees before a judgment is satisfied in full


under Code of Civil Procedure section 685.040

Conservatorship of McQueen (2014) 59 Cal.4th 602 [174 Cal.Rptr.3d 55]


under Code of Civil Procedure § 701.020 et seq.

- fees denied to prevailing creditor in an independent creditor's suit where there is no statutory authorization for such fee award


under Code of Civil Procedure section 720.260

- attorney/lienholder could recover losses incurred in an action on an undertaking but not attorney's fees which were not authorized by statute (CCP §§ 720.260, 996.430)


under Code of Civil Procedure section 907


under Code of Civil Procedure section 916


- former attorneys enjoined from prosecuting suit for fees against litigants while judgment was pending on appeal


under Code of Civil Procedure section 998

Scott Co. of California v. Blount Co. (1999) 20 Cal.4th 1103 [86 Cal.Rptr.2d 614]

Chinn v. KMR Property Management (2008) 166 Cal.App.4th 175 [82 Cal.Rptr.3d 586]


Duale v. Mercedes-Benz USA, LLC (2007) 148 Cal.Rptr.3d 680


- denied where settlement offer did not provide for sufficient time for acceptance


- entitled to award of attorney's fees where sum of jury damage award and defendant's post-settlement offer exceeded defendant's pre-trial settlement offer


- plaintiff not liable for paying defendant's costs in defamation suit if defendant's offer of settlement is conditioned on confidentiality


- prevailing plaintiff in lemon law suit could recover only pre-judgment interest and costs where compromise offer exceeded damage award


- settlement offer silent as to right to recover fees and costs does not constitute a waiver of that right

Chinn v. KMR Property Management (2008) 166 Cal.App.4th 175 [82 Cal.Rptr.3d 586]


- trial court erred in reducing attorney's fees and costs in party's refusal to accept an unreasonable or invalid offer under CCP § 998


under Code of Civil Procedure section 1021


- party may receive attorney's fees incurred in an administrative hearing

Edna Valley v. County of San Luis Obispo (2011) 197 Cal.App.4th 1312 [129 Cal.Rptr.3d 249]

under Code of Civil Procedure section 1021.5

Cabrera v. Martin (9th Cir. 1992) 973 F.2d 735

Serrano v. Stefan Merli Plastering Co., Inc. (2011) 52 Cal.4th 1018 [132 Cal.Rptr.3d 358]

Conservatorship of Whiteley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]

La Mirada Ave. v. City of Los Angeles (2018) 22 Cal.App.5th 1149 [232 Cal.Rptr.3d 338]


San Diego Municipal Employees Association v. City of San Diego (2016) 244 Cal.App.4th 906 [198 Cal.Rptr.3d 355]


Rogel v. Lynwood Redevelopment Agency (2011) 194 Cal.App.4th 1319 [125 Cal.Rptr.3d 267]

Wilson v. San Luis Obispo County Democratic Central Committee (2011) 192 Cal.App.4th 918 [121 Cal.Rptr.3d 731]
-attorney’s fees can only be recovered against opposing parties

-family law
  --fees denied where litigant had done nothing to curtail a public right other than to raise an issue in private litigation that resulted in an important legal precedent
    Adoption of Joshua S. (2008) 42 Cal.4th 945 [70 Cal.Rptr.3d 372]

-fees awarded to prevailing public entity against another public entity

-fees denied where remand to an administrative agency to reconsider a perceived procedural defect did not result in a change in the agency’s decision
  Center for Biological Diversity v. California Fish and Game Commission (2011) 195 Cal.App.4th 128 [124 Cal.Rptr.3d 467]

-fees limited to persons who pursue public interest litigation at a cost that is out of proportion to any personal interests they might have in the outcome
  People ex rel. Brown v. Tehama County Board of Supervisors (2007) 149 Cal.App.4th 422 [56 Cal.Rptr.3d 582]

-must be successful party
  -no provision under this statute, unlike CCP 128.5, giving courts authority to impose sanctions in the form of attorney fees for vexatious or “obdurate behavior”
  People ex rel. Brown v. Tehama County Board of Supervisors (2007) 149 Cal.App.4th 422 [56 Cal.Rptr.3d 582]
  -requires a full fee award unless special circumstances would render such award unjust
  -right of attorney to intervene on own behalf in client’s lawsuit to seek attorney’s fees
  -significant public benefit
  -supplemental fees request based on greater success on appeal
  Center for Biological Diversity et al. v. County of San Bernardino (2010) 188 Cal.App.4th 603 [115 Cal.Rptr.3d 762]
  -suspended corporation is not entitled to attorney fees
  City of San Diego v. San Diegans for Open Government (2016) 3 Cal.App.5th 568 [207 Cal.Rptr.3d 703]

-time limit
  --attorney’s fees incurred in post-judgment proceedings not time barred by rule 3.1702, California Rules of Court

under Code of Civil Procedure section 1021.7
  -no award of fees based on plaintiffs’ pursuit of a legitimate appeal
FEES

under Code of Civil Procedure section 1021.9

- may be awarded for trespass on agricultural land being cultivated even where defendant did not damage crops or interfere with agricultural operations


- party awarded nominal damages not entitled to attorney fees where statute provided award of fees for actions to recover damages to personal or real property


under Code of Civil Procedure section 1023 et seq.

deSaulles v. Community Hospital of the Monterey Peninsula (2016) 62 Cal.4th 1140 [202 Cal.Rptr.3d 429]


under Code of Civil Procedure section 1033.5

- memorandum of costs not required where party seeking contractual attorney fees pursuant to Civil Code section 717 and Code of Civil Procedure Section 1033.5


- plaintiff not entitled to fees where request was not included in default judgment


under Code of Civil Procedure section 1036

- property owner is entitled to attorney’s fees as prevailing party in action to enforce inverse condemnation judgment against city


under Code of Civil Procedure section 1038

- does not authorize attorney fees for successful defense of section 1983 claims, a federal civil rights law


No Toxic Air Inc. v. Lehigh Southwest Cement Co. (2016) 1 Cal.App.5th 1136 [205 Cal.Rptr.3d 535]

under Code of Civil Procedure section 1286.2


under Code of Civil Procedure section 2030

- attorney fees may not be awarded to prevailing attorney acting in pro per


under Code of Civil Procedure section 2033.420

Estate of Manuel (2010) 187 Cal.App.4th 400 [113 Cal.Rptr.3d 448]

under Corporations Code section 317

- fees denied on the grounds that employer is a limited liability company and as such is governed by the Limited Liability Company Act (Corporations Code § 17000 et seq.) which contains no provision similar to section 317 in mandating indemnification for claims against its agents and employees

Nicholas Laboratories, LLC v. Chen (2011) 199 Cal.App.4th 1240 [132 Cal.Rptr.3d 223]

- outside counsel retained by corporation to defend against litigation was not agent of corporation for purposes of statute indemnifying persons sued by reason of such agency for defense costs


under Corporations Code section 800


under Corporations Code section 8337

- failure to award fees to plaintiff wrongfully denied access to the defendant association’s meeting minutes constituted abuse of discretion


under Corporations Code section 15634

Berti v. Santa Barbara Beach Properties et al. (2006) 145 Cal.App.4th 70 [51 Cal.Rptr.3d 364]

under Davis-Stirling Common Interest Development Act

Tract 19051 Homeowners Assn. v. Kemp (2015) 60 Cal.4th 1135 [184 Cal.Rptr.3d 701]

under Family Law Code section 272


under Family Law Code section 1101(g)

In re Marriage of Fossum (2011) 192 Cal.App.4th 336 [121 Cal.Rptr.3d 626]

under Family Law Code section 2030

In re the marriage of Tharp (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 375]


- former wife entitled to recover attorney fees incurred to enforce spousal support agreement

In re Marriage of Bendetti (2013) 214 Cal.App.4th 863 [154 Cal.Rptr.3d 329]

under Federal Rule of Civil Procedure section 11

In re Southern California Sunbelt Developers, Inc. (9th Cir. 2010) 608 F.3d 456

under Federal Rule of Civil Procedure section 17(c) to guard the interests of minors

Robidoux v. Rosenberg (9th Cir. 2011) 633 F.3d 1177

under Federal Rule of Civil Procedure section 23(h)

- practice of setting the deadline for class members to object to fee awards before the actual motion for fees borders on denial of due process in that the class is denied the full and fair opportunity to examine and oppose the motion

In re Mercury Interactive Corp. (9th Cir. 2010) 618 F.3d 988

under Federal Rule of Civil Procedure section 37(c)(2)


under Federal Rule of Civil Procedure section 69(a)

Carneus v. Zamani (9th Cir. 2007) 488 F.3d 1057

under Government Code section 800

- finding of arbitrary and capricious action against school district


under Government Code section 6250


Fontana Police Dept. v. Villegas-Banuelos (1999) 73 Cal.Rptr.3d 448

under Government Code section 12989.1 et seq. (discrimination in housing)


under Government Code section 25845

FEES

under Government Code section 38773 et seq.
- city ordinance which provided for unilateral recovery of attorney fees found invalid because it conflicted with state statute permitting recovery of fees by a prevailing party

City of Monte Sereno v. Padgett (2007) 149 Cal.App.4th 1530 [58 Cal.Rptr.3d 218]

under Government Code section 51200 et seq. (the Williamson Act)


under Health & Safety Code section 13009.1
- fees not recoverable unless they are specifically authorized by contract, statute, or law


under Health & Safety Code section 17980.7


under Health Care Decisions Law

Humboldt Co. Adult Protective Services v. Superior Court (2016) 4 Cal.App.5th 548 [208 Cal.Rptr.3d 666]

under Information Practices Act (California)
- lodestar method in calculating attorney’s fees


under Labor Code § 98.2

- former employee’s attorneys entitled to attorney’s fees even if they represent party without charge

Lolley v. Campbell (2002) 28 Cal.4th 367 [121 Cal.Rptr.2d 510]

under Labor Code § 510
- failure to pay overtime compensation


under Labor Code § 1194
- absent a contract determining a different disposition, attorney fees awarded under Labor Code section 1194, should be made payable directly to the attorney

- arbitrator improperly awarded defendant employer attorney’s fees for defeating plaintiff’s overtime claim prohibited by labor code

- manager who prevailed on employee’s unpaid minimum and overtime claims on grounds he was not employee’s employer was not entitled to recover attorney fees from employee even though manager and employee were employed by same employer


under Labor Code § 2999


under Labor Code § 2802
- employer not required to pay fees and costs incurred by employee in defending against lawsuit when employees refuses to retain employer’s attorney

- fees denied on the grounds that the section 2802 is applicable to indemnification of employees sued by third parties, not to claims by employer against its own employees

Nicholas Laboratories, LLC v. Chen (2011) 199 Cal.App.4th 1240 [132 Cal.Rptr.3d 223]

under Labor Code §§ 3856 and 3860
- claimant’s attorney is not entitled to fees from settlement proceeds if claimant received no benefit from the settlement

Draper v. Aceto (2001) 26 Cal.4th 1086 [113 Cal.Rptr.2d 61]

under Labor Code § 5801
- attorney fees not automatically awarded to injured employee who prevailed in defending against employer’s petition for writ of review


under Lanham Act

SunEarth Inc. v. Sun Earch Solar Power Co. (9th Cir. 2016) 839 F.3d 1179

under Penal Code section 1202.4
- lodestar method not applicable in determining attorney fees in crime victim restitution awards

People v. Taylor (2011) 197 Cal.App.4th 757 [128 Cal.Rptr.3d 399]

under Petroleum Marketing Practices Act

Chevron U.S.A. Inc. v. M&M Petroleum (9th Cir. 2011) 658 F.3d 948

under Probate Code section 10810

- no written fee contract necessary to pay statutory attorney fees out of probate estate for services rendered to personal representative

In re Estate of Wong (2012) 207 Cal.App.4th 366 [143 Cal.Rptr.3d 342]

under Probate Code section 17211(b)


under Proposition 65


under Public Utilities Code § 1757 et seq.
- recalculation of fees to outside counsel retained by consumer group to assist in its work before a commission where outside counsel offered different services than in-house counsel


under Public Utilities Code § 1806 et seq.


under Song Beverly Act


under U.S.C.A. § 4730

Morrison v. Commissioner of Internal Revenue (9th Cir. 2000) 265 F.3d 158
- fees denied even though taxpayer prevailed on most significant issue on the grounds that statutory language does not include government’s pre-litigation conduct

Pacific Fisheries Inc. v. U.S. (9th Cir. (Wash.) 2007) 484 F.3d 1103

under Uniform Foreign Money Judgments Recognition Act

- foreign order to pay attorney fees unenforceable where constitutes support

In re Marriage of Lyustiger (2009) 177 Cal.App.4th 1367 [99 Cal.Rptr.3d 922]

under unlawful detainer action

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under USCS section 928
Shirrod v. Director, Office of Workers' Compensation Programs (9th Cir. 2015) 809 F.3d 1082
Christensen v. Stevedoring Services of America (9th Cir. 2009) 557 F.3d 1049

under Welfare and Institutions Code § 10962

under Welfare and Institutions Code §§ 15600 et seq.
Conservatorship of Levitt (2001) 93 Cal.App.4th 544 [113 Cal.Rptr.2d 294]
- denial of fees to prevailing defendant where statute contains a unilateral fee shifting provision

under Welfare and Institutions Code § 15657
Conservatorship of McQueen (2014) 59 Cal.4th 602 [174 Cal.Rptr.3d 55]

under UCC § 2-719

under undertaking action
- attorney/lienholder could recover losses incurred in an action on an undertaking but not attorney's fees which were not authorized by statute (CCP §§ 720.260, 996.430)

under unilaterally recovery of attorney fees by city under local ordinance found invalid where it conflicted with state statute
City of Monte Sereno v. Padgett (2007) 149 Cal.App.4th 1530 [58 Cal.Rptr.3d 218]

United States liability for
Lauritzen v. Lehman (9th Cir. 1984) 736 F.2d 551
waiver of
- not presumed from silent record
Wakefield v. Mathews (9th Cir. 1988) 852 F.2d 482

under untimely filing of motion for fees
- attorney's fees recoverable where the court found that there was excusable neglect because counsel made an honest and reasonable mistake of law, which was held to be complex and debatable
vexatious litigation statutes do not authorize attorney fees award where complaint is dismissed for failure to post security bond

void
- in violation of stay
In re Miller (9th Cir. (Mont.) 2005) 397 F.3d 726

waiver of
- settlement agreements which include fee-waiver provisions under fee shifting statutes
CAL 2009-176

will not be disturbed absent abuse of discretion
- Americans with Disabilities Act
  -- district court could not deny fees based on a finding that prevailing party had unreasonably prolonged the litigation, but the court could consider prevailing party's actions in reducing fees
  Jankey v. Poop Deck (9th Cir. 2008) 537 F.3d 1122
  - court abused discretion by denying attorney fees to successful party in copyright lawsuit
  Traditional Cat Assn. Inc. v. Gilbreath (9th Cir. 2003) 340 F.3d 829

-district court was required to provide more specific reasons for making such significant reduction in fees (37%)
Carter v. Caleb Brett LLC (9th Cir. 2014) 757 F.3d 866

-federal securities fraud matter remanded because the trial court did not adequately explain the basis for the award of attorney fees
Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249
- no abuse of discretion shown
Rite Nail Packaging Corp. v. Berry Fast (1983) 706 F.2d 933, 936

Binet v. California Health and Welfare Agency (9th Cir. 1983) 704 F.2d 1465, 1473
- trial court abused discretion in limiting award of attorney's fees
United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 896 F.2d 403
- Workers' Compensation lien fund and trial court's authority to allocate amount for attorney fees
Hartwig v. Farm's (1992) 2 Cal.App.4th 1550

Workers' Compensation
- award of fees to employee justified on the grounds that employer's petition for writ of review indisputably lacked merit
- burden is on attorney fee applicant to produce satisfactory evidence of relevant market rate (in workers' compensation case)
Van Skike v. Director, Office of Workers' Compensation Programs (2009) 557 F.3d 1041
- claimant's attorney is not entitled to fees from settlement proceeds if claimant received no benefit from the settlement
Draper v. Aceto (2001) 26 Cal.4th 1086 [113 Cal.Rptr.2d 61]
- non-attorney's law firm representative of injured employee may not be entitled to same fees as licensed attorney
- successful claimant entitled to attorney fees under Longshore and Harbor Workers' Compensation Act
Dyer v. Cenex Harvest Services Cooperative (2009) 563 F.3d 1044
- under Labor Code § 4607
Smith v. WCAB (2009) 46 Cal.4th 272 [92 Cal.Rptr.3d 894]

Award of compensation for law clerk and paralegal time reasonably spent on plaintiff's case
United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 896 F.2d 403
ERISA matter under 29 U.S.C. 1332(g)(2)(D)
- under Labor Code § 4607

Bankruptcy
attorney award of fees and costs for bad faith
In re DeVille (9th Cir. 2004) 361 F.3d 539, 58
- attorney cannot use confidences of former client to challenge client's discharge of fees owed
- attorney employed by a trustee is entitled to compensation for legal services
In re Garcia (9th Cir. BAP 2005) 335 B.R. 717
attorney fees and costs awarded against debtors for dragging proceedings for too long due to inaction
In re Starky (9th Cir. BAP 2014) 522 B.R. 220
attorney fees and costs not dischargeable when awarded for debtor’s willful and malicious conduct
In re Suarez (9th Cir. BAP 2009) 400 B.R. 732
attorney not licensed in Arizona, but who is admitted to practice before Arizona district court, can receive fee as counsel for Chapter 13 debtor
In re Poole (9th Cir. BAP 2000) 222 F.3d 618
attorney who provided debtor with pre-petition legal services in marital dissolution matter lacks standing to complain her unpaid fee is not dischargeable
attorney’s fees and costs awarded to defendant/creditor in a post-petition state court suit based on pre-petition causes of action were dischargeable as personal liability of debtor
In re Ybarra (9th Cir. BAP 2003) 295 B.R. 609
attorney’s fees are administrative expenses that must be paid first
In re Short (1989) 101 B.R. 185
attorney’s fees claim against lender’s collateral barred where law firm negotiated and approved comprehensive waiver in loan agreement which barred surcharge or assessment against the collateral
In re Cooper Commons LLC (9th Cir. 2008) 512 F.3d 533
attorney’s fees denied to debtor in discharging student loan debt
In re Hossoin (9th Cir. BAP 2014) 504 B.R. 558
attorney’s fees denied without court authorization
attorney’s fees not recoverable under sections of the Bankruptcy Code regarding discharge exceptions for fraud, provided that successful plaintiff could recover such fees in non-bankruptcy court
In re Bertola (9th Cir. BAP 2004) 317 B.R. 95
authority of bankruptcy court to award fee enhancements
In re Pilgrim’s Pride Corp. (5th Cir. (Texas) 2012) 690 F.3d 650
automatic stay not applicable to attorney’s efforts to collect previously agreed-upon fees for post-petition services
In re Hines (9th Cir. BAP 1998) 198 B.R. 769
award of fees is void when underlying claim is in violation of stay
In re Miller (9th Cir. (Mont.) 2005) 397 F.3d 726
award of fees to unsecured creditor incurred post-petition but based on a pre-petition contract
In re SNTL Corp. (9th Cir. BAP 2007) 380 B.R. 204
awarding interim fees to attorney in bankruptcy action
In re International Environmental Dynamics (9th Cir. 1983) 718 F.2d 322
bankruptcy court did not abuse its discretion in declining to decide post-dismissal motion to enforce fee agreement between debtor and attorney
In re Elias (9th Cir. BAP 1999) 188 F.3d 1160 [34 Bankr Ct. Dec. 1229]
bankruptcy court erred in awarding debtor’s their attorney fees and costs under statute
In re Faitalia (9th Cir. BAP 2016) 561 B.R. 767
bankruptcy court erred in discharging unpaid attorney fees when debtor agreed in writing to personally pay fees upon completion of plan payments
In re Johnson (9th Cir. BAP 2006) 344 B.R. 104
bankruptcy court has jurisdiction to approve post-petition attorney fees
In re Knudsen Corporation (1988) 84 B.R. 668
bankruptcy court’s authority to order disgorgement of debtor’s counsel’s prepetition security retainer
In re Dick Cepek, Inc. (9th Cir. BAP 2006) 339 B.R. 730
bankruptcy court’s jurisdiction to amend award of attorney’s fees under CCP § 187 and the inherent power of federal courts
In re Levander (9th Cir. 1999) 180 F.3d 1114
bankruptcy petitions preparers (BPP) (11 U.S.C.A. § 110(h))
Bankruptcy court required under the bankruptcy code to disallow any fee paid to BPP found to be in excess of the value of services
Scott v. United States (In re Doser) (9th Cir. 2005) 412 F.3d 1056
-BPP can only transcribe and type bankruptcy forms that debtor alone must prepare without assistance and may charge only what professional typists or word processors would charge
Scott v. United States (In re Doser) (9th Cir. 2005) 412 F.3d 1056
chapter 7 debtor’s attorney may receive professional fees from bankruptcy estate for post-petition services
In re Century Cleaning Services, Inc. (9th Cir. BAP 1999) 195 F.3d 1053 [35 Bankr.Ct. Dec. 63]
chapter 7 estate trustee’s attorney may be denied fees if attorney lacks disinterestedness or represents interests adverse to the interest of the estate
In re Tavis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]
chapter 9 fee agreement based on fixed hourly rate but provides for possible increase found valid
chapter 13
In re Eliapo (Boone v. Derham-Burk) (9th Cir. BAP 2006) 468 F.3d 92
claims for attorney fees and costs incurred in post-petition not discharged where post-petition, the debtor voluntarily commences litigation or otherwise voluntarily returns to the fray
In re Ybarra (9th Cir. 2005) 424 F.3d 1018
court had authority under tax code to pay debtor’s attorney fees
In re Gormaine (1993) 152 B.R. 619
creditor may be ordered to pay chapter 11 debtor’s fees upon dismissal of involuntary petition under Bankruptcy Code § 305
In re Macke International Trade, Inc. (9th Cir. BAP 2007) 370 B.R. 236
creditor’s claim for attorney’s fees incurred during the state court litigation after confirmation of debtor’s Chapter 11 plan was discharged by debtor’s bankruptcy
In re Castellino Villas, A. K. F. LLC (9th Cir. BAP 2016) 836 F.3d 1028
debtor awarded appellate attorney’s fees pursuant to 11 USCA § 362(k)
In re Schwartz-Tallard (9th Cir. 2014) 765 F.3d 1096
delay in bankruptcy court’s approval of payment does not entitle enhanced attorney’s fees
In re Music Merchants, Inc. (C.D. Cal. 1997) 208 B.R. 444
disgorgement of attorney fees against firm and attorney employee is proper
Bankruptcy of Sandoval (9th Cir. 1995) 186 B.R. 490
disgorgement of attorney fees against firm not proper where law firm representation was approved by court
In re S.S. Retail Stores (9th Cir. 2000) 216 F.3d 882 [36 Bankr.Ct. Dec. 79]
disgorgement of attorney fees for professional misconduct
Price v. Lehtinen (In re Lehtinen) (9th Cir. BAP 2005) 332 B.R. 404
disgorgement of attorney fees is allowed after violation of bankruptcy code and rules
In re Petersons (1994) 163 B.R. 665
Bankruptcy of Basham (9th Cir. 1997) 208 B.R. 926
expenses incurred by petitioning creditors in connection with filing an involuntary bankruptcy petition may be reimbursed by debtor’s estate.

In re Wind N’ Wave (9th Cir. 2007) 509 F.3d 938

failure to obtain court approval for employment of counsel may operate to deny payment of attorney fees.

In re Shirley (1992) 134 B.R. 940

fee provision in security agreement did not serve as ground for awarding fees and costs to oversecured creditor following its successful defense of adversary preference proceeding.

In re Connolly (9th Cir. BAP 1999) 238 B.R. 475 [34 Bankr.Ct.Dec. 1219]

fees awarded to party who prevailed, not necessarily on all issues, but on “disputed main issue”.

In re Hoogal (9th Cir. BAP 2007) 369 B.R. 506

fees for wife’s attorney in dissolution dischargeable in bankruptcy

In re Gibson (1989) 103 B.R. 218

fees recoverable if they are linked to litigation seeking to enforce a contract


following dismissal of involuntary petition, debtor did not have to join all creditors in order to move for award of reasonable attorney fees and costs.

In re Maple-Whitworth, Inc. (9th Cir. BAP 2007) 375 B.R. 558

no recovery of attorney’s fees if chapter 7 bankruptcy estate trustee’s attorney lacks disinterestedness or represents interests adverse to the interest of the estate.

In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]

prevailing party may recover attorney fees in state court following dismissal of bankruptcy proceeding


pro rata sharing of attorney fees properly awarded against co-owners

In re Flynn (9th Cir. BAP 2003) 297 B.R. 599 [41 Bankr.Ct.Dec. 211]

security retainer agreements require appropriate fee applications made to the court.

In re Montgomery Drilling Co. (E.D. Cal. 1990) 121 B.R. 32

totality of circumstance test applied when awarding attorney’s fee

In the Matter of Maple-Whitworth (9th Cir. 2009) 556 F.3d 742

Higgins v. Vortex Fishing Systems Inc. (9th Cir. 2004) 379 F.3d 701

trustee expenses incurred in marketing & selling property & defending stay relief to prevent foreclosure property chargeable to sales proceeds & trustee may withhold such proceeds pending resolution of claims by non-debtor, co-owner of property.

In re Flynn (9th Cir. BAP 2003) 297 B.R. 599 [41 Bankr.Ct.Dec. 211]

trustee fees not proper for duties that are not practice of law

In re Garcia (9th Cir. BAP 2005) 335 B.R. 717

trustee may withhold non-debtor, co-owner's share of proceeds from sale of property pending resolution of claims by co-owner relating to such sale

In re Flynn (9th Cir. BAP 2003) 297 B.R. 599 [41 Bankr.Ct.Dec. 211]

waiver of fees and costs

- entitlement to fees and costs upon dismissal of an involuntary bankruptcy petition may be waived if all parties consent or if debtor waives relief

In the Matter of Maple-Whitworth (9th Cir. 2009) 556 F.3d 742

Bankruptcy action

In re DeVille (9th Cir. 2004) 361 F.3d 539, 58

Based on agreement

Tarver v. State Bar (1984) 37 Cal.3d 122

In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252

Based on bad faith action

In re DeVille (9th Cir. 2004) 361 F.3d 539, 58

Basis for court decision

In re DeVille (9th Cir. 2004) 361 F.3d 539, 58

large fee reduction requires a relatively specific articulation of court's reasoning.

Stetsen v. Grissom (9th Cir. 2016) 821 F.3d 1157

Between attorneys

the merits of a declaratory relief action must be resolved in the trial court's discretion

Carver v. Patten (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]

Billing

billing service, use of

LA 423 (1983), LA 374 (1978)

clients must understand and consent to billing practices

CAL 1996-147, OC 99-001

“double billing”

CAL 1996-147, OC 99-001

fee agreement based on fixed hourly rate but provides for possible increase found valid.


justification

-in billing for paralegal work, court, in its discretion, may not allow hearsay by attorney as the sole justification for award such fees

Muniz v. United Parcel Services Inc. (9th Cir. 2013) 738 F.3d 214

“over-billing”

-district court may not reduce fees without identifying the hours spent inefficiently or providing any explanation of the particular degree of reduction

Ferland v. Conrad Credit Corp. (9th Cir. 2001) 244 F.3d 1145

-district court may review attorney’s “billing judgment” and reduce fees if some tasks should have been delegated to associate or paralegal


OC 99-001

-fiduciary duty to clients, both civil and criminal, requires that fee agreements and billings be fair, reasonable, and fully explained to the client


-preparation of false and misleading billing statements involves moral turpitude

In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725

LA 522 (2009)

rates originally agreed to by a client may not be raised by a law firm without first notifying the client.


LA 479 (1994)
services of law clerks, legal assistants (paralegal), and secretaries


use of block billing rather than listing separately time expended to perform each task

Welch v. Metropolitan Life Ins. Co. (9th Cir. 2007) 480 F.3d 942


Billing statements are not protected by attorney-client privilege

Child custody cases

post-divorce child custody fee order requires trial court to first consider parties' relative circumstances


Child support


attorney's fees not classified as gross income in calculating child support obligations


child support act

-putative father's successful defense of paternity/reimbursement action does not include right to attorney fees


no abuse of discretion when award of attorney fees to mother in child support dispute was based on parties' needs, income, assets and abilities


Civil Code section 51 et seq. (Unruh Civil Rights Act)


-putative father's successful defense of paternity/reimbursement action does not include right to attorney fees

no abuse of discretion when award of attorney fees to mother in child support dispute was based on parties' needs, income, assets and abilities


Civil Code section 1717

absent a contractual fees provision, a party cannot recover attorney's fees, even if it prevails in litigation


abuse of discretion where the court held there was no prevailing party even though the result was lopsided in favor of the plaintiff


See How to Use This Index, supra, p. i 283 2019 (updated entries through 12/31/2018)

attorney litigating in propria persona

- attorney litigating in propria persona cannot be said to incur compensation for his time and lost business opportunities


-award of discovery sanctions under CCP § 2030(1) analogized to award of attorney's fees under CC § 1717


-may recover reasonable attorney fees for legal services of assisting counsel


attorney represented by other members of his law firm is entitled to recover attorney fees where the representation involved the attorney's personal interests and not those of the firm


attorney's fees may be awarded to attorneys who represent each other in fee dispute with client that attorneys jointly represented

Farmers Insurance Exchange v. Law Offices of Conrado Joe Sayas, Jr (9th Cir. 2001) 250 F.3d 1234


award of attorney's fees applies mutually and equally to all parties even if written otherwise


California law applies if its' interest in the matter is greater than that of the other state (to prevent unfair litigation tactics through one-sided attorney fee provisions)


denial of fees where party prevailed in enforcing contract that contained no attorney's fees provision while losing party championed another contract with a fees provision


distinction between prevailing in the underlying claim of breach of contract and prevailing in proving the contract contains an applicable attorney fee provision


does not allow firm to recover fees incurred in suit to recover unpaid fees from client when client had already paid entire contractual debt to firm before trial


limited success of plaintiff's enforcement of consent decree should have resulted in denial of attorney fees


mutuality of remedy when contract permits recovery of attorney fees


party that prevails is entitled to attorney's fees only if it can prove it would have been liable for such fees if the opposing party had prevailed


FEES

plaintiff not prevailing party entitled to attorney fees when successful on defendant’s appeal from denial of attorney fees


plaintiffs who were assigned developer’s express indemnity cross-action against subcontractor were liable for attorney fees to subcontractor who prevailed in trial


standard third-party indemnity clause not within scope


voluntary dismissal of one contract claim does not preclude recovery of attorney’s fees on another claim


Class action

absent class members not liable for employer’s attorney’s fees in overtime dispute


amount of attorney’s fees determined to be reasonable in light of quantity and quality


attorney’s failure to disclose fee-splitting agreement to court before obtaining approval of attorney’s fees in class action settlement barred later enforcement of the agreement


attorney’s fees approved by the trial court in a class action settlement are presumed to be reasonable where defendant agreed not to oppose award of certain amount to class counsel

In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]

attorney’s fees for securities class action suits should be based on individual case risk

In re Quantum Health Resources, Inc. v. C.D. Cal. (1997) 962 F.Supp. 1254

attorney’s fees should be adequate to promote consumer class action


award of attorney’s fees denied where shareholder’s class action against corporation did not confer sufficient benefits to shareholders under the substantial benefit doctrine and where plaintiff did not engage in reasonable effort to resolve dispute prior to litigation

Pipefitters Local No. 636 v. Oakley, Inc. (2010) 180 Cal.App.4th 1542 [104 Cal.Rptr.3d 78]

awarded pursuant to Civil Code section 1717


basis for court decision

Stetson v. Grissom (9th Cir. 2016) 821 F.3d 1157

basis of award to an unnamed member of putative class who defeats class certification


clear sailing agreements

In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]

dispute among class counsel

Carder v. Patten (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]

district court presiding over settlement fund had equitable power to award attorney fees for work outside litigation immediately before court where that work helped create settlement fund

Wninger v. SI Management, L.P. (9th Cir. 2002) 301 F.3d 1115

large fee reduction requires a relatively specific articulation of court’s reasoning

Stetson v. Grissom (9th Cir. 2016) 821 F.3d 1157

“lodestar” multiplier method when risk was slight


negative multiplier decreasing the lodestar is justified where amount of time attorney spent on case was unreasonable and duplicative


no abuse of discretion where trial court granted a temporary restraining order to prevent firm from distributing fees to itself without court approval


settlement shall not include attorney fees as portion of common fund established for benefit of class

Staton v. Boeing Co. (9th Cir. Wash.) 2003) 327 F.3d 938

In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]

standing to appeal awards of

Stetson v. Grissom (9th Cir. 2016) 821 F.3d 1157

Lobatz v. U.S. West Cellular (9th Cir. 2000) 222 F.3d 1142

-class member lacks standing to object to attorney’s fees and costs because attorney failed to demonstrate how the award adversely affected that member or the class

Glasser v. Volkswagen of America, Inc. (9th Cir. 2011) 645 F.3d 1084

-objector has standing to appeal denial of own claim for fees even if objector did not submit a settlement claim

Stetson v. Grissom (9th Cir. 2016) 821 F.3d 1157

trial court acted within its discretion in awarding 33.33 percent of common fund as reasonable attorney fees


under Code of Civil Procedure section 916

-former attorneys enjoined from prosecuting suit for fees against litigants while judgment was pending on appeal


under Federal Rule of Civil Procedure 23(h), the practice of setting the deadline for class members to object to fee awards before the actual motion for fees borders on denial of due process in that the class is denied the full and fair opportunity to examine and oppose the motion

In re Mercury Interactive Corp. (9th Cir. 2010) 618 F.3d 988

Collection of [See Collections.]

CAL 1982-68

attorney collection agency

-Business and Professions Code section 6077.5

-Fair Debt Collection Practices Act applies to attorneys regularly engaged in consumer debt-collection


bankruptcy action


bankruptcy court must scrutinize a law firm’s unsecured claim for attorney’s fees

In re Marquis Investment Corporation (9th Cir. 1991) 942 F.2d 1462
billing service, use of
LA 423 (1983), LA 374 (1978)
collection agency, use of
LA 522 (2009), LA 373 (1978)
use of state procedure to execute federal judgment
In re Levander (9th Cir. 1999) 180 F.3d 1114
Confession of judgment signed by client to assure fee collection
improper
Hulland v. State Bar (1972) 8 Cal.3d 440 [105 Cal.Rptr. 152]
In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735
Conflict of interest
Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354
United States ex. Rel. Alnoor Virani v. Jerry M. Truck Parts & Equipment, Inc. (9th Cir. 1996) 89 F.3d 574
Cal Pak Delivery, Inc. v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 Cal.Rptr.2d 207]
Conservatorship of Chilton (1970) 8 Cal.App.3d 34, 43 [86 Cal.Rptr. 860, 866]
attorney engaged in conflicting representation without obtaining informed written consent not entitled to recover fees
Rodriguez v. Disner (9th Cir. 2012) 688 F.3d 645
Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354
lump sum payment of fees and costs does not create inherent conflict
People v. Doolin (2009) 45 Cal.4th 390 [87 Cal.Rptr.3d 209]
no recovery of attorney’s fees where attorney engaged in conflicting representation without obtaining informed consent
Rodriguez v. Disner (9th Cir. 2012) 688 F.3d 645
Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354
where the attorney’s ethical violation in question is a conflict of interest between the attorney and the client, the appropriate fee is zero
Fair v. Bakhtiar et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]
Conflict of interest, fees paid by co-defendant
U.S. v. Wells (9th Cir. Mon. 2005) 394 F.3d 725
Conflict of interest, fees paid by third party
Strolrow v. Strolrow, Inc. (9th Cir. 1987) 813 F.2d 997
CAL 1975-35
Conservatorship
conservatee cannot obligate conservatorship estate for payment of attorney’s fees
Young, etc. v. Thomas (1989) 210 Cal.App.3d 812 [258 Cal.Rptr. 574]
Contingent [See Contingent Fee.]
Contract
attorney fees awarded under contract to law firm seeking to collect unpaid legal bills
award of fees may be proper under broadly-worded attorney fee provision even where claim did not arise out of the agreement
contingency lawyer may negotiate a fee contract that gives first proceeds to the lawyer and imposes on client greater risk of non-payment
LA 526 (2015)
contract making material changes to existing contingency fee contract must comply with Business and Professions Code § 6147
contra to law, policy, or morals
defendant-sellers in real estate case are not required to seek mediation prior to recovery of attorney fees
denial of attorney fees where party is non-signatory under contract and denied third-party beneficiary status
denial of fees where contract is deemed to be entirely voided versus award of fees where a contract is found to be divisible, voidable, or rescindable
Golden Pisces, Inc. v. Wahl Marine Construction (9th Cir. 2007) 495 F.3d 1078
denial of fees where party prevailed in enforcing contract that contained no attorney’s fees provision while losing party championed another contract with a fees provision
fee agreements and billings must be fair, reasonable, and fully explained to the client
In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980
members of dissolved LLC are liable for attorney fees up to amount distributed upon dissolution for breach of contract by LLC
no recovery of attorney’s fees when contractual condition of mediation prior to court action not satisfied
recovery of attorney’s fees may be awarded notwithstanding an invalid contract except when parties are in pari delicto
social security cases
Crawford v. Astrue (9th Cir. 2009) 586 F.3d 142
under Civil Code § 1717
In re Penrod (9th Cir. 2015) 802 F.3d 1084
Scott Co. of California v. Blount Co. (1999) 20 Cal.4th 1103 [86 Cal.Rptr.2d 614]
Burkhalter Kessler Clement & George LLP v. Hamilton (2018) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]
Hjelm v. Prometheus Real Estate Group, Inc. (2016) 3 Cal.App.5th 1155 [208 Cal.Rptr.3d 394]
FEES


Pueblo Radiology Medical Group, Inc. v. J. Dalton Geriach et al. (2008) 163 Cal.App.4th 826 [77 Cal.Rptr.3d 880]


- attorney fees may be awarded to more than one prevailing party in a breach of contract dispute
  - Burkharter Kessler Clement & George LLP v. Hamilton (2018) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]
  - attorney fees may not be awarded to a prevailing attorney acting in pro se
  - denial of attorney fees where party is non-signatory under contract and denied third-party beneficiary status
  - denial of fees where party prevailed in enforcing contract that contained no attorney’s fees provision while losing party championed another contract with a fees provision
  - distinction between prevailing in the underlying claim of breach of contract and prevailing in proving the contract contains an applicable attorney fee provision
  - equitable principles applied to reduce fees by 90% where court found prevailing litigant had unnecessarily prolonged the litigation and counsel’s time was not reasonably incurred
  - limited success of plaintiff’s enforcement of consent decree should have resulted in denial of attorney fees
  - misuse of attorney fee claims sometimes leads to protracted litigation that consumes judicial resources and client money, serves no public purpose, and impairs image of legal profession
  - party claiming entitlement to fees estopped from later challenging the fees provision

- party that prevails is entitled to attorney’s fees only if it can prove it would have been liable for such fees if the opposing party had prevailed


Copyright Act

- Ryan v. Editions Limited West, Inc. (9th Cir. 2015) 786 F.3d 754
- Cadkin v. Loose (9th Cir. 2009) 569 F.3d 1142
- court misapplied the factors on which it focused while omitting analysis of other factors that may have allowed award of attorney fees
  - Glacier Films (USA), Inc. v. Turchin (9th Cir. 2018) 896 F.3d 1033
  - does not preempt California law permitting contractual fee shifting provisions
  - Ryan v. Editions Limited West, Inc. (9th Cir. 2015) 786 F.3d 754
  - use of block billing rather than listing separately time expended to perform each task
  - Ryan v. Editions Limited West, Inc. (9th Cir. 2015) 786 F.3d 754

- Costs: bail bond forfeiture proceedings
  - motion of fees denied where there is no provision in the relevant statute to recover fees as costs
  - certain non-taxable costs, such as clerk and docketing fees, copying costs, can be awarded as part of a reasonable attorney’s fees under 15 USCA § 1681(o)(2); 28 U.S.C.A. § 1920 (the Fair Credit Reporting Act)
  - Grove v. Wells Fargo Financial California, Inc. (9th Cir. 2010) 606 F.3d 577
  - district court erred in allowing for award of pro hac vice fees as taxable costs and costs for editing and synchronizing deposition video tapes
  - Kalitta Air L.L.C. v. Central Texas Airborne System Inc. (9th Cir. 2013) 741 F.3d 955

- County beneficiary of SSI benefits in debtor-creditor relationship with recipients of county funds no duty to share costs of plaintiff’s attorney’s fees

- Court has discretion to award under Criminal Justice Act
  - Matter of Baker (9th Cir. 1982) 693 F.2d 925

- Court must consider relevant guidelines in setting fees
  - Fitzharris v. Wolff (9th Cir. 1983) 702 F.2d 836

- Criminal law matter
  - court imposed on criminal defendant [a criminal laboratory analysis fee] and a drug program fee under Penal Code § 1203(a) which constituted punishment pursuant to Legislature’s intent
  - People v. Ruiz (2018) 4 Cal.5th 1100 [232 Cal.Rptr.3d 714]
  - court may award crime victim attorney’s fees in a restitution order when the victim incurred the expenses to participate in law enforcement’s investigation and prosecution of defendant
  - U.S. v. Eyraud (9th Cir. 2015) 809 F.3d 462
  - lodestar method not applicable in determining attorney fees in crime victim restitution awards
  - People v. Taylor (2011) 197 Cal.App.4th 757 [128 Cal.Rptr.3d 399]

- Delay of client’s matter to collect [See Unpaid fee.]
when court awards none
LA(I) 1962-4
Demand from third party
LA 226 (1955)
award of attorney fee provision in contract applies to third-
party beneficiary
Cal.Rptr.3d 39]
Cal.Rptr.3d 780]
third-party claimant who was not intended beneficiary of
attorney fee clause in contract denied award
Sessions Payroll Management, Inc. v. Noble Construction
Derivative action
Cal.Rptr.3d 387]
Cal.Rptr.3d 419]
Cal.App.4th 468 [119 Cal.Rptr.2d 787]
Determination of [See Bid for legal work.] agreement
- in divorce
LA 226 (1955)
- by statute and contract
Code of Civil Procedure section 1021
- charge less than
- allowed by court
LA 65 (1931)
- schedule, custom, or statute
LA 102 (1937)
- charge more than allowed by court
LA(I) 1962-4
quote specific amount for certain services
LA 342 (1973)
rate increased during representation
235 Cal.App.3d 1569
LA 479 (1994)
- fee agreement based on fixed hourly rate but provides
for possible increase found valid
In re County of Orange (C.D. Cal. 1999) 241 B.R. 212
Discharge of attorney with cause
attorney entitled to collect for services rendered prior to
misconduct
attorney’s behavior which undermines trust may be grounds
for discharge
Moser v. Western Harness Racing Association (1948) 89
Cal.App.2d 1, 8 [200 P.2d 7]
client has implied right to discharge
Fracasse v. Brent (1972) 6 Cal.3d 784 [100 Cal.Rptr. 385]
failure to use ordinary care furnishes cause for discharge
Slopek v. Schoemann (1942) 20 Cal.2d 150, 153 [124
P.2d 21]
Disclosure in bankruptcy proceeding
LA 452
lien against client file
- void
Cal.App.3d 999, 1006 [124 Cal.Rptr. 668]
Discounted as consideration for referrals
CAL 1983-75
Discretion of trial judge to award in county actions for recovery
of support payments
County of Kern v. Ginn (1983) 146 Cal.App.3d 1107 [194
Cal.Rptr. 512]
Disgorgement of excessive fees by bankruptcy petition preparer
for engaging in unauthorized practice of law
Taub v. Weber (9th Cir. 2004) 366 F.3d 966
Disgorgement of fees and costs as equitable relief
In re S.S. Retail Stores (9th Cir. 2000) 216 F.3d 882 [36
Bankr.Ct. Dec. 79]
Cal.Rptr.3d 60]
funds derived from illegal activity and used to pay attorney’s
fees may be subject to forfeiture
Federal Trade Commission v. Network Services Depot,
Inc., et al. (9th Cir. 2010) 617 F.3d 1127
Disgorgement of fees in bankruptcy matter as amount paid
exceeded reasonable value of work performed
Shalaby v. Mamedov (In re Nakhurd) (9th Cir. BAP 2016)
544 B.R. 886
Dispute
absent a contract determining a different disposition, attorney
fees awarded under Labor Code section 1194, should be
made payable directly to the attorney
Henry M. Lee Law Corporation v. Superior Court (Chang)
(2012) 204 Cal.App.4th 1375 [139 Cal.Rptr.3d 712]
absent agreement, fees awarded pursuant to California
FEHA belong to attorneys who labored on case and not to
client
Flannery v. Prentice (2001) 26 Cal.4th 572 [110
Cal.Rptr.2d 809, 28 P.3d 860]
- limited to cases where the parties do not have an
agreement as to award of fees
[2 Cal.Rptr.3d 160]
action brought by criminal defendant against former counsel
for billing improprieties is not necessarily a claim of legal
malpractice
106 Cal.App.4th 419 [130 Cal.Rptr.2d 782]
attorney cannot use confidences of former client to challenge
client’s Chapter 7 discharge of fees owed
In re Rindlisbacher (9th Cir. BAP 1998) 225 B.R. 180 [33
between law firm and former shareholder
- former shareholder has no ownership or lien interest
upon fees owed to firm by client
1114 [84 Cal.Rptr.2d 361]
binding private arbitration clause in attorney-client fee
agreement may be enforced under the California Arbitration
Act (CAA) once the MFAA arbitration process is over
Schatz v. Allen Matskin Leck Gamble & Mallory LLP
(2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]
Greenberg Glusker Fields Claman & Machtinger LLP v.
Rosenson (2012) 203 Cal.App.4th 688 [137 Cal.Rptr.3d
489]
binding private arbitration clause in attorney-client fee
agreement not effective where client requested mandatory
arbitration pursuant to State Bar rules for fee disputes
1034 [79 Cal.Rptr.2d 567]
client given benefit of doubt regarding modified contract for
fees
Baron v. Mare (1975) 47 Cal.App.3d 304[120 Cal.Rptr.
675]
conflict of interest not created by
LA 521 (2007)
criminal defendant need not allege that he was innocent of
the crime charged in order to bring an action against former
law firm over a fee dispute
106 Cal.App.4th 419 [130 Cal.Rptr.2d 782]
funds properly withdrawn from a client trust account under
rule 4-100(A)(2) and later disputed by the client do not need
to be re-deposited into the trust account
CAL 2006-171
governmental entity
- municipal indebtedness or liability limitations under article XVI, section 18 of the California Constitution
  -- contingency fee contract between attorney and city did not violate the constitutional municipal debt limit because attorney's fees were neither a charge against the city's general fund nor an obligation to be by tax levies.


jurisdiction issues
settlement check issued only to client, but delivered to attorney who has a lien.
OC 99-002
under Civil Code section 2860 “cumis counsel” fee dispute requires mandatory arbitration.
umnamed class member who failed to intervene at trial in a securities fraud action had standing to appeal the trial court's award of attorney fees.

Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249

with co-counsel
- terminated attorney could not recover attorney’s fees in quantum meruit from former co-counsel notwithstanding compliance with rule 2-200.


Dissolution
In re the Marriage of Tharp (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 375]
In re Marriage of Munquia (1983) 146 Cal.App.3d 853 [194 Cal.Rptr. 199]

fees for wife's attorney in dissolution dischargeable in bankruptcy.

In re Gibson (9th Cir. 1989) 103 B.R. 218

no abuse of discretion when award of attorney fees to mother in child support dispute was based on parties' needs, income, assets and abilities.


post-divorce child custody fee order requires trial court to first consider parties' relative circumstances.


rationale for awarding attorney's fees in dissolution of marriage cases.


rights of spouse to
In re the marriage of Tharp (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 375]

District court determination of
Muniz v. United Parcel Services Inc. (9th Cir. 2013) 738 F.3d 214

Jeff D. v. Evans (9th Cir. 1984) 743 F.2d 648, 650-651


Diversity cases
award of fees based on the reasonableness of removal of the case from state court to federal court.

Gardner v. UICI et al. (9th Cir. 2007) 508 F.3d 559

Division of, between attorneys or law firms associated on a particular matter


attorney may not prevent law firm from obtaining client consent in order to render contract nonexistent.

dispute among class counsel.

Carder v. Patten (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]

merits of a declaratory relief action must be resolved in the trial court's discretion.

Carder v. Patten (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]

Division of, when partnership dissolves
post-dissolution profits from unfinished partnership business.

Heller Ehrman LLP v. Davis Wright Tremaine LLP (2018) 4 Cal.5th 467 [229 Cal.Rptr.3d 371]

-Dissolved law firm no property interest in the fees or profits associated with unfinished hourly fee matters.

Heller Ehrman LLP v. Davis Wright Tremaine LLP (2018) 4 Cal.5th 467 [229 Cal.Rptr.3d 371]

Division of, when shareholder leaves firm
former shareholder has no right on interpleader to contingency fee from cases which shareholder settled while working for firm.

duty to submit to bar association arbitration committee.

LA 309 (1969)
hold client's papers.

LA 330 (1972), LA(I) 1970-6

SD 1977-3, SF 1973-12

unilateral withdrawal of funds by attorney.

LA 438 (1985)

Division when partnership dissolves
valuation of buyout price for dissociating partner.


Donation of legal fees
LA 434 (1984)
contingent upon bequest to certain organization.

LA 428 (1984)
for charitable auction.

CAL 1982-65, SF 1973-27

Due an attorney on matters unrelated to the malpractice issue at bar.

American Home Assurance Co. v. Miller (9th Cir. 1983) 717 F.2d 1310

Each party must pay own.

Code of Civil Procedure section 1021


Elder Abuse and Dependent Adult Civil Protection Act
value of an estate is a factor in setting fees and is consistent with rule 4-200
Conservatorship of Levitt (2001) 93 Cal.App.4th 544 [113 Cal.Rptr.2d 294]

Employees of government may recover certain costs of defense if the action arose from acts or omissions in course of employment
City of Redondo Beach v. Delong (1981) 123 Cal.App.3d 1035 [177 Cal.Rptr. 77]

Environmental Quality Act
Center for Biological Diversity et al. v. County of San Bernardino (2010) 188 Cal.App.4th 603 [115 Cal.Rptr.3d 762]
Riverwatch v. County of San Diego Dept. of Environmental Health (2009) 175 Cal.App.4th 768 [96 Cal.Rptr.3d 362]

Equal Access to Justice Act
Decker v. Berryhill (9th Cir. 2017) 856 F.3d 659
Tobler v. Colvin (9th Cir. 2014) 749 F.3d 830
Citizens for Better Forestry v. U.S. Dept. of Agriculture (9th Cir. 2009) 567 F.3d 1112
California (9th Cir. 2002) 283 F.3d 1146
U.S. v. Marolf (9th Cir. 2002) 277 F.3d 1156
U.S. v. One 1997 Toyota Land Cruiser (9th Cir. 2001) 248 F.3d 899
U.S. v. Real Property Known as 22249 Dolorosa Street (9th Cir. 2000) 190 F.3d 977

-standards for awarding attorney’s fees under Equal Access to Justice Act

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Tobler v. Colvin (9th Cir. 2014) 749 F.3d 830

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Tobler v. Colvin (9th Cir. 2014) 749 F.3d 830
FEES

Estate
abuse of discretion in determining
Cal.Rptr.3d 723]
administrator’s attorney’s fees for representing administrator
as heir
LA 237 (1956)
attorney for administrator claiming fees for extraordinary
services
Cal.Rptr.3d 573]
attorney for personal representative bills heir for services for
which estate is liable
LA(I) 1956-7
decedent’s successor in interest may be liable for
attorney’s fees under a contract entered into by decedent
Cal.Rptr.3d 409]
executor’s attorney charges for performance of delegable
duties of executor
Probate Code sections 10804 and 15687
LA 347 (1975)
executor’s attorney’s fees when secretary is executor
LA 382 (1979)
independent review required under Probate Code section
21350 et seq. is not met when attorney may be entitled to
to executor fees and the so called independent attorney
at shared office space with drafter
Cal.Rptr.3d 167]
legal fees for administration chargeable to estate
Cal.Rptr. 489]
no written fee contract necessary to pay statutory attorney
fees out of probate estate for services rendered to personal
representative
In re Estate of Wong (2012) 207 Cal.App.4th 366 [143
Cal.Rptr.3d 342]
reasonableness of fees in trust administration, inefficient
and duplicative not permitted
Cal.Rptr.3d 723]
Excessive
Excellent work does not justify enhanced fee; inadequate work
may serve to reduce fee
Southwestern Media Inc. v. Rau (9th Cir. 1983) 708 F.2d
419
397]
In the Matter of Roger M. Lindmark (Review Dept. 2004) 4
Cal. State Bar Ct. Rptr. 668
Exorbitant
Natural Resources Defense Council, Inc. v. Winter (9th Cir.
2008) 543 F.3d 1152
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Anti-Assignment Act voids claimants’ assignment of attorney fees to their attorney but attorney retains lien interest
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-city is not obligated to provide for defense of employees separate from that retained to jointly represent the city and the employees
-public employees are entitled to reimbursement of attorney fees in defense of civil judicial proceedings but not for preliminary investigations that do not result in civil judicial proceedings

exception to award of attorney’s fees

-where the public entity is the state itself & acts through its Attorney General whose public responsibility is to serve the interests of the state at large
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-contingency fee contract between attorney and city did not violate the constitutional municipal debt limitation because attorney’s fees were neither a charge against the city’s general fund nor an obligation to be by tax levies

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-disputes over attorney’s fees and expenses between
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-insurer failed to provide a defense which precluded
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  fees not recoverable from insurer in suits filed outside scope of policy terms
  -landlord's intentional discrimination in renting was willful conduct which precluded indemnification by liability
  insurer for costs and attorney fees
  injured third party who had been assigned insured's bad faith action against liability insurer was entitled to recover attorney
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  interest on prejudgment award of fees begins to accrue upon entry of judgment
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  Interim award of attorney’s fees not an appealable collateral order
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  award of attorney’s fees from interest accrued on interpleader funds statutorily prohibited under Code of Civil
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  district court that presided over the underlying action denied law firm’s motion to enforce a note on the grounds
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  absent a petition by attorney seeking court confirmation of an arbitration award, such award has no greater force or
  effect than an attorney’s written retainer agreement specifying an amount of attorney's fee and assigning it a
  lien on any settlement or judgment (CCR 1285.4 et seq.)
  attorney having a valid but unperfected security interest has priority over other unsecured creditors where the
  People failed to substantially comply with Penal Code § 186.11
  client may by agreements to secure fees
  United States v. Stonehill (9th Cir. 1983) 702 F.2d 1288
  common fund doctrine does not apply to contractual medical
  lien holders in personal injury matters
  City and County of San Francisco v. Sweet (1995) 12 Cal.4th 105, 110, 115-117
  declaratory relief action to determine prior attorney’s right to fees is not subject to anti-SLAPP motion because suit does
  not arise from a protected activity
  duty to pay medical lien with client’s consent
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  equitable lien for fees

equitable lien theory does not apply to contractual lienholders in personal injury matters


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-attorney's lien is subordinate to an adverse party's right to offset judgments

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-attorney's lien, if valid, on proceeds of client’s subsequent judgment has priority over judgment creditor's lien on same judgment


-in relation to medical lien in contingency fee case


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-defending duties of legal services lawyer
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-counsel is acting on the insurer’s behalf and representing the insurer’s own rights and interest as well as those of its insured
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--insurer is not obligated to pay fees and expenses incurred by insured in the representation of a third-party co-defendant who is not a policyholder
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-unenforceable where statutory language specifically does not permit waiver of right to fees, notwithstanding an agreement to the contrary
Berti v. Santa Barbara Beach Properties et al. (2006) 145 Cal.App.4th 70 [51 Cal.Rptr.3d 364]

Prevailing defendant in SLAPP action despite plaintiff’s voluntary dismissal with prejudice

Prevailing parties
Code of Civil Procedure section 1038
-CCP § 1038 does not authorize imposition of defense costs against the plaintiff’s attorney

absent agreement, fees awarded pursuant to California FEHA belong to attorneys who labored on case and not to client
limited to cases where the parties do not have an agreement as to award of fees

abuse of discretion where the court held there was no prevailing party even though the result was lopsided in favor of the plaintiff
Glacier Films (USA), Inc. v. Turchin (9th Cir. 2018) 896 F.3d 1033

administrative hearings
Smith v. Rae-Venter Law Group (2002) 29 Cal.4th 345 [127 Cal.Rptr.2d 516]
-award of attorney fees under Welfare and Institutions Code section 10962 does not include fees incurred in administrative hearing

-party may receive attorney’s fees incurred in an administrative hearing
Edna Valley v. County of San Luis Obispo (2011) 197 Cal.App.4th 1312 [129 Cal.Rptr.3d 249]

agreement providing that trial court will determine prevailing party and award of attorney fees is valid and enforceable

amended party must be given opportunity to respond and contest personal liability before judgment is entered against him
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-defined
--plaintiff in an ADA (Americans with Disabilities Act) claim is the prevailing party if he achieves a material alteration of the legal relationship between the parties and that alteration is judicially sanctioned
Jankey v. Poop Deck (9th Cir. 2008) 537 F.3d 1122
anti-SLAPP motion
-arising out of malicious prosecution action  
  Daniels v. Robbins et al. (2010) 182 Cal.App.4th 204  
  [105 Cal.Rptr.3d 683]
-burden of proving fees were covered by award following  
  successful motion to strike  
  [101 Cal.Rptr.3d 303]
-defendant's motion to strike under the anti-SLAPP  
  statute was frivolous, thus the granting of plaintiff's  
  attorney fee request was not an abuse of discretion  
  [177 Cal.Rptr.3d 153]
-defendants who fail to file an anti-SLAPP motion before  
  the plaintiff's voluntary dismissal of all causes of actions  
  against them cannot recover fees or costs  
  [46 Cal.Rptr.3d 380]
 does not preclude anti-SLAPP defendant from  
  recovering appellate attorney fees upon prevailing on  
  appeal  
  Wanland v. Law Offices of Mastagni, Holstedt &  
  Chiurazz (2006) 141 Cal.App.4th 15 [45 Cal.Rptr.3d  
  633]
-fees awarded to defendant following plaintiff's failure to  
  perfect an appeal from the judgment in favor of  
  defendant  
  Cal.Rptr.3d 87]
-fees awarded to plaintiff where plaintiff showed a  
  probability of prevailing on the merits and motion was  
  found to be meritless  
  Personal Court Reporters, Inc. v. Rand (2012) 205  
  Cal.App.4th 182 [140 Cal.Rptr.3d 301]
  Cal.Rptr.3d 154]
-mandatory award may be based on attorney's  
  declarations instead of time records  
  Raining Data Corp. v. Barrenechea (2009) 175  
  Cal.App.4th 1363 [97 Cal.Rptr.3d 196]
-no prevailing defendant when plaintiff dismissed all  
  claims against defendants before motion to strike was  
  filed by defendants  
  Cal.Rptr.3d 777]
-prevaling defendant under CCP § 425.16 denied an  
  award of attorney fees against plaintiff's attorney  
  Cal.Rptr.3d 19]
-prevaling defendant-attorneys on an anti-SLAPP  
  motion to strike are not entitled to attorney fees  
  because they represented themselves  
  Ellis Law Group, LLP v. Nevada Sugar Loaf  
  Properties, LLC (2014) 230 Cal.App.4th 244 [178  
  Cal.Rptr.3d 490]
  Cal.Rptr.3d 845]
  -will revision considered protected activity for anti-  
  SLAPP motion purposes  
  Cal.Rptr.3d 394]
  -withdrawal of funds was not protected conduct  
  because it was neither communicative nor connected  
  with an issue of public interest  
  Old Republic Construction Program Group v.  
  Cal.Rptr.3d 129]
-appointment not required if successful and unsuccessful  
  claims are interrelated  
  79 Cal.App.4th 1127 [94 Cal.Rptr.2d 448]

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-arbitration award may be modified where arbitrator  
  inadvertently failed to rule on prevailing party’s claim  
  to attorney's fees and costs  
  Century City Medical Plaza v. Sperling, Issacs &  
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-arbitration must be completed and prevailing party  
  determined when awarding attorney fees on motion to  
  compel arbitration  
  Roberts v. Packard, Packard & Johnson (2013) 217  
  Cal.App.4th 822 [159 Cal.Rptr.3d 180]
-arbitrator's denial of attorney's fees was not subject to  
  judicial review where issue of fees was within scope of  
  matters submitted for binding arbitration  
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  Cal.Rptr.2d 916]
-arbitrator's determination of, not subject to appellate  
  review  
  Cal.Rptr.2d 553]
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  prevailing party not subject to judicial review where  
  determination of prevailing party was within scope of  
  issues submitted for arbitration  
  Safari Associates v. Superior Court (Tarlov) (2014)  
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  -attorney fees may be awarded to attorneys who  
  represent each other in fee dispute with client that  
  attorneys jointly represented  
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  -court may award costs and reasonable attorney fees in  
  a judicial proceeding to confirm or vacate an arbitration  
  award  
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  --plaintiffs cannot be required to pay arbitral expense  
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  dispute adjudicated in court; invalid award of fees  
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  incorporating settlement agreement which includes the  
  requested remedy  
  Labotest, Inc. v. Bonta (9th Cir. 2002) 297 F.3d 892  
  -award of fees proper where statute provides for fees in  
  action to enforce documents, even where documents not  
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  Tract 19051 Homeowners Assn. v. Kemp (2015) 60  
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In re Starky (9th Cir. BAP 2014) 522 B.R. 220  
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-absent class members not liable for employer’s  
  attorney’s fees in overtime dispute  
  [95 Cal.Rptr.2d 57]
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- attorney's failure to disclose fee-splitting agreement to court before obtaining approval of attorney's fees in class action settlement barred later enforcement of the agreement

- attorney's fees for securities class action suits should be based on individual case risk
  In re Quantum Health Resources, Inc. (C.D. Cal. 1997) 962 F.Supp. 1254

- attorney's fees should be adequate to promote consumer class action

- fees paid directly to plaintiff's counsel by defendant pursuant to ADEA's fee-shifting provision is taxable income to plaintiff
  Sinvard v. Commissioner of Internal Revenue (9th Cir. 2001) 268 F.3d 756

- trial court acted within its discretion in awarding 33.33 percent of common fund as reasonable attorney fees

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costs not awarded under F.R. Civ. Proc. 54 where underlying claim was dismissed for lack of subject matter jurisdiction
  Miles v. State of California (9th Cir. 2003) 320 F.3d 986

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defendant awarded attorney fees for defending voluntarily dismissed claims when dismissal is based on plaintiff's poor reasoning.

defendant must show that original suit frivolous to recover attorney fees
  Fogerty v. Fantasy (1994) 114 S.Ct. 1023

defendants entitled to attorney's fees even though plaintiffs dismissed appeal

defendants not entitled to award of attorney fees where case brought under anti-hate crime statute

definition of prevailing party under Civil Code § 1780 et seq.

definition of prevailing party under Civil Code Procedure § 1021.5

Center for Biological Diversity v. California Fish and Game Commission (2011) 195 Cal.App.4th 128 [124 Cal.Rptr.3d 467]

definition of prevailing party under Civil Code Procedure § 1032 et seq.

deSalles v. Community Hospital of the Monterey Peninsula (2016) 62 Cal.4th 1140 [202 Cal.Rptr.3d 429]

Goodman et al. v. Lozano et al. (2010) 47 Cal.4th 1327 [104 Cal.Rptr.3d 219]


denied where litigant is unable to materially alter the legal relationship of the parties by judgment or by consent decree
  Kasza v. Whitman (9th Cir. (Nov.) 2003) 325 F.3d 1178

entitled to attorney's fees even without formal judgment
  Rutherford v. Pitchess (9th Cir. 1983) 713 F.2d 1416

entitled to award of attorney's fees where sum of jury damage award and defendant's post-settlement offer exceed defendant's pre-trial settlement offer

ERISA matter
- either party may recover, not just prevailing party; claimant must show some degree of success on the merits

FEHA matter
  Muniz v. United Parcel Services Inc. (9th Cir. 2013) 738 F.3d 214
  Chavez v. City of Los Angeles (2010) 47 Cal.4th 970 [104 Cal.Rptr.3d 710]

-court denied plaintiff attorney fees even though plaintiff suffered adverse employment decision in which discrimination was a motivating factor

-prevailing defendant under this statute can only recover fees upon a showing that plaintiffs' action was frivolous, unreasonable, or without foundation
  Lopez v. Routt (2017) 17 Cal.App.5th 1006 [225 Cal.Rptr.3d 851]

fees awarded under CCP § 1021.5-rationale for award

fees awards in federal securities fraud actions must be reasonable in relation to plaintiffs' recovery
  Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249

fees granted for action that served to vindicate an important right

fees granted for litigating a separate case in which defendants were not parties, but where the issue was central to both actions
  Armstrong v. Davis (9th Cir. 2003) 318 F.3d 965

general rule that pro se litigants, attorneys or not, cannot recover statutory attorney's fees
  Elwood v. Drescher (9th Cir. 2006) 456 F.3d 943

homeowner association dispute over election of board of directors

jurisdiction of court
- trial court has jurisdiction to rule on defendant's motion for attorney fees after motion to quash granted for lack of personal jurisdiction

legal malpractice matter

may seek attorney's fees notwithstanding an invalid contract

- need not be named in contract to be entitled to fees

no fees to prevailing party where planning committee did not have the authority to enact attorney fees as part of the CC&Rs
no prevailing party status
Cadkin v. Loose (9th Cir. 2009) 569 F.3d 1142
Escofar v. Bowen (9th Cir. 1988) 857 F.2d 644
- de minimus damages award merits de minimus fee award
- defendant who successfully completed diversion program in exchange for dismissal of charges not entitled to attorney fees
  U.S. v. Campbell (9th Cir. 2002) 291 F.3d 1169
- no prelitigation attempt to settle
- plaintiff failed to meet the statutory requirements of a successful party where remand of the litigation to the administrative agency to reconsider a perceived procedural defect did not result in change in the agency’s decision
  Center for Biological Diversity v. California Fish and Game Commission (2011) 195 Cal.App.4th 128 [124 Cal.Rptr.3d 467]
- plaintiff not prevailing party entitled to attorney fees when successful on defendant’s appeal from denial of attorney fees
- prevailing party must be determined when awarding attorney fees on motion to compel arbitration
- voluntary dismissal
  -- defendant awarded attorney fees for defending voluntarily dismissed claims when dismissal is based on plaintiff's poor reasoning.
  -- no prevailing defendant where dismissal without prejudice by plaintiff in copyright case does not alter the legal relationship of the parties
  Cadkin v. Loose (9th Cir. 2009) 569 F.3d 1142
  -- voluntary dismissal of suit against defendant did not necessarily establish defendant's entitlement to attorney's fees as prevailing party
  -- voluntary dismissal of suit after defendant withdrew disputed rule
  Citizens for Better Forestry v. U.S. Dept. of Agriculture (9th Cir. 2009) 567 F.3d 1128
  partially prevailing plaintiff in civil rights action awarded fees where successful claim is isolated from unrelated or unsuccessful claims
  party prevails if he was able to achieve most or all of his litigation objectives

party refusing to mediate where contract provision conditioning recovery of attorney’s fees upon acceptance of mediation is barred from recovering such fees

petition for relief from fee judgment permitted if underlying merits of judgment is reversed and party has paid adversary’s attorney fees
California Medical Association v. Shalala (9th Cir. 2000) 207 F.3d 575
prevailing buyers of real property denied attorney fees as offset against purchase price
prevailing party as defined by statute versus one defined by contract
prevailing party in preliminary injunction entitled to attorney fees
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Prison Reform Litigation Act does not entitle former inmate to award of attorney fees merely by obtaining prevailing party status
Kimbrough v. California (9th Cir. 2010) 609 F.3d 1027
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-- attorney fees may not be awarded as a sanction to an attorney representing himself
Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]

recovery under purchase and sale agreements
settlement agreement
-- parties to settlement agreement can validly specify a prevailing party
-- which include fee-waiver provisions under fee shifting statutes

SLAPP action
-- which include fee-waiver provisions under fee shifting statutes

FEES
FEES

- law firm may not recover attorney fees after winning anti-SLAPP motion, even though it used ‘contract attorney’ to work on that motion

- partially successful motion constitutes prevailing party unless no practical benefit from bringing a motion

- prevailing defendant under CCP § 425.16 denied an award of attorney fees against plaintiff’s attorney

- withdrawal of funds was not protected conduct because it was neither communicative nor connected with an issue of public interest

- successful Brown act plaintiffs may be denied attorney’s fees if defendant can show the existence of special circumstances that would render the award unjust
  Los Angeles Times Communications v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1313 [5 Cal.Rptr.3d 776]

- trial court abused its discretion by applying an inapposite decision to deny attorney fees without prior notice to the plaintiff

- trial court must adequately explain the basis for the attorney fees award in a federal securities fraud action
  Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249

- trial court need not issue a statement of decision if record reflects lodestar or touchstone method was used

  - fees paid directly to plaintiff’s counsel by defendant pursuant to ADEA’s fee-shifting provision is taxable income to plaintiff
  Sirvandy v. Commissioner of Internal Revenue (9th Cir. 2001) 268 F.3d 756

  Octane Fitness, LLC v. Icon Health & Fitness, Inc. (2014) 134 S.Ct. 1749

- under California Education Code § 44944(f)
  - application of lodestar methodology in determining reasonable attorney’s fees

- under Civil Asset Forfeiture Reform Act
  U.S. v. King (9th Cir. 2015) 797 F.3d 696

- under Civil Code section 798.85

- under Civil Code section 1354

- under Civil Code section 1717
  In re Penrod (9th Cir. 2015) 802 F.3d 1084

PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084 [95 Cal.Rptr.2d 198] as modified (June 2, 2000)
Burkhalter Kessler Clement & George LLP v. Hamilton (2018) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]
Hjelm v. Prometheus Real Estate Group, Inc. (2016) 3 Cal.App.5th 1155 [208 Cal.Rptr.3d 394]


SCI California Funeral Services Inc. v. Five Bridges Foundation (2012) 203 Cal.App.4th 549 [137 Cal.Rptr.3d 693]

Pueblo Radiology Medical Group, Inc. v. J. Dalton Gerlach et al. (2008) 163 Cal.App.4th 626 [77 Cal.Rptr.3d 880]
Brusso v. Running Springs Country Club (1991) 228 Cal.Rptr.3d 157

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-absent a contractual fees provision, a party cannot recovery attorney's fees, even if it prevails in litigation


-arbitration must be completed and prevailing party determined when awarding attorney fees on motion to compel arbitration


-attorney fees may be awarded to more than one prevailing party in a breach of contract dispute

Burkhelter Kessler Clement & George LLP v. Hamilton (2018) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]

-attorney fees may not be awarded to a prevailing attorney acting in pro se


-attorney represented by other members of his law firm is entitled to recover attorney fees where the representation involved the attorney's personal interests and not those of the firm


-attorney's fees denied because prevailing party's tort action was not an action to enforce the contract


-attorney's fees may be awarded to attorneys who represent each other in fee dispute with client that attorneys jointly represented

Farmers Insurance Exchange v. Law Offices of Conrado Joe Sayas, Jr. (9th Cir. 2001) 250 F.3d 1234


-California law applies if its' interest in the matter is greater than that of the other state (to prevent unfair litigation tactics through one-sided attorney fee provisions)


-decedent's successor in interest may be liable for attorney's fees under a contract entered into by decedent


-denial of attorney fees where party is non-signatory under contract and denied third-party beneficiary status


-did not allow firm to recover fees incurred in suit to recover unpaid fees from client when client had already paid entire contractual debt to firm before trial


-limited success of plaintiff's enforcement of consent decree should have resulted in denial of attorney fees


-memorandum of costs not required where party seeking contractual attorney fees pursuant to Civil Code section 1717 and Code of Civil Procedure section 1033.5


-no apportionment of fees between co-defendants is necessary when calculating attorney fees because same defenses applied to both of them


-party that prevails is entitled to attorney's fees only if it can prove it would have been liable for such fees if the opposing party had prevailed


-party that scored procedural victory not deemed to be prevailing party

In re Estate of Drummond (2007) 149 Cal.App.4th 46 [56 Cal.Rptr.3d 691]

-plaintiff not prevailing party entitled to attorney fees when successful on defendant's appeal from denial of attorney fees


-plaintiffs are not entitled to recover attorney fees because attorneys who represent themselves in litigation cannot recover attorney fees based on such representation


-prevailing defendant attorneys are not entitled to attorney fees because they incurred no attorney fees in representing


-prevailing party law firm not entitled to attorney fees when represented by their own counsel


-reduction of fees by 90% where court found litigant had unnecessarily prolonged the litigation and counsel's time was not reasonably incurred


-voluntary dismissal of one contract claim does not preclude recovery of attorney's fees on another claim

CDF Firefighters v. Maldonado (2011) 200 Cal.App.4th 158 [132 Cal.Rptr.3d 544]

under Civil Code section 3496


under civil rights statutes

Hensley v. Eckerhart (1983) 461 U.S. 424, 429 fn. 2

Klein v. City of Laguna Beach (9th Cir. 2010) 608 F.3d 693

Guy v. City of San Diego (9th Cir. 2008) 608 F.3d 582

Aguirre v. Los Angeles Unified School District (9th Cir. 2006) 461 F.3d 1114

-in civil rights case, district court abused discretion in reducing attorney fee award

Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106

under Clean Water Act


-fees incurred by defendant during its unsuccessful defense of a private party Clean Water Act lawsuit are not allowable as costs under the Federal Acquisition Regulation statute

Southwest Marine, Inc. v. U.S. (9th Cir. 2008) 535 F.3d 1012

under Code of Civil Procedure section 340.1


-under Code of Civil Procedure section 405.38

-in action to expunge a lis pendens, challenging attorney fee award to prevailing party requires petition for writ of mandate, not appeal

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-in action to expunge a lis pendens, court has discretion to award attorney fees based on several considerations: which party would have prevailed on the motion, whether lis pendens claimant acted justifiably in withdrawing the lis pendens, or whether the imposition of fees would be unjust.

- under Code of Civil Procedure section 527.6, defendant or plaintiff may recover

- under Code of Civil Procedure section 916 et seq

- under Code of Civil Procedure section 1021.5

- under Code of Civil Procedure section 1033.5

-suspended corporation is not entitled to attorney fees

under Code of Civil Procedure section 1038, no attorney fees are to be paid for successful defense of section 1983 claims, a federal civil rights law.


-no attorney fees are to be paid for successful defense of section 1983 claims, a federal civil rights law.


under Code of Civil Procedure section 1094.5

No Toxic Air Inc. v. City of Los Angeles (2016) 3 Cal.App.5th 548 [208 Cal.Rptr.3d 666]

under Corporations Code section 800


under Endangered Species Act

-catalyst theory applied

Association of California Water Agencies v. Evans (9th Cir. 2004) 386 F.3d 879

under Equal Access to Justice Act

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Natural Resources Defense Council, Inc. v. Winter (9th Cir. 2008) 543 F.3d 1152

U.S. v. Real Property at 2659 Roundhill Drive, Alamo, California (9th Cir. 2002) 283 F.3d 1146

U.S. v. Real Property Known as 22249 Dolorosa Street, San Diego, Ca. (9th Cir. 2000) 190 F.3d 977

-standing to contest an offset where attorney fees awarded to prevailing party not to attorney


under Family Code section 272, subdivision (a), authorizes the court, in its discretion, to order one spouse to pay the other spouse’s attorney fee directly to attorney

In re the Marriage of Turkanis (2013) 213 Cal.App.4th 332 [152 Cal.Rptr.3d 498]

In re Marriage of Erickson and Simpson (2006) 141 Cal.App.4th 707 [46 Cal.Rptr.3d 253]

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-finding of arbitrary and capricious action against school district


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Irving Unified School District v. K.G. (9th Cir. 2017) 853 F.3d 1087

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-former employee’s attorneys entitled to attorney’s fees even if they represent party without charge

Lolley v. Campbell (2002) 28 Cal.4th 367 [121 Cal.Rptr.2d 571]

“more favorable judgment” test determines whether an appellant is “unsuccessful in the appeal.”

Smith v. Rae-Venter Law Group (2002) 29 Cal.4th 345 [127 Cal.Rptr.2d 516]

under Labor Code § 218.5


-fees denied when prevailing party fails to request in initial complaint


-Labor Code § 218.5’s award of attorney’s fees not applicable to claims brought by former employees for failure to provide statutorily mandated meal and rest periods


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-manager who prevailed on employee’s unpaid minimum and overtime claims on grounds he was not employee’s employer was not entitled to recover attorney fees from employee even manager and employee were employed by same employer


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SunEarth Inc. v. Sun Earth Solar Power Co. (9th Cir. 2016) 839 F.3d 1179

under Penal Code § 182(a), fees imposed on conviction for ‘conspiracy’ to commit crime constitute punishment pursuant to Legislature’s intent

People v. Ruiz (2018) 4 Cal.5th 1100 [232 Cal.Rptr.3d 714]

under Penal Code § 1202.4(f)(3), trial court has authority to order a criminal defendant to pay restitution, including actual and reasonable attorney’s fees directly to the victim

People v. Millard (2009) 175 Cal.App.4th 7 [95 Cal.Rptr.3d 751]


-victim’s comparative negligence may reduce amount of restitution for economic losses

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Workers’ Compensation


-non-attorney’s law firm representative of injured employee at workers’ compensation proceeding may not be entitled to same fees as licensed attorney


-successful claimant entitled to attorney fees under Longshore and Harbor Workers’ Compensation Act

Dyer v. Cenex Harvest States Cooperative (9th Cir. 2009) 563 F.3d 1044

-under Labor Code § 4607

Smith v. WCAB (2009) 46 Cal.4th 272 [92 Cal.Rptr.3d 894]

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Baca v. State Bar (1990) 52 Cal.3d 294 [276 Cal.Rptr. 169]


no violation found when successor attorney fails to reserve funds in trust to satisfy the prior attorney

In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234

Private Attorney General Doctrine

Heron Bay Homeowners Assn. v. City of San Leandro (2018) 19 Cal.App.5th 376 [227 Cal.Rptr.3d 885]

Attorney General may appeal attorney fees in a settlement under Proposition 65


attorney’s fees can only be recovered against opposing parties


-false calculation for lodestar or touchstone fees

-amount and items allowable – factors

In re Washington Public Power Supply Systems Securities Litigation (1994) 19 F.3d 1291

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LA 515 (2005)

-based on time spent and reasonable hourly compensation


-cannot be based on contingent fee – must be based on time spent on base


-contingency fee agreement cannot justify lowering an otherwise reasonable lodestar fee

Quesada v. Thomason (9th Cir. 1988) 850 F.2d 537

-discovery may be allowed by the trial court

Save Open Space Santa Monica Mountains v. Superior Court (County of Los Angeles) (2000) 84 Cal.App.4th 235 [100 Cal.Rptr.2d 725]

-fee award subsumes novelty, experience, complexity, and results obtained


-backaward awarded under CCP § 1021.5 – rationale for award

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-limited success against defendants may not warrant reduction of lodestar
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-multiplier to lodestar ensures counsel’s acceptance of civil rights contingency cases
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-over billing by attorney
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Esther B. v. City of Los Angeles et al. (2008) 158 Cal.App.4th 1093 [70 Cal.Rptr.3d 596]
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King v. Lewis (1990) 219 Cal.App.3d 552 [268 Cal.Rptr. 277]

-lawsuit to compel an agency to give a detailed explanation of its decision did not qualify as either a significant benefit or enforcement of an important right affecting the public interest
Center for Biological Diversity v. California Fish and Game Commission (2011) 195 Cal.App.4th 128 [124 Cal.Rptr.3d 467]
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People ex rel. Brown v. Tehama County Board of Supervisors (2007) 149 Cal.App.4th 422 [56 Cal.Rptr.3d 582]
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Serrano v. Stefan Merli Plastering Co., Inc. (2011) 52 Cal.4th 1018 [132 Cal.Rptr.3d 358]

fee award improper where de minimus public benefit
Pipefitters Local No. 636 v. Oakley, Inc. (2010) 180 Cal.App.4th 1542 [104 Cal.Rptr.3d 78]
Save Open Space Santa Monica Mountains v. Superior Court (County of Los Angeles) (2000) 84 Cal.App.4th 235 [100 Cal.Rptr.2d 725]

fees allowed where court held that proceedings involving modification of a permanent injunction were not “final judgments” that would trigger time limits for attorney fees

fees granted for action that served to vindicate an important right
-factors considered under CCP § 1021.5
Serrano v. Stefan Merli Plastering Co., Inc. (2011) 52 Cal.4th 1018 [132 Cal.Rptr.3d 358]
Conservatorship of Whiteley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]
La Mirada Irrigation Dist. v. City of Los Angeles (2018) 22 Cal.App.5th 1149 [232 Cal.Rptr.3d 338]
Riverwatch v. County of San Diego Dept. of Environmental Health (2009) 175 Cal.App.4th 768 [96 Cal.Rptr.3d 362]
Choi v. Orange County Great Park Corporation (2009) 175 Cal.App.4th 524 [96 Cal.Rptr.3d 90]
Ramon v. County of Santa Clara (2009) 175 Cal.App.4th 515 [93 Cal.Rptr.3d 278]

Hogar v. Community Development Com. of City of Escondido  

Mejia v. City of Los Angeles  
(2007) 156 Cal.App.4th 151 [67 Cal.Rptr.3d 228]

County of Colusa v. California Wildlife Conservation Board  

Abouaq v. City and County of San Francisco  

Lyons v. Chinese Hospital Association  


Satrap v. Pacific Gas & Electric  
(1996) 42 Cal.App.4th 72 [49 Cal.Rptr.2d 348]

Hospital Systems, Inc. v. Office of Statewide Health, Planning and Development  

Urbania v. Newton  

Christward Ministry v. County of San Diego  

Zambrano v. Oakland Unified School District  

Barlina v. Girl Scouts of San Diego, Inc.  
(1986) 184 Cal.App.3d 97, 102-103 [228 Cal.Rptr. 847]

--award of fees improper when plaintiff has personal interest or individual stake in the matter

Adoption of Joshua S.  
(2008) 42 Cal.4th 945 [70 Cal.Rptr.3d 372]

Williams v. San Francisco Board of Permit Appeals  

--non-pecuniary aesthetic interest are sufficient to block an award of attorney’s fees otherwise appropriate under section 1021.5

Conservatorship of Whiteley  
(2010) 50 Cal.4th 1206

--requires a full fee award unless special circumstances would render such award unjust

Lyons v. Chinese Hospital Association  

--fees and costs awarded for sheriff’s distribution of anti-Bird material

California Common Cause v. Duffy  

--indirect benefit not sufficient

Smith v. County of Fresno  
(1990) 219 Cal.App.3d 532 [268 Cal.Rptr. 351]

--limited to successful litigants utilizing judicial process

Crawford v. Board of Education of the City of Los Angeles  

--on remand, trial court to reevaluate fee award in light of party’s success on appeal

Guardians of Turlock’s Integrity v. Turlock City Council  
(1983) 149 Cal.App.3d 584, 601

includes fees for appeal

Schmid v. Lovette  

--must be reconsidered on remand of case

Robinson v. City of Chowchilla  
(2011) 202 Cal.App.4th 382 [134 Cal.Rptr.3d 696]

Guardians of Turlock’s Integrity v. Turlock City Council  

--no award of attorney’s fees under Code of Civil Procedure section 1021.5 where pecuniary interest of public entity outweighed burden of litigation

Children and Families Commission of Fresno County v. Brown  
(2014) 228 Cal.App.4th 45 [174 Cal.Rptr.3d 874]

--prison inmate’s case, successfully litigated

Daniels v. McKinney  
(1983) 146 Cal.App.3d 42 [193 Cal.Rptr. 842]

statutory authority

No Oil, Inc. v. City of Los Angeles  

under Code of Civil Procedure 1021.5

Heron Bay Homeowners Assn. v. City of San Leandro  
(2018) 19 Cal.App.5th 376 [227 Cal.Rptr.3d 885]

--fees awarded under CCP § 1021.5 – rationale for award

Heron Bay Homeowners Assn. v. City of San Leandro  
(2018) 19 Cal.App.5th 376 [227 Cal.Rptr.3d 885]

Pro bono appointment of counsel for incarcerated, indigent civil defendant

Yarbrough v. Superior Court  
(1985) 39 Cal.3d 197 [216 Cal.Rptr. 425]

See How to Use This Index, supra, p. i
FEES

court impressing attorney to represent pro bono an indigent client denies attorney equal protection under Fourteenth Amendment


partial pro bono fee arrangement did not preclude award of fees under C.C.P. § 425.16


public service obligation of the bar

Bradshaw v. U.S. Dist. Court (9th Cir. 1984) 742 F.2d 515, 518-519


where attorney knows pro bono client has sufficient funds to pay legal fees

SD 1983-6

Probate

Probate Code section 17211(b)


abuse of discretion in determining


attorney fees denied where a trustee voluntarily becomes a party to a contest between the beneficiaries over who should control and benefit from the trust


extraordinary attorney’s fees for settlement of claims against estate of decedent under a contingency fee agreement must be approved by the court after noticed hearing


extraordinary attorneys’ fees for settlement of claim of estate of decedent determined by probate court, not settlement agreement


no written fee contract necessary to pay statutory attorney fees out of probate estate for services rendered to personal representative

In re Estate of Wong (2012) 207 Cal.App.4th 366 [143 Cal.Rptr.3d 342]

ordinary/extraordinary fees distinguished


party that prevailed on change in forum from probate court to another court to hear petition for fees not deemed prevailing party

In re Estate of Drummond (2007) 149 Cal.App.4th 46 [56 Cal.Rptr.3d 691]

petition for reimbursement of attorney’s fees not subject to 60-day limit


probate code permits attorney’s fees for out-of-state attorney rendering services for a California estate


probate court has equitable power to charge attorney fees against beneficiaries who instigate unfounded proceeding against trustee


reasonableness of fees in trust administration, inefficient and duplicative not permitted


sanctions for filing frivolous appeal on denial of extraordinary fee request


trust beneficiaries are entitled to attorney fees from trustee whose opposition to the contest was without reasonable cause and in bad faith

Leader v. Cords (2010) 182 Cal.App.4th 1588 [107 Cal.Rptr.3d 505]

Probate fee, statutory scale

Probate Code section 10800


Probate Code section 10810

out-of-state attorney entitled to statutory and extraordinary fees as deemed reasonable by the court


Probate Code section 10811

-discharged attorney not entitled to recover the reasonable value of services rendered up to discharge where probate court approval of fees was required, but not obtained

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

-extraordinary attorney’s fees for settlement of claims against estate of decedent under a contingency fee agreement must be approved by the court after noticed hearing


Promissory note or deed of trust

attorney take as security for fees

CAL 1981-62

LA 492, SF 1997-1

enforcement of a promissory note in federal court

Federal Savings and Loan Insurance Corporation v. Ferrante (9th Cir. 2004) 364 F.3d 1037

Prosecutorial misconduct

denial of attorney’s fees where government’s litigation position, although unsubstantiated, was not vexatious, frivolous, or pursued in bad faith

U.S. v. Manchester Farming Partnership (9th Cir. (Mont.) 2003) 315 F.3d 1176

Public defenders

reimbursable cost of public defender’s service is actual cost to county, not reasonable attorneys’ fees


Public interest case


attorney’s fees paid by losing party in Code of Civil Procedure section 1021.5

Serrano v. Stefan Merli Plastering Co., Inc. (2011) 5 Cal.4th 1018 [132 Cal.Rptr.3d 358]

-advocacy groups filing amicus briefs are not opposing parties within meaning of section 1021.5 and therefore not liable for attorney fees

exception when amicus brief advocates same position as asserted in another case in which amici is a party

Ramon v. County of Santa Clara (2009) 173 Cal.App.4th 915 [93 Cal.Rptr.3d 278]
-party may receive attorney's fees incurred in an administrative hearing

Edna Valley v. County of San Luis Obispo (2011) 197 Cal.App.4th 1312 [129 Cal.Rptr.3d 249]

-exception to award of attorney's fees
- denial of fees to shareholder who brought shareholder class action suit against corporation where the shareholder failed to show an actual and concrete impact on corporate action

Pipefitters Local No. 636 v. Oakley, Inc. (2010) 180 Cal.App.4th 1542 [104 Cal.Rptr.3d 78]
-where the public entity is the state itself & acts through its Attorney General whose public responsibility is to serve the interests of the state at large

People ex rel. Brown v. Tehama County Board of Supervisors (2007) 149 Cal.App.4th 422 [56 Cal.Rptr.3d 582]

-fee shifting
Ketchum v. Moses (2001) 24 Cal.4th 1122 [104 Cal.Rptr.2d 377]

- no fee shifting in a class action suit against corporation where the shareholder failed to show an actual and concrete impact on corporate action

Pipefitters Local No. 636 v. Oakley, Inc. (2010) 180 Cal.App.4th 1542 [104 Cal.Rptr.3d 78]

-successful Brown Act plaintiffs may be denied attorney's fees if defendant can show the existence of special circumstances that would render the award unjust

Los Angeles Times Communications v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1313 [5 Cal.Rptr.3d 776]

-trial court ruled that because County Committee did not violate the California Voting Rights Act, it was not liable for attorney fees and costs


-fees award to consumer group for its participation and work before a public utilities commission on rate stabilization


-fees denied where remand to an agency of the litigation under the California Endangered Species Act to reconsider a perceived procedural defect did not result in change in the agency's decision

Center for Biological Diversity v. California Fish and Game Commission (2011) 195 Cal.App.4th 128 [124 Cal.Rptr.3d 467]

Quantum meruit

-attorney's lien not payable in circumvention of the Bankruptcy Code

award upheld and not prejudicial even though trial court erred in voiding the contingent fee contract

-discharged attorney attempts to enforce contingent fee contract made with substituted counsel

-discharged attorney entitled to reasonable value of services
Fracasse v. Brent (1972) 6 Cal.3d 784, 792 [100 Cal.Rptr. 385, 494 P.2d 9]

In the Matter of Feldsott (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 754
In the Matter of Respondent H (Review Dept.1992) 2 Cal. State Bar Ct. Rptr. 234
CAL 2009-177

division of fees when amount allowed is insufficient for quantum meruit claims of past and existing counsel


failure to comply with rule 2-200 does not preclude a quantum meruit recovery for services rendered in reliance on an unenforceable fee-sharing agreement


-attorney precluded from recovering from client


-failure to comply with rule 2-200 but still permitting a quantum meruit recovery distinguished from failure to comply with rule 3-300 which disallows a quantum meruit recovery

Fair v. Bakhtiar et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]

legal services rendered to executor in individual capacity


newspaper did not bring an action against the city to compel disclosure under the Public Records Act and, therefore, not entitled to fees


no obligation for successor attorney to reserve funds in trust to satisfy the prior attorney's lien

In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234

partnership entitled to

-for unfinished cases taken by departing partner


precise calculations of an attorney's time spent on a client's matters are not required to support a claim for attorney fees; fair approximations based on personal knowledge will suffice


prior counsel not required to endorse a settlement check that is jointly payable to attorney pending resolution of dispute. Attorney has affirmative duty to seek arbitration or judicial determination of the amount attorney is entitled to receive without delay

CAL 2009-177

proper basis for calculating quantum meruit value of client referral is how much of a benefit the previous attorney conferred on successor attorney that the latter unjustly retained

Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP (9th Cir. 2011) 664 F.3d 282

substituted-out attorney may recover for full performance under employment contract


succeeding attorney's duty to advise client concerning prior attorney's quantum meruit claim

SF 1989-1

See How to Use This Index, supra, p. i 309 2019 (updated entries through 12/31/2018)
succeeding attorney’s duty to honor withdrawing attorney’s lien
successor attorney’s obligation to notify prior attorney of the existence of a settlement


approach factors considered
In re Bluetooth Headset Products Liability Litigation (9th Cir. 2011) 654 F.3d 935
Natural Resources Defense Council, Inc. v. Winter (9th Cir. 2008) 543 F.3d 1152
Association of California Water Agencies v. Evans (9th Cir. 2004) 386 F.3d 879
Matthiesen v. Smith (1936) 16 Cal.App.2d 479, 483 [60 P. 873]

-whether contingent fee contract is unconscionable must be determined on situation as it appeared to parties at time it was entered into
Swanson v. Hempstead (1944) 64 Cal.App.2d 681, 688-689 [149 P.2d 404]

bankruptcy

-attorney employed by a trustee is entitled to compensation for legal services
In re Garcia (9th Cir. BAP 2005) 335 B.R. 717
-creditor has burden of proving reasonableness of attorney fee claim
In re Atwood (9th Cir. BAP (Nev.) 2003) 293 B.R. 227
-trustee fees not proper for duties that are not practice of law
In re Garcia (9th Cir. BAP 2005) 335 B.R. 717
class action
Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973
Class plaintiffs v. Jaffe & Schlesinger, P.A. (9th Cir. 1994) 19 F.3d 1306

determination of a reasonable hourly rate based on the prevailing rates in the community in which local counsel practices
Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973
-fees awarded in federal securities fraud actions must be reasonable in relation to plaintiffs’ recovery
Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249
-unnamed member of putative class who defeats class certification

contingent
Rule 2-107, Rules of Professional Conduct (operative until May 26, 1989)
Rule 4-200, Rules of Professional Conduct (operative as of May 27, 1989)

-because contract gambles on result, it may ask for greater compensation than would otherwise be reasonable
Ketchum v. Moses (2001) 24 Cal.4th 1122 [104 Cal.Rptr.2d 377]
Rader v. Thrasher (1962) 57 Cal.2d 244, 253 [18 Cal.Rptr. 736, 368 P.2d 360]
Estate of Raphael (1951) 103 Cal.App.2d 792, 796 [230 P.2d 436]

succeeding attorney’s duty to honor withdrawing attorney’s lien
successor attorney’s obligation to notify prior attorney of the existence of a settlement
CAL. 2008-175
under contingent fee contract, discharged attorney limited to quantum meruit recovery
under occurrence of contingency, discharged attorney entitled to quantum meruit recovery for reasonable value of services

voluntary withdrawal without cause forfeits recovery
Cal Pak Delivery, Inc. v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 Cal.Rptr.2d 207]
Estate of Falco (1986) 188 Cal.App.3d 1004 [233 Cal.Rptr. 807]

where services have been rendered under a contract which is unenforceable as against public policy

where services have been rendered under a contract which is unenforceable because it was not in writing
Leighton v. Forster (2017) 8 Cal.App.5th 467 [213 Cal.Rptr.3d 899]


not signed by client

Real estate transactions
partner in a law firm may represent seller in a real estate transaction and accept a commission in lieu of hourly legal fees so long as no one in the firm who does not hold a real estate broker’s license performs any act for which a license is required (the Real Estate Law, Bus. & Prof. Code §§ 10000-10580)

payment of a real estate commission in lieu of hourly legal fees is not per se illegal
Reasonable number of hours times reasonable fee (community standards) for civil rights cases
White v. City of Richmond (9th Cir. 1983) 713 F.2d 458

Reasonable only
despite contract when contract is invalid

entitled if discharged
37 B.R. 679

fees awards in federal securities fraud actions must be reasonable in relation to plaintiffs’ recovery
Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249

Reasonableness of
People v. Millard (2009) 175 Cal.App.4th 7 [95 Cal.Rptr.3d 751]
-contract presumptively invalid where attorney did not explain and client did not understand contract
-constructs ambiguous contract language to provide for reasonable compensation
  Jackson v. Campbell (1932) 215 Cal. 103, 106 [9 P.2d 845]
-court may consider “open question” of reasonableness of contingent fee charged – factors considered
-evidence on reasonableness inadmissible where only dispute concerns whether agreement even exists
  Ellis v. Woodward (1965) 89 Cal. 129, 133 [26 P. 963]
-evidence supports finding that fee agreement was fair and equitable – factors considered

 Hazard of Raising Fees in California

 Estate of Raphael (1963) 103 Cal.App.2d 792, 796 [320 P.2d 436]

-reasonableness judged by situation as it appeared to parties at time contract was entered
  Swanson v. Hempstead (1944) 64 Cal.App.2d 681, 688 [149 P.2d 404]

 corporations
  court may consider settlement negotiations in deciding a reasonable attorney fee award
  Ingram v. Oroudjian (9th Cir. 2011) 647 F.3d 925
  court may rely on its own familiarity with legal market and customary rates in determining reasonableness of fees
  Ingram v. Oroudjian (9th Cir. 2011) 647 F.3d 925

 dissolution proceedings
-attorney’s fees not matter of right but rests in discretion of trial court – standard of review by appellate court
  Hicks v. Hicks (1967) 249 Cal.App.2d 964, 969 [58 Cal.Rptr. 63]

-award of attorney’s fees made at inception of divorce proceedings
  Collins v. Welsh (1934) 2 Cal.App.2d 103, 109-110 [37 P.2d 505]

award of excessive fee
-Howard v. Howard (1956) 141 Cal.App.2d 233, 244 [296 P.2d 592]
--lodestar multiplier in divorce action was both excessive and inequitable where there was no risk that attorney would not receive compensation under a contingency fee arrangement

-burden of and standard for establishing abuse of discretion
  -circumstances affecting award – court may consider financial conditions of parties
    -court erred in accepting commissioner’s findings as to attorney fees and costs where commissioner provided no notice to affected attorney and had recused himself for bias

-court may determine fee from its own experience – no testimony necessary
  Lipka v. Lipka (1963) 60 Cal.2d 472, 479-480 [35 Cal.Rptr. 71]

-discretion and experience to determine fees vested in trial court

-factors considered by trial court
  Dietrich v. Dietrich (1953) 41 Cal.2d 497, 506 [261 P.2d 269]
  -reasonable fees – factors considered by trial court
    -reasonableableness is a question of fact in discretion of trial court

-reasonableableness of attorney’s fee – discretion of trial court – factors considered – standard of review
  In re Marriage of Lopez (1974) 38 Cal.App.3d 93, 113-114 [113 Cal.Rptr. 58]
  -reasonableableness of attorney’s fees – evidence – review
    by appellate court
  In re Marriage of Keech (1999) 75 Cal.App.4th 860 [89 Cal.Rptr.2d 525]
  -reasonable fees – factors considered by trial court
    -test for determining reasonable attorney’s fees

-discrimination and experience to determine fees vested in trial court

-factors considered by trial court
  Dietrich v. Dietrich (1953) 41 Cal.2d 497, 506 [261 P.2d 269]

-family law court fee awards must be reasonable and based on factual showings

-in re Marriage of Keech (1999) 75 Cal.App.4th 860 [89 Cal.Rptr.2d 525]

-lodestar multiplier in divorce action was both excessive and inequitable where there was no risk that attorney would not receive compensation under a contingency fee arrangement

-burden of and standard for establishing abuse of discretion
  -circumstances affecting award – court may consider financial conditions of parties
    -court erred in accepting commissioner’s findings as to attorney fees and costs where commissioner provided no notice to affected attorney and had recused himself for bias
  -court may determine fee from its own experience – no testimony necessary
    Lipka v. Lipka (1963) 60 Cal.2d 472, 479-480 [35 Cal.Rptr. 71]
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- under Code Civ. Proc. § 1255, trial courts, experience allows it to set reasonable value of attorney’s services
  California Interstate Telephone Co. v. Prescott (1964) 228 Cal.App.2d 408, 411 [39 Cal.Rptr. 472]

fee stipulation
- limited by reasonableness requirement
  In re 288 Limited (9th Cir. BAP 1998) 85 B.R. 101

filiation proceeding

injunctions
  Moore v. Maryland Casualty Co. (1929) 100 Cal.App. 658, 666 [280 P. 1008]

level of success
  McCown v. City of Fontana (9th Cir. 2009) 565 F.3d 1097

malicious prosecution
  Mills v. Friedman (1931) 119 Cal.App. 74, 81 [5 P.2d 901]

partition proceeding
  offer opinion about reasonableness of other attorney’s fee
  LA 68 (1932), LA 66 (1931)

mortgage foreclosure proceedings
- amount of fee within discretion of trial court – factors considered
  Craw v. Craig (1914) 168 Cal. 351, 352 [143 P. 604]
  Patten v. Pepper Hotel Co. (1908) 153 Cal. 460, 471-472 [96 P. 296]
  - fee award not inadequate – factors considered in determining reasonable fee
  - no evidence of value of services necessary for trial court to fix reasonable fee
  Woodward v. Brown (1897) 119 Cal. 283, 309 [51 P.2d 542]
  - where fee issue properly put before jury, jury may fix fee without independent testimony as to reasonableness
  Liebenguth v. Priester (1944) 64 Cal.App.2d 343, 345 [148 P.2d 893]

offer opinion about reasonableness of other attorney’s fee
  LA 311 (1969)

partition proceeding
  Watson v. Sutro (1894) 103 Cal. 169, 171 [37 P. 201]
  pro bono [See: Appointment of attorney by court, pro bono. Duties of attorney, pro bono.]

probate proceedings
  LA 68 (1932), LA 66 (1931)
  - court has discretion knowledge and experience to set reasonable fee without hearing evidence
  Estate of Straus (1904) 144 Cal. 553, 557 [77 P. 1122]
  - court has power to set fees independent of expert testimony
  Estate of Duffill (1922) 188 Cal. 536, 552-554 [206 P. 42]
  - evidence considered by jury in fixing reasonable fee
  - evidence on reasonable value of services offered by witness attorneys
  Freeze v. Pennie (1895) 110 Cal. 467, 468-470 [42 P. 978]
  - fees of attorneys for executors, administrators and guardians fixed by court – court has discretionary power to set fee
  Pennie v. Roach (1892) 94 Cal. 515, 518-519 [29 P. 956, 30 P. 106]
  - opinions of professional witnesses not binding on court
  Estate of Dorland (1883) 63 Cal. 218, 282
  - reasonable fee primarily question of fact for trial court expert testimony unnecessary – appelleate standard of review


- superior court has discretion to determine fee – standard of review by higher court
  Estate of Adams (1901) 131 Cal. 415, 418-419 [63 P. 838]

public interest litigation
- Attorney General may appeal attorney fees in a settlement under Proposition 65
  - awarding fees under “substantial benefit rule” – factors considered in setting reasonable fees
  Coalition for L.A. County Planning etc. Interest v. Board of Supervisors (1977) 76 Cal.App.3d 241, 251 [142 Cal.Rptr. 766]
  - discretion of trial court to set fees
  - trial court has unquestioned power to appraise value of services
  - trial judge in best position to determine value of services
  - appellate standard of review – factors considered
  United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 869 F.2d 403
  - award in federal securities fraud actions must be
  - appellate standard of review – factors considered
  United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 896 F.2d 403
  - reason determined by current rates where there was delay, rather than by adding interest, and hourly rates were based on relevant community of attorneys engaged in similar complex litigation was not abuse of discretion
  Prison Legal News v. Schwarzenegger (9th Cir. 2010) 608 F.3d 446
  - reduction of fees by 90% where court determined that prevailing litigant had unnecessarily prolonged the litigation and that the majority of counsel’s time was not reasonably incurred

securities fraud action
- fees awards in federal securities fraud actions must be
  - inefficient and duplicative not permitted
  Powers v. Echen (9th Cir. 2000) 229 F.3d 1249
  - award in federal securities fraud action
  Powers v. Echen (9th Cir. 2000) 229 F.3d 1249

trusts
- Crocker v. Crocker First National Bank of San Francisco (1943) 60 Cal.App.2d 725, 730 [141 P.2d 482]
  - inefficient and duplicative not permitted

under 42 U.S.C. § 406(b) (social security benefits)
Parrish v. Commissioner of Social Sec. Admin. (9th Cir. 2012) 698 F. 3d 1215
Crawford v. Atrue (9th Cir. 2009) 586 F. 3d 1142
under Civil 3816, “reasonable cost of any litigation thereunder” excludes attorney fees
Tri-State, Inc. v. Long Beach Community College District (2012) 204 Cal.App.4th 224 [138 Cal.Rptr.3d 529]
unrelated claims, unsuccessful
McCown v. City of Fontana (9th Cir. 2009) 565 F. 3d 1097
welfare proceedings
whole amount of the recovery
SD 1975-4
Reduced to match award
Chromalloy American Corp. v. Fischmann (9th Cir. 1983) 716 F.2d 683
Reduction of 90% of attorney’s fees is not intended to punish a party’s litigation conduct; rather, it is to reflect fees that were not reasonably expended
Referee’s
Code of Civil Procedure section 1023
Referral fees [See Division of fees.]
Rules of Professional Conduct 2-200
Refund of fee advanced
In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349
attorney who undertakes representation of conflicting interests without consent must refund fees received after conflict arose
if unearned, except true retainer fee
In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 478
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
Represent in settlement when fee owed by client comes out of settlement
SD 1975-4
Represent self and co-counsel re contingent fee assigned to third party
SD 1972-1
Request for attorney’s fees under Code of Civ. Proc. § 4370
standing to appeal denial of appeal
Retainer
In re Montgomery Drilling Co. (Bankr. C.D. Cal. 1990) 121 B.R. 32, 37
In re C & P Auto Transport, Inc. (Bankr. C.D. Cal. 1988) 94 Bankr. Rptr. 682, 687
Matthew v. State Bar (1989) 49 Cal.3d 784, 787-788
Baranowski v. State Bar (1979) 24 Cal.3d 153, 164, fn. 4
In the Matter of Lai (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907
In the Matter of Fonse (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757
earned portion to be removed from trust account
SF 1973-14
paid by insurance broker to provide free wills to clients
SD 1976-6
“true” retainer is paid to secure an attorney’s availability over a given time period and is not billed against as services are performed
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576

FEES

Retroactive application of city ordinance providing for recovery of attorney’s fees found invalid
City of Monte Sereno v. Padgett (2007) 149 Cal.App.4th 1530 [58 Cal.Rptr.3d 218]

RICO

funds for retention of private counsel not exempted from forfeiture of drug defendant’s assets

Sanctions [See Sanctions.]
criteria for recovery of fees and costs in opposing motion for sanctions
frivolous appeal challenging trial court’s denial of an extraordinary fee request
for delay
In re Silberkraus (9th Cir. 2003) 336 F.3d 864
Thompson v. Tega-Rand Intern. (9th Cir. 1984) 740 F.2d 762, 764
-attorney’s fees may not be awarded as a sanction under CCP § 128.7 to a prevailing attorney acting in pro se
Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]
-award of “reasonable expenses” as sanction under CCP § 437(c) does not include authority to include attorney’s fees
frivolous action
-action not frivolous under CCP § 128.7 where it was supported by sufficient evidence to sustain a favorable jury verdict and where it was not prosecuted for an improper purpose
Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150 [80 Cal.Rptr.3d 812]
improper when awarded as full compensation of all attorney fees for violation of a Rule of Court
no statutory authority under CCP § 177.5 for imposition of fees against prosecutor for submitting to the court a copy of opposing counsel’s disciplinary record without first providing a copy to opposing counsel

Security for
attorney having a valid but unperfected security interest has priority over other unsecured creditors where the People failed to substantially comply with Penal Code § 186.11
client’s property falsely reported as stolen
LA 329 (1972)
confession of judgment
Hulland v. State Bar (1972) 8 Cal.3d 440, 450
In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735
debtor’s counsel’s prepetition security retainer are funds that generally remain the client’s property until applied to the attorney’s charges for services actually rendered
In re Dick Cepek, Inc. (9th Cir. BAP 2006) 339 B.R. 730
financing fees by attorney recommending client take out mortgage loan on client’s real property
CAL 2002-159
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in general
SF 1997-1
insure collection of, inimical to client
lien as
CAL 1981-62
note secured by deed of trust
-family law attorney’s real property lien expunged
In re the Marriage of Turkonis (2013) 213 Cal.App.4th 332 [152 Cal.Rptr.3d 498]
-may be invalid if the encumbrance is on community property and the act of the client/spouse constitutes a prohibited unilateral transfer under Civil Code section 5127
Droeger v. Friedman, Sloan & Ross (1991) 54 Cal.3d 26 [283 Cal.Rptr. 584]
-requires compliance with rule 3-300
In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615
LA 492 (1998)
priority of attorney’s liens
promissory note
Hulland v. State Bar (1972) 8 Cal.3d 440 [105 Cal.Rptr. 152]
CAL 1981-62, SF 1997-1
security agreements
-fee provision in security agreement did not serve as ground for awarding fees and costs to over-secured creditor following its successful defense of adversary preference proceeding in bankruptcy matter
In re Connolly (9th Cir. BAP 1999) 238 B.R. 475 [34 Bankr.Ct.Dec. 1219]
trial court’s award of attorney’s fees against plaintiff’s counsel for violation of an in limine order was neither within the court’s inherent powers nor was authorized by statute
Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150 [80 Cal.Rptr.3d 812]
trust deed
LA(I) 1975-8, LA(I) 1972-2, SD 1976-8
unsecured promissory note does not give attorney a present interest in client’s property to trigger rule 3-300
Settlement
Attorney General may appeal attorney fees in a settlement under Proposition 65
award of fees to prevailing plaintiff in an action brought by the Consumer Legal Remedies Act is mandatory, even where the litigation was resolved by a pretrial settlement agreement
condition settlement on plaintiff’s attorney waiving fees
Pony v. County of Los Angeles (9th Cir. 2006) 433 F.3d 1138
Bernhardt v. Los Angeles County (9th Cir. 2003) 339 F.3d 920
CAL 2009-176
LA 445 (1987)
employer entitled to attorney’s fees from employee suing for employment discrimination where employee initiated litigation following signing of general release of all claims
Linsley v. Twentieth Century Fox Films Corp. (1999) 75 Cal.App.4th 762 [89 Cal.Rptr.2d 429]

fees paid directly to plaintiff’s counsel by defendant pursuant to ADEA’s fee-shifting provision is taxable income to plaintiff
Sinyard v. Commissioner of Internal Revenue (9th Cir. 2001) 268 F.3d 756
lump sum settlement that includes attorney’s fees may hinder plaintiff’s ability to retain counsel
Pony v. County of Los Angeles (9th Cir. 2006) 433 F.3d 1138
Bernhardt v. Los Angeles County (9th Cir. 2003) 339 F.3d 920
offer silent as to right to recover attorney’s fees and costs does not constitute a waiver of that right
parties to settlement agreement can validly specify a prevailing party
prior settlement agreement allowing recovery of attorney’s fees over statutorily permitted amount in subsequent action to enforce settlement
structured settlement, use of
CAL 1987-94
trial court erred by modifying existing settlement agreement by reducing award of attorney fees and costs without parties mutual consent
trial court has jurisdiction to divide attorney fees between prior and current attorneys as part of minor’s settlement approval
SLAPP action
Ketchum v. Moses (2001) 24 Cal.4th 1122 [104 Cal.Rptr.2d 377]
burden of proving fees were covered by award following successful motion to strike
conduct by attorneys that would otherwise come within the scope of the anti-SLAPP statute does not lose its coverage simply because it is alleged to have been unlawful or unethical
Contreras v. Dowling (2016) 4 Cal.App.5th 774 [208 Cal.Rptr.3d 707]
defendants not entitled to attorney fees when plaintiff dismissed all claims against defendants prior to motion to strike
defendants who fail to file an anti-SLAPP motion before plaintiff's voluntary dismissal of all causes of actions against them may not recover attorney fees or costs
defendant's motion to strike under the anti-SLAPP statute was frivolous, thus the granting of plaintiff's attorney fee request was not an abuse of discretion
fees denied where litigant failed to show anti-SLAPP motion was frivolous or was intended to cause unnecessary delay
litigant who only partially successful on anti-SLAPP motion entitled to recover attorney fees
mandatory award may be based on attorney's declarations instead of time records
to prevailing party
under Code of Civil Procedure 425.16
complaint did not arise from protected speech or petitioning activities, but from the nonpayment of a bill
Personal Court Reporters, Inc. v. Rand (2012) 205 Cal.App.4th 182 [140 Cal.Rptr.3d 301]
—does not authorize an award of attorney fees against plaintiff's counsel
—plaintiff's letter to defendant is extortion as a matter of law, therefore it is not protected under the anti-SLAPP statute
Splitting [See Division of fees.]
attorney conducting real estate business
SD 1969-2
with franchisor
LA 423 (1983)
Sports service contracts
Business and Professions Code section 6106.7
Standards applicable to attorney's fees
Church of Scientology of California v. United States Postal Service (9th Cir. 1983) 700 F.2d 486
Statutory attorney's fees to prevailing party
Corporations Code section 317

outside counsel retained by corporation to defend against litigation was not agent of corporation for purposes of statute indemnifying persons sued by reason of such agency for defense costs
Gerling Global Reinsurance Corp. of America v. Garamendi (9th Cir. 2005) 400 F.3d 803
Labotest, Inc. v. Bonta (9th Cir. 2002) 297 F.3d 892
U.S. v. Real Property Known as 22249 Dolorosa Street (9th Cir. 2000) 190 F.3d 977
Smith v. Rae-Venter Law Group (2002) 29 Cal.4th 345 [127 Cal.Rptr.2d 516]
Lolley v. Campbell (2002) 28 Cal.4th 367 [121 Cal.Rptr.2d 257]
Ketchum v. Moses (2001) 24 Cal.4th 1122 [104 Cal.Rptr.2d 377]
client may not keep fees which are measured by and paid on account of attorney's services
Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354
defendant who brings a successful motion to strike under the anti-SLAPP statute is entitled to mandatory attorney fees
district court may review attorney's “billing judgment” and reduce fees if some tasks should have been delegated to associate or paralegal
Equal Access Act
Natural Resources Defense Council, Inc. v. Winter (9th Cir. 2008) 543 F.3d 1152
hours that are not properly billed to one's client are also not properly billed to one's adversary pursuant to statutory authority
plaintiff mandatorily entitled to fees where defendant's anti-SLAPP motion failed to meet threshold burden of establishing the challenged cause of action arose from protected activity and motion was found to be frivolous
Personal Court Reporters, Inc. v. Rand (2012) 205 Cal.App.4th 182 [140 Cal.Rptr.3d 301]
SLAPP action
Summerfield v. Randolph (2011) 201 Cal.App.4th 127 [133 Cal.Rptr.3d 487]
Vargas v. City of Salinas (2011) 200 Cal.App.4th 1331 [134 Cal.Rptr.3d 244]
FEES


-anti-SLAPP defendant may recover appellate attorney fees upon prevailing on appeal


- attorney fees incurred in enforcement of anti-SLAPP judgment recoverable


- conduct by attorneys that would otherwise come within the scope of the anti-SLAPP statute does not lose its

- coverage simply because it is alleged to have been unlawful or unethical

- Contreras v. Dowling (2016) 4 Cal.App.5th 774 [208 Cal.Rptr.3d 707]


- defendant's motion to strike under the anti-SLAPP statute was frivolous, thus the granting of plaintiff's

- attorney fee request was not an abuse of discretion


-mandatory award may be based on attorney's declarations instead of time records


-partially successful motion constitutes prevailing party unless no practical benefit from bringing motion


-trial court has authority to require plaintiff to compensate the defendant for the undue burden of defending against

the non-meritorious claim when it dismisses plaintiff's action on grounds court lacked jurisdiction

Barry v. State Bar (2017) 2 Cal.5th 318 [212 Cal.Rptr.3d 124]

-withdrawal of funds was not protected conduct because it was neither communicative nor connected with an issue of public interest


under Civil Code section 3426


under Code of Civil Procedure section 405.38

-in action to expunge a lis pendens, challenging attorney fee award to prevailing party requires petition for writ of mandate, not appeal


-in action to expunge a lis pendens, court has discretion to award attorney fees based on several considerations:

which party would have prevailed on the motion, whether lis pendens claimant acted justifiably in withdrawing the

lis pendens, or whether the imposition of fees would be unjust


under Penal Code § 1202.4(f)(3), victim of convicted drunk

driver was entitled to restitution for attorney's fees incurred to recover both economic and noneconomic damages


under Song Bevery Act


under Vehicle Leasing Act


Statutory limit

Fair Debt Collection Practice Act (FDCPA), does not authorize award of attorney's fees against attorneys representing debtors

Hyde v. Midland Credit Management, Inc. (9th Cir. 2009) 567 F.3d 1137

Statutory limits for litigation of prison lawsuits

limitations for services performed before and after effective date of Prison Litigation Reform Act

Madrid v. Gomez (9th Cir. 1999) 190 F.3d 990

limitations on attorney fees for post-judgment monitoring services performed after effective date of Prison Litigation Reform Act


Prison Reform Litigation Act does not apply to fees incurred by prisoner who successfully defended verdict on appeal

Woods v. Carey (9th Cir. 2013) 722 F.3d 1177

Prison Reform Litigation Act does not entitle former inmate to award of attorney fees merely by obtaining prevailing party status

Kimbrough v. California (9th Cir. 2010) 609 F.3d 1027

Statutory prohibition

award of attorney's fees from interest accrued on interpleader funds statutorily prohibited under Code of Civil

Procedure section 386.6


denial of fees to defendant who prevailed against plaintiff's claim of misappropriation of patents and trademarks as

patents and trademarks are not trade secrets


Stipulated attorneys' fees

Workers' Compensation matter


Stocks pledged to secure fees improperly sold


Stock promise to attorney is unenforceable because of a violation of rule 3-300


Stop Notice Laws

public entity is not entitled to attorney's fees under stop notice laws

Tri-State, Inc. v. Long Beach Community College District (2012) 204 Cal.App.4th 224 [138 Cal.Rptr.3d 529]

Substituted counsel's

attorney had no right to file proposed fee order after discharge and substitution out of case

In re Marriage of Read (2002) 97 Cal.App.4th 75 [101 Cal.Rptr.3d 153]
entitlement to recover for full performance under employment contract


unpaid [See Fee, attempt to collect, discharge.]

LA 183 (1951)

SD 1972-17

-lien on client’s settlement does not create any automatic rights to disputed fees

LA 438

-refuse substitution until paid

LA(I) 1966-10

Suit to recover

LA 362 (1976), LA 212 (1953)

claim in bankruptcy proceeding

In re Marquam Investment Corporation (9th Cir. 1991) 942 F.2d 1462

LA 452 (1988)

court appointed attorney representing indigent clients is statutory not contractual

-may not sue for more

Arnelle v. City and County of San Francisco (1983) 141 Cal.App.3d 693

disclosure of confidential information

LA 498 (1999)

judgment debtor was entitled to notice of judgment creditor’s post judgment fee application


United States District Court has ancillary jurisdiction over fee disputes arising from litigation pending before the district court

Curry v. Del Priore (9th Cir. 1991) 941 F.2d 730

unnamed class member who failed to intervene at trial in a federal securities fraud action had standing to appeal the trial court’s award of attorney fees

Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249

withdraw before suing for fees


Trial court improperly withheld past due SSI benefits for payment of attorney’s fees


Trial court’s discretion to grant under Brown Act


court has discretion to deny fees if defendant can show the existence of special circumstances that would render such an award unjust

Los Angeles Times Communications v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1313 [5 Cal.Rptr.3d 776]

Tribal law may require tribal remedy exhaustion in contract disputes


Trustee

entitled to reimbursement for attorney’s fees only if litigation is necessary to preserve the trust

Terry v. Conlan (2005) 131 Cal.App.4th 1445 [33 Cal.Rptr.3d 603]

reasonableness of fees in trust administration, inefficient and duplicative not permitted


In re Silverton (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]

agreement providing that attorney waives specified fees if client agrees not to accept a confidentiality clause in any settlement permitted if client retains the authority to settle the case without the lawyer’s consent

LA 505 (2000)

contingent fee percentage calculation in view of de minimis time and labor

LA 458

court may refuse to enforce unconscionable contingent fee

Seltzer v. Robinson (1962) 57 Cal.2d 213, 218

discipline imposed for unconscionable fee


In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266 “double billing”

CAL 1996-147

exorbitant and disproportionate


In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980

exorbitant and unconscionable fee charged

Recht v. State Bar (1933) 218 Cal. 352, 353

extraordinary complex litigation required a high level of legal skills to obtain a favorable result, was not


fee charged in excess of reasonable value of services does not of itself warrant discipline

Herrschel v. State Bar (1935) 4 Cal.2d 399, 401-402

fee financing plan

OC 93-002

forty-five percent of the total judgment plus court awarded fees exceeded the limits of rule 4-200

In the Matter of Yaegman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788

gross overcharge by attorney may warrant discipline


hybrid, hourly and contingent

OC 99-001, SF 1999-1

informed consent of client not obtained

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838

law firm’s costs are irrelevant to claim of unconscionable attorney fees charged to client


County Bar Ct. Rptr. 266

loan modification services

In re Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Swazi Elkanzi Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221

minors’ compromise

-court’s discretion on settlements should be limited to whether the net recovery for each minor plaintiff is fair and reasonable in light of the facts of the case

Robidoux v. Rosengren (9th Cir. 2011) 638 F.3d 1177

offset recovery used as basis for contingent fee calculation

LA 458

“over-billing”

-preparation of false and misleading billing statements involves moral turpitude

In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725

OC 99-001
partnership agreement
allocation of fees for unfinished cases taken by departing partner
contract term providing that if attorney leaves firm and takes clients, then 80% of the subsequent fees shall be paid to the firm may be enforceable
Moncharsh v. Heily & Blase (1992) 3 Cal.4th 1
patent prosecution
LA 507 (2001)
procedural and substantive element
unauthorized and unnecessary research
In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93
unconscionable fee found to violate rule 4-200, Rules of Professional Conduct
In the Matter of Van Sickel (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
*Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266
CAL 1994-135, OC 93-002, SF 1999–1
whether contingent fee charged is unconscionable determined at time contract entered into
Swanson v. Hempstead (1944) 64 Cal.App.2d 681, 688 [149 P.2d 404]
wholly disproportionate as to shock the conscience
In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896
Under Welfare and Institutions Code 730.6(a) juvenile court’s discretion to determine if actual and reasonable attorney fees and costs expended in collecting restitution even if some portion of these were spent in recovering general damages where economic damages are recoverable
Undue influence, presumption of
Sayble v. Feiman (1978) 76 Cal.App.3d 509 [142 Cal.Rptr. 895]
lien agreement assigning anticipated statutory fees in one case to satisfy fees incurred in another unrelated case does not give rise to
LA 496 (1998)
Uniform Foreign Money Judgments Recognition Act enforcement of foreign judgment
foreign order to pay attorney fees unenforceable where constitutes support
In re Marriage of Lyustiger (2009) 177 Cal.App.4th 1367 [99 Cal.Rptr.3d 922]
Uniform Trade Secrets Acts (CC § 3426 et seq.) denial of fees to defendant who prevailed against plaintiff’s claim of misappropriation of patents and trademarks as patents and trademarks are not trade secrets
prevailing defendant may recover attorney fees if the plaintiff pursued an action with subjective bad faith, regardless of whether there was some evidence supporting plaintiff’s contentions
United States civil rights actions
42 U.S.C. § 1983 actions
Guy v. City of San Diego (9th Cir. 2010) 608 F.3d 582
Holland v. Roeser (9th Cir. 1994) 37 F.3d 501
-calculating of fee award must be explained
McCowan v. City of Fontana (9th Cir. 2009) 565 F.3d 1097
United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 896 F.2d 403
Patton v. County of Kings (9th Cir. 1988) 857 F.2d 1379
"degree of success” versus “proportionality” approaches in determining award of attorney’s fees
McCowan v. City of Fontana (9th Cir. 2009) 565 F.3d 1097
-party who wins nominal damages may receive attorney’s fees with showing that lawsuit achieved other tangible results
Guy v. City of San Diego (9th Cir. 2010) 608 F.3d 582
-plaintiff unsuccessful at a stage of litigation necessary to an ultimate victory is entitled to attorney’s fees even for the unsuccessful stage
-preventing party’s statutory right to seek attorney’s fees is a substantive cause of action which shall not be assigned contractually
Pony v. County of Los Angeles (9th Cir. 2006) 433 F.3d 1138
42 U.S.C. § 1988 actions
calculating must be explained
Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106
Wilcox v. City of Reno (9th Cir. 1994) 42 F.3d 550
Gates v. Deukmejian (9th Cir. 1992) 977 F.2d 1300
-computation of fees
Hensley v. Eckerhart (1983) 461 U.S. 424, 429 fn. 2
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-de minimus damages award merits de minimus fee award
-denial of fees based on special circumstances under the traditional prevailing party analysis
San Francisco N.A.A.C.P. v. San Francisco Unified School District (9th Cir. 2002) 284 F.3d 1163
-determining prevailing party status
-Eleventh Amendment permits attorneys’ fees enhancement to compensate for payment delay
-federal official may be liable
Merritt v. Mackey (9th Cir. 1991) 932 F.2d 1317
-fee award denied when precedent did not clearly signal that questionable claim should not have been brought
Gibson v. Office of the Attorney General (9th Cir. 2009) 561 F.3d 920

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-fees awards in civil rights case reviewed for abuse of discretion
  Klein v. City of Laguna Beach (9th Cir. 2016) 810 F.3d 693
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  Aquirre v. Los Angeles Unified School District (9th Cir. 2006) 461 F.3d 1114
  Rock Creek Limited Partnership v. State Water Resources Control (9th Cir. 1992) 972 F.2d 274
  United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 896 F.2d 403
  Benigni v. City of Hemet (9th Cir. 1998) 853 F.2d 1519
  Hardin v. White Mountain Apache Tribe (9th Cir. 1985) 779 F.2d 476, 480

-fees not precluded by failure to achieve remedy sought when constitutional violations remedied

-hospital’s wrongful life-sustaining efforts not “state action” for § 1988 fees

-nominal award of one dollar
  Romberg v. Nichols (9th Cir. 1992) 953 F.2d 1152; amended at 970 F.2d 512

-partial attorney fees awarded
  Erdman v. Cochise County (9th Cir. 1991) 926 F.2d 877
  --application of “degree of success” standard
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  Klein v. City of Laguna Beach (9th Cir. 2006) 810 F.3d 693
  Aquirre v. Los Angeles Unified School District (9th Cir. 2006) 461 F.3d 1114

-party that won consent decree but was later unsuccessful in defending decree in a separate action not entitled to award of fees and costs
  San Francisco N.A.A.C.P. v. San Francisco Unified School District (9th Cir. 2002) 284 F.3d 1163
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  Gerling Global Reinsurance Corp. of America v. Garamendi (9th Cir. 2005) 400 F.3d 803
  plaintiff who wins state claim but loses federal claim not awarded attorney fees
  plaintiff’s environmental challenge to nuclear plant operations are entitled to unenhanced attorney’s fees

-attorney’s fees denied without court authorization

-attachment motion

-attorney’s fees denied without court authorization
  delaying client’s case until fees paid
  Business and Professions Code section 6128(b)
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-future services conditional on payment of fees due
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-notify opposing counsel
  LA 47 (1927), LA(I) 1970-1, SD 1997-1, SD 1984-3, SD 1977-3

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-refuse to continue or begin case
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-attempt as third-party lien claimant entitled to proceeds, over other claimants, from disposition of property where the People failed to substantially comply with this statute
Withdrawal by attorney
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Withdrawal of client trust account funds to pay disputed fees
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Workers’ Compensation
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Van Stike v. Director, Office of Workers’ Compensation Programs (2009) 557 F.3d 1041
claimant’s attorney is not entitled to fees from settlement proceeds if claimant received no benefit from the settlement
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-fees set by contract not binding where contract was deemed to have been drafted to circumvent court’s authority to fix compensation under Labor Code § 4906
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under Labor Code § 4607
Smith v. WCAB (2009) 46 Cal.4th 272 [92 Cal.Rptr.3d 894]
Written fee agreement required
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FICTITIOUS NAMES

[See Advertising, fictitious names. Business activity, name for. Partnership, name.]

FIFTH AMENDMENT

Business and Professions Code section 6068(i)
District court granted IRS’s petition to enforce summons on tax documents based on “foregone conclusion” exception to Fifth Amendment
U.S. v. Sidman & Bancroft, LLP (9th Cir. 2013) 7104 F.3d 1197
Juvenile court proceedings
referee, assuming the function of both judge and advocate in presenting and questioning the witness and in adjudicating a minor’s status, acts in violation of minor’s constitutional right to procedural due process
Public agency attorney may be compelled, under threat of job discipline, to answer questions about the employee’s job performance, so long as the employee is not required to waive the constitutional protection against criminal use of those answers
Spiehauer v. County of Santa Clara (2009) 45 Cal.4th 704 [98 Cal.Rptr.3d 390]

FILE

[See Document.]
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Class Action
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CAL 1999-153

Public agency attorney may be compelled, under threat of job discipline, to answer questions about the employee’s job performance, so long as the employee is not required to waive the constitutional protection against criminal use of those answers
Spiehauer v. County of Santa Clara (2009) 45 Cal.4th 704 [98 Cal.Rptr.3d 390]

FICTITIOUS NAMES

[See Advertising, fictitious names. Business activity, name for. Partnership, name.]

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  In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
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belongs to client whether or not the attorney has been paid


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Rumac, Inc. v. Bottomley (1983) 143 Cal.App.3d 810, 812 In. 3 [192 Cal.Rptr. 104]

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-Code of Civil Procedure section 2018

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-work product rule distinguished from attorney client privilege

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U.S. v. Ross (9th Cir. 2003) 338 F.3d 1054

Dishonesty  
habeas petitioner may be entitled to equitable tolling of statute where attorney had engaged in dishonesty and bad faith in representation of prisoner  
Porter v. Ollison (9th Cir. 2010) 620 F.3d 952

Disqualification  

Drug addiction is not per se ineffective assistance of counsel  

Duty to consult with client about whether to appeal  

Duty to pursue meritorious defenses  
People v. Monzingo (1983) 34 Cal.3d 926 [196 Cal.Rptr. 212]

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Entry of plea bargain  

Errorneous advice  
U.S. v. Day (9th Cir. 2002) 285 F.3d 1167

Evidentiary hearing  
not required where claims were grounded in speculation, no mitigating evidence  
Gonzalez v. Knowles (9th Cir. 2008) 515 F.3d 1006

Ex parte communication between defendant attorney and sentencing court  

Excessive caseload and/or limited resources  


Failure by public defender to introduce newly-discovered evidence  
Salisbury v. County of Orange (2005) 131 Cal.App.4th 756 [31 Cal.Rptr.3d 831]

Failure of appellate defense attorney to file intelligible and supporting briefs has unreasonably interfered with and disrupted the orderly process of the appeal  

Failure of counsel to point out to court that defendant had not been warned that prior conviction would constitute a strike where court presumed the defendant had been warned  

Failure of court to substitute appointed counsel  


Failure of defense counsel to assert objection to an erroneous prior enhancement constituted forfeiture of right to appeal and ineffective assistance of counsel  
People v. Lavoie (2018) 29 Cal.App.5th 875 [240 Cal.Rptr.3d 825]

Failure of defense counsel to disclose he was being prosecuted by same district attorney and was arrested by same police officer  
Harris v. Superior Court (2014) 225 Cal.App.4th 1129 [170 Cal.Rptr.3d 780]

Failure of trial counsel to appoint new counsel deprived defendant of effective assistance of counsel  
Plumlee v. Del Pino (9th Cir. 2005) 426 F.3d 1095

Failure on appeal to raise failure of trial counsel to request certain jury instruction  
*People v. Scobie (1973) 36 Cal.App.3d 97 [111 Cal.Rptr. 600]

Failure to act as an advocate at the probation and sentence hearing  

People v. Cropper (1979) 89 Cal.App.3d 716 [152 Cal.Rptr. 555]

Failure to act on behalf of client at trial after defendant expressed desire to represent himself  
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Failure to present exculpatory expert testimony on blood evidence
  Richter v. Hickman (9th Cir. 2009) 578 F.3d 944

Failure to present exculpatory statement
  People v. Foster (1992) 6 Cal.App.4th 1 [7 Cal.Rptr.2d 748]

Failure to present psychiatric testimony at guilt phase did not prejudice defendant at penalty phase
  People v. Welch (1999) 20 Cal.4th 701, 976 [85 Cal.Rptr.2d 203]

Failure to present psychiatric testimony at penalty phases of capital cases did not constitute ineffective assistance of counsel
  Pinholster v. Ayers (9th Cir. 2009) 590 F.3d 651
  Bonin v. Calderon (9th Cir. 1996) 77 F.3d 1155
  Bonin v. Calderon (9th Cir. 1995) 59 F.3d 815

Failure to present psychiatric testimony at penalty phase of capital case was ineffective assistance of counsel
  White v. Ryan (9th Cir. 2018) 895 F.3d 641
  Stankewitz v. Wong (9th Cir. 2012) 698 F.3d 1163
  Belmontes v. Ayers (9th Cir. 2008) 529 F.3d 834

Failure to press for specific finding on what evidence was to be suppressed

Failure to prevent defendant from testifying

Failure to promptly bring a discovery motion to compel production of crucial defense witnesses
  In re Schiering (1979) 92 Cal.App.3d 429 [154 Cal.Rptr. 847]

Failure to protect marital privilege
  Edwards v. Lamarque (9th Cir. 2007) 475 F.3d 1121

Failure to raise an ineffective assistance of counsel claim on direct appeal does not bar the claim from being brought in a later appropriate proceeding under Section 2255
  United States v. Withers (9th Cir. 2010) 638 F.3d 1055

Failure to raise contentions of arguable merit on appeal
  Delgado v. Lewis (9th Cir. 2000) 223 F.3d 976
  In re Walker (1974) 10 Cal.3d 764, 782 [112 Cal.Rptr. 177]

Failure to raise crucial defense
  Jennings v. Woodford (9th Cir. 2002) 290 F.3d 1006
  People v. Frierson (1979) 25 Cal.3d 142, 157 [158 Cal.Rptr. 281]
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  *People v. McDowell (1968) 69 Cal.2d 737 [73 Cal.Rptr. 1]
  People v. Pinsky (1979) 95 Cal.App.3d 194 [157 Cal.Rptr. 13]
  People v. Farley (1979) 90 Cal.App.3d 851, 864 [153 Cal.Rptr. 695]
  In re Grissom (1978) 85 Cal.App.3d 840, 846 [150 Cal.Rptr. 96]
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  *People v. Wellborn (1967) 257 Cal.App.2d 513 [65 Cal.Rptr. 8]
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  *People v. Belcher (1974) 1 Cal.3d 91, 101 [113 Cal.Rptr. 1]
  Failure to raise defense of double jeopardy

Failure to raise every defense
  People v. Avalos (1979) 98 Cal.App.3d 701, 712 [159 Cal.Rptr. 736]
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Failure to raise statute of limitations argument on appeal
  People v. Rose (1972) 28 Cal.App.3d 415 [104 Cal.Rptr. 702]

Failure to request a crucial jury instruction
  People v. Camden (1976) 16 Cal.3d 808 [129 Cal.Rptr. 438]

Failure to request jury instructions as to lesser offenses

Failure to require prosecution to elect

Failure to research the law
  Hernandez v. Chappell (9th Cir. 2018) 878 F.3d 843

Failure to seek evidence

Failure to seek severance
  *People v. Ottombrino (1982) 127 Cal.App.3d 574, 582 [179 Cal.Rptr. 676]

Failure to stipulate intent not at issue
  People v. Rios (1992) 7 Cal.App.4th 507

Failure to stipulate to prior felony convictions

Failure to submit jury instructions on lesser included offenses
  People v. Finney (1980) 110 Cal.App.3d 705, 711 [168 Cal.Rptr. 80]

Failure to subpoena a critical witness
  People v. Williams (1980) 102 Cal.App.2d 1018, 1030 [162 Cal.Rptr. 748]
  no ineffective assistance of counsel where public defender reasonably relies on professional courtesy between his office and prosecution’s office regarding subpoenas
  People v. Angel (2017) 9 Cal.App.5th 1107 [214 Cal.Rptr.3d 697]

Failure to urge acceptance of favorable plea bargain
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Fee agreement
lump sum payment of fees and costs does not create inherent conflict
People v. Doolin (2009) 45 Cal.4th 390 [87 Cal.Rptr.3d 208]

Filing of “no issue brief”

filing of no issue appellate brief so that court may determine whether appeal is frivolous may also be applied to minor in juvenile delinquency proceedings

Fourth Amendment
Ortiz-Sandoval v. Clarke (9th Cir. 2003) 323 F.3d 1165 counsel not ineffective when tactical choice made to forego
Habeas relief sought based upon tainted prior state conviction which was used to enhance sentence
Evenstad v. United States (1999) 179 F.3d 1154

Habitual disregard for needs of clients
In re Vargas (2000) 83 Cal.App.4th 1125 [100 Cal.Rptr.2d 265]

In propria persona
advisory counsel

Inability of counsel to forthrightly admit deficient legal assistance or to withdraw when not provided with adequate support services. A principled public defender may lose her/his job

Inactive attorney

absent showing of prejudice, inactive status does not result in ineffective assistance of counsel

Indigent defendant constitutionally entitled to counsel’s best argument for appeal before court rules on withdrawal
Delgado v. Lewis (9th Cir. 2000) 223 F.3d 976 United States v. Griffty (9th Cir. 1990) 895 F.2d 561

Insufficient declaration for appointment of second counsel under Keenan motion, no abuse of discretion found for denial of motion
People v. Verduzo (2010) 50 Cal.4th 265 [113 Cal.Rptr.3d 803]

Jury instruction
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Lack of commitment
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Lack of competence
inadequately advised client regarding possibility of deportation
U.S. v. Chan (9th Cir. 2015) 792 F.3d 1151 U.S. v. Kwan (9th Cir. 2005) 407 F.3d 1005

Lack of confidence by defendant in attorney’s abilities

Lack of diligence in preparation
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Lack of experience in capital cases
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Lack of zealous defense

People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]

due to excessive caseload and limited resources People v. Jones (2010) 186 Cal.App.4th 216 [111 Cal.Rptr.3d 745]


prior representation of government witness impaired defense counsel’s duty to fully cross examine witness
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Leading client to open door to wife’s damaging testimony
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Licensed attorneys who are not active members of the State Bar of California

inadequate performance effect on underlying matter


Loyalty to client
People v. Snow (2003) 30 Cal.4th 43 [132 Cal.Rptr.2d 271]

Mitigation strategy was factually unsupported and portrayed client inaccurately and unflatteringly
Visciotti v. Woodford (9th Cir. 2002) 288 F.3d 1097

Motion
evidence hearing not required in motion to vacate sentence because of ineffective assistance of counsel
Shah v. United States (9th Cir. 1989) 178 U.S. 767

No ineffective assistance of counsel where both trial attorney and court explained consequences of plea and defendant plea as agreed

No right to counsel in habeas proceedings and hence no right to effective assistance of counsel

*No-merit brief* by appellate attorney does not violate constitutional right to effective assistance of counsel

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*Davis v. Kramer (9th Cir. 1999) 167 F.3d 494

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Demirdjian v. Gipson (9th Cir. 2016) 832 F.3d 1060
Cox v. Ayers (9th Cir. 2010) 613 F.3d 883
Edwards v. Lamarque (9th Cir. 2007) 475 F.3d 1121
United States v. Fredman (9th Cir. 2004) 390 F.3d 1153
Beardslee v. Woodford (9th Cir. 2004) 358 F.3d 560
In re Valdez (2010) 49 Cal.4th 715 [111 Cal.Rptr.3d 647]
People v. Angel (2017) 9 Cal.App.5th 1107 [214 Cal.Rptr.3d 897]
additional mitigating evidence would probably not have resulted in a different outcome, defendant's crimes, and priors were brutal, and other mitigating evidence of his organic brain dysfunction had failed to persuade jury to reach a different verdict, California Supreme Court decision was not unreasonable

Samayoa v. Ayers (9th Cir. 2011) 649 F.3d 919 at guilt phase
Mayfield v. Woodford (9th Cir. 2001) 270 F.3d 915 at probation revocation hearing
United States v. Edward E. Allen (9th Cir. 1998) 157 F.3d 661
defendant not prejudiced by attorney's failure to object to prosecutor's asking attorney to explain certain evidence
Demirdjian v. Gipson (9th Cir. 2016) 832 F.3d 1060
defendant not prejudiced by attorney's failure to present a mental state defense where proffered evidence does not undermine confidence in the jury's findings of guilt
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defendant was not denied effective assistance of counsel because his counsel's decision to admit in opening statement to some of defendant's criminal wrongdoing
United States v. Fredman (9th Cir. 2004) 390 F.3d 1153
failure to advise client of collateral penalty (deportation)
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failure to consult blood evidence expert
failure to establish that trial counsel failed to consult an expert or that such an expert would have been able to provide favorable testimony
failure to focus on exculatory evidence in closing is not ineffective assistance of counsel
failure to impeach witness
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failure to investigate and present diminished capacity defense not ineffective assistance of counsel
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- failure of deputy public defender to properly investigate information leading to defendant's innocence is not immunized under Government Code § 820.2
Baner v. Leeds (2000) 24 Cal.4th 676 [102 Cal.Rptr.2d 97]
Public defender's office representing defendant had previously represented a witness in the case
People v. Anderson (1976) 59 Cal.App.3d 831, 843
Reduction of conviction makes allegation moot
Refusal to allow defendant to testify
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Remedy is to reoffer a plea agreement
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People v. Mejia (2008) 159 Cal.App.4th 1081 [72 Cal.Rptr.3d 76]
defendant denied effective assistance of counsel at preliminary hearing when his attorney failed to disclose that he himself was being prosecuted by same district attorney and was arrested by same police officer
Harris v. Superior Court (2014) 225 Cal.App.4th 1129 [170 Cal.Rptr.3d 780]
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denial of defendant's motion for substitution of counsel without first conducting proper inquiry is abuse of discretion to effective assistance of counsel
inhabeant waiver of right to counsel where defendant forced to choose between right to speedy trial and right to competent representation
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Sixth Amendment requires effective assistance of counsel at critical stages of a criminal proceeding, including advice regarding plea offers

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timely request to substitute retained counsel for court appointed counsel
to discharge retained counsel
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court had no sua sponte duty to ensure that defendant would be represented by qualified, effective counsel after defendant was made aware that chosen counsel did not meet standards for appointed counsel and court’s offer to defendant to consult with independent counsel was declined
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Right to counsel
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defendant deprived entirely of legal counsel, denied right to attorney acting in the role of an advocate
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Showing of prejudice not necessary for reversal


Stipulation by counsel as to chemical composition of contraband found in possession of defendant


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Summation by defense counsel includes concession to jury that no reasonable doubt existed on factual issues in dispute. United States v. Swanson (9th Cir. 1991) 943 F.2d 1070


Tactical decision

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Client’s claim of ineffective assistance of counsel fails when defense attorney, for tactical reasons, did not seek a time-value discount on victim’s restitution claim. People v. Arce (2014) 226 Cal.App.4th 924 [172 Cal.Rptr.3d 364]

Defense attorney made a strategic decision to address prosecutor’s comments directly in closing arguments instead of objecting. Demirdjian v. Gipson (9th Cir. 2016) 832 F.3d 1060

Ineffective assistance found where tactical decision was made without adequate investigation. Wiggins v. Smith (2003) 539 U.S. 510 [123 S.Ct. 2527]


Presentation by defense counsel of prior robbery of victim. People v. Armenta (1972) 22 Cal.App.3d 823, 827 [99 Cal.Rptr. 738]


Withdrawal of no contest pleas. People v. Johnoson (2009) 47 Cal.4th 668 [101 Cal.Rptr.3d 332]

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may not claim ineffective assistance during dissolution proceeding

Immigration cases
abuse of discretion

Correa-Rivera v. Holder (9th Cir. 2013) 706 F.3d 1128

Singh v. Holder (9th Cir. 2011) 658 F.3d 879

attorney’s IAC was exceptional circumstance, where attorney’s secretary gave client wrong appearance date, BIA abused discretion in denying petitioner’s motion to reopen

Lo v. Ashcroft (9th Cir. 2003) 341 F.3d 934

attorneys’ inadequate assistance denied petitioner the opportunity to present his case at all

Ray v. Gonzales (9th Cir. 2006) 439 F.3d 582

client coerced into accepting volunteer departure under threat of counsel’s withdrawal

Nehad v. Mukasey (9th Cir. 2008) 535 F.3d 962

counsel filed ultimately worthless motions, before the wrong court, and without filing fee

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Counsel’s unreasonable failure to investigate and present the factual and legal basis on asylum claim would itself amount to ineffective assistance of counsel; violation of Fifth Amendment right to due process

Lin v. Ashcroft (9th Cir. 2004) 377 F.3d 1014

denial of due process only if the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case

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U.S. v. Lopez-Chavez (9th Cir. 2014) 757 F.3d 1033

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failure to comply with Lozada requirement to provide proof of complaint

Correa-Rivera v. Holder (9th Cir. 2013) 706 F.3d 1128

failure to file a brief, resulting in dismissal of appeal

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failure to file timely notice of appeal

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failure to file timely petition for review of Board of Immigration

Dearinger v. Reno (9th Cir. 2000) 232 F.3d 1042

failure to introduce sufficient evidence of petitioner’s physical presence in the US and unusual hardship

Morales v. Mukasey (9th Cir. 2008) 514 F.3d 893

lawyer’s error results in alien being denied his right to appeal

Salazar-Gonzalez v. Lynch (9th Cir. 2016) 798 F.3d 917

lawyer’s incorrect analysis of new rules was not ineffective assistance of counsel

Lara-Torres v. Gonzales (9th Cir. 2004) 383 F.3d 968

no denial of due process where immigrants followed the advice of non-attorney immigration consultant and affirmatively declined assistance of counsel

Hernandez v. Mukasey (9th Cir. 2008) 524 F.3d 1014

no plausible grounds for relief shown, no valid claim of due process ineffective assistance of counsel

Serrano v. Gonzales (9th Cir. 2006) 469 F.3d 1317

petitioner must first exhaust administrative remedies, petition to reopen required before hearing on IAC

Singh v. Napolitano (9th Cir. 2010) 649 F.3d 899

petitioner not entitled to relief where counsel had failed to file a “notice of appearance” and was therefore not considered petitioner’s counsel, even though counsel was retained and had filed a brief on petitioner’s behalf

Singh v. Immigration and Naturalization Service (2003) 315 F.3d 1186

prejudice to client

Salazar-Gonzalez v. Lynch (9th Cir. 2015) 798 F.3d 917

Singh v. Lopez-Chavez (9th Cir. 2014) 757 F.3d 1033

Correa-Rivera v. Holder (9th Cir. 2013) 706 F.3d 1128

Singh v. Holder (9th Cir. 2011) 658 F.3d 879

prima facie case that counsel’s performance was flawed but prejudice to client not shown

Iturribarria v. I.N.S. (9th Cir. 2003) 321 F.3d 889

repeated mistakes, compounded by inability to recognize the import of errors are the epitome of ineffective assistance

Singh v. Holder (9th Cir. 2011) 658 F.3d 879

No plausible grounds for relief shown, no valid claim of due process ineffective assistance of counsel

Serrano v. Gonzales (9th Cir. 2006) 469 F.3d 1317

People v. Olivera (2018) 24 Cal.App.5th 1112 [235 Cal.Rptr.3d 200]

Parental rights

failure to take steps to establish


no ineffective assistance where counsel informed the court of the conflict between minor’s stated interest and what counsel believed was minor’s best interests

In re Kristen B. (2004) 108 Cal.Rptr.3d 856

parent may raise ineffective assistance of counsel claim by habeas corpus petition to contest parental rights termination


parent may raise ineffective assistance of counsel claim by Welfare and Institutions Code § 358 petition


Standard of review

Nehad v. Mukasey (9th Cir. 2008) 535 F.3d 962

Yeghiazaryan v. Gonzales (9th Cir. 2005) 431 F.3d 678


See How to Use This Index, supra, p. i
INTEREST

[See Client trust account, interest bearing accounts. Fee, charging interest, financing.]

Expense of interest on short term loans is not ordinary and necessary business expense


On client’s funds

La(i) 1961-7
SF 1970-3

On partnership assets


On unpaid fees

California Constitution Art. 15
Usury § 1, par. 2
CAL 1980-53, SD 1983-1

Prejudgment interest rate is set by state in which court sits

Shakey’s Inc. v. Covalt (9th Cir. 1983) 704 F.2d 426
Turner v. Japan Lines Ltd. (9th Cir. 1983) 702 F.2d 752, 757

INTEREST WITH PROSPECTIVE ADVANTAGE

[See Practice of law.]

INVOLUNTARY ENROLLMENT AS AN INACTIVE MEMBER OF THE STATE BAR

Business and Professions Code section 6007

JUDGE

[See Court. Letterhead. Political activity. Public office.]

California Code of Judicial Conduct

California Constitution Article VI, section 18(a)

Willens v. Commission on Judicial Qualifications (1973) 10 Cal.3d 451 [110 Cal.Rptr. 713, 516 P.2d 1]
In re Tindall (1963) 60 Cal.2d 469 [34 Cal.Rptr. 849, 386 P.2d 473]

Abuse of discretion

found in trial court’s rejection of plea bargain in the absence of any stated justification

People v. Loya (2016) 1 Cal.App.5th 932 [205 Cal.Rptr.3d 231]

found when court removed the public defender in a juvenile proceeding absent showing that minor was not indigent or a conflict existed


resentencing alone will not be full redress for the constitutional injury; defendant entitled to be returned to pre-plea stage and proceed under the correctly calculated sentencing range

Johnson v. Uribe (9th Cir. 2012) 682 F.3d 1238

Administrative Law Judge

law firm retained by school district personnel commission cannot substitute for ALJ


-party cannot be compelled to accept a decision upon the facts a judge who did not hear the evidence in the case


Admonishment

comments at sentencing reflected a biased and insensitive view about sexual assault


dismissal where substantial evidence of wrongful conduct


undeniably and discourteous remarks to family law litigants

In the Matter Concerning Judge Daniel J. Healy (2014) 2014 DJDAR 14999

Appeal premature until remedies exhausted for complaints of judicial misconduct

In re Charge of Judicial Misconduct (9th Cir. Judicial Council 1983) 700 F.2d 1391

As witness


Attorney as temporary judge, referee, or court-appointed arbitrator

Rule 1-710, Rules of Professional Conduct (effective March 18, 1999)

Authority

disqualify law firm


limits on


letter to bar


Bias, appearance or, and prejudice of

Code of Civil Procedure section 170

Rothstein v. Superior Court (2016) 3 Cal.App.5th 424 [207 Cal.Rptr.3d 616]


announced bias or prejudice


Mancini v. U.S. (9th Cir. (Mont.) 2003) 314 F.3d 1158

Little v. Kern County Superior Court (9th Cir. 2002) 294 F.3d 1075

Patt v. Pratt (1903) 141 Cal. 247, 250-251


People v. Fatone (1985) 165 Cal.App.3d 1164 [211 Cal.Rptr. 288]

In re Henry C. (1977) 71 Cal.App.3d 472 [139 Cal.Rptr. 451]

People v. Deutschman (1972) 23 Cal.App.3d 559, 566 [100 Cal.Rptr. 330]

-judge presiding over a proceeding in which the appellant previously made contribution to the judge’s successful election campaign should have recused himself as a matter of due process


-judicial disqualification under due process clause requires a probability of actual bias that is too high to be constitutionally tolerable

People v. Freeman (2010) 47 Cal.4th 993 [103 Cal.Rptr.3d 723]

People v. Poynter (2014) 229 Cal.App.4th 1063 [177 Cal.Rptr.3d 823]

See How to Use This Index, supra, p. i
comments at sentencing reflected a biased and insensitive view about sexual assault


comments to family law litigants reflected bias or prejudice

In the Matter Concerning Judge Daniel J. Healy (2014) 2014 DJDAR 14999
effect on rulings

no bias nor lack of impartiality when court commissioner agrees to officiate litigant’s counsel’s wedding

not found, where judge did not feel threatened by defendant

not found, where the record fails to demonstrate bias

Board of directors

permits use of name

-as member

LA 116 (1937)

-as officer

LA 116 (1937)

serving as member of

LA 116 (1937)

Bribes

judge accepted

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157
Censure

causes for

-conduct prejudicial to the administration of justice that brings the judicial office into disrepute

Broadman v. Commission on Judicial Performance (1998) 18 Cal.4th 1079 [77 Cal.Rptr.2d 408]
In re Norman W. Gordon (1996) 13 Cal.4th 472 [53 Cal.Rptr.2d 788]
In re Rasmussen (1987) 43 Cal.3d 536 [236 Cal.Rptr. 152]
In re Stevens (1981) 28 Cal.3d 873 [172 Cal.Rptr. 676, 625 P.2d 219]
In re Glickfield (1971) 3 Cal.3d 891 [92 Cal.Rptr.278, 479 P.2d 638]
In re Chargin (1970) 2 Cal.3d 617 [87 Cal.Rptr. 709, 471 P.2d 29]

-failure to perform duties within the meaning of Cal. Constitution, Art. VI, section 18

In re Jensen (1978) 24 Cal.3d 72 [152 Cal.Rptr. 503, 593 P.2d 200]

-former judge is barred from receiving an assignment, appointment, or reference of work from any California court


-injudicious conduct


-participation in negotiations for employment as dispute resolution neutral


-publicly commenting on pending cases

Broadman v. Commission on Judicial Performance (1998) 18 Cal.4th 1079 [77 Cal.Rptr.2d 408]

-willful misconduct in office

In the Matter Concerning Judge Scott Steiner (2014) 2014 DJDAR 12197

Broadman v. Commission on Judicial Performance (1998) 18 Cal.4th 1079 [77 Cal.Rptr.2d 408]

Adams v. Commission on Judicial Performance (1994) 8 Cal.4th 630 [34 Cal.Rptr.2d 641; 882 P.2d 358]

Kloepfer v. Commission on Judicial Performance (1989) 49 Cal.3d 826 [264 Cal.Rptr. 100]
In re Chavez (1973) 9 Cal.3d 846 [109 Cal.Rptr. 79, 512 P.2d 303]
In re Sanchez (1973) 9 Cal.3d 844 [109 Cal.Rptr. 78, 512 P.2d 302]

Commission on Judicial Performance (formerly Commission on Judicial Qualifications)

confidentiality of proceedings

Mosk v. Superior Court (1979) 25 Cal.3d 474 [159 Cal.Rptr. 494, 601 P.2d 1030]


disclosure of the votes of individual commission members on issues of judicial discipline following formal proceeding


judge is publicly admonished for treating attorneys in sarcastic and belittling manner while presiding over civil cases


jurisdiction [See Scope of authority.]

- location of hearings


membership

- propriety of lay persons on commission


moral turpitude

Adams v. Commission on Judicial Performance (1994) 8 Cal.4th 630 [34 Cal.Rptr.2d 641]

procedure

-discovery


- notice, effect of procedural defect


purpose is protection of the public, enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity of the judicial system.


qualified to act as judge pro tempore

-may do so only on stipulation of all parties

requirement under Proposition 190 to disclose the votes of individual commission members in disciplinary proceeding against a judge


review of findings/recommendations by Supreme Court
-power to make independent findings of fact/impose sanctions

Spruance v. Commission on Judicial Qualifications (1975) 13 Cal.3d 778, 782-784 [119 Cal.Rptr. 841, 532 P.2d 1209]


Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270 [110 Cal.Rptr. 201, 515 P.2d 1]

Stevens v. Commission on Judicial Qualifications (1964) 61 Cal.2d 886 [39 Cal.Rptr. 397, 393 P.2d 709]

scope of authority
Broadman v. Commission on Judicial Performance (1998) 18 Cal.4th 1079 [77 Cal.Rptr.2d 408]

Mosk v. Superior Court (1979) 25 Cal.3d 474 [159 Cal.Rptr. 494, 601 P.2d 1030]

Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270, 275-276 [110 Cal.Rptr. 201, 515 P.2d 1]


-power to compel testimony
McCom v. Superior Court (1977) 68 Cal.App.3d 89 [137 Cal.Rptr. 233]

Communication with judicial officers about court clerk.

SF 1973-2

about pending matter
LA(I) 1979-2

-judge engaged in improper ex parte conversations
In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

-judge had discussions and resolved son's case in nonpublic areas of the courthouse and outside the normal process, the judge created an appearance of impropriety which undermines public confidence in the impartiality of the judiciary


administrative law judge

-not within the compass of the term "judicial officer"


another judge regarding the case

-impermissible even if attorney is not counsel
LA(I) 1979-2

-permissible when no case is pending

by attorney


Rule 5-300, Rules of Professional Conduct (operative as of May 27, 1989)


LA 387 (1980), SD 2013-2

by prosecutor

ex parte discussion with

-judge engaged in improper ex parte conversations


In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

-listserv
LA 514 (2005)

-rehabilitation consultant
CAL 1985-85

filing briefs

without knowledge of opposing counsel
LA 56 (1928)

hearing officer/administrative law judge


CAL 1984-82

judge is disqualified for speaking to previous judge who was disqualified

publication of article regarding pending case

socializing outside the work environment
OC 94-001

upon merits of a contested issue over which he presides in absence of opposing counsel


Rule 5-300, Rules of Professional Conduct (operative as of May 27, 1989)

In re Winnetka V. (1980) 28 Cal.3d 587, 592-593 and n.5 [169 Cal.Rptr. 713, 620 P.2d 163]


In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

SD 2013-2

-contested issue construed

while case is pending judge engaged in improper ex parte conversations


Rule 5-300, Rules of Professional Conduct (operative as of May 27, 1989)
See How to Use This Index, supra, p. i
had previously supplied him with illegal drugs based on race.

Appeal following appellant's earlier failure to seek writ review of issuance of the remittitur by appellate court. Thereafter, the presiding judge also became personally involved in another matter which the plaintiff believed to be too complex for the trial judge to handle. The presiding judge was also a former member of the appellate tribunal which advised another commissioner after disqualification of temporary judge based on violation of California Code of Judicial Conduct, Canon 3.C and disqualification of judge for disqualification under the due process clause, neither is showing of actual bias sufficient for judicial disqualification under the due process clause, merely the mere appearance of bias is not required for judicial disqualification under the due process clause, unless, however, the mere appearance of bias is not required for judicial disqualification under the due process clause, unless, however, the mere appearance of bias is not required for judicial disqualification under the due process clause, unless, however, the mere appearance of bias is not required for judicial disqualification under the due process clause.


administrative law judge


advise to another commissioner after disqualification


appellate tribunal

-acting upon

Code of Civil Procedure section 170a

-superior court

Code of Civil Procedure section 170.7 attorney as judge presides over a criminal defendant who had previously supplied him with illegal drugs

In re Scott (1991) 52 Cal.3d 968

based on race

People v. Superior Court (1992) 8 Cal.App.4th 873 [10 Cal.Rptr.2d 873]

bias or prejudice

Mangini v. U.S. (9th Cir. (Mont.) 2003) 314 F.3d 1158 Little v. Kern County Superior Court (9th Cir. 2002) 294 F.3d 1075

Fletcher v. Commission on Judicial Performance (1998) 19 Cal.4th 865 [81 Cal.Rptr.2d 58]

Kaiser Foundation Hospitals, Inc. v. Superior Court of Los Angeles (1993) 19 Cal.4th 513

Hayward v. Superior Court (2016) 2 Cal.App.5th 10 [206 Cal.Rptr.3d 102]


In re Marriage of Tharr (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 375]


-not required on due process grounds where mere appearance of bias; probability of actual bias required

People v. Peyton (2014) 229 Cal.App.4th 1063 [177 Cal.Rptr.3d 823]

-plaintiff's remarks regarding his social contacts with presiding judge are not necessarily determinative of judge's bias

Jorgensen v. Cassiday (9th Cir. 2003) 320 F.3d 906

-showing of actual bias is not required for judicial disqualification under the due process clause, neither is the mere appearance of bias sufficient

People v. Freeman (2010) 47 Cal.4th 993 [103 Cal.Rptr.3d 723]

People v. Peyton (2014) 229 Cal.App.4th 1063 [177 Cal.Rptr.3d 823]

-trial judge's adverse legal rulings and denial of a request for a continuance do not reflect personal bias


by criminal defendant


disqualification of temporary judge based on violation of Canon 6D(5)(a), failure to disclose known relationships with parties or lawyers

Hayward v. Superior Court (2016) 2 Cal.App.5th 10 [206 Cal.Rptr.3d 102]

disqualified presiding judge loses jurisdiction over the matter and all subsequent orders and judgments are void


In re Jenkins (1999) 70 Cal.App.4th 1162 [83 Cal.Rptr.2d 232]

duties to call own witnesses but may not shift balance


effect on rulings


failure of judge to disqualify himself after having previously represented one party as attorney was not reviewable on appeal following appellant’s earlier failure to seek writ review


frivolous motions to disqualify


gambling by

LA(I) 1976-6; LA(I) 1958-4

grounds for

California Code of Judicial Conduct, Canon 3.C

Code of Civil Procedure section 170


-multiple similar parties limited to one peremptory challenge per side


-when local superior court rules conflict with the Code of Civil Procedure, local rule is void


Code of Civil Procedure section 170.6

Election campaign
Disruptive and offensive conduct in courtroom of a judge who
impertinent attacks
contributions to
groundless, insulting, contemptuous, scandalous, or
to the court and to protect the integrity of the judiciary from
obligation of judge by his oath to maintain the respect due
fund raising for

People v. Mejia (2008) 159 Cal.App.4th 1081 [72 Cal.Rptr.3d 796]

prior representation of defendant
statement of disqualification must be filed at earliest practi-
cal opportunity
vicarious disqualification of a firm does not automatically
follow the personal disqualification of the tainted attorney,
a former settlement judge
County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990
Disruptive and offensive conduct in courtroom of a judge who
had recused himself from an attorney’s case
Duty
obligation of judge by his oath to maintain the respect due
to the court and to protect the integrity of the judiciary from
groundless, insulting, contemptuous, scandalous, or
impertinent attacks
In the Matter of Koven (2005) 134 Cal.App.4th 262 [35 Cal.Rptr.3d 917]
Election campaign
contributions to
--no duty to advise adversary
LA 387 (1980)
judge presiding over a proceeding in which the appellant
previously made contribution to the judge’s successful
election campaign should have recused himself as a
matter of due process

Plumlee v. Del Papa (9th Cir. 2005) 426 F.3d 1095
Failure to hold Marsden hearing
People v. Mendez (2008) 161 Cal.App.4th 1362 [75 Cal.Rptr.3d 162]
People v. Mejia (2008) 159 Cal.App.4th 1081 [72 Cal.Rptr.3d 76]
court made no inquiry at all
People v. Reed (2010) 183 Cal.App.4th 1137 [107 Cal.Rptr.3d 710]

Failure to perform duties [See Censure, causes for, this
section.]
Frivolous allegations against, attorney disciplined for
Standing Com. on Disc. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1177
Fair and true report of judicial proceedings is privileged and
therefore not actionable
Gambling
LA(I) 1976-6, LA(I) 1958-4
Gifts and favors from litigants and counsel
In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157
JUDGE

Impartiality, protection of
In re Georgetown Park Apartments (9th Cir. 1992) 143 B.R. 557
CAL 1984-78

Improper action
comments at sentencing reflected a biased and insensitive view about sexual assault

undignified and discourteous remarks to family law litigants
In the Matter Concerning Judge Daniel J. Healy (2014) 2014 DJDAR 14999

Injudicious conduct [See Censure, causes for, this section.]
Spruance v. Commission on Judicial Qualification (1973) 13 Cal.3d 778 [119 Cal.Rptr. 841, 532 P.2d 1209]

Judge as prior prosecutor, same case

“Judge” defined
CAL 1984-82

Judicial officer defined
local bar association’s arbitration panel is not a judicial officer
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838

Juvenile court proceedings
referee, assuming the function of both judge and advocate in presenting and questioning the witness and in adjudicating a minor’s status, acts in violation of minor’s constitutional right to procedural due process

Law lectures; delivery of
LA 129 (1940)

Liability
absolute immunity applies to defamatory statements made by judge during settlement conference, but not to statements made during newspaper interview

absolute immunity from for acts done in performance of official duties
Kimes v. Stone (9th Cir. 1996) 84 F.3d 1121
Stanislaus Food Products Co. v. P.U.C. (N.D. Cal. 1982) 560 F.Supp. 114, 117

immunity extended to state agencies that act in judicial capacity
Stanislaus Food Products Co. v. P.U.C. (N.D. Cal. 1982) 560 F.Supp. 114, 117

Listserv
communication with judicial officers
LA 514 (2005)

May rehear a pretrial issue when magistrate’s order is clearly erroneous and contrary to law

Misconduct
alteration of court records
Fletcher v. Commission on Judicial Performance (1998) 19 Cal.4th 865 [81 Cal.Rptr.2d 58]

appearance of embroilment and lack of impartiality
-judge’s attempt to influence another judicial officer on arrest warrant of family litigant before judge was misconduct reflecting
In the Matter Concerning Judge Daniel J. Healy (2014) 2014 DJDAR14999

bias and interference with defense announced bias and prejudice

communication with real party in interest without notice to opposing party
Roberts v. Committee on Judicial Performance (1983) 33 Cal.3d 739 [190 Cal.Rptr.910]
district court improperly participated in defendant’s plea discussions by prematurely committing itself to a sentence of specific severity
U.S. v. Kyle (9th Cir. 2013) 734 F.3d 956
district court’s failure to notify defense counsel about jury note and to give counsel opportunity to be heard before court responds violates rule requiring defendant’s presence at every trial stage
U.S. v. Martinez (9th Cir. 2017) 850 F.3d 1097

impugning defense counsel
People v. Fatone (1985) 165 Cal.App.3d 1164 [211 Cal.Rptr. 288]

judge had discussions and resolved son’s case in nonpublic areas of the courthouse and outside the normal process, the judge created an appearance of impropriety which undermines public confidence in the impartiality of the judiciary

judge is disqualified for speaking to previous judge who was disqualified

judge’s earnings from public employment as a teacher at a community college which were not reported as income did not violate the Political Reform Act

prejudicial and wilful misconduct which seriously undermines the integrity of the judiciary

trial judge entering jury room and engaging in unreported, ex parte communications with the jury concerning issues of law relevant to the case was improper

trial judge’s misconduct which deprives plaintiff of fair trial warrants judgment reversal

Must be final decision authority when magistrates are used for arbitration
Pacemaker Diag. Clinic v. Instromedix, Inc. (9th Cir. 1983) 712 F.2d 1305

Name and designation as judge in journal of fraternal order
-judge contribute to publication cost
LA 100 (1936)

Name of, used in legal directory
SF 1973-11

Non-judicial activity
business activity
LA(I) 1959-7

Perjury
judge solicited the commission of perjury in a federal investigation
In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

Prejudicial conduct [See Removal, causes for. Censure, causes for. Conduct, prejudicial conduct insufficient to support recommendation of sanctions.]
 extraction of attorney fees from bail deposits
judge's abrupt ending of trial without allowing party to present case in chief was denial of due process

In re Marriage of Carlsson (2008) 163 Cal.App.4th 281 [77 Cal.Rptr.3d 305]

judge's discussions with court clerk and presiding judge about son's case through channels not available to the public, even if not done in bad faith, created an appearance of impropriety undermining public confidence in the impartiality and integrity of the judiciary


ordering appearances of defendants for fee collection purposes


prejudicial jury instructions, standard of miscarriage of justice


Presiding judge authority to rule on opinion of another judge


Pro tempore qualifications


Promotion of corporation by shares offered for sale to public

LA 53 (1927)

Public confidence diminished comments at sentencing reflected a biased and insensitive view about sexual assault


Quasi-judicial function of parole officials gives immunity relative to function prompting action

Anderson v. Boyd (9th Cir. 1983) 714 F.2d 906

Radio broadcast of court proceedings

LA 88 (1935)

Recall superior court judges are not state officers therefore petition for recall does not have to be reviewed and certified for circulation by Secretary of State


Recusal based on alleged violation of defendant’s due process rights


People v. Freeman (2010) 47 Cal.4th 993 [103 Cal.Rptr.3d 723]

People v. Peyton (2014) 229 Cal.App.4th 1063 [177 Cal.Rptr.3d 823]

California Supreme Court held that judge's refusal to recuse himself was not required because only the most "extreme facts" would require judicial disqualification on due process grounds

People v. Freeman (2010) 47 Cal.4th 993 [103 Cal.Rptr.3d 723]

commissioner's bias against attorney


contempt proceedings involving attorney -criminal

In re Martin (1977) 71 Cal.App.3d 472 [139 Cal.Rptr. 451]

effect on rulings prior to judge's recusal


failure of judge to disclose participation in substantial negotiations for employment as dispute resolution neutral


failure of judge to disqualify himself after having previously represented one party as attorney was not reviewable on appeal following appellant’s earlier failure to seek writ review


general notice change in calendar judge mailed by superior court’s public information office was insufficient to deny petitioner’s peremptory challenge

Cybermedia Inc. v. Superior Court (1999) 72 Cal.App.4th 910 [82 Cal.Rptr.2d 126]

judge as prior prosecutor, same case


judge not disqualified for failure to disclose ownership interest in various insurance industry companies which were not involved in case


judge presiding over a proceeding in which the appellant previously made contribution to the judge’s successful election campaign should have recused himself as a matter of due process


judge who rules in contested pretrial proceedings may not participate in appellate review in same case

Housing Authority of County of Monterey v. Jones (2005) 130 Cal.App.4th 1029 [30 Cal.Rptr.3d 676]

legal grounds – impartiality

United States v. Spangle (9th Cir. 2010) 626 F.3d 488

United States v. Amrpiester (9th Cir. 1994) 37 F.3d 466

Denardo v. Municipality of Anchorage (9th Cir. 1992) 974 F.2d 1200

United States v. Jaramillo (9th Cir. 1984) 745 F.2d 1245, 1247-1248

In re Georgetown Park Apartments (9th Cir. 1992) 143 B.R. 557

-Rdenied when judge officiates litigant’s counsel’s wedding but has no personal or social relationship with counsel


not required on due process grounds where mere appearance of bias; probability of actual bias required

People v. Peyton (2014) 229 Cal.App.4th 1063 [177 Cal.Rptr.3d 823]

precludes any further action in the case by the judge


reusal required to prevent an impermissible risk of actual bias when judge had earlier significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case


required if judge should have known of circumstances requiring disqualification, even absent actual knowledge


threats against judge as basis for recusal

United States v. Spangle (9th Cir. 2010) 626 F.3d 488

See How to Use This Index, supra, p. i 351 2019 (updated entries through 12/31/2018)
Reinstatement
California Government Code section 75060.6
after voluntary retirement due to disability
Davis v. Commission on Judicial Qualifications (1977) 73 Cal.App.3d 818 [141 Cal.Rptr. 75]
review of findings as to fitness to hold judicial office
Davis v. Commission on Judicial Qualifications (1977) 73 Cal.App.3d 818 [141 Cal.Rptr. 75]

Removal
California Constitution Article VI, section 18(c)
burden of proof
Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270, 275 [110 Cal.Rptr. 201, 515 P.2d 1]
causes for
"-conduct prejudicial to the administration of justice that brings the judicial office into disrepute"
Cannon v. Commission on Judicial Qualifications (1975) 14 Cal.3d 676 [122 Cal.Rptr. 778, 537 P.2d 896]
Spruance v. Commission on Judicial Qualifications (1975) 13 Cal.3d 778, 796, 797 [119 Cal.Rptr. 841, 532 P.2d 1209]
Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270, 284-287 [110 Cal.Rptr. 201, 515 P.2d 1]
-ex parte communication with parties
Fletcher v. Commission on Judicial Performance (1998) 19 Cal.4th 865 [81 Cal.Rptr.2d 58]
-persistent failure or inability to perform judicial duties
-willful misconduct in office
Cannon v. Commission on Judicial Qualifications (1975) 14 Cal.3d 676 [122 Cal.Rptr. 778, 537 P.2d 896]
Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270, 284-287 [110 Cal.Rptr. 201, 515 P.2d 1]
discovery [See Commission on Judicial Performance, procedure - discovery.]
jury trial
effect on rulings
nature of proceedings
-non-criminal
-not constituting civil action
persistent and pervasive conduct prejudicial to the administration of justice
Kloepfer v. Commission on Judicial Performance (1989) 49 Cal.3d 826 [264 Cal.Rptr 100]
procedure [See Commission on Judicial Performance, procedure.]
retirement for disability
In re Roick (1978) 24 Cal.3d 74 [154 Cal.Rptr. 413, 592 P.2d 1165]
review of findings as to fitness to hold judicial office
Davis v. Commission on Judicial Qualifications (1977) 73 Cal.App.3d 818 [141 Cal.Rptr. 75]
special proceedings
-alternative to impeachment
standard of proof required
Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270, 275 [110 Cal.Rptr. 201, 515 P.2d 1]
Supreme Court Justice
California Constitution Article VI, section 18(e)
-selection of special tribunal
Represent/practice before
LA(I) 1954-1
Resignation from judicial office; effect upon proceedings for disbarment
California Constitution Article VI, section 18
In re Craig (1938) 12 Cal.2d 93 [82 P.2d 442]
Retirement [See Removal, retirement for disability.]
benefits
Willsen v. Commission on Judicial Qualifications (1973) 10 Cal.3d 451, 458 [110 Cal.Rptr. 713, 516 P.2d 1]
-as valuable property right
Davis v. Commission on Judicial Qualifications (1977) 73 Cal.App.3d 818, 825-826 [141 Cal.Rptr. 75]
-effect of criminal charges/conviction
-interest on, withheld pending litigation as to entitlement
judges may hold public office or engage in public employment after they resign or retire, even if time remains in judicial term for which they were selected
pension rights [See Retirement, benefits.]
"salary" construed
subsequent representation of one of the parties
Right to hire private counsel when county counsel has conflict of interest
Sanctions [See Removal. Censure. Automatic disqualification.]
contempt of court [See Contempt.]
dismissal of criminal complaint based on intentional eavesdropping by law enforcement was not an appropriate remedy
People v. Shrier (2010) 190 Cal.App.4th 400 [118 Cal.Rptr.3d 233]
improper when court uses mediator's report in violation of Evidence Code Section 1121 (mediation confidentiality)
mitigating factors
Canon v. Commission on Judicial Qualifications (1975) 14 Cal.3d 678, 706-708 [122 Cal.Rptr. 778, 537 P.2d 898]
Sprunce v. Commission on Judicial Qualifications (1975) 13 Cal.3d 778, 800-803 [119 Cal.Rptr. 841, 532 P.2d 1209]
money sanction for violation of lawful court order
- not applicable to advocacy of counsel
Civil Code section 177.5
remanding sanctions did not imply the appearance of impropriety
Yagman v. Republic Insurance (1993) 987 F.2d 1027
State Bar Court
conclusive weight given to disciplinary proceedings in Michigan despite lower standard of proof where the Michigan Supreme court found the evidence of misconduct overwhelming
In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157
in attorney criminal conviction matter, State Bar Court judge not authorized to require evidence beyond that which parties have presented
In the Matter of Bouver (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 886
State Supreme Court authority to appoint judges of the State Bar Court not impaired by permissible appointment mechanisms specified by the legislature
State Bar of California
jurisdiction
- over judges regarding disbarment proceedings
Statutory test for disqualification is whether reasonable person with knowledge of all facts would conclude that judge’s impartiality might reasonably be questioned
United States v. Nelson (9th Cir. 1983) 718 F.2d 315
Suspension
pending appeal from criminal conviction
In re Tindall (1963) 60 Cal.2d 469 [34 Cal.Rptr. 849, 386 P.2d 473]
pending criminal prosecution
In re Tindall (1963) 60 Cal.2d 469 [34 Cal.Rptr. 849, 386 P.2d 473]
Trial conduct
district court improperly participated in defendant’s plea discussions by prematurely committing itself to a sentence of specific severity
U.S. v. Kyle (9th Cir. 2013) 734 F.3d 956
judge is publicly admonished for treating attorneys in sarcastic and belittling manner while presiding over civil cases
judge who testifies as a witness in a case in which he presides must give advance notice and obtain consent of parties
judge’s abrupt ending of trial without allowing party to present case in chief was denial of due process
In re Marriage of Carlsson (2008) 163 Cal.App.4th 281 [77 Cal.Rptr.3d 305]
may not exclude a party to an action

Use of judge’s name
for promotion of corporation
LA 53 (1927)
Willful misconduct in office [See Judge, Censure, causes for. Judge, removal, causes for.]
Witness
judge who testifies as a witness in a case in which he presides must give advance notice and obtain consent of parties
no absolute ban
Writ of habeas corpus
allegation by habeas corpus petitioner that trial judge & prosecutor colluded in an ex parte communication to exclude certain prospective jurors from the panel
In re Freeman (2006) 38 Cal.4th 630 [42 Cal.Rptr.3d 850] defendant’s exclusion from an in-camera procedure regarding defense counsel’s withdrawal deprived defendant of due process of law
*Bradley v. Henry (9th Cir. 2005) 428 F.3d 811
judge granted without adequate information to help a friend
In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

JUDICIAL SALE
Rule 5-103, Rules of Professional Conduct (operative until May 26, 1989)
Rule 4-300, Rules of Professional Conduct (operative as of May 27, 1989)

JURISDICTION, ADVISE CLIENT TO LEAVE
Rules 7-101 and 7-107, Rules of Professional Conduct (operative until May 26, 1989)
Rules 3-210 and 5-310, Rules of Professional Conduct (operative as of May 27, 1989)

JURORS, COMMUNICATION WITH OR INVESTIGATION OF
Rule 7-106, Rules of Professional Conduct (operative until May 26, 1989)
Rule 5-320, Rules of Professional Conduct (operative as of May 27, 1989)
In re Possino (1984) 37 Cal.3d 163 [207 Cal.Rptr. 543, 689 P.2d 115]
Noland v. State Bar (1965) 63 Cal.2d 298, [46 Cal.Rptr. 305, 405 P.2d 129]
In re Loftus (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80 CAL 1988-100
After trial
CAL 1987-95, CAL 1976-39
Court-imposed, post-trial restrictions pursuant to trial court’s inherent authority
Townself v. Superior Court (1999) 20 Cal.4th 1084 [86 Cal.Rptr.2d 602]
Ex parte communications between trial judge and a deliberating jury are prohibited
Jurors have absolute right to refuse to discuss deliberations or verdict with defense counsel
Jones v. Superior Court (1994) 26 Cal.App.4th 92 [31 Cal.Rptr.2d 264]
Mock jury research
SD 2010-1
“Venire” defined
SD 2010-1

LABOR UNION
Emblem of on law firm letterhead
CAL 1971-24
Lawyer, government employee as member of
LA 337 (1973)
Lay employee shows membership in after signature
CAL 1971-24

See How to Use This Index, supra, p. i 353 2019 (updated entries through 12/31/2018)
LAW CORPORATIONS

[See Professional corporations.]

Business and Professions Code sections 6125, 6126, 6127, 6160 et seq.

Attorney held liable for law corporation’s debts as alter ego
where corporation was being used by attorney to escape
personal liability

Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221

State Bar of California

action of reviewable by Supreme Court
Business and Professions Code section 6170
disciplinary power and authority

-nothing in this article affects or impairs
Business and Professions Code section 6172

Business and Professions Code section 6168
notice to show cause

Business and Professions Code section 6169
-hearing on

Business and Professions Code section 6169(b)(c)
-hearing prior to suspension not required
Business and Professions Code Section 6169(d)

Supreme Court of California
disciplinary power and authority

-nothing in this article affects or impairs
Business and Professions Code section 6172
review of action by State Bar
Business and Professions Code section 6170

LAW CORPORATIONS RULES OF THE STATE BAR OF CALIFORNIA

Text is located in:
Deerings Annotated California Codes, Rules of Court, State Bar Rules (p. 417), and in
West’s Annotated California Codes, Court Rules, vol. 23, pt 3, p. 738

Text available through State Bar’s home page:
http://www.calbar.ca.gov

Text may be obtained from:
Law Corporations Department
State Bar of California
180 Howard Street
San Francisco, California 94105
Telephone: (888) 800-3400

Nonprofit corporation
not required to register with State Bar of California as a law corporation
Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221

LAW FIRM

[See Corporation, professional. Partnership, advertising. Practice of law.]

LAW OFFICE

[See Advertising, law office. Practice of law.]
bail company  
SD 1974-23

business  
LA 199 (1952)

foreign attorney  
LA 99 (1936)

insurance business  
LA 215 (1953)

investigator  
LA(I) 1963-8, SD 1974-23

land developer  
LA(I) 1968-1

real estate business  
LA (I) 1970-2

reception room  
-investigator  
SD 1974-23

suspended lawyer  
LA (I) 1937-1

**LAW STUDENT**  
[See Admission to the Bar. Lay employee. Lay person. Practical training of law students.]

Presentation by to state agency  
SD 1973-9

**LAWYER**  
[See Admission to the bar.]

Business and Professions Code section 6060 et seq.

Circulation of list of lawyers who do not extend normal courtesies  
LA 364 (1976)

Definition  
Evidence Code section 950

Rule 1-100(B)(3), Rules of Professional Conduct

Duties  
Business and Professions Code section 6068

MCLE (Minimum Continuing Legal Education)  
Warden v. State Bar (1999) 21 Cal.4th 628


Mandatory bar membership  
Morrow, et. al. v. State Bar (9th Cir. 1999) 188 F.3d 1174

Misconduct of reported  
SF 1977-1

**LAWYER REFERRAL SERVICE**  
[See Group legal services. Referral of legal business.]

Referral of legal business.  

Rule 2-102, Rules of Professional Conduct (operative until May 26, 1989)

Rule 1-600, Rules of Professional Conduct (operative as of May 27, 1989)


Duty to advise referred persons that counsel will divide fee with service  
SD 1973-12

Failure to comply with minimum standards for a lawyer referral service  

Financing of  
LA(I) 1965-7, SD 1973-12

General guidelines  
SD 1977-5

Immunity from liability for referrals  
if authorized by the State Bar of California and in conformance with minimum standards for a lawyer referral service in California

Civil Code section 43.95

Income of organization  
from operation of lawyer referral service in conformance with the minimum standards of a lawyer referral service

-excluded

Revenue and Taxation Code section 23734d

Minimum standards for a lawyer referral service [The full text is reprinted at part LA., appendix A of this Compendium.]

Civil Code section 43.95

Revenue and Taxation Code section 23734d

**LAW STUDENT**  
[See How to Use This Index, supra, p. i

2019 (updated entries through 12/31/2018)
LAY INTERMEDIARIES

Shows labor union membership after signature
CAL 1971-24

Signing on client trust account
CAL 1988-97

Uses card showing relationship to lawyer
LA 346 (1975), LA 172 (1950), LA(I) 1956-2
SD 1974-5

LAY INTERMEDIARIES [See Division of fees. Referral of legal business. Solicitation of business.]

Association

act for members of
LA(I) 1947-8

trade, advise members of
LA 155 (1945)

Communicate with opposing party through
LA 315 (1970)

Consulting firm, advise customers of
LA 194 (1952)

Corporation

represent customers of
LA 262 (1959)

Family counseling corporation, represent clients of
LA 270 (1962)

Interpreters in court
People v. Shaw (1984) 35 Cal.3d 535 [198 Cal.Rptr. 72]

Labor union, represent members of
LA 151 (1944)


Bankruptcy petition preparers (BPP) (11 U.S.C.A. § 110(h))

BPP can only transcribe and type bankruptcy forms that debtor alone must prepare without assistance and may charge only what professional typists or word processors would charge
Scott v. United States (In re Doser) (9th Cir. 2005) 412 F.3d 1056

IRS agents not entitled to absolute immunity
sanction of person when taking action provoking lawsuit
Bothke v. Fluor Engineers and Constructors, Inc. (9th Cir. 1983) 713 F.2d 1405

Listed on law office door
LA(I) 1956-6

Partnership with
Rule 3-103, Rules of Professional Conduct
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
LA(I) 1966-18
accountant
LA(I) 1959-5
SD 1974-17

LECTURE [See Advertising. Publication.]
CAL 1972-29, CAL 1967-12

LEGAL AID [See Indigent persons.]

Agency

advertising or solicitation by
SD 1974-9

advertising, referrals, referral panel, definition of fee generating case
SD 1976-7

case
control over activities of
SD 1974-8, SF 1976-1

disclosure of data about clients of
disposition of unclaimed clients’ funds by
CAL 1975-36

fund raising by
SD 1974-9

propriety of being employed by
LA(I) 1965-1

Divorce
advise client how to obtain in pro per divorce
SD 1972-6

Fees
award of fees to legal aid foundation pursuant to contract, not by statute or common law right, does not violate ban on awards to recipients of Legal Services Corporation funding under 45 C.F.R. § 1642.2


Legal Services Corporation has exclusive jurisdiction over compliance with 45 C.F.R. § 1642.2 by recipient legal aid foundations


Funding
award of fees to legal aid foundation pursuant to contract, not by statute or common law right, does not violate ban on awards to recipients of Legal Services Corporation funding under 45 C.F.R. § 1642.2


Congressional restriction on funding of organizations that represent indigent clients in loss of welfare benefits suits violates First Amendment

Legal Services Corp. v. Velazquez (2001) 531 U.S. 533 [121 S.Ct. 1043]

lack of funding makes withdrawal and effective representation impossible or unreasonably difficult

CAL 1981-64

Lay person, participation in
SD 1983-4

Legal aid lawyer
withdrawal by
SF 1973-5

Legal services corporation including non-attorney shareholders
LA 444 (1987)

Program organized by non-profit corporation
LA(I) 1972-24

Public defender
offers to represent indigent before arraignment
LA(I) 1954-2

Representation of client who possess assets
SD 1983-6

LEGAL DIRECTORY [See Advertising, directory of lawyers. Solicitation of business, inclusion in list of approved practitioners.]

Certified law lists
SF 1975-3

Judicial office, former noted in
SF 1973-11

Listing
SD 1968-1
of interstate partnership
SF 1974-5

Out-of-state attorney listed in
LA 249 (1958)

LEGAL SERVICES [See Legal aid.]


Brotherhood of Railroad Trainmen v. Virginia (1964) 377 U.S. 1 [84 S.Ct. 1113]


Hildebrand v. State Bar (1950) 36 Cal.2d 504 [225 P.2d 508]

Attorney renders legal services to clients of financial planning company
LA 510 (2003)
Lack of funding makes effective representation unreasonably difficult or impossible, withdrawal

**LEGAL SPECIALIZATION**

See How to Use This Index, supra, p. i

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**LEGAL SPECIALIZATION**

[See Advertising. Practice of law. Specialization.]

Advertising

notice to apprise profession of specialized service

LA 110 (1937)

Appellate briefs

LA 258 (1959)

Bankruptcy

LA 258 (1959)

California Board of Legal Specialization

Rules Governing the State Bar of California Program for Certifying Legal Specialists

Text of rules and regulations is located in:

- Deering's Annotated California Codes, Rules of Court, State Bar Rules (p. 433), and in
- West's Annotated California Codes, Court Rules, vol. 23, pt 3, p. 751

Text available through State Bar’s home page:

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Text may be obtained from:

Legal Specialization Department

State Bar of California

180 Howard Street

San Francisco, California 94105

Telephone: (415) 538-2120

Certified specialist authority over

LA(I) 1974-4

Consultative practice

LA 258 (1959)

Corporate litigation

LA(I) 1948-1

Division of community property

LA(I) 1948-1

Divorce

LA 179 (1951)

Drafting

LA 209 (1953)

Holding out as specialist [see Advertising]

**Rule 1-400(D)(6), Rules of Professional Conduct (operative as of June 1, 1997)**

**Rule 1-400, std. 11, Rules of Professional Conduct**

(operative as of May 27, 1989)


**Wright v. Williams** (1975) 47 Cal.App.3d 802 [121 Cal.Rptr. 194]

Inactive lawyer on

Business and Professions Code section 6132

LA 310 (1969)

Lay person on

LA(I) 1964-4

Lay person’s law degree noted on

LA 39 (1927)

Name of lawyer who is not associated with office on

SD 1969-4

Of client, counsel shown on


“Of counsel” on

**Rule 1-400, std. 8, Rules of Professional Conduct**

**CAL 1993-129, CAL 1986-88**


Of office sharers [See Law office.]

**CAL 1971-27**

Of organization, lawyer-officer of identified on

LA 286 (1965), LA 256 (1959)

Out-of-state attorney or firm on


Out-of-state attorney’s

LA(I) 1960-1

Partnership

foreign lawyer or firm on


former member shown on

inactive partner

LA 310 (1969)

interstate

LA 230 (1955)

non-existent partnerships

LA(I) 1959-3

Professional corporation

SD 1978-4

Public office of former judge shown on

SF 1973-11

Public official’s reference to private practice

LA 260 (1959)

Patents

LA 232 (1956), LA 44 (1927)

Private international law

LA(I) 1970-4

Receiverships

LA(I) 1948-1

Reorganizations

LA(I) 1948-1

Selective Service Act

LA 180 (1951)

Taxation

LA 168 (1948)

Workers’ compensation

LA(I) 1959-2

**LETTERHEAD**

Accountant’s lawyer shown on

LA 164 (1947)

Dead lawyer’s name on

CAL 1986-90, LA(I) 1962-5

Former judge

judicial office shown on

SF 1973-11

Holding out as specialist [see Advertising]

**Rule 1-400(D)(6), Rules of Professional Conduct (operative as of June 1, 1997)**

**Rule 1-400, std. 11, Rules of Professional Conduct**

(operative as of May 27, 1989)


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LA 286 (1965), LA 256 (1959)

Out-of-state attorney or firm on


Out-of-state attorney’s

LA(I) 1960-1

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foreign lawyer or firm on


former member shown on

inactive partner

LA 310 (1969)

interstate

LA 230 (1955)

non-existent partnerships

LA(I) 1959-3

Professional corporation

SD 1978-4

Public office of former judge shown on

SF 1973-11

Public official’s reference to private practice

LA 260 (1959)
LIEN

Qualifications on
academic degrees
SD 1974-10
accounting
LA 224 (1955)
membership
 -bar association
 LA 153 (1945)
 -in other professions
 LA 349 (1975), LA(I) 1961-1
 -specialties
 LA 230 (1955), LA 168 (1948), LA(I) 1961-1
Union emblem on
CAL 1971-24
Use of
educational activity
SD 1974-21
political activity
LA 250 (1958)
Used by
client for collections
CAL 1982-68
LA(I) 1968-3
collection supervisor
SD 1978-4

LIEN [See Attorney's lien. Fees, collection of.]
Absent a petition by attorney seeking court confirmation of an arbitration award, such award has no greater force or effect than an attorney's written retainer agreement specifying an amount of attorney's fee and assigning it a lien on any settlement or judgment (CCP 1285.4 et seq.)
Attorney having a valid but unperfected security interest has priority over other unsecured creditors where the People failed to substantially comply with Penal Code § 186.11
Attorney's lien is created and takes effect at the time fee contract is executed
Attorney's lien not payable in circumvention of the Bankruptcy Code
Client settlement
failure of subsequent counsel to honor
 -liability for interference with prospective economic advantage
Common fund doctrine as it does not apply to contractual medical lienholders in personal injury matters
City and County of San Francisco v. Sweet (1995) 12 Cal.4th 105, 110, 115-117
County's right to recover lien for medical expenses from injured debtor's settlement
Hospital's right to assert a lien on patient's lawsuit recovery once Medi-Cal payments accepted
Insurance company pays fee to insured's attorney to protect insurer's lien on insured's settlement
LA 352 (1976)
Judgment creditor denied recovery of attorney's fees incurred against another judgment creditor as to priority of judgments against judgment debtor where judgment debtor did not challenge judgment creditor's rights
Notice
In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9
In the Matter of Folds (Review Dept. 1999) 3 Cal. State Bar Ct. Rptr. 754
CAL 2009-177, CAL 2008-175
attorney may choose to file notice of lien in an underlying action against debtor/client, although attorney is not required to do so
Physician
Priority of
attorney having a valid but unperfected security interest has priority over other unsecured creditors where the People failed to substantially comply with Penal Code § 186.11
attorney's lien is subordinate to an adverse party's right to offset judgments
Pou Chen Corporation v. MTS Products (2010) 183 Cal.App.4th 188 [167 Cal.Rptr.3d 57]
attorney's lien, if valid, on proceeds of client's subsequent judgment has priority over judgment creditor's lien on same judgment
between contractual medical lien and an attorney lien for fees and costs of litigation in a contingency fee case

See How to Use This Index, supra, p. i
LIMITING LIABILITY TO CLIENT

child support obligations have priority over attorney’s fees on funds from liquidated assets deposited in attorney’s client trust account in anticipation of legal services
Brothers v. Kern (2007) 154 Cal.App.4th 126, 64 Cal.Rptr.3d 239

equitable lien for fees

exceptions to priority of attorney’s lien
-judgment creditor’s application for proceeds of judgment bears burden of persuading court that it should be granted to satisfy judgment creditor’s lien over an attorney’s potentially senior claim of lien on same proceeds
-judgment creditor’s lien did not cover commercial tort claims

Third party

CAL 2008-175

attorney as third-party lien claimant entitled to proceeds, over other claimants, from disposition of property where the People failed to substantially comply with this statute

duty of attorney
U.S. v. Limbs (9th Cir. 1975) 524 F.2d 799
Johnstone v. State Bar (1966) 64 Cal.2d 153, 155 [49 Cal.Rptr. 97, 410 P.2d 617]
In re Marriage of Wagoner (1986) 176 Cal.App.3d 936 [222 Cal.Rptr. 479]
In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9
In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91
In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234
In the Matter of Boyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404
-no duty to lender, where client owed no funds to the lender
In re Emery (9th Cir. 2003) 317 F.3d 1064 [40 Bankr.Ct.Dec. 259]

exceptions to priority of attorney’s lien

White collar crime
under Penal Code § 186.11
-attorney as third-party lien claimant entitled to proceeds, over other claimants, from disposition of property where the People failed to substantially comply with this statute

LIMITING LIABILITY TO CLIENT

Business and Professions Code section 6090.5
Rule 6-102, Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-400, Rules of Professional Conduct (operative as of May 27, 1989)

In the Matter of Forte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735

CAL 2012-185, CAL 2009-178, CAL 1989-116

CAL 1989-116


Law firm, acting as agents for a school district, is protected when petitioning on behalf of the citizenry by seeking to take private land for public use
Kearney v. Foley & Lardner, LLP (9th Cir. 2009) 590 F.3d 638

LITIGATION

Anti-SLAPP cases
Mindy’s Cosmetics, Inc. v. Dakar (9th Cir. 2010) 611 F.3d 590
Daniels v. Robbins et al. (2010) 182 Cal.App.4th 204 [105 Cal.Rptr.3d 683]

allegations of conspiring in or aiding and abetting tenant harassment insufficient where the only acts attorney was shown to have committed were giving advice to client and writing a letter to opposing counsel which are unquestionably protected activities

Contreras v. Dowling (2016) 4 Cal.App.5th 774 [208 Cal.Rptr.3d 707]

declaratory relief action to determine prior attorney’s right to fees is not subject to anti-SLAPP motion because suit does not arise from a protected activity

defendant’s general counsel’s statement to press accusing plaintiff’s attorney of wrongdoing is protected under the fair and true reporting privilege
Argentieri v. Zuckerberg (2017) 8 Cal.App.5th 768 [214 Cal.Rptr.3d 358]

denial of anti-SLAPP motion appealable and proper where insurer’s complaint did not arise from counsel’s litigation-related conduct, but rather form his post-settlement conduct
Travelers Casualty Insurance Co. of America v. Hirsch (9th Cir. 2016) 831 F.3d 1179
filing of unredacted credit report is protected activity

See How to Use This Index, supra, p. i
letter of warning to prospective customers of former company employee who was alleged to have misappropriated trade secrets was protected activity, even though employer had not yet filed a lawsuit


letter threatening to report party to Attorney General, District Attorney, IRS, coupled with a demand for money is extortion as a matter of law and not protected under litigation privilege


plaintiff’s letter to defendant is extortion as a matter of law, therefore it is not protected under the anti-SLAPP statute


settlement negotiations are acts in furtherance of person’s right to petition under the statute


underlying policy


Frivolous actions under CCP § 128.7

toxic tort action against manufacturer had sufficient underlying policy


Litigation privilege

Civil Code section 47(b)


Contreras v. Dowling (2016) 4 Cal.App.5th 774 [208 Cal.Rptr.3d 707]


Fremont Reorganization Corp. v. Faigin (2011) 198 Cal.App.4th 1153 [131 Cal.Rptr.3d 478]


-exceptions to the litigation privilege


-litigation privilege should not be extended to litigating in the press


Mindy’s Cosmetics, Inc. v. Dakar (9th Cir. 2010) 611 F.3d 590

Flatley v. Mauro (2006) 39 Cal.4th 299 [46 Cal.Rptr.3d 606]


Kimmel v. Goland (1990) 51 Cal.3d 202 [271 Cal.Rptr. 191]

Silberg v. Anderson (1990) 50 Cal.3d 205, 211-216


Daniels v. Robbins et al. (2010) 182 Cal.App.4th 204 [105 Cal.Rptr.3d 683]


communications mentioning “pursuing remedies” did not fall within the litigation privilege on the grounds that the overall tone of such communications was one of persuasion and cooperation and were not sent in anticipation of litigation


covers communications, torts other than malicious prosecution, and interference with contract


demand letter


dismissal of defamation action against law firm justified

Dove Audio Inc. v. Rosenfeld, Meyer and Susman (1996) 47 Cal.App.4th 777 [54 Cal.Rptr.2d 830]

filing of unredacted credit report is protected activity


litigation privilege applied to allegedly defamatory statements about husband that wife made in a declaration filed in a marital dissolution proceeding, regardless of the truth or falsity of those statements


litigation privilege cannot be used to defend against claims of legal malpractice and breach of fiduciary duty arising from the filing of an application by an attorney, since the filing was not carried out in anticipation of litigation nor was it intended to instigate an official investigation into wrongdoing

Mindys’s Cosmetics, Inc. v. Dakar (9th Cir. 2010) 611 F.3d 590

litigation privilege is inapplicable in an action by a former client against an attorney for breach of professional duties

Fremont Reorganization Corp. v. Faigin (2011) 198 Cal.App.4th 1153 [131 Cal.Rptr.3d 478]

litigation privilege may apply to various types of truth-seeking proceedings, including administrative, legislative and other official proceedings, and may extend to communications made prior thereto or afterwards


malicious prosecution is the only tort claim that falls outside the litigation privilege

Daniels v. Robbins et al. (2010) 182 Cal.App.4th 204 [105 Cal.Rptr.3d 683]

principal purpose underlying the litigation privilege


protected activities under anti-SLAPP statute are not coextensive with the range of statements protected by the litigation privilege.


settlement negotiations


underlying policy


Litigation privilege does not protect attorney's alleged fraudulent statements about insurance coverage


Litigation privilege versus strategic lawsuits against public participation (SLAPP) action


Public official's authority with respect to initiating LA(I) 1974-3

Specially appearing attorney undertakes a limited association with the litigant's attorney of record, forms an attorney-client relationship with the litigant, and owes the litigant a duty of care.


Vicarious disqualification of a firm does not automatically follow the personal disqualification of the tainted attorney, a former settlement judge

County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990

LOAN [See Conflict of Interest, Adverse Interest.]

Rule 4-210, Rule of Professional Conduct (operative as of May 27, 1989)

Security for assignment in client's interest in estate

LA 228 (1995)

MAIL [See Advertising, Solicitation.]

MALICIOUS PROCUTION [See Abuse of process.]

Administrative proceeding


Advice of counsel, bar to

Fisher Tool Co., Inc. v. Gillet Outillage (9th Cir. 2008) 530 F.3d 1063

Against attorney

Lucero v. Stewart (9th Cir. 1989) 892 F.2d 52

Zamos v. Stroud (2004) 32 Cal.4th 958 [12 Cal.Rptr.3d 54]


Daniels v. Robbins et al. (2010) 182 Cal.App.4th 204 [105 Cal.Rptr.3d 683]


associated ("standby") counsel may be held liable for malicious prosecution of a case that lacks probable cause


sanction

-against defendant attorney improper

--dissolve protective order limiting use of financial information to lawsuit

Richards v. Superior Court (1978) 86 Cal.App.3d 265 [150 Cal.Rptr. 77]

unsuccessful attempt to disqualify attorney from representing client not basis for malicious prosecution or abuse of process suit


Against disciplinary complaint not permissible as public policy


Anti-SLAPP

malicious prosecution action subject to Anti-SLAPP statutes

Jarrow Formulas, Inc. v. LaMarche (2003) 31 Cal.4th 728 [3 Cal.Rptr.3d 636]


Daniels v. Robbins et al. (2010) 182 Cal.App.4th 204 [105 Cal.Rptr.3d 683]


scope of commercial speech exemption to the anti-SLAPP statute (Code of Civ. Proc. §§ 425.16, 425.17)

Argenti v. Zuckerberg (2017) 8 Cal.App.5th 768 [214 Cal.Rptr.3d 358]

Karnazes v. Ares (2016) 244 Cal.App.4th 344 [198 Cal.Rptr.3d 155]

Associate attorney may also be held liable for malicious prosecution following a principal attorney’s instructions is not a valid defense


By attorney against former client

--reversal of cross-complaint or counter claim by client in action to recover attorneys' fees


--effect of voluntary dismissal of underlying case

MALICIOUS PROSECUTION

filing complaint for punitive damages
-where prohibited by statute

Umansky v. Urquhart (1978) 84 Cal.App.3d 368 [148
Cal.Rptr. 547]
Cal.Rptr. 113]

unsuccessful attempt to disqualify attorney from representing
client not basis for malicious prosecution or abuse of process
suit

By law firm
law firm liable for malicious prosecution based on acts of
principal
Cal.Rptr.3d 700]

Cal.Rptr. 604]

Continuance of action by firm
grounds for partner’s liability
Cal.Rptr. 654]

Distinguished from abuse of process
Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss
& Karma, Inc. (1986) 42 Cal.3d 1157 [232 Cal.Rptr. 567]
1312 [141 Cal.Rptr.3d 338]

Elements of
Fisher Tool Co., Inc. v. Gillet Outillage (9th Cir. 2008) 530
F.3d 1063
Zamos v. Stroud (2004) 32 Cal.4th 958 [12 Cal.Rptr.3d 54]
Shelton Appel Co. v. Albert & Oliker (1989) 47 Cal.3d 863
[254 Cal.Rptr. 336]
Cal.Rptr.3d 700]

[155 Cal.Rptr.3d 599]

Cal.App.4th 1385 [69 Cal.Rptr.3d 561]
attorney evaluating whether to file a case may generally rely
on information provided by the attorney’s client
Cal.Rptr.2d 747]

attorney provided information
each claim advanced must be supported by
pleading on “on information and belief” not a shield from
liability
test is whether reasonable attorney would have thought the
claim objectively tenable
Zamos v. Stroud (2004) 32 Cal.4th 958 [12 Cal.Rptr.3d 54]
[155 Cal.Rptr.3d 599]
Cal.Rptr.2d 747]


purposes of suit

Public entities are barred from bringing malicious prosecution
suits but may recover costs defending against frivolous suits
under CCP § 1038

Clark v. Optical Coating Laboratory, Inc. (2008) 165
Cal.App.4th 150 [80 Cal.Rptr.3d 812]

Requires favorable termination reflecting the merits of the underlying
action
1512 [141 Cal.Rptr.3d 338]

Daniels v. Robbins et al. (2010) 182 Cal.App.4th 204 [105
Cal.Rptr.3d 683]

Cal.Rptr.3d 683]

Cal.Rptr.3d 700]

[155 Cal.Rptr.3d 599]


Cal.App.4th 1385 [69 Cal.Rptr.3d 561]


may occur at appellate level

Sanctions

Winick v. County of Sanitation District No. 2 of Los Angeles County (1986) 185 Cal.App.3d 1170, 1176 [230 Cal.Rptr. 289]
dismissal of cross-action as sanction for failure to comply with discovery orders does not establish favorable termination element

issues resolved on routine sanction motion not entitled to collateral estoppel preclusive effect in later action for malicious prosecution


Statute of limitations

actions against attorneys, under CCP 340.6

MALPRACTICE [See Neglect. Professional liability.]

Action brought by criminal defendant against former counsel for billing improprieties is not necessarily a claim of legal malpractice


Acts constituting

Wiley v. County of San Diego (1998) 19 Cal.4th 532 [79 Cal.Rptr.2d 672]

Alov v. Mash (1985) 38 Cal.3d 312 [212 Cal.Rptr. 162]

Moya v. Pittullo et al. (2014) 228 Cal.App.4th 107 [174 Cal.Rptr.3d 692]


Wise v. DLA Piper LLP (2013) 220 Cal.App.4th 1180 [164 Cal.Rptr.3d 54]


Thomas v. Lusk, Jr. (1994) 27 Cal.App.4th 1709 [34 Cal.Rptr.2d 265]


breach of a professional duty, which causes only nominal damages, speculative harm, or the threat of future harm that is not yet realized, does not serve to create a cause of action for professional negligence


to third parties


Acts of privately retained counsel and publicly appointed counsel should be measured by the same standard of care, except as otherwise provided by statute


Agreement to limit professional liability

CAL 2009-178, LA 489 (1997)

Anti-SLAPP actions based on breach of duties owed to clients are not SLAPP suits


definitional focus of this statute is not the form of the plaintiff’s cause of action; rather, it is the defendant’s activity that gives rise to his or her asserted liability and whether that activity constitutes protected speech or petitioning

Mindy’s Cosmetics, Inc. v. Dakar (9th Cir. 2010) 611 F.3d 590

litigation tactics protected under Anti-SLAPP statute


See How to Use This Index, supra, p. i
malpractice claims involve breach of duty by neglecting to do an act or doing an act, not the right of petition; therefore, malpractice claim may not be struck under the anti-SLAPP statute


statute not applicable to malpractice claim based on attorney’s breach of loyalty

Mindy’s Cosmetics, Inc. v. Dakar (9th Cir. 2010) 611 F.3d 590


statute not applicable to malpractice claim based on attorney’s breach of professional duties in a non-litigation setting

Fremont Reorganization Corp. v. Faigin (2011) 198 Cal.App.4th 1153 [131 Cal.Rptr.3d 478]

Arbitration provisions of retention agreement are enforceable and applicable to legal malpractice action


CAL 1989-116

LA 489 (1997)

arbitrator’s decision to dismiss legal malpractice case due to plaintiff’s inability to pay should have allowed case to proceed in federal court

Tillman v. Tillman, Rheingold Valet, Rheingold, Shkolnik &McCartney (9th Cir. 2016) 825 F.3d 1069

no duty to separately explain arbitration agreement when attorney changes firms and client signs new fee agreement when client is a sophisticated businessperson


Assignability


Baum v. Duckor, Spradling & Metzger (1999) 72 Cal.App.4th 584 [84 Cal.Rptr.2d 703]


bankruptcy estate representative pursuing claim for the estate is not an assignee


exception to the California rule barring the assignment for the cause of action for legal malpractice


shareholder’s derivative action does not transfer the cause of action from the corporation to the shareholders


Attorney self-interest does not interfere with duty to client where attorney seeks indemnification from co-counsel in malpractice action

Musser v. Provenceher (2002) 28 Cal.4th 274 [121 Cal.Rptr.2d 373]

Attorney sued by former client for legal malpractice may not cross-complain against plaintiff’s present attorney for indemnity or contribution


Austin v. Superior Court (1999) 72 Cal.App.4th 1126 [85 Cal.Rptr.2d 644]

Attorney sued by former corporate client for malpractice is not entitled to receive costs of defense pursuant to Corporations Code section 317


Attorney’s failure to raise inapplicable argument


Breach of fiduciary duty, failure to advise of conflict, failure to advise that an investment was inappropriate for client or refer to independent advisor, obtaining undisclosed profit from transaction


Burden of proof

Moua v. Pittullo et al. (2014) 228 Cal.App.4th 107 [174 Cal.Rptr.3d 662]


attorney charged with spoliation of evidence has burden of showing that his negligence did not result in loss of meritorious case


client must prove causation in transactional matters

Viner v. Sweet (2003) 30 Cal.4th 1232 [135 Cal.Rptr.2d 629]


error on trial court for failing to instruct jury on issue of severability in legal malpractice case


plaintiff failed to prove that any judgment she might have obtained in her “case within a case” would have been collectible


plaintiff must prove that, but for the negligence of the attorney, a better result could have been obtained in the underlying matter


By partner

associate’s duty to disclose to client

LA 383 (1979)

Calculation of damages based on comparative fault of prior and successor counsel and of guardians ad litem pursuant to CCP § 877


“Case within a case” methodology must be used when legal malpractice involves negligence in the prosecution or defense of a legal claim

See How to Use This Index, supra, p. i

insurer has standing to sue law firm representing both insurer and insured

owner of law firm may be personally responsible for reimbursing insurer that settled malpractice claim filed by owner’s business against firm

Jurisdiction of California federal court over Florida matter
Sher v. Johnson (9th Cir. 1990) 911 F.2d 1357

Jurisdiction of California state court over malpractice case involving substantial question of federal law

Jurisdiction of state court
state court subject matter jurisdiction where damages arise from attorney’s negligence, not violation of federal patent law

Labor Code section 2802
attorney sued for malpractice is entitled to indemnification from law firm employer for costs of defending lawsuit arising from claims made by a former client

Legal malpractice carrier does not cover attorney’s alleged malpractice occurring outside of firm’s business

Legal malpractice carrier has no duty to defend malicious prosecution action arising from conspiracy suit by attorney acting on own behalf

Legal malpractice carrier’s liability for multiple claims which are not characterized as arising from a “single act”
Bay Cities Paving & Grading, Inc. v. Lawyer’s Mutual Insurance Company (1991) 233 Cal.App.3d 1184

Legal malpractice defendant not entitled to discover terms of plaintiff’s settlement with regards to mitigating damages with insurer

Legal negligence
plaintiff must prove “but for” alleged malpractice, the resulting contract would have been more favorable

plaintiff must prove “but for” alleged negligence, he would have obtained a more favorable result

Limited Liability Partnership
owner of law firm may be personally responsible for reimbursing insurer that settled malpractice claim filed by owner’s business against firm

Malpractice actions tolled while attorney continues to represent client


Malpractice by itself does not prove violation of rule 3-110(A) of Rules of Professional Conduct
In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138

Mediation
communications and writings are confidential if materially related to and foster mediation, though not necessarily confidential simply because they are contemporaneous to a mediation

malpractice claim is barred due to mediation confidentiality statute when attorney’s alleged misconduct occurred during mediation

Medical certification
Code of Civil Procedure sections 365, 411.30

Medico or health care provider
Business and Professions Code sections 6146, 6147
Code of Civil Procedure section 364


communication with physician of opposing party
SD 1983-9

no duty to consult medical specialist unless such consultations recommended by other doctors

represent
-against former physician client
LA(!) 1965-5

statute of limitations tolled when plaintiff gives notice required by CCP § 364 within the last 90 days of the one year statute


Meritless claims
no obligation to allege or advise a client on an unmeritorious claim

Multiple errors by attorney do not support multiple claims against attorney when only single injury results
Bay Cities Paving & Grading v. Lawyers Mutual Insurance Co. (1993) 5 Cal.4th 854 [21 Cal.Rptr.2d 691]

No action against attorney who is resigned as attorney of record prior to commission of alleged malpractice

No duty to agent of client who participated in attorney in the negotiation of a contract on behalf of their client

No triable issue of fact as to second attorney’s assumption of liability for acts of self-dealing

Omission

by one member of law firm imputed to others when more than one attorney works on case

Outside counsel
outside contractor attorney may be held liable to government agency for acts of self-dealing
outside counsel retained by corporation to defend against litigation was not agent of corporation for purposes of statute indemnifying persons sued by reason of such agency for defense costs of malpractice action brought by the corporation


Outside union counsel immune under Labor Management Relations Act

Breda v. Scott (1993) 1 F.3d 908

Probate cases

out-of-state successor estate representative may sue California attorneys retained by prior representative for alleged malpractice

Smith v. Cimmet et al. (2011) 199 Cal.App.4th 1381 [132 Cal.Rptr.3d 276]

successor conservator, albeit non-client, may bring suit against a predecessor’s attorney for malpractice causing loss to the estate

Stine v. Dell’Osso (2014) 230 Cal.App.4th 834 [178 Cal.Rptr.3d 886]

Professional malpractice distinguished from negligence


Proximate cause

not shown when attorney’s allegedly wrongful conduct is not a substantial factor


Public defender not immune from legal malpractice under statute granting discretionary immunity to public employees


Public defenders not independent contractors for purpose of a government tort claim


Public policy concerns barred first law firm from asserting indemnity claim against Cumis counsel with which it had concurrently represented company


Public policy concerns do not bar concurrent counsel from seeking indemnification from co-counsel in malpractice action

Musser v. Prevencher (2002) 28 Cal.4th 274 [121 Cal.Rptr.2d 373]

Punitive damages

in underlying lawsuit

Ferguson v. Lief, Cabraser, Heimann & Bernstein (2003) 30 Cal.4th 1037 [135 Cal.Rptr.2d 46]


Right to jury trial


Sanctions imposed on client for filing a frivolous appeal does not constitute malpractice as a matter of law


Scope of expert testimony


Settlement


breach of contract action available if settlement agreement cannot be enforced under CCP § 664.6


client needs to show "significant difference" between what the settlement was and what could have been awarded at trial in order to prove damages


owner of law firm may be personally responsible for reimbursing insurer that settled malpractice claim filed by owner’s business against firm


settlement with client of fee dispute and release from liability for potential malpractice including a Civil Code § 1542 waiver

CAL 2009-178

Sexual harassment of client


Signature of plaintiff’s attorney omitted on complaint may not warrant dismissal of action with prejudice


Special appearances

specially appearing attorney forms an attorney-client relationship with the litigant and owes a duty of care to the litigant


Spoilation of evidence


Standard of care to class action members

counsel owed no duty to class member to give notice beyond the court-approved settlement notice procedure


Standing to sue

absent a direct attorney-client relationship, plaintiff & alleged beneficiary of a testamentary instrument may have no standing to bring malpractice against attorney-defendant

Harrigfeld v. Hancock (9th Cir. (Idaho) 2004) 346 F.3d 1024

legal malpractice claim brought by individual members dismissed because attorney was court appointed to represent the unsecured creditors’ committee not the individual members

Schultze v. Chandler (9th Cir. 2014) 765 F.3d 945

probate cases

-out-of-state successor estate representative may sue California attorneys retained by prior representative for alleged malpractice

Smith v. Cimmet et al. (2011) 199 Cal.App.4th 1381 [132 Cal.Rptr.3d 276]

-successor conservator, albeit non-client, may bring suit against a predecessor’s attorney for malpractice causing loss to the estate


respondent’s action barred by collateral estoppel based on prior judgment in a malpractice action against a party in privity with respondent in current action


successor fiduciary has the same powers and duties as the predecessor including the power to sue attorney for malpractice


trustee of “sham” corporation has standing to sue corporate attorneys for legal malpractice

Loyd v. Paine Webber, Inc. (9th Cir. 2000) 208 F.3d 755
MALPRACTICE

Statute of limitations
actions against attorneys, under CCP 340.6

Foxen v. Carpenter (2016) 6 Cal.App.5th 284 [211 Cal.Rptr.3d 372]
%
-time barred where it was filed more than a year after attorney filed motion to withdraw but within one year of court's granting such motion
application of where attorney performs both legal and non-legal services
barred legal malpractice claim brought more than one year after client retained other attorney to represent him in the same matter

burden of proof

-for purposes of one-year-from-discovery limitation on commencing legal malpractice action, defendant bears burden of proving when plaintiff discovered or should have discovered alleged malpractice
Samuels v. Mix (2000) 22 Cal.4th 1 [91 Cal.Rptr.2d 273]
California Tort Claims Act (Government Code section 900 et seq.)

-failure to file late claim with public entity within one year after accrual of cause of action
claims against former law firm not tolled based on continuous representation where client requested that its files be immediately delivered to replacement counsel, thereby consenting to firm's express withdrawal
claims against attorney not tolled where attorney fails to act in a manner required for there to be a continuing attorney-client relationship
claims against former law firm not tolled when client continues to be represented in the same matter by the attorney who left the firm
Beal Bank, SSB v. Arter & Hadden, LLP (2007) 42 Cal.4th 503 [66 Cal.Rptr.3d 52]
claims against former law firm tolled when client not continually represented in the same matter
doctrine of "equitable tolling" applies to legal malpractice limitation period
does not begin to run until client suffers actual harm
Costa v. McKenna & Cuneo (2001) 25 Cal.4th 1194 [108 Cal.Rptr.2d 471]
Laird v. Blacker (1994) 2 Cal.4th 606
Caballero v. Gibson, Dunn & Crutcher (1997) 54 Cal.App.4th 1457 [63 Cal.Rptr.2d 594]
Fantazia v. County of Stanislaus (1996) 41 Cal.App.4th 1444 [49 Cal.Rptr.2d 177]

failure to file complaint


firm's representation terminated when firm emailed client that it “must withdraw” as client’s attorney, that its “attorney-client relationship with client is terminated forthwith,” and that it “no longer represents client with regard to any matters.”


legal negligence action

-began to run when client was first forced to take legal action to rectify prior attorney’s error


loss or diminution of a right or remedy constitutes actual injury


loss or diminution of a right or remedy constitutes actual injury


relation-back doctrine


tolling of statute

Code of Civil Procedure § 340.6

Lee v. Hanley (2015) 161 Cal.4th 1226 [191 Cal.Rptr.3d 538]

Coscia v. McKenna & Cuneo (2001) 25 Cal.4th 1194 [108 Cal.Rptr.2d 471]

Samuels v. Mix (2000) 22 Cal.4th 1 [91 Cal.Rptr.2d 273]


-“equitable tolling” under CCP § 355 not applicable to CCP § 340.6 where plaintiff failed to file a timely action


-not tolled by third-party litigation or attorney’s later role as consultant


-outside statute of limitations for medical malpractice action not tolled by 90-day period for notice of intention to sue


-statute of limitations for legal malpractice action tolled while attorney still represents client on related matters, even if client knows of attorney’s negligence


-actual injury

Callahan v. Gibson, Dunn, & Crutcher, LLP (2011) 194 Cal.App.4th 557 [125 Cal.Rptr.3d 120]

-against former law firm

Beal Bank, SSB v. Arter & Hadden, LLP (2007) 42 Cal.4th 503 [66 Cal.Rptr.3d 52]

-continuous representation tolling provision in Code of Civil Procedure section 340.6 tolls legal malpractice claims brought by successor trustees against attorneys who represented the predecessor trustee


-definition of “continuous representation” for purposes of


-outside statute of limitations for medical malpractice action not tolled by 90-day period for notice of intention to sue


-statute of limitations for legal malpractice action tolled while attorney still represents client on related matters, even if client knows of attorney’s negligence


-statute of limitations for malpractice action tolled by 90-day period for notice of intention to sue


-statute of limitations for legal malpractice action tolled while attorney still represents client on related matters, even if client knows of attorney’s negligence


MILITARY PERSONNEL

- tolled if criminal malpractice claim is filed within one-year or four-year limitations period to plaintiff to timely pursue post-conviction remedies
- tolled when plaintiff gives notice required by CCP § 364 within the last 90 days of the one-year statute
  Russell v. Stanford University Hospital (1996) 4 Cal.App.4th 1798 [52 Cal.Rptr.2d 645]
- unconditionally tolled while attorney represents client
- while attorney-defendant was absent from California

Successor trustee "stands in the shoes" of predecessor trustee and thus may assert legal malpractice claims against predecessor's attorney

Third-party non-clients, liability to

attorney for corporation owes no duty of care to shareholders

intended beneficiaries of a testamentary instrument
  Harrifield v. Hancock (9th Cir. (Iloado) 2004) 364 F.3d 1024

Transactional matters
  client must prove causation
    Viner v. Sweet (2003) 30 Cal.4th 1232 [135 Cal.Rptr.2d 629]

Trial court error can negotiate elements of legal malpractice claim

Trust attorney owes no duty to non-client potential beneficiary absent testator's expressed intent to benefit non-client

Where attorney successfully defends a client and later represents plaintiff in malpractice action against plaintiff's attorney in the same matter
  CAL 1993-133

MILITARY PERSONNEL [See Attorneys of governmental agencies.]

Deserter, whereabouts disclosed
  LA(t) 1956-1

MISAPPROPRIATION [See Clients' trust account.]


Abandonment of client
  In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220
  In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871

Advocating overthrow of government by force, violence or other unconstitutional means
  Business and Professions Code section 6106.1

Alcoholism
  In re Billings (1990) 50 Cal.3d 358 [787 P.2d 617]
  In re Bellicini (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883

Anti-SLAPP motion
does not cover acts of unjust enrichment, breach of California Civil Code section 2860(e) and concealment, because they are not acts in furtherance of attorney's right to petition or free speech
  Travelers Casualty Insurance Co. of America v. Hirsch (9th Cir. 2016) 831 F.3d 1179

Appearing on behalf as plaintiff
  appearance" defined for purposes of Business and Professions Code § 6130

Appearing without authority for client
  Business and Professions Code section 6104
  In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
  "appearing" defined for purposes of Business and Professions code § 6104
  In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907

Assault with a firearm warrants suspension but because of extensive mitigation does not involve moral turpitude
  In the Matter of Burns (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406

Assault on client (premeditated) does not equal moral turpitude
  In re Larkin (1989) 48 Cal.3d 236 [256 Cal.Rptr. 90]

Attempted child molestation
  In re Lesansky (2001) 25 Cal.4th 11 

Attempting to prevent discovery

Attention neglect
  In the Matter of Freyd (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349
  In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
  In the Matter of Dahn (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269

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imputed to client
Luna v. Kerman (9th Cir. 2015) 784 F.3d 640
not necessarily binding on client
Breach of fiduciary duty
civil judgment for fraud and breach of fiduciary duty establishes moral turpitude
In the Matter of Kittrell (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195
to non-client joint ventures
Bribe(s)
judge accepted
In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157
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United States v. Villalobos (9th Cir. 2014) 567 Fed.Appx. 541
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Business transaction, improper
In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252
Carrying a concealed weapon
In re Hickey (1990) 50 Cal.3d 571 [788 P.2d 684]
Chose in action
purchase by attorney with intent to bring suit thereon
Business and Professions Code section 6129
Client reliance on attorney
Collateral order doctrine defined
Nunag-Tanedo v. East Baton Rouge Parish School Board (9th Cir. 2013) 711 F.3d 1136
Collusion
consent to, with intent to deceive court or party
-misdemeanor
Business and Professions Code section 6128(a)
Comments in court
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Conspiracy
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conspiracy to commit offenses against the United States
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In the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469
liability for tortious acts committed in concert with clients
-attorney, acting as agent, is not liable for conspiracy when the agent acts in an official capacity on behalf of the principal
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United States v. Lee (9th Cir. 1983) 720 F.2d 1049
Conviction, felony or misdemeanor, moral turpitude
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In re Gross (1983) 33 Cal.3d 561, 568 [189 Cal.Rptr. 848, 659 P.2d 1137]
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Defense in criminal action aiding, promoting, or advising where partner is district attorney or public prosecutor
Business and Professions Code section 6131(a)

Delay
client's suit
- with view to attorney's gain
- misdemeanor
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"Dirty tricks" disrupting political campaign in acts unrelated to attorney's practice of law
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United States v. Summet (9th Cir. 1988) 862 F.2d 784
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attorneys not entitled to fees for work done prior to admission pro hac vice


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 Judge disbarred in California after disbarment in Michigan

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

Out-of-State Attorney Arbitration Counsel Program

Rule 9.43, California Rules of Court

Partnership

law firm name

-inclusion of out-of-state attorney not admitted in California

LA 295 (1966)

OUT-OF-STATE FIRM

Affiliated with California firm

listed on letterhead

LA 392 (1983)

California Rules of Court do not require out-of-state law firms to apply to appear pro hac vice in California courts when firm employs attorneys who are licensed to practice law in California to represent clients


Of counsel

CAL 1986-88

PARTNERSHIP [See Advertising. Associate. Corporation, professional. Fees. Practice of law.]

Corporation Code section 15001 et seq.


Absent agreement, Uniform Partnership Act applies

Heller Ehrman LLP v. Davis Wright Tremaine LLP (2018) 4 Cal.5th 467 [229 Cal.Rptr.3d 371]


Associate
duty to supervise

Moore v. State Bar (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161]

“Association” of, with foreign lawyer of firm

LA 233 (1956), LA 202 (1952)

Bad faith dissolution of law firm


Conflict of interest in formation of

LA(I) 1967-11

Deceased partner [See Practice of law, goodwill.]

use of name of

CAL 1986-90, LA 123 (1939)

Defined

CAL 1971-27

Dissolved

Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]


CAL 2014-190, CAL 1985-86

agreements after partnership

Rule 1-500, Rules of Professional Conduct


Lyon v. Lyon (1966) 246 Cal.App.2d 519 [54 Cal.Rptr. 829]

CAL 1975-34

allocation of income from unfinished business

Heller Ehrman LLP v. Davis Wright Tremaine LLP (2018) 4 Cal.5th 467 [229 Cal.Rptr.3d 371]


LA 480

dissolved law firm had no property interest in the fees or profits associated with unfinished hourly fee matters

Heller Ehrman LLP v. Davis Wright Tremaine LLP (2018) 4 Cal.5th 467 [229 Cal.Rptr.3d 371]


Heller Ehrman LLP v. Davis Wright Tremaine LLP (2018) 4 Cal.5th 467 [229 Cal.Rptr.3d 371]

-law firm may not remove client file prior to written notification from client

LA 405 (1982)

goodwill

-partner not entitled to


Lyon v. Lyon (1966) 246 Cal.App.2d 519 [54 Cal.Rptr. 829]

handling of practice of

LA(I) 1979-1

no breach of partnership agreement where agreement was silent and each partner had knowledge that the other was taking clients separate from the partnership


Division of, when partnership dissolves

valuation of buyout price for dissociating partner


Duty to produce records of


Ethics violation complaint against member made against firm

SD 1975-10

Fees

allocation of

-in connection with attorney's marital dissolution

In re the Marriage of Foley (2010) 189 Cal.App.4th 521 [117 Cal.Rptr.3d 162]
-post-dissolution profits from unfinished partnership business


-partner leaves firm

allocation of fees for unfinished cases taken by departing partner


Partner's malpractice
duty to disclose to client

LA 383 (1979)

Payments to estate of deceased partner or associate

Rule 3-102(A)(1), Rules of Professional Conduct (operative until May 26, 1989)

Rule 1-320, Rules of Professional Conduct (operative as of May 27, 1989)

Practices

when member is

-when associate is

--prosecutor

Johnson v. Davidson (1921) 54 Cal.App. 251 [202 P. 159]

--city attorney

Regard for non-lawyer

Rule 3-103, Rules of Professional Conduct (operative until May 26, 1989)

Rule 1-310, Rules of Professional Conduct (operative as of May 27, 1989)

CAL 1975-34

Retirement agreements

may include lay employees


Rule 1-320, Rules of Professional Conduct (operative as of May 27, 1989)

CAL 1975-34

Retirement plan

Rule 2-109, Rules of Professional Conduct (operative until May 26, 1989)

Rule 1-500 and 1-320, Rules of Professional Conduct (operative as of May 27, 1989)

CAL 1975-34

Separation agreements

Rule 2-109, Rules of Professional Conduct (operative until May 26, 1989)

Rule 1-500, Rules of Professional Conduct (operative as of May 27, 1989)

CAL 1975-34

With a non-lawyer

Rule 3-103, Rules of Professional Conduct (operative until May 26, 1989)

Rule 1-310, Rules of Professional Conduct (operative as of May 27, 1989)

Crawford v. State Bar (1960) 54 Cal.2d 659, 665 [7 Cal.Rptr. 746]

Johnson v. Davidson (1921) 54 Cal.App. 251 [202 P. 159]
PARTNERSHIP, BUSINESS

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708
LA(I) 1966-18
aviation consultants
CAL 1969-18
certified public accountants
LA(I) 1959-5
SD 1974-17
consumer affairs agency
SD 1983-4
financial management company
LA 372 (1978)
in-debt collections
LA 96 (1936)
independent contractor
LA(I) 1966-9
living trust marketers
CAL 1969-18
management company
LA 488 (1996)
physician
LA 335 (1973)
prohibited, if any activities of partnership constitute practice of law
LA 96 (1936)
real estate
SF 1973-23
rule 3-103 extended to cover corporate business arrangement
LA 372 (1978)
shareholder of incorporated legal services entity
LA 444 (1987)
tax shelter investment promoter
SD 1984-1
With out-of-state attorney
LA 230 (1955), SD 1983-4, SF 1974-1
With out-of-state law firm
LA 392 (1981)
SF 1975-1

PARTNERSHIP, BUSINESS

Consumer affairs agency
SF 1983-4
Drafter of agreement for represents one partner against other re termination agreement prepared by other counsel
LA(I) 1963-9
Financial management company
LA 372 (1978)
With non-lawyer
LA 510 (2003)

PAYMENT OF PERSONAL OR BUSINESS EXPENSES  [See Advancement of funds.]
Rule 5-104, Rules of Professional Conduct (operative until May 26, 1989)
Rule 4-210, Rules of Professional Conduct (operative as of May 27, 1989)
Incurred by or for a client
Isrin v. Superior Court (1965) 63 Cal.2d 153, 164 [45 Cal.Rptr. 320, 403 P.2d 726]

PENDING PROCEEDINGS

Book published about
Harauchi v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 250]
LA 369 (1977)
Ethics committee in Los Angeles will not answer inquiries about
LA(I) 1966-9
Movie about

PENSION PLAN  [See Division of fees.]
PERJURY  [See Confidences of the client, disclosure, perjury. Trial conduct.]
CAL 1983-74, OC 2003-01
PERSONAL INJURY ACTION  [See Automobile accident case.]
PHYSICIAN  [See Malicious prosecution.]

Client’s duty with respect to fee of
LA 368 (1977), LA 357 (1976)
represent against client over unpaid witness’s fee
LA(I) 1931-1
Lawyer duty with respect to medical liens
In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234
Lawyer-physician
LA 349 (1975), LA 331 (1973), LA(I) 1961-1
Medical liens, attorney duty with respect to
In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234
LA 368 (1977), LA 357 (1976)
common fund or “equal apportionment” doctrine does not apply to contractual medical lien holders in personal injury matters
City and County of San Francisco v. Sweet (1995) 12 Cal.4th 105, 110, 115-117
CAL 1995-49(I)

Medical malpractice
Business and Professions Code sections 6146, 6147
Code of Civil Procedure sections 364, 365, 411.30
Opposing party’s treating physician
attorney communicating with
CAL 1975-33, SD 1983-9
sibling relationship between a lawyer and the opposing party’s physician is insufficient, standing alone, to preclude the lawyer from representing her client
Partnership with
LA 335 (1973)
Referral of legal business
LA(I) 1949-1
Referral of medical business to
LA 443 (1988)

POLITICAL ACTIVITY  [See Letterhead, use for. Public office.]

City council
members receiving contributions to their political campaigns from law firms who are representing clients before the council
Woodland Hills Residents Assn., Inc. v. City Council of the City of Los Angeles (1980) 26 Cal.3d 938 [164 Cal.Rptr. 255]
Judicial office
campaign contributions for
LA(I) 1972-21
candidate
-misrepresentation by
LA(I) 1974-11
-no uniform rules regulating conduct of in California
SF 1974-6
derendorse or solicit endorsements for candidate
LA(I) 1972-21
Post-sentencing comment by prosecutor
SD 1974-6
POWER OF ATTORNEY  [See Authority of attorney. Withdrawal.]
Annuity gift from estate’s attorney to himself is void as outside his power of attorney
Estate of Huston (1997) 51 Cal.App.4th 1721 [60 Cal.Rptr.2d 217]
Assignment of power of attorney to heir hunter’s attorney is against public policy
Estate of Wright (2001) 90 Cal.App.4th 228 [108 Cal.Rptr.2d 572]
Does not give non-lawyer the authority to appear in court on behalf of another

PRACTICAL TRAINING OF LAW STUDENTS
California Rule of Court 9.42
Certification of law students
State Bar Rules Governing the Practical Training of Law Students
Contact:
Practical Training of Law Students
Office of Certification
State Bar of California
180 Howard Street
San Francisco, California 94105
Telephone: (415) 538-2117
Text is located in:
Deering’s Annotated California Codes, Rules of Court, State Bar Rules, and in West’s Annotated California Codes, Court Rules, vol. 23, pt 3
Text available through State Bar’s home page:
http://www.calbar.ca.gov

Rules Governing the Practical Training of Law Students, The State Bar of California
Text available through State Bar’s home page:
http://www.calbar.ca.gov
Text of these rules, contact:
Practical Training of Law Students
Office of Certification
State Bar of California
180 Howard Street
San Francisco, California 94105
Telephone: (415) 538-2117
Trial advocacy by a certified law student acting under the active supervision of the deputy public defender, pursuant to the rules promulgated by the State Bar
People v. Perez (1979) 24 Cal.3d 133, 142 [155 Cal.Rptr. 176, 594 P.2d 1]

Adherence to beliefs may prove fitness to practice
Admission to the federal bar
federal district court could reasonably rely upon distinction that State Bar made between active and inactive members to limit practice of inactive attorneys before that court
In re North (9th Cir. 2004) 383 F.3d 871
Affiliation with out-of-state firm
LA 392 (1983)
Appearance by attorney
in small claims court
LA 105 (1936)
Associate attorney is agent of attorney
Beck v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]
Associate changing firms
Reeves v. Harlot (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
CAL 1985-86
LA 405 (1982), LA 363 (1976)
Associate discovers malpractice of partner
LA 383 (1979)
Attorney
Business and Professions Code section 6180.14
placement service
LA 359 (1976)
Barter  [See Bid.]
Circulating names of attorneys who fail to extend professional courtesies
LA 364 (1976)
Client assistance to counsel
People v. Matson (1959) 51 Cal.2d 777, 789 [336 P.2d 937]
Clients’ business promotion by letter
--company engaged in bail bonds
LA 91 (1936)

Constitutional right to practice law free from unreasonable government interference
Consultation with an independent attorney regarding the client’s case may be permitted
SD 1996-1
Corporations
terminated employee/attorney has no right of access to offices, files, corporate records, or employment because of ownership share

Data processing service
use of by law firm
CAL 1971-25

Defined
In re Glad (9th Cir 1989) 98 B.R. 976
Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]
Farnham v. State Bar (1976) 17 Cal.3d 605
Baron v. City of Los Angeles (1970) 2 Cal.3d 535, 542
People v. Merchants Protective Corp. (1922) 189 Cal. 531, 535

LA 195
OC 94-002
SD 1983-4, SD 1983-7
advisory counsel
--pro se defendants given assistance in courtroom without actual conduct of trial
Locks v. Sumner (9th Cir. 1983) 703 F.2d 403, 407
counsel attorney may participate in trial with pro se defendant
Locks v. Sumner (9th Cir. 1983) 703 F.2d 403, 407
Delegation of professional responsibility
to non-lawyer
--tax specialist
LA 86 (1935)

Donation of legal services [See Fees.]
Dual occupation/profession [See Commission, fees.]
CAL 1999-154, CAL 1982-69, CAL 1968-13
SD 1992-1, SD 1969-2
85 Ops. Cal. Atty. Gen. 115 (6/7/02; No. 01-1107)
attorney also certified public accountant
LA 351 (1975), LA 225 (1955)
Fee sharing agreement
between departing partner and firm
-found to violate Rules of Professional Conduct

Fictitious name, use of
by attorney or law firm
Jacoby v. State Bar (1977) 19 Cal.3d 359, 366 [138 Cal.Rptr. 77]
CAL 1982-65, LA 9 (1921)

fitness to practice

lawyer/firm to practice under company name
LA 26 (1925)

Fiduciary duty owed by partners of a dissolved partnership to each other
duty to complete the partnership's unfinished business and to act in the highest good faith

Franchise legal network
LA 423 (1983)

Goodwill of
Rule 2-300, Rules of Professional Conduct (operative as of May 27, 1989)
defined
Business and Professions Code section 14100
Geffen v. Moss (1975) 53 Cal.App.3d 215 [125 Cal.Rptr. 687]

Lyon v. Lyon (1966) 246 Cal.App.2d 519 [54 Cal.Rptr. 829]

dissolution of partnership
Lyon v. Lyon (1966) 246 Cal.App.2d 519, 524 [54 Cal.Rptr. 829]
CAL 2014-190, CAL 1985-86

due to death of partner
Little v. Caldwell (1894) 101 Cal. 553, 561 [36 P. 107]

-partner not entitled to compensation for goodwill

fill in blanks in forms
SD 1983-7

intangible assets, such as goodwill, not converted to community property where spouse did not buy into such assets

measurement of goodwill value

payments of
-to heirs of deceased partners
Little v. Caldwell (1894) 101 Cal. 553, 561 [36 P. 107]
CAL 1975-34
SD 1968-5
use of “similarly situated professional” vs. “average salaried person” standards in calculating value of spouse’s goodwill in law firm.

**In re Marriage of Iredale and Cates** (2004) 121 Cal.App.4th 321 [16 Cal.Rptr.3d 505]

valuation of

-**in divorce or dissolution proceedings**
  
  **In re Marriage of Fonstein** (1976) 17 Cal.3d 738 [131 Cal.Rptr. 873]
  
  **In re Marriage of Aufruth** (1979) 89 Cal.App.3d 446, 463 [152 Cal.Rptr. 668]
  
  **In re Marriage of Lopez** (1974) 38 Cal.App.3d 93, 108 [113 Cal.Rptr. 58]
  

--intangible assets, such as goodwill, not converted to community property where spouse did not buy into such assets

**In re Marriage of Iredale and Cates** (2004) 121 Cal.App.4th 321 [16 Cal.Rptr.3d 505]

Holding out as attorney

Business and Professions Code section 6126

**Holding out as specialist** [see Advertising]

**Rule 1-400(D)(6), Rules of Professional Conduct (operative as of June 1, 1997)**

**Rule 1-400, std. 11, Rules of Professional Conduct (operative as of May 27, 1989)**


**Wright v. Williams** (1975) 47 Cal.App.3d 802 [121 Cal.Rptr. 194]

Inactive attorneys

federal district court could reasonably rely upon distinction that State Bar made between active and inactive members to limit practice of inactive attorneys before that court

**In re North** (9th Cir. 2004) 383 F.3d 871

In pro se
capital defendant who chooses to be represented by counsel generally entitled to present his case personally or to act as co-counsel at trial, but may make pro se motions regarding representation and substitution of counsel

**In re Barnett** (2003) 31 Cal.4th 466 [3 Cal.Rptr.3d 108, 73 P.3d 1100]

preservation of constitutional right

United States v. Condo (9th Cir. 1984) 747 F.2d 238

waiver of right of counsel

United States v. Gerritsen (9th Cir. 2009) 571 F.3d 1001

In propria persona client and advisor counsel share handling of case

Johnson, York, O’Connor & Caudell v. Board of County Commissioners of the County of Fremont (1994) 868 F.Supp. 1226

People v. Bloom (1989) 48 Cal.3d 1194 [259 Cal.Rptr. 669]


capital defendant who chooses to be represented by counsel is generally not entitled to present his case personally or to act as co-counsel at trial

**In re Barnett** (2003) 31 Cal.4th 466 [3 Cal.Rptr.3d 108, 73 P.3d 1100]

Interference by government


Interference with business relations and contracts


elements of


no interference where partnership agreement was silent and each partner had knowledge that the other was taking clients separate from the partnership


Interference with prospective business advantage


elements of


of another lawyer

LA 10 (1921)

Interference with prospective economic advantage or contractual relations


**Limandri v. Judkins** (1997) 52 Cal.App.4th 326 [60 Cal.Rptr.2d 539]


attorney may not sue client who decides on a “walk away” settlement, even when client promised to take case to trial or settlement to ensure attorney is paid for legal representation, because client cannot be constrained to pursue a lawsuit he wishes to abandon


elements of

**Limandri v. Judkins** (1997) 52 Cal.App.4th 326 [60 Cal.Rptr.2d 539]

Investigator

use of by attorney

-where employed by client

LA 67 (1932)

Law firm liable for malicious prosecution based on acts of principal


Law office relocation

announcement of

LA 104 (1936)

Law practice defined

**Rule 1-100(B)(1), California Rules of Professional Conduct** (operative September 14, 1992)

Business and Professions Code section 6126

Lawyer defined

Evidence Code section 950

**Rule 1-100(B)(3), California Rules of Professional conduct**

Lawyer referral [See Lawyer referral, referral of legal business.]

 Lay person may not represent another

**Drake v. Superior Court** (1994) 21 Cal.App.4th 1826 [26 Cal.Rptr.2d 829]


Legal research service

operated by attorneys

-constitutes practice of law

---advertising of

LA 301 (1967)
Letterhead
use union emblem on

Liability of firm for legal malpractice of partner
Liens [See Liens.]
Lottery ticket
assignment of
-lo to attorney
LA 115 (1937)
purchase of
-by attorney
LA 115 (1937)
Names [See Fictitious names.]
Non-payment of fee
withdrawal from representation
-notice to client
LA 125 (1940)
-protect client's position in litigation
LA 125 (1940)
Non-resident member performing legal services governed by California law
Of counsel [See Of counsel.]
Omissions by one member of law firm imputed to others when more than one attorney works on case
Partner leaves firm and takes clients with him
-allocation of fee
-former firm entitled to quantum meruit
Partnership [See Partnership.]
Physician-lawyer
LA 477
employed by law firm
LA 114 (1937)
Preparation of legal documents
In re Garcia (9th Cir. BAP 2005) 335 B.R. 717
Preparation of petition to be presented by client in propria persona in other state improper
LA 218 (1953)
Pro bono
Segal v. State Bar (1988) 44 Cal.3d 1077 [245 Cal.Rptr. 404]
Professional courtesy
-circulating names of attorneys who fail to extend professional courtesies
LA 364 (1976)
Public interest law firm
LA 339
Referral agreement with layperson unenforceable for non-compliance with Business and Professions Code § 6155
Referral of legal business [See Referral of legal business.]
Sale of
Lyon v. Lyon (1968) 246 Cal.App.2d 519, 526 [54 Cal.Rptr. 829]
LA 361 (1976)
good will
Geffen v. Moss (1975) 53 Cal.App.3d 215 [125 Cal.Rptr. 687]
SD 1968-5
-defined
Business and Professions Code section 14100
-violation
Rules 2-101, 2-104(B) and 2-108, Rules of Professional Conduct
valuation of law practice may require deduction of operating costs
Sharing office space with accountant
LA(I) 1968-1
another attorney not a partner
People v. Pastrano (1997) 52 Cal.App.4th 610 [60 Cal.Rptr.2d 620]
CAL 1997-150, CAL 1986-90
LA(I) 1981-4
SD 1985-1
-not able to provide independent review as required under Probate Code section 21350
bail bond agency
SD 1972-15
conflict of interest
CAL 1997-150, CAL 1986-90, CAL 1979-50
LA 216 (1953), LA(I) 1972-15
SD 1985-1
insurance company
LA 215 (1953), SD 1972-7
investigator
LA(I) 1963-8
SD 1974-23
land developer
LA(I) 1968-1
management consulting company
LA 446 (1987)
publishing company
LA 446 (1987)
real estate broker
CAL 1982-69
LA 384 (1980), LA 140 (1942)
separate sole practitioners
CAL 1997-150, CAL 1986-90, SD 1985-1
when representing opposing sides
SD 1972-15
with non-lawyers
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
Sign
-location
-where no office
LA 134 (1940)
Small claims court
appearance by attorney in
LA 105 (1936)
SD 1983-4
Specialist
Holding out as
Rule 1-400(D)(6), Rules of Professional Conduct
(operative as of June 1, 1997)
Rule 1-400, std. 11, Rules of Professional Conduct
(operative May 27, 1989 until May 31, 1997)
Wright v. Williams (1975) 47 Cal.App.3d 802
Statutory service on attorney and employees
Tax specialist
employment of
-to assist in advising client
LA 86 (1935)
holding out as
Business and Professions Code section 6126
Trade name, use of Rule 1-400, standards 6, 7, 8, 9, 12, Rules of Professional Conduct by attorney or law firm CAL 1982-66, LA 9 (1921)

Valuation of a law practice in a marital dissolution proceeding


Work product [See Files and Work Product.]

PREPAID LEGAL SERVICES [See Group legal services.]

PRIVILEGED COMMUNICATIONS [See Confidences of the client, privilege]

Evidence Code section 950 et seq., communications between Agricultural Labor Relations Board and Board’s general counsel when request is made under the Public Record Act

Agricultural Labor Relations Board v. The Superior Court of Sacramento County (2016) 4 Cal.App.5th 675 [209 Cal.Rptr.3d 243]

communications between defendant/minor and psychotherapist appointed to assist in his defense are confidential under attorney-client privilege

Elijah W. v. Superior Court of Los Angeles (2013) 216 Cal.App.4th 140 [156 Cal.Rptr.3d 592]

communications between firm attorney and in-house counsel related to dispute with current client may be privileged


in camera review of communications to determine privilege

Behunin v. Superior Court (Schwab) (2017) 9 Cal.App.5th 833 [215 Cal.Rptr.3d 475]


investigatory report prepared for city by outside attorney is privileged despite attorney not providing legal advice to city

City of Petaluma v. Superior Court (2016) 248 Cal.App.4th 1023 [204 Cal.Rptr.3d 196]

opinion letter by outside counsel to corporate counsel covered by attorney-client privilege

Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]

privilege communications between city attorney and commissions cannot be eliminated by public records ordinance

St. Croix v. Superior Court (City and County of San Francisco) (2014) 228 Cal.App.4th 434 [175 Cal.Rptr.3d 202]

Attorney cannot use confidences of former client to challenge client’s Chapter 7 discharge of fees owed


Attorney-client privilege passes to insurers assigned to defend against claims where no director could be elected to waive privilege


Compelled disclosure

court may not find waiver of privilege when opposing party submits an inadequate privilege log that fails to provide sufficient information to rule on merits of objections


disclosure orders adverse to the attorney-client privilege do not qualify for immediate appeal in federal court under collateral order doctrine


judgment debtor attorney must produce all documents (including tax records) responsive to the subpoena duces tecum at the Order of Examination

Li v. Yan (2016) 247 Cal.App.4th 56 [201 Cal.Rptr.3d 772]

Condominium associations are holders of attorney-client privilege and are not required to disclose privileged information to individual homeowners


Confidential communications between a trustee and the trust’s attorney are privileged and need not be disclosed to trust beneficiaries

Wells Fargo Bank v. Superior Court (Boltwood) (2000) 22 Cal.4th 201 [901 Cal.Rptr.2d 716]

new trustees succeeds to all the rights, duties and responsibilities of his or her predecessors


Deceased client


LA 414 destruction of file

LA 491 (1997)

Defendant’s former attorney allowed to testify as to defendant’s threats against witnesses

U.S. v. Alexander (9th Cir. (Mont.) 2002) 287 F.3d 811


Electronic communication technologies, utilization of LA 529 (2017), OC 97-002

Exceptions

corporation waived attorney-client and work product privileges when it shared documents with government


defendant did not waive attorney-client and work product privileges when it shared documents with government

Regents of University of California v. Superior Court (2008) 165 Cal.App.4th 672 [81 Cal.Rptr.3d 186]

defendant’s former attorney allowed to testify as to defendant’s threats to commit act likely to result in death or substantial bodily harm

U.S. v. Alexander (9th Cir. (Mont.) 2002) 287 F.3d 811


independent third party digital forensic expert’s report do not reflect an attorney’s impressions, conclusions, opinions, legal research and theories, thus, not protected from discovery as work product


no implied exceptions to attorney-client privilege


when one of the joint clients sues their former attorney and the other client, the non-suing client cannot prevent the parties to the lawsuit from introducing otherwise privileged attorney-client communications made in the course of the joint representation


Inadverted disclosure [See Confidences of the Client, Inadverted disclosure]

Ardon v. City of Los Angeles (2016) 62 Cal.4th 1176 [199 Cal. Rptr. 3d 743]

PRO BONO

Intervention by non-party holder of privilege is not necessary or required to assert Evidence Code section 954 privilege

Litigation privilege

Litigation privilege does not insulate an attorney from disciplinary proceedings based on his in-court actions

Litigation privilege extends to demand letters under Civil Code section 47(b)


Litigation privilege is inapplicable in an action by a former client against an attorney for breach of professional duties
Fremont Reorganization Corp. v. Faigin (2011) 198 Cal.App.4th 1153 [131 Cal.Rptr.3d 478]

may not apply to plaintiff’s unfair competition claim against attorney if plaintiff not a party to the earlier litigation

Litigation privilege is absolute and extends to alleged misrepresentations by opposing side

Probate Code section 16060 et seq.
confidential communications between a trustee and the trust’s attorney are privileged and need not be disclosed to
trust beneficiaries
Wells Fargo Bank v. Superior Court (Boltwood) (2000) 22 Cal.4th 201 [901 Cal.Rptr.2d 716]

former trustee cannot withhold communications with trust’s former counsel on ground of attorney-client privilege to successor trustee

predecessor trustor...failed to establish that they communicated with counsel in their personal capacity

trust may not allow a former trustee to withhold from a successor trustee all communications between that former trustor and the trust’s legal counsel

Qualified common interest privilege against defamation under Civil Code section 47(c) protects statements made on subject of mutual interest to parties sharing common interest
Hui v. Sturbaum (2014) 222 Cal.App.4th 1109 [166 Cal.Rptr.3d 569]

Reports in public journals of judicial proceedings under Civil Code section 47(d)

Sixth Amendment’s Confrontation Clause vs. attorney-client privilege
defendant barred from using purportedly exculpatory letter written by government witness to counsel did not deprive defendant of his constitutional right to cross-examination
Murdoch v. Castro (9th Cir. 2010) 609 F.3d 983
government...right not violated when jail officials improperly read privileged materials but defendant fails to prove it was actually communicated to prosecutors
People v. Ervine (2009) 47 Cal.4th 745 [102 Cal.Rptr.3d 786]

Tripartite attorney-client privilege arises when title insurer hires law firm to prosecute action on behalf of its insured under title insurance policy
Bank of America v. Superior Court of Orange County (2013) 212 Cal.App.4th 1076 [151 Cal.Rptr.3d 526]

Under Civil Code section 47
Hui v. Sturbaum (2014) 222 Cal.App.4th 1109 [166 Cal.Rptr.3d 569]

Ingram v. Flippo (1999) 74 Cal.App.4th 1280 [89 Cal.Rptr.2d 60]

PRO BONO

Attorney disciplined for failure to communicate and perform for pro bono clients
Segal v. State Bar (1988) 44 Cal.3d 1077 [245 Cal.Rptr. 404]
Federal courts authority under a specific statute to require an unwilling attorney to represent an indigent party

Indigent’s retention of privately obtained pro bono counsel is improper basis to deny an independent psychiatric examination at public expense
In re Conservatorship of Scharles (1991) 233 Cal.App.3d 1334

Partial pro bono fee arrangement did not preclude award of attorney’s fees under C.C.P. § 425.16

Pro bono-type representation, even by a law firm with financial resources to absorb the cost of litigation, does not necessarily justify a reduction in fees award

Slight mitigating credit for pro bono service which was not great and was remote in time
In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269

Slight mitigating credit for pro bono work
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

PROBATE [See Estate. Purchasing property at probate, foreclosure or judicial sale.]


Code of Civil Procedure section 187
trial court held attorney liable for law corporation’s debts as alter ego where corporation was being used by attorney to escape personal liability

Hutchinson v. Gertsch (1979) 97 Cal.App.3d 605


Absolute privilege in the public’s interest

Accrual of causes of action and limitation in malpractice action against attorneys

Action against attorney for


Adequacy of motion for summary judgment
PROFESSIONAL LIABILITY

requirements to state a cause of action
Cal.Rptr.3d 422]
Cal.Rptr.3d 210]
Cal.Rptr.3d 471]
Cal.Rptr.3d 60]
New Plumbing Contractors, Inc. v. Edwards, Sooky &
Pierce v. Lyman (1991) 1 Cal.App.4th 1093
-claims to strike under anti-SLAPP statute
Hytton v. Frank E. Rogoziencki Inc. (2009) 177
Cal.App.4th 1264 [99 Cal.Rptr.3d 805]
violation of rules of professional conduct may be admitted as
evidence of fiduciary breach

Burden of proof
Cal.Rptr.3d 23]
attorney charged with spoliation of evidence has burden of
showing that his negligence did not result in loss of
meritorious case
Cal.Rptr.2d 236]
client must prove causation in transactional matters
Viner v. Sweet (2003) 30 Cal.4th 1232 [135 Cal.Rptr.2d
629]
plaintiff failed to prove that any judgment she might have
obtained in her “case within a case” would have been
collectible
Cal.Rptr.3d 60]
[121 Cal.Rptr.2d 317]
plaintiff must prove that, but for the negligence of the
attorney, a better result could have been obtained in the
underlying matter
Cal.Rptr.3d 422]
Cal.Rptr.3d 710]
Cal.Rptr.3d 471]
689]
plaintiff must prove under “minimum contacts test” that the
“quality and nature” of the defendant’s activity is such that it
is “reasonable” and “fair” to require him to conduct his
defense in that state
Cal.Rptr.3d 864]

Co-counsel not liable for other counsel’s fees due to his own
malpractice which reduced or eliminated fees of other counsel
Beck v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]

Co-counsel’s duty to report counsel’s
L.A. 313 (1969)

Code of Civil Procedure section 340.6
Cal.Rptr.3d 166]
specialty appearing attorney owes a duty of care to the
litigant
[82 Cal.Rptr.2d 193]

Collateral estoppel, effect of
client is prohibited from re-litigating previously decided issues
even if second suit raises different causes of action
1075 [196 Cal.Rptr.3d 35]

Agency
(2005) 131 Cal.App.4th 802 [32 Cal.Rptr.3d 325]

Agreement with client to arbitrate any malpractice claim
CAL 1977-47

Arbitration of claims for
-arbitrator’s decision to dismiss legal malpractice case due to
plaintiff’s inability to pay should have allowed case to
proceed in federal court
Tillman v. Tillman, Rheingold, Valet, Rheingold, Shkolnik &
McCarran (9th Cir. 2016) 825 F.3d 1069

client’s agreement
-as condition to employment
Rule 3-400, Rules of Professional Conduct
CAL 1977-47

Assignability of chose in action for legal malpractice
White Mountains Reinsurance Company of America v.
Cal.Rptr.3d 912]

[133 Cal.Rptr. 83]

exception to the California rule barring the assignment for
the cause of action for legal malpractice
White Mountains Reinsurance Company of America v.
Cal.Rptr.3d 912]

legal malpractice claims sounding in tort or contract not
assignable
[258 Cal.Rptr. 454]

attorney’s dissemination of information produced by adverse
party and covered by protective order does not constitute tort
Cal.App.4th 370 [46 Cal.Rptr.2d 151]

attorney’s failure to raise inapplicable argument
Croakall v. Davis, Punelli & Keathley & Willard (1998) 65
Cal.App.4th 1048 [77 Cal.Rptr.2d 250]

attorney general
-deputy attorney general immune from liability to person
wrongfully accused following grand jury investigation

attorney-client relationship
-consultation

Cal.Rptr. 789]

Miller v. Metzinger (1979) 91 Cal.App.3d 31 [154
Cal.Rptr. 22]

specially appearing attorney forms an attorney-client
relationship with the litigant
[82 Cal.Rptr.2d 193]

Bankruptcy proceeding
-liquidating bankruptcy trustee’s claims against company’s
lawyer relating to his alleged role in company’s fraud barred
by doctrine of in pari delicto
Ucker v. Zentil (2016) 244 Cal.App.4th 789 [198
Cal.Rptr.3d 620]

standard of care
Cal.Rptr.2d 264]

Breach of fiduciary duty
-claims to strike under anti-SLAPP statute
Cal.Rptr.3d 155]

-anti-SLAPP motion by defendant’s attorney proper
where plaintiff’s complaint comprises communications
with future defendant’s attorney in preparation of litigation
Cal.Rptr.3d 155]
PROFESSIONAL LIABILITY

collateral estoppel doctrine bars plaintiff from relitigating the issue of whether her juvenile dependency attorneys caused the termination of her parental rights because causation is an essential element of a malpractice claim.


respondent’s action barred by collateral estoppel based on prior judgment in a malpractice action against a party in privity with respondent in current action.


Collateral order doctrine defined.

*Nunag-Tanedo v. East Baton Rouge Parish School Board* (9th Cir. 2013) 711 F.3d 1136

Comparative fault doctrine

calculation of damages based on comparative fault of prior and successor counsel and of guardians ad litem pursuant to CCP § 877.


contributory negligence of the person injured in person or property shall not bar recovery but damages awarded shall be diminished in proportion to the amount of negligence attributable to the person.


Conspiracy to violate legal ethics.


Conspiracy under Civil Code section 1714.10


attorney, acting as agent, is not liable for conspiracy when the agent acts in an official capacity on behalf of the principal.


claim against opposing counsel for fraud may be viable if the attorney’s act caused harm to the plaintiff.


suit for conspiracy against opposing counsel may be viable if attorney is found to have acted in furtherance of his private gain.


Continued representation of clients regarding the specific subject matter in which alleged wrongful act or omission occurred.


“Continuity of representation” test.


Continuous representation tolls statutes.


Contributory negligence of client.


Corporate counsel retained by corporation to defend against litigation was not agent of corporation for purposes of:

Corporations Code section 317.


Counsel who may benefit from malpractice action informs party who may have such action against her counsel.

LA 326 (1972)

Criminal defendant must prove actual innocence in action for

Wiley v. County of San Diego (1998) 19 Cal.4th 532 [79 Cal.Rptr.2d 672]


[31 Cal.Rptr.3d 831]


legal malpractice action in the course of Sexually Violent Predator Act (SVPA) proceedings does not require proof of actual innocence.

Jones v. Whisenand (2017) 8 Cal.App.5th 543 [214 Cal.Rptr.3d 72]

Damages

*Smith v. Lewis* (1975) 13 Cal.3d 349, 361 [118 Cal.Rptr. 621]


calculation of damages based on comparative fault of prior and successor counsel and of guardians ad litem pursuant to CCP § 877


legal fees spent in an unsuccessful attempt to overturn marital settlement agreement did not represent tort damages, and thus, without evidence of any other recognized tort damages, case could only proceed as a fee dispute.


Defense attorneys are not liable for unauthorized reading of victim’s mental health records which they received through the prescribed judicial process.


Disclose information in action by client against co-counsel.

LA 254 (1958)

Duty of attorney

advise client of other claims related to but outside the scope of the representation:


advise client of potential liability from promulgating a false or misleading offering to investors.

Federal Deposit Insurance Corporation v. O’Melveny & Myers (9th Cir. 1992) 969 F.2d 44

advise client of prior attorney’s malpractice.

-no duty found.

LA 390 (1981)

attorney acting as a mediator assumes duty to disclose to the parties any information that might reasonably cause doubt in the attorney’s impartiality.

PROFESSIONAL LIABILITY

class action members
- counsel owed a duty, post certification, to advise clients of other claims related to but outside the scope of the representation
- counsel owed no duty to class member to give notice beyond the court-approved settlement notice procedure
no duty to disclose to client that law firm had hired law clerk of judge from whom law firm was appearing in pending matter because the alleged harm lacked foreseeability
First Interstate Bank of Arizona v. Murphy, Weir & Butler (9th Cir. 2000) 210 F.3d 983
report to the State Bar
Business and Professions Code sections 6068(o)(1), (2), 6086.8
settlement
- cannot prohibit the filing of State Bar complaint
Rule 1-500[B], Rules of Prof. Conduct
Business and Professions Code section 6090.5
CAL 2012-185
- no duty to exonerate clients from fault in public eye
-- no liability to counsel
specially appearing attorney owes a duty of care to the litigant
Duty owed in favor of third persons
adverse party
- no duty allowed
assumption of fiduciary duty as “escrow holder” for adverse party
- prior counsel
CAL 2009-177
attorney advising client is liable to third party when reasonably foreseeable that advice will be transmitted to and relied upon by third party
attorney employer
- client of
Donald v. Garry (1971) 19 Cal.App.3d 769 [97 Cal.Rptr. 191]
-disclosure that counsel represented only executor-trustee
-liability to intended beneficiaries of amended trust resulting from attorney’s failure to deliver amendment to trustee prior to death of settlor
attorney’s duty of loyalty to client assignee for the benefit of creditors cannot be divided or diluted by a duty owed to the class of creditors
attorney’s representation of assignee for the benefit of creditors does not give rise to a duty owed to the class of creditors
california and national bar
children of client in dissolution
children of criminal client
- attorney’s duty to client does not sustain damages for emotional distress suffered by client’s children
escrow agents
- generally, no duty
first attorney who was to receive a percentage of fee of second attorney
Mason v. Levy & Van Bourg (1978) 77 Cal.App.3d 60 [143 Cal.Rptr. 389]
insurer’s attorney has duty to include insured’s independent counsel in settlement negotiations and to fully exchange information
investors in client’s securities offering
Federal Deposit Insurance Company v. O’Melveny & Myers (9th Cir. 1992) 969 F.2d 44
liability to intended beneficiary where attorney failed to advise client regarding requirements governing presumptively disqualified donees, resulting in damage to intended beneficiary
lienholder
In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234
negligent misrepresentation to non-client
- non-fiduciary’s active concealment or suppression of facts during a business negotiation is the equivalent of false representation and non-fiduciary therefore is held liable
non-client
Sodikoff v. State Bar (1975) 14 Cal.3d 422 [121 Cal.Rptr. 467, 535 P.2d 331]
PROFESSIONAL LIABILITY

- attorney's representation of assignee for the benefit of creditors does not give rise to a duty owed to the class of creditors


- law firm not liable to reinsurer where contract was between insurer and law firm and where the insurer was not the intended beneficiary of the contract


- non-fiduciary who commits actual fraud in his dealings with a third party in the course of a business negotiation is not relieved of liability even if non-fiduciary does so in his capacity as attorney for a client


- patient of attorney's psychologist client


- potential creditors of client

  U.S. v. Lim (9th Cir. 1975) 524 F.2d 799


- purchasers of client's property


- prospective defendants


- purchasers of client's stock


  - on the issue of personal jurisdiction, plaintiff bears burden of proving that the defendant had "minimum contacts" with the forum state that being subjected to its jurisdiction will not offend traditional notions of fair play


- insurers


- spouse of client who was to receive portion of proceeds of trust


- duty owed to insured by attorney retained by insurer


- duty to refer client to a "specialist"


- creditors does not give rise to a duty owed to the class of creditors

  attorney's representation of assignee for the benefit of creditors

  Pierce v. Lyman (1991) 1 Cal.App.4th 1093


See How to Use This Index, supra, p. i
Failure to assert interest of wife in retirement benefits of husband in dissolution proceedings
   *Smith v. Lewis (1975) 13 Cal.3d 349 [118 Cal.Rptr. 621, 530 P.2d 589]
Failure to clarify terms of settlement agreement with media
Failure to consult medical specialist where such consultation was not recommended by other medical specialists
Bay Cities Paving & Grading, Inc. v. Lawyer’s Mutual Insurance Co. (1991) 233 Cal.App.3d 1184
   Failure to file cross-complaint
   Failure to file late claim against public entity within one year after accrual of cause of action
   Failure to file petition for change in client disability rating
   Failure to file petition for discharge in bankruptcy
   Feldesman v. McGovern (1941) 44 Cal.App.2d. 566 [112 P.2d 645]
   Failure to file responsive pleadings
   Failure to file timely notice of a motion for a new trial
   Failure to include husband’s assets as community property
   Failure to obtain trial setting preference for aged client
   Failure to offer evidence to court about which attorney had serious doubts
   Failure to prepare a valid “Clifford Trust”
   Failure to prepare or cause entry of judgment or verdict
   Chavez v. Carter (1967) 256 Cal.App.2d 577 [64 Cal.Rptr. 350]
   Failure to properly draft stipulation, order and judgment in divorce action
   McGee v. Weinberg (1979) 97 Cal.App.3d 798 [159 Cal.Rptr. 86]
   Failure to raise a defense of anti-deficiency statute
   Failure to raise available defenses in a criminal prosecution
   Failure to research law
   Failure to serve summons and complaint
   First attorney prohibited from cross-complaining for indemnity against the successor attorney
First attorney cross-complaint for indemnity against former associate/successor attorney based on fraud proper
Fraudulent scheme
   attorney providing services to client not liable under racketeering law
   Baumer v. Peichi (1993) 8 F.3d 1341
   outside contractor attorney may be held liable to government agency for acts of dealing
Immunity
   attorney accused of conspiracy with a judge not entitled to federal law immunity
   Kimes v. Stone (9th Cir. 1996) 84 F.3d 1121
   attorney not entitled to judicial immunity for preparing order for judge
   Burton v. Infinity Capital Management (9th Cir. 2014) 753 F.3d 954
   lawyers temporarily deputized to prosecute whose appointments were defective were “defacto deputy district attorneys” and thus their actions were in furtherance of a protected activity within the meaning of the anti-SLAPP statute
   public entity is not liable for injury resulting from an act or omission from an employee of the public entity
Indemnification of attorneys who represented same client on same matter
   Gibson, Dunn & Crutcher v. Superior Court (1979) 94 Cal.App.3d 347 [156 Cal.Rptr. 326]
Insurance
   attorney’s deadline to report malpractice claim to insurance carrier quitably tolled
   law firm not liable to reinsurer where contract was between insurer and law firm and where the insurer was not the intended beneficiary of the contract
   Invited error of defendant
   Kessler v. Gray (1977) 77 Cal.App.3d 284 [143 Cal.Rptr. 496]
Jurisdiction
   California court has subject matter jurisdiction where damages arise from attorney’s negligence, not violation of federal patent law
   California courts have jurisdiction under “minimum contacts test” if the “quality and nature” of the defendant’s activity is such that it is “reasonable” and “fair” to require him to conduct his defense in this state
   California courts non-disciplinary jurisdiction over non-resident California attorney
Legal negligence
   plaintiff must prove “but for” alleged negligence, he would have obtained a more favorable results
PROFESSIONAL LIABILITY

Liability of court appointed counsel to federal criminal defendant for negligence
Fern v. Ackerman (1979) 444 U.S. 193 [62 L.Ed.2d 355; 100 S.Ct. 402]

Liability of law firm
attorney as alter ego of law corporation is liable for debts of
corporation where it was used by attorney to escape
personal liability
Wells Fargo Bank, National Association v. Weinberg
(2014) 227 Cal.App.4th 1 [173 Cal.Rptr.3d 113]

not liable to insured when insurer, under consent clause of
policy, was entitled to settle without consulting insured
Blackmon v. Hale (1970) 1 Cal.3d 548 [83 Cal.Rptr. 194]

Liability of partner for attorney negligence
Blackman v. Hale (1970) 1 Cal.3d 548 [83 Cal.Rptr. 194]

for acts of other partners after leaving law firm
Commercial Standard Title Co. v. Superior Court (1979)
92 Cal.App.3d 934 [155 Cal.Rptr. 393]

Redman v. Walters (1979) 88 Cal.App.3d 448 [152
Cal.Rptr. 42]

422]

Liability of subsequent tortfeasors
Cal.Rptr. 609]

81]

197]

Rowell v. TransPacific Life Insurance Company (1979)
94 Cal.App.3d 818 [156 Cal.Rptr. 679]

Gibson, Dunn & Crutcher v. Superior Court (1979) 94
Cal.App.3d 347 [156 Cal.Rptr. 326]

calculation of damages based on comparative fault of prior
and successor counsel and of clients
Cal.Rptr.3d 330]

Limiting liability to client
CAL 2009-178
agreement to waive a conflict of interest
CAL 1989-115
assistance to an in propria persona litigant in preparing
pleading or negotiating settlement
LA 502 (1999)

attorney declares bankruptcy
judgment may be non-dischargeable
In re Keller (9th Cir. 1989) 106 B.R. 639

for personal professional liability
Rule 6-102, Rules of Professional Conduct (operative
until May 26, 1989)
Rule 3-400, Rules of Professional Conduct (operative as
of May 27, 1989)
LA 489 (1997)

limited liability partnership
LA 489 (1997)

Malpractice
acts constituting
189 Cal.App.4th 1140 [177 Cal.Rptr.3d 516]
Cal.Rptr.3d 710]
Cal.Rptr.3d 471]
Cal.Rptr.3d 60]
no duty to consult medical specialist unless such consultations recommended by other doctors

professional malpractice distinguished from negligence

punitive damages in underlying case recoverable as compensatory damages in malpractice suit against negligent law firm

sanctions imposed on client for filing a frivolous appeal does not constitute malpractice as a matter of law

settlement of claims for
-breach of contract action available if settlement agreement cannot be enforced under CCP § 664.6

specially appearing attorney owes a duty of care to the client

standing to sue
-out-of-state successor estate representative may sue California attorneys retained by prior representative for alleged malpractice
Smith v. Cimmet et al. (2011) 199 Cal.App.4th 1381 [132 Cal.Rptr.3d 276]

-successor conservator, albeit non-client, may bring suit against a predecessor’s attorney for malpractice causing loss to the estate
Sline v. Dell’Oso (2014) 230 Cal.App.4th 834 [178 Cal.Rptr.3d 895]

statute of limitations does not begin to run until client suffers actual harm


-defendant bears burden of proving when plaintiff discovered or should have discovered alleged malpractice
Samuels v. Mt. (2000) 22 Cal.4th 1 [91 Cal.Rptr.2d 273]


-doctrine of “equitable tolling” applies to legal malpractice limitation period

trustee of “sham” corporation has standing to sue corporate attorneys for legal malpractice
Lloyd v. Paine Webber, Inc. (9th Cir. 2000) 208 F.3d 755 under “delayed discovery rule” accrual date of cause of action is delayed until plaintiff becomes aware of injury and its cause

Mere breach of professional duty causing harm not yet realized does not create cause of action for malpractice

Meritless claims
-no obligation to allege or advise a client on an unmeritorious claim

Necessity for expert testimony


Necessity for proof of actual damages


Negligence attorney’s breach of duty as escrow holder deemed actionable for negligence


client damages
-cross-complaint against plaintiff’s attorney

Gibson, Dunn & Crutcher v. Superior Court (1979) 94 Cal.App.3d 347 [156 Cal.Rptr. 326]

inadequate investigation of medical malpractice claim
-no cause of action against attorney by physician
Weaver v. Superior Court (1979) 95 Cal.App.3d 166 [156 Cal.Rptr. 745]

injunction of emotional distress

negligent misrepresentation to non-client


-non-fiduciary’s active concealment or suppression of facts during a business negotiation is the equivalent of false representation and non-fiduciary therefore is held liable

specially appearing attorney owes a duty of care to the client

third-party non-clients


No duty to consult medical specialist unless such consultations recommended by other doctors

Noerr-Pennington immunity defined
Nunag-Tanedo v. East Baton Rouge Parish School Board (9th Cir. 2013) 711 F.3d 1136

Obligation of insurance company to represent attorney against malpractice claim
American Home Assurance Co. v. Miller (9th Cir. 1983) 717 F.2d 1310

Offering incorrect advice to client


Eckert v. Schaal (1967) 251 Cal.App.2d 1 [58 Cal.Rptr. 817]
PROFESSIONAL LIABILITY


Personal


Predecessor attorney/malpractice defendant may not cross-complain for equitable indemnity against successor attorney


Privilege of judicial proceedings


Proceedings of State Bar against member of bar


liability for

Business and Professions Code section 6180.11

Proximate cause


Ishmael v. Millington (1966) 241 Cal.App.2d 520, 529 [50 Cal.Rptr. 592]


Feldesman v. McGovern (1941) 44 Cal.App.2d 566 [112 P.2d 645]


not shown where attorney's allegedly wrongful conduct is not a substantial factor


Punitive damages

in underlying lawsuit

Ferguson v. Lief, Cabraser, Heimann & Bernstein (2003) 30 Cal.4th 1037 [135 Cal.Rptr.2d 46]


Recovery of emotional suffering damages


Reliance on one attorney’s advice does not preclude malpractice suit later


Retaliation

employee may proceed with retaliation action filing an employee's complaint under the Fair Labor Standard Act (FLSA)

Arias v. Raimondo (9th Cir. 2017) 860 F.3d 1185

Right to jury trial in legal malpractice actions


Rule against perpetuities


Rules of Professional Conduct as an ethical standard


Scope of expert testimony


Settlement

client needs to show “significant difference” between what the settlement was and what could have been awarded at trial in order to prove damages


settlement with client of fee dispute and release from liability for potential malpractice including a Civil Code § 1542 waiver

CAL 2009-178

Special appearances

specially appearing attorney owes a duty of care to the litigant


Standard of care


Wright v. Williams (1975) 47 Cal.App.3d 802, 809, 810 [121 Cal.Rptr. 194]

Ishmael v. Millington (1966) 241 Cal.App.2d 520, 525 [50 Cal.Rptr. 592]

failure to establish prima facie case

Conley v. Kiefer (1979) 97 Cal.App.3d 646 [58 Cal.Rptr. 770]

no duty to consult medical specialist unless such consultations recommended by other doctors


for advice attorney to an in propria persona litigant

LA 502 (1999)

for legal specialist


Wright v. Williams (1975) 47 Cal.App.3d 802, 809 [121 Cal.Rptr. 194]

proof of

expert testimony required


Statute of limitations

Davies v. Kraesaw (1975) 14 Cal.3d 502 [121 Cal.Rptr. 705]

Neel v. Magana, Olney, Levy, Cathcart & Gelfand (1971) 6 Cal.3d 176, 190 [98 Cal.Rptr. 837]

Heyer v. Flaig (1969) 70 Cal.2d 233 [74 Cal.Rptr. 225]

Alter v. Michael (1966) 64 Cal.2d 1037 [50 Cal.Rptr. 552]

Foxen v. Carpenter (2016) 6 Cal.App.5th 284 [211 Cal.Rptr.3d 372]


See How to Use This Index, supra, p. i

PROFESSIONAL SOCIETIES

McGee v. Weinberg (1979) 97 Cal.App.3d 798 [159 Cal.Rptr. 86]
Chavez v. Carter (1967) 256 Cal.App.2d 577, 580 [64 Cal.Rptr. 22]
Eckert v. Schaal (1967) 251 Cal.App.2d 1, 4 [58 Cal.Rptr. 817]
Jensen v. Sprigg (1927) 84 Cal.App. 519

-against attorney

-legal services
do not begin to run until client suffers actual harm

application of where attorney performs both legal and non-

-legal services

-Jensen v. Spring (1927) 84 Cal.App. 519

actions against attorneys, under CCP § 140.6

-Foxen v. Carpenter (2016) 6 Cal.App.5th 284 [211 Cal.Rptr.3d 372]


-client’s claim of conversion against attorney is not time-

-barred under statute, as the claim does not require proof that attorney violated “professional obligation”

-Lee v. Hanley (2015) 61 Cal.4th 1226 [191 Cal.Rptr.3d 536]

-dismissal reversed to determine whether client’s action against attorney arose from the performance of legal services


application of where attorney performs both legal and non-

-legal services


does not begin to run until client suffers actual harm

-Callahan v. Gibson, Dunn, & Crutcher, LLP (2011) 194 Cal.App.4th 557 [125 Cal.Rptr.3d 120]


-doctrine of “equitable tolling” applies to legal malpractice limitation period


-in action against attorney

Code of Civil Procedure section 340.6

-Lee v. Hanley (2015) 61 Cal.4th 1226 [191 Cal.Rptr.3d 536]

-Foxen v. Carpenter (2016) 6 Cal.App.5th 284 [211 Cal.Rptr.3d 372]


-defendant bears burden of proving when plaintiff discovered or should have discovered alleged malpractice

-Samuels v. Mix (2000) 22 Cal.4th 1 [91 Cal.Rptr.2d 273]


-duty of attorney to advise client of imminent running of


prisoner may be entitled to equitable tolling where there were extraordinary circumstances; attorney who resigns, running “writ mill” may be extraordinary

-Porter v. Ollison (9th Cir. 2010) 620 F.3d 952
toiled for bringing legal malpractice action while attorney still represents client on related matters, even if client knows of


tolling of statute

-Callahan v. Gibson, Dunn, & Crutcher, LLP (2011) 194 Cal.App.4th 557 [125 Cal.Rptr.3d 120]

-notice of claim by former client timely, relation-back doctrine applied where claim amended complaint alleging negligence pertain to specific acts of negligence contained in the original complaint


-under “delayed discovery rule” accrual date of cause of action is delayed until plaintiff becomes aware of injury and its cause

-Praakshpalan v. Engram (2014) 223 Cal.App.4th 1105 [167 Cal.Rptr.3d 832]

-under “delayed discovery rule” accrual date of cause of action is delayed until plaintiff becomes aware of injury and its cause


Successor attorney advising client of action against former attorney

LA 390 (1981)

Superceding negligence of second attorney retained


-Training of staff

-pattern of conduct needed to prove prosecutor’s liability for failing to train employees in Brady obligations


-Transaction matters

-client must prove causation

-Viner v. Sweet (2003) 30 Cal.4th 1232 [135 Cal.Rptr.2d 629]

-Trust administrator’s attorney’s fees are compensable in litigation related to trust administration


PROFESSIONAL SOCIETIES

Committees established for the maintenance of professional standards

-immunity for liability

-Civil Code section 43.7
PROFESSIONALISM

Peer review committees
- immunity for liability
  Civil Code section 43.7
- Professional standards, committees established for maintenance of
  immunity for liability
  Civil Code section 43.7

PROFESSIONALISM

California Attorney Guidelines of Civility and Professionalism
- Attorney's must strive to maintain the highest standards of
  civility and professionalism and must be an example of
  lawfulness, not lawlessness
  Scott Moody, Inc. v. Starr Surgical Company (2011) 195
  Cal.App.4th 1043 [128 Cal.Rptr.3d 89]
- Integrity of adversary system depends on the highest standard of
  ethics, civility, and professionalism in the practice of law
  Sacramento County Department of Health and Human
  Cal.Rptr.3d 453]

PROPERTY

Client's property
- attorney's duties
  Rule 8-101, Rules of Professional Conduct (operative until
  May 26, 1989)
    Rule 4-100, Rules of Professional Conduct (operative as of
  May 27, 1989)
    -withdrawal from representation
      Rule 2-111(A)(2), Rules of Professional Conduct
      (operative until May 26, 1989)
      Rule 3-700, Rules of Professional Conduct (operative
      as of May 27, 1989)
- Sale of
  auctioneer, attorney may act as
    -where trust or deed of trust gives power of sale to trustee
      Civil Code section 2924a
      conduct sale
        -attorney for trustee may
          Civil Code section 2924a
        trust or deed of trust gives power of sale to trustee
        -attorney for trustee may conduct sale
          Civil Code section 2924a

PROPERTY, PURCHASE OF AT PROBATE, FORECLOSURE, OR JUDICIAL SALE

PROSECUTOR

Conflict of interest

Communication with criminal defendant who is potential wit-ness to another crime
CAL 1979-49
Communication with jurors
CAL 1976-39
Conflict of interest
- welfare proceeding
  between state and child
    disclosure to court
    CAL 1977-45
- Cumulative effect of errors results in prejudice
  U.S. v. Preston (9th Cir. 2017) 873 F.3d 829
- Legal advice
  to victim of crime
    -of civil remedies
    CAL 1976-40
- Rule prohibiting ex parte communications does not bar
  discussions initiated by employee of defendant corporation
  with government attorney for the purpose of disclosing that
  corporate officers are attempting to suborn perjury and obstruct justice
  United States v. Talao (9th Cir. 2000) 222 F.3d 1133
Sanctions
- not appropriate against district attorney in debt collection matter, strong public policy advising against interference by bankruptcy court in state criminal matters
  Nash v. Clark County District Attorney's Office (In re Nash)
  (9th Cir. BAP 2012) 464 B.R. 674 [56 Bankr.Ct.Dec. 37]

PROSECUTORIAL MISCONDUCT

[See Competence. Ineffective assistance of counsel. Judges, ex parte communication with. Trial conduct.]

Rule 5-110, Rules of Professional Conduct (operative as of May
1, 2017)

- prosecutor must disclose and/or conduct an investigation
  when the prosecutor is presented with “new, credible and material” evidence of a wrongful conviction
  Rule 5-110(F)
- prosecutor must exercise reasonable care to prevent
  persons under the prosecutor’s supervision from making an
  extrajudicial statement the prosecutor would be prohibited
  from making under rule 5-120
  Rule 5-110(E)
- prosecutor must make reasonable efforts to assure the
  accused has been advised of the right to, and the procedure for,
  obtaining counsel, and has been given reasonable
  opportunity to obtain counsel probate matters
  Rule 5-110(B)
- prosecutor must not seek to obtain from an unrepresented
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- prosecutor must seek to remedy a conviction when the
  prosecutor “knows of clear and convincing evidence”
  establishing that a wrongful conviction occurred
  Rule 5-110(G)

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Appeal
- timely objection required
Authority
- effect of trial court discretion
  People v. Geiger (1984) 35 Cal.3d 510, 530
Brady disclosures
- law firm representing victim is not part of the prosecution for purposes of Brady disclosure requirements
  IAR Systems Software Inc. v. Superior Court (Shehayed)
  (2017) 12 Cal.App.5th 503 [218 Cal.Rptr.3d 852]
  no violation found where witnesses/notes of witnesses’ statements which were not favorable to the defendant were not given to defense counsel but statements were given at trial and were not suppressed. No reasonable probability that disclosure of the information would have altered the trial results
  People v. Verdugo (2010) 50 Cal.4th 265 [113 Cal.Rptr.3d 803]
  pattern of conduct needed to prove prosecutor’s liability for failing to train employees in Brady obligations

Breach of plea bargain agreement

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California county district attorney acted as state official for purposes of section 1983 claim when deciding whether to prosecute individual for criminal defense
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United States v. Edwards (9th Cir. 1998) 154 F.3d 915

intentional destruction of capital defense strategy tape not violative of due process

People v. Zapien (1993) 4 Cal.4th 929 [17 Cal.Rptr.2d 122]

introduction of physical evidence forming the basis of a count dismissed by the court

People v. Harris (1977) 71 Cal.App.3d 959, 967 [139 Cal.Rptr. 778]

location and nature of evidence disclosed, though police action may have been negligent, no denial of due process

Richter v. Hickman (9th Cir. 2008) 521 F.3d 1222

knowingly presenting false evidence

Haves v. Brown (9th Cir. 2005) 399 F.3d 972

manipulation of the evidence

Hovey v. Ayers (9th Cir. 2006) 458 F.3d 892

no suppression where evidence was available to defense

Cunningham v. Wong (9th Cir. 2013) 704 F.3d 1143

pattern of conduct needed to prove prosecutor’s liability for failing to train employees in Brady obligations


prosecutor’s fabrication of false confession in interrogation transcript prejudices defendant’s right to counsel


[185 Cal.Rptr.3d 286]

statements by prosecutor during direct examination, inferring that defendant was the “Hillside Strangler”


suppression by prosecutor of statement by victim to the effect that a third person, identified as a perpetrator, had been involved in the crime

People v. Bauer (1969) 1 Cal.3d 368, 375 [82 Cal.Rptr. 357, 461 P.2d 637]

suppression of evidence of defendant’s mental state, by conditioning plea agreement with percipient witness/co-defendant that the witness not testify at trial was denial of defendant’s compulsory process rights under 6th and 14th amendments

PROSECUTORIAL MISCONDUCT

suppression of letter to witness that witness would not be prosecuted for selling marijuana
  Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897

suppression of witness location and information favorable to defense
  In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

use by prosecutor of allegedly perjured testimony of defendant’s accomplice
  People v. Laverone (1971) 4 Cal.3d 735, 742-744 [94 Cal.Rptr. 405, 484 P.2d 77]

use of perjured testimony

Ex parte communication with administrative law judge

Examination of witness or defendant

alleged influence of witness, even if true would not have resulted in actual prejudice and was harmless
  Karis v. Calderon (9th Cir. 2002) 283 F.3d 1117

asking rebuttal witness whether he was aware of an investigation of defendant’s billing practices in an earlier period in a prosecution for offenses arising out of defendant’s doctor’s presentation of allegedly false Medi-Cal claims

asking character witness on cross-examination about specific acts of misconduct relating to the offense for which defendant was charged
  People v. Qui Mei Lee (1975) 48 Cal.App.3d 516, 528 [122 Cal.Rptr. 43]

asking questions clearly suggesting the existence of facts harmful to defendant where such facts were not in evidence and could not be established independently
  *People v. Chomakov (1973) 8 Cal.3d 759, 766 [106 Cal.Rptr. 106, 505 P.2d 530]

asking questions known to be inadmissible and improper; asking questions for the clear purpose of prejudicing the jury against defendant

asking questions, the answers to which prosecutor knows to be both irrelevant and prejudicial
  People v. Fitzgerald (1972) 29 Cal.App.3d 296, 311 [105 Cal.Rptr. 458]

asking questions, the answers to which prosecutor knows to be inadmissible
  People v. Mazoras (1977) 76 Cal.App.3d 32, 48 [142 Cal.Rptr. 559]

attempt to impeach defense alibi witness by demonstrating that she learned of the crime one day earlier than she had claimed in prior testimony

attempt to impeach defense witness by asking if he was in custody because of outstanding traffic warrants

attempts by prosecution to cast aspersions upon defendant’s character in relation to his personal sexual morality

attempts to elicit allegedly improper testimony

attempts to elicit testimony of defendant’s domain over drugs at a time outside a limitation previously set by trial court
  People v. Pacheco (1972) 27 Cal.App.3d 70, 83 [103 Cal.Rptr. 583]

comment on defendant’s failure to request live line-up

duty to see that a witness called by prosecutor volunteers no statement that would be inadmissible, and also those which are prejudicial

eliciting references to defendant’s arrest record

eliciting statement on redirect of prosecution witness, that defendant had been in trouble with the police previously
  People v. Vernon (1979) 89 Cal.App.3d 853, 865-867 [152 Cal.Rptr. 765]

expression of personal opinion regarding witnesses’ credibility
  U.S. v. Kerk (1992) 981 F.2d 1050

improper use of leading questions

inadvertently elicitating from witness the fact of defendant’s previous imprisonment

non-production of records used to refresh recollection of key prosecution witness

prosecutor commits flagrant violation of defendant’s right to remain silent by eliciting testimony that defendant had refused to make pretrial statement; asking defendant on cross-examination whether he made any pre-trial disclosure of his defense

question asked of defendant as to whether he had any means of identification on him at time of arrest
  People v. Fitzgerald (1972) 29 Cal.App.3d 296, 311-12 [105 Cal.Rptr. 458]

question by prosecutor of victim of prior felony-rape as to whether witness had ever told prosecutor that it appeared that she had been raped by the same man as had witness

question by prosecutor which assumed that defendant and his companion had killed the victim

questioning certain witnesses concerning defendant’s appearance before, during, and after a prior court proceeding; questioning witnesses about alleged “affair” defendant had during relevant time period
  People v. Mazoras (1977) 76 Cal.App.3d 32, 47-48 [142 Cal.Rptr. 599]

questioning defendant’s psychiatric expert witness on statements made by defendant to the psychiatrist, where such statements formed the basis of the expert’s testimony
  People v. Mazoras (1977) 76 Cal.App.3d 32, 46-47 [142 Cal.Rptr. 599]

reference by prosecution to defendant’s parole status
  *People v. Romo (1975) 47 Cal.App.3d 976, 987-88 [121 Cal.Rptr. 684]

reference to defendant as “assailant” during direct examination of complaining witness in prosecution of rape
  People v. Sims (1976) 64 Cal.App.3d 544, 552 [134 Cal.Rptr. 566]

reference to defendant’s failure to surrender weapon (used in charged offense) to the police

reference to defendant’s pre-arrest silence
no egregious pattern of misconduct
Karis v. Calderon (9th Cir. 2002) 283 F.3d 1117
publication of fictional account of crime did not create
disqualifying conflict for prosecutor or district attorney’s office
Haraguchi v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 250]
without showing of conflict, censure or sanctions appropriate
where prosecutor involved in making of film about capital
murder case
Held to higher standards because of the unique function he or
she performs in representing the interests, and in exercising the
sovereign power, of the state

Immunity
§ 1983 claims
-prosecutors afforded absolute immunity for parole
recommendations
Brown v. California Dept. of Corrections (9th Cir. 2009) 554 F.3d 747
absolute or qualified immunity may not shield from civil rights
claim where district attorney misstates facts in affidavit to
secure arrest warrant
Morley v. Walker (1999) 175 F.3d 756
county district attorney may not be entitled to qualified
immunity for infringement of subordinate attorney’s
consitutionally protected speech in authoring a
memorandum regarding police misconduct
Ceballos v. Garcetti (9th Cir. 2004) 361 F.3d 1168
county district attorney may not be entitled to qualified
immunity for retaliatory measures taken against subordinate
attorney in asserting his First Amendment right to free
speech
Eng v. Cooley (9th Cir. 2009) 552 F.3d 1062
district attorney not entitled to qualified immunity on
attorney’s claim that telephone wiretap was obtained by
judicial deception in violation of Fourth Amendment
Whitaker v. Garcetti (9th Cir. 2007) 486 F.3d 572
district attorney’s statements in a press release are
privileged pursuant to prosecutorial immunity principles
Eng v. Cooley (1999) 74 Cal.App.4th 1280 [89 Cal.Rptr.2d 60]
district attorney not entitled to qualified immunity on
claim where district attorney misstates facts in affidavit to
secure arrest warrant
Haraguchi v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 250]

Fabricating evidence, filing false crime report, making
comments to the media and investigating crime against
attorney may not be protected by absolute immunity against
§ 1983 claims
Milstein v. Cooley (9th Cir. 2001) 257 F.3d 1004
lawyers temporarily deputized to prosecute whose
appointments were defective were “defacto deputy district
attorneys” and thus their actions were in furtherance of a
protected activity within the meaning of the anti-SLAPP
statute

Improper argument
Improper questioning
Inferences and deductions

Intent to cause mistrial test

Intentional violation of law
In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

Interference with attorney-client relationship

Intimidation of witnesses
Earp v. Ormoski (9th Cir. 2005) 431 F.3d 1158
PROSECUTORIAL MISCONDUCT

prosecutor’s fabrication of false confession in interrogation
transcript prejudices defendant’s right to counsel
[185 Cal.Rptr.3d 286]
violation of defendant’s right to compulsory process not
found when prosecutor not responsible for deportation
of defendant’s key witness
People v. Jacinto (2010) 49 Cal.4th 263 [109 Cal.Rptr.3d 610]
vioation of defendant’s right to compulsory process when
prosecutor interferes with defendant’s right to present
witnesses on his behalf
Jury selection
prosecutor’s discriminatory use of peremptory challenges
People v. Guiterrez (2017) 2 Cal.5th 1150 [218 Cal.Rptr.3d 289]
All v. Hickman (9th Cir. 2009) 571 F.3d 902
-discriminatory exclusion of Hispanic juror results in
reversal of convictions when Batson/Wheeler motion denied
People v. Guiterrez (2017) 2 Cal.5th 1150 [218 Cal.Rptr.3d 289]

May include mischaracterizing evidence, referring to factors not
in evidence, misstating the law, predicting the defendant will
commit future crimes if found not guilty, and appealing to the
passions of the jury
Misstatement of law inadvertently made did not constitute
misconduct
People v. Berryman (1993) 6 Cal.4th 1048 [25 Cal.Rptr.2d 867]
Misstatement of the law through use of a jigsaw to illustrate
reasonable doubt standard
Motive
Twiggs v. Superior Court (1983) 34 Cal.3d 360, 374-375
[194 Cal.Rptr. 152, 667 P.2d 1165]
Obligation to avoid prejudicial non-relevant testimony by
government witnesses
United States v. Long (9th Cir. 1983) 715 F.2d 1364, 1368
fn. 1
Opening statement
misstatement of the value of a quantity of heroin in
possession of defendant
People v. Cooper (1979) 95 Cal.App.3d 844, 849-850
[157 Cal.Rptr. 348]
prosecutor improperly refers to defendant’s failure to testify
prosecutor’s statement that evidence would prove defendant
committed a murder at the insistence of his friend
reference to change in appearance
Cunningham v. Wong (9th Cir. 2013) 704 F.3d 1143
reference to defendant as a felon
reference to expected testimony of a person who had
testified at preliminary examination to potentially
incriminating statements made by defendant, where said
witness was never called
23 Cal.3d 208 [152 Cal.Rptr. 141, 589 P.2d 336]
reference to fact of defendant’s status as a life prisoner
People v. Robles (1970) 2 Cal.3d 205, 213-214 [85 Cal.Rptr. 166, 466 P.2d 710]
reference to fact that one accused, arrested with defendant,
led police to defendant’s brother, where the brother had not
been charged and was never formally accused of crime
reference to murder victim’s tragic life story
Tak Sun Tan v. Runnels (9th Cir. 2005) 413 F.3d 1101
reference to polygraph test
People v. Carpenter (1979) 99 Cal.App.3d 527, 531-33
[160 Cal.Rptr. 386]
reference to statement made by defendant at time of arrest
but prior to defendant’s having been advised of his Miranda
rights
Mozzetti v. Superior Court (1971) 4 Cal.3d 699 [94 Cal.Rptr. 412, 484 P.2d 84]
[84 Cal.Rptr. 528]
reference to statement of separately tried co-defendant
indicating a third party had committed the crime
reference to the effect that defendant had “said very little” in
response to the questions of an investigating police officer;
comment on defendant’s silence
People v. Meneley (1972) 29 Cal.App.3d 41, 59 [105 Cal.Rptr. 432]
references to evidence never produced by prosecutor in trial
[89 Cal.Rptr. 766]
references to extraneous matters dealing with defendant’s
private life
references to witnesses/testimony not produced at trial;
statements known to be untrue

remark that prosecution expected a certain witness to testify
because the defense had subpoenaed her
statement to jury that prosecutor would prove defendant’s
prior narcotics convictions by testimony of parole officers and
by documentary evidence
*People v. Cruz (1970) 6 Cal.App.3d 384, 391 [85 Cal.Rptr. 918]

stating theory of the case
*People v. Ramos (1982) 30 Cal.3d 553, 574-75 [180 Cal.Rptr. 266, 639 P.2d 908]
use by prosecutor of allegedly “inflammatory” words, descriptions
People v. Hayes (1971) 19 Cal.App.3d 459, 469-70 [96 Cal.Rptr. 879]
use of unauthenticated voice recordings
Penalty phase
biblical authority quoted in final argument does not require
reversal of penalty judgment
People v. Sandoval (1992) 4 Cal.4th 155 [14 Cal.Rptr.2d 342]

Permissible advocacy
must contribute materially to the verdict
Pervasive misconduct was harmless
People v. Friend (2009) 47 Cal.4th 1 [97 Cal.Rptr.3d 1]
Pervasive pattern of questions, comment and argument, denial of due process


Plea Bargain

agreement that percipient witness/co-defendant not testify at trial, denied other co-defendant the right to compulsory process and due process under 6th and 14th amendments


Post trial

jurors, communication with

Rule 5-320, Rules of Professional Conduct (operative as of May 27, 1989)

CAL 1976-39

post trial declaration of victim recanting allegation

People v. Uribe (2008) 162 Cal.App.4th 1457 [76 Cal.Rptr.3d 829]

Prejudice to appellant


assertion without proof that defense counsel fabricated a defense


lack of diligence re introducing prior convictions until after prosecutors case closed


not shown, where prosecution failed to turn over to defense, a letter stating that witness would not be prosecuted for selling marijuana

Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897

Prejudice to defendant

People v. Uribe (2008) 162 Cal.App.4th 1457 [76 Cal.Rptr.3d 829]


multiple instances of prosecutorial misconduct and trial conduct error deprived capital defendant of a fair trial

People v. Hill (1998) 17 Cal.4th 800 [72 Cal.Rptr.2d 656]

prosecutor's fabrication of false confession in interrogation transcript prejudices defendant's right to counsel


Preliminary hearing

alleged use of perjured testimony


failure to disclose evidence to defense which is not favorable to the defendant nor material to the probable cause determination does not violate duty to disclose

Bridgeforth v. Superior Court (2013) 214 Cal.App.4th 1074 [154 Cal.Rptr.3d 528]

knowingly presenting false evidence

Hayes v. Brown (9th Cir. 2005) 399 F.3d 972

misstatement of the facts by prosecutor, representing that defendant “was running” from the scene of the crime allowed inference of guilty knowledge on part of defendant


Presumption of vindictiveness

United States v. Jenkins (9th Cir. 2007) 504 F.3d 694

Twanga v. Superior Court (1983) 34 Cal.3d 360, 368-369 [194 Cal.Rptr. 152, 667 P.2d 1165]

Prettrial

Rule 7-106(A), Rules of Professional Conduct (operative until May 26, 1989)

Rule 5-320, Rules of Professional Conduct (operative as of May 27, 1989)

announcement to court by prosecutor that there was presently on file in municipal court an action against appellant (defendant)

People v. Patejd (1973) 35 Cal.App.3d 936, 946

failure to elect


failure to join unrelated offenses


failure to use diligence in obtaining evidence


has burden to show good cause as to why accused has not been brought to trial

Rhinehart v. Municipal Court (1984) 35 Cal.3d 772, 780-781

lineup by district attorney without notifying the attorney of record


Private prosecution

California law does not permit private prosecution of criminal case without presence of public prosecutor

People v. Dehle (2008) 166 Cal.App.4th 1380 [83 Cal.Rptr.3d 461]

Prosecutor

must disclose and/or conduct an investigation when the prosecutor is presented with “new, credible and material” evidence of a wrongful conviction

Rule 5-110(F), Rules of Professional Conduct (operative as of May 1, 2017)

must exercise reasonable care to prevent persons under the prosecutor’s supervision from making an extrajudicial statement the prosecutor would be prohibited from making under rule 5-120

Rule 5-110(E), Rules of Professional Conduct (operative as of May 1, 2017)

must make reasonable efforts to assure the accused has been advised of the right to, and the procedure for, obtaining counsel, and has been given reasonable opportunity to obtain counsel probate matters

Rule 5-110(B), Rules of Professional Conduct (operative as of May 1, 2017)

must not seek to obtain from an unrepresented accused a waiver of pretrial rights, unless the tribunal has approved the accused’s appearance in pro per

Rule 5-110(C), Rules of Professional Conduct (operative as of May 1, 2017)

must seek to remedy a conviction when the prosecutor “knows of clear and convincing evidence” establishing that a wrongful conviction occurred

Rule 5-110(G), Rules of Professional Conduct (operative as of May 1, 2017)

Questions which are sufficient for reversal


Recusal

conflict of interest

- abuse of discretion found, where trial court failed to hold evidentiary hearing to determine whether prosecutor’s personal involvement in the case warranted recusal

Packer v. Superior Court (2014) 60 Cal.4th 695 [181 Cal.Rptr.3d 41]

defendant may not disqualify prosecutor on ground that defendant had some degree of relationship with prosecutor’s children at some point in time


improper absent evidence that prosecutor would employ discretionary powers to deprive defendant of fair trial


no recusal required where prosecutor wrote a novel containing factual similarities of the underlying case

Haraguchi v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 250]
not required where less drastic alternatives such as walling off of witness/employee of district attorney’s office would be effective


not required where prosecutor advocates but does not formally represent the interests of third party

People v. Superior Court (Humberto) (2008) 43 Cal.4th 737 [76 Cal.Rptr.3d 276]

Relocation costs for witness, paid by prosecution not disclosed till after trial, no reasonable probability that disclosure would have altered the trial results, no Brady violation

People v. Verdugo (2010) 50 Cal.4th 265 [113 Cal.Rptr.3d 803]

Restitution hearing

California law does not permit private prosecution of criminal case without presence of public prosecutor

People v. Dehle (2008) 166 Cal.App.4th 1380 [83 Cal.Rptr.3d 461]

Retaliation against defendant

Morley v. Walker (1999) 175 F.3d 756


Suppression of evidence

Hast. Const. L.Q. 715 (fall 1977)


advising rape victim of her right to refuse a psychiatric examination

People v. Mills (1978) 87 Cal.App.3d 302, 308 [151 Cal.Rptr. 71]

Brady and Napue claims, no reasonable probability that the outcome of the guilt phase would have been different

Hamilton v. Ayers (9th Cir. 2009) 583 F.3d 1100

defendant is not required to show that prosecutor failed to turn over discovery materials it was obligated to produce at trial in order to obtain post-conviction discovery in capital crime case


destruction of tapes containing recorded, incriminating statements to police by accused


failure to call informant to testify for People


failure to disclose deal between prosecutor and star witness, immunity for testimony, Brady violation

Horton v. Mayle (9th Cir. 2005) 406 F.3d 570

failure to disclose identity of an informant

In re Bacalalupo (2012) 55 Cal.4th 312 [145 Cal.Rptr.3d 832]

People v. Rand (1972) 23 Cal.App.3d 579, 583 [100 Cal.Rptr. 473]

failure to disclose police reports


failure to disclose to co-defendant offer of leniency in exchange for testimony


failure to disclose to defense, letter to witness, that witness would not be prosecuted for selling marijuana

Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897

failure to disclose to prosecution reasonably accessible address of prospective witness

In re Littlefield (1993) 5 Cal.4th 122 [19 Cal.Rptr.2d 248]

failure to inform counsel for defense that evidence critical to asserted defense had been falsified, causing defendant to abandon the defense, where prosecutor knew that facts would sustain the defense if truthfully disclosed

People v. Dena (1972) 25 Cal.App.3d 1001, 1010 [102 Cal.Rptr. 357]

failure to produce a prior statement of prosecution witness to police which incriminated defendant in a way different in factual detail but not in effect from witness’s statement

People v. Green (1971) 3 Cal.3d 981, 991 [92 Cal.Rptr. 494, 479 P.2d 998]

failure to produce evidence favorable to defendant

In re Bacalalupo (2012) 55 Cal.4th 312 [145 Cal.Rptr.3d 832]

In re Miranda (2008) 43 Cal.4th 541 [76 Cal.Rptr.3d 172]

improper interference with defendant’s right to psychiatric examinations of the complaining witness in prosecution for incest and rape

People v. Davis (1971) 20 Cal.App.3d 890, 896-97 [89 Cal.Rptr. 71]

material evidence bearing on credibility of key prosecution witness

People v. Ruthford (1975) 14 Cal.3d 399, 406-409 [121 Cal.Rptr. 261, 534 P.2d 1341]

People v. Uribe (2008) 162 Cal.App.4th 1457 [76 Cal.Rptr.3d 829]

pretrial suppression does not bar retrial


suppression of evidence of defendant’s mental state, by conditioning plea agreement with peripient witness/co-defendant that the witness not testify at trial was denial of defendant’s compulsory process rights under 6th and 14th amendments


suppression of exculpatory fingerprint


suppression of extra-judicial statement of defendant as co-defendant


Trial conduct

arguative questioning of defense witness, not designed to elicit evidence, but to argue to the jury


calling to the stand defendant’s juvenile accomplice, knowing that the minor would invoke the privilege against self-incrimination

People v. Chandler (1971) 17 Cal.App.3d 798, 803-05 [95 Cal.Rptr. 146]

comment by prosecutor on

-defense counsel’s intentions


-merits of a case both as to law and fact

People v. Johnson (1979) 39 Cal.App.3d 170, 190-191 [207 Cal.Rptr. 431]

-presumton of innocence in closing argument misrepresented

People v. Cowan (2017) 8 Cal.App.5th 1152 [214 Cal.Rptr.3d 576]

conferring with judge in absence of opposing counsel respecting alteration of evidence by prosecutor


criticizing trial court’s publicity order, attempting to secure removal of defense counsel

People v. Manson (1976) 61 Cal.App.3d 102, 179-180 [132 Cal.Rptr. 265]

duty to disclose misleading testimony of prosecution’s witnesses

In re Martin (1983) 150 Cal.App.3d 148, 169

See How to Use This Index, supra, p. i
effect of conduct on verdict  

ex parte communication to the adjudication hearing referee in juvenile court proceeding indicating that a witness in a companion case had told him that the companion minor had attempted to run over the witness’s children  

ex parte communication with administrative law judge  

failure of district attorneys to inform appointed defense counsel of bargain made with defendant; deliberate debasement of the attorney-client relationship by disparaging defendant’s counsel; encouraging defendant to reveal nothing of the prosecutor’s bargain to his counsel  

failure to indicate modification in standard jury instructions  

failure to inform defense of an agreement to provide benefits to key state witness in return for testimony in the case violates defendant’s right to a fair trial  
Singh v. K.W. Prunty (C.D. Cal. 1998) 142 F.3d 1157

inadvertent violation of court order prohibiting reference to highly prejudicial evidence  

inconsistency in referring to date of commission of charged offense where prosecutor alternately referred to two dates and defense was predicated on alibi accounting for only one of those  
*People v. Choinacky (1973) 8 Cal. 3d 759, 766 [106 Cal.Rptr. 106, 505 P.2d 530]

interview given to magazine reporters by a deputy district attorney in violation of court’s publicity order  
People v. Manson (1976) 61 Cal.App.3d 102, 177-79 [132 Cal.Rptr. 265]

making disparaging remarks concerning the ongoing prosecution of defendant  

material evidence bearing on credibility of key prosecution witness  
People v. Uribe (2008) 162 Cal.App.4th 1457 [76 Cal.Rptr.3d 829]

offer of assistance to criminal defendant in exchange for valuable consideration  

offer to stipulate to reopening case in order to corroborate testimony to which defendant had objected  
People v. Utter (1972) 24 Cal.App.3d 535, 554 [101 Cal.Rptr. 214]

prejudicial comments  
United States v. Medina-Gasca (9th Cir. 1984) 739 F.2d 1451, 1455  
People v. Centeno (2014) 60 Cal.4th 659 [180 Cal.Rptr.3d 649]

reference, in criminal proceedings under juvenile court law, to fact that defendant’s father was facing criminal charges  

reference to fact that two of defendant’s fellow gang members had been convicted of charges arising out of the same murders in which defendant was charged  

repeated acts of intertemporal and unprofessional conduct by deputy district attorney, including personal attacks and threats against defense counsel, ridicule of defendants and their defense, and refusal on occasion to comply with trial court’s orders  
People v. Kelley (1977) 75 Cal.App.3d 672, 680-690 [142 Cal.Rptr. 457]

statements insinuating that defendant was involved in a prostitution ring  
*People v. Hathcock (1973) 8 Cal.3d 599, 610-11 [105 Cal.Rptr. 540, 504 P.2d 476]

threats of possible prosecution against defense counsel and unlicensed investigator by district attorney, although serious, did not prejudice defendant  

use of district attorney’s address as his own by prosecution witness  

vouching for witness’s credibility  

*People v. Hathcock (1973) 8 Cal.3d 599, 610-11 [105 Cal.Rptr. 540, 504 P.2d 476]

Use of courtroom to eavesdrop on confidential attorney-client communications requires severe sanctions  
People v. Shrier (2010) 190 Cal.App.4th 400 [118 Cal.Rptr.3d 233]


Vindictiveness  
United States v. Jenkins (9th Cir. 2007) 504 F.3d 694


Voir dire  
leaving police officer’s file in position where plainly visible to members of venire  
People v. Luckett (1969) 1 Cal.App.3d 248, 255 [81 Cal.Rptr. 539]

peremptory challenge based on gender violated Equal Protection Clause  
United States v. De Gross (9th Cir. 1992) 960 F.2d 1433

peremptory challenges on unmarried female venire persons violated defendant’s right to equal protection  
United States v. Omoruyi (1993) 7 F.3d 880

prosecutor’s peremptory challenge of sole black juror not a showing of group bias  
Boyde v. Brown (9th Cir. 2005) 404 F.3d 1159


prosecutor speculating as to whether defendant would elect to take the stand; statement that in event of evidentiary conflict defendant would only have to take the witness stand and deny the charges  

reference to impeaching effect which defendant’s five prior felony convictions would have  

selection of a “death penalty oriented” jury  
People v. Wong (1973) 35 Cal.App.3d 812, 832-33 [111 Cal.Rptr. 314]

See How to Use This Index, supra, p. i 421

PROSECUTORIAL MISCONDUCT

(Updated entries through 12/31/2018)
unsupported implication by prosecutor that defense counsel has fabricated a defense


using peremptory challenges for racially discriminatory purposes


not found

People v. Lomax (2010) 49 Cal.4th 530 [112 Cal.Rptr.3d 96]

Vouching

United States v. Edwards (9th Cir. 1998) 154 F.3d 915
United States v. Molina (9th Cir. 1991) 934 F.2d 1440

not found

U.S. v. Tavakkoly (9th Cir. 2001) 238 F.3d 1062

Withholding evidence

United States v. Medina-Gasca (9th Cir. 1984) 739 F.2d 1451, 1455

Witness’s absence not improperly effected by prosecutor

Acosta-Huerta v. Estelle (9th Cir. 1992) 954 F.2d 581
People v. Jacinto (2010) 49 Cal.4th 263 [109 Cal.Rptr.3d 610]

Witness credibility

expression of personal opinion
U.S. v. Kerr (9th Cir. 1992) 981 F.2d 1050
witness’s recanting of claims
People v. Uribe (2008) 162 Cal.App.4th 1457 [76 Cal.Rptr.3d 829]

PUBLIC OFFICE  

[See Administrative agency. Court. Judge. Political activity.]

City attorney

acts as both advocate of city’s position and advisor to neutral decision maker

associate of
-piece by
LA(I) 1975-4
former associate or partner refers clients to former firm
CAL 1967-10

partner
-piece by
LA(I) 1975-4

partner represents
-in criminal matters
LA 242 (1957), LA(I) 1975-4
partnership with
-piece by
--associate of
LA(I) 1975-4

City council member

associate, practice by
CAL 1977-46
LA(I) 1975-4

communication with
Rule 2-100, Rules of Professional Conduct
CAL 1977-43

partner

-practice by
CAL 1977-46, LA(I) 1975-4

represents
-criminal defendants
CAL 1977-46
-in ordinance violations
LA 273 (1962), SD 1969-1
-in traffic cases
SD 1969-1

Electioneering

for judge

-lawyer may question incumbent judge’s qualifications
LA 304 (1968)

Judge

election campaign for
-lawyer may question incumbent judge’s qualifications
LA 304 (1968)
systematically and routinely sold his office and his public trust
In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

Lawyer

as a candidate for
-misleading public re experience
LA 297 (1966)
-use of campaign materials to advertise profession
LA 297 (1966)

Prosecuting attorney

communication with criminal defendant
-who may be witness for matter unrelated to that for which accused
CAL 1979-49

criticizes sentence
SD 1974-8

employer of, practice by
LA 377 (1978)

former
-represent person indicted by grand jury
--when served as, during pendency of same action
LA 117 (1937)

legal advice
-to victim of crime
--regarding civil remedies
CAL 1976-40

partner of

-practice by
LA 377 (1978)

-represents
--in criminal matter
Business and Professions Code section 6131
LA 377 (1978)

state official role versus county administrative functionary for purposes of absolute or qualified immunity
Ceballos v. Garcetti (9th Cir. 2004) 361 F.3d 1168

welfare proceedings
-potential conflict between interests of state and child
--disclosure to court
CAL 1977-45

Public officials

entitled to qualified immunity for acts that do not violate clearly established constitutional rights of which a reasonable person would have known
Ceballos v. Garcetti (9th Cir. 2004) 361 F.3d 1168

may not be entitled to qualified immunity for retaliatory measures taken against subordinate attorney in asserting his First Amendment right to free speech
Eng v. Cooley (9th Cir. 2009) 552 F.3d 1062
PUBLICATION [See Advertising, publication. Judicial conduct. Lecture. Solicitation.]
Rule 2-101, Rules of Professional Conduct (operative until May 26, 1989)
Rule 1-400, Rules of Professional Conduct (operative as of May 27, 1989)
Article
about self
LA 38 (1927), SD 1975-3
on law
-about pending case
LA 343 (1974)
-lawyer cannot be identified as an attorney
SF 1972-1
-lay publication
LA 181 (1951), LA(I) 1978-1
SF 1972-1
-newspaper
LA 175 (1950), SD 1974-3
-periodical
LA 181 (1951), LA(I) 1964-2, LA(I) 1960-4
-trade of professional
LA 200 (1952), LA(I) 1964-2
Biography
LA 268 (1960), SD 1973-4
Blogging by attorney
CAL 2016-196
Book
about case
Haraguchi v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 250]
LA 369 (1977)
course for real estate salespeople
LA(I) 1963-3
law
LA 235 (1956)
Client’s counsel listed in
SF 1974-2
Column
-law
LA 354 (1976), LA 191 (1952), LA 34 (1927)
SD 1976-2, SD 1974-3
-bar association
LA 191 (1952)
“Course” for real estate salespeople
LA(I) 1963-3
Directory
SD 1968-1
Legal newsletter or service
LA 148 (1944)
Pamphlet
“consult your lawyer first,” by bar association
LA 65 (1931)
on legal topic
LA(I) 1962-1
PURCHASING PROPERTY AT PROBATE, FORECLOSURE, OR JUDICIAL SALE [See Estate.]
Rule 5-103, Rules of Professional Conduct (operative until May 26, 1989)
Rule 4-300, Rules of Professional Conduct (operative as of May 27, 1989)
Sodikoff v. State Bar (1975) 14 Cal.3d 422, 425-432 [121 Cal.Rptr. 467, 533 P.2d 331]
Lantz v. State Bar (1931) 212 Cal. 213 [298 P. 497]
Carlson v. Lantz (1929) 208 Cal. 134, 138-142 [280 P. 531]
Expanding prohibition to include purchases made by attorney’s spouse
Marlowe v. State Bar (1965) 63 Cal.2d 304, esp. at 307-308 [46 Cal.Rptr. 326, 405 P.2d 150]
Permissible where attorney only represents a mortgage company to obtain relief from an automatic stay in bankruptcy court
LA 455
Presumption of undue influence respecting agreements between attorney and client
The estate of Witt (1926) 198 Cal. 407, 419-426 [245 P. 197]
“Probate sale” construed
Eschwig v. State Bar (1969) 1 Cal.3d 8, 15 [81 Cal.Rptr. 352, 459 P.2d 904]
See also:
Ames v. State Bar (1973) 8 Cal.3d 910, 915-921 [106 Cal.Rptr. 489, 506 P.2d 625] (applicability, scope and breadth of rule 5-103 vis-à-vis rule 5-102)
The estate of Effron (1981) 117 Cal.App.3d 915, 928-931 [173 Cal.Rptr.93] (applicability of rule 5-103 in probate proceedings, especially with respect to attorneys duties to client/client’s interest)
You may also wish to consult:
In the Matter of Randall (1981) 640 F.2d 898
QUANTUM MERUIT [See Fee.]
REAL ESTATE [See Trustee.]
Attorney/realtor [See Practice of law, dual occupation.]
CAL 1982-69, SD 1992-1, SD 1969-2, LA 413, LA 384
Board
-attorney becomes affiliate of
CAL 1968-15
REAL ESTATE TRANSACTION [See Conflict of interest. Estate. Purchasing property at probate, foreclosure or judicial sale.]
Represent
-buyer and seller/later one against other
SF 1973-22
-client in donating property to another client, later same client in attempt to secure return of property
LA(I) 1970-10
REALTOR [See Practice of law, dual profession and Business activity, dual profession.]
REBATE [See Commission. Fees.]
Code of Civil Procedure section 568
RECEIVER [See Bankruptcy.]
Code of Civil Procedure section 568
Entitled to attorney-client privilege
RECORDING
Rule 2-101(E), Rules of Professional Conduct (operative as of May 26, 1989)
Rule 1-400, Rules of Professional Conduct (operative as of May 27, 1989)
Court proceedings
California Rule of Court 1.150
Disclosure of wiretap after its authorization expires violated 18 U.S.C. 2232(c)
Of conversation
California Penal Code section 632
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In re Loftus (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80
In the Matter of Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83
California Penal Code section 633
- applicability to city attorney while prosecuting misdemeanor cases
  79 Ops. Cal. Atty. Gen. 221 (9/16/96; No. 96-304) telephone
Kimmel v. Goland (1990) 51 Cal.3d 202 [271 Cal.Rptr. 191]
  CAL 1966-5, LA 272 (1962), LA 182 (1951)
  - district attorney not entitled to qualified immunity on
to attorney's claim that telephone wiretap was obtained by
judicial deception in violation of Fourth Amendment
Whitaker v. Garcetti (9th Cir. 2007) 486 F.3d 572

REFERRAL FEE
[See Division of Fees. Referral of legal business.]

REFERRAL OF BUSINESS
To physician
LA 443 (1988)

REFERRAL OF LEGAL BUSINESS
[See Division of fees. Lay employees. Lay intermediaries. Legal referral services. Solicitation of business.]
Business and Professions Code section 6152(c)
Rules 2-108 and 3-102, Rules of Professional Conduct (operative until May 26, 1989)
Rules 2-200 and 1-320, Rules of Professional Conduct (operative as of May 27, 1989)
Between partners when one is lawyer-physician
LA 331 (1973)
Referred by adjuster
- who failed to settle claim
LA 59 (1930)
- attorney to associate or partner
  CAL 1967-10
- who specializes in field of law
business to partner who is lawyer
CAL 1969-18
client’s employees
LA(I) 1973-10
consumer organization
LA(I) 1978-1, SD 1983-5, SD 1975-17, SF 1973-27
educational foundation
LA(I) 1977-2
foreign attorney
LA(I) 1959-3
insurance agent
LA(I) 1964-3
investigator
- employed by client
LA 67 (1932)
law firm
- by membership organization
LA 401 (1982)
- by religious organization
  -- employing attorney
  -- referral of member
    LA 298 (1966)
- for compensation from client
LA 135 (1941)
- of employees
  -- where lawyer hired to advise, counsel, and represent
  employee of industrial organization
    LA 137 (1941)
management consulting company
La 446 (1987)
membership organization
LA 401 (1982)
non-profit organization
SF 1976-2

REFERRAL SERVICES
[See This Compendium, Part I-B, appendix A, State Bar Act.]

REINSTATEMENT
After disbarment
Hippard v. State Bar (1989) 49 Cal.3d 1084
Calaway v. State Bar (1986) 41 Cal.3d 743
In re Andreani (1939) 14 Cal.2d 736, 748-750
In the Matter of Bodell (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459
In the Matter of Salant (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1

denied because of petitioner’s failure to prove rehabilitation, present moral qualifications, and present legal learning and ability

In the Matter of Ainsworth (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894
In the Matter of Miller (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423
In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 301
In the Matter of Rudman (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 756

After resignation

passage of professional responsibility examination is a condition of reinstatement, not a condition precedent to filing of petition for reinstatement
In the Matter of Sheppard (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91
After resignation with disciplinary charges pending denied for failure to make restitution

In the Matter of Rudnick (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27

does not affect the necessity for a reinstatement proceeding

Hippard v. State Bar (1989) 49 Cal.3d 1084, 1082, fn. 4
Calaway v. State Bar (1986) 41 Cal.3d 743, 745
Tardiff v. State Bar (1980) 27 Cal.3d 395, 398

In the Matter of Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 314, fn. 2

petitioner must pass professional responsibility examination and demonstrate rehabilitation, present moral qualifications, and present learning and ability in the general law

In the Matter of Sheppard (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91

reimbursement of Client Security Fund is a condition of reinstatement, not a condition precedent to filing of petition for reinstatement

In the Matter of Jauregui (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 459

unauthorized practice of law and lack of candor demonstrated the lack of moral reform that would prevent reinstatement

In the Matter of Kirwan (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630

Consideration of reinstatement decisions from jurisdictions other than California

In re Bellicini (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883

Denied because of petitioner’s insufficient showing of rehabilitation

In re Bellicini (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883

Moral character

In the Matter of Bodell (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459

Not precluded by egregiousness of misconduct as law favors rehabilitation

In re Andreai (1939) 14 Cal.2d 736, 749
In the Matter of Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309
In the Matter of McCray (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373, 382

Requirements for reinstatement

In re Bellicini (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883

petition for reinstatement requires reimbursement of discipline costs and reimbursement for payments made by the Client Security Fund

In the Matter of MacKenzie (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56

Standard for rehabilitation and present moral qualifications

Calaway v. State Bar (1986) 41 Cal.3d 743
Resner v. State Bar (1967) 67 Cal.2d 799
Allen v. State Bar (1962) 58 Cal.2d 912
Werner v. State Bar (1954) 42 Cal.2d 187
Jones v. State Bar (1946) 29 Cal.2d 131
In re Gaffney (1946) 28 Cal.2d 761
Preston v. State Bar (1946) 28 Cal.2d 643
In re Andreai (1939) 14 Cal.2d 736
In the Matter of Bodell (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459
In the Matter of Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 320

Standards same for disbarred and resigned with charges pending

In the Matter of Bodell (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459

Tax delinquencies not involving concealed assets

In the Matter of Bodell (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459

Testimony by members given in support of reinstatement is governed by rule 1-200(B) of the Rules of Professional Conduct

In the Matter of Bodell (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459

REPORTING FEES [See Advancement of funds.]

Failure to pay for contracted services

CAL 1979-48

RESIGNATION [See Disabled lawyer. Disbarment. Suspension.]

Business and Professions Code section 6180 et seq.
As active member of State Bar
Business and Professions Code sections 6004-6007
Duties of resigned attorney
Rule 9.20, California Rules of Court

Resignation requires passage of responsibility examination as a condition of reinstatement, not a condition precedent to filing of a petition for reinstatement

In the Matter of Sheppard (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91

Resigned attorney may not represent parties in state administrative hearings


With disciplinary charges pending

criminal defendant’s state constitutional right to counsel violated when during trial attorney resigns with charges pending from the bar

In re Johnson (1992) 1 Cal.4th 689 [4 Cal.Rptr.2d 170]
reimbursement of Client Security Fund is a condition of reinstatement, not a condition precedent to filing of petition for reinstatement

In the Matter of Sheppard (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91

RESPECTIVE COVENANT BETWEEN LAWYERS


Rule 1-500, Rules of Professional Conduct (operative as of May 27, 1989)

CAL 2009-176, CAL 1988-104
SF 2012-1
Business and Professions Code section 16602, applicability
Howard v. Babcock (1993) 6 Cal.4th 409

Collaborative family law practice

OC 2011-01

Confidential settlement agreements

LA 512 (2004)

Contract term compelling departing partners to forfeit a significant sum of money should they decide to compete with their former partners is contrary to public policy


Contract term providing that if an attorney leaves the firm and takes clients, then 80% of the subsequent fees shall be paid to the firm may be enforceable

Moncharsh v. Heely & Blase (1992) 3 Cal.4th 1

Covenant not to compete

Howard v. Babcock (1993) 6 Cal.4th 409 [7 Cal.Rptr.2d 687]
LA 480 (1995)

Law Partners’ Agreement imposing reasonable toll on departing partners who compete with firm is enforceable

Howard v. Babcock (1993) 6 Cal.4th 409 [7 Cal.Rptr.2d 687]

In the Matter of Respondent X (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 309

REPORTING FEES

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Rule 3-700(D)(2), California Rule of Professional Conduct

Securities and Exchange Commission v. Interlink Data Network (9th Cir. 1996) 77 F.3d 1201
In re Montgomery Drilling Co. (E.D. Cal. 1990) 121 B.R. 32
Baranowski v. State Bar (1979) 24 Cal.3d 153, 163

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752

Rule 270(c) [disclosure of private reproval]

Rule 262 [dismissal]

Rule 205 [requirement of motion for relief from actual suspension] not a valid reason for failure to recommend a specific period of stayed suspension

Rule 220(b) [requirement to file a decision within 90 days of submission] neither mandatory nor jurisdictional, but directory

Rule 221 (b)(2) [request for review filed prior to ruling]

Rule 270(c) [disclosure of private reproval]


Rules 271 and 290 examined in connection with Section 6078 of Business and Professions Code and rule 9.19, California Rules of Court

In the Matter of Respondent Z (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 252
In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263
In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220
In the Matter of Stansbury (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 56
In the Matter of MacKenzie (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56

Rule 290 [completion of Ethics School if discipline is imposed] may be required as a probation condition

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220

Rule 300 Interlocutory Review

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289

In the Matter of Sheppard (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91

Rule 301(a)(2) [trial transcript required for review]

In the Matter of Wu (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263

Rule 301(d) (filing of post-trial motion)

In the Matter of Ozowski (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 67

Rule 305 [independent de novo review]

In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302

Rule 305(a) Great Weight to Credibility Determinations by Hearing Judge

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126
In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112

Rule 561 [standard of proof in probation revocation, preponderance of evidence]

In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302

Rule 634 Standard 1.4(c)(ii) Proceeding, Petitioner’s Burden of Proof, Preponderance of the Evidence

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289

Rule 639 Standard 1.4(c)(iii) Proceeding, Review Under Rule 300, Abuse of Discretion or Error of Law

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289

Rule 655 Reinstatement

In the Matter of Sheppard (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91

Rule 662 In the Matter of MacKenzie (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56

Rules of Professional Conduct

[The full text of the rules are reprinted in part 1 A above. The annotated Rules of Professional Conduct are found in:

Deerings Annotated California Codes, Court Rules, vol. 23, pt 3
West’s Annotated California Codes, Court Rules, vol. 23, pt 3, p. 319]
attorney ethics rules do not apply only to attorneys who are acting in their role as advocates for others
In re Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160
attorney ethics rules do not apply to non-lawyers and law entities
attorney's conduct evaluated by the Rules of Professional Conduct in effect at the time of the misconduct
Judicial notice of
Dudugian v. State Bar (1991) 52 Cal.3d 1092, 1094, fn. 1 [278 Cal.Rptr. 90]
Kelson v. State Bar (1990) 52 Cal.3d 307, 311, fn. 4 [276 Cal.Rptr. 176]
Kelson v. State Bar (1976) 17 Cal.3d 1, 4 fn. 1
Tomlinson v. State Bar (1975) 13 Cal.3d 567, 569 fn. 1 [119 Cal.Rptr. 320, 537 P.2d 1119]
In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354
In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343
civil case
Western Continental Operating Co. v. Natural Gas Corp. (1989) 212 Cal.App.3d 752 [261 Cal.Rptr. 100]
Government attorneys
applicability to
In re Lee G. (1991) 1 Cal.App.4th 17, 34 [1 Cal.Rptr.2d 375]
Interpretation of
rules conclusively set ethical duties
Judicial notice of
Evidence Code section 451
Jurisdiction
California courts non-disciplinary jurisdiction over non-resident California attorney
over out-of-state arbitration representatives
Code of Civil Procedure section 1282.4
Purpose of, generally
Zitney v. State Bar (1966) 64 Cal.2d 787, 793 [51 Cal.Rptr. 825]
govern discipline of attorneys and do not create disqualification standards for courts but may be used for guidance
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willful violation is disciplinary offense


“associate” defined


Rule 1-110 Disciplinary Authority of the State Bar.

In the Matter of Pasyanos (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179

In the Matter of Posthuma (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 613

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697

Rule 1-120 Assisting, Soliciting, or Inducing Violations.


Rule 1-200 False Statement Regarding Admission to the Bar.

In the Matter of Pasyanos (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746

In the Matter of Bodell (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459

Rule 1-300 Unauthorized Practice of Law.


In re the Marriage of Bianco (2013) 221 Cal.App.4th 826

[164 Cal.Rptr.3d 785]


In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]

In the Matter of Lenard (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896

CAL 2001-155, SD 2007-1

Rule 1-310 Forming a Partnership With a Non-Lawyer.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315


Rule 1-311 Employment of Disbarred, Suspended, Resigned, or Voluntary Inactive Member.

In re the Marriage of Bianco (2013) 221 Cal.App.4th 826

[164 Cal.Rptr.3d 785]


In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]

In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920

Rule 1-320 Financial Arrangements With Non-Lawyers.


In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920

In the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

In the Matter of Bragg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615


SD 1989-2

Rule 1-400 Advertising and Solicitation.


In re Monroe (1995) 11 Cal.4th 184 [44 Cal.Rptr.2d 620]

Rubin v. Green (1993) 4 Cal.4th 1187


In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838


SD 2018-2, SD 2018-1, SD 1996-1, SD 1992-3

OC 93-001

Standard 1

In the Matter of Copena (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861

Standard 4

SD 2000-1

Standard 5

In re McKesson HBOC, Inc. Securities Litigation (N.D. Cal. 2001) 126 F.Supp.2d 1239

Standard 7

LA 530 (2018)

Standard 8


LA 516 (2006)

Standard 9


use of former employer’s client lists for solicitation purposes

Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]

Rule 1-500 Agreements Restricting a Member’s Practice.

In re T.J. Thope, Inc.; Thope Insulation Co., Debtors

Michael J. Mandelbrot; The Mandelbrot Law Firm; The Mandelbrot Law Firm, Appellants, v. J.T. Thorpe Settlement Trust; Thope Insulation Company Asbestos Settlement Trust; Charles B. Renfrew, Administrative Law Judge, Futures Representative, Appellees (9th Cir. 2017) 870 F.3rd 1121

In the Matter of Respondent X (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592

CAL 2012-185, CAL 2009-176


OC 2011-01, SF 2012-1

Rule 1-600 Legal Service Programs.

Feye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]


CAL 1997-148, CAL 1992-126

LA 500 (1999)

Rule 1-650 Limited Legal Services Programs

CAL 2011-182

Rule 1-700 Member as Candidate for Judicial Office

Rule 1-710 Member as Temporary Judge, Referee, or Court-Appointed Arbitrator

LA 514 (2005)

Rule 2-100 Communication With a Represented Party.

United States v. Talao (9th Cir. 2000) 222 F.3d 1133

Graham v. U.S. (9th Cir. 1996) 96 F.3d 446

Karnazes v. Ares (2016) 244 Cal.App.4th 344 [198 Cal.Rptr.3d 155]

Conservatorship of Becerra (2009) 175 Cal.App.4th 1474 [96 Cal.Rptr.3d 910]


La Jolla Cove Motel and Hotel Apartments Inc. v. Superior Court (2004) 121 Cal.App.4th 773 [17 Cal.Rptr.3d 467]
In the Matter of Dale (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798
In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70
*In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664
SD 2011-2, SD 2005-1
public officer, board committee or body.except - not applicable where questions posed by attorney for opposing party to public employees were designed to obtain evidence for use in litigation
Rule 2-200 Financial Arrangements Among Lawyers.
CAL 2004-165
association of outside counsel not a basis for exemption from rule 2-200 requirements
do not apply to partnership agreements with respect to fees from unfinished cases taken by departing partner
failure to comply with rule 2-200 does not preclude a quantum meruit recovery for services rendered in reliance on an unenforceable fee-sharing agreement
failure to comply with rule 2-200 but still permitting a quantum meruit recovery distinguished from failure to comply with rule 3-300 which disallows a quantum meruit recovery
Fair v. Bakhtiar et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]
purpose of the rule - protection of the public and promotion of confidence in the legal profession
terminated attorney could not recover attorney’s fees in quantum meruit from former co-counsel notwithstanding compliance with rule 2-200
use of client confidential information in action to recover unpaid attorney referral fees
Dietz v. Meisenheimer et al. (2009) 177 Cal.App.4th 771
[177 Cal.Rptr.3d 464]
Rule 2-300 Sale or Purchase of a Law Practice of a Member, Living, or Deceased.
LA 475 (1993)
Rule 2-400 Discriminatory Conduct in a Law Practice (operative March 1, 1994)
Rule 3-100 Confidential Information of a Client
Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221
DIjjiah W. v. Superior Court of Los Angeles (2013) 216 Cal.App.4th 140 [156 Cal.Rptr.3d 592]
OC 2011-01
SD 2012-1
SF 2014-1, SF 2011-1
attorney’s purchase of judgment from adverse party and his attempt to enforce that judgment against former client in the same matter established a certainty that attorney possessed confidential information that could be used against former client
Rule 3-110 Failing to Act Competently
In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]
In re Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296
In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263
In the Matter of Field (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 171
In the Matter of Conner (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 93
In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 1
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688
In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 498
In the Matter of Gadd (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416

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Rule 3-210 Advising the Violation of Law.
In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767
CAL 2013-189, CAL 2003-162, CAL 1996-146
SD 1993-1 attorneys may give legal advice and assistance limited to activities permissible under California state law provided the client is advised of possible liability under federal law and other potential adverse consequences
LA 527, SF 2015-1

Rule 3-300 Avoiding Adverse Interests.
In re Taliant (9th Cir. 1998) 218 B.R. 58
Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221
In re Silverton (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]
Fletcher v. Davis (2004) 33 Cal.4th 61 [14 Cal.Rptr.3d 58]
“Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 529 [28 Cal.Rptr.2d 617]
In re Marriage of Murchison (2016) 245 Cal.App.4th 847 [199 Cal.Rptr.3d 800]
Fair v. Bakhtiar et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 675]

In the Matter of Song (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273
In the Matter of Allen (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198
In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93
In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483
In the Matter of Gillis (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387
In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252
In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824
In the Matter of Forte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
OC 2011-02, OC 93-002
SD 1992-1, SD 1989-2, SF 1997-1 attorneys may give legal advice and assistance limited to activities permissible under California state law provided the client is advised of possible liability under federal law and other potential adverse consequences
Rule 3-310 Avoiding the Representation of Adverse Interests.
Rodriguez v. Disher (9th Cir. 2012) 688 F.3d 648
Abbott v. United States IRS (9th Cir. 2005) 399 F.3d 1083
In re S.S. Retail Stores Corp. (9th Cir. 2000) 216 F.3d 882 [36 Bankr.Ct.Dec. 79]
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SD 2017-1, SD 2013-1, SD 2006-1, SD 1997-2, SD 1990-3, SD 1899-4, OC 2012-1, OC 2011-02, OC 95-002, OC 94-003, attorney has a clear conflict of interest when he represents client in bankruptcy, solicits client to use his services as a real estate broker, and serves client as loan broker Price v. Lehtinen (In re Lehtinen) (9th Cir. BAP 2005) 332 B.R. 404
paragraph (B) CRS Recovery, Inc. v. Laxton (9th Cir. 2010) 600 F.3d 1138
SD 2017-1
paragraph (C) 101 Ops. Cal. Atty Gen. 1 (04/03/18; No. 14-301)
paragraph (C)(1) and (2) ECC Capital Corporation et al. v. Manatt, Phelps & Phillips, LLP (2017) 9 Cal.App.5th 885 [215 Cal.Rptr.3d 492]
-attorney’s purchase of judgment from adverse party and his attempt to enforce that judgment against former client in the same matter established a certainty that attorney possessed confidential information that could be used against former client Styles v. Mumbert (2008) 164 Cal.App.4th 1163 [79 Cal.Rptr.3d 880]
-no conflict where the court found that the partner who switched sides had no involvement in the instant action and had not discussed the action with the attorneys at the new law firm and where the firm had not discussed the new partner’s services relating to the instant action Openwave Systems, Inc. v. Myriad France S.A.S. (N.D. Cal. 2011) 2011 WL 1225978, 2011 U.S. Dist. Lexis 93147
paragraph (F) LA 510 (2003)
Rule 3-320 Relationship With Other Party’s Lawyer. SD 1989-4
34 Santa Clara L. Rev. 1157 (1994)

Rule 3-400 Limiting Liability to Client.
In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
OC 2011-01

Rule 3-500 Communication.
Nehad v. Mukasey (9th Cir. 2008) 535 F.3d 962
Price v. Lehtinen (In re Lehtinen) (9th Cir. BAP 2005) 332 B.R. 404
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In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
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duty to release to client mental health care records is not altered by written warning from mental health care provider that disclosure may be detrimental to client
LA 509 (2002)
failure to return unearned fees
In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
failure to provide status reports to law firm on client matters when attorney-employees abruptly resigned from law firm
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Rule 4-100 Preserving Identity of Funds and Property of a Client.
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- Boccardo v. Commissioner of Internal Revenue (9th Cir. 1995) 56 F.3d 1016  
- CAL 1996-147  
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Rule 4-300  Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review.  
- LA 455  

Rule 4-400  Gifts From Client.  
- CAL 2011-180  
- LA 462  

Rule 5-100  Threatening Criminal, Administrative, or Disciplinary Charges.  
- Flayley v. Mauro (2006) 39 Cal.4th 299 [46 Cal.Rptr.3d 606]  
- In re Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160  
- In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576  
- In the Matter of Malek-Yonan (Rev. Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627  
- LA 469 (1992)  
- SD 2005-1  

Rule 5-110  Performing the Duty of Member in Government Service. (operative September 14, 1992 to April 30, 2017)  

Rule 5-110  Special Responsibilities of a Prosecutor. (operative May 1, 2017 to present)  
- prosecutor must disclose and/or conduct an investigation when the prosecutor is presented with “new, credible and material” evidence of a wrongful conviction  
- Rule 5-110(F)  
- prosecutor must exercise reasonable care to prevent persons under the prosecutor’s supervision from making an extrajudicial statement the prosecutor would be prohibited from making under rule 5-120  
- Rule 5-110(E)  
- prosecutor must make reasonable efforts to assure the accused has been advised of the right to, and the procedure for, obtaining counsel, and has been given reasonable opportunity to obtain counsel probate matters  
- Rule 5-110(B)  
- prosecutor must not seek to obtain from an unrepresented accused a waiver of pretrial rights, unless the tribunal has approved the accused’s appearance in pro per  
- Rule 5-110(C)  
- prosecutor must seek to remedy a conviction when the prosecutor “knows of clear and convincing evidence” establishing that a wrongful conviction occurred  
- Rule 5-110(G)  

Rule 5-120  Trial Publicity (operative October 1, 1995).  
- statements found not in violation of rule  
- Rule 5-200  Trial Conduct.  
- Murdoch v. Castro (9th Cir. 2010) 609 F.3d 983  
- In re Aguilar and Kent (2004) 34 Cal.4th 386 [18 Cal.Rptr.3d 874]  

elder abuse cases  
- Welfare and Institutions Code § 15657.1 incorporates rule 4-200 by reference  
- Conservatorship of Levitt (2001) 93 Cal.App.4th 544 [113 Cal.Rptr.2d 294]  
- loan modification services  
- collecting pre-performance fees in violation of the law  
- In the Matter of Swazi Elkazni Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 22T  

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Rule 3-101  Aiding the Unauthorized Practice of Law. [See Business activity, partnership. Misconduct, partnership. Partner, non-lawyer.]

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Rule 4-101 Accepting Employment Adverse to a Client. [See Acceptance of employment. Conflict of interest. Confidences of client.]

Rule 5-101 Avoiding Adverse Interest. [See Conflict of interest.]

Rule 5-102 Representation of Adverse Interest. [See Conflict of interest.]

Rule 5-103 Prohibiting a Partnership With a Non-lawyer [See Business activity, partnership.]

Rule 3-102 Financial Arrangements With Non-lawyers. [See Division of fees.]

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708

Rule 3-101 Aiding the Unauthorized Practice of Law. [See Unauthorized practice of law.]


Rule 4-101 Accepting Employment Adverse to a Client. [See Acceptance of employment. Conflict of interest. Confidences of client.]
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1928-1975)
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General Prohibition Against Solicitation of
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LA 346 (1975), LA 342 (1973)
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Rule 2-102 Publicity in General. (Repealed by order of
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Rule 2-103 Professional Notices, Letterheads, Offices, and
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court abused its discretion by denying motion for
continuance thus terminating sanctions and granting
summary judgment

26 Cal.App.5th 309 [237 Cal.Rptr.3d 45]
court cannot sanction pro hac vice attorney for misconduct
in a manner that a California attorney could not be sanctioned

[71 Cal.Rptr.3d 207]
court has no statutory authority to impose monetary sanctions against pro hac vice attorney for misconduct, but
in its discretion, court may revoke attorney’s status

[71 Cal.Rptr.3d 207]
district court did not give attorney notice or opportunity to be heard

Weissman v. Quail Lodge Inc. (9th Cir. 1999) 179 F.3d
1194
under Penal Code § 1054.5(c)
- before excluding witness testimony court must consider
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In re Aguilar and Kent (2004) 34 Cal.4th 386 [18
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Sanders Associates v. Summarographics Corp. (1993) 2
F.3d 394
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Cunningham v. Hamilton County, Ohio (1999) 527 U.S.
198 [119 S.Ct. 1915, L.Ed.2d 184]
Against attorney for taking all actions necessary to protect his client’s rights

[191 Cal.Rptr. 735]
Against law firm for continuing to pursue unlawful detainer action in state court despite automatic stay by bankruptcy court

In re H Granados Communications, Inc. (9th Cir. BAP 2013)
503 B.R. 726
Against non-party attorneys is final and appealable by the person sanctioned when imposed

Mesrow v. Pepperidge Farm, Inc. (9th Cir. 1983) 703 F.2d
339, 345
Against non-party attorneys may be abuse of discretion

Westlake North Property Owners Association v. City of Thousand Oaks (9th Cir. 1990) 915 F.2d 1301
Against the attorney for violation of protective order

[86 Cal.Rptr.3d 297]
Agreement regarding allocation of future sanction payments may be ethically with adequate disclosure to the client

CAL 1997-151
SANCTIONS

Arbitration proceedings
arbitrator’s award of sanctions proper for mishandling of inadvertently received privileged documents

Attempt to depose opposing counsel

Attorneys fees awarded as sanctions for
failure to comply with discovery order
Bost staff Brewing Corp. v. Miller Brewing Co. (9th Cir. 1993) 702 F.2d 770

inadvertently received privileged documents
Code of Civil Procedure section 128.5

frivolous legal arguments not subject to automatic stay in attorney’s bankruptcy proceeding
Berg v. Good Samaritan Hospital (9th Cir. 2000) 230 F.3d 1165

prosecutor for submitting to the court a copy of opposing counsel’s disciplinary record without first providing notice of intent to use the record in the proceeding

in dissolution matter
In re the Marriage of Tharp (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 375]

Authority of court
Code of Civil Procedure section 128.5

- inherent authority of appellate court

- inherent authority of bankruptcy court

- inherent authority of trial court


People v. Superior Court (Meraz) (2008) 163 Cal.App.4th 28 [77 Cal.Rptr.3d 352]


attorney’s fees may not be awarded as a sanction under Code of Civil Procedure § 128.7 to a prevailing attorney acting in pro se
Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]

available where attorney makes reckless misstatements of fact and law coupled with an improper purpose
Lahiri v. Universal Music and Video (9th Cir. 2010) 606 F.3d 1216

Fink v. Gomez (9th Cir. 2001) 239 F.3d 989

In re Deville (9th Cir. BAP 2002) 280 B.R. 483

bankruptcy court has the power to disbar or suspend for misconduct
In re Lehtinen (9th Cir. 2009) 564 F.3d 1052

court allowed to impose sanctions on its own motion, but attorney must be afforded procedural due process protections pursuant to CCP § 177.5

court had no authority to award costs of future depositions as monetary sanction for coaching plaintiff during deposition where those costs had not yet been incurred

court may not impose sanction summarily and orally from the bench; CCP § 177.5 requires that sanction be written and contain a detailed recitation of the conduct or circumstances justifying such sanction

for delay
In re Silberkraus (9th Cir. 2003) 336 F.3d 864
In re Deville (9th Cir. BAP 2002) 280 B.R. 483


- award of “reasonable expenses” as sanction under CCP § 437c does not include authority to include attorney’s fees


improper sanctions imposed when court uses mediator’s report in violation of Evidence Code Section 1121 (mediation confidentiality)


inherent power
Gomez v. Vernon (9th Cir. (Idaho) 2001) 255 F.3d 1118 [50 Fed. R. Serv.3d (Callaghan) 436]

no statutory authority under CCP § 177.5 for imposition of fees against prosecutor for submitting to the court a copy of opposing counsel’s disciplinary record without first providing a copy to opposing counsel

trial court had no authority to impose sanctions for attorney’s ex parte request to set date for status conference

Awarded by the court

after rendering of verdict

belong to client unless express attorney-client agreement or court order to contrary
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Ct. Rptr. 838

in order to be awarded, a compensatory award must be linked to a harm caused by attorney’s statement; large non-compensatory awards are akin to criminal contempt
Miller v. City of Los Angeles (9th Cir. 2011) 661 F.3d 1024

Bad faith
no bad faith violation found where attorney did not, in fact, violate the district court’s order
Miller v. City of Los Angeles (9th Cir. 2011) 661 F.3d 1024

Bankruptcy court
against attorney for failure to list asset on debtor’s bankruptcy schedule
In re Kayne (9th Cir. BAP 2011) 503 B.R. 726
authority to impose its own sanctions and to refer the matter to the State Bar

In re Lehtinen (9th Cir. 2009) 564 F.3d 1052  
Price v. Lehtinen (In re Lehtinen) (9th Cir. BAP 2005) 332  
B.R. 404

discovery sanction order against attorney who no longer represents party in lawsuit was immediately appealable


bankruptcy court cannot rely on local rules to sanction nonparty debtors and their attorney in deposition dispute

In re Pham (9th Cir. BAP 2015) 536 B.R. 242

consideration of ABA standards to categorize misconduct and to identify the appropriate sanction

Price v. Lehtinen (In re Lehtinen) (9th Cir. BAP 2005) 332  
B.R. 404

court did not err when it imposed discovery sanctions against attorney/debtor for transferring property with intent to hinder, delay or defraud creditor


imposition of sanctions against attorney for filing bankruptcy petition without corporate authorization and failing to conduct reasonable inquiry was appropriate

In re Blue Pine Group, Inc. (9th Cir. BAP 2011) 457 B.R. 64

sanctions not justified where creditor did not actively participate in settlement negotiations in violation of discharge injunction and sanctions were not appropriate against district attorney who negotiated repayment of gambling debt in a criminal proceeding; strong public policy advising against interference by bankruptcy court in state criminal matters


Complaint filed without legal or factual justification


Copyright action under 17 U.S.C. § 505

Neft v. Vidmark, Inc. (9th Cir. 1991) 923 F.2d 746

Court initiated

court-initiated sanctions in the Ninth-Circuit is “akin to contempt” which requires more than ignorance or negligence on the part of an attorney

Shalaby v. Mansord (In re Nakhuda) (9th Cir. BAP 2016) 544 B.R. 886

Deposition

bankruptcy court cannot rely on local rules to sanction nonparty debtors and their attorney in deposition dispute

In re Pham (9th Cir. BAP 2015) 536 B.R. 242

instructions not to answer sanctionable


when attorney fails to attend court-ordered depositions regarding disciplinary charges, sanctions permitting his testimony are not proper

In the Matter of Torres (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19

Dismissal of action

client entitled to relief from terminating sanctions caused solely by her attorney’s neglect of discovery


dismissal of special circumstance allegation improper as discovery sanction

People v. Superior Court (Meraz) (2008) 163 Cal.App.4th 28 [77 Cal.Rptr.3d 352]

terminating sanctions appropriate for willful failure to comply with discovery order


to reimburse a party proving truth of a requested admission under CCP § 2033(o)


to reimburse a party proving truth of a requested admission under CCP § 2033.420

Estate of Manuel (2010) 187 Cal.App.4th 400 [113 Cal.Rptr.3d 448]

trustee lacked standing to appeal order awarding discovery sanctions against counsel

In re Hesico Industries, Inc. (9th Cir. BAP 2003) 295 B.R. 372

when attorney fails to attend court-ordered depositions regarding disciplinary charges, sanctions permitting his testimony are not proper

In the Matter of Torres (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19

Discovery sanctions

client’s conduct was not a contributing cause of the terminating sanctions and attorney’s declaration of fault entitles client to relief from the judgment


complaint need not specify by dollar amount the attorney fees that will be incurred and sought in a case ultimately resolved by a default judgment entered as a terminating sanction


discovery sanctions against attorney may be a significant development and should be communicated to the client

CAL 1997-151

discovery sanction order makes attorney liable for client’s costs and expenses

Hyde & Drath v. Baker (9th Cir. 1994) 24 F.3d 1162

discovery sanction order against attorney who no longer represents party in lawsuit was immediately appealable


discovery sanctions not available to attorney who litigates in propria persona under Code of Civil Procedure sections 2030(1) and 2033(b)1


dismissal of special circumstance allegation improper as discovery sanction

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when attorney fails to attend court-ordered depositions regarding disciplinary charges, sanctions permitting his testimony are not proper

In the Matter of Torres (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19

for misuse of discovery process

R.S. Creative Inc. v. Creative Cotton Ltd., et al. (1999) 75 Cal.App.4th 486 [89 Cal.Rptr.2d 353]

in malpractice action where plaintiff allowed the entire client testimony to be destroyed


where sanction amounted to dismissal of action, court must consider if noncompliance involved willfulness, fault or bad faith

R & R Sails, Inc. v. Insurance Co. of Pennsylvania (9th Cir. 2012) 673 F.3d 1240


in malpractice action where plaintiff allowed the entire client testimony to be destroyed


where sanction amounted to dismissal of action, court must consider if noncompliance involved willfulness, fault or bad faith

R & R Sails, Inc. v. Insurance Co. of Pennsylvania (9th Cir. 2012) 673 F.3d 1240

SANCTIONS

District court’s inherent authority to sanction by awarding attorney fees
Primus Automotive Financial Services, Inc. v. Batarse (9th Cir. 1997) 115 F.3d 644
denied by court of appeal
Fields v. Gates (9th Cir. 2000) 233 F.3d 1174
Evidence
destruction of
Unigard Security Ins. Co. v. Lakewood Engineering and Manufacturing (9th Cir. 1992) 982 F.2d 363
intentional concealment of
Excessive imposition of court ordered monetary sanctions may result in State Bar discipline
Canatella v. California (9th Cir. 2002) 304 F.3d 843
Failure to obey court order to appear personally
Failure to obtain court’s permission to withdraw in 39 cases
Wolff v. State Bar (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1
Federal Rule of Bankruptcy Procedure 9011
bankruptcy court has inherent power to impose district-wide suspension of attorney
In re Brooks-Hamilton (9th Cir. 2009) 400 B.R. 238
case law interpreting rule 11 is applicable to Rule 9011
Shalaby v. Mansdorf (In re Nahkuda) (9th Cir. BAP 2016) 544 B.R. 896
Federal Rule of Civil Procedure 11
cannot be awarded to a client against his own attorney
Mark Industries, Ltd. v. Sea Captain’s Choice (9th Cir. 1995) 50 F.3d 703
factually unfounded motions
Hammer v. Career College Association (9th Cir. 1992) 979 F.2d 758
Stitt v. Williams (9th Cir. 1990) 919 F.2d 516
failure to investigate a client’s domicile before filing a diversity action
Hendrix v. Naphtal (9th Cir. 1992) 971 F.2d 398
failure to make reasonable inquiry
Warren v. Guelker (9th Cir. 1994) 29 F.3d 1386
Maisonville v. America, Inc. (9th Cir. 1990) 902 F.2d 746
frivolous complaint
Truesdell v. Southern California Permanente Medical Group (9th Cir. 2002) 293 F.3d 1146
Gaskell v. Weir (9th Cir. 1993) 10 F.3d 626
“judge shopping”
Fields v. Gates (9th Cir. 2000) 233 F.3d 1174
meritless suit
McCright v. Santoki (9th Cir. 1992) 977 F.2d 590
King v. Idaho Funeral Service Association (9th Cir. 1988) 862 F.2d 744
method of calculation
Lyddon v. Geothermal Properties (9th Cir. 1993) 996 F.2d 212
Lockary v. Kayfetz (9th Cir. 1992) 974 F.2d 1166
no inherent power to sanction when case already dismissed
Fields v. Gates (9th Cir. 2000) 233 F.3d 1174
non-frivolous complaint
In re Keegan Management Co. (9th Cir. 1996) 78 F.3d 431
not require payment for any activities outside the context of district court proceedings
Partington v. Gedat (9th Cir. 1991) 923 F.2d 686
objective reasonableness standard
Unigard Security Insurance Company v. Lakewood Engineering and Manufacturing Corporation (9th Cir. 1992) 982 F.2d 363
sanctions levied on party not the attorney for the party
Lockary v. Kayfetz (9th Cir. 1992) 974 F.2d 1166
sanctions levied only on lawyers, not law firms
scope of
Lyddon v. Geothermal Properties (9th Cir. 1993) 996 F.2d 212
signature – for purposes of Rule 11, “signature” is more than a typewritten name
Geibelhaus v. Spindrift Yachts (9th Cir. 1991) 938 F.2d 962
Federal Rule of Civil Procedure 26
R & R Sails, Inc. v. Insurance Co. of Pennsylvania (9th Cir. 2012) 673 F.3d 1240
Federal Rule of Civil Procedure 37
R & R Sails, Inc. v. Insurance Co. of Pennsylvania (9th Cir. 2012) 673 F.3d 1240
Unigard Security Ins. Co. v. Lakewood Engineering and Manufacturing Corp. (9th Cir. 1992) 982 F.2d 363
order imposing sanctions on attorney pursuant to Rule 37(a)(4) is not final decision and thus not immediately appealable
Stanley v. Woodford (9th Cir. 2006) 449 F.3d 1060
Federal Rule of Civil Procedure 41(a)(2)
Heckethorn v. Sunan Corp. (9th Cir. 1993) 992 F.2d 240
Federal Rule of Civil Procedure 41(b)
Sanders v. Union Pacific Railroad Company (1998) 154 F.3d 1037
Fees and costs
award of “reasonable expenses” as sanction under CCP § 437(c) does not include authority to include attorney’s fees
For bad faith
appeal taken solely for purpose of delay
United States v. Blodgett (9th Cir. 1983) 709 F.2d 608
award of “reasonable expenses” as sanction under CCP § 437(c) does not include authority to include attorney’s fees
courts levying sanctions must make explicit findings regarding an attorney’s conduct
In re Silberkraus (9th Cir. 2003) 336 F.3d 864
Primus Automotive Financial Services, Inc. v. Batarse (9th Cir. 1997) 115 F.3d 644
evidence of call to State Bar ethics hotline insufficient for court to conclude that attorney acted in good faith
failure to disclose to court and/or opposing counsel receipt of confidential information
Gomez v. Verano (9th Cir. Idaho) 2001) 255 F.3d 1118 [50 Fed. R. Serv.3d (Callaghan) 436]
failure to dismiss a defendant
MGIC Indemnity Corporation v. Moore (9th Cir. 1991) 952 F.2d 1120
attorney should not accept so much employment, that the attorney is unable to appear due to other case commitments.


attorney’s fees may not be awarded as a sanction under Code of Civil Procedure § 128.7 to a prevailing attorney acting in pro se.

Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]

family law


sanctions under CCP § 128.5 require notice of grounds and opportunity to respond.


In re Marriage of Quinlan (1989) 209 Cal.App.3d 1471 [257 Cal.Rptr. 850]

For discovery abuses

Hyde & Drath v. Baker (9th Cir. 1994) 24 F.3d 1162


In re Koehler (2010) 181 Cal.App.4th 1153 [104 Cal.Rptr.3d 877]


dismissal of special circumstance allegation improper as discovery sanction.


failure of law firm to disclose corporate client’s suspended status is sanctionable even though firm did not engage in any abuse of the discovery process.


order imposing sanctions on attorney pursuant to Federal Rule of Civil Procedure 37(a)(4) is not final decision and thus not immediately appealable.


when attorney fails to attend court-ordered depositions regarding disciplinary charges, sanctions permitting his testimony are not proper.

In the Matter of Torres (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19

For failure to admit facts contained in request for admissions


For failure to comply with court order

Stanley v. Woodford (9th Cir. 2006) 449 F.3d 1060

Pacific Harbor Capital, Inc. v. Carnival Air Lines, Inc. (9th Cir. 2000) 210 F.3d 1112

Sanders v. Union Pacific Railroad Company (1998) 154 F.3d 1037


In re Koehler (2010) 181 Cal.App.4th 1153 [104 Cal.Rptr.3d 877]


In re Ringgold (2006) 142 Cal.App.4th 1001 [48 Cal.Rptr.3d 507]
For frivolous appeal
Scott v. Younger (9th Cir. 1984) 739 F.2d 1464, 1467
DeWitt v. Western Pacific Railroad Company (9th Cir. 1983) 719 F.2d 1448
Bucur v. Ahmad (2016) 244 Cal.App.4th 175 [198 Cal.Rptr.3d 127]
In re Kinney (2011) 201 Cal.App.4th 951 [135 Cal.Rptr.3d 471]
In re Marriage of Adams (1997) 52 Cal.App.4th 911 [60 Cal.Rptr.2d 811]
In the Matter of Scott (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446
bad faith, vexatious, wanton, or oppressive reasons
Int'l Union of P.I.W. v. Western Indus. Main. (9th Cir. 1983) 707 F.2d 425, 428
by disbarred attorney
-order to pay former wife's attorney's fees by former
husband an appropriate sanction for former husband's
frivolous appeal of court's denial of his motion to stop
further payment of child's support
granting of additional sanctions against plaintiffs and their
trial attorney warranted based on frivolous appeal
Bucur v. Ahmad (2016) 244 Cal.App.4th 175 [198 Cal.Rptr.3d 127]
in frivolous habeas corpus petitions, sanctions should be
imposed sparingly, except in most egregious cases, so as
to not to discourage use of the writ
In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]
nomination of State Bar
sanctions imposed on client for filing a frivolous appeal does
not constitute malpractice as a matter of law
For frivolous complaint
In re Brooks-Hamilton (9th Cir. 2009) 400 B.R. 238
Truesdell v. Southern California Permanente Medical Group
(9th Cir. 2002) 293 F.3d 1146
Gaskell v. Weir (9th Cir. 1993) 10 F.3d 626
In re Kinney (2011) 201 Cal.App.4th 951 [135 Cal.Rptr.3d 471]
denied, no authority of court when an attorney presents a
frivolous claim to an arbitrator during binding arbitration
For frivolous motion
In re Kinney (2011) 201 Cal.App.4th 951 [135 Cal.Rptr.3d 471]
In re the Marriage of Burgard (1999) 72 Cal.App.4th 74 [84 Cal.Rptr.2d 739]
action not frivolous under CCP § 128.7 where it was
supported by sufficient evidence to sustain a favorable jury
verdict and where it was not prosecuted for an improper
purpose
Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150 [80 Cal.Rptr.3d 812]
fees awarded to plaintiff in anti-SLAPP motion where plaintiff
showed a probability of prevailing on the merits and motion
was found to be frivolous and without merit
For frivolous petition
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
For frivolous petition demonstrating pattern of delay
For frivolous pleadings
requires subjective bad faith

For misleading responses to requests for admission
Marchand v. Mercy Medical Center (9th Cir. 1994) 22 F.3d 933

For multiplying proceedings unreasonably and vexatious under 28 U.S.C. section 1927
Lahiri v. Universal Music and Video (9th Cir. 2010) 606 F.3d 1216
Stanley v. Woodford (9th Cir. 2006) 449 F.3d 1060
Gomez v. Vernon (9th Cir. (Idaho) 2001) 255 F.3d 1118 [50 Fed. R. Serv.3d (Callaghan) 436]
In re DeVille (9th Cir. BAP 2002) 280 B.R. 483

For obstreperous actions of counsel
In re Marriage of Daniels (1993) 19 Cal.App.4th 1102
For repeated requests for reconsideration
Conn v. Borjorquez (9th Cir. 1992) 967 F.2d 1418

For unjustified litigation
For violation of California Rules of Professional Conduct
family court may not order attorney to pay sanctions for hiring co-counsel, who could not practice in California, based on California Rules of Court
In re the Marriage of Bianco (2013) 221 Cal.App.4th 826 [164 Cal.Rptr.3d 785]

For violation of protective order

For waste of court’s resources
sanctions imposed to compensate court in part for cost to process, review, and decide frivolous petitions
In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]
Harsh judicial words constitute sanction only if they are expressly identified as reprimand
Weissman v. Quail Lodge, Inc. (9th Cir. 1999) 179 F.3d 1194
Imposed by State Bar against disciplined attorneys under Business and Professions Code § 6086.13
In re Taggart (2001) 249 F.3d 987

Inability to pay
attorney unable to present evidence of financial inability to pay monetary sanctions when court calculated fees attorney received from clients to file frivolous appeals
In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]

Inherent power of court
In re Mark B. (2007) 149 Cal.App.4th 61 [56 Cal.Rptr.3d 697] available where attorney makes reckless misstatements of fact and law coupled with an improper purpose
Lahiri v. Universal Music and Video (9th Cir. 2010) 606 F.3d 1216
Fink v. Gomez (9th Cir. 2001) 239 F.3d 989

Bankruptcy court abused its discretion by using its § 105(a) inherent powers as alternative authority for sanctioning attorney
Eskanos & Adler, P.C. v. Leetlief (9th Cir. 2002) 309 F.3d 1210

Bankruptcy court has authority to impose sanctions against law firm for continuing to pursue unlawful detainer action in state court despite automatic stay by bankruptcy court
In re H Granados Communications, Inc. (9th Cir. BAP 2013) 503 B.R. 726

Bankruptcy court has inherent power to impose district-wide suspension of attorney
In re Brooks-Hamilton (9th Cir. 2009) 400 B.R. 238

Trial court’s award of attorney’s fees against plaintiff’s counsel for violation of an in limine order was neither within the court’s inherent powers nor was authorized by statute
Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150 [80 Cal.Rptr.3d 812]

Insults and affronts to court and opposing counsel, confrontational, accusatory and disdainful tone, civility required; sanctions appropriate

Judicial
Business and Professions Code section 6068(o)(3) duty to report monetary sanctions over $1,000 except for discovery sanctions
Sarraf v. Standard Insurance Co. (9th Cir. 1996) 102 F.3d 991
Hill v. MacMillan/McGraw Hill Company (9th Cir. 1996) 102 F.3d 422
In the Matter of Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862
In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170
CAL 1997-151

Law firm has standing to appeal monetary sanction on firm attorney

Limitations on
court had no authority to award costs of future depositions as monetary sanction for coaching plaintiff during deposition where those costs had not yet been incurred
juvenile proceeding
In re Sean R. (1989) 214 Cal.App.3d 662 trial court’s award of attorney’s fees against plaintiff’s counsel for violation of an in limine order was neither within the court’s inherent powers nor was authorized by statute
Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150 [80 Cal.Rptr.3d 812]

May not be imposed without hearing

Meritorious suit results in Federal Rule of Civil Procedure, Rule 11, sanctions on attorney
Truesdell v. Southern California Permanente Medical Group (9th Cir. 2002) 293 F.3d 1146
King v. Idaho Funeral Service Association (9th Cir. 1988) 862 F.2d 744

Meritorious cause of action
improper basis for imposing sanctions

Misrepresentation of evidence in argument
In re Disciplinary Action Ctrd (9th Cir. 1986) 803 F.2d 1004

Misuse of discovery under CCP section 128.7 need not be willful

Monetary
Code of Civil Procedure section 128

Code of Civil Procedure section 128.7

-attorney’s fees may not be awarded as a sanction under Code of Civil Procedure § 128.7 to a prevailing attorney acting in pro se
Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]
SANCTIONS

-does not authorize sanctions in the form of an award of attorney fees to self represented attorneys
Musaeian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]

In re Blue Pine Group, Inc. (9th Cir. BAP 2011) 457 B.R. 64
dismissal inappropriate for failure to pay

for alleged violation of local court rules conduct must clearly interfere with administration of justice
Wehrl v. Pagliotti (9th Cir. 1991) 947 F.2d 1424

inapplicable to appellate courts

In re Brooks-Hamilton (9th Cir. 2009) 400 B.R. 238
“safe harbor” provisions preclude the imposition of sanctions who added fictitious defendants on the eve of trial

Non-compliance with local rules

Non-party attorney may lack standing to seek sanctions for harassment against a party attorney
Pennwalt Corp. v. Durand-Wauland, Inc. (9th Cir. 1983) 708 F.2d 492, 495

Not properly imposed on client for alleged failure of counsel to adhere to court rule

On attorney and client

appropriate method for dealing with unjustified litigation


Probate court
award of monetary sanctions and attorney’s fees improper for violation of Rule of Professional Conduct
Conservatorship of Becerra (2009) 175 Cal.App.4th 1474 [96 Cal.Rptr.3d 910]

Prosecutor
failure to provide discovery to the public defender

must not appropriate against district attorney in debt collection matter, strong public policy advising against interference by bankruptcy court in state criminal matters

Public defender
not imposed for filing misleading emergency petition where factual omission resulted from mistake
Jones v. Superior Court (1994) 26 Cal.App.4th 92 [31 Cal.Rptr.2d 264]

Reciprocal Discovery Rule

Reliance on State Bar ethics hotline insufficient for court to conclude that attorney acted in good faith

Reporting of sanctions
court neither required to report sanctionable conduct to the Bar nor to take action with other authorities

Scheduling depositions and serving subpoenas when opposing counsel is known to be out of the country
Tenderloin Housing Clinic, Inc. v. Sparks (1992) 8 Cal.App.4th 299

State Bar discipline imposed for repeated sanctions
Canatella v. Van De Kamp (9th Cir. 2007) 486 F.3d 1128

Terminating sanctions
dismissal with prejudice deemed appropriate sanction for attorney’s repeated violation of court’s order
Osborne v. Todd Farm Service (2016) 247 Cal.App.4th 43 [202 Cal.Rptr.3d 84]
sanctions properly terminated when attorney threatens opposing attorney with physical harm and is openly contemptuous of trial court

Trial court award of attorney fees

Two requirements: just and related to particular claim as to discovery
Wylie v. R.J. Reynolds Industries, Inc. (9th Cir. 1983) 709 F.2d 585, 591

permits an award of sanctions against attorneys, not against law firms
Kaass Law v. Wells Fargo Bank (9th Cir. 2015) 799 F.3d 1290

Under Code of Civil Procedure section 128.5


In re Marriage of Reese and Guy (1999) 73 Cal.App.4th 1214 [87 Cal.Rptr.2d 339]

In re Marriage of Adams (1997) 52 Cal.App.4th 911 [60 Cal.Rptr.2d 811]


bad faith intentional concealment of evidence

bad faith required for sanctions
-evidence of call to State Bar ethics hotline insufficient for court to conclude that attorney acted in good faith

bad faith submission of forged documents
bad faith violation of protective order
duty to report the imposition of sanctions to State Bar not excused solely because of the pendency of an appeal
In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70
In the Matter of Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 867

filings a frivolous lawsuit

filings false documents under penalty of perjury
order must specify attorney misconduct  
Cal.App.3d 1166 [267 Cal.Rptr. 516]  
require written notice of hearing  
“reasonable expenses” cannot be read to amount to consequential damages  
Cal.App.3d 701  
Under Code of Civil Procedure section 128.7, the purpose is to deter frivolous actions and give the offending party the opportunity to withdraw or correct the pleading  
Bucur v. Ahmad (2016) 244 Cal.App.4th 175 [198  
Cal.Rptr.3d 127]  
action not frivolous under CCP § 128.7 where it was supported by sufficient evidence to sustain a favorable jury verdict and where it was not prosecuted for an improper purpose  
Clark v. Optical Coating Laboratory, Inc. (2008) 165  
Cal.App.4th 150 [80 Cal.Rptr.3d 812]  
attorney’s fees may not be awarded as a sanction under Code of Civil Procedure § 128.7 to a prevailing attorney acting in pro se  
Mussett v. Adams (2009) 45 Cal.4th 512 [87  
Cal.Rptr.3d 475]  
granting of additional sanctions against plaintiffs and their trial attorney warranted based on frivolous appeal  
Bucur v. Ahmad (2016) 244 Cal.App.4th 175 [198  
Cal.Rptr.3d 127]  
Under Code of Civil Procedure section 177.5  
Cal.Rptr.2d 309]  
calculated decision to violate a court order  
Scott Moody, Inc. v. Starr Surgical Company (2011) 195  
Cal.App.4th 1043 [128 Cal.Rptr.3d 89]  
imposition of monetary sanctions for failing to obey court order is within discretion of the trial court  
Cal.Rptr.3d 871]  
no statutory authority under CCP § 177.5 for imposition of fees against prosecutor for submitting to the court a copy of opposing counsel’s disciplinary record without first providing a copy to opposing counsel  
Cal.Rptr.3d 166]  
sanctions resolved in court’s favor when attorney fails to provide adequate record transcript to support position  
Cal.Rptr.3d 823]  
when attorney leaves courtroom after being told not to leave  
Under Code of Civil Procedure sections 2030(1) and 2023(b)(1) discovery sanctions not available to attorney who litigates in propria persona  
Cal.Rptr.2d 917]  
Under Code of Civil Procedure section 2033  
Estate of Manuel (2010) 187 Cal.App.4th 400 [113  
Cal.Rptr.3d 448]  
Under Penal Code § 1054.5  
Vexatious litigant   
attorney appearing for client is not a litigant  
Weissman v. Quail Lodge Inc. (9th Cir. 1999) 179 F.3d 1194  
lawyer declared vexatious litigant based on a multiple filings of frivolous matters and the use of a client as a puppet or conduit for abusive litigation practices  
Cal.Rptr.3d 247]  
In re Kinney (2011) 201 Cal.App.4th 951 [135 Cal.Rptr.3d 471]  
Violation of the Rules of Professional Conduct  
technical violation of the State Bar ethical rules does not necessarily constitute a violation of a court rule  
Cal.Rptr.3d 166]  
When defendant and attorneys fail to appear at deposition  
Rockwell International Inc. v. Pos-A-Traction Industries (9th Cir. 1983) 712 F.2d 1324, 1326  
SEARCH WARRANT FOR LAW OFFICE  
Penal Code sections 1524, 1525  
United States v. Mittleman (1993) 999 F.2d 440  
Cal.Rptr.2d 53]  
SEMINARS  
LA 286 (1965), LA 221 (1954)  
SD 1974-16, SD 1974-21  
SETTLEMENT  
Acceptance of settlement offers  
subsequent rejection  
Cal.Rptr.2d 217]  
Agreement providing that trial court will determine prevailing party and award of attorney fees is valid and enforceable  
Attorney General may appeal attorney fees in a settlement under Proposition 65  
Attorney may not seek written or oral agreement that client will not file, nor seek a representation from the client that they have not filed, nor intend to file, a State Bar complaint  
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Mallott & Peterson v. Director, Office of Workers’ Compensation Program (9th Cir. 1996) 98 F.3d 1170  
Cal.Rptr.2d 264]  
Levy v. Superior Court (1995) 10 Cal.4th 578 [41 Cal.Rptr.2d 878]  
general rule that attorney-agent lacks authority, without specific client authorization, to bind client to settlement agreement distinguished where the authorized corporate representative is an in-house attorney  
Provost v. Regents of the University of California (2011) 201 Cal.App.4th 1288 [135 Cal.Rptr.3d 591]  
By attorney representing insured defendant for amount above policy limit  
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OC 99-002  
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Cal.App.4th 785 [96 Cal.Rptr.3d 441]  
class member has standing to appeal final award of costs and fees which were payable by defendants independently rather than from class settlement  
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court must have sufficient information to make an informed evaluation on fairness
fees paid directly to plaintiff's counsel by defendant pursuant to ADEA's fee-shifting provision is taxable income to plaintiff
Sinard v. Commissioner of Internal Revenue (9th Cir. 2001) 268 F.3d 766
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SA 1973-25
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Communications made during confidential mediation cannot be disclosed without express waiver of parties
Simmons v. Ghaderi (2008) 44 Cal.4th 570 [80 Cal.Rptr.3d 83]

Confidential settlement agreement
LA 512 (2003)
renders CCP § 998 offer invalid
Condition settlement on plaintiff's attorney waiving fees
Venegas v. Mitchell (1990) 110 S.Ct. 1679
Pony v. County of Los Angeles (9th Cir. 2006) 433 F.3d 1138
Bernhardt v. Los Angeles County (9th Cir. 2003) 339 F.3d 920
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Conflicting instructions from insurance company and assured
LA 344 (1974)
Corporation's settlement proceeds are claimed by individual members of the board of directors
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Defense misrepresented principal benefits of settlement
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Spectra-Physics, Inc. v. Superior Court (1988) 198 Cal.App.3d 1487 [244 Cal.Rptr. 258]
Disclosure of death of client
LA 300 (1967)
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LA 380 (1979)
Endorsement of client check
successor attorney authorizes an employee to simulate the prior attorney's signature on a settlement draft
In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234
Enforceable where attorney stipulated to waiver of mediation confidentiality; client consent not required as substantial rights not affected
Exonerate client in public eye, attorney no duty to
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Los Angeles:
845 Figueroa Street, Suite 100
Los Angeles, California 90017-5450
Telephone: (213) 765-1000
San Francisco:
180 Howard Street
San Francisco, California 94105
Telephone: (415) 538-2000
Advice of a State Bar employee cannot give attorney
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Criminal Courts Bar Association v. State Bar of California
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Public access to bar examination statistics: balancing of right of
access and right of applicants’ privacy
Cal.Rptr.3d 276]
Purpose
Cal.Rptr.2d 87]
630 [6 Cal.Rptr.3d 592]
State Bar Court
Hirsh v. Justices of the Supreme Court of the State of
California (1995) 67 F.3d 708
Cal.Rptr.2d 205, 999 P.2d 95]
In re Rose (2000) 22 Cal.4th 430 [83 Cal.Rptr.2d 298]

See How to Use This Index, supra, p. i 455 2019 (updated entries through 12/31/2018)
STATUTORY PRIVILEGES AND IMMUNITIES

Statutory privileges and immunities protect State Bar and staff from action brought by a disbarred attorney


Supreme Court on recommendation of State Bar alone may issue disciplinary proceedings against an attorney


Unified Bar

Morrow, et al. v. State Bar (9th Cir. 1999) 188 F.3d 1174


STIPULATION [See Professional Liability.]

Actions against attorneys, under CCP 340.6

Foxen v. Carpenter (2016) 6 Cal.App.5th 284 [211 Cal.Rptr.3d 372]


client’s claim of conversion against attorney is not time-barred under statute, as the claim does not require proof that attorney violated “professional obligation”

Lee v. Hanley (2015) 61 Cal.4th 1226 [191 Cal.Rptr.3d 36]

dismissal reversed to determine whether client’s action against attorney arose from the performance of legal services


Criminal offense of conspiracy to defraud by false pretenses or false promises is subject to three-year statute of limitations

People v. Milstein (2012) 211 Cal.App.4th 1158 [150 Cal.Rptr.3d 290]

Habeas petition

attorney abandonment may constitute extraordinary circumstances that may require relief

Foley v. Biter (9th Cir. 2015) 793 F.3d 998

death row inmate entitled to assistance from conflict-free counsel in federal habeas petition to argue equitable tolling


prisoner may be entitled to equitable tolling where there were extraordinary circumstances; attorney who resigns, running “writ mill” may be extraordinary

Porter v. Ollison (9th Cir. 2010) 620 F.3d 952
tolling of habeas petition deadline when prisoner did not have access to file

Lott v. Mueller (9th Cir. 2002) 304 F.3d 918

STIPULATION [See Authority of attorney, stipulation.]

SUBPOENA

Grand jury subpoena of court-appointed defense counsel to testify against client would likely destroy the attorney-client relationship

U.S. v. Bergeson (9th Cir. (Or.) 2005) 425 F.3d 1221

Of attorney information regarding client [See Search warrant.]

Prosecutor is not automatically entitled to subpoena a lawyer to testify against his client before a grand jury merely because the information sought is not privileged

U.S. v. Bergeson (9th Cir. (Or.) 2005) 425 F.3d 1221

Protection from discovery

subpoena duces tecum served on non-party DA for the production of documents, prepared by another entity, not enforceable as the documents were not generated by DA personnel nor was the DA qualified to attest to their authenticity


SUBSTITUTION OF COUNSEL [See Withdrawal.]

Code of Civil Procedure sections 284, 285

Rule 2-111, Rules of Professional Conduct (operative until May 26, 1989)

Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)

Abuse of discretion in denying criminal defendant’s request for substitution

U.S. v. Torres-Rodriquez (9th Cir. 1991) 930 F.2d 1375

Adverse party notice of

Code of Civil Procedure section 285

Appeal

Rule 8.36 and rule 8.768, California Rules of Court

Application for

Code of Civil Procedure section 284

“Appointed” distinguished from “retained” counsel for purposes of determining the right of an indigent defendant to replace an attorney without cause

People v. Turner (1992) 7 Cal.App.4th 1214

Attorney interest in case

Irvin v. Superior Court (1965) 63 Cal.2d 153, 158 [45 Cal.Rptr. 320]

Wright v. Security First National Bank (1939) 13 Cal.2d 139, 141 [88 P.2d 125]

O’Connell v. Superior Court (1935) 2 Cal.2d 473, 474 [41 P.2d 334]

Estate of Cazaurant (1934) 1 Cal.2d 712, 716 [36 P.2d 1069]

Gaige v. Atwater (1902) 136 Cal. 170, 172 [68 P. 598]


Attorney interest in subject matter

Telander v. Telander (1943) 60 Cal.App.2d 207 [140 P.2d 204]

Authority of attorney


actual authority from client to represent is more important than the substitution document recording it

In re Marriage of Park (1980) 27 Cal.3d 337 [165 Cal.Rptr. 792, 612 P.2d 882]


attorney had no right to file proposed fee order after discharge and substitution out of case

In re Marriage of Read (2002) 97 Cal.App.4th 476 [118 Cal.Rptr.2d 497]

defendant’s exclusion from an in-camera conference regarding defense counsel’s withdrawal deprived defendant of due process of law

*Bradley v. Henry (9th Cir. 2005) 428 F.3d 811

disagreement between attorney and client as to which motions to file is not a sufficient reason to require substitution

People v. Turner (1992) 7 Cal.App.4th 193

Based on public defender’s excessive caseload and limited resources


Client has absolute right to

General Dynamics v. Superior Court (1994) 7 Cal.4th 1164 [876 P.2d 487]

*Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]

Fracasse v. Brent (1972) 6 Cal.3d 784, 790


In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

CAL 1994-134

LA 489 (1997), LA 481

discharge retained counsel in criminal case

People v. Lara (2001) 86 Cal.App.4th 139 [103 Cal.Rptr.2d 201]

See How to Use This Index, supra, p. i
Conflict of interest

Conflicts of clients in different proceedings
Levensen v. Superior Court (1983) 34 Cal.3d 530

Consent to
Code of Civil Procedure section 284
SD 1972-17

Conservatorship proceedings
Prospective conservatee's due process interest in his statutory right to counsel requires, upon his request for substitute appointed counsel, that he be given a hearing to state the reasons for his request

Contingent fee agreement
Tracy v. MacIntrye (1938) 29 Cal.App.2d 145 [84 P.2d 526]

Court order
Cal of Civil Procedure section 284

Death of attorney
Code of Civil Procedure section 286

Denial of criminal defendant's motion for substitution of counsel without first conducting proper inquiry is abuse of discretion
U.S. v. Adelzo-Gonzalez (9th Cir. 2001) 268 F.3d 772

Dissolution of a corporation or partnership

Duty to represent client until obtain court approval, if required
In re Jackson (1958) 170 Cal.App.3d 773 [216 Cal.Rptr. 539]
Cal 1994-134

Excusable neglect not found when attorney fails to file for trial de novo as a result of taking over a large case load from another attorney including the arbitration matter

Failure to file substitution form constitutes negligence and may not be imputed to the client

Grand jury subpoena seeking non-privileged documents held by law firms takes precedence over civil protective order
In re Grand Jury Subpoenas (White) (9th Cir. 2010) 627 F.3d 769

In propria se

Local rule of substitution
Hock v. Superior Court of San Diego County (1990) 221 Cal.App.3d 670 [270 Cal.Rptr. 579]

Motion made one day before trial scheduled

New attorney's authority
Wells Fargo & Co. v. San Francisco (1944) 25 Cal.2d 37 [152 P.2d 625]
McMahjon v. Thomas (1896) 114 Cal. 588 [46 P. 732]
Carrara v. Carrara (1953) 121 Cal.App.2d 59 [262 P.2d 591]
Ross v. Ross (1953) 120 Cal.App.2d 70 [260 P.2d 652]
Estate of Morgan (1926) 94 Cal.App. 617 [271 P. 762]
McMunn v. Lehrke (1915) 29 Cal.App. 298 [155 P. 473]

Notice
Code of Civil Procedure section 284
Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]

In re Martinez (1959) 52 Cal.2d 808, 813 [345 P.2d 449]
Echlin v. Superior Court (1939) 13 Cal.2d 368, 372 [90 P.2d 63]
Wright v. Security First National Bank (1939) 13 Cal.2d 139, 141 [88 P.2d 125]
O'Connell v. Superior Court (1935) 2 Cal.2d 418 [41 P.2d 34]
Scott v. Superior Court (1928) 205 Cal. 525 [271 P. 906]
Todd v. Superior Court of San Francisco (1919) 181 Cal. 406, 411-413 [184 P. 684].
Gage v. Atwater (1902) 136 Cal. 170, 172 [68 P. 581]
Rundberg v. Belcher (1897) 118 Cal. 589 [50 P. 670]
Lee v. Superior Court (1896) 112 Cal. 354 [44 P. 666]
Ex parte Clarke (1881) 62 Cal. 490
People v. Ward (1972) 27 Cal.App.3d 218, 231 [103 Cal.Rptr. 671]
Estate of McManus (1963) 214 Cal.App.2d 390, 395 [29 Cal.Rptr. 543]
Metzenbaum v. Metzenbaum (1953) 115 Cal.App.2d 771, 775 [252 P.2d 1014]
Warden v. Lamb (1929) 98 Cal.App. 738 [277 P. 867]
Cal 1994-134

Notice of change of attorney
Code of Civil Procedure section 284
Death of attorney
- replacement after
Code of Civil Procedure section 286
Suspension of attorney
to adversary party
Code of Civil Procedure section 285
Notice of substitution
On motion of trial court
People v. Lucev (1986) 188 Cal.App.3d 551, 556
on request of criminal defendant
South v. Superior Court (1986) 188 Cal.App.3d 1055, 1060

Original attorney's authority
People v. Bouchard (1957) 49 Cal.2d 438 [317 P.2d 971]
Reynolds v. Reynolds (1943) 21 Cal.2d 560 [134 P.2d 251]
SUIT AGAINST CLIENT


People v. Hook (1967) 248 Cal.App.2d 618 [56 Cal.Rptr. 683]


Pre-signed substitution forms

LA 371 (1977)

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Code of Civil Procedure section 284

Rule 8.36, California Rules of Court

Echlin v. Superior Court (1939) 13 Cal.2d 368 [90 P.2d 63]

Wright v. Security etc. Bank (1939) 13 Cal.2d 139 [88 P.2d 125]

O'Connor v. Superior Court (1935) 2 Cal.2d 418 [41 P.2d 334]

Estate of Cazaurang (1934) 1 Cal.2d 712 [36 P.2d 1069]

Scott v. Superior Court (1928) 205 Cal. 525 [271 P. 906]

Rundberg v. Belcher (1897) 118 Cal. 589 [50 P. 670]

Smith v. Whittier (1892) 95 Cal. 279 [30 P. 529]


Refusal to execute


Removal of

appointment of replacement on

Code of Civil Procedure section 286

Replacement of

on death of attorney

Code of Civil Procedure section 286

on removal of attorney

Code of Civil Procedure section 286

on retirement of attorney

Code of Civil Procedure section 286

on suspension of attorney

Code of Civil Procedure section 286


on termination of services

Code of Civil Procedure section 286

Retirement of attorney

notice of replacement of, on

Code of Civil Procedure section 286

Scheduling conflict


Shareholder who leaves firm has no ownership or lien interest

upon fees owed to firm by client


Signed by client at outset of employment

improper

LA 371 (1977)

Substituted counsel

defendant’s right to conflict free counsel required that new appointed counsel be present before conducting further proceedings in open court to hear PD’s request to be re-appointed


diligence of new counsel substituted in at the last minute


duty with respect to client’s file

LA(l) 1964-5, LA(l) 1959-4

SD 1970-3, SF 1976-4

fee

- contingent

LA 50 (1927)

may recover for full performance under employment contract


notice to

LA 183 (1951, LA 154 (1945)

substitute counsel should only be appointed upon showing that defendant’s right to counsel has been substantially impaired


Substituting counsel

borrowed file of client’s returned to substituted counsel

LA 253 (1958)

Suspension of attorney

notice of replacement of

Code of Civil Procedure section 286

Termination of services

Code of Civil Procedure section 286

Timeliness of motion for

United States v. Moore (9th Cir. 1998) 159 F.3d 1154

Trial court denial of motion to substitute, denies right to effective assistance of counsel

Schell v. Witek (1999) 181 F.3d 1094

Withdrawal in domestic actions

Code of Civil Procedure section 285.1

SUIT AGAINST CLIENT [See Fee, unpaid.]

Dismiss one party’s in order to enhance chances of other

LA(l) 1968-6

For unpaid fee


SURVEILLANCE

Undercover surveillance of opposing party

LA 315 (1970)

SUSPENSION [See Disabled lawyer. Disbarment. Resignation.]

Bankruptcy court has inherent power to impose district-wide suspension of attorney

In re Brooks-Hamilton (9th Cir. 2009) 400 B.R. 238

Duties of suspended lawyer

Rule 9.20, California Rules of Court

-purpose of imposition of requirement to comply with Rule 9.20

In the Matter of Coppen (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861

Failure to comply with rule 9.20, California Rules of Court

Shapiro v. State Bar (1990) 51 Cal.3d 251 [794 P.2d 572]

Standard 1.4(c)(ii) proceeding for relief from actual suspension alcohol and drug addiction brought under control

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289

not a reinstatement proceeding

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289

petitioner’s burden of proof, preponderance of the evidence

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289

standard of review

-abuse of discretion or error of law

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289

-substantial evidence supported hearing judge’s findings

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289

summary nature of proceeding

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289

Suspended attorney

authority to represent party in litigation


discipline may be aggravated if attorney fails to take all steps necessary, short of practicing law, to protect client’s interest

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563

must be licensed at time services performed to recover fees


See How to Use This Index, supra, p. i
referrals from
LA(I) 1937-1
share office with
LA(I) 1937-1

TAX
Attorney's fees paid in tort-based action were excluded from client's gross income
Banatis v. Commissioner of Internal Revenue (9th Cir. 2003) 340 F.3d 1074
Contingency fee portion of settlement recovery constitutes taxable income
Determination of whether attorney's fees are to be included in gross income involves how federal law operates in light of a state's definition of attorney's rights in the action
Banatis v. Commissioner of Internal Revenue (9th Cir. 2003) 340 F.3d 1074
Failure of attorney to pay
In re Fakery (1973) 8 Cal.3d 842, 849-854
Fees paid directly to plaintiff's counsel by defendant pursuant to ADEA's fee-shifting provision is taxable income to plaintiff
Sinyard v. Commissioner of Internal Revenue (9th Cir. 2001) 258 F.3d 756

TEACHING

TERMINATION OF ATTORNEY-CLIENT RELATIONSHIP
[See Substitution of counsel. Withdrawal from employment.]
Rule 2-111, Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)
Agreement evidenced parties' intent to establish an ongoing attorney-client relationship of an open-ended nature, terminable only by specific methods described in the agreement and under conditions that included attorney's return of all property and funds to the client
By client
[See Discharge of attorney by client.]
Client may have a reasonable belief that attorney continued the client's representation even though attorney had not communicated with the client for two and a half years
Compliance with rule 9.20, California Rules of Court, in connection with disbarment
Bercovich v. State Bar (1990) 50 Cal.3d 116
Conflict of interest
Death or incapacity of attorney
appeal from judgment not extended by death of the attorney
Voinich v. Poé (1921) 52 Cal.App. 597 [199 P. 74]
Code of Civil Procedure section 286 requires notice to a party that his attorney has died
death of one member of the firm leaves option to consider employment terminated
Little v. Caldwell (1894) 101 Cal. 553 [36 P. 107]
party whose attorney has ceased to act must appoint new attorney
written notice required by adverse party to appoint another attorney
Code of Civil Procedure section 286
Larkin v. Superior Court (1916) 176 Cal. 719 [154 P. 841]
Death or incapacity of client
LA 300

death of client-defendant terminates attorney's authority to represent him in a suit
insanity or incapacity of client terminates authority of attorney
Sullivan v. Dunn (1926) 198 Cal. 183 [244 P. 343]
relation of attorney-client not terminated by death of client in a special contract of employment
Estate of Malloy (1929) 99 Cal.App. 96 [278 P. 488]
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Dependency proceeding
inability to provide competent legal services because of disagreement with a minor client
LA 504 (2000)
Discharge of attorney by client
absolute right to discharge
General Dynamics v. Superior Court (1994) 7 Cal.4th 1164 [876 P.2d 487]
Fracasse v. Brent (1972) 6 Cal.3d 784 [100 Cal.Rptr. 385, 494 F.2d 9]
CAL 1994-134
LA 489 (1997), LA 481
-attorney in an action may be changed at any time
Gage v. Atwater (1902) 136 Cal. 170 [68 P. 581]
-executors had absolute right to change attorneys at any stage of probate proceedings
Estate of McManus (1963) 214 Cal.App.2d 390 [29 Cal.Rptr. 543]
-if discharged without cause, client liable for compensation and damages
Echlin v. Superior Court (1939) 13 Cal.2d 368 [90 P.2d 63]
-may change attorneys at any stage of action even if contingent fee exists
Estate of Cazaurang (1934) 1 Cal.2d 712 [36 P.2d 1069]
-may discharge attorney at any time unless attorney has vested interest
-plaintiff was without authority to substitute an attorney adverse to interests of associates
Scott v. Donahue (1928) 93 Cal.App. 256 [269 P. 774]
-retained attorney in criminal case
People v. Lara (2001) 86 Cal.App.4th 139 [103 Cal.Rptr.2d 201]
-right of a litigant to change attorneys at any stage of a proceeding
Estate of Hardenberg (1936) 6 Cal.2d 371 [57 P.2d 914]
-right to change attorney at any state in action absence any relation of attorney to subject matter
Meadow v. Superior Court (1963) 59 Cal.2d 610 [30 Cal.Rptr. 824, 381 P.2d 64]
-right to discharge attorney even if attorney rendered valuable services
O'Connell v. Superior Court (1935) 2 Cal.2d 418 [41 P.2d 334]
-to prohibit discharge, attorney must have a "power coupled with an interest"
-wrongfully discharged under contingent fee contract entitled same compensation as if completed contemplated services
criminal matters
Code of Civil Procedure 284
TESTIMONY

Client’s motion to discharge counsel does not require showing of incompetency


Court discretion for continuance


Denial of defendant’s motion to discharge retained counsel was abuse of discretion

U.S. v. Brown (9th Cir. 2015) 785 F.3d 1337

Right to discharge retained counsel

U.S. v. Brown (9th Cir. 2015) 785 F.3d 1337


People v. Lara (2001) 86 Cal.App.4th 139 [103 Cal.Rptr.2d 201]

Duty is not dissolved

Corporate attorney cannot take sides in a serious dispute between owners (dissolution)


Minimal duties of attorney

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269

Power coupled with an interest

Agreement did not result in a contract coupled with an interest


-Contingent fee contract and assignment were ineffectual to create a power coupled with an interest

Estate of Cazaurang (1934) 1 Cal.2d 712 [36 P.2d 1069]

-Interest must be specific, must be in the subject matter of the litigation and must be beneficial


-Interest not created by execution of a contingent fee contract


-Interest must be a specific, present, and coexisting interest in the subject of the power or agency

O’Connell v. Superior Court (1935) 2 Cal.2d 418 [41 P.2d 334]

-Must be an interest in the thing itself

Scott v. Superior Court (1928) 205 Cal. 525 [271 P. 906]

-No exception when the relation of the attorney to subject matter arises from his employment

Telander v. Telander (1943) 60 Cal.App.2d 207 [140 P.2d 204]

Unwarranted discharge by court

Defendant’s exclusion from an in-camera conference regarding defense counsel’s withdrawal deprived defendant of due process of law

*Bradley v. Henry (9th Cir. 2005) 428 F.3d 811

-Order preventing attorneys from representing clients contrary to wishes of all those involved


-Over attorney’s and defendant’s consistent and repeated objections

Smith v. Superior Court (1968) 68 Cal.2d 547 [68 Cal.Rptr. 1, 440 P.2d 65]

Dismissal of case may not terminate attorney-client relationship

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354

Factors demonstrating ongoing attorney-client relationship with corporate client


Failure to move to withdraw as counsel paired with client’s belief that he was represented constitutes abandonment of a client

Foley v. Biter (9th Cir. 2015) 793 F.3d 998

Not necessary to terminate prior agreement where there was only a framework for future representation, contract was not self effectuating, it required reciprocal actions by attorney and client


Objective standard governs end of relationship


Firm’s representation terminated when firm emailed client that it “must withdraw” as client’s attorney, that its “attorney-client relationship with client is terminated forthwith,” and that it “no longer represents client with regard to any matters.”


Scheduling conflict


Standard for determining end of relationship


Undue influence

Attorney used party’s financial entanglements to coerce an agreement with plaintiff


TESTIMONY

See Witness.

Copy of results of discovery given to lawyer with some interest in the matter

LA(l) 1965-16

THIRD PARTY


THREATENING ADMINISTRATIVE ACTION WITH EEOC

CAL 1984-81

THREATENING CRIMINAL PROSECUTION

Rule 7-104, Rules of Professional Conduct (operative until May 26, 1989)

Rule 5-100, Rules of Professional Conduct (operative as of May 27, 1989)

In re Elkis (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160

Fiatley v. Mauro (2006) 39 Cal.4th 299 [46 Cal.Rptr.3d 606]


Bluestein v. State Bar (1974) 13 Cal.3d 162, 166-170 [118 Cal.Rptr. 175, 529 P.2d 599]


Libarian v. State Bar (1952) 38 Cal.2d 328, 328-329 [239 P.2d 865]

Lindenbaum v. State Bar (1945) 26 Cal.2d 505, 566-573 [160 P.2d 9]


In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627

LA 469 (1992)

SD 2005-1
TRADE NAME

disrespectful reference to defense attorney
-prosecutor effectively calling defense attorney a liar
United States v. Rodrigues (9th Cir. 1998) 159 F.3d 439

disrespectful reference to prosecutor
Hanson v. Superior Court of Siskiyou County (2001) 91 Cal.App.4th 106 [93 Cal.Rptr.2d 782]

disrespectful remarks concerning judge
Hogan v. State Bar (1951) 36 Cal.2d 807, 810 [228 P.2d 554]

falsey maligning appellate court judges

impugning integrity of prosecutor and legal profession
Hanson v. Superior Court of Siskiyou County (2001) 91 Cal.App.4th 75 [109 Cal.Rptr.2d 782]

knowingly presenting falsified check
Reznik v. State Bar (1969) 1 Cal.3d 198, 203 [81 Cal.Rptr. 769, 460 P.2d 599]

no discipline for factual statements unless the State Bar proves that such statements are false
Standing Committee on Discipline of the United States District Court v. Yagman (9th Cir. 1995) 55 F.3d 1430
In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775

no discipline for rhetorical hyperbole incapable of being proved true or false
Standing Committee on Discipline of the United States District Court v. Yagman (9th Cir. 1995) 55 F.3d 1430
In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775

repeated statements in pleadings and letters that impugned the integrity of numerous judges
In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775
series of offensive statements against judges and others
Lebbos v. State Bar (1991) 53 Cal.3d 37
In re Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160
unwarranted charges of bias against superior court judges

Business and Professions Code sections 6068(b), (c), (d), (g)
attacked those involved with State Bar and State Bar Court by commencing a federal civil rights action against the justices of the Supreme Court, State Bar Court judges and attorneys of the State Bar
In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

Business and Professions Code section 6068(d)
affirmative false representation actionable even though no harm results

attorney never directly asked by court, not guilty of intentionally misleading court by not expressly revealing facts
Clark v. State Bar (1952) 39 Cal.2d 161, 174 [246 P.2d 1]
OC 95-001

TRADE NAME

Anti-SLAPP
letter threatening reporting party to Attorney General, District Attorney, IRS, coupled with a demand for money is extortion as a matter of law and not protected under litigation privilege
plaintiff's letter to defendant is extortion as a matter of law, therefore it is not protected under the anti-SLAPP statute

Client of attorney
assisting client in the filing of an improper State Bar complaint
bad check for fees
LA 5 (1918)

Disciplinary action
attorney may not advise client to do what attorney may not do
In CAL. 1983-73, LA 469 (1992), SD 2005-1
Filing of Bar complaint as a prohibited act of extortion

In attempt to collect fees due and owing
Bluestein v. State Bar (1974) 13 Cal.3d 162, 166-170 [118 Cal.Rptr. 175, 529 P.2d 599]

Letter threatening reporting party to Attorney General, District Attorney, IRS, coupled with a demand for money is extortion as a matter of law and not protected under litigation privilege

Public prosecutor
CAL. 1989-106, SF 1975-6
Statement that "all available legal remedies will be pursued" may not be improper
CAL 1991-124

Threat may be implied
In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627

TRADE NAME [See Advertising, fictitious name. Practice of law, fictitious name.]

Business and Professions Code section 6164

TRIAL CONDUCT
Business and Professions Code sections 6068(a)
changing vote while serving as a juror in order to shorten deliberations and get back to law practice
In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141
counsel's flagrant and repeated violations of the court's orders
Osborne v. Todd Farm Services (2016) 247 Cal.App.4th 189-190 [202 Cal.Rptr.3d 84]
Business and Professions Code section 6068(b)
accusing judge of lack of integrity
In re Siegel (1975) 45 Cal.App.3d 843, 845 [120 Cal.Rptr. 864]

advising client to violate court order
arguing to jury that goal of defense and prosecution counsel is to misrepresent facts
Hanson v. Superior Court of Siskiyou County (2001) 91 Cal.App.4th 75 [109 Cal.Rptr.2d 782]
breach of an attorney’s duty to be truthful in statements made to a court

  In re Aguilar and Kent (2004) 34 Cal.4th 386 [18 Cal.Rptr.3d 874]

citing case known not to be controlling, failure to cite known controlling case


counsel’s absence from court, attorney may not answer court’s inquiry if harmful to client

SD 2011-1

concealing known material letter from court


concealment of known material information


  In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 196

  In the Matter of Jeffers (Review Dept 1994) 3 Cal. State Bar Ct. Rptr. 211

OC 95-001

counsel married to bailiff/court reporter

  CAL 1987-93

disrespectful reference to prosecutor

  Hanson v. Superior Court of Siskiyou County (2001) 91 Cal.App.4th 75 [105 Cal.Rptr.2d 782]


  In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96

OC 95-001

duty to disclose possible violation of court order by third party, no duty found

LA 394 (1982)

failure to disclose material facts


  In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166

  *Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266

  In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211

OC 95-001

falsely maligning appellate court judges


falsely maligning prosecutor and legal profession

  Hansen v. Superior Court of Siskiyou County (2001) 91 Cal.App.4th 75 [105 Cal.Rptr.2d 782]

  knowingly allowing client to testify falsely

  People v. Pike (1962) 58 Cal.2d 70, 97 [22 Cal.Rptr. 664, 372 P.2d 656]

law firm representing corporation has duty to disclose to the court and to opposing counsel corporate client’s suspended status


  misleading judge by concealment of request for continuance

  Grove v. State Bar (1965) 63 Cal.2d 312, 315 [46 Cal.Rptr. 513, 405 P.2d 553]

OC 95-001

misleading judge through failure to disclose, filing false documents

  Eschwig v. State Bar (1969) 1 Cal.3d 8, 17 [81 Cal.Rptr. 352, 459 P.2d 904]


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failure to disclose to judge earlier order affecting same parties; knowing failure to disclose to judge intended use of granted ex parte order
failure to disclose to judge whereabouts of absent opposing counsel
OC 95-001

misleading the court
In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166
negligent failure to cite applicable case violates rule
People v. State Bar (1975) 15 Cal.3d 609, 617 [125 Cal.Rptr. 471, 542 P.2d 631]

failure to disclose to judge earlier order affecting same parties; knowing failure to disclose to judge intended use of granted ex parte order
failure to disclose to judge whereabouts of absent opposing counsel
OC 95-001

misleading the court
In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166
negligent failure to cite applicable case violates rule
People v. State Bar (1976) 18 Cal.3d 286, 291 [133 Cal.Rptr. 864, 555 P.2d 1104]
failure to disclose to judge earlier order affecting same parties; knowing failure to disclose to judge intended use of granted ex parte order
failure to disclose to judge whereabouts of absent opposing counsel
OC 95-001

misleading the court
In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166
negligent failure to cite applicable case violates rule
People v. State Bar (1976) 18 Cal.3d 286, 291 [133 Cal.Rptr. 864, 555 P.2d 1104]
failure to disclose to judge earlier order affecting same parties; knowing failure to disclose to judge intended use of granted ex parte order
failure to disclose to judge whereabouts of absent opposing counsel
OC 95-001
negligent, not intentional misrepresentation, is still misrepresentation and attorney must inform court upon such realization


suspended corporate client’s status


Obstruction of justice

In re Richardson (1930) 209 Cal. 492, 499 [288 P. 669]

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

Offensive descriptions of opposing party’s counsel

United States v. Wunsch (9th Cir. 1996) 84 F.3d 1110

Snyder v. State Bar (1976) 18 Cal.3d 286, 292 [133 Cal.Rptr. 528, 557 P.2d 1104]


Offensive personality

United States v. Rodrigues (9th Cir. 1998) 159 F.3d 439

United States v. Wunsch (9th Cir. 1996) 84 F.3d 1110

Lebbo v. State Bar (1991) 53 Cal.3d 37

Van Sloten v. State Bar (1989) 48 Cal.3d 921, 925


Dixon v. State Bar (1982) 32 Cal.3d 728, 735


Snyder v. State Bar (1976) 18 Cal.3d 286, 292


In re Elkins (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 179

unconstitutional vagueness

United States v. Wunsch (9th Cir. 1996) 84 F.3d 1110

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 775

Omission of material statements of fact or law


In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166

Peremptory challenges to exclude all Asians from the jury as possible trial court error


Perjury by client

--criminal proceeding


Lowery v. Caldwell (9th Cir. 1978) 575 F.2d 727

People v. Guzman (1988) 45 Cal.3d 915 [248 Cal.Rptr. 467]

People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]


OC 2003-01

--disclosure of

--by attorney

People v. Guzman (1988) 45 Cal.3d 915 [248 Cal.Rptr. 467]

People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]


CAL 1983-4

LA 386 (1981), LA 305 (1968)

TRIAL CONDUCT

-no civil liability for attorney for inducing false testimony by client


narrative form of testimony is best choice when attorney fears client will commit perjury

People v. Guzman (1996) 45 Cal.3d 915 [248 Cal.Rptr. 467]

People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]


of former client in ongoing case

LA 386 (1977)

withdrawal

OC 2003-01

-by attorney

People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]


CAL 1983-4

SD 1983-8

LA 305 (1968)

Prejudicial conduct of counsel

reversal of verdict on appeal


Prejudicial statements during closing argument [See Closing argument]Privileged acts of attorney

attorney’s acts found not privileged under Civil Code section 47(2)

Argentieri v. Zuckerberg (2017) 8 Cal.App.5th 768 [214 Cal.Rptr.3d 358]


“interest of justice” test


Pro hac vice attorney

Rule 9.40, California Rules of Court

Pacilfan v. George (9th Cir. 2000) 229 F.3d 1226

censure for failure to follow local court rules

United States v. Ries (9th Cir. 1996) 100 F.3d 1469

United States v. Summet (9th Cir. 1996) 862 F.2d 784

Public defender

assignment to act as advisory counsel proper even though attorney is officially relieved of the representation


refusal to obey court order to proceed with care excused when counsel is unprepared


Punctuality for court appearances


Repeated threatening telephone calls

In re Allis (9th Cir. 1976) 531 F.2d 1391

Removal of defense counsel warranted when counsel’s repeated delays are the result of a medical condition


Repeated questioning after objection sustained


TRIAL CONDUCT


Reversal of judgment in judicial proceeding

Respect for judiciary

Representation by incompetent counsel not enough for reversal

Repetitive motions

Sanctions

altering evidence in criminal trial

published letter written about opinion of a judge

faith" or "willful misconduct" by attorneys

documents to third party

attorney/debtor for transferring property with intent to hinder, bankruptcy court imposed discovery sanctions against

criminal record where such remarks have no basis in fact

prosecutorial misconduct to hint that defendant has prior

presenting fabricated documents, making false

false statement of law

false pleading

false statement of law

frivolous pleadings

frivolous appeals

concealment of suspended corporate client's status

Palm Valley Homeowners Association, Inc. v. Design


delay

In re Silberkraus (9th Cir. 2003) 336 F.3d 864

In the Matter of Torres (Review Dept. 2007) 5 Cal. State

Bar Ct. Rptr. 19

failure to comply with court order

Kelly v. Wengler (9th Cir. 2016) 822 F.3d 1085

Osborne v. Todd Farm Services (2016) 247 Cal.App.4th

43 [202 Cal.Rptr.3d 84]


-law firm must pay sanctions for continuing to pursue

unlawful detainer action despite automatic stay imposed

by bankruptcy court

In re H Granados Communications, Inc. (9th Cir. BAP

2013) 503 B.R. 726

failure to file an opposition to summary judgment does not make the failure willful and thus court's grant of terminating

sanctions was abuse of discretion


26 Cal.App.5th 509 [237 Cal.Rptr.3d 45]

Federal Rule 11 sanctions levied only on lawyers, not law firms


493 U.S. 120 [110 S.Ct. 456]

Truedsoll v. Southern California Permanente Medical

Group (9th Cir. 2002) 293 F.3d 1146

frivolous appeal


-granting of additional sanctions against plaintiffs and

their trial attorney warranted based on frivolous appeal

Bucur v. Ahmad (2016) 244 Cal.App.4th 175 [198 Cal.Rptr.3d 127]

frivolous pleadings

580 Folsom Associates v. Prometheus Development Co.


-in favor of dismissed party for bad faith tactics of

plaintiff's attorney


215 Cal.App.3d 353

limitations

-court had no authority to award costs of future
depositions as monetary sanction for coaching plaintiff
during deposition where those costs had not yet been

incurred


-juvenile proceeding


multiplying proceedings unreasonably and vexatiously under

28 U.S.C. section 1927

Lahiri v. Universal Music and Video (9th Cir. 2010) 606 F.3d 1216

Stanley v. Woodford (9th Cir. 2006) 449 F.3d 1060

Gomez v. Vernon (9th Cir. (Idaho) 2001) 255 F.3d 1118

[50 Fed. R. Serv.3d (Callaghan) 436]

In re DeVille (9th Cir. BAP 2002) 280 B.R. 483
TRIAL CONDUCT

procure and countenance the commission of perjury

In re Allen (1959) 52 Cal.2d 762, 767 [344 P.2d 609]

public defender questions veracity of criminal defendant’s witnesses

In re Atchley (1957) 48 Cal.2d 408, 418 [310 P.2d 15]

requires proof of corrupt agreement between attorney and witness

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456

rule prohibiting ex parte communications does not bar discussions initiated by employee of defendant corporation with government attorney for the purpose of disclosing that corporate officers are attempting to suborn perjury and obstruct justice

United States v. Talao (9th Cir. 2000) 222 F.3d 1133

Suppression of evidence

Penal Code section 135

Tape recorder, use during trial

People v. Ashley (1990) 220 Cal.App.3d 919 [269 Cal.Rptr. 769]

Two attorneys may question a deponent when deponent has agreed

Violation of local court rule

- attorney not subject to sanctions under local rules for

Peabody v. Maud Van Courtland Hill Schroll Trust (9th Cir. 1989) 892 F.2d 772

-running for new trial

In re Marriage of Reese and Guy (1999) 73 Cal.App.4th 1214 [87 Cal.Rptr.2d 339]

Solicitation of perjured testimony

In re Allen (1959) 52 Cal.2d 762, 768 [344 P.2d 609]

Special appearances

specially appearing attorney owes a duty of care to the


Statement

use of one that may have been improperly obtained

LA 376 (1978)

Subornation of perjury

attorney instructs client to commit perjury

Paonessa v. State Bar (1954) 43 Cal.2d 222, 226

attorney may not knowingly allow witness to testify falsely, whether he or she is criminal defendant or otherwise

Jackson v. Brown (9th Cir. 2008) 513 F.3d 1057

People v. Pike (1962) 58 Cal.2d 70, 97 [22 Cal.Rptr. 664]

criminal defendant insists on testifying perjuriously, appropriate and necessary for defense counsel to present request to withdraw


knowingly countenance the commission of perjury

In re Jones (1971) 5 Cal.3d 390, 400 [96 Cal.Rptr. 448]

lack of sufficient evidence to prove attorney advised client to commit perjury

In re Petersen (1929) 208 Cal. 42, 52 [280 P. 124]

no duty to offer on client’s behalf testimony which is untrue

in criminal proceeding

in Branch (1969) 70 Cal.2d 200, 212 [74 Cal.Rptr. 233]

penalty

In re Jones (1929) 208 Cal. 240, 242-243 [280 P. 964]

presentation of known false claim to insurance company by attorney

TRIAL PUBLICITY


TRIAL PUBLICITY

Rule 5-120, Rules of Professional Conduct (operative October 1, 1995).

Statements found not in violation of rule Ramirez v. Trans Union, LLC (N.D. Cal. 2013) 2013 WL 1164921, 2013 U.S. Dist. Lexis 39120

TRUST ACCOUNT

See [Assignment. Bankruptcy. Estate, trustee.]

TRUSTEE

See [Client’s trust account.]

Action brought by beneficiaries against attorney for trustee

Attorney as trustee, client as beneficiary
Probate Code sections 15687 and 16004(c)
In re Marriage of Wagoner (1986) 176 Cal.App.3d 936 [222 Cal.Rptr. 479]

Attorney-client privilege

Attorney-client relationship does not extend to beneficiaries

Breach of trust duty fiduciary duty

Cannot assign legal malpractice claim by trustee of bankruptcy estate

Employs himself as counsel for trustee
LA(I) 1966-2

Escrow holder
In re Marriage of Wagoner (1986) 176 Cal.App.3d 936 [222 Cal.Rptr. 479]

Legatee for testamentary trust
LA 219 (1954)

Non-attorney trustee who represents trust in action to protect trust property engages in unauthorized practice of law

Receiver entitled to attorney-client privilege

Standing to sue corporate attorneys of “sham” corporation for malpractice
Loyd v. Paine Webber, Inc. (9th Cir. 2000) 208 F.3d 755

Successor trustee “stands in the shoes” of predecessor trustee and thus may assert legal malpractice claims against predecessor’s attorney

Trustee as client of attorney
Probate Code section 16247

Unauthorized practice of law not found where non-attorney represents himself as sole trustee, sole settlor and beneficiary in litigation involving trust property

UNAUTHORIZED PRACTICE OF LAW

Rule 3-101, Rules of Professional Conduct (operative until May 26, 1989)
Rule 1-300, Rules of Professional Conduct (operative as of May 27, 1989)

Business and Professions Code section 6105
McGregor v. State Bar (1944) 24 Cal.2d 283, 287

Business and Professions Code section 6125


See How to Use This Index, supra, p. i
UNAUTHORIZED PRACTICE OF LAW

In re Steven C. (1970) 9 Cal.App.3d 255, 265
In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966
76 Cal. Ops. Gen. 208 (9/17/93; opn. no. 93-416)
76 Cal. Ops. Gen. 193 (8/30/93; opn. no. 93-303)
Business and Professions Code section 6126
Z. A. v. San Bruno Park School District (9th Cir. 1999) 165 F.3d 1273
In re Johnson (1992) 1 Cal.4th 689 [4 Cal.Rptr.2d 170]
People v. Perez (1979) 24 Cal.3d 133, 142 [155 Cal.Rptr. 176, 594 P.2d 1]
Farnham v. State Bar (1976) 7 Cal.3d 605, 612 [131 Cal.Rptr. 661, 552 P.2d 445]
Gerhard v. Stephens (1968) 68 Cal.2d 864, 917-918 [69 Cal.Rptr. 478, 242 P.2d 490]
Crawford v. State Bar (1960) 54 Cal.2d 659, 666 [7 Cal.Rptr. 746, 355 P.2d 490]
People v. Stairs (2017) 7 Cal.App.5th 215 [122 Cal.Rptr.3d 622]
In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966
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contempt of court
Business and Professions Code section 6127
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Business and Professions Code section 6126
misdemeanor
Business and Professions Code section 6126
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Business and Professions Code section 6127(b)
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Ridley v. State Bar (1972) 6 Cal.3d 551, 558 [99 Cal.Rptr. 873, 493 P.2d 105]
Griffith v. State Bar (1953) 40 Cal.2d 470, 472
Dudney v. State Bar (1937) 8 Cal.2d 555, 562
Smallberg v. State Bar (1931) 212 Cal. 113, 119
In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]
In re Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708
advising non-lawyer who performs services in forming corporations for charge
LA 69 (1933)
association with firm rendering advice concerning
certification of non-resident, out-of-state attorney
contract
advising agent concerning legality of
--being negotiated by agent for fee
LA 80 (1935)
corporation provides paid legal services
--for employees
LA 292 (1965)
disbarred lawyer to practice
Crawford v. State Bar (1960) 54 Cal.2d 659 [7 Cal.Rptr. 746, 355 P.2d 490]
LA 402 (1982)
employees of dual practice brokerage/law firm
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LA 359 (1976), LA 327 (1972)
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LA 372 (1978)
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LA 426 (1984)
SD 2007-1
living trust marketers
In re Mid-American Living Trust Association, Inc., et al. (Mo. 1996) 927 S.W.2d 855
The Florida Bar Re Advisory Opinion-Nonlawyer Preparation of Living Trusts (Fla. 1992) 613 So.2d 426
out-of-state lawyer
--renting office to--where public might be misled to believe person
admitted in California
LA 99 (1936)
outsourced legal services
LA 518 (2006)
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partnership with doctor providing legal services
LA 335 (1973)
resigned attorney allowed to practice
Rule 1-311, allowed resigned attorney to sign up clients, split fees, negotiate, engage in insurance fraud
In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920
uncharged violation of rule 1-300(A) considered in aggravation and involved moral turpitude
In the Matter of Bragg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615
Arbitration
certification of non-resident, out-of-state attorney representatives
Code of Civil Procedure section 1282.4
Assuming and acting as attorney without authority
contempt of court
Business and Professions Code section 6127(a)
Howard v. Superior Court (1975) 52 Cal.App.3d 722 [125 Cal.Rptr. 255]
UNAUTHORIZED PRACTICE OF LAW


Attorneys


California attorney is disbarred for practicing law in other states by settling consumer debt matters and holding himself out as entitled to practice in those jurisdictions.

In the Matter of Leonard (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250

controlled by consultants

Cal 1984-79

criminal defendant’s state constitutional right to counsel violated when during trial attorney resigns with charges pending from the bar.

In re Johnson (1992) 1 Cal.4th 699 [4 Cal.Rptr.2d 170]


disbarred

In re McKelvey (1927) 82 Cal.App. 426, 429 [255 P. 834]

out-of-state

--arbitration representatives

Code of Civil Procedure section 1282.4

--California Rules of Court do not require out-of-state law firms to apply to appear pro hac vice in California courts when firm employs attorneys who are licensed to practice law in California to represent clients.


--hired as “consultant” who merely assists California lawyer may recover attorney fees

Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815

--lawyer renting office to

--where public might be led to believe person admitted in California

LA 99 (1936)

resigned attorney may not represent parties in state administrative hearings


--law corporations are members of the State Bar and are bound by rules prohibiting aiding resigned attorneys in the unauthorized practice of law.


suspended from practice, while

Porter v. State Bar (1990) 52 Cal.3d 518

In re Nancy (1990) 51 Cal.3d 186


Silva-Vidor v. State Bar (1989) 49 Cal.3d 1071


Ainsworth v. State Bar (1988) 46 Cal.3d 1218


Farnham v. State Bar (1976) 17 Cal.3d 605, 612 [131 Cal.Rptr. 661, 552 P.2d 445]

In re Cadwell (1975) 15 Cal.3d 762 [125 Cal.Rptr. 889]

Ridley v. State Bar (1972) 6 Cal.3d 551, 559 [99 Cal.Rptr. 873, 393 P.2d 105]

Abraham v. State Bar (1941) 17 Cal.2d 625 [111 P.2d 317]

Hill v. State Bar of California (1939) 14 Cal.2d 732, 735

In re the Marriage of Bianco (2013) 221 Cal.App.4th 826 [164 Cal.Rptr.3d 785]


People v. Medler (1986) 177 Cal.App.3d 927 [223 Cal.Rptr. 401]

Gomes v. Roney (1979) 88 Cal.App.3d 274 [151 Cal.Rptr. 756]

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

In the Matter of Mason (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495

In the Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343

In the Matter of Trousl (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229

Bankruptcy

11 U.S.C. § 110(c) enacted to remedy widespread fraud and the unauthorized practice of law in the bankruptcy petition preparers industry.

In re Reynoso (9th Cir. 2007) 477 F.3d 1117

Taub v. Weber (9th Cir. 2004) 366 F.3d 966


attorney must be admitted to practice in the jurisdiction where the services were rendered.

In re Peterson (1994) 163 B.R. 665

attorney not licensed in Arizona, but who is admitted to practice before Arizona district court, can receive fee as counsel for Chapter 13 debtor.

In re Poole (9th Cir. BAP 2000) 222 F.3d 618

In re Mendez (9th Cir. BAP 1999) 231 B.R. 86

Complaints about

Contact: Unauthorized Practice of Law

Office of Complaint Intake

State Bar of California

845 Figueroa Street, Suite 100

Los Angeles, California 90017-5450

Telephone: (800) 843-9053

Questions regarding research assistance on activities of law clerks, paralegals, and inactive members.

Contact: Unauthorized Practice of Law

Office of Professional Competence, Planning & Development

180 Howard Street

San Francisco, CA 94105

(415) 538-2150

(800) 238-4427 (within CA)

Contempt of court

Business and Professions Code section 6127 advertising or holding oneself as entitled to practice.

Business and Professions Code section 6127(b) assuming and acting as attorney without authority.

Business and Professions Code section 6127(a)

Contract preparation

by non-lawyer

--for compensation

--involving legal knowledge of skill

LA 80 (1935)

Corporations


People v. Merchants Protective Corp. (1922) 189 Cal. 531, 535


People v. California Protective Corp. (1926) 76 Cal.App. 354, 360

76 Cal. Ops. Gen. 208 (9/27/93; opn. no. 93-303)

appearing in small claims court

Code of Civil Procedure section 116.540
collections
LA 522 (2009)
Corporations Code Section 13406(b) does not govern all nonprofit corporations providing legal services
Frue v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221
in-house attorney
SD 1975-18
law corporations are members of the State Bar and are bound by rules prohibiting aiding resigned attorneys in the unauthorized practice of law
need not be represented by counsel before administrative agencies and tribunals
sole proprietorship on appeal
Code of Civil Procedure section 904.3
to provide financial and other services
LA 372 (1978)
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In re Glad (9th Cir. 1990) 98 B.R. 976
Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]
Farnham v. State Bar (1976) 17 Cal.3d 605 [131 Cal.Rptr. 661]
Baron v. City of Los Angeles (1970) 2 Cal.3d 535, 542 [86 Cal.Rptr. 873]
People v. Starski (2017) 7 Cal.App.5th 215 [212 Cal.Rptr.3d 622]
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In the Matter of Tady (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121
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Definition of “attorney”
Department of Unauthorized Practice of Law. [See Complaints or Questions.]
Deposition in California for use in another state
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Disgorgement of fees
bankruptcy attorney admitted in one state but not admitted in the jurisdiction where he rendered the legal services ordered to disgorge fees to the estate
In re Peterson (1994) 163 B.R. 665
bankruptcy petitioner preparer ordered to disgorge excessive fees for engaging in unauthorized practice of law
Taub v. Weber (9th Cir. 2004) 366 F.3d 966
non-attorney who offered financial services and referred debtor to bankruptcy counsel not required to disgorge fees where court found no evidence of unauthorized practice of law
In re Peterson (1994) 163 B.R. 665
*“Do-it-yourself”*
Howard v. Superior Court (1975) 52 Cal.App.3d 722 [125 Cal.Rptr. 255]
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Spanos v. Skours (1966) 364 F.2d 161
Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]
McCue v. State Bar (1930) 211 Cal. 57 [293 P. 47]
bankruptcy court
-attorney not licensed in Arizona, but who is admitted to practice before Arizona district court, can receive fee as counsel for Chapter 13 debtor
In re Poole (9th Cir. BAP 1999) 222 B.R. 86
-suspension from federal practice is not dictated by state rules
In re Poole (9th Cir. BAP 2000) 222 F.3d 618
disbarment from state does not result in automatic disbarment from Federal Court
In the Matter of Ruffalo (1968) 390 U.S. 544 [88 S.Ct. 1222]
Federal District Courts (Central, Eastern, Northern re State Bar Membership)
Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815
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Giannini v. Real (9th Cir. 2009) 556 F.3d 815
Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815
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Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]
state prohibition of practicing law without a license is assimilated into federal law under Assimilative Crimes Act
United States v. Clark (9th Cir. 1999) 195 F.3d 446

Federal law
State Bar Act does not regulate practice before United States courts
Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815
Augustine v. Department of Veterans Affairs (Fed. Cir. 2005) 429 F.3d 1334
Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]
state prohibition of practicing law without a license is assimilated into federal law under Assimilative Crimes Act
United States v. Clark (9th Cir. 1999) 195 F.3d 446

Fees for legal services
bankruptcy attorney admitted in one state but not admitted in the jurisdiction where he rendered the legal services ordered to disgorge fees to the estate
In re Peterson (1994) 163 B.R. 665
must be licensed at time services performed to recover
Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815
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UNAUTHORIZED PRACTICE OF LAW


In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896

-out-of-state attorney who merely assists California lawyer may recover attorney fees

Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815

-pro hac vice

Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815

Financing arrangements jointly controlled by buyer and seller may not be entitled to same fees as licensed attorney


out-of-state attorney who merely assists California lawyer may recover attorney fees

Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815

non-attorney’s law firm representative of injured employee at workers’ compensation proceeding may not be entitled to same fees as licensed attorney

Guardian ad litem


J.W., a Minor, etc. v. Superior Court (1993) 17 Cal.App.4th 958 [22 Cal.Rptr.2d 527]

Guardian ad litem

Holding oneself out as entitled to practice law

Business and Professions Code section 6127

California attorney held himself out as entitled to practice law in other states

In the Matter of Lenard (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250

contempt of court

Business and Professions Code section 6127(b)

In re Johnson (1992) 1 Cal.4th 689 [4 Cal.Rptr.2d 170]


disclaimer explaining that the advertiser is not licensed may permit use of terms (i.e., “accountants”) which are normally used only by state licensees

Moore v. California State Board of Accountancy (1992) 2 Cal.4th 996 [9 Cal.Rptr.2d 358]

honorific “ESQ” appended to a signature creates an impression that the person signing is presently able and entitled to practice law

People v. Starks (2017) 7 Cal.App.5th 215 [212 Cal.Rptr.3d 622]

In the Matter of Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83

CAL 1999-154

lawyer

-disbarred or under suspension

Business and Professions Code sections 6125, 6126, and 6127

Crawford v. State Bar (1960) 54 Cal.2d 659 [7 Cal.Rptr. 746]

-resigned with charges pending mid-trial

In re Johnson (1992) 1 Cal.4th 689 [4 Cal.Rptr.2d 170]


letterhead of New York law firm listing a California lawyer as “admitted in California only”


misdemeanor where person not active member of the State Bar of California

Business and Professions Code section 6126 (a) non-lawyers

Business and Professions Code section 6127(b)

In re Naney (1990) 51 Cal.3d 186 [793 P.2d 54]

In re Cadwell (1975) 15 Cal.3d 762 [125 Cal.Rptr. 889, 543 P.2d 257]

-use of terms “Legal Aid,” “Legal Aid Services,” “Legal Services"


non-member administrative proceeding advisor

Z. A. v. San Bruno Park School District (9th Cir. 1999) 165 F.3d 1273


suspension order disqualifies an attorney not only from practicing law but also from holding himself or herself out as entitled to practice


In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

In the Matter of Tady (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121

In the Matter of Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83

while living out-of-state, indicating only that respondent was licensed in California, no indication such as “only” in California or “not licensed” in other state

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 895

Immigration matters

law corporations allowed a resigned member to provide legal services in INS matters to clients in violation of rules of professional conduct and the State Bar act


use of Notarios or Notarios publicos

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

Inactive member

In the Matter of Tady (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121

Individuals with Disabilities Education Act (IDEA) allows parents to prosecute claims under the act on their own behalf without representation by counsel


Ineffective assistance of counsel


in-house counsel representing insureds

CAL 1987-91

Internet advertising

CAL 2001-155
Licensed attorneys practicing in another jurisdiction where they are not licensed including in a federal court which required membership in the state where resident resided and practicing in that state.

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896

Licensed attorneys who are not active members of the State Bar of California certification of non-resident, out-of-state attorney arbitration representatives

Code of Civil Procedure section 1282.4

effect on underlying matter

Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]


People v. Medler (1986) 177 Cal.App.3d 927 [223 Cal.Rptr. 401]

Gomez v. Romay (1979) 88 Cal.App.3d 274

-criminal defendant’s state constitutional right to counsel violated when during trial attorney resigns with charges pending from the bar

In re Johnson (1992) 1 Cal.4th 689 [4 Cal.Rptr.2d 170]


out-of-state attorneys

Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815

Russell v. Hug (9th Cir. 2002) 275 F.3d 812

Z. A. v. San Bruno Park School District (9th Cir. 1999) 165 F.3d 1273

Giannini v. Real (9th Cir. 1990) 911 F.2d 354

Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]

In re McCue (1930) 211 Cal. 57, 67 [293 P. 47]


Cowen v. Calabrese (1964) 230 Cal.App.2d 870, 872 [41 Cal.Rptr. 441]

subject to liability for malpractice


outsourced legal services

LA 518 (2006)

SD 2007-1

see also:

40 So.Cal.L.Rev. 569

11 ALR3d 907

19 Stanf.L.Rev. 856

Living Trusts

In re Mid-American Living Trust Association, Inc. et al. (Mo. 1996) 927 S.W.2d 855

The Florida Bar Re Advisory Opinion-Nonlawyer Preparation of Living Trusts (Fla. 1992) 613 So.2d 426

CAL 1997-148

unauthorized practice of law not found where non-attorney represents himself as sole trustee, sole settlor and beneficiary in litigation involving trust property


Medical-legal consulting service

Ojeda v. Sharp Cabrillo Hospital (1992) 8 Cal.App.4th 1

Name of attorney

use of, by non-lawyer

LA 16 (1922)

Non-lawyers

In re Peterson (1994) 163 B.R. 665

bankruptcy petition preparers

In re Reynoso (9th Cir. 2007) 477 F.3d 1117

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UNAUTHORIZED PRACTICE OF LAW

-bankruptcy court required under the bankruptcy code to disallow any fee paid to BPP found to be in excess of the value of services

Scott v. United States (In re Doser) (9th Cir. 2005) 412 F.3d 1056

code provision requiring public disclosure of petition preparers' social security numbers does not violate equal protection, due process, and right to privacy

certified law student

People v. Perez (1979) 24 Cal.3d 133, 142 [155 Cal.Rptr. 176, 594 P.2d 11]
certified public accountant


collection agencies


LeDoux v. Credit Research Corp. (1975) 52 Cal.App.3d 451, 454 [125 Cal.Rptr. 166]


contract negotiation

corporation

-Corporations Code Section 13406(b) does not govern all nonprofit corporations providing legal services

Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221

need not be represented by counsel before administrative agencies


-representation by, prohibited in court of law

corporation formation

LA 69 (1933)
divorce center

SD 1983-12

effect on underlying matter


City of Downey v. Johnson (1968) 263 Cal.App.2d 775 [69 Cal.Rptr. 630]

eviction service


executor of estate

City of Downey v. Johnson (1968) 263 Cal.App.2d 775, 778 [69 Cal.Rptr. 830]

heir hunter

Estate of Butler (1947) 29 Cal.2d 644, 651 [177 P.2d 16]

Estate of Wright (2001) 90 Cal.App.4th 228 [108 Cal.Rptr.2d 572]

Estate of Collins (1968) 268 Cal.App.2d 86, 92 [73 Cal.Rptr. 599]

immigration consultants

-no denial of due process where immigrants followed the advice of non-attorney immigration consultant and affirmatively declined assistance of counsel

Hernandez v. Mukasey (9th Cir. 2008) 524 F.3d 1014

insurance adjuster

Insurance Code section 14000 et seq.

Insurance Code section 15002 et seq.

In the Matter of Bragg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615

insurance company

Woodriff v. McDonald’s Restaurants (1977) 75 Cal.App.3d 655, 658 [142 Cal.Rptr. 367]

law clerks

In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]

Johnson v. Davidson (1921) 54 Cal.App. 251, 257 [202 P. 159]

SD 1983-7, SD 1974-5

law students

In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]

SD 1983-7, SD 1974-1, SD 1973-9

living trust marketers

In re Mid-American Living Trust Association, Inc., et al. (Mo. 1996) 927 S.W.2d 855

The Florida Bar Re Advisory Opinion-Nonlawyer Preparation of Living Trusts (Fla. 1992) 613 So.2d 426 CAL 1997-148

negotiate reaffirmation agreement with chapter 7 debtors


In the Matter of Bragg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615

non-member administrative proceeding advisor


notary public

Biakana v. Irving (1958) 49 Cal.2d 647 [320 P.2d 16]


outsourced legal services

LA 518 (2006)

paralegals

Jacoby v. State Bar (1977) 19 Cal.3d 359, 364, fn.3

LA 522 (2009), OC 94- 002

appearance before Workers’ Compensation Appeals Board

CAL 1988-103

-general guidelines

SD 1983-7, SD 1976-9

parents may prosecute claims under the Individuals with Disabilities Education Act without representation by counsel


penalties and other effects

In re Carpenter (1931) 213 Cal. 122 [1 P.2d 983]


probation officer


providing small claims, para-court services in partnership with attorney

SD 1983-4

real estate brokers


resigned attorney

-attorney allowed resigned attorney to sign up clients, split fees, negotiate, engage in insurance fraud

In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920

resigned attorney may not represent parties in state administrative hearings


See How to Use This Index, supra, p. i
scrivener
-petition preparer’s interpretation of such terms as “market value” and “secured claim or exemption” went beyond his role of scrivener

Tauby v. Weber (9th Cir. 2004) 366 F.3d 966

trustee represents interests of beneficiaries

Ziegler v. Nickel (1998) 64 Cal.App.4th 545 [75 Cal.Rptr.2d 312]

unlawful detainer assistants


Out-of-state attorneys

Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 566 F.3d 815

Russell v. Hug (9th Cir. 2002) 275 F.3d 812

Giannini v. Real (9th Cir. 1990) 911 F.2d 354

In re McCue (1930) 211 Cal. 57, 67 [293 P. 47]


Cowen v. Calabrese (1964) 230 Cal.App.2d 870, 872 [41 Cal.Rptr. 441]

as ghostwriter

OC 2014-1

bankruptcy attorney admitted in one state but not admitted in the jurisdiction where he rendered the legal services ordered to disgorge fees to the estate

In re Peterson (1994) 163 B.R. 665

California may exercise personal jurisdiction over out-of-state law firm that employs California member performing legal services governed by California law


certification of non-resident, out-of-state attorney representatives

Code of Civil Procedure section 1282.4

foreign attorney’s declaration of fault entitled client to relief under CCP § 473


out-of-state law firms not required to apply to appear pro hac vice in California courts when firm employs attorneys who are licensed to practice law in California to represent clients


subject to liability for malpractice


see also:

40 So.Cal. L.Rev. 569

11 ALR 907

19 Stanf.L.Rev. 856

Outsourced legal services

LA 518 (2006)

SD 2007-1

Participate in activity that assists unauthorized practice of law

LA 286 (1965)

as partner in agency conducting small claims court actions

SD 1983-4

renting law office

-to out-of-state lawyer

--where public led to believe person admitted in California

LA 99 (1936)

Partnership with non-lawyer


Power of attorney

Alexander v. Robertson (9th Cir. 1990) 882 F.2d 421

Porter v. State Bar (1990) 52 Cal.3d 518

People v. Starski (2017) 7 Cal.App.5th 215 [212 Cal.Rptr.3d 622]

Estate of Wright (2001) 90 Cal.App.4th 228 [108 Cal.Rptr.2d 572]

Ziegler v. Nickel (1998) 64 Cal.App.4th 545 [75 Cal.Rptr.2d 312]


Practice in jurisdiction, outside of California, where attorney is not licensed

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1

Practice of law, defined


In re Reynolds (9th Cir. 2007) 477 F.3d 1117

Tauby v. Weber (9th Cir. 2004) 366 F.3d 966

Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]

Morgan v. State Bar (1990) 51 Cal.3d 598

Farnham v. State Bar (1976) 17 Cal.3d 605 [131 Cal.Rptr. 661]

Baron v. City of Los Angeles (1970) 2 Cal.3d 535, 542 [86 Cal.Rptr. 673]

People v. Starski (2017) 7 Cal.App.5th 215 [212 Cal.Rptr.3d 622]


OC 94-002, SD 1983-4, SD 1983-7

Preparation of legal documents

In re Garcia (9th Cir. BAP 2005) 335 B.R. 717


Prepare petition for court of another state

LA 218 (1953)

Pro hac vice

Rule 9.40, California Rules of Court

Paciulan v. George (9th Cir. 2000) 229 F.3d 1226

Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1996) 195 B.R. 740

Arizona requirement for pro hac vice admission could not be waived orally by a hearing officer

Shapiro v. Paradise Valley Unified School District No. 69 (9th Cir. 2004) 374 F.3d 857

attorney’s pattern of inability to practice law in an unethical and orderly manner, including pending disciplinary proceedings and lack of candor supports court’s rejection of pro hac vice application in criminal case

Bundy v. U.S. District Court of Nevada (9th Cir. 2016) 840 F.3d 1034

counsel for plaintiffs “practice law in California” without pro hac vice admission therefore fee section of settlement deemed illegal


defendant not entitled to pro hac vice representation by attorney who failed to follow court rules

United States v. Ries (9th Cir. 1996) 100 F.3d 1469

duties of associate counsel

People v. Cooks (1983) 141 Cal.App.3d 224 [190 Cal.Rptr. 211]

out-of-state law firms not required to apply to appear pro hac vice in California courts when firm employs attorneys who are licensed to practice law in California to represent clients

UNPOPULAR CAUSE

Questions about research assistance on activities of law clerks, paralegals, and inactive members.

Contact: Unauthorized Practice of Law
Office of Professional Competence, Planning & Development
180 Howard Street
San Francisco, CA 94105
(415) 538-2150
(800) 238-4427 (within CA)

Representation by non-lawyer in court of law prohibited
Rule 3-101, Rules of Professional Conduct (operative until May 26, 1989)
Rule 1-300, Rules of Professional Conduct (operative as of May 27, 1989)

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

Sanctions
guarantee of right to counsel denied when representation is provided by an attorney who has submitted a resignation with disciplinary charges pending and placed on inactive status

In re Johnson (1992) 1 Cal.App.4th 689
monetary award against law firm proper sanction for aiding in unauthorized practice of law
voiding judgment inappropriate where it neither protects judicial integrity nor vindicates interests of parties
Retail Clerks Union Joint Pension Trust v. Freedom Food Center, Inc. (9th Cir. 1991) 938 F.2d 136
Alexander v. Robertson (9th Cir. 1989) 882 F.2d 421

Special hearings
administrative proceeding
Z. A. v. San Bruno Park School District (9th Cir. 1999) 165 F.3d 1273
-resigned attorney may not represent parties in state administrative hearings
alcohol beverage control appeals board
certification of non-resident, out-of-state attorney representatives
Code of Civil Procedure section 1282.4
city council proceedings
Baron v. City of Los Angeles (1970) 2 Cal.3d 535, 543 [86 Cal.Rptr. 673, 496 P.2d 353]
justice court proceedings
Gray v. Justice's Court (1937) 18 Cal.App.2d 420, 423 [63 P.2d 1160]
patent
Sperry v. Florida (1963) 373 U.S. 379 [83 S.Ct. 1322, 10 L.Ed.2d 428]

public utilities commission proceedings
Consumers Lobby Against Monopolies v. PUC (1979) 25 Cal.3d 891, 913 [160 Cal.Rptr. 124, 603 P.2d 41]
80 Ops. Cal. Atty. Gen. 221 (8/5/97; No. 97-409)

unauthorized practice of law
Rule 3-301, Rules of Professional Conduct (operative as of May 31, 1989)

-disbarred or suspended attorney may be excluded from participation in Workers’ Compensation proceedings
Title 8 CA Administration Code section 10779
-non-attorney's law firm representative of injured employee at workers’ compensation proceeding may not be entitled to same fees as licensed attorney.


State Bar Act of 1927
Section 47.49
People v. Ring (1937) 26 Cal.App.2d Supp. 768, 771

Unfair Competition Law
district attorney may hire private counsel to pursue civil penalties under California’s Unfair Competition Law (UCL)
American Bankers Management Company, Inc. v. Heryford (9th Cir. 2018) 885 F.3d 629
law firm may sue online legal services provider for unfair competition based on unauthorized practice of law

Unincorporated association
lay person may not represent in court


Virtual law office (VLO)
CAL 2012-184
“Writ mill”
In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]

UNPOPULAR CAUSE
Business and Professions Code section 6068(h)
UNREPRESENTED PERSON [See Communication, Not represented by counsel.]

USURY
California Constitution Art. 15, Usury § 1, par. 2
on past due receivables
CAL 1980-53
LA 374 (1978), LA 370 (1978)
SD 1983-1, SD 1976-8, SF 1970-1
Enforce usurious claim
LA 44 (1927)

VIOLATION OF THE LAW [See Advising violation of the law.]
WILL [See Estate. Trustee.]

Attorney as beneficiary
undue influence
LA 462 (1990)

Attorney as beneficiary of trust

Attorney who drafted will was later employed as attorney for executor

Counsel for organization drafts for those leaving money to it
LA 428 (1984), LA(I) 1966-17

Failure to advise client regarding requirements governing presumptively disqualified donees may lead to liability to intended beneficiary
Given to executor after incompetency of client  
LA 229 (1955)  
Person who must sign will is a client regardless of who has  
ought up and employed the attorney  
SD 1990-3  
Will deposition  
Probate Code sections 700 et seq. provide for termination of  
deposit with attorney, attorney may not use a commercial will  
depository without client consent  
CAL 2007-173  
Will revision considered protected activity for anti-SLAPP motion  
purposes  
attorney may register certain identifying information about a  
client’s will or estate documents if the attorney can  
determine, based on knowledge of client, that disclosure will  
not be detrimental to the client and will advance the client’s  
interests  
CAL 2007-173  
WIRETAPPING [See Recording.]  
WITHDRAWAL FROM EMPLOYMENT [See Conflict of interest.  
Files. Public office. Substitution of counsel.]  
Code of Civil Procedure section 284 et seq.  
Rules 3.1362, California Rules of Court  
Rules 2-111 and 8-101, Rules of Professional Conduct  
(operative until May 26, 1989)  
Rules 3-700 and 4-100, Rules of Professional Conduct  
(operative as of May 27, 1989)  
Acts of attorney required to demonstrate the existence of a  
continuing attorney-client relationship  
Shaoxing City Maolong Wuzhong Down Products, Ltd., et.  
Appeal  
indigent defendant constitutionally entitled to counsel’s best  
argument for appeal before court rules on withdrawal  
United States v. Gruffy (9th Cir. 1990) 895 F.2d 561  
Assisting the transition from one attorney to another is not  
providing assistance on the same subject matter of the  
representation and thus does not constitute a continuing  
attorney/client relationship  
Shaoxing City Maolong Wuzhong Down Products, Ltd., et.  
Associate leaving law firm  
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]  
Attorney appointed by court to represent a minor  
In re Jesse C. (1999) 71 Cal.App.4th 1481 [84 Cal.Rptr.2d 609]  
Attorney as advisor for an in propria persona litigant  
LA 502 (1999)  
Attorney as witness  
218, 578 P.2d 935]  
Comden v. Superior Court (1978) 20 Cal.3d 906 [145  
Cal.Rptr. 9, 576 P.2d 971]  
Smith, Smith & Kring v. Superior Court (1997) 60  
Cal.App.4th 573 [70 Cal.Rptr.2d 507]  
Cal.Rptr. 207]  
Cal.Rptr. 894]  
Cal.Rptr. 473]  
Cal.Rptr. 918]  
597, 605 [168 Cal.Rptr. 196]  
Cal.Rptr. 81]  
Harris v. Superior Court (1979) 97 Cal.App.3d 488, 492 [158  
Cal.Rptr. 807]  
Graphic Process Co. v. Superior Court (1979) 95 Cal.App.3d  
43, 50 [156 Cal.Rptr. 841]  
301]  
People ex rel. Younger v. Superior Court (1978) 86  
Cal.App.3d 180 [150 Cal.Rptr. 156]  
*People v. Superior Court (Hollenbeck) (1978) 84 Cal.App.3d  
491, 500 [148 Cal.Rptr. 704]  
People v. Guerrero (1975) 47 Cal.App.3d 441, 446 [120  
Cal.Rptr. 732]  
786]  
Kalmus v. Kalmus (1951) 103 Cal.App.2d 405, 423 [230 P.2d  
57]  
LA 399 (1982)  
Attorney for guardian ad litem  
Cal.Rptr.2d 459]  
Cal.Rptr. 604]  
SD 2017-2  
Attorney who might be called as witness not required to  
withdraw with written consent of client  
Smith, Smith & Kring v. Superior Court (1997) 60  
Cal.App.4th 573 [70 Cal.Rptr.2d 507]  
Cal.Rptr. 207]  
Attorney-client relationship not established  
LA(I) 1968-7  
Before suing client for fee  
Break-down in communications asserted as basis for withdrawal  
but court does not agree  
Rus, Miliband & Smith v. Conkle & Olesten (2003) 113  
Cal.App.4th 656 [6 Cal.Rptr.3d 612]  
Cannot provide level of advocacy required by rule 6-101  
726]  
Class action  
counsel owed a duty, post-judgment, to pursue class claims  
through enforcement of judgment  
Barboza v. West Coast Digital GSM Inc. (2009) 179  
Cal.App.4th 540 [102 Cal.Rptr.3d 295]  
duty of class counsel runs to the class and, in the event of  
conflicts, withdrawal is appropriate  
7-Eleven Owners for Fair Franchising v. The Southland  
Corporation (2000) 85 Cal.App.4th 1135 [102 Cal.Rptr.2d  
277]  
Client  
appears to have abandoned case  
CAL 1989-111  
LA 441 (1987), LA(I) 1958-1  
burden to prove  
William H. Raley Co. v. Superior Court (1983) 149  
Cal.App.3d 1042, 1048 [197 Cal.Rptr. 232]  
cannot be located  
CAL 1989-111  
LA 441 (1987)  
claims cannot pay fee  
LA 356 (1976)  
SD 1983-6  
commits  
-fraud  
LA 329 (1972)  
SF 1977-2  
-persifery  
CAL 1983-74  
LA(I) 1974-7
WITHDRAWAL FROM EMPLOYMENT

conducts undercover surveillance of opposing party
LA 315 (1970)
engaged in unlawful activity
LA 353 (1976)

intends to commit perjury
People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
LA 362 (1976)
objects to fee
LA 211 (1953)

perjured testimony
CAL 1983-74
OC 2003-01

plaintiff's failure to correct defendant's overpayment of a settlement may require withdrawal if plaintiff's conduct constitutes a fraud
LA 520 (2007)

refuses to file accurate fiduciary accounting
SD 1983-10

refuses to follow advice
LA 362 (1976)

threatens harm to attorney or attorney's staff
-veiled threats to defense counsel's staff insufficient to declare conflict of interest and relieve counsel
People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]

unable to pay fee
LA 251 (1958)

uncooperativeness of client

Client conduct renders continued representation unreasonably difficult
Client's refusal to cooperate with attorney's withdrawal does not excuse attorney from making motion to be removed as counsel of record
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871

Code of Civil Procedure section 284
People v. Bouchard (1957) 49 Cal.2d 438, 440 [317 P.2d 971]
Roswall v. Municipal Court (1979) 89 Cal.App.3d 467, 472 [152 Cal.Rptr. 337]
Mandell v. Superior Court (1977) 67 Cal.App.3d 1, 4 [136 Cal.Rptr. 354]
People v. Prince (1968) 268 Cal.App.2d 398, 406 [74 Cal.Rptr. 197]
People v. Kerfoot (1960) 184 Cal.App.2d 622, 635 [7 Cal.Rptr. 674]

Compensation dispute
People v. Prince (1968) 268 Cal.App.2d 398, 406 [74 Cal.Rptr. 197]
People v. Collins (1966) 242 Cal.App.2d 626, 636 [51 Cal.Rptr. 604]
Helps v. Kluge (1951) 104 Cal.App.2d 461 [231 P.2d 505]
Linn v. Superior Court (1926) 79 Cal.App. 721 [250 P. 880]
LA 251 (1958), LA 212 (1953)
SD 1983-6

Competence of attorney

Conflict of interest
Hodcarriers, etc. Local Union v. Miller (1966) 243 Cal.App.2d 391 [52 Cal.Rptr. 251]
SD 1972-1

appearance of impropriety due to counsel's relationship with judge may be cured by withdrawal
In re Georgetown Park Apartments (9th Cir. 1992) 143 B.R. 557

becoming apparent
LA 333 (1973), LA 219 (1954)

may be required where attorney represents corporation and officer in separate matters and then learns of officer's sexual harassment of employees of corporation
CAL 2003-163

multiple representation
-where client's interests become adverse
CAL 1988-96

obligated to withdraw when consent cannot be obtained to an actual conflict
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 105

public defender must re-evaluate minor's situation, when charged in a subsequent petition, and offer representation if a prior conflict no longer exists and other statutory requirements are met

removal of criminal defense attorney improper due to insufficient conflict of interest
People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]

request by public defender to be re-appointed as counsel of record after withdrawal based on a conflict of interest required that defendant's new appointed counsel be present at the hearing

vicarious disqualification where "of counsel" attorney and law firm represented opposing parties and where "of counsel" attorney obtained confidential information and provided legal services to client

Contract for employment
includes substitution of attorney clause
LA 371 (1977)

Control by court
DeRecat Corp. v. Dunn (1926) 197 Cal. 787 [242 P. 936]
In re Jesse C. (1999) 71 Cal.App.4th 1481 [84 Cal.Rptr.2d 609]
Linn v. Superior Court (1926) 79 Cal.App. 721
discretion
People v. Turner (1992) 7 Cal.App.4th 913

substitution sought on morning of probation revocation hearing
People v. Turner (1992) 7 Cal.App.4th 913

Counsel who represented defendant at preliminary examination only was not required to file formal motion to withdraw

Criminal cases
based on public defender's excessive caseload and limited resources
WITHDRAWAL FROM EMPLOYMENT

rule barring withdrawal from employment until the member has taken reasonable steps to avoid avoid reasonably foreseeable prejudice to the rights of the client not violated where client consents to withdrawal and requests that its file be transferred to replacement counsel


Duty to client and administration of justice require effectuation of consensual withdrawal or motion under Code of Civil Procedure section 284

In re Hickey (1990) 50 Cal.3d 571 [788 P.2d 684]


Duty to impart information to third parties at former client’s request

LA 360 (1976), LA 330 (1972)

Duty to represent client until court approves withdrawal


In re Jackson (1985) 170 Cal.App.3d 773 [216 Cal.Rptr. 539]

Wolff v. State Bar (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1

CAL 1994-134

Effect on contingency fee contract


Estate of Falco (1986) 188 Cal.App.3d 1004 [233 Cal.Rptr. 807]


Failure to communicate with clients regarding intention to withdraw

Wolff v. State Bar (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1

Failure to execute a substitution of attorney

Wolff v. State Bar (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 1

In the Matter of Sullivan, II (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 1

In the Matter of Pasky (1990) 52 Cal.3d 1055

Failure to return unearned fees

Harford v. State Bar (1990) 52 Cal.3d 93

In re Brockway (Review Dept. 2004) 6 Cal. State Bar Ct. Rptr. 944

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126

In the Matter of Aulakh (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631

Failure to take reasonable steps to avoid prejudice by first attorney’s lack of cooperation with client’s new attorney

Friedman v. State Bar (1990) 50 Cal.3d 235

Fee dispute

LA 521 (2007)

settlement negotiations do not require attorney to withdraw

CAL 2009-178

File

King v. State Bar (1990) 52 Cal.3d 307

Cal Pak Delivery v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 Cal.Rptr.2d 207]

In the Matter of Sullivan, II (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608
WITHDRAWAL FROM EMPLOYMENT

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547
In the Matter of Nuñez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196
In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32
In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708
In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652
CAL 1992-127
electronic file
CAL 2007-14
mental health records in file must be released to client notwithstanding written notice from health care provider that disclosure may be detrimental to client
LA 509 (2002)
multiple clients each demand the original
LA 493 (1998)
For non-payment of fee
LA 362 (1976), LA 212 (1953)
court cannot coerce attorney to represent defendant at trial without compensation when defendant paid for attorney’s appearance at the preliminary examination only
failure or refusal to pay or secure proper fees or expenses as grounds for withdrawal
notice to client
LA 125 (1940)
SD 1978-7
suit for fees
Formal substitution ordinarily ends the attorney/client relationship. However the relationship can continue—notwithstanding the withdrawal and substitution—if objective evidence shows that the attorney continues to provide legal advice or services.
Former client, not party, objects to representation
LA(f) 1976-3
“Framework” agreement for future representation did not require withdrawal to terminate contract which was not self-effectuating because it required reciprocal actions by attorney and client, there was no current representation
Frivolous appeal
brief requirement prior to withdrawal discussing frivolous appeal deemed permissible
defense counsel believes that American Bar Association Model Rule 3.1 would be violated by asserting issues claimed by defendant
U.S. v. Skurdal (9th Cir. MT 2003) 341 F.3d 921
If client persists in illegitimate acts
Davis v. State Bar (1983) 33 Cal.3d 231 [188 Cal.Rptr. 441, 655 P.2d 1276]
Inability to provide services as agreed through virtual law office (VLO) setting
CAL 2012-184
Inability to work with co-counsel
Beck v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]
Incompetence of attorney
LA 383 (1979)
Ineffective assistance of counsel as basis for motion
Delpardo v. Lewis (9th Cir. 2000) 223 F.3d 976
Intent to withdraw is not necessary for finding client abandonment
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
Legal aid lawyer
CAL 1981-64, SD 1983-6, SF 1973-5
Mandatory withdrawal
Rule 2-111(B), Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)
In re Hickey (1990) 50 Cal.3d 571 [788 P.2d 684]
In the Matter of Davi (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
CAL 2013-189, CAL 1995-139
attorney must withdraw if attorney obtains from insured that could provide basis for insurance carrier to deny coverage
LA 528 (2017)
client letter containing perceived insults of law firm is not a basis for mandatory withdrawal
Minimal requirements
In the Matter of Dahzi (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269
Motion for
Rule 3.1362, California Rules of Court
failure to file a brief in compliance with applicable procedures
U.S. v. Skurdal (9th Cir. MT 2003) 341 F.3d 921
may be denied if attorney fails to provide even general information regarding nature of ethical dilemma
CAL 2015-192
Neglect [See Neglect.]
protect client’s position in litigation
LA 125 (1940)
Neighborhood Legal Assistance Foundation
SF 1973-5
Notice of withdrawal not communicated to client is prejudicial
In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32
Partial when case against one defendant weak
Perjury
Rule 2-111(B)(1) and (C)(1)(a), Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)
by client
People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
WITHDRAWAL FROM EMPLOYMENT

Representation ends when client actually has or reasonably should have no expectation that the attorney will provide further legal services for purposes of CCP 340.6(a)(2)


Representation of a corporation


Request for withdrawal properly denied despite prospect of client perjury

People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]


Return papers and property to client

SD 1997-1, SD 1984-3, SD 1977-3

Right to establish in retainer agreement

LA 371 (1977)

Scope of representation


Skilled counsel prejudices criminal defendant


Substitution of attorney clause in retainer agreement

LA 371 (1977)

Suit for fees


Threat to withdraw if client refuses settlement

Nehad v. Mukasey (9th Cir. 2008) 535 F.3d 962

Timeliness of motion for substitution of counsel

United States v. Moore (9th Cir. 1998) 159 F.3d 1154

Unjustifiable delay in cooperating with client’s new attorney

Conroy v. State Bar (1991) 53 Cal.3d 495

King v. State Bar (1990) 52 Cal.3d 307

Friedman v. State Bar (1990) 52 Cal.3d 235

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47

Unpaid fee

Rule 2-111(C)(1)(f), Rules of Professional Conduct (operative until May 26, 1989)

Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)

Mackey v. Hoffman (9th Cir. 2008) 535 F.3d 962

Delgado v. Lewis (9th Cir. 2000) 223 F.3d 971

Colangelo v. State Bar (1991) 53 Cal.3d 1255 [283 Cal.Rptr. 181]

Read v. State Bar (1991) 53 Cal.3d 394, Modified at 53 Cal.3d 1009

Martin v. State Bar (1991) 52 Cal.3d 1055

Borré v. State Bar (1991) 52 Cal.3d 1047

Aronin v. State Bar (1980) 52 Cal.3d 276

Cannon v. State Bar (1990) 51 Cal.3d 1103

In re Billings (1990) 50 Cal.3d 358 [787 P.2d 617]

Silva-Vidor v. State Bar (1989) 49 Cal.3d 1071


Kapelus v. State Bar (1987) 44 Cal.3d 179

Frazer v. State Bar (1987) 43 Cal.3d 564 [238 Cal.Rptr. 54]

Franklin v. State Bar (1990) 41 Cal.3d 700

Stuart v. State Bar (1985) 40 Cal.3d 838, 842 [221 Cal.Rptr. 557]


Wolff v. State Bar (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269

In the Matter of Laib (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196

In the Matter of Aguilluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631

arguing against the interest of client in making motion to withdraw

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871

collaborative family law practice, in order to avoid prejudice, the circumstances for withdrawal must be adequately addressed at the outset of the attorney-client relationship

OC 2011-01

Recusal of district attorney staff, conflict of interest

WITNESS

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652

Witness

Rule 2-111(A)(4) and (5), Rules of Professional Conduct (operative until May 26, 1989)

Rule 7-107, Rules of Professional Conduct (operative until May 27, 1989)

in case
LA 367 (1977), LA 323 (1971)
for client

WITNESS [See Lay employee. Testimony.]

Rule 2-111(A)(4) and (5), Rules of Professional Conduct (operative until May 26, 1989)

Rule 5-210, Rules of Professional Conduct (operative as of May 27, 1989)

Rule 7-107, Rules of Professional Conduct (operative until May 26, 1989)

Rule 5-310, Rules of Professional Conduct (operative as of May 27, 1989)

Attorney as

Smith, Smith & Kring v. Superior Court (1997) 60 Cal.App.4th 573 [70 Cal.Rptr.2d 507]
Comden v. Superior Court (1978) 20 Cal.3d 906 [145 Cal.Rptr. 9, 576 P.2d 971]

SD 2017-1

about nature and value of services rendered
Branda v. Superior Court (1985) 37 Cal.3d 813, 820 fn. 7
[210 Cal.Rptr. 211]

against criminal defendant

[204 Cal.Rptr. 217]
United States v. Edwards (9th Cir. 1998) 154 F.3d 915

against former client
LA 75 (1934)
associate of attorney as
LA 399 (1982)

before grand jury

In re Grand Jury Proceedings (9th Cir. 1998) 162 F.3d 554

behalf of adverse party

-duty to assert privilege
LA 20 (1923)
calling former associate as witness

LA 399 (1982)

client’s right to counsel of choice

Smith, Smith & Kring v. Superior Court (1997) 60 Cal.App.4th 573 [70 Cal.Rptr.2d 507]

consent of client

Smith, Smith & Kring v. Superior Court (1997) 60 Cal.App.4th 573 [70 Cal.Rptr.2d 507]
Reynolds v. Superior Court (1986) 177 Cal.App.3d 1021 [223 Cal.Rptr. 258]
CAL 1993-133
-calling former associate as witness

LA 399 (1982)

defense counsel testifies at penalty phase

People v. Dunkle (2005) 36 Cal.4th 861 [32 Cal.Rptr.3d 23]

for impeachment purposes


not applicable to non-jury trials

Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1996) 195 B.R. 740

-exception where roles of advocate and witness are irreconcilable, multiple conflicting and awkward roles;

-witness and advocate for son adverse to mother of grandson

Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]
proceeding where representing client

-on behalf of client


Rule 5-210, Rules of Professional Conduct (operative as of May 27, 1989)
Comden v. Superior Court (1978) 20 Cal.3d 906 [145 Cal.Rptr. 9, 576 P.2d 971]
Smith, Smith & Kring v. Superior Court (1997) 60 Cal.App.4th 573 [70 Cal.Rptr.2d 507]
LA 367 (1977)

-on behalf of party other than client


Rule 5-210, Rules of Professional Conduct (operative as of May 27, 1989)
LA 323 (1971)

prosecutor

U.S. v. Prantil (1985) 756 F.2d 759

purpose of ethical prohibition against attorney acting as both advocate and witness

Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]

where representing client in same proceeding

-called by party other than client

Graphic Process v. Superior Court (1979) 95 Cal.App.3d 43 [156 Cal.Rptr. 841]

Communication with

SD 1983-9

Contact with

Rule 7-107, Rules of Professional Conduct (operative until May 26, 1989)

Rule 5-310, Rules of Professional Conduct (operative as of May 27, 1989)
communication with opposing party’s expert who had been withdrawn as a witness but remained a consultant warrant disqualification

County of Los Angeles v. Superior Court (1990) 222 Cal.App.3d 647 [217 Cal.Rptr. 698]
defense attorney consults in confidence one defendant who becomes witness against other co-defendants

-attorney may not represent other co-defendants
LA 366 (1977)
defense attorney contact treating physician of plaintiff

-notice or information

Rules of Professional Conduct, rule 7-107, former rule 15
SD 1983-9

-suppressing evidence which attorney has a legal obligation to reveal or produce

Rule 7-107(A), Rules of Professional Conduct (operative until May 26, 1989)

Rule 5-220, Rules of Professional Conduct (operative as of May 27, 1989)
--advising or causing witness to secrete himself

Rule 7-107, Rules of Professional Conduct (operative until May 26, 1989)

Re Rule 5-310, Rules of Professional Conduct (operative as of May 27, 1989)

2019 (updated entries through 12/31/2018)
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WORK PRODUCT

applicable to non-attorney in propria persona litigant
[98 Cal.Rptr.3d 422]
Cal.Rptr.2d 180]

belongs to attorney
Wells Fargo Bank v. Superior Court (Boltwood) (2000) 22
Cal.4th 201 [901 Cal.Rptr. 2d 716]
Lasky, Haas, Coher & Munter v. Superior Court (1985)
172 Cal.App.3d 264 [218 Cal.Rptr. 205]

belongs to client whether or not attorney has been paid
Weiss v. Marcus (1975) 51 Cal.3d 590
CAL 1992-127
LA 330, LA 602, SD 1997-1, SF 1984-1, SF 1975-4

disclosure of putative class members' identity does not
violate
Cal.Rptr.3d 121]
general (qualified) versus attorney's impressions,
conclusions, opinions, or legal research or theories
(absolute)
Colto v. Superior Court (2012) 54 Cal.4th 480 [142
Cal.Rptr.3d 607]
Wells Fargo Bank v. Superior Court (Boltwood) (2000) 22
Cal.4th 201 [901 Cal.Rptr. 2d 716]
Cal.App.3d 1240 [245 Cal.Rptr. 682]

identity of non-expert witnesses intended to be called at trial is
entitled to a qualified work product privilege and cannot be
compelled unless there is a showing that the party seeking the
discovery will be unfairly prejudiced (CCP § 2018.030)
[69 Cal.Rptr.3d 600]

must yield to a compelling public purpose
PSC Geothermal Services Co. v. Superior Court (1994)
25 Cal.App.4th 1697 [31 Cal.Rptr.2d 213]
Cal.Rptr. 712]

intervention by non-party holder of privilege is not necessary or
required to assert Evidence Code section 954 privilege
Mylan Laboratories, Inc. v. Soon-Shiong (1999) 76
Cal.App.4th 76 [90 Cal.Rptr.2d 111]
merely turning over documents prepared independently by
party to attorney does not make them privileged
532 [105 Cal.Rptr. 2d 866]
report prepared by expert-consultant is protected by the
attorney's work product privilege
County of Los Angeles v. Superior Court (1990) 222
Cal.App.3d 647 [217 Cal.Rptr. 698]
restrictions on discovery of an attorney's impressions,
conclusions, opinions or legal research, (CCP § 2018.030)
Carehouse Convalescent Hospitacl v. Superior Court
(2006) 143 Cal.App.4th 1558 [50 Cal.Rptr.3d 129]

standing to assert absolute or qualified privilege
State Compensation Insurance Fund v. Superior Court
1016A [111 Cal.Rptr.2d 284]
unwritten opinion work product is entitled to the protection of
the absolute work product privilege
Fireman's Fund Insurance Co. v. Superior Court
(2011) 196 Cal.App.4th 1263 [127 Cal.Rptr.3d 768]

waiver
by sending letters containing work product to auditors of client,
lawyers did not waive the right to assert attorney work product
protection
Laguna Beach County Water District v. Superior Court
corporation may withhold from director documents that were
generated in defense of a lawsuit that director filed against the
corporation
Tritek Telecom, Inc. v. Superior Court (2009) 169
Cal.App.4th 1385 [87 Cal.Rptr.3d 455]

unwritten opinion work product is entitled to the protection
of the absolute work product privilege
532 [105 Cal.Rptr. 2d 866]

relationship to Proposition 115, "Crime Victims Justice
Reform Act"
Izazaga v. Superior Court (1991) 54 Cal.3d 356
restrictions on discovery of an attorney's impressions,
conclusions, opinions or legal research, (CCP § 2018.030)
Carehouse Convalescent Hospital v. Superior Court
(2006) 143 Cal.App.4th 1558 [50 Cal.Rptr.3d 129]

standing to assert attorney-client privilege and work
product doctrine
969 [98 Cal.Rptr.3d 422]
State Compensation Insurance Fund v. Superior Court
unwritten opinion work product is entitled to the protection of
the absolute work product privilege
Fireman's Fund Insurance Co. v. Superior Court
(2011) 196 Cal.App.4th 1263 [127 Cal.Rptr.3d 768]

-common interest doctrine
Costco Wholesale Corp. v. Superior Court (2009) 47
Cal.4th 725 [101 Cal.Rptr.3d 758]
OXY Resources California LLC v. Superior Court

-defendant did not waive attorney-client and work
product privileges when it shared documents with
government
McKesson HBOC, Inc. v. Superior Court (2004) 115
Cal.App.4th 1229 [9 Cal.Rptr.3d 812]

-when shared documents with government
Regents of University of California v. Superior Court
(2008) 165 Cal.App.4th 672 [81 Cal.Rptr.3d 186]

deputy district attorney cannot assert attorney-client privilege
as to documents prepared in official capacity when the
attorney is subject of criminal investigation
People ex rel. Lockyer v. Superior Court (Pfingst) (2000) 83
Cal.App.4th 367 [99 Cal.Rptr.2d 646]
fraud or crime exception does not apply to work product
defendant did not waive attorney-client and work
product privileges when it shared documents with
government
State Farm Fire and Casualty Co. v. Superior Court

hardship test for non-opinion work product discovery

Holding v. State Farm Mutual Automobile Insurance
Company (9th Cir. 1992) 976 F.2d 573

In re Grand Jury Subpoena Issued to Mark Torf of Torf
Environmental Management (9th Cir. (Idaho) 2004) 357
F.3d 900

identity of non-expert witnesses intended to be called at trial is
entitled to a qualified work product privilege and cannot be
compelled unless there is a showing that the party seeking the
discovery will be unfairly prejudiced (CCP § 2018.030)

[69 Cal.Rptr.3d 600]

See How to Use This Index, supra, p. i
-employer did not waive attorney-client or attorney work product protections by providing sex discrimination claimant substantial discovery of employer's non-attorney in-house investigation report
- not found simply because objecting party submits an inadequate privilege log that fails to provide sufficient information to rule on merits of objections
Witness interviews, conducted by investigators employed by counsel, are protected by work product privilege
  Coito v. Superior Court (2012) 54 Cal.4th 480 [142 Cal.Rptr.3d 607]
Work product doctrine reaches documents prepared because of litigation even if they were prepared in connection with a business transaction or also served a business purpose
Work product privilege and the client's right to his or her file pose an apparent conflict that has not been definitely resolved by the courts
Work product rule distinguished from attorney-client privilege
  Admiral Insurance v. U.S. Dist. Court for Dist. of Arizona (9th Cir. 1989) 881 F.2d 1486

WORKERS’ COMPENSATION
[See  Administrative agency.]
Advertising
  Labor Code sections 5430-5434
Attorney-client privilege and work product doctrine
Contingent fee contracts
to represent plaintiff
  - exempt from written contract provisions
    Business and Professions Code section 6147(c)
Disregard of order by a workers’ compensation judge violates Business & Professions Code section 6103
  In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126
Evidence Code section 915 is applicable in Workers’ Compensation proceedings
Fees
  award of fees to employee justified on the grounds that employer's petition for writ of review indisputably lacked merit
burden is on attorney fee applicant to produce satisfactory evidence of relevant market rate (in workers’ compensation case)
  Van Skike v. Director, Office of Workers’ Compensation Programs (2009) 557 F.3d 1041
claimant's attorneys is not entitled to fees from settlement proceeds under Labor Code §§ 3856 and 3860 if claimant received no benefit from the settlement
  Draper v. Aceto (2001) 26 Cal.4th 1086 [113 Cal.Rptr.2d 61]

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