To assist you in your research on attorney professional responsibility, an electronic copy of the 2018 *California Compendium on Professional Responsibility* index is posted here. Enclosed are the following:

1. **How to Use This Index Reference**
2. **Table of Contents**
3. **Index (including entries through 12/31/17)**
4. **Compendium Update Case List***

Other helpful research links:

1. **California Rules of Professional Conduct**
2. **State Bar Ethics Opinions**
3. **Client Trust Accounting Resources**
4. **Ethics and Technology Resources**
5. **Attorney Civility and Professionalism**

Information about the *Compendium* and other professional responsibility publications that are available for purchase can be found at: [http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Publications](http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Publications).

*** An alphabetical list of cases added in this 2018 update of the California Compendium on Professional Responsibility index. Generally, cases added in this update are from January 2017 to December 2017.
HOW TO USE THIS INDEX

SUBJECT LISTINGS AND HEADINGS

The original 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, some of the listings in this index are compatible with and cumulative to the listings in American Bar Association professional responsibility materials, which may be consulted for the views of other jurisdictions. In some instances, 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 COMPENDIUM 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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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
Zitney v. State Bar (1966) 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 1979-51
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 COMPRENDIUM ON PROFESSIONAL RESPONSIBILITY
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-representation of corporation against officers and directors
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Appointment of counsel to serve as advisor to criminal defendant
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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]
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LA 140 (1942)
Bad faith appeal
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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
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-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
-repeated appeals
-evidentiary appeals
--complaint deemed sufficient in first appeal so second appeal on sufficiency is frivolous
Sipe v. McKenna (1951) 105 Cal.App.2d 737 [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]
Helcomb v. Breitkreutz (1919) 180 Cal. 17
--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 1 2018 (updated entries through 12/31/2017)
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
--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]
  Burrus v. Municipal Court (1973) 36 Cal.App.3d 233, 237 [111 Cal.Rptr. 539]
--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, California 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
  --“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

-simply meritless appeal is not frivolous
Marriage of Flaherty (1982) 31 Cal.3d 637 [183 Cal.Rptr. 508]

-soley 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

riminal 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. 697]
-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 [89 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

Frivulous 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 entities 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
323 [326 P.2d 918]

-evidence of misappropriation of money for probable cause, even though acquitted
Haydel v. Morton (1935) 8 Cal.App.2d 730 [161 Cal.Rptr. 54]

-felony grand theft evidence is disputed; enough to show probable cause

-evidence of misappropriation of money for probable cause, even though acquitted

-felony 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
Danieles 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

prosecute 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 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.]

Accountant’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 Freydi (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 1-200, 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. 848]

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. 493
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
Merrithed 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]
successful 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 Menna (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 4.40, California Rules of Court
Ninth Circuit Civ. L.R. 83.3(c)(5) [S.D.Cal.]

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


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
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 Arizona (2016) 840 F.3d 1034
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].

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


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].


Reinstatement

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


In the Matter of Salant (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1.

Residency requirements


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

Arden v. State Bar (1959) 52 Cal.2d 310 [341 P.2d 6].

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

Penal Code section 273

Represent

one party in, after advising the other

LA(I) 1958-6

ADVANCEMENT OF FUNDS [See Expenses. Fee.]


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).


-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.

Bond

attorney acting as guarantor of client’s cost

CAL 1981-55.

premium for absent guardian of minor

LA(l) 1954-5.

By client

status as trust funds


-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 4-100, Rules of Professional Conduct (operative as of May 27, 1989).


-of legal fees to attorney

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


-of legal fees to attorney

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].
Third parties paying or agreeing to pay from funds collected or to be collected

Rule 5-104(A)(1), Rules of Professional Conduct (operative until May 26, 1989)
Rule 4-210, Rules of Professional Conduct (operative as of May 27, 1989)

ADVERTISING


[Note: Authorities decided prior to 1977 must be reviewed to determine their continued viability in light of Bates v. State Bar of Arizona (1977) 433 U.S. 350, etc. and new rule 1-400, Rules of Professional Conduct.]

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)

Business and Professions Code section 6157 Advising inquirers through media seminars -conducted for existing clients
SD 1969-8

Announcement to clients of association of firm specializing in tax matters LA 119 (1938)
of former firm, announcement of new partnership -non-legal
of former firm, of transfer of associate to new firm Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
CAL 1985-86, SD 1975-1

Assumed or misleading name
Jacobv. State Bar (1977) 19 Cal.3d 359 [738 Cal.Rptr. 77, 562 P.2d 1326]
Johnson v. State Bar (1935) 4 Cal.2d 744, 752 [52 P.2d 928]

Attorney as partner or employee of two law firms 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]
CAL 1997-50, CAL 1986-90

Bankruptcy attorneys are “debt relief agencies” within meaning of BAPCAPA and must make required disclosures, they may, however, also mention that they are attorneys in their advertisements


Bar membership number

pleadings
Rule 201, California Rules of Court (Superior Court)
Rule 501(e), California Rules of Court (Municipal Court)

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Atari, Inc. v. Superior Court (1985) 166 Cal.App.3d 867 [212 Cal.Rptr. 773]

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    LA 122 (1939)
- honorific “ESQ” appended to a signature creates an impression that the person signing is presently able and entitled to practice law
  In the Matter of Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83
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- Labor Code sections 5430-5434

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  - Cal. 1982-66, LA 413 (1983)

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- Labor Code sections 5430-5434

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- 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)

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Townsend v. State Bar (1948) 32 Cal.2d 592, 593-598
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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
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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
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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
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[See Attorney-client relationship. Contract for employment.]
Business and Professions Code section 6068(h)
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People v. Superior Court (1985) 39 Cal.3d 197 [216 Cal.Rptr. 425]
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Inaheta v. Superior Court (1999) 70 Cal.App.4th 1500 [83 Cal.Rptr.2d 471]
Cunningham v. Superior Court (1986) 177 Cal.App.3d 336

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attorney initiated conservatorship proceedings, absent client consent
CAL 1989-112, OC 95-002
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In re Conservatorship of the Person of John L. (2010) 48 Cal.4th 131 [105 Cal.Rptr.3d 424]
Court appointed attorney for bankruptcy trustee may not be removed by spouse of bankruptcy party
Matter of Fonolluer (9th Cir. 1983) 707 F.2d 441, 442
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In re Sanders (1999) 21 Cal.4th 697 [87 Cal.Rptr.2d 899]
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-defendant not entitled to second court-appointed counsel when death penalty not sought
U.S. v. Waggoner (9th Cir. (Ariz.) 2003) 339 F.3d 915
-denied
People v. Verdugo (2010) 50 Cal.4th 265 [113 Cal.Rptr.3d 803]
-public defender may be appointed standby or advisory counsel for defendant who chooses to represent himself
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Gonzalez v. Knowles (9th Cir. 2008) 517 F.3d 1006
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In re Rodriguez (1973) 34 Cal.App.3d 510 [110 Cal.Rptr. 56]
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*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 Charisse 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]

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- 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


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Good cause to relieve counsel appointed for a minor

In re Jesse C. (1999) 71 Cal.App.4th 1481 [84 Cal.Rptr.2d 609]

Inadverent 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


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United States v. Condo (9th Cir. 1984) 741 F.2d 238

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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 (1874) 49 Cal. 158, 159

Rowe v. Yuba County (1860) 17 Cal. 60, 63


County of Fresno v. Superior Court (1978) 82 Cal.App.3d 191, 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

**ARB**

Agreement with client to arbitrate claims brought by client

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


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, Rheingoldm 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


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ARBITRATION

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 1284
- arbitrator may not revise final arbitration award to include attorney fees after he already made substantive ruling in final award denying attorney fees
Cooper v. LaVely & Singer Professional Corp. (2014) 230 Cal.App.4th 1 [178 Cal.Rptr.3d 322]

Code of Civil Procedure section 1286.2(a)(4)
- arbitrator exceeded his authority by limiting appellant’s representation at arbitration to an individual who was not appellant’s choice of representation denying party of a fair hearing

Code of Civil Procedure section 1286.2(a)(5)
- intercession by courts to vacate an arbitration award where arbitrator has prevented a party from fairly presenting his or her case

Code of Civil Procedure section 1286.2(a)(5)
- appointment of law office associate as -by attorney representing claimant in same proceeding
LA 302 (1988)

arbitral immunity
arbitrator’s decision not subject to judicial interference standard

Code of Civil Procedure section 1281.9
disclosure required under Code of Civil Procedure section 1281.9

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


failure of arbitrator to disclose facts that show reasonable impression of partiality vacates award
New Regency Productions, Inc. v. Nippon Herald Films, Inc. (9th Cir. 2007) 501 F.3d 1101


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]

failure of arbitrator to disclose prior arbitration involving a lawyer from the same firm did not require vacatur of arbitration award

failure to disclose nature of professional responsibility practice

requires raising issue in 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]


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]


Rebmann 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

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

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standards for neutral arbitrators adopted by the Judicial Council


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while representing client on other matters
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Moore v. First Bank of San Luis Obispo (2000) 22 Cal.4th 782 [94 Cal.Rptr.2d 603]

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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 award fees under the terms of the controlling arbitration


- pursuant to Civil Code section 1717


binding at county bar level

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 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]


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Authority of arbitration

Authority of arbitration

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Authority of attorney to unilaterally bind client to binding arbitration agreement

Authority of arbitration


Binder's denial of a motion to disqualify lawyer for an alleged conflict of interest may not support party's subsequent assertion of claim preclusion of res judicata

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

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Allegation of agency

As bank's director, bank attorney

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Allegation of agency

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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 payment

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]

LA 506 (2001)
ATTORNEY-CLIENT RELATIONSHIP

Corporation as client against corporation’s outside counsel cannot proceed because attorney-client privilege precludes counsel from mounting meaningful defense


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

2018 (updated entries through 12/31/2017)

-attorney-client privilege does not extend to communications after attorney declines representation

People v. Gionis (1995) 9 Cal.4th 1196 [40 Cal.Rptr.2d 456]

-no duty based on receipt of private information from potential client via unsolicited email


no duty to advise rejected client of limitations period in contemplated suit targeting attorney’s existing client

Flatt v. Superior Court (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537]

“on-going” or continuing relationship not found where, aside from assisting the post-substitution transition from attorney to subsequent attorney, there was no evidence the attorney had taken any steps on behalf of the client


“on-going relationship” between attorney and client based on periodic visits by client to the attorney’s office seeking legal assistance

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

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153

relationship with individual attorney not with firm in general based on client’s direct dealings with the individual attorney

Bernstein v. State Bar (1990) 50 Cal.3d 221

Contract for contingency fees


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

compliance with Business and Professions Code section 6147 required


Contract for employment

attorney agrees to waive specified fees if client agrees not to accept a confidentiality clause in any settlement

LA 505 (2000)

attorney requires inclusion of substitution of attorney clause

LA 371 (1977)

compliance with Rules of Professional Conduct 3-300

CAL 2006-170

Contract limits fees


Contractual


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]


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compliance with Rules of Professional Conduct 3-300

CAL 2006-170

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Contractual

ATTORNEY-CLIENT RELATIONSHIP


Court appointed attorney for bankruptcy trustee may not be removed by spouse of bankrupt party

Matter of Fonsoiller (9th Cir. 1983) 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]

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


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. Gral (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


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]

People v. Mellor (1984) 161 Cal.App.3d 32 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 financial 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.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 generally does not have standing


former personal involvement with opposing party


handship to client

Trone v. Smith (9th Cir. 1980) 621 F.2d 994, 1002

party of moving for disqualification of counsel absent an attorney-client relationship generally does not have standing to assert conflict of interest


-no vicarious standing among members of entity in non-derivative suit


-vicarious standing among members of Limited Liability Company

Disqualification of firm
- 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

District attorney
- no attorney-client relationship is created between district attorney and parent in support enforcement actions.

Donation of legal services
  - [See Auction.]

Duty of attorney
  - [See Duties of attorney.]
  - not to offer false testimony
    - Business and Professions Code section 6068(d)
    - Penal Code section 127
    - Rule 7-105, Rules of Professional Conduct (operative until May 26, 1989)
      - Rule 5-200, Rules of Professional Conduct (operative as of May 27, 1989)
    - In re Branch (1969) 70 Cal.2d 200, 210 [138 Cal.Rptr. 620]
    - People v. Pike (1962) 58 Cal.2d 70, 97 [22 Cal.Rptr. 664, 372 P.2d 656]
    - In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269

outlast employment
  - LA 389 (1981)
- representation of a minor client in a dependency proceeding
  - In re Charlisse C. (2000) 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 Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269
- to represent client zealously
  - to take all actions necessary to protect his client’s rights may not be sanctioned
  - to take reasonable measures to determine law at time of actions
    - 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

Executors
- existence of relationship for purposes of privilege

Existence of, prima facie case

Extended attorney-client privilege to lay persons

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]
  - Smith v. State Bar (1986) 38 Cal.3d 525 [213 Cal.Rptr. 236]
- In the Matter of Freyd (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
- In the Matter of Kittrell (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195

absent attorney-client relationship
  - -plaintiff and alleged beneficiary of a testamentary instrument may have no standing to bring malpractice action against attorney-defendant
  - Harrigfield v. Hancock (9th Cir. (Idaho) 2004) 364 F.3d 1024
- does 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

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ATTORNEY-CLIENT RELATIONSHIP

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See How to Use This Index, supra, p. i
ATTORNEY-CLIENT RELATIONSHIP

Fiduciary relationship
Keams v. Fred Laverey Porsche Audi Co. (Fed. Cir. 1984) 745 F.2d 600, 603-605
Elan Transdermal, Ltd. v. Cygnus Therapeutic Systems (N.D. Cal. 1992) 809 F.Supp. 1383, 1384
Metropolis etc. Sav. Bank v. Monnier (1915) 169 Cal. 592, 598 [147 P. 265]
Fair v. Bakhtiar et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]
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–notwithstanding the withdrawal and substitution–if objective evidence shows that the attorney continues to provide legal advice or services.


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 by the representation
  In the Matter of Gillis (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387
  In the Matter of Hullman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 237
- 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 Gaetano (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.

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

CAL 2011-180

Good faith of defendant client


Governmemental 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]

 guard 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. 1232
People v. Bloom (1989) 48 Cal.3d 1194 [259 Cal.Rptr. 669]
attorney as “ghost writer”
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 similarly with duty to truthful to the court

Insurance company

American Casualty Co. v. O’Flaherty (1997) 57 Cal.App.4th 1070
"monitoring counsel" distinguished from "Cumis counsel"
Insurer’s attorney has duty to include insurer’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 litigation by third party (district attorney and sheriff)
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
effective 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
Ligiting client
Bradshaw 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 re 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 pursuing 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
Bianton v. Womancare, Inc. (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]
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
Minor as client
LA 504 (2000)
delinquency proceeding
dependency proceeding
ATTORNEY-CLIENT RELATIONSHIP

-actual conflict amongst multiple siblings requires disqualification of appointed counsel from joint representation
-appellate counsel for a minor client 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]
-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]
-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]
-Minor must have independent counsel in hearing for emancipation from parental custody and control

Mismanagement of funds
  client
    -administrator
      --report to court
        LA 132 (1940)
      --restitution
        LA 132 (1940)

Misrepresentation to client regarding status of case

Non-payment of fees by client [See Fees, unpaid.]
  lawyer declines to perform further legal services
  LA 371, LA 32 (1925)

Not recoverable unless the contract or statute provides

Obligation of attorney to protect client’s interest
  no ineffectual assistance where counsel informed the court of the fact that 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]

specially appearing attorney owes a duty of care to the litigant
  In the Matter of Valinoti (Rev. Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

Of record, party may only act through
  McMunn v. Lehrike (1915) 29 Cal.App. 298, 308

Outsourcing legal services
  LA 518 (2006)

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


attorney represents all partners as to partnership matters

Party defined, corporate context

Preparing pleadings for in propria persona litigant

Prison officials may not read mail, only open it

Private attorney under contract to government agency
  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]

Privilege [See Confidences of the Client, privilege]
  CAL 2016-195, LA 519 (2006), SF 2014-1

admissibility of evidence when attorney discloses client’s confidential information to police

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]

disclosure orders adverse to the attorney-client privilege do not qualify for immediate appeal in federal court under collateral order doctrine

does not extend to otherwise unprivileged subject matter that has been communicated to attorney
  2,022 Ranch, LLC v. Superior Court (2003) 113 Cal.App.4th 1377 [7 Cal.Rptr.3d 197]

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

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ATTORNEY-CLIENT RELATIONSHIP

Reasonable measures must be taken to determine the law at time of actions
*Sharpe 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 one 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
Ewell v. State Bar (1934) 2 Cal.2d 209, 216, 220

CAL 1996-145

Remedies of former clients

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

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. 2000) 223 F.3d 990

criminal defendant not entitled to second court-appointed counsel when death penalty not sought
U.S. v. Waggoner (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
ATTORNEY-CLIENT RELATIONSHIP

-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]


automatic disqualification of a firm would reduce the right of County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990


applies to retained counsel, not appointed counsel
U.S. v. Brown (9th Cir. 2015) 785 F.3d 1337


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 was based on an inadequate 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


-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 reapointed 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


See How to Use This Index, supra, p. i
ATTORNEY-CLIENT RELATIONSHIP

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
specialty 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)
special appearing attorney forms an attorney-client relationship with the litigant and owes a duty of care to the litigant
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 retainer agreement
LA 371 (1977)
Substitution when conflicts of interest occur based on obligations to clients in different proceedings
Leverens v. Superior Court (1983) 34 Cal.3d 530
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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
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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 (1987) 16 Cal.4th 1124 [69 Cal.Rptr.2d 317]
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 [216 Cal.Rptr. 539]
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 1983-74
--inability to provide competent legal services because of disagreement with a minor client
LA 504 (2000)
Work product
client's right to
Lasky, Haas, Cohler & Munter v. Superior Court (1985)
172 Cal.App.3d 264, 276-277 [218 Cal.Rptr. 205]
SD 2004-1, SD 1997-1, SF 1990-1
ATTORNEYS OF GOVERNMENTAL AGENCIES

- 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
  Assistant’s 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
  Rendish v. City of Tacoma (W.D. (Washington) 1997) 123 F.3d 1216
assigned to represent constituent agency
  attorney may not advise 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]
  -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]
Conflict of interest
  In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
  advising constituent public agency ordinarily does not give rise to attorney-client relationship separate and distinct from entity of which agency is a part
  attorney acts as both advocate and advisor to decision maker
  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
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]
country counsel giving advice to independent board of retirement
   80 Ops. Cal. Atty. Gen. 36 (2/7/97; No. 96-301)
counties
   County counsel not disqualified where screening measures were timely and effective
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)

related to prior representation of private company
   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]
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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 (6/7/02; No. 01-1107)

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

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   85 Ops. Cal. Atty. Gen. 115 (6/7/02; No. 01-1107)


County counsel
   Conservatorship of Early (1983) 35 Cal.3d 244, 255
   Mize v. Crall (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
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   may serve simultaneously as a city council member
   85 Ops. Cal. Atty. Gen. 115 (6/7/02; No. 01-1107)

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
   Cleland 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]
ATTORNEYS OF GOVERNMENTAL AGENCIES

-reusal 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. 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]
defense attorney changes to prosecutor’s office
deputy 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
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
discretionary charging authority

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]

-Penal Code section 1424

People v. Superior Court (Humberto) (2008) 43 Cal.4th 737 [76 Cal.Rptr.3d 276]
Haraquachi 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]

Hambarian v. Superior Court (2002) 27 Cal.4th 826 [118 Cal.Rptr.2d 275]

People v. Eubanks (1996) 14 Cal.4th 580
People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]

--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]

-disqualification not required where ethical wall would be effective alternative
See How to Use This Index, supra, p. i
impartiality subject to private party influence


may represent county in an action even if county has a county counsel


office employees are immune from liability for acts taken during investigations

pattern of conduct needed to prove prosecutor’s liability for failing to train employees in Brady obligations


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]
recusal of entire staff, conflict of interest

People v. Superior Court (Humberto) (2008) 43 Cal.4th 737 [76 Cal.Rptr.3d 276]
*People v. Eubanks (1996) 14 Cal.4th 580

People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]


-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. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]


-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]


-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]

recusal of the prosecutor not required when victim pays for prosecutorial expenses

Hambarian v. Superior Court (2002) 27 Cal.4th 826 [118 Cal.Rptr.3d 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, 365-366

[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

Nunag-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 presented 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


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 revenue

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 831

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]

Public defender as administrative head of office
Code section 27706 with self-representation is impermissible under Government dependency proceeding

delinquency proceeding can be sued under 42 U.S.C. 1983, not as "counsel should be measured by the same standards of care, acts of privately retained counsel and publicly appointed Cal.Rptr. 478 Uhl v. Municipal Court (1974) 37 Cal.App.3d 526 [112 Cal.Rptr.2d 280]

confidential information of witness defender defendant was represented by another member of public office had represented witness in current matter where -representation of one co-defendant by public defender

conflict where compelled by excessive caseload to choose between the rights of the various indigent defendants he or she is representing -in re Edward S. (2009) 173 Cal.App.4th 387 [92 Cal.Rptr.3d 725]

-removal of public defender was proper where defendant made credible death threat against counsel -in re Edward S. (2009) 173 Cal.App.4th 717 [119 Cal.Rptr.3d 657]


In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 589]
ATTORNEY’S LIEN

Bankruptcy action

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


Charging lien

common law

- not recognized in California

Isrin 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


CAL 2006-170

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


CAL 2006-170

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

OC 99-002

failure of subsequent counsel to honor

- liability for interference with prospective economic advantage


Supp.16 [158 Cal.Rptr. 762]

Client’s award

improper

Cain v. State Bar (1978) 21 Cal.3d 523, 525 [146 Cal.Rptr. 1053]

Client’s funds

LA(I) 1970-1

Client’s papers

LA 48 (1927), SD 1977-3

no right to


LA 330 (1972), LA 253 (1958), LA 197 (1952), LA 103 (1936), LA 48 (1927)

SF 1975-4

Common law liens


Created by contract

Haupt v. Charlie’s Kosher Market (1941) 17 Cal.2d 843 [121 P.2d 627]


Wagner v. Sariotti (1943) 56 Cal.App.2d 693 [133 P.2d 430]

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


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]

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

Mojtahed 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

Notice of lien


CAL 2009-177, CAL 2008-175

See How to Use This Index, supra, p. i
attorney may choose to file notice of lien in an underlying action against debtor/client, although attorney is not required to do so


Possessory

Hulland v. State Bar (1972) 8 Cal.3d 440 [105 Cal.Rptr. 152]

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

Ex parte Kyle (1850) 1 Cal. 331


Wagner v. Sariotti (1943) 56 Cal.App.2d 693 [133 P.2d 430]

client files or papers

-no right to


LA 330 (1972), LA 253 (1958), LA 197 (1952), LA 103 (1936), LA 48 (1927)

SF 1975-4

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 [107 Cal.Rptr.3d 57]

attorney’s lien superior to claims of other creditors against a bankruptcy distribution


between contractual medical lien and an attorney lien for fees and costs of litigation in a contingency fee case


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


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


Statutory liens

Los Angeles v. Knapp (1936) 7 Cal.2d 168 [60 P.2d 127]

AUCTION

Donate legal services through CAL 1982-65, SD 1974-19

AUTHORITY OF ATTORNEY [See Substitution of counsel.]


Acknowledge satisfaction of judgment after judgment, upon payment of money claimed in action

Code of Civil Procedure section 283

After substitution

appearance carries presumption


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]

Agency

authority covers all ordinary procedural steps to bind client

Code of Civil Procedure section 283

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


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

Agency basis

Rule 7-103, Rules of Professional Conduct (operative until May 26, 1989)

Rule 2-100, Rules of Professional Conduct (operative as of May 27, 1989)

Bristschgi v. McCall (1953) 41 Cal.2d 138, 142 [257 P.2d 977]

Preston v. Hill (1875) 50 Cal. 43


Fresco v. Baboian (1975) 52 Cal.App.3d 753, 757 [125 Cal.Rptr. 332]


Pacific Tel. & Tel. Co. v. Fink (1956) 141 Cal.App.2d 332 [296 P.2d 843]


Fidelity & Cas. Co. v. Abraham (1945) 70 Cal.App.2d 776 [161 P.2d 689]


CAB 1989-111

Apparent authority as to procedural or tactical matters


United States v. Fredman (9th Cir. 2004) 390 F.3d 1153

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

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

In re Marriage of Read (2002) 97 Cal.App.4th 476 [118 Cal.Rptr.2d 497]


In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844

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In re Marriage of Read (2002) 97 Cal.App.4th 476 [118 Cal.Rptr.2d 497]
AUTHORITY OF ATTORNEY

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]
Troy v. Haskell (1900) 128 Cal. 558, 560 [61 P. 89]
Wylie v. Sierra Gold Co. (1899) 120 Cal. 485, 487
Anglo California Trust Co. v. Kelly (1928) 95 Cal.App. 390 [272 P. 1080]

Client bind client in action or proceeding client once court has raised competency of criminal defendant
Attorney plays greater role for making fundamental choices for

(updated entries through 12/31/2017)

To avoid inferences as to the client


Kaslavage v. West Kern County Water District (1978) 84 Cal.App.3d 529, 530-537 [148 Cal.Rptr. 729]

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308
CAL 2002-160
advise attorney for in propria persona litigant
LA 502 (1999)

conservatee bound by appointed attorney’s action where conservatee requests not to be present at conservatorship hearing
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 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]
by agreement filed with clerk of court
Code of Civil Procedure section 283, par. 1
entered upon minutes of court
Code of Civil Procedure section 283, par. 1
to arbitration agreement
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. Schriner (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
Blanton v. Womancare, Inc. (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]
LA 502 (1999)
endorse client’s name
-incapacity
on 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]
In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308
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
People v. Lomax (2010) 49 Cal.4th 530 [112 Cal.Rptr.3d 96]
In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308
In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844
In the Matter of Aquiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32
CAL 2002-160
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]

2018 (updated entries through 12/31/2017) 44
See How to Use This Index, supra, p. i
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. 827]


acts contrary to law, court rule or public policy

San Francisco Lumber Co. v. Bibb (1903) 139 Cal. 325
[73 P. 864]

[137 Cal.Rptr. 648]


Berry v. Chaplin (1946) 74 Cal.App.2d 652 [169 P.2d 442]


advise attorney for in propria persona litigant

LA 502 (1999)

after judgment

Knowlton v. Mackenzie (1895) 110 Cal. 183 [42 P. 580]

Wherry v. Rambo (1950) 97 Cal.App.2d 569 [218 P.2d 142]

Davis v. Robinson (1942) 50 Cal.App.2d 700 [123 P.2d 894]


Elv v. Liscomb (1914) 24 Cal.App. 224 [140 P.2d 1086]

apparent authority

Linsk v. Linsk (1969) 70 Cal.2d 272 [74 Cal.Rptr. 544, 449 P.2d 760]

Woerner v. Woerner (1915) 171 Cal. 298, 299 [152 P.2d 919]


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

Fresno v. Baboian (1975) 52 Cal.App.3d 753 [125 Cal.Rptr. 332]


Fidelity & Cas. Co. v. Abraham (1945) 70 Cal.App.2d 776 [161 P.2d 689]


-statement decisions belong to client

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

-freedom from client's control

Associated Indemnity Corp. v. Ind. Acc. Com. (1943) 56 Cal.App.2d 804, 808 [133 P.2d 698]

giving up right to hearing

Linsk v. Linsk (1969) 70 Cal.2d 272 [74 Cal.Rptr. 544, 449 P.2d 760]

giving up substantive defense


Merritt v. Wilcox (1877) 52 Cal. 238


Ross v. Ross (1953) 120 Cal.App.2d 70 [260 P.2d 652]

Fresno City High School District v. Dillon (1939) 34 Cal.App.2d 636 [94 P.2d 86]


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

-settlement decisions belong to client

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

giving up substantive right

Linsk v. Linsk (1969) 70 Cal.2d 272 [74 Cal.Rptr. 544, 449 P.2d 760]

Woerner v. Woerner (1915) 171 Cal. 298, 299 [152 P.2d 919]


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

Fresno v. Baboian (1975) 52 Cal.App.3d 753 [125 Cal.Rptr. 332]


Fidelity & Cas. Co. v. Abraham (1945) 70 Cal.App.2d 776 [161 P.2d 689]


-not found when attorney stipulates to waiver of mediation confidentiality

Stewart v. Preston Pipeline Inc. (2005) 34 Cal.Rptr.4th 1565 [36 Cal.Rptr. 3d 901]

-settlement decisions belong to client

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


major questions of policy

Gagnon Co. v. Nevada Desert Inn (1955) 45 Cal.2d 448, 460 [289 P.2d 466]

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

Trove v. Kerns (1890) 83 Cal. 553, 556 [23 P. 691]

Preston v. Hill (1875) 50 Cal. 43


AUTHORITY OF ATTORNEY

Clemens v. Gregg (1917) 44 Cal.App. 245, 255 [167 P. 294]
matters collateral to litigation
Britschgi v. McCall (1953) 41 Cal.2d 138, 142 [257 P.2d 977]
Nellis v. Massey (1952) 108 Cal.App.2d 724, 728
Orelli v. Orelli (1937) 18 Cal.App.2d 499 [64 P.2d 483]
[See 27 So.Cal.L.Rev. 463]
motion to suppress
People v. Turner (1992) 7 Cal.App.4th 1214
power to waive right to jury trial
Blanton v. Women Care Inc. (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]
receipt of money in settlement
In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308
CAL 2002-160
taking or defending against appeal
People v. Bouchard (1957) 49 Cal.2d 438 [317 P.2d 971]
Guardianship of Gilman (1944) 23 Cal.2d 862, 864 [147 P.2d 530]
Mize v. Crail (1973) 29 Cal.App.3d 797 [106 Cal.Rptr. 34]
In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844
waive right to speedy trial
People v. Lomax (2010) 49 Cal.4th 530 [112 Cal.Rptr.3d 96]
waiver of right to appeal
Linsk v. Linsk (1989) 70 Cal.2d 272 [74 Cal.Rptr. 544,449 P.2d 760]
Death of client
during settlement negotiations
-continued representation
LA 300 (1967)
-disclosure to opposing counsel
LA 300 (1967)
Disappearance of client
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
CAL 2002-160
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]
In propria persona litigant
LA 502 (1999)
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]
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
Gagnon Co. v. Nevada Desert Inn (1955) 45 Cal.2d 448 [289 P.2d 466]
Pac. Paving Co. v. Vizelich (1903) 141 Cal. 4 [74 P. 353]
Security Loan and Trust Co. v. Estudillo (1901) 134 Cal. 166 [66 P. 257]
Dale v. City Court (1951) 105 Cal.App.2d 602 [234 P.2d 110]
Receive money claimed by client in action
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
Code of Civil Procedure section 283, par. 2
-discharge claim
Code of Civil Procedure section 283, par. 2
Representation of a minor client in a dependency proceeding
minors have the absolute right to make decisions concerning their parental rights
LA 504 (2000)
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]
In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 CAL 2002-160
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


-when waiver or compromise of a fundamental right is not involved

In re Marriage of Crook (1991) 235 Cal.App.3d 30

construction and relief

-special rules applicable

Ukiah v. Fones (1966) 64 Cal.2d 104, 107 [48 Cal.Rptr. 865, 410 P.2d 369]

Buckley v. Roche (1931) 214 Cal. 241 [4 P.2d 929]

Jackson v. Puget Sound Lumber Co. (1898) 123 Cal. 97, 100 [55 P.2d 788]


People v. Nolan (1917) 33 Cal.App. 493, 495 [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]

Raymond v. McMullen (1891) 90 Cal. 279 [27 P. 21]

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

Jackson v. Puget Sound Lumber Co. (1898) 123 Cal. 97 [55 P. 788]


dismissal of cause of action


effects

Code of Civil Procedure section 283

Estate of Stickelbaut (1960) 54 Cal.2d 390 [6 Cal.Rptr. 7, 353 P.2d 719]

Palmer v. Long Beach (1948) 33 Cal.2d 134 [199 P.2d 952]


Estate of Burson (1975) 51 Cal.App.3d 300 [124 Cal.Rptr. 105]


Estate of Schmelz (1968) 259 Cal.App.2d 440, 442-446 [66 Cal.Rptr. 480]


Henning v. Wuest (1920) 48 Cal.App. 147 [191 P. 713]

-in subsequent proceedings


formal

Smith v. Whittier (1892) 95 Cal. 279 [30 P. 529]


Fresno City High School v. Dillon (1939) 34 Cal.App.2d 636 [94 P.2d 86]


informal


Smith v. Whittier (1892) 95 Cal. 279 [30 P. 529]

Fidelity Casualty Co. v. Abraham (1945) 70 Cal.App.2d 776 [161 P.2d 689]


matters subject to stipulation

-evidence or facts

Estate of Stickelbaut (1960) 54 Cal.2d 390 [6 Cal.Rptr. 7, 353 P.2d 719]

McGuire v. Baird (1937) 9 Cal.2d 353 [70 P.2d 915]

Haese v. Heitzen (1911) 159 Cal. 569 [114 P. 816]

Smith v. Whittier (1892) 95 Cal. 279 [30 P. 529]

Estate of Schmelz (1968) 259 Cal.App.2d 440 [66 Cal.Rptr. 480]


Authority of Attorney


Issues
Estate of Stickelbaut (1960) 54 Cal.2d 390 [6 Cal.Rptr. 7, 353 P.2d 179]
Webster v. Webster (1932) 216 Cal. 485 [14 P.2d 522]
Michelin Tire Co. v. Coleman and Bentel Co. (1919) 179 Cal. 598 [178 P.2d 507]
Abalian v. Townsend Social Center, Inc. (1952) 112 Cal.App.2d 441 [246 P.2d 965]
Collins v. Welsh (1934) 2 Cal.App.2d 103 [37 P.2d 505]

Judgment

Witasche & Witaschek (1942) 56 Cal.App.2d 277, 283 [132 P.2d 200]
Cathcart v. Gregory (1941) 45 Cal.App.2d 179, 186 [113 P.2d 894]
Morrow v. Morrow (1940) 40 Cal.App.2d 474, 485 [105 P.2d 129]
Morrow v. Learned (1926) 76 Cal.App. 538, 540 [235 P.2d 442]
McCord v. Martin (1920) 47 Cal.App. 717, 726 [191 P. 89]

Liability or damages
Gonzales v. Pacific Greyhound Lines (1950) 34 Cal.2d 749 [214 P.2d 809]
McGee v. City of Los Angeles (1936) 6 Cal.2d 390 [57 P.2d 925]
City of Los Angeles v. Oliver (1929) 102 Cal.App. 299 [283 P.2d 289]

Miscellaneous
City of Los Angeles v. Cole (1946) 28 Cal.2d 509, 515 [170 P.2d 928]
Estate of Kent (1936) 6 Cal.2d 154, 163 [57 P.2d 910]
Meagher v. Gagliardi (1868) 35 Cal. 602
People v. Busick (1968) 259 Cal.App.2d 744, 748 [66 Cal.Rptr. 532]


Pleadings and issues
Estate of Stickelbaut (1960) 54 Cal.2d 390 [6 Cal.Rptr. 7, 353 P.2d 179]
Webster v. Webster (1932) 216 Cal. 485 [14 P.2d 522]
Michelin Tire Co. v. Coleman and Bentel Co. (1919) 179 Cal. 598 [178 P.2d 507]
Abalian v. Townsend Social Center, Inc. (1952) 112 Cal.App.2d 441 [246 P.2d 965]
Collins v. Welsh (1934) 2 Cal.App.2d 103 [37 P.2d 505]

Subsequent proceedings
Estate of Cohn (1940) 36 Cal.App.2d 676 [98 P.2d 521]
Pacific States Savings and Loan Co. v. Roselli (1936) 17 Cal.App.2d 527 [42 P.2d 441]

--probable cause stipulation admissible as an admission in plaintiff's action against police arising out of arrest

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

Nature
73 Am.Jur.2d, Stipulations, section 1
Palmer v. City of Long Beach (1948) 33 Cal.2d 134, 142 [199 P.2d 952]
Raymond v. McMullen (1891) 90 Cal. 122, 125 [27 P. 21]


Oral stipulations not entered
Webster v. Webster (1932) 216 Cal. 485 [14 P.2d 522]
In re Marriage of Carter (1971) 19 Cal.App.3d 479 [97 Cal.Rptr. 274]
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 husband on traffic charge
SF 1973-6

owner-passenger against driver after representing both parties
LA(l) 1974-10

BANKRUPTCY

[See Trustee.]

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. BAP 2011) 448 B.R. 775

Attorney’s fees

In re Auto Parts Club, Inc. (9th Cir. BAP 1997) 211 B.R. 29

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


BANKRUPTCY

-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
-awards to 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 Tesuque Pueblo (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. 601
-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
-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 (municipally bankrupt 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 Mackey 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 awarded the debtors 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
without need to file application for compensation
In re Awood (9th Cir. BAP (Nov.) 2003) 293 B.R. 227
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. 944
dischargeability of a contempt judgment
Guarerez 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 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. 665
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 Hoopai (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
Circle Star Center Associates, L.P. v. Liberate
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 circumstances test applied when awarding
attorney’s fee
Higgins v. Vortex Fishing Systems Inc. (9th Cir. 2004) 379 F.3d 701

Bankruptcy petition prepares
BPP can only transcribe and type bankruptcy forms that
declarant 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
disgorgement of excessive fees for services constituting
the unauthorized practice of law
In re Reynoso (9th Cir. 2007) 477 F.3d 1117
Taup 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
Taup 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 Tevis (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]

State Farm Mutual Automobile Insurance Company v.
[86 Cal.Rptr.2d 20]

-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
-bankruptcy/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
BAPCAPA

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 induction 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.Ct.Dec. 140]
attorney’s bankruptcy not a bar to an order to pay restitution
Brookman v. State Bar (1989) 46 Cal.3d 100
In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302
In the Matter of Petilia (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
Schultzv. Chandler (9th Cir. 2014) 765 F.3d 945
Legal malpractice claims cannot be assigned by trustee of bankruptcy estate
Baum v. Ducker, 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
Hedges v. Resolution Trust Corp. (9th Cir. 1994) 32 F.3d 1360
In re Hansen (9th Cir. BAP 2007) 368 B.R. 868
In re DeVille (9th Cir. BAP 2002) 250 B.R. 483
against attorney for failure to list asset on debtor’s bankruptcy estate
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
Loyd 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

BAR ASSOCIATION
Ethics committee
answers legal questions in newspaper
LA 191 (1952)
arbitration committee, duty to submit fee dispute to in Los Angeles
LA 309 (1969)
legal advice
-answer questions about pending litigation
LA(I) 166-9
-answer questions of law
LA(I) 1970-1, LA(I) 1969-7, LA(I) 1969-4

BAR EXAMINERS
See Admission to the bar.

BARRATRY
Penal Code § 158

BARTER
Legal services for other goods
CAL 1981-60, CAL 1977-44
LA(I) 1965-18

BOND
See Conflict of interest, bond.

Attorney acting as guarantor
CAL 1981-55
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§ 6086.13

In re Findley (9th Cir. 2010) 493 F.3d 1048

In re Taggart (2001) 249 F.3d 987

§ 6086.65


§ 6087

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]

§ 6090.5

In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

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§ 6093 (b)

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138

§ 6094


§ 6100

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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- Disclosure to court of conflict between client and child
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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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  - actual conflict amongst multiple siblings requires disqualification of appointed counsel from joint representation


- 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]

  - 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
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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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- Counsel for one party in divorce who holds trust fund executes against other's share for child support
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--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


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


Abuse of discretion by trial court


Advertising


Attorney fee awards in federal securities fraud actions must be reasonable in relation to the plaintiffs’ recovery

Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249

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]

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basis for court decision

--large fee reduction requires a relatively specific articulation of court’s reasoning

Stetson v. Grisom (9th Cir. 2016) 821 F.3d 1157

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-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]

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Garder 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

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fees paid directly to plaintiff’s counsel by defendant pursuant to ADEA’s fee-splitting provision is taxable income to plaintiff

Sinyard v. Commissioner of Internal Revenue (9th Cir. 2001) 268 F.3d 756

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

See How to Use This Index, supra, p. i
-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
Glassar 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
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
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Anti-SLAPP statute inapplicable to claims that attorney disqualification is more likely in class action context because proposed settlement agreement if approved defendant agrees to hire class counsel to monitor the court-approved settlement notice procedure
Stetson v. Grissom (9th Cir. 2016) 821 F.3d 1157
-but court-approved settlement notice procedure was erroneous impression
class counsel offers to dismiss case if defendant makes multi-million dollar payment to attorney personally
-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 class counsel to monitor the proposed settlement agreement if approved
Linney v. Cellular Alaska Partnership (9th Cir. 1998) 151 F.3d 1234
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See How to Use This Index, supra, p. i

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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

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Standing to pursue an award of fees attorney’s lack
Churchill Village LLC v. General Electric (9th Cir. 2004) 361 F.3d 566
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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

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Defined Evidence Code section 951
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State Farm Fire and Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625 [62 Cal.Rptr.2d 834]

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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 Jaurequi (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)
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See How to Use This Index, supra, p. i
- 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 overreaching 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
    Narlian v. State Bar (1943) 21 Cal.2d 876 [136 P.2d 553]
  -- public reprimand
  -- suspension
    Sunderlin v. State Bar (1944) 33 Cal.2d 785 [205 P.2d 382]

- 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 never 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

- fiduciary duty to inform client

- notice to client of receipt of funds on client’s behalf
  In re Smith (1967) 67 Cal.2d 460, 463

- 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

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

- 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, 164 fn.4 [154 Cal.Rptr. 752, 593 P.2d 613]

- In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
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- failure to return unearned portion
  Rule 3-700(D)(2), Rules of Professional Conduct (operative as of May 27, 1989)
  Matthew v. State Bar (1985) 49 Cal.3d 784
  Pineda v. State Bar (1989) 49 Cal.3d 752
  Bambic v. State Bar (1985) 40 Cal.3d 314 [219 Cal.Rptr. 489]
  Baranowski v. State Bar (1985) 40 Cal.3d 153, 163 [154 Cal.Rptr. 752, 593 P.2d 613]
  In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
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In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
In the Matter of Freydi (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349
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In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390
In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
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- client entitled to a refund of entire advance fee amount because client received nothing of value
  In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263

Attachment of
Finance Code section 17410
Authorized withdrawal of client funds and subsequent revocation of consent
LA(I) 1980-3

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
clients should have an opportunity to review a bill before the attorney seeks authorization to make payment out of the client’s recovery
In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128

Costs and expenses
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
SD 2013-3
“double billing”
CAL 1996-147

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

improper billing and retention of funds out of a client’s lien reduction involves moral turpitude
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
“over-billing”
In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725

Cashier’s check
holding client’s funds in
Vaughn v. State Bar (1972) 6 Cal.3d 847, 854 [100 Cal.Rptr. 713, 494 P.2d 1257]
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Check
profession shown on
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
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overdraft protection
CAL 2005-169

Client cannot be located
Code of Civil Procedure section 1518
attorney holding funds for the benefit of client
CAL 1975-36, LA(I) 1976-2

Client’s use and control of suspension
Coppock v. State Bar (1988) 44 Cal.3d 665 [244 Cal.Rptr. 462]

Commingling
Read v. State Bar (1991) 53 Cal.3d 394, mod. at 53 Cal.3d 1009a
Lebbo v. State Bar (1991) 53 Cal.3d 37
Bowles v. State Bar (1989) 48 Cal.3d 100 [256 Cal.Rptr. 381, 768 P.2d 1058]
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In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213
In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788
In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420

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
-bar membership fees are paid by checks drawn upon client 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 561, 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. 838
-wife of attorney acts as bookkeeper and attorney tells her that personal use of trust funds is permissible
  Burns v. State Bar (1955) 45 Cal.2d 296, 300
-willful commingling and conversion with no showing of mitigation can result in disbarment
dangers of offense realized even if violation is technically not committed
  Clark v. State Bar (1952) 39 Cal.2d 161, 168

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
-advance payment retainer distinguished from true retainer
-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].
SF 1980-1

-allowing a friend to use the account for business
  In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420
-an attorney who uses a single account for both personal and client funds is subject to discipline
  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
  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 Qheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920
  In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
  In the Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287
  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 E (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 17

--client’s funds placed in attorney’s account
  In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896
--advanced costs improperly deposited in attorney’s account
  Aroner v. State Bar (1990) 52 Cal.3d 276

--attorney admits to commingling client’s funds in personal checking account
  In the Matter of Kauflman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213

--attorney deposit settlement check in his personal account
--attorney misleads clients into allowing client funds to be deposited into attorney’s personal account
  Bernstein v. State Bar (1972) 6 Cal.3d 909, 918 [101 Cal.Rptr. 369, 495 P.2d 1289]
--bankruptcy papers not filed and advanced funds not deposited in a trust account
  Lavin v. State Bar (1975) 14 Cal.3d 581, 583 [121 Cal.Rptr. 729]

--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 the 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 in personal account is a violation

--client transacts business with his attorney and attorney keeps transaction funds on his person with his own money
  Bennett v. State Bar (1945) 27 Cal.2d 16, 16-33 [101 Cal.Rptr. 369, 432 P.2d 231]

--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
--failure to maintain client funds in trust
  In the Matter of Lawrence (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
CLIENTS’ TRUST ACCOUNT

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
  [238 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
  Gassman 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 (1960) 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 signing 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 F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17
- trust account established but attorney fails to use it
  Zmny 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. 368, 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
  - 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
    Spindell 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
    Cutter 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)
-any person engaged in a trade or business must report to the IRS the receipt in any year of $10,000 or more in
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
In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

settlement check without authorization
Silver v. State Bar (1974) 13 Cal.3d 134, 144
Himmel v. State Bar (1971) 4 Cal.3d 786, 798
Tardiff v. State Bar (1971) 3 Cal.3d 903, 904

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

successor attorney authorizes an employee to simulate the
prior attorney’s signature
In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234

Entitlement of client to receive prompt receipt of settlement
funds based upon client signing release
In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17

CLIENTS’ TRUST ACCOUNT

Escrow account
compliance with rule 4-100 not required where funds to be
used to pay attorney’s fees are placed in escrow account
and are never received or held by the lawyer
CAL 2002-159

Failure to disburse client funds promptly [upon request]
Dudugjian v. State Bar (1991) 52 Cal.3d 1092
Edwards v. State Bar (1990) 52 Cal.3d 28
Bates v. State Bar (1990) 51 Cal.3d 1056
Friedman v. State Bar (1990) 50 Cal.3d 235
Trousil v. State Bar (1985) 38 Cal.3d 337 [211 Cal.Rptr. 525]

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In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153
In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1
CAL 2009-177, LA 438 (1985)

Failure to establish
Alberton v. State Bar (1984) 37 Cal.3d 1, 12 [206 Cal.Rptr. 373]

Failure to notify clients of receipt of funds
McKnight v. State Bar (1991) 53 Cal.3d 1025
Chasteen v. State Bar (1985) 40 Cal.3d 586, 592
Murray v. State Bar (1985) 40 Cal.3d 575, 580-584 [220 Cal.Rptr. 677]
Bambic v. State Bar (1985) 40 Cal.3d 314
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In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708
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Failure to place client funds in
McKnight v. State Bar (1991) 53 Cal.3d 1025
Dudugjian v. State Bar (1991) 52 Cal.3d 1092
Waysman v. State Bar (1986) 41 Cal.3d 452
Chasteen v. State Bar (1985) 40 Cal.3d 586, 592 [220 Cal.Rptr. 842]
Bambic v. State Bar (1985) 40 Cal.3d 314 [219 Cal.Rptr. 489]
Vaughn v. State Bar (1972) 6 Cal.3d 847, 854-855 [100 Cal.Rptr. 713, 494 P.2d 1257]
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Fiduciary obligation to non-clients as "clients" to maintain records, render appropriate accounts, and make prompt disbursements

Guzzetta v. State Bar (1987) 43 Cal.3d 962, 979 [239 Cal.Rptr. 675]

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91

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)

Business and Professions Code section 6212
duty of lawyer to place client funds in

Business and Professions Code section 6211

IOLTA interest income is private property of owner of principle for purposes of Takings Clause


Washington Legal Foundation v. Legal Foundation of Washington (9th Cir. 2001) 236 F.3d 1097

-no regulatory taking, no net loss to clients


nominal funds in

Business and Professions Code section 6211(a)


on deposit for a short period of time

Business and Professions Code section 6211(a)


CAL 1988-97

trustee savings versus trustee checking

SF 1970-3

use of, and ownership of interest accrued

Business and Professions Code section 6211(a)-(b)


Issuing settlement checks to clients, before settlement proceeds received from defendant or defendant’s insurance company

In re Silverton (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]

Lay employee on

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bank owed no duty of care to non-customer lawyer after law office manager opened accounts in lawyer’s name to steal client trust funds

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

Levy on
Finance Code section 17410
Maintain at an adequate level
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LA 454

Med-pay


Misappropriation
In re Silverton (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]

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Edwards v. State Bar (1990) 50 Cal.3d 28

In re Naney (1990) 50 Cal.3d 186 [793 P.2d 54]

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Amane v. State Bar (1990) 50 Cal.3d 247 [786 P.2d 375]

Friedman v. State Bar (1990) 50 Cal.3d 235 [786 P.2d 359]


Snyder v. State Bar (1990) 49 Cal.3d 1302

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Weiler v. State Bar (1989) 49 Cal.3d 670


In re Ford (1988) 44 Cal.3d 810 [244 Cal.Rptr. 476]


Guzetta v. State Bar (1987) 43 Cal.3d 962 [239 Cal.Rptr. 675]

Arden v. State Bar (1987) 43 Cal.3d 713 [239 Cal.Rptr. 68]


Allen v. State Bar (1977) 20 Cal.3d 172, 175-178 [141 Cal.Rptr. 808, 570 P.2d 1226]


Sevin v. State Bar (1973) 8 Cal.3d 641, 643-646 [105 Cal.Rptr. 513, 504 P.2d 449]

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In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495

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In the Matter of Haagen (Review Dept. 1992) 3 Cal. State Bar Ct. Rptr. 153

In the Matter of Cacioppo (Review Dept. 1992) 3 Cal. State Bar Ct. Rptr. 128

In the Matter of Yagman (Review Dept. 1992) 3 Cal. State Bar Ct. Rptr. 96

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47

In the Matter of Robbins (Review Dept. 1991) 3 Cal. State Bar Ct. Rptr. 708

In the Matter of Tindall (Review Dept. 1991) 3 Cal. State Bar Ct. Rptr. 652

advances for expenses in connection with a foreclosure proceeding re withdrawn by attorney but not used to pay expenses


assets collected for client are converted for attorney’s personal benefit


attorney as broker or financial advisor is held to professional standards and is subject to discipline for violations arising from such a relationship


In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824

attorney as guardian commingles estate funds and makes improper investments


Taitlow v. State Bar (1936) 52 Cal.2d 520, 521-524 [55 P.2d 214]

attorney claims money is loan from client but court says money in trust cannot be used for personal benefit


attorney converts client money kept in a personal account

Sturr v. State Bar (1959) 52 Cal.2d 125, 129 [338 P.2d 897]

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

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


attorney’s repeated conversion of client money without client consent or knowledge

Re Urias (1966) 65 Cal.2d 258, 260-262

attorney’s wife uses client funds for personal use

Burns v. State Bar (1955) 45 Cal.2d 520, 521-524 [55 P.2d 214]

bad faith and/or evil intent need not be shown


bad faith found when attorney fails to make restitution


bail bond money entrusted to attorney by third party, non-client, is converted

bank owed no duty of care to non-customer lawyer after law office manager opened accounts in lawyer’s name to steal client trust funds
breach of fiduciary duty
Bate v. State Bar (1983) 34 Cal.3d 920 [196 Cal.Rptr. 209, 671 P.2d 360]
checks issued with insufficient funds
In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47 CAL 2005-169
-overdraft protection
CAL 2005-169
client’s name forged on draft and proceeds are converted
combined with other misconduct
-deceit and overreaching of a client who had limited English-speaking ability
In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170
-false statements to bar aggravates misappropriation violations
-forgery on settlement check and failure to return advances
Porter v. State Bar (1990) 52 Cal.3d 518
-grand theft as crime of moral turpitude with misappropriation by deceit on client
In re Abbot (1977) 19 Cal.3d 249, 251-252 [137 Cal.Rptr. 195, 561 P.2d 285]
-misappropriation of partnership funds
Kaplan v. State Bar (1991) 52 Cal.3d 1067
In re Basinger (1988) 45 Cal.3d 1348 [249 Cal.Rptr. 110, 756 P.2d 833]
-misappropriation together with fraud, commingling, and grand theft
In re Demergian (1989) 48 Cal.3d 284 [256 Cal.Rptr. 392, 768 P.2d 1069]
In re Wright (1973) 10 Cal.3d 374, 382 [110 Cal.Rptr. 348, 515 P.2d 292]
-moral turpitude
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
-moral turpitude merits disbarment
Pension v. State Bar (1973) 9 Cal.3d 456, 462 [107 Cal.Rptr. 708, 509 P.2d 524]
In the Matter of Song (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273
-refusal to make restitution
Grim v. State Bar (1991) 53 Cal.3d 21
-repeated and persistent misconduct in multiple cases
-violation in numerous separate instances accompanied with other dishonest acts
-violation of rule 7-103
continuing course of serious misconduct
court orders attorney to reimburse client for legal expenses incurred in client’s action to recover misappropriated funds
disbarment warranted in absence of extenuating circumstances
Stevens v. State Bar (1990) 51 Cal.3d 283 [794 P.2d 925]
discipline imposed even if no financial loss to client
Bernstein v. State Bar (1972) 6 Cal.3d 909, 919 [101 Cal.Rptr. 369, 495 P.2d 1289]
doctor refuses payment of medical bills and attorney puts funds to personal use
Vaughn v. State Bar (1972) 6 Cal.3d 847, 851
total proceeds of client settlement is converted
escrow funds unjustifiably withheld by attorney
Crooks v. State Bar (1970) 3 Cal.3d 346, 357-358 [90 Cal.Rptr. 600, 475 P.2d 872]
evil intent need not be shown for finding of moral turpitude
Lipson v. State Bar (1991) 53 Cal.3d 1010
failure to pay funds as designated by bankruptcy court
In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676
failure to properly dispose of fees in dispute by client
Guzetta v. State Bar (1987) 43 Cal.3d 962 [239 Cal.Rptr. 675]
In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725
In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153
In the Matter of Respondent E (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17
In the Matter of Respondent E (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716
LA 484 (1995)
-attorney did not take appropriate steps to resolve competing claims
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547 CAL 2009-177
failure to refund unearned funds advanced by client
failure to use funds for designated purpose
Baca v. State Bar (1990) 52 Cal.3d 294
Copren v. State Bar (1944) 25 Cal.2d 129
In the Matter of McCarthy (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364
fee agreement modification from hourly to contingent is fee agreement modification from hourly to contingent is
false statements to bar aggravates misappropriation
In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153
In re Wright (1973) 10 Cal.3d 374, 382 [110 Cal.Rptr. 348, 515 P.2d 292]
-moral turpitude
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
-moral turpitude merits disbarment
Pension v. State Bar (1973) 9 Cal.3d 456, 462 [107 Cal.Rptr. 708, 509 P.2d 524]
In the Matter of Song (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273
-refusal to make restitution
Grim v. State Bar (1991) 53 Cal.3d 21
See How to Use This Index, supra, p. i
misappropriation is a grievous breach of trust and endangers public confidence

misappropriation is a grievous breach of trust and endangers public confidence

mitigation and restitution efforts by attorney

absence of harm to attorney’s client or others

Kelly v. State Bar (1991) 53 Cal.3d 509

-attorney’s restitution began long before disciplinary proceeding was mitigating


- cooperation and candor with State Bar undermined by failure to make restitution

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

-sustaining the client’s funds

-weaknesses in personal supervision and control


-when client instructs attorney to give money to a third person, attorney, having power of attorney from third person, deposits the money in his own account

Russell v. State Bar (1941) 3 Cal.2d 321, 328

-when notice to show cause does not use term “misappropriation”

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456

no violation found

-when attorney merely fails to supervise records regarding disbursement of settlement funds

Steiner v. State Bar (1968) 68 Cal.2d 707, 714 [68 Cal.Rptr. 729, 441 P.2d 289]

-when client instructs attorney to give money to a third person and attorney, having power of attorney from third person, deposits the money in his own account

Russell v. State Bar (1941) 18 Cal.2d 321, 328

-when notice to show cause does not use term “misappropriation”

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456

no violation found
CLIENTS' TRUST ACCOUNT

Office procedures
Allen v. State Bar (1977) 20 Cal.3d 172, 179 [141 Cal.Rptr. 808, 570 P.2d 1226]
Fitzpatrick v. State Bar (1977) 20 Cal.3d 73, 86-89 [141 Cal.Rptr. 169, 569 P.2d 763]
In re Abbott (1977) 20 Cal.3d 249, 253-254 [137 Cal.Rptr. 195, 561 P.2d 285]
In re Wright (1973) 10 Cal.3d 374, 381-382 [110 Cal.Rptr. 348, 515 P.2d 292]
Sevin v. State Bar (1973) 8 Cal.3d 641, 664-664 [105 Cal.Rptr. 513, 504 P.2d 449]

Sanctions

client procedures inadequate
Lowe v. State Bar (1953) 40 Cal.2d 564, 566
-neglect procedures evidence a violation
-mere fact that the balance in a trust account is below amount of deposits will support a violation
Lipson v. State Bar (1991) 53 Cal.3d 1010
Edwards v. State Bar (1990) 52 Cal.3d 28
In the Matter of Blum (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403
In the Matter of McCarthy (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364
In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47
-office procedures inadequate
Lipson v. State Bar (1991) 53 Cal.3d 1010
-trust account showing funds less than amount due to clients will support a violation
Black v. State Bar (1972) 7 Cal.3d 676, 691 [103 Cal.Rptr. 288, 499 P.2d 968]
-violation by establishing trust account but using as general business account
In re Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 9
In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602

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Vaughn v. State Bar (1972) 6 Cal.3d 847, 858-859 [100 Cal.Rptr. 713, 494 P.2d 1257]

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Amante v. State Bar (1990) 50 Cal.3d 247 [786 P.2d 375]
Snyder v. State Bar (1990) 49 Cal.3d 1302
Cordova v. State Bar (1978) 20 Cal.3d 789, 796-797 [144 Cal.Rptr. 404, 579 P.2d 188]
Innis v. State Bar (1978) 20 Cal.3d 552, 556-559 [143 Cal.Rptr. 408, 573 P.2d 852]
CLIENTS' TRUST ACCOUNT

-Gassman v. State Bar (1976) 18 Cal.3d 125, 130-133 [132 Cal.Rptr. 675, 553 P.2d 1147]
-Greenbaum v. State Bar (1976) 15 Cal.3d 893, 904-906 [126 Cal.Rptr. 785, 544 P.2d 921]
-Schultz v. State Bar (1975) 15 Cal.3d 799, 803-805
-[126 Cal.Rptr. 232, 543 P.2d 600]
-[124 Cal.Rptr. 185, 540 P.2d 25]
-Magee v. State Bar (1975) 13 Cal.3d 700, 708-709
-[119 Cal.Rptr. 465, 532 P.2d 133]
-[115 Cal.Rptr. 639, 525 P.2d 79]
-[113 Cal.Rptr. 371, 521 P.2d 107]
-[113 Cal.Rptr. 97, 520 P.2d 721]
-[111 Cal.Rptr. 905, 518 P.2d 337]
-Persson v. State Bar (1973) 9 Cal.3d 456, 462 [107 Cal.Rptr. 708, 509 P.2d 524]
-Fielding v. State Bar (1973) 9 Cal.3d 446, 451-453
-[107 Cal.Rptr. 561, 509 P.2d 193]
-Mrakich v. State Bar (1973) 8 Cal.3d 896, 906-907
-[106 Cal.Rptr. 497, 506 P.2d 633]
-Black v. State Bar (1972) 7 Cal.3d 676, 694 [103 Cal.Rptr. 288, 499 P.2d 968]
-Bernstein v. State Bar (1972) 6 Cal.3d 909, 918-919
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-Simmons v. State Bar (1969) 70 Cal.2d 361, 366-368
-[74 Cal.Rptr. 915, 450 P.2d 291]
-Simmons v. State Bar (1966) 65 Cal.2d 281, 287 [54 Cal.Rptr. 97, 410 P.2d 161]
-Burns v. State Bar (1955) 45 Cal.2d 296 [288 P.2d 514]
-In the Matter of Blum (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403
-In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213
-In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126
-In the Matter of Silver (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902

-settlement check cashed by attorney, clients do not receive their share
-Simmons v. State Bar (1966) 65 Cal.2d 281, 286 [54 Cal.Rptr. 97, 410 P.2d 617]
-settlement proceeds never transmitted to client
-settlement received for client is deposited in attorney’s business account
-third parties involved
-attorney for defendant delays in transmitting funds to plaintiff
-Kelly v. State Bar (1991) 53 Cal.3d 509
-bank not paid as requested by client
-In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583
-by attorney’s failure to pay client’s medical lien
-Guzzetta v. State Bar (1987) 43 Cal.3d 962, 979
-In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91
-In the Matter of Prohens (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708
-In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280
-conversion of funds belonging to others may be act of moral turpitude
-Baca v. State Bar (1990) 52 Cal.3d 294
-deliberate misuse of a client’s funds to impress a prospective client warrants disbarment
-Pearlin v. State Bar (1941) 18 Cal.2d 682, 683 [117 P.2d 341]
-duty not to convert funds designated to pay prior attorney
-Baca v. State Bar (1990) 52 Cal.3d 294
-duty to not convert funds entrusted by non-client third parties
-estate funds are loaned out to other clients
-Cutler v. State Bar (1969) 71 Cal.2d 241, 244 [78 Cal.Rptr. 172, 455 P.2d 106]
-failure to use advanced funds to purchase hearing transcript
-In the Matter of Nunez (Review Dept.1992) 2 Cal. State Bar Ct. Rptr. 196
-funds retained to pay medical liens
-In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1
-succeeding attorney’s duty to prior attorney
-CAL 2008-175
-third parties’ lien interest on a client’s settlement is converted by attorney
- unauthorized settlement of case and conversion of proceeds
  Bodisco v. State Bar (1962) 58 Cal.2d 495, 496-497
  [24 Cal.Rptr. 835, 374 P.2d 803]
  to repay debt owed attorney by client
  SD 1976-5
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  In the Matter of Davis (Review Dept. 2003) 4 Cal. State
  Bar Ct. Rptr. 576
  - 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
  - an attorney may not unilaterally determine fees without client knowledge or consent
  Sternlieb v. State Bar (1990) 52 Cal.3d 317
  Most v. State Bar (1967) 67 Cal.2d 589, 597 [63
  Cal.Rptr. 265, 432 P.2d 953]
  In the Matter of Song (Review Dept. 2013) 5 Cal.
  State Bar Ct. Rptr. 273
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  State Bar Ct. Rptr. 364
  In the Matter of Moriarty (Review Dept. 1999) 4 Cal.
  State Bar Ct. Rptr. 9
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  In the Matter of Fonte (Review Dept. 1994) 2 Cal.
  State Bar Ct. Rptr. 752
  LA 496 (1998)
  - client’s funds deposited in attorney’s personal account and used for personal benefit claimed as fees
  Greenbaum v. State Bar (1976) 15 Cal.3d 893, 899
  [126 Cal.Rptr. 785, 544 P.2d 921]
  - disputed fee may not be withdrawn without client consent or judicial determination
  In the Matter of Kroll (Review Dept. 1998) 3 Cal. State
  Bar Ct. Rptr. 838
  LA 438
  - prohibited even if attorney is entitled to reimbursement for service already rendered
  McKnight v. State Bar (1991) 53 Cal.3d 1025
  Bates v. State Bar (1990) 51 Cal.3d 1056
  [113 Cal.Rptr. 371, 521 P.2d 107]
  In the Matter of Cacioppo (Review Dept. 1992) 2 Cal.
  State Bar Ct. Rptr. 128
  - retaining funds without authority involves moral turpitude
  Petersen v. State Bar (1943) 21 Cal.2d 866, 867-870
  [136 P.2d 561]
  - supports a finding of intentional conversion
  Himmel v. State Bar (1973) 9 Cal.3d 16, 19 [106
  Cal.Rptr. 638, 506 P.2d 1014]
  - “willful” requirement
  Brockway v. State Bar (1991) 53 Cal.3d 51
  Dudugian v. State Bar (1991) 52 Cal.3d 1092
  - withdrawing funds held in trust to offset a personal loan debt owed by the client to the attorney
  SD 1976-6
  - withdrawing part of funds designated to pay creditor after creditor refuses payment
  In the Matter of Trouil (Review Dept. 1990) 1 Cal.
  State Bar Ct. Rptr. 652
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  Warner v. State Bar (1983) 34 Cal.3d 36, 43 [192
  Cal.Rptr. 244, 664 P.2d 148]
  violation for extended period
  Cal.Rptr. 362, 603 P.2d 464]
  willful failure to disburse client funds
  Cal.Rptr. 834, 612 P.2d 924]
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  Lawhorn v. State Bar (1987) 43 Cal.3d 1357
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  Bar Ct. Rptr. 403
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  Rule 3-700 (D)(2), Rules of Professional Conduct
  [56 Cal.Rptr.2d 41]
  Securities and Exchange Commission v. Interlink Data
  Network of Los Angeles (9th Cir. 1996) 77 F.3d 1201
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  Baranowski v. State Bar (1979) 24 Cal.3d 153, 164 at
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  Alkow v. State Bar (1952) 38 Cal.2d 257, 259, 261
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  - for misappropriation
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  CAL 1988-101
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  SF 1980-1, SF 1973-14
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  [See 96 A.L.R.3d 830; 96 A.L.R.3d 739-95 A.L.R.3d 738;
  94 A.L.R.3d 834; 93 A.L.R.3d 1089; 91 A.L.R.3d 977;
  80 A.L.R.3d 1260; 35 A.L.R.3d 674; 17 A.L.R.3d 835;
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  LA 488 (1996)
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  Cal.Rptr. 915, 450 P.2d 291]
  Johnstone v. State Bar (1966) 64 Cal.2d 153, 155 [49
  Cal.Rptr. 97, 410 P.2d 617]
CODE OF JUDICIAL ETHICS, CALIFORNIA

[The full text of the California Code of Judicial Ethics (formerly known as the California Code of Judicial Conduct) is reprinted in part IV B of this Compendium.]

CODE OF PROFESSIONAL RESPONSIBILITY

[See American Bar Association Model Code of Professional Responsibility.]

COLLECTIONS

[See Division of fees. Fees. Judgment.]

Business and Professions Code section 6077.5
Fair Debt Collection Practices Act applies to attorneys regularly engaged in consumer debt-collection

Advising creditors of legal action
-offering to represent on percentage basis
LA 122 (1939)

Agency

-when acts as counsel
LA 124 (1939)
-as dummy corporation
LA 124 (1939)
-under fictitious name
LA 124 (1939)
-under nominal head
LA 124 (1939)

malling of attorney form letter may be an Unfair Collection Practice

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CODE OF JUDICIAL ETHICS, CALIFORNIA

As business
Assignment of clients’ claims or accounts to lawyer for LA 7 (1918)
Collection agency, use of LA 373 (1978)
Collection letters
-computer print collection letters, use of LA 338 (1973)
Conduct of debt collector Civil Code sections 1788.10 et seq. as attorney as Business & Professions Code section 6077.5 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 113
Confidences divulged in collection action LA 452 (1988)

Default
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Dual profession
operating law practice and licensed collection agency in same office
-cards, professional LA 70 (1933)

Fair Debt Collections Practice Act (FDCPA) authorizes award of costs to debt collectors only after determination that debtor’s action was brought in bad faith and for the purpose of harassment Rouse v. Law Offices of Rory Clark (9th Cir. 2010) 603 F.3d 699
prohibition against false or misleading representations not violated by special counsel’s use of Attorney General’s letterhead on debt collection letters at Attorney General’s direction Sheriff v. Gillie (2016) __ U.S. __ [136 S.Ct. 1594]

Federal judgment
use of state procedure: In re Levander (9th Cir. 1999) 180 F.3d 1114

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CAL 1982-68

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contingent upon -percentage of amount charged creditor LA 4 (1917)

Investigator
employed by attorney -on contingent basis --to collect judgments of creditors LA 89 (1936)

Judgment
judgment creditor authorized to recover attorney fees incurred in enforcing underlying judgment against sureties Rosen v. Legacy Quest (2014) 225 Cal.App.4th 375 [170 Cal.Rptr.3d 1]
notice of attorney’s request for post judgment attorney fees must be given to former client David S. Karton, a Law Corp. v. Dougherty (2009) 171 Cal.App.4th 133 [89 Cal.Rptr.3d 506]
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third-party who helped judgment debtor hide assets and evade enforcement liable to judgment creditor for attorney fees
Cardinale v. Miller (2014) 222 Cal.App.4th 1020 [166 Cal.Rptr.3d 546]

Law firm accused of commingling unlawful debt collection practices in violation of FDCPA allows consumer to proceed with its' civil action against them
Maschiri v. Epstein Grinnell & Howell (9th Cir. 2017) 845 F.3d 984

Lending name of attorney to non-lawyer
LA 522 (2009) in collection of claims
CAL 1982-68, LA 61 (1930) lay personnel, use of
LA 338 (1973)

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LA 338 (1973)
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LA(I) 1988-3
form letter
-signed by lawyer
LA 338 (1973)

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- attorney letterhead used
CAL 1982-68
used by client
LA(I) 1988-3

Misleading debtor by letters
LA 19 (1922)
Seek payment by curtailing debtor's banking privileges
LA 373 (1978)
firm's letter to consumer demanding payment within 35 days of date of letter possibly violated consumer's rights under FDCPA to dispute debt within 30 days of letter's receipt
Maschiri v. Epstein Grinnell & Howell (9th Cir. 2017) 845 F.3d 984

Solicitation by letter
-advising potential clients of claims of which unaware
--offering to represent upon
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Counsel for buyer or seller receives part of broker's
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Estate executor shares with lay person
-from the sale of property
LA 317 (1970)
Real estate transaction
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Business and Professions Code section 6103.5
Rule of Professional Conduct 5-105 (operative until May 26, 1989)
Rule 3-510, Rules of Professional Conduct (operative as of May 27, 1989)

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SD 1978-6
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-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
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Ardon v. City of Los Angeles (2016) 62 Cal.4th 1176 [199 Cal. Rptr. 3d 473]
State Compensation Insurance Fund v. WPS, Inc. (entitled to the privilege of that fact1999) 70 Cal.App.4th 644 [82 Cal.Rptr.2d 799]
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LA(I) 1958-3, SD 1972-5
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court order prohibiting attorney for a named plaintiff in a class action from communicating with non-client class members regarding proposed class settlement was not an abuse of discretion

potential members


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-consensual class certification triggers “no contact rule”


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-grand jury witness initiated communication with Assistant U.S. Attorney

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defendant interviewed by prosecutor

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People v. Mejia (2008) 159 Cal.App.4th 1081 [72 Cal.Rptr.3d 76]

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for confidential assistance, contact:
Center for Human Resources/West
Telephone: (415) 502-7290

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Business and Professions Code section 6180
suspension
Business and Professions Code section 6180
Class action
arm’s length negotiation
Client’s instructions intentionally ignored
People v. Lomax (2010) 49 Cal.4th 530 [112 Cal.Rptr.3d 96]
In the Matter of Aquilux (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32
Collaborative family law practice
OC 2011-01
Communication with clients
Foley v. Biter (9th Cir. 2015) 793 F.3d 998
Lister v. State Bar (1990) 51 Cal.3d 1117
Hartford v. State Bar (1999) 50 Cal.3d 1139
Layton v. State Bar (1990) 50 Cal.3d 889
In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263
In the Matter of Friedl (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
In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220
In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831
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 Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585
In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128
CAL 2010-175, CAL 2003-163, LA 497 (1999), SF 2011-1
ability to communicate with non-English speaking clients
Iturribarria v. I.N.S. (9th Cir. 2003) 321 F.3d 889

Delgado v. Lewis (9th Cir. 2000) 223 F.3d 976
In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354
CAL 1984-77
counsel testator regarding the nature and consequences of a gift to disqualified person under Probate Code section 21350
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
In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153
instructions during deposition not to answer sanctionable
representation of a minor
LA 504 (2000)
successor attorney’s duty to advise client of ramifications of failure to notify prior attorney of existence of settlement
CAL 2008-175
use of outside lawyers or outsourcing legal services
CAL 2004-165, CAL 1994-138
LA 518 (2006)
SD 2007-1
uses of technology via virtual law office (VLO) may require additional reasonable steps to ensure that client comprehends legal concepts and advice given
CAL 2012-184
Criminal matter
abandonment of client
Brooks v. Yates (9th Cir. 2016) 818 F.3d 532
Mackey v. Hoffman (9th Cir. 2012) 682 F.3d 1247
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
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
defendant’s attorney was not ineffective for not objecting to prosecutor’s asking attorney to explain certain evidence
Demirdjian v. Gipson (9th Cir. 2016) 832 F.3d 1060
failure to file timely Appellate Opening Brief (AOB)
In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41
ineffective assistance of counsel by attorney when he failed to seek psychological testing for a minor
Weeden v. Johnson (9th Cir. 2017) 854 F.3d 1063
malpractice
Coscia v. McKenna & Cuneo (2001) 25 Cal.4th 1194 [108 Cal.Rptr.2d 471]
Salisbury v. County of Orange (2005) 131 Cal.App.4th 756 [31 Cal.Rptr.3d 831]
COMPETENCE

Duty in handling discovery of electronically stored information (ESI) outside the scope of representation

LA 502 (1999)

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


[92 Cal.Rptr.3d 725]

one investigator shared among 12 contract defenders


[111 Cal.Rptr.3d 745]

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]

attorney employees

Bernstein v. State Bar (1990) 50 Cal.3d 221


[155 Cal.Rptr.3d 321]

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416

In the Matter of Hindin (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657

-pattern of conduct needed to prove prosecutor’s liability for failing to train employees in Brady obligations


client related to ESI (electronically stored information)

CAL 2015-193, SD 2012-1

non-attorney employees


Renteria v. San Jose Police Dept. of Corrections and Rehabilitation (2006) 135 Cal.App.4th 903

[37 Cal.Rptr.3d 777]

In re Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93

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

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

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

Piney v. Andrews (9th Cir. 2004) 389 F.3d 853

See How to Use This Index, supra, p. i
outside lawyers or providers of outsourced legal services
CAL 2004-165
LA 518 (2006)
SD 2007-1
outside vendors related to ESI (electronically stored information)
People v. Aguilar (2014) 227 Cal.App.4th 60 [173 Cal.Rptr.3d 816]
People v. Kim (2009) 45 Cal.4th 1078 [90 Cal.Rptr.3d 355]
U.S. v. Bonilla (9th Cir. 2011) 637 F.3d 980
U.S. v. Chan (9th Cir. 2015) 792 F.3d 1194
People v. Aguilar (2014) 227 Cal.App.4th 60 [173 Cal.Rptr.3d 473]
Failure to appear at hearing to mitigate prejudice caused by attorney
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

COMPETENCE

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
Failure to deliver accompanied by suppression of judgment
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688
Failure to cooperate with discovery
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688
Failure to complete opposition to summary judgment motion
Minick v. City of Petaluma (2016) 3 Cal.App.5th 15 [207 Cal.Rptr.3d 350]
Failure to file timely notice of appeal
Canales v. Roe (9th Cir. 1998) 151 F.3d 1226 [949 F.Supp. 762]
Failure to file opposition to summary judgment motion
Minick v. City of Petaluma (2016) 3 Cal.App.5th 15 [207 Cal.Rptr.3d 350]
Failure to file opposition to summary judgment motion

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

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

In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

Failure to serve answer repeatedly and in violation of court order
Community Dental Services v. Tani (2002) 282 F.3d 1164

Failure to supervise client related to ESI
CAL 2015-193
outside vendors related to ESI
CAL 2015-193
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, 78 [41 Cal.Rptr. 161, 396 P.2d 577]
Cheleden v. State Bar (1942) 20 Cal.2d 133, 138 [124 P.2d 1]

Failure to take steps to establish paternity

Failure to use reasonable skill and diligence
Sands v. State Bar (1989) 49 Cal.3d 919
Gary v. State Bar (1988) 44 Cal.3d 820 [244 Cal.Rptr. 482]
Arden v. State Bar (1987) 43 Cal.3d 713 [239 Cal.Rptr. 68]
Franklin v. State Bar (1986) 41 Cal.3d 700
Stuart v. State Bar (1985) 40 Cal.3d 838, 842 [221 Cal.Rptr. 557]
In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]

In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

In the Matter of Freed (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
In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
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
CAL 2015-193, SD 2007-1
fee dispute does not relieve counsel of duty
LA 521 (2007)
specially appearing attorney owes a duty of care to the litigant
[82 Cal.Rptr.2d 193]

CAL 2004-165

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 matter
Foley v. Biter (9th Cir. 2015) 793 F.3d 998
abandonment of a client
Foley v. Biter (9th Cir. 2015) 793 F.3d 998

Incacity to attend to law practice
inactive enrollment
Business and Professions Code section 6007
-alcohol addiction
Business and Professions Code section 6007(b)
-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 of
Business and Professions Code section 6007(a)
-involutary treatment required
Business and Professions Code section 6007(a)
-mental illness
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
-infirmity
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 concealed 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. Ngg (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)

Mere ignorance of law insufficient

Zilny 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

Gee v. Estate of James Charles Jewett (2016) 6 Cal.App.5th 477 [211 Cal.Rptr.3d 137]

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

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

Public defender
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

excessive caseload and limited resources


supervision of separate alternate public defender office

CAL 2001-158

Reckless behavior by attorney

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

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9

failure to respond to discovery requests, oppose dismissal motion, and file case

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

Repeated failure to provide competent legal services

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

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

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416

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

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

Representation of a minor client in a dependency proceeding

LA 504 (2000)

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

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

affecting representation

CAL 1987-92, OC 2003-02

Suspended 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

Technology, 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

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CONFIDENCES OF THE CLIENT

CONFIDENCES OF THE CLIENT  [See  Attorney-client relationship.  Conflict of interest, client.]

Business and Professions Code section 6068(e)


Evidence Code section 950 et seq.

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 May 27, 1989)

Tomblin v. Hill (1926) 206 Cal. 689, 693-694


Arbitration agreements

Confidentiality provision within law firm employment agreement

Davis v. O'Melveny & Myers (9th Cir. 2007) 485 F.3d 1066

Assertion 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

U.S. v. Bauer (9th Cir. 1997) 132 F.3d 504

United States v. Blackman (9th Cir. 1995) 72 F.3d 1418

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

Baird v. Koerner (9th Cir. 1960) 279 F.2d 623, 627

Hoffman v. City and County of San Francisco (N.D. Cal. 2013) 2013 WL 2403641

DP Pham LLC v. Cheadle (2016) 246 Cal.App.4th 653 [200 Cal.Rptr.3d 937]


People v. Shrier (2010) 190 Cal.App.4th 400 [118 Cal.Rptr.3d 233]


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


CAL 2016-195, SD 2006-1

court has obligation to rule on claim of privilege regarding documents seized from attorneys whether or not the attorneys are suspected of criminal conduct

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

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

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


SD 2006-1

extends to communications between firm attorney and in-house counsel related to dispute with current client


extends to investigatory 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 Pham 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 Pham 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

Behunin v. Superior Court (Schwab) (2017) 9 Cal.App.5th 833 [215 Cal.Rptr.3d 475]


survives client’s death


survives corporate merger


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

broader 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


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CONFIDENCES OF THE CLIENT

Miller v. Metzinger (1979) 91 Cal.App.3d 31 [154 Cal.Rptr. 22]
between firm attorney and in-house counsel

Attorney-inmate consultation
People v. Torres (1990) 218 Cal.App.3d 700 [267 Cal.Rptr. 213]

Attorney-inmate letters
People v. Ervine (2009) 47 Cal.4th 745 [102 Cal.Rptr.3d 786]
In re Jordan (1974) 12 Cal.3d 575 [116 Cal.Rptr. 371]
In re Jordan (1972) 7 Cal.3d 930 [103 Cal.Rptr. 849]
In re Gonzalez (1989) 212 Cal.App.3d 459

Attorney’s affirmative acts which further unlawful client conduct not subject to duty to maintain confidences
In re Young (1989) 49 Cal.3d 257 [261 Cal.Rptr. 59]

Bankruptcy proceedings
In re Tesis (9th Cir. BAP 2004) 257 Cal.Rptr. 9 [39 Cal.Rptr.3d 1]

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

LA 452

attorney cannot use confidences of former client to challenge client’s discharge of fees owed
In re Rindlisbacher (9th Cir. BAP 1998) 225 B.R. 180 [33 Bankr.Ct. Dec. 528]

trustee of a corporation has the power to waive the corporation’s attorney-client privilege with respect to pre-bankruptcy communications

Billing information
United States v. Amlanj (9th Cir. 1999) 169 F.3d 1189
CAL 1971-25, LA 456, SF 1984-1

Business checks payable to a client or to others on the client’s behalf may not be privileged

Child dependency proceedings
duty to follow a minor client’s instruction not to disclose confidential information
LA 504 (2000)
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]

“Chinese wall”
County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990
Atasi Corp. v. Seagate Technology (9th Cir. 1988) 847 F.2d 826

CAL 2002-158, CAL 1998-152

Client cannot be located
CAL 1989-111

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CONFIDENCES OF THE CLIENT

Client name protected by privilege when disclosure of client’s name might implicate client’s rights of privacy

Client name protected by privilege when disclosure of client’s name might subject client to investigation for civil or criminal liability
Hays v. Wood (1979) 25 Cal.3d 772
People v. Chapman (1984) 36 Cal.3d 98, 110

Client need not show actual disclosure

Client to entertainment industry
LA 409 (1983)

Client trust fund records may be disclosed for good cause by
State Bar for attorney disciplinary proceedings
In the Matter of Member W (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 535

Client’s confidence
duty of lawyer to maintain inviolate
Business and Professions Code section 6068(e)
In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
CAL 2016-195
LA 422 (1983)

Client’s identity covered by attorney-client privilege
U.S. v. Bauer (9th Cir. 1997) 132 F.3d 504
Teddter & Associates v. United States (9th Cir. 1996) 77 F.3d 1166
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
Ralls 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 Proceedings v. U.S. (9th Cir. 1994) 33 F.3d 1060
In re Grand Jury Subpoena (Horn) (9th Cir. 1992) 976 F.2d 1314, 1317
United States v. Blackman (9th Cir. 1990) 963 F.2d 623, 635
*Olson v. Superior Court (1984) 157 Cal.App.3d 780, 796 not required where putative class members’ rights of privacy when they responded to neutral letter from plaintiff’s counsel
Tien v. Superior Court (2006) 139 Cal.App.4th 528 [43 Cal.Rptr.3d 121]

Compelling testimony against client
In the Matter of the Grand Jury Subpoena Issue to Chesnoff (9th Cir. 1995) 62 F.3d 1144
Alexiou v. United States (9th Cir. 1994) 39 F.3d 973
In re Michaelson (9th Cir. 1975) 511 F.2d 882, 892
Baird v. Koerner (9th Cir. 1960) 279 F.2d 623, 628-635
McKnew v. Superior Court (1943) 23 Cal.2d 58, 61-62 [142 P.2d 1]
Hinds v. State Bar (1941) 19 Cal.2d 87, 92-93 [119 P.2d 134]
Ex parte McDonough (1917) 170 Cal. 230, 233 [149 P. 566]
People v. Johnson (1968) 258 Cal.App.2d 705, 710
Hutson v. Superior Court (1962) 203 Cal.App.2d 687 [21 Cal.Rptr. 753]
People v. Morgan (1956) 140 Cal.App.2d 796, 803-804 [296 P.2d 75]

Confidences and secrets
Earl Schieb, Inc. v. Superior Court (1967) 253 Cal.App.2d 703, 706 [61 Cal.Rptr. 386]
Pacific Tel. & Tel. Co. v. Fink (1956) 141 Cal.App.2d 332, 357 [296 P.2d 843]
In re Soale (1916) 31 Cal.App. 144, 152 [159 P. 1065]
CAL 2016-195
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acquisition of
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In re Grand Jury Subpoena Issue to Gerson S. Horn (9th Cir. 1992) 976 F.2d 1314
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Criminal case reciprocal discovery under the Crime Victim’s Justice Reform Act upheld despite alleged interference with attorney work product privilege

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-client had no action against defendant
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-client’s absence from court, attorney may not answer court’s inquiry if harmful to client
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-client, officer of corporation, discloses sexual harassment of employee of corporation, at time that attorney also represents the corporation
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-client/plaintiff overpaid by defendant under settlement agreement
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-client’s civil fraud
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-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 CAL 2007-173
-registrar, 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

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does not result in enforcement of judgment, creditor may not ask for information
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after termination of attorney-client relationship
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-does not extend to private information received from a non-client via an unsolicited email
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handling discovery of electronically stored information (ESI)
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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.

Elijah W. v. Superior Court of Los Angeles (2013) 216 Cal.App.4th 140 [156 Cal.Rptr.3d 592]

Evidence of crime in lawyer's possession

California (2012) 173 F.3d 1237

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 1984-76

Electronic file metadata

CAL 2015-193, CAL 2007-174, SD 2012-1

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CAL 2012-184, CAL 2010-179, CAL 2007-174

SD 2006-1

OC 97-002

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. Kellington (9th Cir. (Or.) 2008) 521 F.3d 1084

People v. Piccione (1982) 31 Cal.3d 731 [183 Cal.Rptr. 685]

People v. Meredith (1981) 29 Cal.3d 682, 695

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]

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LA 466

Exceptions to rule of confidentiality

U.S. v. Sideman & Bancroft, LLP (9th Cir. 2013) 7104 F.3d 1197

McClure v. Thompson (9th Cir. (Or.) 2003) 323 F.3d 1233

Chubb & Son v. Superior Court (Lemmon) (2014) 228 Cal.App.4th 1094 [176 Cal.Rptr.3d 389]


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Exemptions to the attorney-client privilege codified in the Evidence Code modify the duty of confidentiality under Bus. & Prof. Code § 608(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. Mitsuishi (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 777 [177 Cal.Rptr.3d 464]

LA 465

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

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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)

Fugitive

client’s absence from court, attorney may not answer court’s inquiry if harmful to client

SD 2011-1

harboring a fugitive

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LA(I) 1931-2

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Identity of third party paying attorney’s fee


Ralls v. U.S. (9th Cir. 1995) 52 F.3d 223

U.S. v. Hirsch (9th Cir. 1986) 803 F.2d 493

Implied-in-fact contract

duty of confidentiality does not extend to private information received from a potential client via an unsolicited email

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may result in duty of confidentiality

CAL 2005-168, CAL 2003-161

In camera hearing on motion to withdraw
defense counsel reveals belief that defendant would commit perjury


In camera review
determination of waiver of privilege where documents related to a joint defense agreement were shared or sought under theory of common interest doctrine

Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 724 [101 Cal.Rptr.3d 758]


Inaccurate fiduciary accounting by client

SD 1983-10

Inadvertent disclosure


KL Group v. Case, Kay & Lynch (9th Cir. 1987) 829 F.2d 909

Ardon v. City of Los Angeles (2016) 62 Cal.4th 1176 [199 Cal. Rptr. 3d 743]

Rico v. Mitsubishi (2007) 42 Cal.4th 807 [68 Cal.Rptr.3d 758]

McDermott Will & Emery, LLP v. Superior Court (Hausman) (2017) 10 Cal.App.5th 1083 [217 Cal.Rptr.3d 47]


Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996 [22 Cal.Rptr.2d 862]

CAL 2015-193, CAL 2010-179, SD 1987-3

by third party does not negate confidentiality or cause forfeiture of privilege where claimant acted pursuant to protective order to keep trade secrets confidential


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 47]

client did not waive attorney-client privilege applicable to e-mail by forwarding it to third party and did not consent to additional disclosure of e-mail

McDermott Will & Emery, LLP v. Superior Court (Hausman) (2017) 10 Cal.App.5th 1083 [217 Cal.Rptr.3d 47]

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]

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. Vernon (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


theft 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 1121

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]
CONFIDENCES OF THE CLIENT

all communications among all participants remain privileged unless all mediation participants involved in a mediation-related communication agree to its disclosure
Cassel v. Superior Court (2011) 51 Cal.4th 113 [119 Cal.Rptr.3d 427]
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]
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.)
Estate of Thottam (2008) 165 Cal.App.4th 1331 [81 Cal.Rptr.3d 856]
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]
malpractice claim is barred due to mediation confidentiality statute when attorney’s alleged misconduct occurred during mediation
mediation confidentiality statutes prohibit a mediator from testifying to anything about a settlement agreement unless parties agree otherwise
prepared for the purpose of mediation are not subject to discovery and are not admissible in subsequent litigation
proponent’s attorney’s declaration that he numbered the agreement pages before the parties signed was admissible because it involved non-communicative conduct
waiver of confidentiality may not be effective in absence of party authorization
Mediator may not report sanctionable conduct of parties to court
Minor client in dependency matter
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
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Mismanagement of funds by client
-administrator
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--urge restitution
LA 132 (1940)
Misuse of client funds
Brawner v. State Bar (1957) 48 Cal.2d 814 [313 P.2d 1]
Misuse of client property
Lefner v. State Bar (1966) 64 Cal.2d 189, 193 [49 Cal.Rptr. 296, 410 P.2d 832]
Sunderlin v. State Bar (1949) 33 Cal.2d 785 [205 P.2d 382]
Moral turpitude
In the Matter of Gillis (Review Dept. 2002) 4 Cal. State Bar Rptr. 387
Name of client [See Confidences of the client, client name.]
Obtained in unrelated matter
LA(l) 1963-1
Outside services, use of by attorney
CAL 2010-179
may involve disclosure of client confidences
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-to outside lawyers or providers of outsourced legal services
LA 518 (2006)
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Knight v. Ferguson (2007) 149 Cal.App.4th 1207 [57 Cal.Rptr.3d 823]
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People v. Guzman (1988) 45 Cal.3d 915 [248 Cal.Rptr. 467]
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narrative form of testimony is best choice when attorney fears client will commit perjury
People v. Guzman (1988) 45 Cal.3d 915 [248 Cal.Rptr. 467]
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People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
CAL 1983-74, LA 305 (1968), OC 2003-01
-discretion of the court in granting motion
Possession of, presumed if substantial relationship of the matters
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County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990
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Trone v. Smith (9th Cir. 1980) 621 F.2d 994, 999
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Evidence Code sections 950 et seq.
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LA 519 (2006)

- absense waiver, responding to disparaging public statement via internet posting made by former client, attorney must be proportionate and restrained and must not reveal client confidential information nor injure the client
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LA 529 (2017)
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In re Boileau (9th Cir. 1984) 736 F.2d 503, 506
- by sending letters containing work product to auditors of client, lawyers did not waive the right to assert attorney work product protection
- communications between defendant/minor and psychotherapist appointed to assist in his defense are confidential under attorney-client privilege
Eliljah W. v. Superior Court of Los Angeles (2013) 216 Cal.App.4th 140 [156 Cal.Rptr.3d 592]
- good faith requirement
- holder of psychotherapist-patient privilege when appointed for minor and serving as guardian ad litem
- 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)
- required to claim privilege
Evidence Code section 955
- witness interviews, conducted by investigators employed by defendant’s counsel, are protected by work product privilege
Colto v. Superior Court (2012) 54 Cal.4th 480 [142 Cal.Rptr.3d 607]
atorney-client and work product privileges are not limited by the prosecution seeking to discover documents through a search warrant
People v. Superior Court (Laff) (2001) 25 Cal.4th 703 [107 Cal.Rptr.2d 323]
atorney-client privilege applies even to disclosures to a court
Tilmas v. Superior Court of Orange County (2001) 87 Cal.App.4th 738 [104 Cal.Rptr.2d 803]
atorney-client privilege extends to all communications 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]

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-disqualification of law firm appropriate due to violation of ethical obligations regarding use of inadvertently disclosed privileged e-mail
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-email to attorney on client’s employer’s computer, where client warned that communication was neither private nor confidential
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--no joint client privilege when parties have simply overlapping interests
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-communications between firm attorney and in-house counsel related to dispute with current client may be privileged

-Palmer v. Superior Court (Mireskandari) (2014) 231 Cal.App.4th 1214 [180 Cal.Rptr.3d 620]

-distinctions between confidences and secrets and privileged communications

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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]

-does not protect third party information unless third party is an agent of client

-Beuhun 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

-Ardan v. State Bar (1959) 52 Cal.2d 310, 320


--billing statements

-Clarke v. American National Commerce Bank (9th Cir. 1992) 974 F.2d 127

--business checks payable to a client or others on the client's behalf


--co-defendant's statements in letter to own attorney which, if disclosed, would be purportedly of exculpatory nature as to other co-defendant

-Murdoch 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 unprotected subject matter that has been communicated to attorney


--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


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

--no unavailability exception – privilege protects pre-trial statements although unavailable to opposing counsel through discovery

-Admiral Insurance Co. v. United States (9th Cir. 1989) 881 F.2d 1486
CONFIDENCES OF THE CLIENT

- 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


- 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]

- predecessor trustee failed to establish that they communicated with counsel in their personal capacity


- privilege does not extend to investigated work done by claims adjuster who also is an attorney

2,022 Ranch, LLC v. Superior Court (2003) 113 Cal.App.4th 1377 [7 Cal.Rptr.3d 197]

- 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 800

- condominium associations are holders of attorney-client privilege and are not required to disclose privileged information to individual homeowners


deceased client

Evidence Code section 957

Fletcher v. Alameda County Superior Court (1996) 44 Cal.App.4th 773 [52 Cal.Rptr.2d 65]


Paley v. Superior Court (1955) 137 Cal.App.2d 450

LA 300

- destruction of file

LA 491 (1997)

definitions

- client

Evidence Code section 951

- confidential communication between lawyer and client

Evidence Code section 952


lawyer

Evidence Code section 950

deputy district attorney cannot assert attorney-client privilege as to documents prepared in official capacity when the attorney is subject of criminal investigation


- derivative action by shareholders does not entitle shareholders to attorney-client privilege information

Tilmus v. Superior Court of Orange County (2001) 87 Cal.App.4th 738 [104 Cal.Rptr.2d 803]

- disclosure by corporate officer to attorney for the purpose of disclosure to outside auditors is not privileged

United States v. Ruehle (9th Cir. 2009) 593 F.3d 600

disclosure of client secret

- attorney plaintiff may not prosecute a lawsuit if in doing so client confidences would be disclosed unless statute removes the protection of the attorney-client privilege

Dietz v. Meisenheimer et al. (2009) 177 Cal.App.4th 771 [177 Cal.Rptr.3d 464]

General Dynamics Corp. v. Superior Court (1994) 7 Cal.4th 1184, 1190 [32 Cal.Rptr.2d 1]


- leading to search warrant


- to third parties reasonably necessary to carry out the representation


-- 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]

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]

duty to assert, lawyer’s

- extends to attorney for corporation as to communications with client before merger


eight-part test

United States v. Ruehle (9th Cir. 2009) 593 F.3d 600

exceptions

- breach of duty arising out of lawyer-client relationship

-- no exception where third party is seeking disclosure to information related to the litigation

Dietz v. Meisenheimer et al. (2009) 177 Cal.App.4th 771 [177 Cal.Rptr.3d 464]

- courts cannot add to statutory privilege exceptions

St. Croix v. Superior Court (City and County of San Francisco) (2014) 228 Cal.App.4th 434 [175 Cal.Rptr.3d 202]

- does not apply to work product


- due process

Dietz v. Meisenheimer et al. (2009) 177 Cal.App.4th 771 [177 Cal.Rptr.3d 464]

- 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

Tien v. Superior Court (2006) 139 Cal.App.4th 528 [43 Cal.Rptr.3d 121]

- no implied exceptions to attorney-client privilege

CONFIDENCES OF THE CLIENT

- 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.)
Estate of Thottam (2008) 165 Cal.App.4th 1331
[81 Cal.Rptr.3d 856]

- federal common law
United States v. Ruehle (9th Cir. 2009) 583 F.3d 600

fundamental fairness
Dietz v. Meisenheimer et al. (2009) 177 Cal.App.4th 771
[177 Cal.Rptr.3d 464]

holder of privilege
- 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
  HLC Properties, Ltd. v. Superior Court (2005) 35 Cal.4th 54 [24 Cal.Rptr.3d 199]

- 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

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]

not waived when the client’s agent discloses a privileged
communication without client’s authorization
DP Pham LLC v. Cheadle (2016) 246 Cal.App.4th 653 [200 Cal.Rptr.3d 937]

policy and purpose
- privilege extends to opinion letter by outside counsel to
corporate counsel which court could not require in
camera disclosure or 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
Titmas v. Superior Court of Orange County (2001) 87 Cal.App.4th 738 [104 Cal.Rptr.2d 803]

presumption


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

presumption of shared confidences in a law firm
County of Los Angeles v. United States District Court
(Forsyth) (9th Cir. 2000) 223 F.3d 990

property interest
- intention of deceased client affecting
Evidence Code section 961

- validity of writing affecting
Evidence Code section 961

protection from discovery
Hoffman v. City and County of San Francisco (N.D. Cal.
2013) 2013 WL 2403641

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]


The Regents of University of California v. Workers’ Compensation Appeals Board and Lappi
(2014) 226 Cal.App.4th 1530 [173 Cal.Rptr.3d 80]

Bank of America v. Superior Court of Orange County
(2013) 212 Cal.App.4th 1076 [151 Cal.Rptr.3d 526]

Dietz v. Meisenheimer et al. (2009) 177 Cal.App.4th 771 [177 Cal.Rptr.3d 464]


Titmas v. Superior Court of Orange County (2001) 87 Cal.App.4th 738 [104 Cal.Rptr.2d 803]


- attorney plaintiff may not prosecute a lawsuit if in doing
so 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. Meisenheimer et al. (2009) 177 Cal.App.4th 771 [177 Cal.Rptr.3d 464]


- attorney, at a minimum, must have a basic
understanding of and facility with, issues relating to e-
discovery or seek expert assistance
CAL 2015-193

- by corporate director
Tritek Telecom, Inc. v. Superior Court (2009) 169 Cal.App.4th 1385 [87 Cal.Rptr.3d 455]

- co-defendant’s statements in letter to own attorney
which, if disclosed, would be purportedly of exculpatory
nature as to other co-defendant
Murdoch v. Castro (9th Cir. 2010) 609 F.3d 983

- communications related to issues raised in litigation
Transamericia Title Ins. Co. v. Superior Court (1986) 188 Cal.App.3d 1047, 1052-1053
CONFIDENCES OF THE CLIENT

-communications with expert witness for opposing party
  County of Los Angeles v. Superior Court (1990) 222
  Cal.App.3d 647 [217 Cal.Rptr. 698]

-general, boilerplate assertion of an evidentiary privilege
  is not a proper assertion of the privilege
  Burlington Northern & Santa Fe Railway Co. v. U.S.
  District Court (9th Cir. (Mont.) 2005) 408 F.3d 1142

-not limited to litigation communications
  STI Outdoor v. Superior Court (Eller Media Co.)

-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]

-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

-through binding arbitration clause within law firm
  employment agreement
  Davis v. O'Melveny & Myers (9th Cir. 2007) 485 F.3d 1066

-use of law enforcement agents to intentionally eavesdrop
  on confidential attorney-client communications
  Cal.Rptr.3d 553]

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

public record
-city attorney’s written opinion to council on pending
  matter subject to attorney-client privilege
  Roberts v. City of Palmdale (1993) 5 Cal.4th 363 [20
  Cal.Rptr.2d 330]

-city’s inadvertent disclosure of documents in response to
  Public Records Act request did not waive attorney-client privilege
  Arden v. City of Los Angeles (2016) 62 Cal.4th 1176
  [199 Cal.Rptr. 3d 743]

-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]

-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]

-mere fact that information may appear in public domain
  does not affect the privileged status of the information
  In re Complex Asbestos Litigation (1991) 232
  Cal.App.3d 572 [283 Cal.Rptr. 723]

-privileged communications exempt from disclosure
  pursuant to Public Records Act request and city Sunshine
  ordinance
  St. Croix v. Superior Court (City and County of San
  Francisco) (2014) 228 Cal.App.4th 434 [175
  Cal.Rptr.3d 202]

-report prepared by police officers in the performance of
  their duties are public record and are not privileged
  Green & Shinee v. Superior Court (2001) 88
  Cal.App.4th 532 [105 Cal.Rptr.2d 886]
  LA 386

public record information
-city attorney’s written opinion to council on pending
  matter subject to attorney-client privilege
  St. Croix v. Superior Court (City and County of San
  Francisco) (2014) 228 Cal.App.4th 434 [175
  Cal.Rptr.3d 202]

real parties in interest may not compel disclosure when
  receiver asserts privilege
  [266 Cal.Rptr. 242]

right of corporation to claim
  United States v. Ruehle (9th Cir. 2009) 583 F.3d 600
  Zurich American Ins. Co. v. Superior Court (2007) 155
  Cal.App.4th 1485 [66 Cal.Rptr.3d 833]
  Tilmas v. Superior Court of Orange County (2001) 87
  Cal.App.4th 738 [104 Cal.Rptr.2d 803]

818

-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]

scope
  529 [135 Cal.Rptr.2d 126]
  818, 824, 826-829, 830-831
  In the Matter of Johnson (Review Dept. 2000) 4 Cal.
  State Bar Ct. Rptr. 179

search warrant not quashed despite use of defendant’s
  confidential information to obtain the warrant when law
  enforcement agents do nothing to procure or induce the
  defendant’s attorney’s improper disclosure of the
  information
  Cal.Rptr.3d 164]

selective waiver
  Pacific Pictures Corporation v. U.S. District Court (9th Cir.
  2012) 679 F.3d 1121

shareholders may not pierce privilege
  Reilly v. Greenwald and Hoffman, LLP (2011) 196
  Cal.App.4th 891 [127 Cal.Rptr.3d 317]
  Tilmas v. Superior Court of Orange County (2001) 87
  Cal.App.4th 738 [104 Cal.Rptr.2d 803]
  McDermott, Will & Emory v. Superior Court (James)
  Goldstein v. Lee (1975) 46 Cal.App.3d 614 [120
  Cal.Rptr. 253]

-third party paying fee, identity of
  Rails v. U.S. (9th Cir. 1995) 52 F.3d 223
  U.S. v. Hirsch (9th Cir. 1986) 803 F.2d 493

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

-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]

-standing to assert common interest doctrine
  OXY Resources California LLC v. Superior Court (2004)
  115 Cal.App.4th 874 [9 Cal.Rptr.3d 621]

-not applicable where the parties executed no agreement
  in the pursuit of a joint strategy
  Pacific Pictures Corporation v. U.S. District Court (9th
  Cir. 2012) 679 F.3d 1121
CONFIDENCES OF THE CLIENT

-agreement requires disclosure
Tennenbaum v. Deloitte & Touche (9th Cir. 1996) 77 F.3d 337

-arbitration case
--privilege waived with disclosure of arbitration documents to accountants for non-legal purposes

--bankrupt corporation's attorney-client privilege passes to insurers assigned to defend against claims where no director could be elected to waive privilege

-by client
McClure v. Thompson (9th Cir. (Or.) 2003) 323 F.3d 1233
Beck v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]
Musser v. Provencher (2002) 28 Cal.4th 274 [121 Cal.Rptr.2d 373]

LA 519 (2006)

-absent waiver, responding to disparaging public statement via internet posting made by former client, attorney must be proportionate and restrained and must not reveal client confidential information nor injure the client
LA 525 (2012)
SF 2014-1

--email to attorney was neither private nor confidential

-by corporation
United States v. Ruehle (9th Cir. 2009) 583 F.3d 600

-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 must hold hearing before ruling on waiver of attorney-client privilege
Tilmas v. Superior Court of Orange County (2001) 87 Cal.App.4th 738 [104 Cal.Rptr.2d 803]

--disclaimer of attorney-client relationship does not effectively waive the duty of confidentiality
Bart v. U.S. Dist. Court for Central Dist. of Cal. (9th Cir. 2005) 410 F.3d 110

-failure to produce a privilege log in a timely manner is a waiver of privilege

Burlington Northern & Santa Fe Railway Co. v. U.S. District Court (9th Cir. (Mont.) 2005) 408 F.3d 1142

--forced waiver not an authorized sanction for failure to file a privilege log
Korea Data Systems Co. Ltd. v. Superior Court (1997) 51 Cal.App.4th 1513 [59 Cal.Rptr.2d 925]

-found when attorney did not specifically reference objections to individual items in discovery request for production of documents

--found when claiming ineffective assistance of counsel
Bittaker v. Woodford (9th Cir. 2003) 331 F.3d 715

CONFIDENCES OF THE CLIENT

--found when party claiming privilege uses non-disclosure as both a sword and a shield
Pacific Pictures Corporation v. U.S. District Court (9th Cir. 2012) 679 F.3d 1121
Bittaker v. Woodford (9th Cir. 2003) 331 F.3d 715
United States v. Amlani (9th Cir. 1999) 169 F.3d 1189
Chevron Corporation v. Pennzoil Company (9th Cir. 1992) 974 F.2d 1156
Dietz v. Meisener et al. (2009) 177 Cal.App.4th 771 [177 Cal.Rptr.3d 464]

--found where clients never disputed attorney’s authority to release documents to a third-party
Pacific Pictures Corporation v. U.S. District Court (9th Cir. 2012) 679 F.3d 1121

--inadvertent disclosure absent client’s waiver does not destroy privilege
Ardon v. City of Los Angeles (2016) 62 Cal.4th 1176 [199 Cal. Rptr. 3d 743]
KL Group v. Case, Kay & Lynch (9th Cir. 1987) 829 F.2d 909

--inadvertent disclosure by third party does not negate confidentiality or cause forfeiture of privilege where claimant acted pursuant to protective order to keep trade secrets confidential

--inadvertent, accidental disclosure by attorney not waiver by client

--insured employer of claimant may not waive attorney-client privilege that insurer is entitled to assert under Labor Code section 3762

--IRS, voluntary disclosure by client

--limited in federal habeas petitions, court justified in entering protective order
Bittaker v. Woodford (9th Cir. 2003) 331 F.3d 715

--limited to habeas proceeding when court within its discretion, issues protective order when ineffective assistance of counsel issues are raised
Bittaker v. Woodford (9th Cir. 2003) 331 F.3d 715
Osband v. Woodford (9th Cir. 2002) 282 F.3d 1125

--limited waiver based on limited disclosure
Chevron Corporation v. Pennzoil Company (9th Cir. 1992) 974 F.2d 1156

--no waiver when previously produced privileged documents to federal government during regulatory and criminal investigations found to be coerced
Regents of University of California v. Superior Court (2003) 165 Cal.App.4th 672 [81 Cal.Rptr.3d 186]

--not found
Gomez v. Vernon (9th Cir. (Idaho) 2001) 255 F.3d 1118 [50 Fed. R. Serv.3d (Callaghan) 436]
Hoffman v. City and County of San Francisco (N.D. Cal. 2013) 2013 WL 243641

--common interest doctrine applies to joint prosecution agreement for the sharing of experts reports

--disclosure of documents reasonably necessary to further the interests of counsel, clients, and third parties who were bound by an offer and acceptance

--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

--shareholder derivative action
Reilly v. Greenwald and Hoffman, LLP (2011) 196 Cal.App.4th 891 [127 Cal.Rptr.3d 517]

--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
Citizens for Ceres v. Superior Court (2013) 217 Cal.App.4th 899 [156 Cal.Rptr.3d 789]

--when previously produced privileged documents to federal government during regulatory and criminal investigations found to be coerced
Regents of University of California v. Superior Court (2003) 165 Cal.App.4th 672 [81 Cal.Rptr.3d 186]

--patent case

--reasonable steps to protect privileged communications
Regents of University of California v. Superior Court (2008) 165 Cal.App.4th 672 [81 Cal.Rptr.3d 186]

--sexual relations with client may waive privilege
OC 2003-02

--technology
CAL 2010-179

--third party communication, privilege only extends to those necessary to effectuate the client’s consultation
U.S. v. Kovel (2nd Cir. 1961) 296 F.2d 918

--trustee’s reporting duties do not trump the attorney-client privilege and does not constitute a waiver
Welis Farago Bank v. Superior Court (Bolwood) (2000) 22 Cal.4th 201 [901 Cal.Rptr.2d 716]

--who may claim

--witnesses

-- privilege does not extend to memorandum disclosing the existence of
Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996 [22 Cal.Rptr.2d 862]

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

--work product including non-litigation work
CONFIDENCES OF THE CLIENT

- 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]

work product privilege
- witness interviews, conducted by investigators employed by defendant’s counsel, are protected by work product privilege
  Colto v. Superior Court (2012) 54 Cal.4th 480 [142 Cal.Rptr.3d 607]

Psychotherapist-patient privilege

Public Records Act
  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]

Public record information
  In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
  CAL 2016-195
  city attorney’s written opinion to council on pending matter subject to attorney-client privilege
  St. Croix v. Superior Court (City and County of San Francisco) (2014) 228 Cal.App.4th 434 [175 Cal.Rptr.3d 202]
  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]
  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]
  report prepared by police officers in the performance of their duties are public record and not privileged
  LA 386
  Questionnaire posted on the Internet may be privileged if no waiver of privilege, despite waiver of attorney-client relationship
  Barton v. U.S. Dist. Court for Central Dist. of Cal. (9th Cir. 2005) 410 F.3d 110
  Receivers entitled to attorney-client privilege when counsel is obtained to assist in the discharge of duties
  Records mistakenly delivered to a party
  SD 1987-3

Related matter
  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

imputed knowledge

- absolute privilege not applicable when attorney merely acts as a business agent receiving or conveying messages

- attorney/client privilege distinguished from work product rule
  Admiral Insurance v. U.S. District Court for Dist. of Arizona (9th Cir. 1989) 881 F.2d 1486
  SD 2004-1

- attorney’s use of social media to communicate with non-clients regarding professional activities must guard against disclosing confidential client information
  LA 529 (2017)
  - by sending letters containing work product to auditors of client, lawyers did not waive the right to assert attorney work product protection

- common interest doctrine
  - common interest doctrine, did not protect otherwise privileged communications disclosed between parties because their interests were fundamentally divergent

- common agreements or defense agreements for the sharing of experts’ reports
  - excluded from discovery
  - identity of putative class members does not violate
  Tien v. Superior Court (2006) 139 Cal.App.4th 528 [43 Cal.Rptr.3d 121]
  - limited to work done for client and communications with the client for that purpose
  - need not be revealed to enable the court to rule on privilege
  - no waiver when previously produced privileged documents to federal government during regulatory and criminal investigations found to be coerced
  Regents of University of California v. Superior Court (2008) 165 Cal.App.4th 672 [81 Cal.Rptr.3d 186]
  - privilege does not extend to memorandum disclosing the existence of
  Aerotek General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996 [22 Cal.Rptr.2d 862]
CONFIDENCES OF THE CLIENT

-rebuttable presumption of shared confidence in a law firm
County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990
Relationship of matter to Smoking gun
imputed knowledge
-rebuttable presumption of shared confidences in a law firm
County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990
Representing client’s former spouse DeLong v. Miller (1955) 133 Cal.App.2d 175
Research project by non-attorney seeks summarized client data LA 378 (1978)
Revelation of client confidences required by court order challenge to error Roberts v. Superior Court (1973) 9 Cal.3d 330, 335-336 [107 Cal.Rptr. 309, 508 P.2d 309]
automatic vicarious 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
Search warrant lawyer’s voluntary disclosure to police that her clients are committing crimes is not a basis to quash a search warrant or suppress evidence despite a claimed breach of the attorney-client privilege People v. Navarro (2006) 138 Cal.App.4th 146 [41 Cal.Rptr.3d 164]
SD 2011-1
secret includes criminal or fraudulent acts CAL 1988-96, CAL 1986-87
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 his lawyer’s consent LA 505 (2000)
“Smoking gun” United States v. Kellington (9th Cir. (Or.) 2000) 217 F.3d 1084
In re Grand Jury Subpoena (Horn) (9th Cir. 1992) 976 F.2d 1314, 1317
CAL 1984-76, LA 466 (1991)
Social media LA 529 (2017)
LA 408 (1982)
Supervision of employees attorneys must prohibit their employees from violating confidences of former employers as well as confidences of present clients In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]
duty to maintain client confidences when sharing facilities and staff with other attorneys CAL 1997-150
duty to maintain client confidences when sharing facilities with non-lawyers In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
Technology, use of CAL 2012-184, CAL 2010-179
when using e-discovery, if attorney is not well versed in use of such technology, should consult with an expert to make sure no confidential information is released CAL 2015-193
Telephone “hotline” taking legal inquiries from callers LA 449 (1988)
To “of counsel” LA 516 (2006)
To protect self against a claim brought by a third-party LA 519 (2006)
attorney may respond generally to online review of former client if the matter is concluded and no confidential information is disclosed SF 2014-1
Trusts
trust obligations between the United States and Indian tribes are defined by statute and are not comparable to a private trust relationship U.S. v. Jicarilla Apache Nation (2011) 564 U.S. 162 [131 S.Ct. 2313]
trust’s attorney need not disclose to beneficiaries confidential communication with trustee Wells Fargo Bank v. Superior Court (Bolwood) (2000) 22 Cal.4th 201 [901 Cal.Rptr.2d 716]
Unauthorized dismissal of case Foote v. State Bar (1951) 37 Cal.2d 127, 128 [230 P.2d 617]
Use of CAL 2012-183
following disqualification due to a conflict of interest CAL 1970-22
former in-house counsel may disclose employer-client confidences to her own attorneys to the extent relevant to her wrongful termination action Fox Searchlight Pictures, Inc., v. Paladino (2001) 89 Cal.App.4th 294 [106 Cal.Rptr.2d 906]
CAL 2012-183, SD 2008-1
in action against former client -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]
SD 1970-2
-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]
in action to collect fee involving client LA 452 (1988), LA 159 (1945), LA(I) 1961-3
in action to recover unpaid attorney referral fees

Dietz v. Meisenheimer et al. (2009) 177 Cal.App.4th 771 [177 Cal.Rptr.3d 464]
in representation of another client
in representing former client’s opponent
SD 1976-10
parties may disclose to their respective counsel documents containing potentially confidential or privileged information of third party claims

Chubb & Son v. Superior Court (Lemmon) (2014) 228 Cal.App.4th 1094 [176 Cal.Rptr.3d 389]
revelation to entertainment industry regarding client’s case
LA 409 (1983)
Virtual law office (VLO)
CAL 2012-184
Waiver [See Privilege. waiver]
Whereabouts of client
CAL 1989-111, LA(I) 1931-2
Wireless connection, use of and need for precautions
CAL 2010-179
Withdrawal
in camera disclosure of general information as basis for
ine camera disclosure of possible client perjury
LA 498 (1999)
Withholding client funds
Work product
law firm is the holder of work product privilege and need not seek consent from associate attorney before disclosure
Wrongfully retaining client money
Griffith v. State Bar (1945) 26 Cal.2d 273, 275 [158 P.2d 1]

Rule 3-310(D)

Abuse of discretion
court did not abuse discretion in denying motion to substitute in retained counsel; waiver based on inadequate conflict whether
found when court removed the public defender in a juvenile proceeding absent showing that minor was not indigent or a conflict existed
Joshua P. v. Superior Court (2014) 226 Cal.App.4th 957 [172 Cal.Rptr.3d 505]
Acceptance of adverse employment
Rule 3-310, Rules of Professional Conduct (operative as of May 27, 1989)

CONFLICT OF INTEREST

attorney purchases judgment from opposing party, then seeks enforcement of that judgment against former client

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]
client in one matter, later opposing party in unrelated matter
consultation with opposing party related to fees only, not to issues of cause of action
continuing relationship with opposing party deemed conflict
Shaefler v. State Bar (1934) 220 Cal. 681
dual representation after disclosure and upon receipt of consent
necessity for consent of parties
61 Ops. Cal. Atty. Gen. 18, 19 (1/5/78; No. CV 77-118)
60 Ops. Cal. Atty. Gen. 206, 212 (7/7/77; No. CV 76-14)
preparing answer for in propria persona defendant while representing plaintiff in same matter
LA 432 (1984)
public defender may not set up separate division within office to represent criminal defendant where conflict present
59 Ops. Cal. Atty. Gen. 27 (1/15/76; No. CV 72-278)
representation of arbitrator presently hearing matter
LA 415 (1983)
representation of both husband and wife in a divorce action
Ishmael v. McCartney (1966) 241 Cal.App.2d 520 [50 Cal.Rptr. 592]
representation of criminal defendant in one matter and representation of another client in a related matter is an actual conflict
People v. Easley (1988) 46 Cal.3d 712
representation of husband and wife in estate planning, later represents husband in Marvin agreement
LA 448 (1987)
representation of opposing party in the same matter without consent of former client
Acceptance of adverse interest
inadequate evidence to determine conflict of interest
Pringle v. La Chappelle (1999) 73 Cal.App.4th 1000 [87 Cal.Rptr.2d 90]
Accepting compensation from other than client
Rule 3-310(F), Rules of Professional Conduct (operative as of September 14, 1992)
LA 500 (1999)
Accepting employment adverse to client
Rules 4-101 and 5-102, Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-310, Rules of Professional Conduct (operative as of May 27, 1989)
Acquisition of adverse interest
absolute prohibition
Ames v. State Bar (1973) 8 Cal.3d 910, 915 fn.8
acquiring former client’s collection business and clientele
CONFLICT OF INTEREST

advice of independent counsel

Connor v. State Bar (1990) 50 Cal.3d 1047
Hawk v. State Bar (1988) 45 Cal.3d 589
Ritter v. State Bar (1985) 40 Cal.3d 595
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 Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153

-adverse pecuniary interest must be "knowingly acquired"

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

asset in probate estate acquired by attorney in apparent satisfaction of fee

Fall v. State Bar (1944) 25 Cal.2d 149, 152-154 [153 P.2d 1]

attorney enters into partnership with client

Kapelus v. State Bar (1987) 44 Cal.3d 179
-Tinder’s fee
Tuohy & Barton v. Anaheim Memorial Hospital (1986) 187 Cal.App.3d 609
-judgment proceeds as source of attorney fee
LA 416 (1983)
-representation/business relationship with living trust marketer
CAL 1997-148
-security for fees
-selling information regarding case to entertainment industry
LA 409 (1983)

attorney purchases judgment from opposing party, then seeks enforcement of that judgment against former client


attorney's dual capacity as attorney and real estate broker

Price v. Lehtinen (In re Lehtinen) (9th Cir. 1997) 332 B.R. 404
SD 1992-1

attorney's purchase of real property which was the subject matter of client representation

Tomblin v. Hill (1929) 206 Cal. 689

before termination of attorney-client relationship requires compliance with rule 5-101

Arden v. State Bar (1987) 43 Cal.3d 713

bidding on government contract requiring client's consent to waiver of client's attorney-client and work product privileges

LA 435

borrowing money from client

In re Tallant (9th Cir. 1998) 218 B.R. 58

business transaction with client

Connor v. State Bar (1990) 50 Cal.3d 1047

-california public apportionment of fees

Connor v. State Bar (1990) 50 Cal.3d 1047

-full disclosure and written consent required

McKnight v. State Bar (1991) 53 Cal.3d 1025

LS v. State Bar (1981) 43 Cal.3d 802 [239 Cal.Rptr. 121]


In the Matter of Song (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483

borrowing money from trust where attorney is trustee

Schneider v. State Bar (1987) 43 Cal.3d 784 [239 Cal.Rptr. 111]

In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93

agascar c. state bar

inquiry concerning judge seeman, com. on jud. performance, ann. rep. (2013), public censure and bar, p. 15

-fee financing plan

CAL 2002-159, OC 93-002

-from fund which resulted from representation, attorney-client relationship exists even if representation has otherwise ended


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 Conner (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153

In the Matter of Little Brown Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233


CAL 1995-140, LA 477

-law partner not "independent counsel" for purpose of conflicts rule

Connor v. State Bar (1990) 50 Cal.3d 1047

-moral turpitude found

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824

-no violation found if no financial gain and not a party to the transaction

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767
CONFLICT OF INTEREST

- 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
- not found where attorney merely refers client to real estate broker for loan for legal fees and there is no referral fee from broker and attorney does not represent any party in the loan transaction
  CAL 2002-159
- post-settlement agreement, that attorney would attempt to compromise medical bills in exchange for payment
  In re Silvertown (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]
- strictly scrutinized for fairness
  Rodgers v. State Bar (1989) 48 Cal.3d 300 [256 Cal.Rptr. 381]
  In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483
  In the Matter of Lillian Brown Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233
  In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153
- charging lien in hourly fee agreement requires compliance with rule 3-300
  Fletcher v. Davis (2004) 33 Cal.4th 61 [14 Cal.Rptr.3d 58]
  CAL 2006-170
- contingency fee agreements distinguished
  compensation from third party affecting professional judgment
  LA 317 (1970)
  In the Matter of Allen (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198
  In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735
  entering into loan transaction with client – attorney has one client loan money to another client
  Rodgers v. State Bar (1989) 48 Cal.3d 300 [256 Cal.Rptr. 381]
  estate attorney charging personal representative personally for services performed
  LA 347 (1975), SD 1992-1
- judgment proceeds as source of attorney fee
  LA 416 (1983)
- lending money to client by attorney
  Dixon v. State Bar (1982) 32 Cal.3d 728, 733
  Bradpiece v. State Bar (1974) 10 Cal.3d 742, 744
  In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 201
  In the Matter of Fonete (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
  In the Matter of Allen (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198
  - by attorney's spouse
- lien against recovery in unrelated matter to secure fees owed not subject to rule 3-300
  LA 496 (1998)
- no duty to recommend specific lawyer
  Maltaman v. State Bar (1987) 43 Cal.3d 924
- charging lien in contingency fee agreement does not create an adverse interest within the meaning of rule 3-300
  CAL 2006-170
- where attorney arranges to transfer client's property to attorney's son
  In re Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117
- where attorney merely refers client to real estate broker for loan for legal fees and there is no referral fee from broker and attorney does not represent any party in the loan transaction
  CAL 2002-159
- note and deed of trust for personal gain
  Lee v. State Bar (1970) 2 Cal.3d 927
- note secured by deed of trust to secure fees is an "adverse interest requiring compliance with rule 5-101
  Read v. State Bar (1991) 53 Cal.3d 394, mod. at 53 Cal.3d 1009
  In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93
  LA 492 (1998)
- open-ended credit transaction found unfair
  Morgan v. State Bar (1990) 51 Cal.3d 598
- patent prosecution, compliance with 3-300 not required where attorney's fees are linked to the proceeds of the patent but attorney has no ability to summarily extinguish the client's ownership interest
  LA 507 (2001)
- post-settlement agreement, that attorney would attempt to compromise medical bills in exchange for payment
  In re Silvertown (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]
- purchase of property which is the subject matter of the litigation
- purchase of real property subject of collection effort on behalf of client
- purchase of second deed of trust by wife of attorney deemed adverse to client
- quit claim deed and general power of attorney which permit attorney to summarily extinguish a client's property interest constitutes an adverse interest
  Brockway v. State Bar (1991) 53 Cal.3d 51
- representation of insurer and party adverse to insurance company
  Anderson v. Eaton (1930) 211 Cal. 113, 116-117 [293 P. 788]
  LA 407 (1982)
- security for fees
- selling information regarding case to entertainment industry
  LA 409 (1983)
- settlement with client of fee dispute and release from liability for potential malpractice including a Civil Code § 1542 waiver, does not require 3-300 compliance
  CAL 2009-178
- structured settlement, use of
  CAL 1987-94
- taking business clientele from a former client

See How to Use This Index, supra, p. i
CONFLICT OF INTEREST

Actual or potential conflict


Adversity of interest

LA 216 (1953)

Adverse interest

LA 418 (1983)

Adoption

LA 407 (1982)

Administrative Procedure Act does not prohibit state agency attorney from acting as an agency prosecutor in one case and concurrently acting as an agency advisor in unrelated case

Civil Code section 225(m)

LA 521 (2007)

Adverse interest

LA 74 (1934)

attorney both partner in partnership arrangement and counsel to partnership and another party

OLivet v. Frischling (1980) 104 Cal.App.3d 831, 842 [184 Cal.Rptr. 87]

LaFleur v. State Bar (1995) 22 Cal.4th 1087 [92 Cal.Rptr.2d 472, 2 P.3d 1214]

attorney for bankruptcy estate trustee had prior consultation with debtor

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

attorney for defendant accusing client of being in collusion with plaintiff


attorney for estate attempts to purchase property of beneficiary for substantially less than the true value

Sodikoff v. State Bar (1975) 14 Cal.3d 422 [121 Cal.Rptr. 467, 535 P.2d 331]

attorney involvement in fee dispute with client and prior attorney over fees not arising out of current representation


attorney purchases judgment from opposing party, then seeks enforcement of that judgment against former client


attorney retained by a party to recover monies owed subsequently becomes involved with opposing party to detriment of original client


attorney’s agreement to indemnify a client’s reasonable costs and expenses is not an adverse interest

LA 517 (2006)

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

charging lien in hourly fee agreement requires compliance with rule 3-300


Fletcher v. Davis (2004) 33 Cal.4th 61 [14 Cal.Rptr.3d 58]

- contingency fee agreements distinguished

CAL 2006-170

city attorney disqualified from representing city in matter related to prior representation of private company

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

confession of judgment deemed detrimental to client

Hull v. State Bar (1972) 8 Cal.3d 440 [105 Cal.Rptr. 152, 503 P.2d 608]

county counsel with private practice may not represent district organized under Municipal Water District Act of 1911


defense counsel in criminal matter is being prosecuted by district attorney in other matters

Campbell v. Rice (9th Cir. 2005) 408 F.3d 1166

definition

CAL 2011-182

disclosure and consent per rule 3-300 not a cure when matter is governed by probate code

SD 1989-2

executor hiring attorney


fee dispute does not create adverse pecuniary interest

LA 521 (2007)

financial interest in the subject matter of the representation


- accepting compensation from broker for referring client

SD 1989-2

- accepting compensation from doctor for client referral

LA 443 (1987)

- accepting compensation from insurance agent for client referral

CAL 1995-140

- accepting compensation from investment manager for client referral

CAL 1999-154

- in corporation about which client desires legal advice

LA 57 (1928)

former client

LA 2 (1917)

- in litigation

Gendron v. State Bar (1983) 35 Cal.3d 409

LA 30 (1925); SD 1976-10

former corporate counsel now counsel for stockholders in derivative suit

Jacuzzi v. Jacuzzi Bros., Inc. (1963) 218 Cal.App.2d 24, 29 [32 Cal.Rptr. 188]

in-house counsel represented employer and employee concurrently (to the employee’s detriment) without obtaining informed consent


injury to former client due to representation of current client


insurance company and insured [See Insurance.]


- and other party

Hammett v. McIntyre (1952) 114 Cal.App.2d 148 [249 P.2d 885]

See How to Use This Index, supra, p. i
CONFLICT OF INTEREST

attorney for plaintiff formerly had borrower-lender relationship with defendant
collaborative family law practice, duties to adverse party, adverse counsel and own client, must be disclosed to client
OC 2011-01

communication with unrepresented party
CAL 1996-145, LA 334 (1973)

compelled to communicate directly with party
disclosure of relationship between attorney and family members as adverse parties to client
Godiga v. State Bar (1978) 20 Cal.3d 788, 792 [144 Cal.Rptr. 404, 575 P.2d 1186]

failure to disclose relationship with

fraudulent conduct of reported
SF 1975-2

instruct client with respect to communications with opposing party
CAL 1993-131, SD 1983-2

insurance cases, company and insured [See Insurance.]

plaintiffs' class counsel offered employment by defendant
Linney v. Cellular Alaka Partnership (9th Cir. 1998) 151 F.3d 1234 [41 Fed.R.Serv.3d 1079]

previously consulted attorney on another matter
CAL 1984-84
LA 406 (1982)

relationship with opposing counsel not considered a relationship with adverse party
CAL 1984-83
SD 1989-4, SD 1976-12

represent city in prosecution of actions and represent city employee against city

-in unrelated matters
LA 77 (1934)

representation in related matter against former client
[117 Cal.Rptr.3d 125]

representation of
-after obtaining information from
LA 193 (1952)

- attorney for bankruptcy estate trustee had prior consultation with debtor
In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]

-one against the other after investigation
LA 223 (1954)

-related matter
LA 223 (1954), LA 141 (1943)

-unrelated action
--against client
LA 6 (1918)

representation of, in unrelated matter against existing client
Abbott v. United States IRS (9th Cir. 2005) 399 F.3d 1083
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]
CONFLICT OF INTEREST


represented

-by former partner

CAL 1981-57

social relationship; attorney and opposing party

-club membership of attorney as impacts representation of client against club

Pepper v. Superior Court (1977) 76 Cal.App.3d 252, 261-262 [142 Cal.Rptr. 756]


Adverse position

attorney for criminal defendant adopted position in direct opposition to that of his client

People v. Davis (1957) 48 Cal.2d 241, 256 [309 P.2d 1]

Aggregate settlements of claims


All affected clients' consent

applies to current not former clients

LA 463 (1990)

Appeal

attorney may not advise city council regarding arbitration award when another attorney in the same firm represented the city's police department at arbitration


attorney purchased judgment from opposing party seeks to enforce judgment against former client in the appeal on same matter as original representation


disqualification order not appealable in the grand jury context

In re Grand Jury Investigation (9th Cir. 1999) 182 F.3d 668

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 denying motion to disqualify not an immediately appealable final order

Manley v. Fireman's Fund Insurance Co. (9th Cir. 1989) 883 F.2d 747

Appearance of conflict


Harauchi 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]

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 201]


People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]


People v. Pastrano (1997) 52 Cal.App.4th 610 [60 Cal.Rptr.2d 620]

district attorney

-recusal of entire office

People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]

publication of fictional account of crime did not create disqualifying conflict for prosecutor or district attorney office


Harauchi v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 250]

recusal of entire office

People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]

Appearance of impropriety

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

In re Georgetown Park Apartments (9th Cir. BAP 1992) 143 B.R. 557

Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1996) 195 B.R. 740


Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]


DCH Health Services Corp. v. Waite (2002) 95 Cal.App.4th 829 [115 Cal.Rptr.2d 847]


Comden v. Superior Court (1978) 20 Cal.3d 906, 912 [145 Cal.Rptr. 9, 576 P.2d 571]


CAL 1981-63

LA 363 (1979)

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


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

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


former employee of defendant may become a client of plaintiff's attorney and may communicate confidential information to that attorney


See How to Use This Index, supra, p. i
multiple and interconnected family entanglements results in an appearance of impropriety and undermines the integrity of the judicial system
Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]
standard has never been used by a California court as the sole basis for disqualification
In re AFH Holding Inc. (9th Cir. BAP 2006) 355 B.R.139

Arising from relationship with non-client
Lynn v. George (2017) 15 Cal.App.5th 630 [223 Cal.Rptr.3d 407]
OC 2012-1

- disqualifying conflict may arise, with regard to an adverse non-client, by virtue of representing non-client's attorney

Arising out of formation of partnership with out-of-state law firm
LA 392 (1981)
Assignee
represent
- against former client’s assignee in matter in which acted for client
LA(I) 1961-2
Associate
city attorney’s
- practice by
LA(I) 1975-4
city council member’s, practice by
CAL 1977-46, LA(I) 1975-4
moving to opposing side – now representing opposing party
LA 363 (1976)
practice by employer when associate
- is prosecutor
LA 377 (1978)

Attorney acting as arbitrator
improper for an attorney appearing before him to represent him
LA 415 (1993)
Attorney acting as class action class representative
Attorney as partner or employee of two law firms
LA 511 (2003)
Attorney general
withdrawing from representation of one party then suing the same clients on the identical controversy
Attorney-client relationship
consultation in non-office setting
CAL 2003-161
consultation where potential client submits legal question via website
CAL 2005-168

CONFLICT OF INTEREST

-is not created by receipt of private information from potential client via an unsolicited email
SD 2006-1
Cumis counsel does not have attorney-client relationship with insurer for purposes of disqualification
existence of
Perkins v. West Coast Lumber Co. (1900) 129 Cal. 427
[62 P. 57]
Hicks v. Drew (1897) 117 Cal. 305, 307-308 [49 P. 188]
Miller v. Metzingen (1979) 91 Cal.App.3d 31 [154 Cal.Rptr. 22]
Kraus v. Davis (1970) 6 Cal.App.3d 484, 490-491 [85 Cal.Rptr. 846]
CAL 1977-47
-arising out of a joint defense agreement
United States v. Henke (9th Cir. 2000) 222 F.3d 633
-fiduciary relationship exists in absence of fee agreement
Byeer v. State Bar (1987) 43 Cal.3d 802 [239 Cal.Rptr. 121]
-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. 846]
-former client
--exists when transaction involves funds obtained by representation
In the Matter of Gillis (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387
--law firm acquires former client’s collection business
-minor and guardian
Evidence Code section 951
CAL 1988-96
-on-going relationship” between attorney and client based on periodic visits to attorney's office seeking legal assistance
In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153
-preparing answer for in propria persona defendant creates relationship
LA 432 (1984)
-purchaser of client’s assets
LA 433 (1984)
-telephone “hotline” providing legal advice to callers
LA 449 (1988)
CONFLICT OF INTEREST

for purposes of disqualification, attorney representing insured is also representing insurance company
formed with bank when attorney writes an opinion letter for bank at the request of a client who is a customer of the bank.
substantial attorney-client relationship must be shown
without separate relationship, there can be no conflict of interest between governmental entity and constituent entity

Avoiding adverse interests
Rule 5-101, Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-300, Rules of Professional Conduct (operative as of May 27, 1989)
Avoiding representation of adverse interests
Rule 5-101, Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-300, Rules of Professional Conduct (operative as of May 27, 1989)

Bankruptcy [See Conflict of interest, receiver.]

In re Hines (9th Cir. BAP 1996) 198 B.R. 769
attorney failed to disclose debtor owed prior fees to attorney
In re Elias (9th Cir. BAP 1999) 188 F.3d 1160 [34 Bankr.Ct.Dec. 1229]
attorney for bankruptcy estate not inherently in conflict if represent estate creditors against others in a separate action

attorney for bankruptcy estate trustee had prior consultation with debtor
In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]
attorney for bankruptcy estate has duty to disclose all facts concerning his transactions with the debtor
In re Tevis (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

attorney-trustee was removed when it was shown she was not disinterested (had an indirect relationship with debtor)
In re AFI Holding, Inc. (9th Cir. BAP 2006) 355 B.R.139
concurrent representation of clients with adverse interests
-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)

Bond

indentity company counsel acts against assured by way of subrogation
LA(I) 1966-1

Bonus program for public agency attorneys tied to savings by agency
SD 1997-2

Breach of fiduciary duty

attorney acting as counsel for both sides in leasing transaction
Olivet v. Frischling (1980) 104 Cal.App.3d 831, 842 [164 Cal.Rptr. 87]
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
business dealings between attorney and client subject to scrutiny
disbursement from community property assets in dissolution matter without consent of parties
disclose to court representation of related trust
doctrine component defined
misrepresentation and undue influence induce client to sell real property to attorney
Hicks v. Clayton (1977) 67 Cal.App.3d 251
to former client
-law firm acquires former client’s collection business

Business activity

recommend own to client
LA(I) 1971-16
represent
-customers of own
LA 205 (1953), LA(I) 1976-7

Business or financial transactions with clients

In re Tallant (9th Cir. 1998) 218 B.R. 58

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206
In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349
In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252
In the Matter of Primos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824
In the Matter of Fonte (Review Dept. 1999) 188 F.3d 1160 [34 Bankr. Ct. Rptr. 824]
In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 252
In the Matter of Silverton (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 252
In the Matter of Primos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824

Business activity

recommend own to client
LA(I) 1971-16
represent
-customers of own
LA 205 (1953), LA(I) 1976-7

Business or financial transactions with clients

In re Tallant (9th Cir. 1998) 218 B.R. 58

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206
In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349
In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252
In the Matter of Primos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824
In the Matter of Fonte (Review Dept. 1999) 188 F.3d 1160 [34 Bankr. Ct. Rptr. 824]
CONFLICT OF INTEREST

[62 Cal.Rptr.2d 27]

[62 Cal.Rptr.2d 298]

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170

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

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153

SD 1992-1

partner not an independent counsel

Connor v. State Bar (1990) 50 Cal.3d 1047

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

burden of proof on attorney that dealings fair and reasonable

In re Silverton (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]

Rodgers v. State Bar (1989) 48 Cal.3d 300


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 Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735

SD 1992-1

deed of trust to secure fees

Read v. State Bar (1991) 53 Cal.3d 394

Hawk v. State Bar (1988) 45 Cal.3d 589

LA 492 (1998)

duty to disclose interest


Fair market value is not determinative of whether a transaction is fair and reasonable to a client

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

full disclosure required

Beery v. State Bar (1987) 43 Cal.3d 802

Frazer v. State Bar (1987) 43 Cal.3d 564

Fair v. Bakhtiani et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]


In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824

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

lending money to client by attorney


-by attorney’s spouse


moral turpitude found

In re Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117

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

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824

no violation found if no financial gain and not a party to the transaction

In re Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767

CAL 2002-159

overreaching and/or undue influence, presumption of

Fitter v. State Bar (1985) 40 Cal.3d 595


-Probate Code, § 16004(c), prohibiting a fiduciary from obtaining an advantage from the beneficiary, applies to the attorney-client relationship

Fair v. Bakhtiani et al. (2011) 195 Cal.App.4th 1135

[125 Cal.Rptr.3d 765]

stock promise to attorney is unenforceable


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

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(l) 1975-4

attorney

46 Ops. Cal. Atty. Gen. 74 (10/14/65; No. 64-65)

No. 64-65

attorney may not advise city council regarding arbitration award when another attorney in the same firm represented the city’s police department in arbitration

Sabey v. City of Pomona (2013) 216 Cal.App.4th 69

[155 Cal.Rptr.3d 452]

city attorney/country 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)
CONFLICT OF INTEREST

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 (8/7/02; 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
-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
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
conflict 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
Rodríguez v. Disner (9th Cir. 2012) 688 F.3d 645
Rodríguez 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)
CONFLICT OF INTEREST

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]
60 Ops. Cal. Atty. Gen. 216, 212-213 (7/7/77; No. CV 76-14)
59 Ops. Cal. Atty. Gen. 27 (1/15/76; No. CV 72-278)

actual versus potential disclosure
-actual use or misuse not determinative – possibility of breach of confidence controls


-associate switches sides

SD 2008-1, SD 1976-10, SD 1974-12, SD 1970-2
SF 1973-6, SF 1973-19
acquisition of by virtue of employment as associate in law firm
Kraus v. Davis (1970) 6 Cal.App.3d 484, 491 [85 Cal.Rptr. 846]

-associate switches sides

SD 2008-1, SD 1976-10, SD 1974-12, SD 1970-2
SF 1973-6, SF 1973-19
acquisition of by virtue of employment as associate in law firm
Cone v. Superior Court (1937) 21 Cal.App.2d 18, 19 [68 P.2d 369]
CONFLICT OF INTEREST

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 (employer)


- 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

In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]

Howitt v. Superior Court of Imperial County (1992) 3 Cal.App.4th 1575

- 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]

- cone of silence

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


- disqualification not required, marital relationship does not create assumption that lawyers violate duty of confidentiality

DCH Health Services Corp. v. Waite (2002) 95 Cal.App.4th 829 [115 Cal.Rptr.2d 847]

- 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]

- elements of

Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1996) 195 B.R. 740

- “ethical wall” failed to prevent district attorney from discussing case with the press


- former court commissioner now associate in firm


- former government attorney now associate in law firm

LA 246 (1957)

- general analysis


--- must be set up at a time when the potentially disqualifying event occurred

Concel LP v. Unilevel, PLC (N.D. Cal. 2004) 350 F.Supp.2d 796

- public law office

In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]

- retired judge subsequently represents one of the parties in the same matter


- screening of law clerk hired by law firm while clerk worked for 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

- screening procedures must be put in place before the “tainted” attorney is brought on board

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

Alasri Corp. v. Seagate Technology (9th Cir. 1988) 847 F.2d 826

- separation between Public Defender and Alternate Public Defenders’ offices


- settlement confidentiality agreement

LA 512 (2004)

- steps which must be taken to set up an effective screen

Armstrong v. McAlpine (2nd Cir. 1980) 625 F.2d 433


--- public law office

In re Charlisse 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 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 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 Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
CONFLICT OF INTEREST

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

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
Costello v. Buckley (2016) 245 Cal.App.4th 748 [199 Cal.Rptr.3d 891]

disqualification of defense counsel not required where plaintiff's expert witness was a former client of defense counsel and where expert was not an expert witness
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

dissemination of information to counsel for adversary by a third party

-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]
CONFLICT OF INTEREST

- for disqualification purposes, confidential information may include knowledge of a client’s internal operations, policies, and litigation philosophies
- no automatic 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 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 [96 Bankr.Ct.Dec. 79]
Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1996) 195 B.R. 740

"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

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
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
Shaefier v. State Bar (1934) 220 Cal. 681 [32 P.2d 140]
potential disclosure
- in criminal case
- representation under Joint Powers Act
Government Code section 6500 et seq.
60 Ops. Cal. Atty. Gen. 206, 212-213 (7/77/77; No. CV 76-14)

presumption of possession
Trone v. Smith (9th Cir. 1980) 621 F.2d 994, 999
In re Tevis (9th Cir. 2006) 347 B.R. 573 [153 Cal.Rptr. 295]

- possession of as impetus to representation of client against former client
Shaefier v. State Bar (1934) 220 Cal. 681 [32 P.2d 140]
potential disclosure
- in criminal case
- representation under Joint Powers Act
Government Code section 6500 et seq.
60 Ops. Cal. Atty. Gen. 206, 212-213 (7/77/77; No. CV 76-14)
- rebuttable presumption of shared confidential information when a non-lawyer changes employment from one law firm to another
- significant danger as a result of law firm's prior involvement in a divorce case where firm represented the father of the opposing party that the firm had acquired confidential information of the opposing party
- prior association with opposing party counsel by attorney for defendant
- prior relationship with opposing party
- prior representation of co-defendant
- public defender may not set up separate division within office to represent criminal defendant
- relationship with opposing party in unrelated litigation
- disputing This Index, supra, p. i

CONFLICT OF INTEREST

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

switching sides in same matter

Sheffield v. State Bar (1943) 22 Cal.2d 627, 630 [140 P.2d 376]
  Knight v. Ferguson (2007) 149 Cal.App.4th 1207 [57 Cal.Rptr.3d 823]

  CAL 1998-152

LA 363 (1976), LA(l) 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

- 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)

viscious 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 1100

CITY OF SANTA BARBARA V. STENSON (1999) 71 CAL.RPTR.3D 880

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. 1978) 578 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]

CITY OF SANTA BARBARA V. STENSON (1999) 71 CAL.RPTR.3D 880

class action

LA 423 (1983)

from buyer and seller where attorney is broker for both, but attorney to only one

LA 413 (1983)

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 of interest


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. Sup. Ct. in counties of Los Angeles, Orange & San Diego (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 Aquiluz (Review Dept. 1994) 2 Cal. App.3d Ct. Ch. 2d 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

-by wife, where attorney represented husband and wife jointly on estate plans, later represents husband on Marvin Agreement with another woman

LA 448 (1987)

-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

-potential conflict waived, attorney as scrivener to marriage settlement agreement

In re Marriage of Friedman (2001) 88 Cal.App.4th 17 [105 Cal.Rptr.2d 518]

-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]
necessity of


People v. Davis (1957) 48 Cal.2d 241, 256 [309 P.2d 1]


of client

-after disclosure of former representation of adverse party

LA 406 (1982)

-attorney’s relationship with courtroom personnel

CAL 1987-93

-by appropriate constituent of organization other than the constituent to be represented


Pringle v. La Chappelle (1999) 73 Cal.App.4th 1000 [87 Cal.Rptr.2d 90]

CAL 1999-153

-corporation and board of directors in derivative suit

LA 397 (1982)

-representation of adverse party

--in unrelated action

LA 406 (1982)

LA 6 (1918)

-witness is former colleague of attorney

CAL 1987-93

of opposing party

Earl Scheib, Inc. v. Superior Court (1967) 253 Cal.App.2d 703, 705 [61 Cal.Rptr. 386]

parties pursuant to Joint Powers Act

Government Code section 6500 et seq.

60 Ops. Cal. Atty. Gen. 206 (7/7/77; No. CV 76-14)

representation of more than one party


-to continued representation

CAL 1975-35

LA 427 (1984), LA 22 (1923)

required for full disclosure


unrelated action

61 Ops. Cal. Atty. Gen. 18 (1/58; No. CV 77-118)

where current expert for plaintiff was prior client of defense counsel, no disqualification of defense counsel required when expert gives unqualified waiver and consent

Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

Conservatorship proceedings


Contingent fee from insurer, based on percentage of medical expenses recovered, for protecting insurer’s lien on recovery of expenses

LA 352 (1976)
CONFLICT OF INTEREST

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


Corporation 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


against corporation's outside counsel cannot proceed because attorney-client privilege precludes counsel from mounting meaningful defense


attorney (employee) sues employer/client

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

- 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 majority shareholder's and corporation's interests adverse, majority shareholder's attempt to consent to attorney's concurrent representation of corporation over minority shareholder's objection was ineffective


Corporate director/attorney representing client in transaction with corporation

CAL 1993-132

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


CAL 1989-113, OC 2012-1

representation of corporation and board of directors in derivative action

LA 397 (1982)

representation of corporation and controlling shareholders


representation of corporation and corporate director as co-defendants


CAL 1999-153, LA 471 (1992), SD 2017-1

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

CAL 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]


Meehan v. Hopps (1956) 144 Cal.App.2d 284, 290 [301 P.2d 101]

representation of corporation not deemed representation of minority shareholder


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representation of former shareholders against former
corporate client in related matters requires disqualification
because of duty of loyalty and confidentiality
Cal.App.4th 1832 [43 Cal.Rptr.2d 327]
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]
represents
-corporation against director
LA(l) 1966-14
-corporation and board of directors in derivative suit
LA 397 (1982)
director of represents stockholder against
LA(l) 1955-2
-incorporate
--later represent against one incorporator
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Beachcomber Management Crystal Cove, LLC, et al v. The
Superior Court of Orange County (2017) 13 Cal.App.5th
1105 [220 Cal.Rptr.3d 872]
Cal.Rptr.3d 836]
Cal.Rptr.3d 783]
Cal.Rptr.2d 857]
-against corporation’s outside counsel cannot proceed
because attorney-client privilege precludes counsel from
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McDermott, Will & Emory v. Superior Court (James)
-attorney not barred from continuing to represent insider
of closely held company in a derivative lawsuit pursuant
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-director of corporation represents stockholder against
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-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]
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prevented county counsel from representing either party
since the two were county public officers, thus, requiring
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85 Ops. Cal. Atty. Gen. 115 (6/7/02; No. 01-1107)
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61 Ops. Cal. Atty. Gen. 18 (1/578; No. CV 77-118)
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LA 459 (1990)
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Appeals Board places burden on county to show effective
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effective screening procedures were shown
In re Lee G. (1991) 1 Cal.App.4th 17 [1 Cal.Rptr.2d 375]
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clients, a party should not be able to create one by merely
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American Airlines v. Sheppard Mullin, Richter & Hampton
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1051 [112 Cal.Rptr.3d 642]
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LA(l) 1969-5
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People v. Easley (1988) 46 Cal.3d 712 [250 Cal.Rptr. 855] - actual conflict that adversely affects defense counsel's performance is required to find ineffective assistance of counsel
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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. Cornwall (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]

- witness
  -- against present client
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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

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Daniels v. Woodford (9th Cir. 2005) 428 F.3d 1181
U.S. v. Adelze-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
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People v. Cornwall (2005) 37 Cal.4th 50 [33 Cal.Rptr.3d 117]

People v. Bonin (1989) 47 Cal.3d 808 [254 Cal.Rptr. 298]
People v. Cook (1975) 13 Cal.3d 663 [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]

- 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]
defense counsel not entitled to assistance from conflict-free counsel in federal habeas petition to argue equitable tolling

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defense attorney consults in confidence one defendant who becomes witness against other co-defendants
- attorney may not represent other co-defendants
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defense counsel and district attorney involved in personal relationship
defense counsel good friend of defendant's roommate who was also a suspect
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defense counsel in criminal matter is being prosecuted by district attorney in other matters
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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]
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- 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
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district attorney
- recusal of entire office
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-by same attorney
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-potential conflict between
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-superior, head of criminal organization pays legal fees
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right to counsel includes right to waive potential conflict
right to counsel may be forfeited by defendant's threatening conduct towards counsel only after a full due process proceeding is afforded
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McCormick v. Adams (9th Cir. 2010) 621 F.3d 970
People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
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test for entitlement to a hearing on a conflict of interest Sixth Amendment claim by habeas petitioner
U.S. v. Rodrigues (9th Cir. 2003) 347 F.3d 818
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-by defendant
People v. Pastrano (1997) 52 Cal.App.4th 326 [60 Cal.Rptr.2d 620]
--denied if showing of a serious potential conflict
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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

People v. Superior Court (1996) 51 Cal.App.4th 584 [59 Cal.Rptr.2d 280]

People v. Pennington (1991) 228 Cal.App.3d 959

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[45 Cal.Rptr.3d 464]

People v. Pennings (1991) 228 Cal.App.3d 959

moved to bailiff

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plaintiff attorney dating secretary of law firm representing defendant


[254 Cal.Rptr. 853]

social contacts and dating conflicts of interest

34 Santa Clara L. Rev. 1157 (1994)

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righbits and obligations of client


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

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

disqualification proper remedy for failure to disclose reasonably foreseeable adverse effects in testifying

People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]


disqualification denied where full disclosure of reasonably foreseeable adverse effects in testifying

People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]

Panduit Corp. v. All States Plastic Mfg. Co., Inc. (7th Cir. 1984) 744 F.2d 1564, 1577-1578

disqualification denied where full disclosure of reasonably foreseeable adverse effects in testifying


malpractice found where attorney failed to advise elder client of conflict where attorney would receive finder’s fee and repayment of loan, by attorney to another client, from loan proceeds obtained in transaction


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buy to buyer and seller where attorney is broker for both, but attorney to only one

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-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
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-in child custody proceedings
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-inform of representation of related trust


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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


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--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

-from pre-trial order denying motion to disqualify counsel for conflict of interest

--standard requires showing on appeal that order affected outcome of case


-standing to challenge disqualification


-arbitration

--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


--arbitrator’s denial of motion to disqualify opposing counsel for conflict of interest was open to collateral attack


-associated counsel


-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 the court found that new 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 used the new partner’s services relating to the instant action


--disqualification despite technicality of no attorney-client relationship


831 F.Supp. 785

-disqualification may not be available when an attorney-client relationship never existed between the party and the attorney sought to be disqualified

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In re Marriage of Murchison (2016) 245 Cal.App.4th 847 [199 Cal.Rptr.3d 800]


In re Lee G. (1991) 1 Cal.App.4th 17 [1 Cal.Rptr.3d 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]


CONFLICT OF INTEREST

attorney disqualified for an ethical violation generally not entitled to fees

attorney general – denied

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Western Continental Operating Co. v. Natural Gas Corp. (1989) 212 Cal.App.3d 752 [261 Cal.Rptr. 100]

based on incidental social contacts and completely unrelated business transaction
Cohn v. Rosenfield (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

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Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2009) 731 F. Supp. 2d 1100


-public law office
In re Charles C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]

“case-by-case” approach must be used by trial courts


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
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class action representatives may waive conflicts of interest on behalf of potential class members

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-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. 1989) 864 F.2d 1564, 1578

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--to all in firm
LA 377 (1978)

conflict occurs when prosecution calls as witness former co-counsel


[86 Cal.Rptr.2d 20]

-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
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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

criminal proceeding

PUBLIC DEFENDER

--public defender's workload so excessive to warrant removal


See How to Use This Index, supra, p. i
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 not required where client never imparted confidential information to attorney – now representing adverse party in same matter

Med-Trans Corp., Inc. v. City of California City (2007) 156 Cal.App.4th 655 [68 Cal.Rptr.3d 17] [20 Cal.Rptr.3d 132]

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 Corp. v. Miami Hotel Apartments Inc. v. Superior Court (2004) 121 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]

disqualification 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]
CONFLICT OF INTEREST

- 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 695 [181 Cal.Rptr.3d 41]
  - 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 200]
  - defendant may not disqualify prosecutor on ground that defendant had some degree of relationship with prosecutor’s children at some point in time
  - Packer v. Superior Court (2013) 219 Cal.App.4th 226 [161 Cal.Rptr.3d 595]
  - 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]
  - 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 court status
  - 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
  - People v. Neely (1999) 70 Cal.App.4th 767 [82 Cal.Rptr.2d 886]
  - 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]
  - 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 [93 Cal.Rptr. 148, 666 P.2d 5]
  - People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]
  ---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]
  ---not required where ethical wall would be effective alternative
  ---not required where prosecutor involved in making of film about capital murder case
  - Haraguchi v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 250]
  ---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]
  ---recusal of entire office due to prior association with defense firm by assistant district attorney
  - *Younger v. Superior Court (1978) 77 Cal.App.3d 892, 894-897 [144 Cal.Rptr. 34]
  ---recusal of entire office due to prior representation of defendant by district attorney while in private practice
  - People v. Lepe (1985) 164 Cal.App.3d 685
  ---recusal of entire office unnecessary when defendant and victim exchange roles in concurrent cases
  ---without showing of conflict, censure or sanctions appropriate where prosecutor involved in making of film about capital murder case
  - duty of loyalty does not apply where defense counsel previously had represented expert for plaintiff and where expert waves conflict

See How to Use This Index, supra, p. I
duty of loyalty requires
Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]
event firm
In re S.S. Retail Stores Corp. (9th Cir. 2000) 216 F.3d 882 [36 Bankr.Ct.Dec. 79]
Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354
Paul E. Isacson Structural Engineer, Inc. v. Humphrey (1983) 722 F.2d 435
Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1999) 195 B.R. 740
In re Charisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
*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 where firm-switching attorney’s relationship with client at former firm was peripheral or attenuated and documents relating to that 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. Santiago (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]
*presumption 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 1109
*In re Charisse 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 cases against the same party
*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]
CONFLICT OF INTEREST

-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

“of counsel” to defendant’s firm becomes “of counsel” to plaintiff’s firm
Atasi Corp. v. Seagate Technology (1999) 84 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
- 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]
Cal.App.4th 752 [23 Cal.Rptr.3d 116]
Western Continental Operating Co. v. Natural Gas Corp. (1989) 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 C. (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]

party of moving for disqualification of counsel absent an attorney-client relationship generally does not have standing to assert conflict of interest

- 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
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party of moving for disqualification of counsel absent an attorney-client relationship generally does not have standing to assert conflict of interest

- in related matter
CONFLICT OF INTEREST

-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

--public law office


-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


-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


-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


-student of public defender

-Law Office of the Public Defender, San Francisco (2001) 737 [76 Cal.Rptr.3d 276]

-People v. Superior Court (Humberto) (2008) 43 Cal.4th 737 [76 Cal.Rptr.3d 276]

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-no automatic where previous representation did not expose attorney to confidential information material to the current representation

CONFLICT OF INTEREST

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]


Cal Pak Delivery, Inc. v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 Cal.Rptr.2d 207]


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 (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 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

Platt 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]

2018 (updated entries through 12/31/2017) 146 See How to Use This Index, supra, p. i
defendant may not disqualify prosecutor on ground that defendant had some degree of relationship with prosecutor's children at some point in time

$\text{People v. Superior Court (2013) 219 Cal.App.4th 226 [161 Cal.Rptr.3d 595]}

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

effirent office

People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]
form

-in criminal matters

Business and Professions Code section 6131

LA(1) 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]
marrned to bailiff

CAL 1987-93

personal animosity of district attorney towards co-defendant

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

People v. Superior Court (2013) 219 Cal.App.4th 226 [161 Cal.Rptr.3d 595]
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 [137 Cal.Rptr. 333, 561 P.2d 1164]

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

Penal Code section 1424

spells of possible prosecution against defense counsel and unlicensed investigator by district attorney, although serious, did not prejudice defendant

ConFLict of interest

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

In re Marriage of Eged (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]

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

LA 231 (1955)

- 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

- 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) 1969-8

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

88 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 896]


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 1982-69


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. 500, 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
CONFLICT OF INTEREST

franchisee law firms of franchisor group representing multiple clients
LA 471 (1992), LA 423 (1983)
insurance company
insured

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

non-insured

Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100

9 separate counsel had been appointed, the result would have been the same.
2 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.

Copies of all relevant cases are available through the LexisNexis and California Law Library databases. For further research, consult the California Court of Appeal Reports, the California Supreme Court Reports, and other legal resources as available.

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

149 2018 (updated entries through 12/31/2017)
CONFLICT OF INTEREST


Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]


CAL 2011-182, 2003-163

SD 2013-1

OC 2012-1

U.S. v. Rodrigues (9th Cir. 2003) 347 F.3d 818

attorney should not request representation of another client

U.S. v. Roydhu (9th Cir. 2003) 350 F.3d 818

attorney should not request representation of another client

U.S. v. Wells (9th Cir. 2003) 394 F.3d 725

conflict of interest based on divided loyalties when law firm that represents class also employs an attorney who serves as class representative


criminal defendant has right to representation free from conflicts of interest and to assistance of counsel whose loyalties are not divided

U.S. v. Wells (9th Cir. (Mont.) 2005) 394 F.3d 725

Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989
defendant denied effective assistance of counsel when his attorney not only failed to speak on defendant’s behalf at forfeiture of right to counsel hearing, but also testified against defendant

does not apply where defense counsel had previously represented plaintiff’s expert

Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

here attorney has professional or financial interest in the subject matter


ineffectiveness claim based on divided loyalty in criminal matter does not require showing of prejudice as a result of defense counsel’s actual conflict

U.S. v. Christakis (9th Cir. 2001) 238 F.3d 1164

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

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

self-interest of attorney does not interfere with duty to client where attorney seeks indemnification from co-counsel in malpractice action

Musser v. Provencer (2002) 28 Cal.4th 274 [121 Cal.Rptr.2d 384]

where attorney has professional or financial interest in the subject matter

CAL 2009-178

Duty to both insured and insurer


McGee v. Superior Court (1985) 176 Cal.App.3d 221 [221 Cal.Rptr. 421]


LA 528 (2017)

cumis counsel does not have attorney-client relationship with insurer for purposes of disqualification


extends to uninsured, courtesy, defense client


CONFLICT OF INTEREST

Duty to client
Ishmael v. Millington (1966) 241 Cal.App.2d 520 [50 Cal.Rptr. 592]
Hammett v. McIntyre (1952) 114 Cal.App.2d 148 [249 P.2d 885]
conflicting claims of two clients
McClure v. Donovan (1947) 82 Cal.App.2d 664, 666 [186 P.2d 718]

Duty to disclose attorney acting as trustee for client
discovery of conflicting duties to multiple clients
Hammett v. McIntyre (1952) 114 Cal.App.2d 148 [249 P.2d 885]
CAL 1970-22, CAL 1975-35
duty to disclose self-involvement in trust
Lyders v. State Bar (1938) 12 Cal.2d 261 [83 P.2d 500]
prior representation of opposing party in unrelated matter
Flatt v. Superior Court (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537]
Jeffry v. Pounds (1977) 67 Cal.App.3d 6, 10 [136 Cal.Rptr. 373]
to both clients in multiple representation

Duty to withdraw
timeliness

Effect of mere prior professional relationship

Effect of time lapse

Escrow
agent
- represents
-- against grantor
LA 266 (1959)
-- one party in dispute over escrow between parties
LA (I) 1955-6

Estate(s)
attorney as beneficiary of trust
attorney for
- buys estate property
LA 238 (1956)
- charges personal representative personally for services performed
CAL 1993-130, LA 347 (1975)
- claimant in bankruptcy proceeding, then later purchases property in foreclosure sale held by claimant
LA 455
- personal representative and real estate broker
SD 1992-1
- removal of beneficiary’s request/demand
- represents
-- administrator
--- as contestant in probate
LA 193 (1952)
--- as such and as heir
CAL 1976-41

See How to Use This Index, supra, p. i 151 2018 (updated entries through 12/31/2017)

Duty to disclose attorney acting as trustee for client
discovery of conflicting duties to multiple clients
Hammett v. McIntyre (1952) 114 Cal.App.2d 148 [249 P.2d 885]
CAL 1970-22, CAL 1975-35
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- personal representative and real estate broker
SD 1992-1
- removal of beneficiary’s request/demand
- represents
-- administrator
--- as contestant in probate
LA 193 (1952)
--- as such and as heir
CAL 1976-41

See How to Use This Index, supra, p. i 151 2018 (updated entries through 12/31/2017)
CONFLICT OF INTEREST

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]

False arrest cases on retainer for police officers/represent clients who might raise issue of false arrest

SD 1972-2

Fee

- apportioning fees where conflict between insurer and insured
  LA 424

attorney engaged in conflicting representation without obtaining informed written consent not entitled to recover fees

Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354
Cal Pak Delivery, Inc. v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 Cal.Rptr.2d 207]
Goldstein v. Lees (1975) 46 Cal.App.3d 614

charging lien in hourly fee agreement requires compliance with rule 3-300

Fletcher v. Davis (2004) 34 Cal.4th 61 [14 Cal.Rptr.3d 58] - contingency fee agreements distinguished

conflict of interest

United States ex rel. Alnoor Virani v. Jerry M. Truck Parts & Equipment, Inc. (9th Cir. 1996) 89 F.3d 574

Pringle v. La Chappelle (1999) 73 Cal.App.4th 1000 [87 Cal.Rptr.2d 90]
Conservatorship of Chilton (1970) 8 Cal.App.3d 34, 43 [86 Cal.Rptr. 863, 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 595]

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

CAL 1992-126, CAL 1975-35

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 1972-2

union pays for representation of potential class members


referred

paid to an attorney by client in an unrelated matter

SD 1987-2

represent

in settlement when fee paid out of settlement

SD 1975-4

self and co-counsel with regards to contingent fee

SD 1972-1

when in client’s best interest to settle although no recovery of 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

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
Pepper v. Superior Court (1977) 76 Cal.App.3d 252, 259 [142 Cal.Rptr. 759]

attorney represents estates and deceased attorney’s former client

Estate of Linnick (1985) 171 Cal.App.3d 752 [217 Cal.Rptr. 552]
breach of

taking business clientele of a former client
can exist even absent express attorney-client relationship

Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1996) 195 B.R. 740


CAL 1993-132, CAL 1981-63

not created by receipt of private information from potential client via an unsolicited email

SD 2006-1

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


“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 282 (1963)

Former client


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

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

acceptance of employment
- adverse to
  - knowledge of former clients’ property and property rights involved in action
  LA 31 (1925)

adverse interest to
- buying an interest in the judgment against one’s client from former client’s opponent
  - in litigation
  LA 30 (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

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

co-defendant in present criminal proceeding
- disqualification


estate plan for husband and wife, and subsequent agreement for husband

LA 448 (1987)

expert witness is 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
  LA 75 (1934)
- present client
  United States v. Henke (9th Cir. 2000) 222 F.3d 633
  People v. Pennington (1991) 228 Cal.App.3d 959
  CA 1980-52

- 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.


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

Government attorneys
- 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


Government code section 1090
- outside contractor attorney may be treated as an employee

CONFLICT OF INTEREST

Grand jury
Sixth Amendment right to counsel of one's choice does not apply
-disqualification order not appealable
In re Grand Jury Investigation (9th Cir. 1999) 182 F.3d 688

Guardian
attorney for
-deemed to represent minor
CAL 1988-96
-former represents against as counsel for wife of deceased ward
LA(t) 1962-5

Homeowner's association -- where attorney is member of association and represents plaintiffs against association
LA 397 (1982)

Immigration matters
representation adverse to former corporate client's employees and officers in immigration matters

Improperly, appearance of
can exist even absent express attorney-client relationship
CAL 1981-63

Ineffective assistance of counsel
attorney's performance unaffected by fee arrangement whereby attorney's insurance policy was held 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

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...insured'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 disqualified

Cumis representation is based on ethical standards, not insurance concepts
dispute between insurer and insured as to policy coverage entities insured to obtain counsel for third party claim at

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
CONFLICT OF INTEREST

- represents
  - assured
    --- and company
      LA 336 (1973)

insurance company attorney represents insurance company
- assured
  SD 1978-5
- criminal defendant against insured
  SD 1972-2

insured's counsel interjecting issue of collusion between defendant insured and plaintiff raises conflict of interest

insurer has standing to sue law firm representing both insurer and insured

insurer's right to control defense provided to insured
  - right to control the defense includes what measures are cost effective provided there is no actual conflict of interest

laches—delay in raising conflict of interest motion

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 528 (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
  Holmgren v. State Farm Mutual Automobile Insurance Company (9th Cir. 1992) 976 F.2d 573

full disclosure of conflict of interests required in representation of insurer and insureds by same attorney

- independent counsel's ability to represent insureds interest in insurance company
  - assures
    - company
      LA 336 (1973)

representation of two insureds with potentially divergent interests requires disclosure
  Spindle v. Chubb/Pacific Indemnity Group (1979) 89 Cal.App.3d 706, 713 [152 Cal.Rptr. 776]

reimbursement claims without insurer's consent may create conflict of interest
  - acts against company in related matter
    LA 217 (1953)
CONFLICT OF INTEREST

McGee v. Superior Court (1985) 176 Cal.App.3d 221 [221 Cal.Rptr. 421]
CAL 1995-139
-insurer that voluntarily provided courtesy defense but no indemnification had duty to defend uninsured as if they had been insured
-insurer’s attorney has duty to include insured’s independent counsel in settlement negotiations and to fully exchange information
-insurer’s control over insured’s selected counsel
rule 3-310 requires informed consent for continued representation of all clients
withdrawal
Insured’s consent required for prior counsel to maintain role in case on behalf of insurer
SD 1987-1
Issues, attorney argues inconsistent positions
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
Maxwell v. Superior Court (1992) 30 Cal.3d 606 [180 Cal.Rptr. 248]
literary rights agreement not found neither prior nor during actual trial
publication of fictional account of crime did not create disqualifying conflict for prosecutor or district attorney’s office
Haranuchi 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
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]

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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

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, Inc. (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
-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)

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 pre 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


assistant district attorney representing county and private citizen
Dettamanti v. Lompoc Union 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
-Cree 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
Spindel v. Chubb/Pacific Indemnity Group (1979) 89 Cal.App.3d 706, 713 [152 Cal.Rptr. 776]

LA 395 (1982)
CONFLICT OF INTEREST

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70
In the Matter of Aguilux (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 32
In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
LA 22 (1923), SD 1971-1, SD 1974-22

-in-house counsel represented employer and employer concurrently (to the employee’s detriment) without obtaining informed consent

consultation with attorney, evidence of relationship

[See Attorney-Client Relationship, Consultation with, prima facie 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. 576
CAL 1999-153, SD 2017-1
corporation and officers


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

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]

Dependency Court Legal Services may represent multiple parties with adverse interests

Castro v. Los Angeles County Board of Supervisors (1991) 222 Cal.App.3d 1432
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 Geline F. (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
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LA 423 (1983)
husband and ex-wife in tax proceedings

Devore v. Commissioner of Internal Revenue Service (9th Cir. 1992) 963 F.2d 280

husband and wife in dissolution of marriage

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
CONFLICT OF INTEREST

minor and guardian  
CAL 1988-96  
no joint representation, where parties have simply overlapping interests  
Roush v. Seagate Technology, LLC (2007) 150  
Cal.App.4th 210 [58 Cal.Rptr.3d 275]  
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  
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)  
-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  
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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. 1988) 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 sharer
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 (1952), 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

--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
formation of
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)

LA(I) 1967-11

--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)

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
CAL 1987-92

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

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)
  - -- in criminal cases
    • Business and Professions Code section 6131
    • LA 377 (1978)
- private practice
  • district attorney engaged in
    • 4 Ops. Cal. Atty. Gen. 39 (7/19/44; No. NS-5517)
  - representation of criminal defendant by member of firm acting as city prosecutor
    • LA 453

public agency attorneys
- 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 may not advise city council regarding arbitration award when another attorney in the same firm represented the city’s police department at arbitration

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

participation in bonus program tied to savings by public agency
- SD 1997-2

Public defender
- appointment of public defender to represent defendant at sentencing not precluded by public defender’s office representation of co-defendant at trial
  • People v. Ware (1966) 241 Cal.App.2d 143, 146-148 [50 Cal.Rptr. 252]

Conflict of interest
- defendant’s right to conflict free counsel required that new appointed counsel be present before conducting any further proceedings in open court to hear PD’s request to be re-appointed after being relieved for a conflict of interest
  • People v. Earp (2008) 160 Cal.App.4th 1223 [73 Cal.Rptr.3d 570]
- excessive caseload and limited resources may require removal or substitution
  • In re Edward S. (2009) 173 Cal.App.4th 387 [92 Cal.Rptr.3d 725]
  - juvenile court had no power to remove public defender absent a showing that minor was not indigent or a conflict existed
  • Joshua P. v. Superior Court (2014) 226 Cal.App.4th 957 [172 Cal.Rptr.3d 509]
  - representation of one co-defendant by public defender and representation of other co-defendant by alternate public defender
  • CAL 2002-158
  - witness for prosecution former client of public defender’s office
  • People v. Noriega (2010) 48 Cal.4th 517 [108 Cal.Rptr.3d 74]
- 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
  • People v. Lopez (2008) 168 Cal.App.4th 801 [85 Cal.Rptr.3d 675]
- removal of public defender was proper when defendant made credible death threat against counsel
  • People v. Avila (2011) 191 Cal.App.4th 717 [119 Cal.Rptr.3d 657]
- representation of criminal defendant by separate division within office does not alleviate conflict
  • 59 Ops. Cal. Atty. Gen. 27 (1/5/76; No. CV 72-278)
- withdrawal
  • Aceves v. Superior Court (1996) 51 Cal.App.4th 584 [59 Cal.Rptr.2d 280]

Public office
- duality of
  • 38 Ops. Cal. Atty. Gen. 121, 123 (10/9/61; No. 61-91)
CONFLICT OF INTEREST

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

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]

Purpose of rule 3-600


Real estate transactions [See Conflict of interest, foreclosure; title; deed of trust on client’s property through use of wife of attorney Calzada v. Sinclair (1970) 6 Cal.App.3d 903 [86 Cal.Rptr. 387]
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]

errorneous 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. Gamache (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)

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


Related with previously disqualified counsel


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 (1955), LA 192 (1952)
--former client’s in divorce
LA(I) 1971-8
CONFLICT OF INTEREST

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]
both guardian and minor
CAL 1988-96, SD 2017-2oth interests of child and state
-in welfare proceeding
CAL 1977-45
both sides
SF 1973-15
concurrent representation of mother and child with conflicting interest
SD 2017-2
multiple witnesses in a grand jury investigation
In re Grand Jury Investigation (9th Cir. 1999) 182 F.3d 668
party to reclaim rights from federal government/parties in whom rights are vested
SD 1968-3
subpoena served on current client, by prospective client constitutes an adverse interest
CAL 2011-182
Representation by public officials
city councilman as defense attorney in criminal proceeding
county counsel acts as attorney for district under Municipal Water District Act of 1911, not permitted
Representation of co-defendants
U.S. v. Lightbourne (9th Cir. 1996) 104 F.3d 1172
People v. Pastrano (1997) 52 Cal.App.4th 610 [60 Cal.Rptr.2d 620]
CAL 2002-158, LA 471 (1992)
actual conflict for joint representation can exist due to co-defendant’s psychological domination of defendant sibling
United States v. Stites (9th Cir. 1995) 56 F.3d 1020
actual conflict not found
U.S. v. Wells (9th Cir. 1995) 394 F.3d 725

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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
public defender’s office representation of co-defendant does not preclude representation of other co-defendant at sentencing hearing
People v. Ware (1966) 241 Cal.App.2d 143 [50 Cal.Rptr. 252]
separate trials for co-defendants but attorneys for both associated with one another
People v. Avalos (1979) 98 Cal.App.3d 701, 715-716 [159 Cal.Rptr. 736]
CAL 1979-49, CAL 1970-22
Right to effective counsel
attorney’s literary rights to trial interfered with duty of undivided loyalty to client
multiple representation as violation of Sixth Amendment
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 F.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
U.S. 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 2002-159
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. Omossi (9th Cir. 2005) 431 F.3d 1158

Sharing 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 216 (1953), SD 1985-1

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]


DCH Health Services Corp. v. Waite (2002) 95 Cal.App.4th 829 [115 Cal.Rptr.2d 847]

McGee v. Superior Court (1985) 176 Cal.App.3d 221 [221 Cal.Rptr.421]

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


agrieved non-party had standing to disqualify client’s counsel who had been previously disqualified in a related litigation involving non-party and client

courts should be skeptical when disqualification motions are brought by opposing parties


insurer has standing to sue law firm representing both insurer and insured

laches

CRS Recovery, Inc. v. Laxton (9th Cir. 2010) 600 F.3d 1138


litigant lacks standing to assert a third party’s conflict of interest claim against opposing counsel


DCH Health Services Corp. v. Waite (2002) 95 Cal.App.4th 829 [115 Cal.Rptr.2d 847]

-attorney-client relationship not always required for a party to have standing to bring a motion to disqualify


-vicarious standing among members of Limited Liability Company


no vicarious standing among members of entity in non-derivative suit


-vicarious standing distinguished


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. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]

Substantial relationship


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]


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 823]


CONFLICT OF INTEREST

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
attorney 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 prior 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
Trust Corp. of Montana v. Piper Aircraft Corp. (1983) 701 F.2d 87
Trone v. Smith (9th Cir. 1980) 621 F.2d 994, 998
Cord v. Smith (9th Cir. 1984) 336 F.2d 516
In re Airport Car Rental Antitrust Litigation (N.D. Cal. 1979) 470 F.Supp. 495
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
Flatt v. Superior Court (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537]
Shields v. State Bar (1943) 22 Cal.2d 627 [140 P.2d 374]
 attorneys not barred from continuing to represent insider of closely held company in a derivative lawsuit pursuant to Forrest v. Baeza
-preservation of the exchange of confidential information
Morrison Knudsen Corp. v. Hancock, Rother & Bunshoft, LLP (1999) 69 Cal.App.4th 223 [81 Cal.Rptr.2d 425
Goldstein v. Lees (1975) 46 Cal.App.3d 614 [120 Cal.Rptr. 253]
-in re Airport Car Rental Antitrust Litigation (N.D. Cal. 1979) 470 F.Supp. 495
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
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]
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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]
disqualification of attorney where same attorney was previously disqualified in a related case
factors considered by the court
Dieter v. Regents of the University of California (E.D. Cal. 1997) 963 F.Supp. 908
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dependency proceeding
In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
modified substantial relationship test
motion to disqualify must be based on application of substantial relationship test
-alleged protected activity under Anti-SLAPP statute (C.C.P. § 425.16) found to be incidental to conflict of interest
o automatic where previous representation did not expose attorney to confidential information material to the current representation
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Merle Norman Cosmetics, Inc. v. United States District Court (9th Cir. 1988) 856 F.2d 98

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against former client as the adverse party in the same matter in which the attorney had represented that client
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-factors determining whether disqualification of appointed counsel and entire public law office is required in substantially related successive representations
In re Charles C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
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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]
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Trust upon conflict defined
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Undue influence
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Plexwee Aircraft Co. v. Greenwood (1943) 61 Cal.App.2d 21 [141 P.2d 933]
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Probate Code sections 15687, 16002, 16004, 21350 et seq.
attorney beneficiary of trust
attorney beneficiary of will
burden on attorney
-lo to enforce fee agreement
Femara v. La Sala (1960) 186 Cal.App.2d 263 [9 Cal.Rptr. 179]
-lo to prove arm’s length transaction
-lo to show transaction fair
Estate of Witt (1926) 198 Cal. 407 [245 P.2d 197]
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Felton v. Le Breton (1891) 92 Cal. 457, 469 [28 P. 490]-courts view attorney/client transactions with suspicion
Stiegitz v. Settle (1920) 50 Cal.App. 581 [195 P. 705]-must fully inform client
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
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-use of confession of judgment against client
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unfair advantage to attorney
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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 1090)
Vicarious disqualification of entire law firm [See Disqualification.]
Atasi Corp. v. Seagate Technology (9th Cir. 1988) 847 F.2d 826

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In re Charline C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
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Voluntary withdrawal

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) 155 B.R. 740

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


no valid waiver found
Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

not required where attorney never performed services for former client of attorney’s wife’s firm
not required where attorney never performed services for former client of public defender’s office

not required where attorney who handled adverse party’s prior matter has left firm and there is no evidence confidential information was exchanged
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 People ex rel. Deukmejian v. Brown (1981) 29 Cal.3d 150, 157 [172 Cal.Rptr. 47]

by private company

no required where 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

not required where former client of attorney's prior representation of opposing parties and where "of counsel" attorney obtained confidential information and provided legal services to client People ex rel. Deukmejian v. Brown (1981) 29 Cal.3d 150, 157 [172 Cal.Rptr. 47]

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

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--no conflict found where defense counsel previously represented witness/prosecution witness
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expert witness for plaintiff previously represented by defense counsel, need not be removed and defense counsel need not be disqualified where expert waives conflict

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Attorney intimated 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


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

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Constructive attorney-client relationship not formed between conservatee and her conservator’s designated attorney

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value of an estate in an elder abuse case is a factor in setting fees and is consistent with rule 4-200

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In re Conservatorship of Deidre B. (2010) 180 Cal.App.4th 1006 [103 Cal.Rptr.3d 825]

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Contingency fee agreements distinguished from hourly fee agreements


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Civil rights

fee arrangement allowed providing fees in excess of court awarded fee


Client discharges attorney

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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(a)(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)

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county attorney, private contingency fee contract

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-attorney entitled to percentage of periodic payments

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-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


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Former shareholder of law firm has no right on interpleader to contingency fee from cases which shareholder settled while working for firm
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From insurer, based on medical expenses recovered, for protecting insurer's lien on recovery of its expenses
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- attorney entitled to percentage of present value of periodic payments award best represented by cost of annuity
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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
-federal tort claims act preempts California Business and Professions Code section 6146 fee limitation
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-fee in excess of MICRA limitations may be pursued if MI CRA causes of action are brought together with non-
-MICRA causes of action
-Waters v. Bourhis (1985) 40 Cal.3d 424
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-medical-legal consulting firms may contract for a contingent fee
-test for determining attorney fees based on periodic payments

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-Baron v. Mare (1975) 47 Cal.App.3d 304 [120 Cal.Rptr. 675]

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-Offset recovery

Public entities
-May contract with private attorneys on contingency fee basis under certain circumstances, supervision by neutral governmental attorneys who retain control
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Paternity action
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-Kyne v. Kyne (1943) 60 Cal.App.2d 326 [140 P.2d 866]

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-agreement voidable at option of, where attorney fails to comply with Business and Professions Code section 6147 Business and Professions Code section 6147(b)

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-exception for requirements of written contract
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Reasonableness of in light of legislative activity

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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 Mardrossian & Associates, Inc. v. Ersoff (2007) 153 Cal.App.4th 257 [62 Cal.Rptr.3d 665]

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Settlement

Referral fee, duty to pay on occurrence of contingency

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**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

Amelle v. City and County of San Francisco (1983) 141 Cal.App.3d 693 [190 Cal.Rptr. 490]

Arbitration fee binding


-client contract conditioned on


CAL 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


Arbitration for professional liability of lawyer


LA 489 (1997)

-client contract conditioned on


CAL 1981-489, CAL 1980-1501

-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 Silverton (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.Dec. 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


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
Coviello v. State Bar (1955) 45 Cal.2d 57, 59-61 [286
P.2d 357]
evaluated as of time of making
C.A. 1994-135
fees received before contingency fee reduced to a writing
In the Matter of Nunuez (Review Dept. 1992) 2 Cal. State
Bar Ct. Rptr. 196
fifty percent of recovery contingency fee
In the Matter of Nunuez (Review Dept. 1992) 2 Cal. State
Bar Ct. Rptr. 196
hybrid, hourly and
SF 1989-1
hybrid, reverse contingency
Cal.Rptr.3d 160]
not violative of public policy
In re Marriage of Gonzales (1975) 51 Cal.App.3d 340
[124 Cal.Rptr. 278]
- client 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
Cal.Rptr. 575]
strictly construed against the attorney
C.A. 1994-135
in the Matter of Roger M. Lindmark (Review Dept. 2004)
4 Cal. State Bar Ct. Rptr. 668
LA 499 (1999)
Fees may not be raised by a law firm without notification to clients
Cal.Rptr.2d 554]
Cal.App.3d 1569
Formal contract
Jackson v. Campbell (1932) 215 Cal. 103 [8 P.2d 845]
additional compensation must not be too vague
[98 Cal.Rptr. 862]
construe liberally in favor of client
discharged attorney
formed after attorney-client relationship established
Preston v. Herminghaus (1930) 211 Cal. 1 [292 P. 953]
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98]
nomissary note was not valid contract for payment of legal services rendered absent valid underlying attorney-client agreement
Iverson, Yoakum, Papiano & Hatch v. Berwald (1999) 76
Cal.App.4th 990 [90 Cal.Rptr.2d 665]
strictly construed against the attorney
Leighton v. Forster (2017) 8 Cal.App.5th 467 [213
Cal.Rptr.3d 899]
Cal.Rptr. 845]
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
In re County of Orange (C.D. Cal. 1999) 241 B.R. 212
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


non-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. Griffsy (9th Cir. 1990) 895 F.2d 561

Indigent, non-contractual is statutory


Arnette 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 565]

equitable lien created if fee not stated

Wagner v. Sarriotti (1943) 56 Cal.App.2d 693

extrinsic evidence to establish fee


intention of parties

Houge v. Ford (1955) 44 Cal.2d 706

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

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discretion of trial court
Kendrick v. Gould (1921) 51 Cal.App. 712 [197 P. 681]
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Cal.Rptr.3d 266]
Stuart v. Preston (1934) 2 Cal.App.2d 310 [38 P.2d 155]
trial court has wide discretion in fixing fee
Sattinger v. Golden State Glass Corp., (1942) 53
Cal.App.2d 130 [127 P.2d 653]
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]
People ex rel. Clancy 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
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LA 500 (1999)
Providing for court awarded attorney fees
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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 660]
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done outside confines of litigation before court
Wininger v. SL Management, L.P. (9th Cir. 2002) 301
F.3d 1115
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the agreement, express or implied of the parties (Code of
Civil Procedure 1021)
Cal.App.4th 1318 [126 Cal.Rptr.2d 267]
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effectively eliminates fee award
Cal.Rptr.3d 160]
Providing for disposition of client files upon termination
LA 493 (1998)
Providing for repayment of costs of litigation
LA 495 (1998)
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Federal Debt Collection Practice Act (FDCPA) unless
plaintiff brought the action in bad faith and for purpose of
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Rouse v. Law Offices of Rory Clark (9th Cir. 2010) 603
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not to accept a confidentiality clause in any settlement
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without the lawyer’s consent and without the imposition of any
unconscionable penalty fee
LA 505 (2000)
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Cal.Rptr. 879]
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Cusick v. Boyne (1905) 1 Cal.App. 643 [182 P. 985]
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Cal.Rptr.2d 263]
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Term void as against public policy
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
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attorney’s consent
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-Iaction will generally lie upon a common count for
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76 Cal.App.4th 990 [90 Cal.Rptr.2d 665]
-attorney entitled to reasonable value of services where
there is no written fee contract
Cal.Rptr.3d 266]
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Leighton v. Forster (2017) 8 Cal.App.5th 467 [213
Cal.Rptr.3d 899]
Use of "Contract Attorney Services"

**CAL** 2004-165

ghostwriting

OC 2014-1

Void if consideration is unlawful


voidable

agreement voided where 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**


contingent attorney fee agreement 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 retainer 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


LA 389 (1981), LA 185 (1955)

Agent for, attorney acting as, to solicit athletic contracts

**CAL** 1968-13

Corporation may withhold from director documents that were generated in defense of a lawsuit that director filed against the corporation


Counsel for

-brings suit against shareholder in unrelated matter

SD 1978-11

communicates with general counsel when suing subsidiary represented by local counsel

SD 1968-2

Corporation and directors

-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)

-advise officer that his conduct was illegal

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

**disvolusion**


duty to prevent client's communications with opposing party

LA(l) 1966-16

former

-represents

-against corporation

LA(l) 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)

informs directors of criminal record of a director

LA(l) 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(l) 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

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LA 397 (1982)

-prevailing party awarded attorney's fees

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subsidiary also represented by corporate counsel

SD 1976-6

suspended corporation

-duty to inform the court of corporation's status


LA 408 (1982)
CORPORATION COUNSEL

Director represents stockholder against corporation
LA(I) 1955-2

Enjoy attorney-client privilege
Commodity Futures Trading Commission v. Weintraub
United States v. Rowe (9th Cir. 1996) 96 F.3d 1294
Costco Wholesale Corp. v. Superior Court (2000) 47 Cal.4th 725 [101 Cal.Rptr.3d 756]
Tritek Telecom, Inc. v. Superior Court (2009) 169 Cal.App.4th 1385 [87 Cal.Rptr.3d 455]
displaced managers in merger may not assert the privilege over the wishes of current managers
Commodity Futures Trading Commission v. Weintraub
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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]
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
Titmas 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 meaningful defense
In propria persona
Incorporate
later represent against one incorporator
SD 1974-13
In-house counsel
award of attorney fees that compensates corporation’s inside and outside counsel at the same rate may be an abuse of discretion
etitled to award of reasonable fees under Civil Code section 1717
PLCM Group, Inc. v. Drecker (2000) 22 Cal.4th 1084 [95 Cal.Rptr.2d 198] as modified (June 2, 2000)
may state cause of action against employer for retaliatory discharge and breach of implied-in-fact contract
General Dynamics Corp. v. Superior Court (1994) 7 Cal.4th 1164 [876 P.2d 487]
LA 389 (1981), SD 2080-1
officers of the court, subject to Code of Professional Responsibility
Joint venture
LA 412 (1983)
Representation of corporation and board of directors in derivative suit
LA 397 (1982)
Representation of corporation and director
CAL 1999-153
Shareholder(s)
director represents shareholder against corporation
LA(I) 1955
may not pierce the privilege in that capacity
Titmas v. Superior Court of Orange County (2001) 87 Cal.App.4th 738 [104 Cal.Rptr.2d 803]
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Subsidiary
CAL 1989-113
Suspended corporation
attorney for suspended corporation cannot claim that statute of limitations expired when reliance upon his advice led to the statute expiring
duty to inform the court of corporation’s status
LA 408 (1982)
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

CORPORATION COUNSEL


COSTS
[See Advancement of funds. Client trust account. Expenses.]

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)
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
Apporportioning costs between insurer and insured
LA 424 (1984)

2018 (updated entries through 12/31/2017)
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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
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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 Taggart (2001) 249 F.3d 987
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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 689

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
Aronin 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
Otay 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
necessarily incurred traveling expenses recoverable

Recovery of, defending a frivolous civil action
Kozloff 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
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Eskanos & Adler, P.C. v. Leetien (9th Cir. 2002) 309 F.3d 1210
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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 Raley Co. v. Superior Court (1983) 149 Cal.App.3d 1042, 1048

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 Dis. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1170-1173
-courts cannot sanction pro hac vice attorney for bad faith misconduct in a manner that a California attorney could not be sanctioned
-courts 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
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-for delay
In re Silberkraus (9th Cir. 2003) 336 F.3d 864
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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 P.2d 980]
Duty to inform
aid court in avoiding error
Furlong v. White (1921) 51 Cal.App. 265, 271
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of perjury by the client
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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. Rosenfeld (9th Cir. 1984) 733 F.2d 625, 631
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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. Gruffy (9th Cir. 1990) 895 F.2d 561
Information disclosed to
LA(I) 1972-3
Informed about fee agreement
LA 261 (1959)

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Adequacy of appointed counsel.


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. Smith v. Robbins (2000) 528 U.S. 259 [120 S.Ct. 746].


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.


Defense counsel’s declarations regarding informant


Habeas petition

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. Griffo (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


Represent

defendant

- after representing party who is now prosecution witness.


-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. People v. Earp (2008) 160 Cal.App.4th 1223 [73 Cal.Rptr.3d 370].

when client is complaining witness. SD 1974-15.

Right of criminal defendant to consult privately with counsel

CROSS REFERENCE TABLES

Right to ancillary defense services under Penal Code section 987.9

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U.S. v. Walters (9th Cir. 2002) 309 F.3d 899
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People v. Clemmons (1990) 224 Cal.App.3d 1500
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People v. Jones (2003) 33 Cal.4th 234 [14 Cal.Rptr.3d 579]
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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
Luis v. United States (2016) ___ U.S. ___ [136 S.Ct. 1083]
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-Eze (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]
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-defendant not entitled to second court-appointed counsel when death penalty not sought
U.S. v. Waggoner (9th Cir. (Ariz.) 2003) 339 F.3d 915
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U.S. v. Gerritsen (9th Cir. 2009) 571 F.3d 1001

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-equitable maxim to “do equity” does not preclude the recovery of damages

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In re Silverton (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]
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Text is located in:

Deerings Annotated California Codes, Court Rules, and in West’s Annotated California Codes, Court Rules, vol. 23, pt 3

Text available through State Bar’s home page:

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DISQUALIFICATION


Authority of court

Comden v. Superior Court (1978) 20 Cal.3d 906, 914 fn. 4 [145 Cal.Rptr. 9, 576 P.2d 971]
Clark v. Superior Court (2011) 196 Cal.App.4th 37 [125 Cal.Rptr.3d 361]

Ciclo-Pak Delivery, Inc. v. United Parcel Service (1997) 52 Cal.App.4th 1 [50 Cal.Rptr.2d 207]

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 less favored client who explicitly refuses to consent

Flatt v. Superior Court (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537]


Concurrent representation of clients with adverse interests


client as witness in another client’s case


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


Confidences of adversary
disqualification denied where attorney received information from plaintiff’s former coworker who was litigant in unrelated case


disqualification required where confidences acquired inadvertently

Rico v. Mitsubishi (2007) 42 Cal.4th 807 [68 Cal.Rptr.3d 758]


disqualifying conflict may arise, with regard to an adverse non-client, by virtue of representing non-client’s attorney


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


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]


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


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]

material to current representation


reputable presumption of shared confidences among the attorneys in a firm

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

County counsel contingency fee agreement with private attorney does not always require County of Santa Clara v. Superior Court (2010) 50 Cal.4th 35 [112 Cal.Rptr.3d 697]


Disqualification denied where attorney received information from plaintiff’s former coworker who was litigant in unrelated case Roush v. Seagate Technology, LLC (2007) 150 Cal.App.4th 210 [58 Cal.Rptr.3d 275]

District attorney 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. Eubanks (1996) 14 Cal.4th 580, 599 [59 Cal.Rptr.2d 200]

disqualification based on private party influence on the impartiality of the district attorney People v. Parmar (2001) 86 Cal.App.4th 781 [104 Cal.Rptr.2d 31]

district attorney’s office cannot be excused from case where alleged conflict was speculative and did not show actual unfairness Spaccia v. Superior Court (2012) 209 Cal.App.4th 93 [146 Cal.Rptr.3d 742]
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

- 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]
recusal not required where ethical wall would be effective alternative

Examine circumstances of each case


Expert witness
Rico v. Mitsubishi (2007) 42 Cal.4th 807 [68 Cal.Rptr.3d 758]


Western Digital Corp. v. Superior Court (1998) 60 Cal.App.4th 1471 [71 Cal.Rptr.2d 179]


defendant may not disqualify opposing counsel based on alleged exchange of confidential information between counsel and expert witness without providing nature of information

need not be removed where expert for plaintiff was previously represented by defense counsel and waives conflict
Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

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Financial management company
LA 372 (1978)

Financial stake in action


people ordinary must be the moving party to seek disqualification based on a conflict of interest
Colyer v. Smith (C.A. 9th Cir. 1999) 218 F.3d 671

Former client ordinarily must be the moving party to seek disqualification based on a conflict of interest
Colyer v. Smith (C.A. 9th Cir. 1999) 218 F.3d 671

In re Grand Jury Investigation (9th Cir. 1999) 182 F.3d 668

Adventitious disclosure requires disqualification
McDermott Will & Emery, LLP v. Superior Court (Hausman) (2017) 10 Cal.App.5th 1083 [217 Cal.Rptr.3d 47]
DISQUALIFICATION

Interest in subject matter of the representation
disqualification granted where payment of attorney legal services were paid from allegedly tainted funds
no disqualification where attorney owned shares in a company that purchased shares from a client that the attorney represented
CRS Recovery, Inc. v. Laxton (9th Cir. 2010) 600 F.3d 1138
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]
Mediator is generally not disqualified from litigating later cases against the same party
attorney’s receipt of confidential information as settlement officer would bar attorney’s firm from representing the opposing party (employer)
Motion
motion-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 sought to be disqualified
Lynn v. George (2017) 15 Cal.App.5th 630 [223 Cal.Rptr.3d 407]
Motion brought by in propria persona party against opposing counsel
Motion for disqualification that is still pending does not automatically require stay of all trial matters
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Kearns v. Fred Lavery Porsche Audi Co. (C.A. Fed. 1984) 745 F.2d 600, 605
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
Non-client litigant has no standing to assert conflict and no expectation of confidentiality
Lynn v. George (2017) 15 Cal.App.5th 630 [223 Cal.Rptr.3d 407]
DCH Health Services Corp. v. Waite (2002) 95 Cal.App.4th 829 [115 Cal.Rptr.2d 847]
Non-client litigant may have standing to move for disqualification of counsel in cases where they have a sufficient personal stake
Concat LP v. Unilevel, PLC (N.D. Cal. 2004) 350 F.Supp.2d 796
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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Possibility of breach of client confidences
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County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990
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Wutchumma Water Co. v. Bailey (1932) 216 Cal. 564, 574 [155 P.2d 505]
Western Continental Operating Co. v. Natural Gas Corp. (1989) 212 Cal.App.3d 752 [261 Cal.Rptr. 100]
Quaglini v. Quaglini (1979) 88 Cal.App.3d 542, 550 [152 Cal.Rptr. 47]
attorney for plaintiff formerly had borrower-lender relationship with defendant
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Prior representation of opposing party
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Trone v. Smith (9th Cir. 1980) 621 F.2d 994
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Flatt v. Superior Court (1994) 9 Cal.4th 275 [36 Cal.Rptr. 537][36 Cal.Rptr.2d 537]
Knight v. Ferguson (2007) 149 Cal.App.4th 1207 [57 Cal.Rptr.3d 823]
DISQUALIFICATION

Raised on appeal from final judgment requires showing that denial of motion affected outcome of case


Required when attorneys change sides in factually related cases

Trone v. Smith (9th Cir. 1980) 621 F.2d 994, 1000-1001

Review procedures for denial of motion to disqualify


Risk of disclosure of confidential information


rebuttable presumption of shared confidences among the attorneys in a firm

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) 963 F. Supp. 917


Services never performed for former client of attorney’s wife’s previously disqualified firm


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Sixth Amendment

no right to counsel of one’s choice in grand jury investigation

In re Grand Jury Investigation (9th Cir. 1999) 182 F.3d 668

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*Bradley v. Henry (9th Cir. 2005) 428 F.3d 811

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Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

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In re Marriage of Murchison (2016) 245 Cal.App.4th 847 [199 Cal.Rptr.3d 800]

vicarious standing among members of Limited Liability Company


Timeliness of mitigation claims

Bencovich v. State Bar (1990) 50 Cal.3d 116

Timeliness of motion to disqualify


Vicarious disqualification to law firm

In re S.S. Retail Stores Corp. (9th Cir. 2000) 216 F.3d 882 [36 Bankr.Ct.Dec. 79]

Atasi Corp. v. Seagate Technology (9th Cir. 1988) 847 F.2d 829


Bankruptcy of Mortgage and Realty Trust (C.D. Cal. 1996) 195 B.R. 740


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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 of Santa Barbara v. Stenson (2004) 122 Cal.App.4th 17 [18 Cal.Rptr.3d 403]

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 attorney at law firm covers depositions for independent counsel


when "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]

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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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. Cassiday (9th Cir. 2003) 320 F.3d 906

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2.200 requirement
- 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

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

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contract to divide
- attorney may 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

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

- former partner associated on a particular case

- if illegal, is void


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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


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Fra Casa v. Brent (1972) 6 Cal.3d 784, 792 [100 Cal.Rptr. 385, 494 P.2d 9]
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-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

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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


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requires written disclosure to client and client’s written consent
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Attorney, not licensed at time services performed

- may not be entitled to legal fees


Bonuses to lay employee

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LA 522 (2009), LA 461 (1990)

- difference between original contingency fee and larger court award of fees

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- refund of an overpayment

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Client assistant

LA 437 (1985)

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LA 522 (2009)

Corporate employer

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


- attorney, not licensed at time services performed - may not be entitled to legal fees

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Management company

LA 488 (1996)

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LA 518 (2006)

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- Prison Litigation Reform Act does not set a separate benchmark rate for paralegal fees

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Provisor v. Haas Realty, Inc. (1967) 256 Cal.App.2d 850, 856 [64 Cal.Rptr. 509]

LA 384 (1980), LA 18 (1922)

- attorney/real estate licensee who shares a commission with a person who does not perform any act for which a license is required (the Real Estate Law, Bus. & Prof. Code §§ 10000-10580)

Perez v. Cate (9th Cir. 2011) 632 F.3d 553

Receivers

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 Alimony. Collusion. Confidences of the client. Conflict of interest, divorce, multiple representation. Fees.]

Award of attorney's fees


When other spouse is able to pay


Communication of confidences

LA 417 (1983)

Completion and filing of selected forms by divorce center

SD 1983-12

See How to Use This Index, supra, p. i 211
DONATIONS

Contingent fee for [See Contingent fee, divorce.]

CAL 1983-72, LA T88 (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

absolute and 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 party in

CAL 1996-145

LA 334 (1973)

Opposing party

fee paid by

LA 226 (1955)

Represent

client’s spouse

LA 207 (1953), LA 192 (1952)

family corporation formerly


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 other about divorce

SD 1984-2, SD 1975-1

-settlement

SD 1984-2

-subsequently other in related action

LA 231 (1955), LA(I) 1968-8

other spouse previously

SD 1984-2

party in and receiver

LA 51 (1927)

successive wives of same husband

LA(I) 1963-6

Rights of spouse to fees


DONATIONS

[See Fee, donation of legal fees.]

Charitable

CAL 1982-65

SF 1974-4

Legal services

LA 434 (1984), SD 1975-14, SD 1974-19

contingent upon bequest to certain organization

LA 428 (1984)

Merchandise

SD 1973-2

DRAFT, MILITARY

Member of selective service appeal board represents appellants before other boards

LA(I) 1969-8

DRUG ABUSE

[See Alcohol abuse.]

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

Rule 3-101(B), Rules of Professional Conduct (operative until May 26, 1989)

Rule 1-300, Rules of Professional Conduct (operative as of May 27, 1989)

CAL 1993-71

Abide by Rules of Professional Conduct, the American Bar Association, and applicable court decisions

Standing Com. on Dis. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1170

Accept rulings of the court


Action

encouraging commencement or continuation from corrupt motive

Business and Professions Code section 6068(c)

Canatella v. California (9th Cir. 2002) 304 F.3d 843

Business and Professions Code section 6068(g)

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

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

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73

Adequacy and effectiveness of counsel


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

specially appearing attorney owes a duty of care to the litigant


Adequately research and know the law

Aloy v. Mash (1985) 38 Cal.3d 312 [212 Cal.Rptr. 162]


Adequately research triable issues of fact


no duty to consult medical specialist unless such consultations recommended by other doctors


Adequately supervise [See Competence, Failure to adequately supervise. Employee.]

Adhere to Rules of Professional Conduct


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)

-applies 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


indigent defendant constitutionally entitled to counsel’s best argument for an appeal before court rules on withdrawal
United States v. Griffy (9th Cir. 1990) 895 F.2d 561

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 runs 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

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

dishonestly to court
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
In the Matter of Dahiz (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

-while attorney served on civil jury
In the Matter of Faly (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

distortions of record
Amstar Corp. v. Envirotech Corp. (C.A. Fed 1984) 730 F.2d 1476
electronic data, concealing in violation of law
SD 2012-1
	no duty to disclose assistance to an in propria persona litigant unless a court rule requires disclosure
LA 502 (1999)
quoting containing deletions
Amstar Corp. v. Envirotech Corp. (C.A. Fed. 1984) 730 F.2d 1476
withdrowal from representation of a minor child
LA 504 (2000)

Care
counsel owed a duty, post certification, to advise clients of other claims related to but outside the scope of the representation
specially 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
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 class claims through enforcement of judgment.

Communicate remedial action

CAL 1983-74

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. Schrinq (9th Cir. 2005) 427 F.3d 623
U.S. v. Leonti (9th Cir. (Hawaii) 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
Kapelus v. State Bar (1987) 44 Cal.3d 179
Franklin v. State Bar (1986) 41 Cal.3d 700 [224 Cal.Rptr. 705]

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 Freydi (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
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
In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831
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 Delene (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
In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1
In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652
In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563
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 a 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. 438
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
no duty 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 incurrance of debt in contemplation of filing a bankruptcy case. The inhibition of frank discussion serves no conceivable purpose within the statutory scheme


radio cal-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**

**LA 518 (2006)**

**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

**In re Conservatorship of Estate of David L.** (2008) 164 Cal.App.4th 701 [79 Cal.Rptr.3d 530]

-obligation to anticipate reasonably foreseeable risks


Compil 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**

**DUTIES OF ATTORNEY**

-duty to follow a minor client’s instruction not to disclose confidential information


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]

**People ex rel. Department of Corporations v. Speedee Oil Change Systems, Inc.** (1999) 20 Cal.4th 1135 [86 Cal.Rptr.2d 816]


**CAL 2010-179, CAL 1981-58, CAL 1987-93, CAL 1987-92**

LA 506 (2001)

-after termination of the attorney-client relationship

**LA 519 (2006)**

duty to protect client confidences and secrets

-after death of client

**Swidler & Berlin v. United States** (1998) 524 U.S. 399

LA 414 (1983)

-after termination of attorney-client relationship


fundamental ethical obligation not changed by court appointment to represent minor in dependency proceeding


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

**Furia v. Helm** (2003) 111 Cal.App.4th 945 [4 Cal.Rptr.3d 357]

**In the Matter of Priaimos** (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

LA 527, SF 2015-1

- no discipline for a negligent mistake made in good faith

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

Consult governing legal authorities and make a reasonable determination of the amount attorney is entitled to receive

CAL 2009-177

Control communications of employees under attorney’s letterhead and signature


Cooperate in disciplinary proceeding

Business and Professions Code section 6068(i)

Corrupt motive of passion or interest

not to encourage action or proceeding from clients

Business and Professions Code section 6068(g)

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

Business and Professions Code section 6068(c)

Canatella v. California (9th Cir. 2002) 304 F.3d 843

Sorensen v. State Bar (1991) 52 Cal.3d 1036

In the Matter of Maloney and Virsk (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774

In the Matter of Scott (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112

Courts of justice

maintain respect for courts

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)

report child abuse

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. 1983) 716 F.2d 1285, 1291

Shaef er v. State Bar (1945) 26 Cal.2d 739, 747 [160 P.2d 825]

violation of court order by third party

LA 394 (1982)

Dispute

conflict of interest not created by

CAL 2009-178

District attorney


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 1987-93, 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. 112

Employee duties to employer

Labor Code section 2650

Estate executor and beneficiary

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 (1979)
outsourcing legal services
LA 518 (2006)
Failure to appear in numerous matters
Wolf 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
Foley v. 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 Freydi (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
OLD REPUBLIC CONSTRUCTION PROGRAM GROUP v. BOCARDO LAW
FIRM (2014) 230 Cal.App.4th 859 [179 Cal.Rptr.3d 129]
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. Rptr. 196
actions based on breach of duties owed to client are not SLAPP suits
advisee party
Stemline v. State Bar (1990) 52 Cal.3d 317
Guizzetti 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
advisee 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 advisee 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]


In the Matter of Kittrell (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195

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2018 (updated entries through 12/31/2017)
DUTIES OF ATTORNEY

duty owed by partners of a dissolved partnership to complete the partnership’s unfinished business and to act in the highest good faith


fiduciary duties owed to former client even after termination of the relationship


legal obligation to give notice of impending default in plaintiff’s suit


no duty to co-counsel

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


no duty to co-counsel regarding advice by attorney to terminate co-counsel

SF 2011-1

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


relationship ends when insured sues its insurer


rule requiring that trust funds disputed by client be maintained in the client trust account until the dispute is resolved also applies to disputes concerning funds held for the benefit of non-clients to whom the attorney owes fiduciary duties


In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17

standard for the relationship

Elan Transdermal, Ltd. v. Cygnus Therapeutic Systems (N.D. Cal. 1992) 809 F.Supp. 1383, 1384


statute of limitations


successor counsel to prior counsel

CAL 2009-177

to client’s prior attorney

CAL 2008-175

to non-client joint ventures


LA 412 (1983)

to non-client, where a confidential relationship of trust and dependency was created

In the Matter of Dale (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798

to third-party non-client

Sodikoff v. State Bar (1975) 14 Cal.3d 422 [121 Cal.Rptr. 467, 535 P.2d 331]


In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70

Files [See Files.]

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. 141

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. Yale (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 Dahlg (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 Collins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166

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 6068(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


non-party witness perjury

SD 1983-8

counsel perjury

CAL 1983-74

Insist that trustee receivers keep accurate records

Southwestern Media, Inc. v. Rau (9th Cir. 1983) 708 F.2d 419

2018 (updated entries through 12/31/2017)
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
Insurer’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.Dec. 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
Investigate statements made by own client
United States v. Kellington (9th Cir. (Or.) 2000) 217 F.3d 1084
Butler v. State Bar (1986) 42 Cal.3d 323, 329 [228 Cal.Rptr. 499]
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)
never to mislead with artifice or false statement
Business and Professions Code section 6068(d)
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 law provided the client is advised of possible liability under federal law and other potential adverse consequences
LA 527, SF 2015-1
DUTIES OF ATTORNEY
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
Ligitation privilege does not protect attorney’s alleged fraudulent statement about insurance coverage
Loyalty
Flatt v. Superior Court (1994) 9 Cal.4th 275, 284 [36 Cal.Rptr.2d 537]
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 1179 [20 Cal.Rptr.3d 621]
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 agency
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) 51 Cal.4th 811 [124 Cal.Rptr.3d 256]
class of creditors
client’s absence from court, attorney may not answer court’s inquiry if harmful to client
SD 2011-1
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 219
2018 (updated entries through 12/31/2017)
DUTIES OF ATTORNEY

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.

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

SF 2011-1

owed to one client does not consume that owed the other client.


personal duty not delegable


Baum v. Duckor, Spradling & Metzger (1999) 72 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.

Musser v. Provencer (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

Mandatory bar membership.

Monrow, 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 Freedl (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 recommended by other doctors.


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.

Sorenson 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. 41

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 Mkts. (9th Cir. 1983) 702 F.2d 1269, 1284

lawyer 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

no penalty for contempt for advising client-witness not to produce incriminating material based on 5th Amendment.

Manness v. Myers (1974) 419 U.S. 467 [95 S.Ct. 528]

Obey oath.


Of discharged attorney.

sign settlement draft/check to facilitate former client’s receipt of settlement proceeds.

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

-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
Schneider v. Cerio (1992) 5 Cal.App.4th 528 [7 Cal.Rptr.2d 323]
should not be extended to litigating in the press
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 (1981)
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: Professional liability, duty owed to third parties.]
atorney for corporation owes no duty to shareholders
atorney owes no duty to beneficiaries to evaluate and ascertain client’s testamentary capacity to draft or amend a will
atorney’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

Choose DUTIES OF ATTORNEY

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509
CAL 2009-177

Of succeeding attorneys
honor preceding 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
atorneys, by virtue of their professional position, must undertake certain special duties to conduct that undermines the integrity of the adjudicative process
Federal Trade Commission v. Network Services Dept., 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)
dishonesty 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
atorney has duty to avoid knowingly making false statements and misrepresentations to non-clients
atorney 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
--settlement negotiation

Choose DUTIES OF ATTORNEY

See How to Use This Index, supra, p. i 221 2018 (updated entries through 12/31/2017)
DUTIES OF ATTORNEY

settlement negotiations
CAL 2015-194

Partner’s malpractice
associate’s duty to disclose to client
LA 383 (1979)

Partnership dissolution

Revos v. Harden (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
Bradshaw 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]
*Yarbrough v. Superior Court (1983) 150 Cal.App.3d 388, 397

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 12820)
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

-convention of attorney
Business and Professions Code section 6068(o)(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(o)(6)

-judgment against attorney
Business and Professions Code section 6068(o)(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(o)(2)
In the Matter of Sullivan II (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189

-judicial sanctions
Business and Professions Code section 6068(o)(3)
Eskanos & Adler, P.C. v. Leetien (9th Cir. 2002) 309 F.3d 1210
Canetella v. California (9th Cir. 2002) 304 F.3d 843
Sarraf v. Standard Insurance Co. (9th Cir. 1996) 102 F.3d 991
Hill v. McMullian/McGraw Hill Company (9th Cir. 1996) 102 F.3d 422
In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483
In the Matter of Respondent Y (Review Dept. 1998) 2 Cal. State Bar Ct. Rptr. 862

See How to Use This Index, supra, p. i
DUTIES OF ATTORNEY

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170 CAL 1997-151

--duty to report runs from the time sanctions ordered regardless of pendency of an appeal In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 43
In the Matter of Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862 -malpractice lawsuits Business and Professions Code section 6068(o)(1)

Represent client zealously *People v. McKenzie (1983) 34 Cal.3d 616 [194 Cal.Rptr. 492, 668 P.2d 768]
People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576

attorneys 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 In re County of Orange (C.D. Cal. 1999) 241 B.R. 212 [4 Cal. Bankr. Ct. Rptr. 117]
should not interfere with attorney’s duties under rule 3-200 or B&P § 6068(c)
Canatella v. California (9th Cir. 2002) 304 F.3d 843 zeal must be subordinate to an attorney’s paramount obligation to assure orderly administration of justice Scott Moody, Inc. v. Star Surgical Company (2011) 195 Cal.App.4th 1043 [128 Cal.Rptr.3d 89]

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

Respect courts and judicial officers
Business and Professions Code section 6068(b)

Return client files to client In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
CAL 2007-174
SD 1997-1, SD 1984-3, SD 1977-3
SF 1996-1, SF 1984-1

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 Employees]

Settlement
attempt to effectuate settlement where standards of professional care compel that most reasonable manner of disposing of action is settlement Lysick v. Walcom (1966) 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 an appeal CAL 2008-175

Special obligation to obey the law Standing Com. on Dis. 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]


Supervise client trust account
Coppock 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]
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. 627
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. 1991) 1 Cal. State Bar Ct. Rptr. 354
CAL 1997-150, CAL 1988-103
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 Connick v. Thompson (2011) 563 U.S. 51 [131 S.Ct. 1350]
outside lawyers or providers of outsourced legal services CAL 2004-165, CAL 1994-138
LA 518 (2006)
SD 2007-1
paralegal
Pincay v. Andrews (9th Cir. 2004) 389 F.3d 853
DUTIES OF ATTORNEY

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
OC 94-002

- lack of supervision over paralegal which led to late filing of opposition to summary judgment is not excusable neglect

responsible 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

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
Harrigfeld 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 to insurer 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 Cal.Rptr.3d 357]

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]
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 Silvertown (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252
  In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
advice attorney to in propria persona litigants
LA 502 (1999)
breach warrants discipline
Albertson v. State Bar (1984) 37 Cal.3d 1, 14-15

See How to Use This Index, supra, p. i
To honor medical lien when client consents

To insured when retained by insurer
no duty to turn over portions of third-party recoveries made on behalf of client

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]
Pierce v. Lyman (1991) 1 Cal.App.4th 1093
In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70
accepting non-client funds/securities to secure client fees
attorney acting as a mediator assumes duty to disclose to the parties any information that might reasonably cause doubt in the attorney's impartiality
atorney for corporation owes no duty to shareholders
attorney may be liable to a non-client if the attorney's actions went beyond his role as legal representative
atorney who overstates his client's rights or position violates no independent duty of care to the client's adversary
atorney's representation of assignee for the benefit of creditors does not give rise to a duty owed to the class of creditors
duty to intended beneficiaries of a testamentary instrument
Harrigfeld v. Hancock (9th Cir. (Idaho) 2004) 364 F.3d 1024
estate planning

DUTIES OF ATTORNEY

-office has no duty of care to non-client potential beneficiary absent testator's express intent to benefit non-client

-joint venture
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
no duty to third-party absent an intent to benefit third party
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
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 252]
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
To third parties
-estate planning
-office has duty to act with due care as to the interests of the intended beneficiary
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 304, 345 [155 Cal.Rptr. 393]
LA 428 (1984)
Unpaid
-settlement negotiations do not require attorney to withdraw
CAL 2009-178
Use such skill and diligence as others in the profession commonly use
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
EDUCATIONAL ACTIVITY  

reasonable steps to avoid reasonably foreseeable prejudice to client’s rights

- attorney’s active steps to prejudice client’s rights

- violation of professional responsibility

Witness

- 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 824

Warden v. State Bar (1999) 99 Cal.4th 628


CAL 1972-29


ELECTIONS  [See  Political activity.]

EMBEZZLEMENT  [See  Client trust fund, misappropriation.  Misappropriation.  Misconduct.]

EMLOYEE  [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

- attorney is responsible for calendaring error regardless of whether the error was made by the attorney or paralegal

Pincay v. Andrews (9th Cir. 2004) 389 F.3d 853

- attorney liable for overdrawn bank account

Black v. State Bar (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288, 499 P.2d 968]

- attorney unaware collection procedures already initiated

Vaughn v. State Bar (1972) 6 Cal.3d 847, 857-858 [100 Cal.Rptr. 713, 494 P.2d 1257]

- calendaring paralegal

Pincay 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


- 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

Spiebauer 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.  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


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


Attorney for conservatee owes no duty to beneficiary of conservatee’s estate


Attorney-client relationship does not extend to beneficiaries


trust attorney owes no duty to non-client potential beneficiary absent testator’s expressed intent to benefit non-client


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) 1956-7

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


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


offers 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


Liability to intended beneficiaries of amended trust resulting from attorney’s failure to deliver amendment to trustee prior to death of settlor


Liability to intended beneficiary where attorney failed to advise client regarding requirements governing presumptively disqualified donees, resulting in damage to intended beneficiary


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


Successor fiduciary has the same powers and duties as the predecessor including the power to sue attorney for malpractice


Successor in interest may be liable for award of attorney’s fees under a contract entered into by decedent


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]


Fletcher v. Superior Court (1996) 44 Cal.App.4th 773 [52 Cal.Rptr.2d 65]


-successor fiduciary has the same powers and duties as the predecessor including the power to sue attorney for malpractice


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


-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)

See How to Use This Index, supra, p. i 227
ETHICS COMMITTEES

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 for termination of deposit with attorney, attorney may not use 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) 982-1600

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 (9th Cir. (Or.) 2000) 217 F.3d 1084

LA 466 (1991)

Attorney-client privilege survives client’s death


Attorney-client privilege survives corporate merger


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 Chapelle (1999) 73 Cal.App.4th 1000 [87 Cal.Rptr.2d 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 [86 Cal.Rptr.2d 111]


SD 2013-2

“Judge” defined


CAL 1984-82

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

EXECUTOR [See Estate, executor.]

EXPENSES [See Advancement of funds. Costs.]

Reimbursement of attorney for expenses.]

Rule 5-104, Rules of Professional Conduct (operative until May 26, 1989)

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

Advance

LA 379 (1979), LA 106 (1936)

Advanced costs by law firm per contingency fee agreement deductible as business expenses

Boccardo v. Commissioner v. Internal Revenue (9th Cir. 1995) 56 F.3d 1016
FACSIMILE TRANSMISSIONS

Filing via

Solicitations via
faxing of unsolicited advertisements prohibited
Deerings Annotated California Codes, Court Rules, and
in West’s Annotated California Codes, Court Rules, Rules
of Procedure for Fee Arbitration and the Enforcement of
Awards, vol. 23, pt 3, p. 679

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
[64 Cal.Rptr.3d 504]
Cal.App.4th 1076 [29 Cal.Rptr.3d 499]
P.2d 151

Binding clause in retainer agreement
45 Cal.4th 1034 [87 Cal.Rptr.3d 700]

Attorney’s dismissal of fee action was an attempt to evade both
mandatory fee arbitration and the arbitral process as a whole
531 [28 Cal.Rptr.3d 310]

Attorney’s fee guarantor entitled to arbitrate fee dispute
National Union Fire Insurance Co. of Pittsburgh v. Stites
Professional Law Corp. (1991) 235 Cal.App.3d 1718 [1
Cal.Rptr.2d 570]

Public policy
45 Cal.4th 1034 [87 Cal.Rptr.3d 700]

Attorney’s lien.

Precedent
Bunn v. Lucas, Pino & Lucas (1959) 172 Cal.App.2d 450

Section 6200 et seq. is non-binding unless parties
agree in writing to make it binding
[64 Cal.Rptr.3d 504]

FEE ARBITRATION

Business and Professions Code sections 6200-6206
Guidelines and Minimum Standards for the Operation of
Mandatory Fee Arbitration Programs

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agree in writing to make it binding
[64 Cal.Rptr.3d 504]
FEES

unavailable if attorney failed to notify client of additional services performed

unavailable where attorney’s contract with client is a “bad bargain” on behalf of the attorney

Reynolds v. Sorneis Fruit Co. (1901) 133 Cal. 625 [66 P. 21]

“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

Advance payment requested from client

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907
CAL 1976-38, LA 360 (1976), LA(I) 1966-4, SF 1974-4

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
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907

Agreement

acquisition of adverse interest, in general
Fletcher v. Davis (2004) 33 Cal.4th.61 [14 Cal.Rptr.3d 58]
CAL 2006-170
SF 1997-1
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 and without the imposition of any unconscionable penalty fee
LA 505 (2000)
ambiguity is a question of law
arbitration clause

-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
billing practices
CAL 1996-147, OC 99-001
charging liens

-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 261 (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 Bankr.Ct.Dec. 1219]
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 (1964)
-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
In re County of Orange (C.D. Cal. 1999) 241 B.R. 212
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

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]
arbitration award becomes binding 30 days after notice of award
vocation 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. Schoemann (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

Echlin 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)
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
David S. Karton, a Law Corp. v. Dougherty (2009) 171
Cal.App.4th 133 [99 Cal.Rptr.3d 506]
post-judgment interest on attorney fees
213 Cal.App.4th 635 [152 Cal.Rptr.3d 641]
Cal.Rptr.3d 908]
quantum meruit
- attorney’s lien not payable in circumvention of the
  Bankruptcy Code
  In re Monument Auto Detail, Inc. (9th Cir. 1998)
- legal services rendered to executor in individual capacity
  Miller v. Campbell, Warburton, Fitzsimmons, Smith,
  Cal.Rptr.3d 649]
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
  Cal.Rptr.3d 266]
- effect of contract for attorney fees made after attorney-
  client relationship exists
  Estate of Mallory (1929) 99 Cal. App. 96, 103 [278 P.
  488]
  Countryan 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. 749, 749-750 [194 P.
  296]
Attorney
- applies to all causes of action arising from malpractice claim
  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 expe-
dite resolution; anything less would be unethical and dishonor-
able
In re County of Orange (C.D. Cal. 1999) 241 B.R. 212 [4 Cal.
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
Cal.App.4th 220 [51 Cal.Rptr.3d 527]
Attorney’s fees agreed to by contract
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
allowed to oversecured creditor
In re Salazar (9th Cir. BAP 1988) 82 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 Silverson (Review Dept. 2001) 4 Cal.
State Bar Ct. Rptr. 232
contract formation is governed by objective manifestations,
not subjective intent of parties
Cal.Rptr.3d 160]
corporate in-house counsel entitled to reasonable fees
under Civil Code section 1717
PLMG Group, Inc. v. Dreier (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
Cal.Rptr.3d 160]
Attorney/client interests
so great as to make both parties on appeal for attorney’s fees
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
1061 [30 Cal.Rptr.3d 690]
Authority of arbitrator to award fees under the terms of the
controlling arbitration agreement
Cal.Rptr.2d 606]
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]
Award of attorney’s fees
Civil Code section 51 (Unruh Civil Rights Act)
Kittok v. Leslie’s Poolmart, Inc. (C.D. Cal. 2012) 687
F.Supp.2d 953
Turner v. Assn of American Medical Colleges (2011)
193 Cal.App.4th 1047 [123 Cal.Rptr.3d 395]
Civil Code section 54 et seq. (Disabled Persons Act)
Kittok v. Leslie’s Poolmart, Inc. (C.D. Cal. 2012) 687
F.Supp.2d 953
Turner v. Assn of American Medical Colleges (2011)
193 Cal.App.4th 1047 [123 Cal.Rptr.3d 395]
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]
Cal.Rptr. 827]
LA 523 (2009)
- limited to cases where the parties do not have an
agreement as to award of fees
Cal.Rptr.3d 160]
adjustment of award to account for unsuccessful claims
182
Cal.App.4th 278 [106 Cal.Rptr.3d 265]
101
Cal.App.4th 418 [124 Cal.Rptr.2d 250]
administrative hearings
-award of attorney fees under Welfare and Institutions Code section 10962 does not include fees incurred in administrative hearings

after dismissal of complaint

against government
Lefemine v. Wideman (2012) 568 U.S. 1 [133 S.Ct. 9]
Gerling Global Reinsurance Corp. of America v. Garamendi (9th Cir. 2005) 400 F.3d 803
U.S. v. Real Property at 2659 Roundhill Drive, Alamo, California (9th Cir. 2002) 283 F.3d 1146
Hoang Ha v. Schweiker (9th Cir. 1983) 707 F.2d 1104, 1106

-conflict between city ordinance and state statute
City of Monte Sereno v. Padgett (2007) 149 Cal.App.4th 1530 [58 Cal.Rptr.3d 218]

-denied where city ordinance conflicts with state law which fords unilateral recovery of fees by city
City of Monte Sereno v. Padgett (2007) 149 Cal.App.4th 1530 [58 Cal.Rptr.3d 218]

-denied where city ordinance had retroactive application, which changed the legal consequences of past conduct by imposing new or different liabilities based on that conduct
City of Monte Sereno v. Padgett (2007) 149 Cal.App.4th 1530 [58 Cal.Rptr.3d 218]

-denied where city rent control ordinance authorizes recovery of attorney fees only between landlords and tenants

-fees awarded pursuant to a city council resolution

-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]

-plaintiff who filed a civil rights claim against a public entity and was subsequently awarded attorney's fees in an administrative proceeding may challenge the fees award in federal district court which is the proper forum for seeking those fees
Porter v. Winter (9th Cir. 2010) 603 F.3d 1113

-under Brown Act

--court has discretion to deny fees if defendant can show 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]

-under California Tort Claims Act
--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]

-under Civil Asset Forfeiture Reform Act
--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

-under Code of Civil Procedure 1021.5
Conservatorship of Whitley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]
San Diego Municipal Employees Association v. City of San Diego (2016) 244 Cal.App.4th 906 [198 Cal.Rptr.3d 355]
Samantha C. v. State Department of Developmental Services (2012) 207 Cal.App.4th 71 [142 Cal.Rptr.3d 625]

-attorney's fees can only be recovered against opposing parties

--denied because lawsuit did not cause defendant's change in behavior
Center for Biological Diversity v. California Fish and Game Commission (2011) 195 Cal.App.4th 128 [124 Cal.Rptr.3d 467]

--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]

--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 586 [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. 2008) 929 F.3d 1200
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
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-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 without regard to 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. Mavr 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
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 party has 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
Pipelifters 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 Piscs, 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

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
--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. Sobrecck, 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
--burden of proving fees were covered by award following successful motion
--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
--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 § 425.16 (i.e. public interest, protected speech or petitioning activity)

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Blewins v. Demarest (2011) 196 Cal.App.4th 1533 [127 Cal.Rptr.3d 580]


---complaint did not arise from protected speech

Personal Court Reporters, Inc. v. Rand (2012) 205 Cal.App.4th 182 [140 Cal.Rptr.3d 301]

Christensen v. Stevedoring Services of America, Inc. (9th Cir. (Or.) 2005) 430 F.3d 1032

appellate 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 v. County of San Bernardino (2010) 188 Cal.App.4th 603 [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


---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


---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


---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


---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


---failure to comply with 6201(a) does not compel court to dismiss action


---fees and costs awarded in proceeding to confirm or vacate an arbitration award


---plaintiffs cannot be required to pay arbitral expenses and attorney fees that would not be imposed were the dispute adjudicated in court; invalid award of fees against plaintiff when case brought under anti-hate crimes statute


---prevailing party

Dzownikowski v. Spinnella (2011) 200 Cal.App.4th 930 [133 Cal.Rptr.3d 274]


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

Hayward v. Brandon (2005) 36 Cal.4th 364 [30 Cal.Rptr.3d 558]

---assignment

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

---right to statutory award of attorney fees in civil rights case cannot be contractually assigned to attorney

Penny v. County of Los Angeles (9th Cir. 2006) 433 F.3d 1138

---Attorney General may appeal attorney fees in a settlement under Proposition 65


---attorney-client fee agreements may provide for reasonable


---attorney-litigant representing self in pro se

attorney’s fees and costs to prevailing party

Gering Global Reinsurance Corp. of America v. Garamendi (9th Cir. 2005) 400 F.3d 803
In re Estate of Drummond (2007) 149 Cal.App.4th 46 [56 Cal.Rptr.3d 691]
absent a contractual fees provision, a party cannot recover attorney’s fees, even if it prevails in litigation
net monetary award to a party does not determine the prevailing party when there are two fee shifting statutes involved in one action
no abuse of discretion where court failed to reduce award of attorney fees under Davis-Stirling Common Interest Development Act
settlement offer that is silent on the issue of attorney fees and costs
Chinn v. KMR Property Management (2008) 166 Cal.App.4th 175 [82 Cal.Rptr.3d 586]
when there are two fee shifting statutes in separate causes of action, there can be a prevailing party for one cause of action and a different prevailing party for the other cause of action
authority of arbitrator to award fees
may fashion relief that is just or fair
authority of arbitrator to determine whether the filing of a complaint before mediation barred award of fees
bail bond forfeiture proceedings
motion of fees denied where there is no provision in the relevant statute to recover fees as costs
bankruptcy action
In re Jastrem (9th Cir. 2001) 253 F.3d 438 [37 Bankr.Ct.Dec. 275]
In re Levandar (9th Cir. 1999) 180 F.3d 1114

In re Auto Parts Club, Inc. (9th Cir. 1997) 211 B.R. 29
Bankruptcy of Harvey (9th Cir. 1994) 172 B.R. 314
-attorney employed by a trustee is entitled to compensation for legal services
In re Garcia (9th Cir. BAP 2005) 335 B.R. 717
-attorney’s 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’s 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 are recoverable if they are linked to litigation seeking to enforce a contract
-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 denied without court authorization
-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 450
-automatic stay of proceedings
In re Jastrem (9th Cir. 2001) 253 F.3d 438 [37 Bankr.Ct.Dec. 275]
In re Stinson (9th Cir. BAP 2003) 295 B.R. 109
In re Hines (9th Cir. BAP 1998) 198 B.R. 769
-award of fees is void where 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. 730]
-bankruptcy court erred in awarding debtor’s attorney fees and costs under statute
In re Failalia (9th Cir. 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 Cepex, 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]
In re Century Cleaning Services, Inc. (9th Cir. BAP 1999) 195 F.3d 1061 [35 Bankr.Ct.Dec. 63]
-chapter 11 debtor’s counsel entitle to attorney’s fees only for services benefitting the estate
In re Xebec (9th Cir. 1992) 147 B.R. 518
-claims for attorney 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 Mana 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. 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 USC § 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. 2003) 295 B.R. 609

-dischargeability of a contempt judgment

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

-dissorgement of attorney fees against firm and attorney employee is proper

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

-dissorgement 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

-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


-feel 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 re LCO Enterprises, Inc. (9th Cir. 1995) B.R. 567

 [27 Bankr.Ct.Dec. 201]


-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. 303, though not for post-dismissal motions themselves

 In re Southern California Sunbelt Developers, Inc. (9th Cir. 2010) 698 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 account attorney’s fees claim not barred by statute of limitations

 In re Robert Farms, Inc. (9th Cir. 1992) 980 F.2d 1248

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


-“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

 In re County of Orange (C.D. Cal. 1999) 241 B.R. 212


-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) 556 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]
-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 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 must articulate factors used to calculate award

Ferland v. Conrad Credit Corp. (9th Cir. 2001) 244 F.3d 1145
Beaty 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]

---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 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

Wininger 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

-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. 1990) 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]
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award may be based on attorney’s declarations instead of time records

-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 (9th Cir. 2006) 452 F.3d 1055

Wininger v. SI Management, L.P. (9th Cir. 2002) 301 F.3d 1115

Ferland v. Conrad Credit Corp. (9th Cir. 2001) 244 F.3d 1145

Beaty 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) 745 F.2d 560, 561

In re County of Orange (C.D. Cal. 1999) 241 B.R. 212


-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 not properly billed to one’s adversary pursuant to statutory authority

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


-prevaling market rate in relevant community


--action by corporate in-house counsel 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)

--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

-social security cases

--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. Eichen (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]


-award may exceed actual hourly rate

Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249

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-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 nonfrivolous claims are closely intertwined

Tutor-Saliba Corp. v. City of Hailey (9th Cir. 2006) 452 F.3d 1055

“benchmark” fee calculation

In re County of Orange (C.D. Cal. 1999) 241 B.R. 212


Brown Act

-court has discretion to award attorney fees where it

Brown Act

-court has discretion to award attorney fees where it
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) 608 F.3d 582
Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106

Aguirre v. Los Angeles Unified School District (9th Cir. 2006) 461 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


-award 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. Wongler (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

-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
Guy v. City of San Diego (9th Cir. 2010) 608 F.3d 582

--federal common law, rather than California law, applied to activist’s claim for attorney fees

Klein v. City of Laguna Beach (9th Cir. 2016) 810 F.3d 683

-feather who filed a civil rights claim against a public entity and was subsequently awarded attorney’s fees in an administrative proceeding may challenge the fees awarded in federal district court which is the proper forum for seeking those fees

Porter v. Winter (9th Cir. 2010) 603 F.3d 1113

-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

CAL 2009-176

-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

In re Quantum Health Resources, Inc. (C.D. Cal. 1997) 962 F.Supp. 1254

FEES
FEES

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 quality

-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. (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
Pipelayers 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. Grautly (9th Cir. 1989) 886 F.2d 268

-fee allocation among co-counsel subject to court approval
In re FPI/Anrotech 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
Sinyard 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 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

--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 33.33 percent of common fund as reasonable attorney fees

-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) 645 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 1323

-client security fund
--assisting applicant
collections
LA 522 (2009)
common fund/equitable apportionment doctrine
Wininger v. Sl 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]

contract for contingency fee, court not limited to constitutional immunity
-passive beneficiary

computation of under Code of Civil Procedure 998 offer contractual

constitutional immunity
-regents of defendant university, as an arm of the state, are immune from the fee-shifting provision of Labor Code § 218.5


-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

-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

-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 1180
-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 fees award based on contract

contractual
Nicholas Laboratories, LLC v. Chen (2011) 199 Cal.App.4th 1240 [132 Cal.Rptr.3d 223]

-absent a contractual fees provision, a party cannot recover attorney’s fees, even if it prevails in litigation

-absent agreement, fees awarded pursuant to California FEHA belong to attorneys who labored on case and not to client
LA 523 (2009)
--limited to cases where the parties do not have an agreement as to award of fees
FEES

-agreement requiring patent licensor to indemnify licensee for attorney's fees for alleged infringement or violation of any patent, copyright, trademark, or other right did not require licensor to pay licensee violation of any patent, copyright, trademark, or other

-entire contractual debt to firm before trial

-recover unpaid fees from client, who had already paid 

-law firm not entitled to attorney fees incurred in suit to

-party under such facts

-did not provide for entitlement to fees award for either

-under contract and denied third-party beneficiary status

-denial of attorney fees where party is non-signatory

-condition precedent must be met to recover attorney

-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


-prevaling 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


-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


--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


Scott Co. of California v. Blount Co. (1999) 20 Cal.4th 1103 [86 Cal.Rptr.2d 614]
--attorney's successor in interest may be liable for attorney's fees under a contract entered into by decedent
--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
--judgment of a post-settlement settlement effectively eliminates attorney 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
--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
--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 Conrad Joe Sayas, Jr (9th Cir. 2001) 215 F.3d 1234
--award on contract claims in accordance with Civil Code § 1717
In re Penrod (9th Cir. 2015) 802 F.3d 1084
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 826 [77 Cal.Rptr.3d 880]
--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 to firm before trial
--no attorney's fees clause 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 non-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 Brosio (9th Cir. BAP 2014) 505 B.R. 903
--party that prevails is entitled to attorney fees when it can prove it would had been liable for such fees if the opposing party had prevailed
FEES

--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 614]
--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. Drexler (2000) 22 Cal.4th 1084 [95 Cal.Rptr.2d 198] as modified (June 2, 2000)
--when a Section 998 offer is silent on costs and fees, the prevailing party is entitled to costs and fees, if authorized by statute or contract
--Family code section 272, subdivision (a), invalidates the court’s 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 of appeal will not disturb trial court
--section 800 is a bond or security statute, not a liability statute, and as such, prevailing defendant was precluded from recovering fees in excess of the posted bond
--cost of litigation included attorney fees and expert witness fees for purposes of applying automatic stay provisions
--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 erred in awarding attorney fees to prevailing defendant on malicious prosecution claim when claim was not frivolous
  Fabbrini 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
--prevailing party entitled to attorney’s fees under 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 party
corporations Code section 800
--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)
  In re Imran Q. (2008) 158 Cal.App.4th 1316 [71 Cal.Rptr.3d 121]
--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]


--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


defendants not entitled to attorney fees under the anti-SLAPP statute when plaintiff dismissed all claims against the moving defendants before they filed their motion to strike


delay enhancement

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 United States (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

--abuse 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 to award 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


--FEHA matter

Chavez v. City of Los Angeles (2010) 47 Cal.4th 970 [104 Cal.Rptr.3d 710]

--filling 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]
FEES

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
er elder abuse by attorney
er 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]
er enforcement of foreign judgment
er 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]
[33 Cal.Rptr.3d 694]
- 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.
[120 Cal.Rptr.2d 98]
- 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. Berryhill (9th Cir. 2017) 856 F.3d 659
Tobeler v. Colvin (9th Cir. 2014) 749 F.3d 830
Le v. Astrue (9th Cir. 2006) 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
- abuse of discretion not found
Williams v. Bowen (9th Cir. 1991) 934 F.2d 221; 966 F.2d 1259
- applies to contested petitions for naturalization
Abela v. Gustafson (9th Cir. 1989) 888 F.2d 1258
- award denied
Citizens for Better Forestry v. U.S. Dept. of Agriculture (9th Cir. 2009) 567 F.3d 1128
Gray v. Secretary, Health and Human Services (1993) 983 F.2d 954
- award should encompass fees incurred in subsequent
litigation to protect that fee award
- award subject to offset to satisfy claimant’s pre-existing
debt to government
- 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
- error to deny award on basis that the court lacked
subject matter jurisdiction
United States v. 87 Skyline Terrace (9th Cir. 1994) 26 F.3d 923
- judicial relief required for prevailing party status to
recover attorney fees under the Act
Citizens for Better Forestry v. U.S. Dept. of Agriculture (9th Cir. 2009) 567 F.3d 1128
- navy officer who successfully challenged his discharge for
stating that he was gay is entitled to attorney fees
- standing to contest an offset where attorney fees
awarded to prevailing party not to attorney
ERISA matter
- either party may recover, not just prevailing party;
claimant must show some degree of success on the
merits
- excessive
attorney fee award not excessive
- 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
- social security cases
- collection of fees in excess of those allowed by the
court is a criminal offense (42 U.S.C. § 406(b)(2))
Crawford v. Astrue (9th Cir. 2009) 586 F.3d 1142
- expert witness fees cannot be included as attorney fees or
recovered as “necessary expense” under contract unless
properly pled and proved
failure to award fees to plaintiff wrongfully denied access to
the defendant association’s meeting minutes constituted
abuse of discretion
Cal.App.4th 1029 [12 Cal.Rptr.3d 435]
seq.)
Pousse v. Law Offices of Rory Clark (9th Cir. 2010) 603
F.3d 699
Hyde v. Midland Credit Management, Inc. (9th Cir. 2009)
567 F.3d 1137
Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523
F.3d 973
family law
-abuse of discretion where court refused and failed
exercise discretion; failed to make needs-based analysis
and where court refused to review billing records
In re the Marriage of Thann (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 375]
-bankruptcy court has exclusive jurisdiction in determining
whether family law matters are exempted from the
automatic bankruptcy stay
In re Marriage of Spraque & Spiegel-Sprague (2003)
105 Cal.App.4th 215 [129 Cal.Rptr.2d 261]
-breach of spouse’s fiduciary duty
In re Marriage of Fussum (2011) 192 Cal.App.4th 336
[121 Cal.Rptr.3d 195]
-fees based on totality of the circumstances
In re Marriage of Turkins (2013) 213 Cal.App.4th 332 [152 Cal.Rptr.3d 498]
-fees denied where the court determined that the party
requesting an award of fees had the marketable skills and
the potential earning capacity to pay her own fees (Family
Code §§ 7604 and 7605)
[124 Cal.Rptr.3d 676]
-fees denied where the 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]
-given wife’s authorization, trial court had jurisdiction to
order direct payment of attorney fees even after
substitution form filed
In re Marriage of Erickson and Simpson (2006) 141
Cal.App.4th 707 [46 Cal.Rptr.3d 253]
-no abuse of discretion when award of attorney fees to
mother in child support dispute was based on parties’
needs, income, assets and abilities
[184 Cal.Rptr.3d 315]
-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
Cal.Rptr.3d 540]
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
Cal.Rptr.2d 39]
-family law court fee awards must be reasonable and based
on factual showings
[91 Cal.Rptr.3d 241]
In re Marriage of Keech (1999) 75 Cal.App.4th 860 [89
Cal.Rptr.2d 525]
fee arbitration
Colchett, Pitre & McCarthy v. Universal Paragon Corp.
fee award for appeal proper after paternity adjudication
Cal.Rptr. 830]
FEHA matter
[168 Cal.Rptr.3d 539]
-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. Rout (2017) 17 Cal.App.5th 1006 [225
Cal.Rptr.3d 851]
final judgment determining the prevailing party is a prerequi-
site for the district court to have jurisdiction to rule on a peti-
tion for fees
Scanlon 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
People ex rel. Dept. of Corporations v. SpeeDee Oil
Cal.Rptr.3d 225]
Cal.Rptr. 830]
-vacation of judgment as part of post-judgment settlement
effectively eliminates fee award based on contract
Cal.Rptr.3d 160]
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White v. City of Richmond (N.D. Cal. 1982) 559 F.Supp.
127, 131
Premier Medical Management Systems, Inc. v. California
Cal.Rptr.3d 695]
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Cal.Rptr.3d 540]
general 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-Sahyun 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
Warehouse, Processing, Distribution Workers Union
Cal.App.4th 732 [76 Cal.Rptr.2d 814]
-inappropriate when opponent lacked notice
Mayer v. Wedgewood Neighborhood Coalition (9th Cir.
1993) 707 F.2d 1020
-amended party must be given opportunity to respond
and contest personal liability before judgment is entered
against him
Dilling v. Adams USA, Inc. (2000) 529 U.S. 460 [120
S.Ct. 1579]
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Indemnification clause
- fees denied where clause makes no reference to attorney’s fees which were incurred under circumstances not addressed in the agreement


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) 591 F.3d 1255
- 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
- insured fees and costs if litigant is prevailing party; if 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 782
- interest on attorney’s fees pursuant to statutes
governing post-judgment interest

Interest on fees, attorney has standing to seek
- 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

Jurisdiction of court
- trial has jurisdiction to rule on defendant’s motion for 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

Liability for, regardless who the recipient is

Limits on
- In re County of Orange (C.D. Cal. 1999) 241 B.R. 212
- prevailing party in a derivative action precluded from recovering fees and costs in excess of the bond posted pursuant to Corporations Code § 800


Lis pendens action

"Iodestar" multiplier method of fee calculation
- Carter v. Caleb Brett LLC (9th Cir. 2014) 757 F.3d 866
- McCown v. City of Fontana (9th Cir. 2009) 565 F.3d 1097
- Christensen v. Stedevoting Services of America (9th Cir. 2009) 557 F.3d 1049
- Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973
- Welch v. Metropolitan Life Ins. Co. (9th Cir. 2007) 480 F.3d 942
- Fischel v. Equitable Life Assurance Society of the U.S. (9th Cir. 2002) 307 F.3d 997
- Wininger v. Sm Management, L.P. (9th Cir. 2002) 301 F.3d 1115
- Beaty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607
- Van Gerwin v. Guaranteed Mutual Life Co. (9th Cir. 2000) 214 F.3d 1041

See How to Use This Index, supra, p. i
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
-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. Astrue (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
district court judge was required to 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
-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
-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. Lynwood 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 insured’s fees for independent counsel
denial of fees where district court erred in remanding case to state court
Dahl v. Rosenfeld (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
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Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973
United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 866 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]
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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
  Musaelian 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

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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 (2002) 29 Cal.4th 345 [127 Cal.Rptr.2d 516]

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- court may award attorneys’ fees in excess of $25,000
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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 the amount of client’s recovery
  Gonzalez v. City of Maywood (9th Cir. 2013) 729 F.3d 1196

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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]
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not limited by terms of contingency fee contract
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not recoverable beyond surety’s penal sum
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City of Monte Sereno v. Padgett (2007) 149 Cal.App.4th 1530 [58 Cal.Rptr.3d 218]
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- 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
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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
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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

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prevailing 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

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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

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- defined
Lefemine v. Wideman (2012) 568 U.S. 1 [133 S.Ct. 9]
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
--petitioner 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 petitioner 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

-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]

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Samantha C. v. State Department of Developmental Services (2012) 207 Cal.App.4th 71 [142 Cal.Rptr.3d 625]

Mejia v. City of Los Angeles (2007) 156 Cal.App.4th 151 [67 Cal.Rptr.3d 228]

--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
---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]

--award improper where de minimus public benefit
Save Open Space Santa Monica Mountains v. Superior Court (County of Los Angeles) (2000) 84 Cal.App.4th 235 [100 Cal.Rptr.2d 725]

--award improper where remand to reconsider a perceived procedural defect did not result in change in the decision
Center for Biological Diversity v. California Fish and Game Commission (2011) 195 Cal.App.4th 128 [124 Cal.Rptr.3d 467]

--award of fees justified where court determined that vindication of a constitutional or statutory right fulfilled a fundamental legislative goal

--calculation for
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-criteria for award of fees
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-Wilson v. San Luis Obispo County Democratic Central Committee (2011) 192 Cal.App.4th 918 [121 Cal.Rptr.3d 731]
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-Choi v. Orange County Great Park Corporation (2009) 175 Cal.App.4th 524 [96 Cal.Rptr.3d 90]
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--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]


-entitled to fees because action resulted in enforcement of an important right affecting the public interest
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-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 Whitley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]
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-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
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-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]
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-test
Conservatorship of Whitley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]
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-trial court may not require reimbursement for attorneys' fees as a condition of probation
proper despite party's failure to file noticed motion
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-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
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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 § 18610(a)(2): 26 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 196] 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. Astue (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
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- 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 licensure, had graduated from an unaccredited law school, and had experience mainly in another area of law
- rate determined by current rates where there was a 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
- 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 judge in best position to determine value of services
  Goorman v. Traci Development Corp. (2009) 178 Cal.App.4th 44 [100 Cal.Rptr.3d 152]
- under 42 U.S.C. § 406(b) (social security benefits)
- reduction of fees by trial court without identifying which factors made the requested hourly rates unreasonable
  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
  reviewable on appeal

- 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
- arbitration award may be modified where arbitrator inadverently 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]
- authority of arbitrator to amend or correct a final award
- 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) 188 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
- attorney fees may not be awarded as a sanction to an attorney representing himself
  Musaalian 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
- sanctions imposed and expanded prefiled 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]
- sanctions order reversed where trial court improperly awards sanctions order reversed where trial court improperly awards
- sanctions where conduct frustrates a settlement and increases the cost of litigation
  In re Marriage of Tharp (2010) 188 Cal.App.4th 1295 [103 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
-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
-CP § 998 offer invalid if settlement is conditioned on confidentiality
-fees denied where terms of the settlement agreement failed to establish that plaintiff was the prevailing party on the claims for which fees were sought
-parties to settlement agreement can validly specify a prevailing party
-settlement offer did not specify a particular amount of fees did not render it unenforceable
-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
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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
-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
-fees denied where 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]
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-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
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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 1167
  -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
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  Church of Scientology v. U.S. Postal Service (9th Cir. 1983) 700 F.2d 486, 494
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  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]
In re Marriage of Erickson and Simpson (2006) 141 Cal.App.4th 707 [46 Cal.Rptr.3d 253]
  CAL 2009-176
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]
    Kelchum 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]
  --attorney fees incurred in enforcement of anti-SLAPP judgment recoverable
  --standing to assert
    Willard & Mitchell v. City of Los Angeles (9th Cir. 1996) 803 F.2d 526
  --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

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- 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
- court 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
- stipulations and settlements are controlling
  Labostic, Inc. v. Bonta (9th Cir. 2002) 297 F.3d 892
  Oregon Natural Resources Council v. Madigan (1992) 980 F.2d 1330
- 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
- prevailing defendant not entitled to award of attorney fees where case brought under anti-hate crime statute
- 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
  - entitled 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 fee awards
- action dismissed as part of post-judgment settlement effectively eliminates fee award based on contract
- 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

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- action for negligent performance of contractual duties
- action on contract
  Mx v. Tumanjan Development Corp. (2002) 102 Cal.App.4th 1318 [126 Cal.Rptr.2d 267]
  Valley Bible Center v. Western Title Ins. Co. (1983) 138 Cal.App.3d 931, 933 [188 Cal.Rptr. 335]
- action on contract in inadvertently failed to rule on prevailing party
- 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
- 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 where 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
  Mx v. Tumanjan Development Corp. (2002) 102 Cal.App.4th 1318 [126 Cal.Rptr.2d 267]
-- 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
  More Direct Response v. Calahan (1992) 10 Cal.Rptr.3d 129
  -- 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
In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]
--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
--trial court acted within its discretion in awarding 33.33 percent of common fund as reasonable attorney fees

-Clean Water Act matters
--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
-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 provision not applicable to breach of limited partnership agreement
--contra 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 plaintiff 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
--definition of prevailing party under Code of Civil Procedure § 1032 et seq.
deSaules 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 tasks 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
Tobeler 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. J.N.S. (9th Cir. 2005) 429 F.3d 894
--standing to contest an offset where attorney fees awarded to prevailing party not to attorney
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--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 1189
  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. 1323(g)(1)
  Simonia v. Glendale Nissan/Infini Disabilty Plan (9th Cir. 2010) 608 F.3d 1118
--under 29 U.S.C. 1323(g)(2)(D)
  Trustees of the Construction Industry v. Summit Landscape Companies, Inc. (9th Cir. 2006) 460 F.3d 1253

--fee awards in federal securities fraud actions must be reasonable in relation to plaintiffs’ recovery
  Powers v. Eiches (9th Cir. 2000) 229 F.3d 1249
--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 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
  Beatty 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]
  [110 Cal.Rptr.2d 903]
--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]

- Government Code section 970 et seq.
  --property owner is entitled to attorney’s fees as prevailing party in action to enjoin inverse condemnation judgment against city

- Government Code section 6250

- Government Code section 6259(c)

- Government Code section 6259(d)

- Government Code section 12965(b)
  Beatty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607

Linsley v. Twentieth Century Fox Films Corp. (1999) 75 Cal.App.4th 762 [89 Cal.Rptr.2d 429]

- Government Code section 25845

- Handicapped Children’s Protection Act
  Barlow/Gresham Union High School District v. Mitchell (9th Cir. 1991) 940 F.2d 1280

- IDEA (Individuals with Disabilities Education Act) matter
  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) 591 F.3d 1255
-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


-partly 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 prevailing, partial or prevailing, may be recoverable under statute

Lange v. Schilling (2008) 163 Cal.Rptr.3d 412 [78 Cal.Rptr.3d 356]

-party entitled to costs of an unsuccessful appeal


-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

-participant not entitled to recover attorney fees where request was not included in default judgment


-participant not prevailing party entitled to attorney fees when successful on defendant's appeal from denial of attorney fees


-participant obtained some relief on merits of claim

Gerling 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 recover attorney fees because they represented themselves


-prevailing party as defined by statute versus one defined by contract

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-prevaling 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]

-prevaling party may recover attorney fees in state court following dismissal of bankruptcy proceeding.


-prevaling party status irrelevant when defendant was not a party to the underlying contract.

Richardson 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. 2016) 246 Cal.App.4th 761 [201 Cal.Rptr.3d 548]

-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]

-real estate purchase agreement


-settlement agreement


--parties to settlement agreement can validly specify a prevailing party.


-SLAPP action

--burden of proving fees were covered by award following successful motion.


--partially successful motion constitutes prevailing party unless 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 879


Topeler 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

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. 1994) 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. Depes (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. Sobrbeck, 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 966
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--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
--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]
  San Diego Municipal Employees Association v. City of San Diego (2016) 244 Cal.App.4th 906 [118 Cal.Rptr.3d 355]

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) 173 Cal.App.4th 915 [93 Cal.Rptr.3d 278]
Riverside Sheriff's Ass'n 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 San 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 231]
--trial court is not permitted to use a public entity's status to negate a lodestar that would otherwise be appropriate
  Rogel v. Lynwood Redevelopment Agency (2011) 194 Cal.App.4th 1319 [125 Cal.Rptr.3d 267]
--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
-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
-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 [206 Cal.Rptr.3d 366]
-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
  -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
  -salaried employee entitled to recover attorney’s fees in action for non-payment of wages
-under Labor Code § 1194
-under Labor Code § 4607
  Smith v. WCAB (2009) 46 Cal.4th 272 [92 Cal.Rptr.3d 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]
- under Probate Code section 17211(b)
  Leader v. Cords (2010) 182 Cal.App.4th 1588 [107 Cal.Rptr.3d 505]
- under Song Beverly Act
- under Uniform Foreign Money Judgments Recognition Act
- under Uniform Trade Secrets Act
- under Vehicle Leasing Act
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- unsuccessful plaintiff
to prevailing party buyers of real property denied attorney fees as offset against purchase price
- to VA patient not proper where government’s position is substantially justified
  Foster v. Tourtellotte (9th Cir. 1983) 704 F.2d 1109
- 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
  -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
- under Code of Civil Procedure section 1038, the California Torts Claims Act does not authorize attorney fees for successful defense of section 1983 claims
trial court need not issue a statement of decision if record reflects lodestar or touchstone method was used
under 11 U.S.C. § 303
  In re Southern California Sunbelt Developers, Inc. (9th Cir. 2010) 608 F.3d 456
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  In the Matter of Maple-Whitworth (9th Cir. 2009) 556 F.3d 742
  In re Garcia (9th Cir. BAP 2005) 335 B.R. 717
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  Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354
-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
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  K and N Engineering, Inc. v. Bulat (9th Cir. 2007) 510 F.3d 1079
  -election of statutory damages precludes award
  K and N Engineering, Inc. v. Bulat (9th Cir. 2007) 510 F.3d 1079
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- 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

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Hyde v. Midland Credit Management, Inc. (9th Cir. 2009) 567 F.3d 1137

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- 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

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Tashima v. Administrative Office of the United States Courts (9th Cir. 1991) 967 F.2d 1264

under 28 U.S.C. § 1142(g)(1)
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. UICI (9th Cir. 2007) 508 F.3d 559

under 28 U.S.C. § 2412(d)
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
  Sivard 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 31 U.S.C. § 3729(a)(1), False Claims Act
- court must provide detailed findings in support of any award
  Pfingsten v. Ronan Engineering Co. (9th Cir. 2002) 294 F.3d 999

under 33 U.S.C. § 821(d)
Christensen v. Stevedoring Services of America, Inc. (9th Cir. (Or.) 2005) 430 F.3d 1032

under 33 U.S.C. § 1365


under 42 U.S.C. § 406(a)
Clark v. Astrue (9th Cir. 2008) 529 F.3d 1211

under 42 U.S.C. § 406(b) (social security benefits)
Crawford v. Astrue (9th Cir. 2009) 586 F.3d 1142

Gonzalez v. City of Maywood (9th Cir. 2013) 729 F.3d 1196
Guy v. City of San Diego (9th Cir. 2010) 608 F.3d 582
Prison Legal News v. Schwarzenegger (9th Cir. 2010) 608 F.3d 446

under 42 U.S.C. § 2996
- 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
under 42 U.S.C. § 6972(e)
- release of EPA records pursuant to FOIA
  Kasza v. Whitman (9th Cir. ( Nev.) 2003) 253 F.3d 1178
under 42 U.S.C. § 9607

under 42 U.S.C. § 12205 (ADA)
- claim for equal treatment in remedial programs for disabled inmates and parolees
  Armstrong v. Davis (9th Cir. 2003) 318 F.3d 965

under 42 U.S.C. § 1988
Rickett v. County of Los Angeles (9th Cir. 2011) 654 F.3d 950
Kimbrough v. California (9th Cir. 2010) 609 F.3d 1027
McCown v. City of Fontana (9th Cir. 2009) 565 F.3d 1097
Gibson v. Office of the Attorney General (9th Cir. 2009) 561 F.3d 920
Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106
Aguirre v. Los Angeles Unified School District (9th Cir. 2006) 461 F.3d 1114
Elwood v. Drescher (9th Cir. 2006) 456 F.3d 943
Tutor-Saliba Corp. v. City of Hailey (9th Cir. 2006) 452 F.3d 1055

Gerling Global Reinsurance Corp. of America v. Garamendi (9th Cir. 2005) 400 F.3d 803
Richard S. v. Department of Developmental Services of State of California (9th Cir. 2003) 317 F.3d 1080
Labotest, Inc. v. Bonta (9th Cir. 2002) 297 F.3d 892
Corder v. Gates (9th Cir. 1996) 104 F.3d 247
BFI Medical Waste Systems v. Whatcom (1993) 983 F.2d 911

Thomas v. Bible (1993) 983 F.2d 152
Chao v. County of Orange (2001) 86 Cal.App.4th 312 [103 Cal.Rptr.2d 339]

See How to Use This Index, supra, p. i
-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. Sobbeck, LLC (9th Cir. 2009) 554 F.3d 742

--Civil Code section 55 mandatory award of attorney fees is not preempted by the federal American with Disabilities Act

Les Jankey et al. v. Song Koo Lee etc. (2012) 55 Cal.4th 1038 [150 Cal.Rptr.3d 191]

--prevailing party’s conduct in unreasonably prolonging the litigation did not justify outright denial of fees

Jankey v. Poop Deck (9th Cir. 2008) 537 F.3d 1122 under 11 U.S.C.A. § 503(b)(4)

-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 under 28 U.S.C.A. § 2412(d)

-Parrish v. Commissioner of Social Sec. Admin. (9th Cir. 2012) 698 F.3d 1215

-judicial relief required for prevailing party status to recover attorney fees under the Act


-fee application timely filed pursuant to 28 U.S.C.A. § 2412(d)(1)(B) may be amended after filing period has run may still qualify for consideration and determination on the merits


under Business and Professions Code § 809.9


under Business and Professions Code § 17200 (Unfair Competition)

-deny of fees to city in its successful lawsuit against a landlord, as the city sued only under the unfair competition law, which does not allow for recovery of attorney’s fees


-award to purchaser of reasonable attorney fees


Center for Biological Diversity et al. v. County of San Bernardino (2010) 188 Cal.App.4th 603 [115 Cal.Rptr.3d 762]

under California Public Records Act


under Civil code section 51 et seq. (Unruh Civil Rights Act)


under Civil Code section 55


-Civil Code section 55 mandatory award of attorney fees is not preempted by the federal American with Disabilities Act

Les Jankey et al. v. Song Koo Lee etc. (2012) 55 Cal.4th 1038 [150 Cal.Rptr.3d 191]

under Civil Code section 998(d)

SCI California Funeral Services Inc. v. Five Bridges Foundation (2012) 203 Cal.App.4th 549 [137 Cal.Rptr.3d 693]

under Civil Code section 1354


-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


under Civil Code section 1717

In re Penrod (9th Cir. 2015) 802 F.3d 1084

In re Baroff (9th Cir. 1997) 105 F.Supp. 439

Bankruptcy of Job (9th Cir. 1996) 198 B.R. 768

Scott Co. of California v. Blount Co. (1999) 20 Cal.4th 1103 [86 Cal.Rptr.2d 614]


Hielm v. Prometheus Real Estate Group, Inc. (2016) 3 Cal.App.5th 1155 [208 Cal.Rptr.3d 394]


Pueblo Radiology Medical Group, Inc. v. J. Dalton Gerlach et al. (2008) 163 Cal.App.4th 826 [77 Cal.Rptr.3d 880]


FEES
attorneys jointly represented the firm and entitled to recover attorney fees where the representation of counsel was reasonable.

A reasonable attorney who acted pro se in contract action may recover attorney fees for legal services of assisting his personal interests and not those of the party that scored procedural victory not deemed to be the prevailing party when calculating attorney fees because same defenses applied to both of them.


- 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
  
  
  under Civil Code section 1794
  
  
  under Civil Code section 1798.48(b)
  
  - application of lodestar methodology by court in determining “reasonable attorney’s fees”
  
  
  under Civil Code section 2981 (Fees-Levering Act)
  
  - award not barred by CCP § 1717
  
  
  - 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]
  
  under Civil Code section 3260
  
  - 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)
  
  - 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
  
  
  under Civil Code section 3496
  
  
  under civil rights statutes
  
  - anti-hate crime matter
  
  
  - 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
  
  - denied when plaintiff did not establish violation of protected right
  
  Kimbrough v. California (9th Cir. 2010) 609 F.3d 1027
  
  - lodestar calculation
  
  Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106
  
  Beatty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607

  Davis v. City & County of San Francisco (9th Cir. 1992) 976 F.2d 1536
  
  
  
  - 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
  
  - court’s discretion - test
  
  United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 896 F.2d 403
  
  Sherman v. Babbitt (9th Cir. 1985) 772 F.2d 1476, 1478
  
  - nominal damages received by plaintiff
  
  
  Klein v. City of Laguna Beach (9th Cir. 2016) 810 F.3d 693
  
  Mahan-Watkins v. Depeu (9th Cir. 2010) 593 F.3d 1054
  
  
  - federal law, rather California law, applied to activist’s claim for attorney’s fees
  
  Klein v. City of Laguna Beach (9th Cir. 2016) 810 F.3d 693
  
  - 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
  
  Guy v. City of San Diego (9th Cir. 2010) 608 F.3d 582
  
  - partial success of prevailing attorneys may reduce amount of fee awarded
  
  McCowan v. City of Fontana (9th Cir. 2009) 565 F.3d 1097
  
  
  - application of “degree of success” standard
  
  Hensley v. Eckerhart (1983) 461 U.S. 424, 429 In. 2
  
  Aquirre v. Los Angeles Unified School District (9th Cir. 2006) 461 F.3d 1114
  
  - waiver or limitation of attorney fees in section 1983 case must be clear and unambiguous
  
  Aquirre v. Los Angeles Unified School District (9th Cir. 2006) 461 F.3d 1114
  
  Erdman v. Cochise County (9th Cir. 1991) 926 F.2d 877
  
  under civil rights statute appropriate only when action was frivolous, unreasonable, or without foundation
  
  Tutor-Saliba Corp. v. City of Hailey (9th Cir. 2006) 452 F.3d 1055
  
  - attorney’s fees denied where opposing party’s claims were not frivolous, unreasonable, or without foundation
  
  Hensley v. Eckerhart (1983) 461 U.S. 424, 429 In. 2
  
  Benigni v. City of Hemet (9th Cir. 2009) 565 F.3d 1054
  
  Birdowners and Tenants Ass’n, Inc. v. Port of Seattle (9th Cir. 1987) 834 F.2d 758, 770
  
  Parks v. Watson (9th Cir. 1983) 716 F.2d 669, 674
  
  United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 896 F.2d 403
  
  Sherman v. Babbitt (9th Cir. 1985) 772 F.2d 1476, 1478
  
  - party awarded attorney’s fees to be paid by opposing counsel as sanction for filing frivolous brief
  
  Hamblen v. County of Los Angeles (9th Cir. 1986) 803 F.2d 462, 465
  
  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
  
  Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]
under Code of Civil Procedure section 386.6
-awards 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 pre-filing 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]
der under Code of Civil Procedure section 425.18
-fee denial where party'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 fees through three different avenues
-prevaling 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 376]
-withdrawal of funds was not protected conduct because it was neither communicative nor connected with an issue of public interest
der under Code of Civil Procedure section 425.18
-fees not recoverable
der 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
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.

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 awards

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]

-FEES
-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 exceed 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-offer fees 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]

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 Whitely (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]

San Diego Municipal Employees Association v. City of San Diego (2016) 244 Cal.App.4th 906 [198 Cal.Rptr.3d 355]


Wilson v. San Luis Obispo County Democratic Central Committee (2011) 192 Cal.App.4th 918 [121 Cal.Rptr.3d 731]

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


against police department following plaintiff’s voluntary release of civil liability by stipulation
appointment 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

--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

--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

--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”

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

under Code of Civil Procedure section 1021.9
--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 1032 et seq.
derSaules v. Community Hospital of the Monterey Peninsula (2016) 62 Cal.4th 1140 [202 Cal.Rptr.3d 429].

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under Code of Civil Procedure section 1033.5
-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

-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

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 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's 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 195]

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. Rosensteng (9th Cir. 2011) 638 F.3d 1177

under Federal Rule of Civil Procedure section 23(h)
-practice of setting up classes of claimants, 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)
Estate of Manuel (2010) 187 Cal.App.4th 400 [113 Cal.Rptr.3d 448]

under Federal Rule of Civil Procedure section 6250

under Government Code section 800
-finding of arbitrary and capricious action against school district

under Government Code section 6250

under Government Code section 12989.1 et seq.

under Government Code section 25845

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

under Government Code section 51200 et seq. (the Williamson Act)
under Health & Safety Code section 13009.1
-fee not recoverable unless they are specifically authorized by contract, statute, or law
FEES

under Health & Safety Code section 17980.7

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 Information Practices Act (California)

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 571]

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

-attorney improperly awarded defendant employer’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 § 2699

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 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
Wohlgevuth v. Caterpillar Inc. (2012) 207 Cal.App.4th 1252 [144 Cal.Rptr.3d 545]

-under U.S.C.A. § 7430
Morrison v. Commissioner of Internal Revenue (9th Cir. 2009) 565 F.3d 658
-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

under USCIS 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 284]

-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]


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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)
unilateral recovery of attorney fees by city under local ordinance found invalid where it conflicted with state statute which provides for recovery of fees by a prevailing party
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 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
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. Pool 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

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-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
-Drazer 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. Genex Harvest States Cooperative (9th Cir. 2009) 563 F.3d 1044
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-Smith v. WCAB (2009) 46 Cal.4th 272 [92 Cal.Rptr.3d 894]
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-Richlin Sec. Service Co. v. sweetheart (2008) 553 U.S. 571 [128 C.St. 2007]
-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)
-Trustees of the Construction Industry v. Summit Landscape Companies, Inc. (9th Cir. 2006) 460 F.3d 1253

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-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
-In re Mendez (9th Cir. BAP 1999) 231 B.R. 86
-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

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

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-bankruptcy court required to allow any fee paid to BPP found to be in excess of the value of services
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-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
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-district court may review attorney’s “billing judgment” and reduce fees if some tasks should have been delegated to associate or paralegal
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-fiduciary duty to clients, both civil and criminal, requires that fee agreements and billings be fair, reasonable, and fully explained to the client
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- 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

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- fees denied where prevailing defendant intertwined its claims under two related but different code sections that permitted fee awards only to prevailing plaintiffs

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- abuse of discretion where the court held there was no prevailing party even though the result was lopsided in favor of the plaintiff
- 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) analyzed 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
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- 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
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- amount of attorney's fees determined to be reasonable in light of quantity and quality
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-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

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-objector has standing to appeal denial of own claim for fees even if objector did not submit a settlement claim

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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 deadline is denied the full and fair opportunity to examine and oppose the motion

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


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funds properly withdrawn from a client trust account under rule 1-100(A)(2) and later disputed by the client do not need to be re-deposited into the trust account
CAL 2006-171
governmental entity
-removal 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 limitation 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
unnamed 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]
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 non-party to suit in child support dispute was based on parties’ needs, child support, 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
Division of, when shareholder leaves firm
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 649, 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 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
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

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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
[141 Cal.Rptr.3d 586]
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
against government
Decker v. Bernhill (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
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
U.S. v. Real Property Known as 22249 Doloresa Street (9th Cir. 2000) 190 F.3d 977
-factors considered under CCP § 1021.5
-fee application timely filed pursuant to 28 U.S.C.A. § 2412(d)(1)(B) may be amended after filing period has run
may still qualify for consideration and determination on the merits
-prevailing market rates
reasonable market rates
Brown v. Sullivan (9th Cir. 1990) 916 F.2d 492
recovery of paralegal time at prevailing market rates
requires attorney’s fees absent substantially justified government position
U.S. v. Marolf (9th Cir. 2002) 277 F.3d 1156
Thomas v. Peterson (9th Cir. 1988) 841 F.2d 332
standard for awarding attorney’s fees under Equal Access to Justice Act
FEES

standing to contest an offset where attorney fees awarded to prevailing party not to attorney


statutory basis for

U.S. v. Real Property Known as 22249 Dolorosa Street (9th Cir. 2000) 190 F.3d 977
to prevailing party


must show that counsel’s distinctive knowledge and skill were needful to the litigation in order to justify attorney fees above statutory cap

Natural Resources Defense Council, Inc. v. Winter (9th Cir. 2008) 543 F.3d 1152

standard for awarding attorney’s fees under Equal Access to Justice Act


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

Carbonell v. I.N.S. (9th Cir. 2005) 429 F.3d 894

U.S. v. Real Property at 2659 Roundhill Drive, Alamo, California (9th Cir. 2002) 283 F.3d 1146

U.S. v. Marolt (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

under 28 U.S.C. section 2412(d)

Parrish v. Commissioner of Social Sec. Admin. (9th Cir. 2012) 698 F.3d 1215

Natural Resources Defense Council, Inc. v. Winter (9th Cir. 2008) 543 F.3d 1152

Van v. Barnhart (9th Cir. 2007) 483 F.3d 600

U.S. v. Real Property at 2659 Roundhill Drive, Alamo, California (9th Cir. 2002) 283 F.3d 1146

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

-fee application timely filed pursuant to 28 U.S.C.A. § 2412(d)(1)(B) may be amended after filing period has run may still qualify for consideration and determination on the merits


-standing to contest an offset where attorney fees awarded to prevailing party not to attorney


value of plaintiff’s assets determined

United States v. 88.88 Acres of Land (9th Cir. 1990) 907 F.2d 106

ERISA matter

either party may recover, not just prevailing party; claimant must show some degree of success on the merits


Error in awarding fees

court erred in awarding attorney fees given limited success of plaintiffs’ enforcement of consent decree

court erred in awarding attorney fees to prevailing defendant on malicious prosecution claim when claim was not frivolous

Fabbriini v. City of Dunsmuir (9th Cir. 2011) 631 F.3d 1299
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 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
district court erred in reducing attorney’s fees under ERISA statute to amount well below prevailing market rate for ERISA plaintiff’s attorneys of comparable skill

Welch v. Metropolitan Life Ins. Co. (9th Cir. 2007) 480 F.3d 942

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

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

Estate

abuse of discretion in determining


administrator’s attorney’s fee for representing administrator as heir

LA 237 (1956)

attorney for administrator claiming fees for extraordinary services


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


executor’s attorney charges for performance of delegable duties of executor

Probate Code sections 10804 and 15687

LA 347 (1975)

executor’s attorney’s fee 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 executor fees and the so called independent attorney shared office space with drafter


legal fees for administration chargeable to estate


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


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 1213


In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668

Excessive

Natural Resources Defense Council, Inc. v. Winter (9th Cir. 2008) 543 F.3d 1152

2018 (updated entries through 12/31/2017)

Recht v. State Bar (1933) 218 Cal. 352, 354 [23 P.2d 273].

argument that fees were too high unpersuasive where defendants were unable to point to any particular fee entries or claimed hours.

Armstrong v. Davis (9th Cir. 2003) 318 F.3d 965.

award of fees in excess of damages justified where successful litigation causes conduct to be exposed and corrected.

Muniz v. United Parcel Services Inc. (9th Cir. 2013) 738 F.3d 214.


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.


negative multiplier decreasing the lodestar is justified where amount of time attorney spent on case was unreasonable and duplicative.


plaintiff failed to provide sufficient record on appeal to support its claim that the amount of fees awarded to defendant’s attorneys for time spent on prior appeal was unreasonable.


Exorbitant

district court may review attorney’s “billing judgment” and reduce fees if some tasks should have been delegated to associate or paralegal.


exorbitant and unconscionable fee charged.

Recht v. State Bar (1933) 218 Cal. 352, 354 [23 P.2d 273].


In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.


93-002.

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 [49 P.2d 832].

gross overcharge by attorney may warrant discipline.


In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

test for impermissible overcharge – “shock the conscience”.


Expert witness fees

expert witness fees cannot be included as attorney fees or recovered as “necessary expense” under contract unless properly pled and proved.


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.


Failure to return unearned fees

Bernstein v. State Bar (1990) 50 Cal.3d 221.


In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.


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

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


more than minimal preliminary services required to justify retention of advanced fees.


until after disciplinary action initiated.


Fair Debt Collection Practice Act

authorizes award of costs to debt collectors only after determination that debtor’s action was brought in bad faith and for the purpose of harassment.

Rouse v. Law Offices of Rory Clark (9th Cir. 2010) 603 F.3d 699.

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.

False Claims Act provides for award of fees under rare and special circumstances.

Pfingston v. Ronan Engineering Co. (9th Cir. 2002) 284 F.3d 999.

defendant entitles to attorney’s fees when claim filed by county found to be frivolous and brought to harass defendant.


Family law


abuse of discretion where court refused and failed exercise discretion; failed to make needs-based analysis and where court refused to review billing records.

In re the Marriage of Tharp (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 375].

child support obligations ordered by family court have priority over fees deposited in client trust account to retain criminal defense attorney.


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.


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 adoption.

Adoption of Joshua S. (2008) 42 Cal.4th 945 [70 Cal.Rptr.3d 372].

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fees denied where the court determined that the party requesting an award of fees had the marketable skills and the potential earning capacity to pay her own fees (Family Code §§ 7604 and 7605).

Kevin Q. v. Lauren W. (2011) 195 Cal.App.4th 633 [124 Cal.Rptr.3d 676] no abuse of discretion when award of attorney fees to mother in child support dispute was based on parties’ needs, income, assets and abilities.

In re Marriage of M.A. (2015) 234 Cal.App.4th 894 [184 Cal.Rptr.3d 315] 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.


Business and Professions Code sections 6200-6206

Ervin, Cohen & Jessup, LLP v. Kassel (2007) 147 Cal.App.4th 821 [54 Cal.Rptr.3d 685] attorney fees may be awarded to attorneys who represent each other in fee dispute with client that attorneys jointly represented.


- arbitration in accordance with Business and Professions Code section 6200 et seq., is non-binding unless parties agree in writing to make it binding.


OC 99-002 rejection of offer of binding arbitration.

- where one party offers binding arbitration and the offeree rejects the offer, the offeror’s offer is effectively rejected and cannot later be accepted by the offeree.


CAL 2007-172, CAL 2002-159, CAL 1980-53


LA(1) 1972-26 SD 1974-6, SD 1972-13, SD 1972-10


through banks.

LA 288 (1965) through lending institutions.

LA 288 (1965) Finder’s fee


alimony payments, processing of.

LA(1) 1969-1

child support payments, processing of.

LA(1) 1969-1 collections.


LA(1) 1968-4 Foreclosures

in an action seeking to prevent a nonjudicial foreclosure, the borrowers “prevailed” for purposes of attorney fees pursuant to Civ. Code § 2924.12, subd. (l), because they obtained preliminary, not solely permanent, injunctive relief against a trustee’s sale of their home.


Rule 2-200, Rules of Professional Conduct (operative as of May 27, 1989).


United Assn. of Journeymen Apprentices v. Department of the Army (9th Cir. 2015) 797 F.3d 696 city ordinance which provided for unilateral recovery of attorney fees found invalid because it conflicted Government Code section 38773 et seq. permitting recovery of fees by a borrower.


- 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

People ex rel. Brown v. Tehama County Board of Supervisors (2007) 149 Cal.App.4th 422 [56 Cal.Rptr.3d 592]

fee application timely filed pursuant to 28 U.S.C.A. § 2412(d)(1)(B) may be amended after filing period has run may still qualify for consideration and determination on the merits


fees awarded to city retirement board of members pursuant to a city council resolution authorizing payment of all expenses incurred in connection with any claim arising from any act or omission in the scope of their duties as board members


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 limitation because attorney's fees were neither a charge against the city's general fund nor an obligation to be by tax levies


property owner is entitled to attorney's fees as prevailing party in action to enforce inverse condemnation judgment against city


Andres v. City of West Sacramento (2001) 92 Cal.App.4th 532 [111 Cal.Rptr.2d 891]


retroactive application of city ordinance providing for recovery of attorney fees found invalid on the grounds that the ordinance changed the legal consequences of past conduct

City of Monte Sereno v. Padgett (2007) 149 Cal.App.4th 1530 [58 Cal.Rptr.3d 218]

social security claimant timely files for attorney fees

Van v. Barnhart (9th Cir. 2007) 483 F.3d 600

under 26 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

under Code of Civil Procedure § 1021.5, prevailing public entity entitled to collect fees from another public entity


under Code of Civil Procedure § 1038, the California Torts Claims Act does not authorize attorney fees for successful defense of section 1983 claims


Gross overcharge

Bushman v. State Bar (1974) 11 Cal.3d 558, 563 [113 Cal.Rptr. 904]


Group legal services

LA(/) 1971-9
SD 1973-7

Guidelines for courts to follow [See Award of attorneys' fees. Sanctions.]

29 U.S.C section 1132(q)

Hummel v. S.E. Rykoff & Co. (9th Cir. 1980) 634 F.2d 446, 452-453

Guidelines for setting attorneys' fees

retirement branch

Sapper v. Lenco Blade, Inc. (9th Cir. 1983) 704 F.2d 1069, 1073

Handicapped Children’s Protection Act

attorney’s fees recoverable by plaintiff

McSomebodies v. San Mateo School District (9th Cir. 1990) 886 F.2d 1559

McSomebodies v. Burlingame Elementary School District (9th Cir. 1990) 886 F.2d 1558

Hybrid, hourly and contingent

OC 99-001

SF 1999-1

Illegal fee

Coviello v. State Bar (1953) 41 Cal.2d 273

Estate of Glikson (1998) 65 Cal.App.4th 1443, fn. 2 [77 Cal.Rptr.2d 463]

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

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126

In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725

*Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266

LA 466, OC 99-001

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


counsel for plaintiffs “practiced law in California” without pro hac vice admission therefore fee section of settlement deemed illegal


fee contract between an attorney and an applicant in a workers’ compensation case, is not prohibited by the Labor Code; instead, the Workers’ Compensation Appeals Board has authority to approve, increase, or reduce the fees within the contract


fees collected while engaged in UPL in another jurisdiction constitute

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896

loan modification services

- collecting pre-performance fees in violation of the law

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

Immigration cases

Equal Access to Justice Act

Carbonell v. I.N.S. (9th Cir. 1994) 429 F.3d 894

Improper billing

billing for paralegal work, court, in its discretion, may not allow hearsay by attorney as the sole justification for award of such fees

Muniz v. United Parcel Services Inc. (9th Cir. 2013) 738 F.3d 214

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district court may review attorney’s “billing judgment” and reduce fees if some tasks should have been delegated to associate or paralegal
LA 391 (1981), OC 99-001
Improper for court to withhold past due SSI benefits for payment of attorney’s fees
In propria persona client and advisor counsel share handling of case

Indigent person
Business and Professions Code section 6068(h)

extra fees from family of LA 245 (1957)
county hospital lien against indigent patient’s tort recovery from third party subject to pro rata reduction for patient’s reasonable attorney’s fees
City and County of San Francisco v. Sweet (1995) 32 Cal.App.4th 1483 [38 Cal.Rptr.2d 620]
court consider indigent losing party’s financial condition before awarding reasonable attorney’s fees to prevailing party

criminal cases

-right to ancillary defense services under Penal Code section 987.9
litigation cost not limited as tool to deny pro per pro litigant access to court

representation by legal aid foundation

-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
Insurance agent may be liable for attorney fees incurred by insured

Insurance cases
Civil Code section 2860 – reactivity

-award of attorney’s fees to insurance company from interest accrued on interpleader funds statutorily prohibited under Code of Civil Procedure section 386.6

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

-insurer failed to provide a defense which precluded invocation of statutory arbitration remedy for Cumis’s attorney fee dispute

-no right to fee dispute where no determination of whether insurer has duty to defend

Cumis counsel

-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

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 fees incurred in recovering policy benefits wrongfully withheld

insured entitled to reimbursement of attorney’s fees incurred in a forfeiture proceeding

insurer’s ability to recover attorney fees from insured

Interest on unpaid [See Charge interest.]
California Constitution Art. 15
Usury section 1, par. 2

CAL 1980-53

LA 370 (1978), LA 374 (1978)
SD 1983-1, SD 1976-8
SF 1970-1

in the absence of an agreement as to any accrued interest, the interest belongs to the attorney who owns the fee judgment upon which interest is accruing

interest on prejudgment award of fees begins to accrue upon entry of judgment


standing to pursue claim for interest on award of attorney’s fees


Interim award of attorney’s fees not an appealable collateral order
Hillery v. Rusher (9th Cir. 1983) 702 F.2d 848

Interim awards appropriate to party substantially prevailing
Powell v. United States Dept. of Justice (N.D. Cal. 1983) 569 F.Supp. 1192

Interim bankruptcy

In re International Environmental Dynamics (9th Cir. 1983) 718 F.2d 322
Interpleader funds
award of attorney’s fees from interest accrued on
interpleader funds statutorily prohibited under Code of Civil
Procedure 386.6
Cal.App.4th 239 [11 Cal.Rptr.3d 626]
fees denied where party failed to satisfy criteria for
interpleader action pursuant to Code of Civil Procedure
section 386.6
Cal.App.4th 393 [22 Cal.Rptr.3d 750]
fees denied where public entity failed to file interpleader
action pursuant to Code of Civil Procedure 386.6
Tri-State, Inc. v. Long Beach Community College
District (2012) 204 Cal.App.4th 224 [138 Cal.Rptr.3d
529]

Invalid contract
Mountain Air Enterprises v. Sundowner Towers, LLC
(2014) 231 Cal.App.4th 805 [180 Cal.Rptr.3d 840]
Yuba Cypress Housing Partners, Ltd. v. Area Developers
IRS matter
Morrison v. Commissioner of Internal Revenue
(9th Cir. 2009) 565 F.3d 658

Jurisdiction of federal court
district court that presided over the underlying action
denied law firm’s motion to enforce a note on the grounds
that the note was not collateral to the action and therefore
outside of the court’s supplemental jurisdiction
Federal Savings and Loan Insurance Corporation v.
Ferrante (9th Cir. 2004) 364 F.3d 1037
over Title VII claim for attorney’s fees for legal work
performed in state, local or administrative proceedings
Porter v. Winter (9th Cir. 2010) 603 F.3d 1113

Labor Management Act (§ 301)
Dahl v. Rosenfeld (9th Cir. 2003) 316 F.3d 1074

Law clerks and paralegals
district court may review attorney’s “billing judgment” and
reduce fees if some tasks should have been delegated to
associate or paralegal
1101
Cal.Rptr.3d 387]
LA 391 (1981)
non-attorney collection agency employees
LA 522 (2009)

Lien
absent a petition by attorney seeking court confirmation of
an arbitration award, such award has no greater force or
effect than an attorney having a valid but unperfected security interest
specifying an amount of attorney’s fee and assigning it a
lien on any settlement or judgment (CCP 1285.4 et seq.)
Cal.Rptr.3d 551]
- attorney’s lien is subordinate to an adverse party’s right
to offset judgments
- attorney’s lien on same judgment
- attorney’s lien superior to claims of other creditors
  against a bankruptcy distribution
- attorney’s lien on same proceeds of client’s
  subsequent judgment has priority over judgment
  creditor’s lien on same judgment
Cal.Rptr.3d 912]
- attorney’s lien on same judgment
- attorney’s lien to offset judgments
- attorney’s lien, if valid, on proceeds of client’s
  subsequent judgment has priority over judgment
  creditor’s lien on same judgment
Cal.Rptr.3d 912]
- attorney’s lien to offset judgments

security for fees
Fletcher v. Davis (2004) 33 Cal.4th 61 [14 Cal.Rptr.3d 58]
38 [108 Cal.Rptr.3d 455]
C A L 2006-170, C A L 1981-62
- attorney’s lien to offset judgments

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collecting pre-performance fees in violation of the law
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“Lodestar” multiplier method of fee calculation
Carter v. Caleb Brett LLC (9th Cir. 2014) 757 F.3d 866
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Welch v. Metropolitan Life Ins. Co. (9th Cir. 2007) 480 F.3d 942
Ketchum v. Moses (2001) 24 Cal.4th 1122 [104 Cal.Rptr.2d 377]
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abuse of discretion where quality of representation was used to reduce
Van Gerwin v. Guarantee Mutual Life Co. (9th Cir. 2000) 214 F.3d 1041
class action cases
Winingor v. SSI Management, L.P. (9th Cir. 2002) 301 F.3d 1115
court abused discretion in using cost-plus method of determining attorney fees where the lodestar method was the appropriate method
probate matters
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 did not abuse its’ discretion in reducing the attorney fees award when it determined that many of the hours were duplicative
trial court is not permitted to use a public entity’s status to negate a lodestar that would otherwise be appropriate
Rogel v. Lynwood Redevelopment Agency (2011) 194 Cal.App.4th 1319 [125 Cal.Rptr.3d 267]
Malpractice action
Dahl v. Rosenfeld (9th Cir. 2003) 316 F.3d 1074
Lage v. Alnor (9th Cir. 2007) 152 Cal.App.4th 1431 [62 Cal.Rptr.3d 378]
Mandatory arbitration
Med-pat
Mediation
agreement containing attorney fee provision was inadmissible, judicial estoppels provides no exception to mediation confidentiality
defendant-sellers in real estate case are not required to seek mediation prior to recovery of attorney fees
no recovery of attorney’s fees when contractual condition of mediation prior to court action not satisfied
party refusing request to mediate due to incomplete discovery responses cannot recover attorney fees under contract provision conditioning recovery of attorney’s fees upon acceptance of mediation
party refusing to mediate where contract provision conditioning recovery of attorney’s fees upon acceptance of mediation is barred from recovering such fees
Medical malpractice
attorney not automatically entitled to the maximum contingency percentages under Business and Professions Code section 6146, which establishes caps on the recovery, not guarantees of the attorney’s fees
calculation under Business and Professions Code section 6146 when attorney has multiple clients
contract contingency fee limits in Business and Professions Code section 6146 are constitutional and to be followed even when clients agree to a higher fee contract
Rog v. Lod Medical Group, Inc. (1985) 37 Cal.3d 920 [211 Cal.Rptr. 77]
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
medical-legal consulting services entitlement to a contingent fee may be restricted by MICRA limitations
Queda v. Sharp Cabrillo Hospital (1992) 8 Cal.App.4th 1 MICRA not applicable to medical procedure performed without patient’s consent by doctor acting as agent of law enforcement
Ellis v. City of San Diego (9th Cir. 1999) 176 F.3d 1183
Membership fees
Business and Professions Code section 6140 et seq.
Minimum fee schedules
no longer in effect
SD 1973-7

Minors’ compromise
Probate Code sections 3500 et seq., 3600 et seq.
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
trial court has jurisdiction to divide attorney fees between prior and current attorneys as part of minor’s settlement approval

Must be licensed at time services performed to recover
Shapiro v. Paradise Valley Unified School District No. 69 (9th Cir. 2004) 374 F.3d 857
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]
failure to register as a professional law corporation has no effect on fees charged by a law firm or partnership
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 856

Mutuality of remedies
No attorney’s fees as obligated under contract that was not assumed
No award of attorney’s fees when government takes an affirmative legal action
No recovery of attorney’s fees if a violation of Rules of Professional Conduct occurs
United States ex rel. Ainoor Virani v. Jerry M. Truck Parts & Equipment, Inc. (9th Cir. 1996) 89 F.3d 574
Conservatorship of Chilton (1970) 8 Cal.App.3d 34, 43 [86 Cal.Rptr. 860, 866]

In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583
denial of forfeiture motion on grounds that alleged ethical violations are irrelevant to the value of attorney’s services to client
serious ethical violation required, forfeiture never automatic
Pringle v. La Chappelle (1999) 73 Cal.App.4th 1000 [87 Cal.Rptr.2d 90]

No recovery of attorney’s fees when contractual condition of mediation prior to court action not satisfied

No recovery of attorney’s fees where attorney voluntarily withdraws without cause
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]

Nominal fee
printed upon professional card
LA 131 (1940)

None charged
charitable, educational, and religious organizations
SD 1974-19
for referrals from health plan
LA 1 (1931-3)
for will
-leaving money for cause
LA 314 (1970), LA 196 (1952)
to bank’s customers
SD 1974-21 1/2
to insurance broker’s clients
SD 1976-4
labor union members
LA 151 (1944)
when client can pay
SD 1983-6

Non-payment of
by client
-attorney fees awarded under contract to law firm seeking to collect unpaid legal bills
-lawyer declines to perform further services
SD 1973-3, LA 32 (1925)

Non-statutory award of attorney’s fees
reasonable lodes, risk factor
Beatty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607

Note and deed of trust to secure requires compliance with rule 5-101 (current rule 3-300)


Note without deed of trust may not require compliance with rule 3-300
SF 1997-1

Out-of-state attorney’s fees
LA 1 (1969-3)
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

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FEES

Paid by others

- Rule 3-310(F), Rules of Professional Conduct
- accessory of client in felony
  - LA(I) 1964-1

- by corporation to minority shareholder’s attorney
  - Strotrow v. Strotrow, Inc. (9th Cir. 1987) 813 F.2d 997

- by fee guarantor

- by former employer
  - Morrison v. Commissioner of Internal Revenue (9th Cir. 2009) 565 F.3d 658

- by government
  - defending duties of legal services lawyer
    - CAL 1981-64

- by individual homeowners of a condominium association
  - payment of fees does not determine ownership of the attorney-client privilege

- by insurer of client
  - counsel is acting on the insurer’s behalf and representing the insurer’s own rights and interest as well as those of its insured

- Cumis counsel
  - 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

- insurer is not a “client” for purposes of mandatory fee arbitration and may not demand an arbitration of attorney’s fees incurred by on behalf of an insured client
  - LA 439 (1986)

- by non-lawyer immigration service providers
  - In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

- by parent of client

- by trust beneficiaries
  - payment of fees does not determine ownership of the attorney-client privilege
    - Wells Fargo Bank v. Superior Court (Boltwood) (2000) 22 Cal.4th 2001 Cal.Rptr.2d 716

- disclosure of identity
  - Rails v. U.S. (9th Cir. 1995) 52 F.3d 223

- fee financing plan
  - CAL 2002-159, OC 93-002

- head of criminal organization
  - to represent subordinate
    - CAL 1975-35

- not privileged information
  - Rails v. U.S. (9th Cir. 1995) 52 F.3d 223
  - United States v. Hirsch (9th Cir. 1986) 803 F.2d 493

- third party agrees to indemnify client’s legal fees but not entitled to confidences or secrets

- Paid with funds belonging to receivership

- Paid with funds illegally gained
  - funds for retention of private counsel not exempted from forfeiture of drug defendant’s assets

  - Partnership agreement to divide fee upon partner leaving firm held unconscionable
    - former firm entitled to quantum meruit

  - Partnership dissolution
    - CAL 1985-86
  - division of post-dissolution profits from unfinished partnership business

  - Party must substantially prevail and government must have acted in bad faith to get attorney’s fees

  - Periodic payments
    - client recovery is annuity, attorney is entitled to percentage of periodic payments
    - Sayble v. Feinman (1978) 76 Cal.App.3d 509 [142 Cal.Rptr. 895]
    - Permissive intervention by client’s former attorney concerning attorneys’ fees
    - Venegas v. Skaggs (9th Cir. 1989) 867 F.2d 527

  - Physician’s client’s duty with respect to LA 368 (1977), LA 357 (1976)

- Post-judgment
  - fee awarded where one party petitioned to enforce judgment, even if settlement agreement did not provide for post-judgment fees
    - Berti v. Santa Barbara Beach Properties et al. (2006) 145 Cal.App.4th 70 [51 Cal.Rptr.3d 364]

  - fees going to post-judgment collection costs not covered under terms of fees provision in pre-judgment contract

  - judgment creditor authorized to recover attorney fees incurred in enforcing underlying judgment against sureties
    - Rosen v. Legacy Quest (2014) 225 Cal.App.4th 375 [170 Cal.Rptr.3d 1]

  - judgment creditor entitled to attorney’s fees incurred in the defense of an a separate action on the enforcement of the judgment

  - judgment creditor entitled to recover attorney fees from third-party who helped judgment debtor hide assets and evade eviction
    - Cardinale v. Miller (2014) 222 Cal.App.4th 1020 [166 Cal.Rptr.3d 546]

  - judgment creditor must request post-judgment attorney fees before the underlying judgment is fully satisfied
    - Barnes v. Zamani (9th Cir. 2007) 488 F.3d 1057

  - limitation on attorney fees for post-judgment monitoring services performed after effective date of Prison Litigation Reform Act

  - limits imposed by Prison Litigation Reform Act did not burden prisoners’ fundamental right of access to courts
    - Madrid v. Gomez (9th Cir. 1999) 190 F.3d 990

  - limits imposed by 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

  - members of dissolved LLC are liable for attorney fees up to amount distributed upon dissolution for breach of contract by LLC

  - 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
waiver
-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

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

American with Disabilities Act

-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

-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

-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

-does not preclude anti-SLAPP defendant from recovering appellate attorney fees upon prevailing on appeal

-fees awarded to defendant following plaintiff’s failure to perfect an appeal from the judgment in favor of defendant

-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]


-mandatory award may be based on attorney’s declarations instead of time records

-no prevailing defendant when plaintiff dismissed all claims against defendants before motion to strike was filed by defendants

-prevaling defendant under CCP § 425.16 denied an award of attorney fees against plaintiff’s attorney

-prevaling defendant-attorneys on an ant-SLAPP motion to strike are not entitled to attorney fees because they represented themselves


-revision of 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 where arbitrator inadvertently failed to rule on prevailing party’s claim to attorney’s fees and costs

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FEES

-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, not 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


-attorney fees may be awarded to attorneys who represent each other in fee dispute with client that attorneys jointly represented


court may award costs and reasonable attorney fees in a judicial proceeding to confirm or vacate an arbitration award


--plaintiffs cannot be required to pay arbitral expense and attorney fees that would not be imposed were the dispute adjudicated in court; invalid award of fees against plaintiff when case brought under anti-hate crimes statute


-prevailing party in action to forestall arbitration


-attorney fee awarded to party who obtained court order incorporating settlement agreement which includes the requested remedy

Laboletest, 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 proven under the statute

Tract 19051 Homeowners Assn. v. Kemp (2015) 60 Cal.4th 1135 [184 Cal.Rptr.3d 701]

bankruptcy matter

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

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

civil rights cases

Lefemine v. Wideman (2012) 568 U.S. 1 [133 S.Ct. 9]

class actions

-absent class members not liable for employer’s attorney’s fees in overtime dispute


-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

Sinyard 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


contract clear that party must attempt mediation before commencing litigation to recover attorney fees


-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

-costs of suit that are routine and non-routine


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 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 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 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. (2016) 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

Kaszka v. Whitman (9th Cir. ( Nev.) 2003) 325 F.3d 1178

etitled 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]
- prevailing defendant under this statute can only recover fees upon a showing that plaintiff’s action was frivolous, unreasonable, or without foundation

Lopez v. Rout (2017) 17 Cal.App.5th 1006 [225 Cal.Rptr.3d 851]

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 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

Cadin v. Loose (9th Cir. 2009) 569 F.3d 1142
Escobar v. Bowen (9th Cir. 1998) 857 F.2d 64
Abouab v. City and County of San Francisco (2006) 141 Cal.App.4th 643 [46 Cal.Rptr.3d 206]
- 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

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 any part of the defense was able to achieve most or all of his litigation objectives

- 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
- voluntarily dismissal of suit against defendant did not necessarily establish defendant’s entitlement to attorney’s fees

- 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 any part of the defense 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

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prevailing party as defined by statute versus one defined by contract
prevailing party in preliminary injunction entitled to attorney fees
Watson v. County of Riverside (9th Cir. 2002) 300 F.3d 1082
prevailing party may recover attorney fees in state court following dismissal of bankruptcy proceeding

Prison Litigation Reform 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

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]

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
CAL 2009-176

SLAPP action
-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]

-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 inappropriate 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 civil 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
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

Octane Fitness, LLC v. Icon Health & Fitness, Inc. (2014) U.S. [134 S.Ct. 1744]

Prison Legal News v. Schwarzenegger (9th Cir. 2010) 608 F.3d 446
Mahach-Watkins v. Depes (9th Cir. 2010) 593 F.3d 1054
under Business and Professions Code § 809.9
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. 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
PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084 [95 Cal.Rptr.2d 198] as modified (June 2, 2000)
Helm v. Prometheus Real Estate Group, Inc. (2016) 3 Cal.App.5th 1155 [208 Cal.Rptr.3d 394]
under Civil Code section 1717

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see how to use this index, supra, p. i

the firm

attorney acting in pro se entitled to recover attorney fees where the representation -attorney represented by other members of his law firm is

attorney fees may not be awarded to a prevailing party that prevails is entitled to attorney fees only if it

defenses applied to both of them

contractual attorney fees pursuant to Civil Code section 1717 and Code of Civil Procedure section 1033.5

limited success of plaintiff’s enforcement of consent decree should have resulted in denial of attorney fees

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 themselves


-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


-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


-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


-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)


-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)

FEES
FEES

-prevaling 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 3406


under civil rights statutes

Hensley v. Eckerhart (1983) 461 U.S. 424, 429 fn. 2

Klein v. City of Laguna Beach (9th Cir. 2016) 810 F.3d 693

Guy v. City of San Diego (9th Cir. 2016) 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

Morris-Smith v. Moulton Niguel Water District (2000) 44 F.3d 1084

-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 1023

under Code of Civil Procedure section 3401


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 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

Serrano v. Stefan Merli Plastering Co., Inc. (2011) 51 Cal.4th 1018 [132 Cal.Rptr.3d 358]

San Diego Municipal Employees Association v. City of San Diego (2016) 244 Cal.App.4th 906 [198 Cal.Rptr.3d 355]


Edna Valley v. County of San Luis Obispo (2011) 197 Cal.App.4th 1312 [129 Cal.Rptr.3d 249]

Center for Biological Diversity v. California Fish and Game Commission (2011) 195 Cal.App.4th 128 [124 Cal.Rptr.3d 467]

Rogel v. Lynwood Redevelopment Agency (2011) 194 Cal.App.4th 1513 [125 Cal.Rptr.3d 267]


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 390]

Ramon v. County of Santa Clara (2009) 173 Cal.App.4th 915 [93 Cal.Rptr.3d 278]


-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]

-must be successful party


-suspended corporation is not entitled to attorney fees

City of San Diego v. San Diegos for Open Government (2016) 3 Cal.App.5th 568 [207 Cal.Rptr.3d 703]

under Code of Civil Procedure section 1032

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 1717 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 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. Lehigh Southwest Cement Co. (2016) 1 Cal.App.5th 1136 [205 Cal.Rptr.3d 535]

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
Tobeler v. Colvin (9th Cir. 2014) 749 F.3d 830
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 at 22249 Dolorosa Street (9th Cir. 2000) 190 F.3d 977
-standing to contest an offset where attorney fees awarded to prevailing party not to attorney
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In re the Marriage of Turkanis (2013) 213 Cal.App.4th 332 [152 Cal.Rptr.3d 498]
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Irvine Unified School District v. K.G. (9th Cir. 2017) 853 F.3d 1087
under Labor Code § 98.2
-fomer 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]
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-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
under Labor Code § 1194
-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
under Lanham Act
SunEarth Inc. v. Sun Earch Solar Power Co. (9th Cir. 2016) 839 F.3d 1179
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People v. Millard (2009) 175 Cal.App.4th 7 [95 Cal.Rptr.3d 751]
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-non-attorney’s law firm representative of injured employee at workers’ compensation proceeding may not be entitled to same fees as licensed attorney
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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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- 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]

- 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]
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- --attorney’s fees can only be recovered against opposing parties
- --award of fees improper when plaintiff has personal interest or individual stake in the matter
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- 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]

--must be successful party
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Serrano v. Stefan Merli Plastering Co., Inc. (2011) 52 Cal.4th 1018 [132 Cal.Rptr.3d 358]
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--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]

--must be successful party
--factors considered under CCP § 1021.5

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no award of attorney’s fees under Code of Civil Procedure section 1021.5 where pecuniary interest of public entity outweighed burden of litigation


prosecute inmate’s case, successfully litigated


statutory authority


Pro bono

appointment of counsel for incarcerated, indigent civil defendant

Yarbrough v. Superior Court (1985) 39 Cal.3d 197 [216 Cal.Rptr. 425]

court impressing attorney to represent pro bono an indigent client denies attorney equal protection under Fourteenth Amendment

Cunningham v. Superior Court (1986) 177 Cal.App.3d 536, 547-549 [222 Cal.Rptr. 854]

partial pro bono fee arrangement did not preclude award of fees under C.C.P. § 425.16


public service obligation of the bar

Brashaw v. U.S. Dist. Court (9th Cir. 1984) 742 F.2d 515, 518-519


when attorney knows pro bono client has sufficient funds to pay legal fees

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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


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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 343]

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]

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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, statutory scale

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Probate Code section 10810

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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


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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 substandard, was not vexatious, frivolous, or pursued in bad faith

U.S. v. Manchester Farming Partnership (9th Cir. (Mont.) 2003) 315 F.3d 1176

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Public interest case

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Serrano v. Stefan Merli Plastering Co., Inc. (2011) 52 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
Ramón 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]

fees awarded 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
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CAL 2009-177
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Ketchum v. Moses (2001) 24 Cal.4th 1122 [104 Cal.Rptr.2d 377]
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-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]

-attorney precluded from recovering from client

-fee for services rendered to executor in individual capacity

legal services rendered to executor in individual capacity

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 no fee shifting in a class action suit against corporation where the shareholder failed to show an actual and concrete impact on corporate action


-fee shifting in a class action suit against corporation where the shareholder failed to show an actual and concrete impact on corporate action
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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

no fee shifting in a class action suit against corporation where the shareholder failed to show an actual and concrete impact on corporate action
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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

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

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FEES

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

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 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 fee 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


fees awards in federal securities fraud actions must be reasonable in relation to plaintiffs’ recovery

Powers v. Eichan (9th Cir. 2000) 229 F.3d 1249

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People v. Millard (2009) 175 Cal.App.4th 7 [95 Cal.Rptr.3d 751]


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 awards in federal securities fraud actions must be reasonable in relation to plaintiffs’ recovery

Powers v. Eichan (9th Cir. 2000) 229 F.3d 1249

-unnamed member of putative class who defects 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]

-award of excessive fee made at inception of divorce

Ingram v. Oroudjian (9th Cir. 2011) 647 F.3d 925

-award of attorney’s fees not matter of right but rests in discretion of trial 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 289]


-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]

-inadequate fee award shows abuse of discretion


-modification of court order allowing attorney’s fee – circumstances affecting right to and amount of allowance


-modification of custody award – determination of reasonable attorney’s fees


-no abuse of discretion – factors considered by appeals court on review


-reasonable fees – factors considered by trial court


-reasonableness is a question of fact in discretion of trial court


-reasonableness 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]

-reasonableness 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]

In re Marriage of Cueva (1978) 86 Cal.App.3d 290, 297-304 [149 Cal.Rptr. 918]


-test for determining reasonable attorney’s fees


-eminent domain proceedings

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-scope of appellate review
-trial judge has discretion to set reasonable fee – factors considered – appellate standard of review
- 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 268 Limited (9th Cir. BAP 1998) 85 B.R. 101
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Moore v. Maryland Casualty Co. (1929) 100 Cal.App. 658, 666 [280 P. 1008]
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McCown v. City of Fontana (9th Cir. 2009) 565 F.3d 1097
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Mills v. Friedman (1931) 119 Cal.App. 74, 81 [5 P.2d 901]
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Prison Legal News v. Schwarzenegger (9th Cir. 2010) 608 F.3d 446
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]
education considered by jury in fixing reasonable fee
education on reasonable value of services offered by witness attorneys
Freese v. Pennig (1895) 110 Cal. 467, 468-470 [42 P. 976]
education of attorneys for executors, administrators and guardians fixed by court – court has discretionary power to set fee
Penne v. Roach (1892) 94 Cal. 515, 518-519 [29 P. 956, 30 P. 106]
options of professional witnesses not binding on court
Estate of Dorland (1933) 63 Cal. 218, 282
reason fee primarily question of fact for trial court expert testimony unnecessary – appellate 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) 896 F.2d 403
rates 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 awarded in federal securities fraud actions must be reasonable in relation to plaintiffs’ recovery
Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249

FEES

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 529 (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

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 Turkanis (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

Hawk v. State Bar (1988) 45 Cal.3d 589 [247 Cal.Rptr. 598]

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615

LA 492 (1998)

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CAL 1981-62, SF 1997-1

security agreements

-fees 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) 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]


- plaintiff’s letter to defendant is extortion as a matter of law, therefore it is not protected under the anti-SLAPP statute

- splitting 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

- attorney conducting real estate business
  SD 1969-2

- with franchisor
  LA 423 (1983)

FEES

See How to Use This Index, supra, p. i 311 2018 (updated entries through 12/31/2017)

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Standards applicable to attorney’s fees
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plea 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]
Kyle v. Carmon (1999) 71 Cal.App.4th 901 [84 Cal.Rptr.2d 33]
- 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 services incurred to recover both economic and noneconomic damages
under Song Beverly 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 476 [118 Cal.Rptr.2d 497]
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 Marquard 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
Armel 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
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]

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]

reasonable of fees in trust administration, inefficient and duplicative not permitted

Unconscionable
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 500 (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
Herrscher 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
[113 Cal.Rptr.964]

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
LA 518 (2006)

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

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

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
  Champion v. Superior Court (1986) 201 Cal.App.3d 777
- 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 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
*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
In re Imran Q. (2008) 158 Cal.App.4th 1316 [71 Cal.Rptr.3d 121]
Undue influence, presumption of
Sayble v. Feinman (1978) 76 Cal.App.3d 509 [142 Cal.Rptr. 859]
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 Lystiger (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
preferring 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. Roezer (9th Cir. 1994) 37 F.3d 501
-calculating of fee award must be explained
McCaown v. City of Fontana (9th Cir. 2009) 565 F.3d 1097
United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1996) 896 F.2d 403
Potton v. County of Kings (9th Cir. 1988) 857 F.2d 1379
"degree of success" versus “propriateness” 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
-preliminary unsuccessful at a stage of litigation necessary to an ultimate victory is entitled to attorney’s fees even for the unsuccessful stage
-prevaling 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
Aguirre v. Los Angeles Unified School District (9th Cir. 2006) 461 F.3d 1114
-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
Meritt 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
-fees awards in civil rights case reviewed for abuse of discretion
Klein v. City of Laguna Beach (9th Cir. 2016) 810 F.3d 693
McCown v. City of Fontana (9th Cir. 2009) 565 F.3d 1097
Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106
Aquire 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. 1988) 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 1125; 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
Hensley v. Eckerhart (1983) 461 U.S. 424, 429 fn. 2
Klein v. City of Laguna Beach (9th Cir. 2016) 810 F.3d 693
Aquire 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
-plaintiff obtained some relief on merits of claim
Gerting Global Reinsurance Corp. of America v. Garamendi (9th Cir. 1997) 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
-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
-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
-reduction of “fees-on-fees” is warranted for counsel’s time spent on unsuccessful “merits fees” request
Thompson v. Gomez (9th Cir. 1995) 45 F.3d 1365
-standing to pursue an award of fees, attorneys lack
Churchill Village LLC v. General Electric (9th Cir. 2004) 361 F.3d 566
-successful challenge to application of city ordinance
Segundo v. Rancho Mirage City (9th Cir. 1989) 873 F.2d 1277
-superior performance in appropriate civil rights cases may allow for increase in fees beyond amount determined by lodestar calculation

Unlawful detainer action

Unpaid [See Attorney lien.]
attachment motion
-attorney’s fees denied without court authorization
-attorney fees awarded under contract to law firm seeking to collect unpaid legal bills

bankruptcy action

default against client without consulting
LA 174 (1950)

foreclosure note for
LA(I) 1975-8

future services conditional on payment of fees due
LA 360 (1976)

hold client’s papers
LA 330 (1972), LA(I) 1970-6
SD 1997-1, SD 1984-3. SD 1977-3
Board Policy Statement (Sept. 1971) III.A.2., supra

levy on client’s spouse’s property
LA(I) 1971-17

lien asserted [See File.]
LA 47 (1927), LA(I) 1970-1, SD 1997-1, SD 1984-3, SD 1977-3

notification to opposing counsel
SD 1969-3

paid with check not covered with funds
LA(I) 1947-3

refuse to continue or begin case
Business and Professions Code section 6128(b)
LA 356 (1978), LA 261 (1959)

finance charge added to

See How to Use This Index, supra, p. i  315  2018 (updated entries through 12/31/2017)
FICTITIOUS NAMES

- 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]
  suit for, requires attorney to withdraw
  threaten “dire consequences” and “increased costs” if not paid
  LA(l) 1966-12
  threaten to “take up with authorities”
  LA(l) 1947-3
  unconscionable
  use confidences of client to collect
  LA 452, LA 159 (1945), LA(l) 1961-3
  use of criminal process to collect
  Bluestein v. State Bar (1974) 13 Cal.3d 162 [118 Cal.Rptr. 175, 529 P.2d 599]
  withdrew
  - before suing client for fees
  LA 407 (1982), LA 362 (1976), LA 212 (1953)
  withdrawal of client trust account funds to pay disputed fees
  LA 382 (1979)
  Waiver of right to appeal includes waiver of right to argue ineffective assistance of counsel
  may not be applicable to defendant’s motion to withdraw plea containing the waiver
  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
  Withdrawal by attorney
  attorney entitled to quantum meruit
  - not available if attorney abandoned case
  Withdrawal of client trust account funds to pay disputed fees
  LA 438 (1985)
  Withdrawal of unrelated client monies to pay off debt of client
  SD 1976-5
  Workers’ Compensation
  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
  Richardson v. Continental Grain Co. (9th Cir. 2003) 336 F.3d 1103
  Draper v. Aceto (2001) 26 Cal.4th 1086 [113 Cal.Rptr.2d 61]
  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
  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]

Written fee agreement required
Business and Professions Code section 6147-6149
FICTITIOUS NAMES [See Advertising, fictitious names. Business activity, name for. Partnership, name.]

FIFTH AMENDMENT

Business and Professions Code section 6088(i)
District court granted IRS’s petition to enforce summons on tax documents based on “foregone conclusion” exception to Fifth Amendment
U.S. v. Sideman & 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
Spielbauer v. County of Santa Clara (2009) 45 Cal.4th 704 [88 Cal.Rptr.3d 590]

FILE [See Document.]
Rules 2-111(A) and 8-101(B)(4), Rules of Professional Conduct
operating until May 26, 1989
Rules 3-700 and 4-100, Rules of Professional Conduct
operating as of May 27, 1989
Class Action
former member of a class who opted out of the class has no right to the papers and property
LA 481 (1995)

Client claims of multiple clients
CAL 1999-153
- multiple clients each demand the original
LA 493 (1998)
delivery to succeeding attorney
SD 1970-3
- consent of client
LA 112 (1937)
disposition of death of client
LA 491 (1997)
- partnership dissolves
CAL 1985-86, LA 405 (1982), LA(l) 1979-1
documents within an attorney’s legal file belong to the client
following attorney to new firm
LA 405 (1982)
hold in fee dispute
LA 330 (1972), LA(l) 1970-6
SD 1997-1, SD 1984-3, SD 1977-3
SF 1973-12
lien
- against client file
-- permissable if created by contract
- against non-payment of attorney’s fees
-- void

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

Crime-fraud exception to attorney-client privilege does not apply to work product

Denied access to
tolling of habeas petition deadline when prisoner did not have access to file
Lott v. Mueller (9th Cir. 2002) 304 F.3d 918

Duty to deliver client’s to succeeding attorney
-consent of client
LA 112 (1937)

Electronic file
CAL 2007-174

Failure to deliver file to client’s new attorney
King v. State Bar (1990) 52 Cal.3d 307 [801 P.2d 419]
Friedman v. State Bar (1990) 50 Cal.3d 235 [786 P.2d 359]
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547
In the Matter of Mydall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363
In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735
In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716
In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703

Failure to protect clients’ records and files
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
Fiduciary duty to keep adequate non-financial client files and records
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

Fixed by statute
-agreement with client to handle legal matter for less than amount
-probate matter
LA 102 (1936)

Lien
against non-payment of attorney’s fees
-void
CAL 1994-134

Reasonableness of probate proceedings
-agreement with client to handle for less than fee fixed by statute
LA 102 (1936)

Retention
criminal files
LA 420 (1983)
deceased client
-duty to notify legal representatives or legatees
Probate Code section 700 et seq.

Substitution form
client’s refusal to sign
In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32

Unilateral determination of
by attorney
Greenbaum v. State Bar (1976) 15 Cal.3d 893, 899
Crooks v. State Bar (1970) 3 Cal.3d 346, 358
Trafton v. Youngblood (1968) 69 Cal.2d 17, 26

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

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FINANCIAL ARRANGEMENT WITH NON-LAWYER

Work product


belong to client whether or not the attorney has been paid

client’s right to

[30 Cal.Rptr.2d 371]

Rumiac, Inc. v. Bottomley (1983) 143 Cal.App.3d 810, 812 In. 3 [152 Cal.Rptr. 104]

SD 2004-1 SD 1997-1

SF 1990-1

crime-fraud exception to attorney-client privilege does not apply to work product

general (qualified) versus attorney’s impressions, conclusions, opinions, or legal research or theories (absolute)

law firm’s right
law firm is the holder of work product privilege and need not seek consent from associate attorney before disclosure

privilege
-Code of Civil Procedure section 2018
Coito v. Superior Court (2012) 54 Cal.4th 480 [142 Cal.Rptr.3d 607]


SD 1997-1, SD 1984-3, SD 1977-3

SF 1984-1

-demonstrated need for access can compel production and overcome privilege

-unwritten opinion work product is entitled to 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]

-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


FINANCIAL ARRANGEMENT WITH NON-LAWYER [See Division of fees, With lay entity]
Rule 1-320, Rules of Professional Conduct

Attorney renders legal services to clients of financial planning company
LA 510 (2003)

Compensation paid to lawyer by doctor for referring a client to a doctor to provide medical services
LA 443 (1988)

FINANCIAL HELP TO CLIENT [See Advancement of funds.]
FINANCING
Credit card
SD 1983-1

FINDER’S FEE [See Commission.]

FIRST AMENDMENT

Blogging by attorney
CAL 2016-196

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]

Mandatory bar membership
Morrow, et al. v. State Bar (9th Cir. 1999) 188 F.3d 1174

Protections

Edenfield v. Fane (1990) 507 U.S. 761 [113 S.Ct. 1792]


Central Hudson Gas & Electric Corp. v. Public Service


Canatella v. California (9th Cir. 2002) 304 F.3d 843


212 Cal.Rptr.3d 589


In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775

public employees

-scope of protection accorded to speech by public employees
Ceballos v. Garcetti (9th Cir. 2004) 361 F.3d 1168

Speech rights of lawyers limited in certain respects
CAL 2003-162

denial of permission for government attorney to represent client in private action did not violate constitutionally protected speech or constitute improper prior restraint
Gibson v. Office of the Attorney General (9th Cir. 2009) 561 F.3d 920

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

FORECLOSURE [See Real estate transaction.]
Rule 4-300, Rules of Professional Conduct
Represent
plaintiff/buyer property involved
LA 283 (1963)

FOREIGN ATTORNEY [See Advertising. Division of fees. Letterhead. Partnership, interstate. Practice of law.]

Association with
Bluestein v. State Bar (1974) 13 Cal.3d 162 [118 Cal.Rptr. 175, 529 P.2d 599]


Compensation
LA(I) 1969-3

Employment
LA 189 (1952), LA 166 (1947), LA(I) 1969-3

Declaration of fault by foreign attorney entitled client to relief under CCP § 473


Listed in law list
LA 249 (1958)

“Of counsel”
LA(I) 1967-8

Office, share with
LA 99 (1936)

Out-of-state Attorney Arbitration Counsel Program
Rule 9.43, California Rules of Court
GARNISHMENT  services.

GROUP LEGAL SERVICES

[See Advertising, group legal

GRIEVANCE COMMITTEE

GRATUITOUS SERVICE

governmental agencies. Conflict of interest, disqualification.

GOVERNMENTAL AGENCIES

[See Attorneys for

GOOD WILL

fees/time. Division of fees. Fees.

GIFT

GENERAL COUNSEL  [See Corporation, counsel for.]

GAMBLING

Harboring a fugitive

In the Matter of DeMassa (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737

ABSTAINING FROM ALL GAMBLING AS A PROBATION CONDITION

In the Matter of Pettilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231

Attendance at Gamblers Anonymous meetings not warranted as a probation condition

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Sully v. Ayers (9th Cir. 2013) 725 F.3d 1057
failure to investigate jailhouse informants
Plascencia v. Alameida (9th Cir. 2006) 467 F.3d 1190
failure to make arguments or file documents at automatic application to modify verdict stage is not error warranting reversal
People v. Dunkle (2005) 36 Cal.4th 861 [32 Cal.Rptr.3d 23]
failure to object during opening and closing arguments
Cunningham v. Wong (9th Cir. 2013) 704 F.3d 1143
failure to object not necessary where prosecutor’s statements were not found to be prosecutorial misconduct
People v. Lopez (2008) 42 Cal.4th 960 [71 Cal.Rptr.3d 253]
failure to object to admonishment in jury’s presence
failure to object to peremptory challenges by prosecutor
Carrera v. Ayers (9th Cir. 2014) 725 F.3d 1057
failure to object to prosecutor’s having argument commenting on defendant’s decision not to testify
People v. Mesa (2006) 144 Cal.App.4th 1000 [50 Cal.Rptr.3d 875]
failure to object to modulation in jury’s presence
failure to object to peremptory challenges by prosecutor
Carrera v. Ayers (9th Cir. 2014) 725 F.3d 1057
failure to object to prosecutor’s having argument commenting on defendant’s decision not to testify
People v. Mesa (2006) 144 Cal.App.4th 1000 [50 Cal.Rptr.3d 875]
failure to present case differently
United States v. Olson (9th Cir. 1991) 925 F.3d 1170
failure to object to modulation in jury’s presence
failure to object to peremptory challenges by prosecutor
Carrera v. Ayers (9th Cir. 2014) 725 F.3d 1057
failure to object to prosecutor’s having argument commenting on defendant’s decision not to testify
People v. Mesa (2006) 144 Cal.App.4th 1000 [50 Cal.Rptr.3d 875]
failure to present evidence of mental illness at sentencing where medical history involved mix of both mitigating and incriminating factors
Daire v. Lattimore (9th Cir. 2015) 780 F.3d 1215
failure to present expert opinion testimony undermining prosecution’s theory when it adds nothing to evidence already before jury
Ainsworth v. Calderon (9th Cir. 1998) 138 F.3d 77
failure to raise issue of letter suppressed by prosecution regarding possible immunity for witness
Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897
failure to raise weak issues
Cunningham v. Wong (9th Cir. 2013) 704 F.3d 1143
U.S. v. Baker (9th Cir. 2001) 256 F.3d 855
In re Scott (2003) 29 Cal.4th 783 [129 Cal.Rptr.2d 605]
failure to request competency hearing
Sully v. Ayers (9th Cir. 2013) 725 F.3d 1057
failure to show prejudice in light of staggering aggravating evidence
Sully v. Ayers (9th Cir. 2013) 725 F.3d 1057
failure to take positions contrary to law
In re Richardson (2011) 196 Cal.App.4th 647 [126 Cal.Rptr.3d 720]
failure to win suppression motion based on police interception of cordless telephone transmissions not ineffective assistance of counsel
People v. Chavez (1996) 44 Cal.App.4th 1144 [52 Cal.Rptr.2d 347]
humanizing evidence cumulative and more would have made little difference, and may have triggered admission of extremely damaging evidence
result of penalty phase would have been no different where petitioner failed to show casual connection between family environment and murder
In re Crew (2011) 52 Cal.4th 126 [127 Cal.Rptr.3d 285]
tactical decision to volunteer defendant’s multiple prior convictions during direct examination
People v. Mendoza (2000) 78 Cal.App.4th 918 [93 Cal.Rptr.2d 216]
tactical decision to waive marital privilege
Edwards v. Limerarque (9th Cir. 2007) 475 F.3d 1121
tactically justified concessions made during penalty phase, reasonable to establish credibility of defense counsel
People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]
when defendant makes informed, voluntary, and intelligent decision to forgo presenting mitigating evidence after defense counsel’s extensive background examination pointing to mitigating facts
People v. Brown (2014) 59 Cal.4th 96 [172 Cal.Rptr.3d 516]
where ample evidence of crime existed
Cunningham v. Wong (9th Cir. 2013) 704 F.3d 1143
where counsel advised against plea and where Marsden motions were waived by defendant’s please of no contest
where counsel failed to object to the prosecutor’s use of peremptory challenges
Carrera v. Ayers (9th Cir. 2012) 699 F.3d 1104
where defendant avers that counsel did not urge acceptance of plea offer based on prosecutor’s mistaken belief regarding prior strike
Perez v. Rosario (9th Cir. 2006) 459 F.3d 943
withdrawal of insanity claim at NGI phase that had almost no chance of success
“Nothing to lose” standard
Offering proof of client incompetence to stand trial over client objection
*People v. Bolden (1979) 99 Cal.App.3d 375
Penalty paid by counsel, appeal is moot
Permitting defendant to testify at preliminary hearing
People v. White (1981) 118 Cal.App.3d 767, 772
Plea bargain entered into by coercion
In re Vargas (2000) 83 Cal.App.4th 1125 [100 Cal.Rptr.2d 265]
*Plea bargain” not coercive unless counsel was aware of coercion
In re Ibarra (1983) 34 Cal.3d 277
Plea bargain, immigration consequences not explained to client
U.S. v. Bonilla (9th Cir. 2011) 637 F.3d 980
Post indictment grand jury subpoena of target’s counsel does not result in ineffective assistance of counsel
United States v. Perry (9th Cir. 1988) 857 F.2d 1346
Prejudice by defendant’s counsel for alleged deficiencies is not necessary if counsel’s performance is not deficient
LaGrand v. Stewart (9th Cir. 1998) 133 F.3d 1253
Presentation of “irrelevant” testimony
Davis v. Woodford (9th Cir. 2003) 333 F.3d 982
Psychiatrist used by defense counsel an exercise of appropriate professional judgment
Davis v. Woodford (9th Cir. 2003) 333 F.3d 982
Public defender present at sentencing unfamiliar with defendant and facts of case
People v. Valenti (1971) 15 Cal.App.3d 54, 61
Public defenders immune from suit
Federal Civil Procedure section 1983
Glover v. Tower (9th Cir. 1983) 700 F.2d 556, 558

2018 (updated entries through 12/31/2017)
INEFFECTIVE ASSISTANCE OF COUNSEL IN CRIMINAL CASES

exception to immunity
- failure of deputy public defender to properly investigate information leading to defendant’s innocence is not immunized under Government Code § 820.2

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
People v. Anderson (1976) 59 Cal.App.3d 831, 843

Right of every criminal defendant

Requirements for establishing the ineffectiveness assistance of counsel

Refusal to allow defendant to testify
People v. Strawder (1973) 34 Cal.App.3d 370, 381 [108 Cal.Rptr. 901]

Remedy is to reoffer a plea agreement

Representation by different deputy public defenders at various stages of prosecution

Request for new counsel

Request for new counsel: request not required to come through current counsel – defendant may properly request

Requirements for establishing the ineffectiveness assistance of counsel

Reversal

Right of every criminal defendant

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]

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]

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

denial of defendant’s motion for substitution of counsel without fist conducting proper inquiry is abuse of discretion to effective assistance of counsel

involuntary waiver of right to counsel where defendant forced to 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]

Sixth Amendment requires effective assistance of counsel at critical stages of a criminal proceeding, including advice regarding plea offers


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


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]

Right to assistance of counsel implicated during period of client’s incompetency
Rohan ex rel. Gates v. Woodford (9th Cir. 2003) 334 F.3d 803

Right to counsel
court’s refusal to appoint indigent defendant’s chosen attorney at re-sentencing did not violate due process
Gonzalez v. Knowles (9th Cir. 2008) 515 F.3d 1006

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]

defendant deprived entirely of legal counsel, denied right to attorney acting in the role of an advocate
Plumlee v. Del Papa (9th Cir. 2005) 426 F.3d 1095
does not attach at arrest or at an extradition hearing
Anderson v. Alameida (9th Cir. 2005) 397 F.3d 1175
during interrogation

new counsel – standard
People v. Sanchez (2011) 53 Cal.4th 80 [133 Cal.Rptr.3d 564]

People v. Marsden (1970) 2 Cal.3d 118, 123 [84 Cal.Rptr. 156]
People v. Lucero (2017) 18 Cal.App.5th 532 [226 Cal.Rptr.3d 660]
Ng v. Superior Court (1992) 1 Cal.4th 689 [4 Cal.Rptr.2d 170]

People v. Bolten (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
INEFFECTIVE ASSISTANCE OF COUNSEL IN CRIMINAL CASES

Trial court was not required to appoint new counsel on remand on ineffective assistance grounds, absent request from defendant

People v. Lucero (2017) 18 Cal.App.5th 532 [226 Cal.Rptr.3d 660]
waiver of right

McConnell v. Adams (9th Cir. 2010) 621 F.3d 970

U.S. v. Gerritsen (9th Cir. 2009) 571 F.3d 1001

Role of defense attorney


Sentencing, not a factor in

U.S. v. Dibee (9th Cir. 2015) 776 F.3d 665

Single counsel representing co-defendants with conflicting interests


People v. Mroczko (1983) 35 Cal.3d 86 [197 Cal.Rptr. 52]

People v. Hallock (1973) 8 Cal.3d 599, 612 [105 Cal.Rptr. 540, 504 P.2d 457]


People v. Locklar (1978) 84 Cal.App.3d 224 [148 Cal.Rptr. 322]

People v. Karlin (1964) 231 Cal.App.2d 227 [41 Cal.Rptr. 786]

LA 471

Sixth Amendment may require substitution

Schell v. Witek (1999) 181 F.3d 1094

People v. Stankewitz (1990) 51 Cal.3d 72 [793 P.2d 23]

Sixth Amendment rights not violated where co-defendant raised conflict of interest based on a mere theoretical division of loyalty

U.S. v. Wells (9th Cir. 1990) 517 Cal.Rptr. 540, 504 P.2d 457

Stankewitz v. Woodford (9th Cir. 2004) 365 F.3d 706

Beardslee v. Woodford (9th Cir. 2004) 358 F.3d 560


Sanders v. Ryder (2003) 342 F.3d 991

U.S. v. Ross (9th Cir. 2003) 338 F.3d 1054

Alcalza v. Woodford (2003) 334 F.3d 862

Davis v. Woodford (9th Cir. 2003) 333 F.3d 982

U.S. v. Leonti (9th Cir. 2003) 326 F.3d 1111

McClure v. Thompson (9th Cir. (Or.) 2003) 323 F.3d 1233

Ortiz-Sandoval v. Clarke (9th Cir. 2003) 323 F.3d 1118

U.S. v. Fry (9th Cir. (Nebraska) 2003) 322 F.3d 1198

Luna v. Cambray (9th Cir. 2003) 306 F.3d 954

Avila v. Galazan (9th Cir. 2003) 297 F.3d 1048

Jennings v. Woodford (9th Cir. 2002) 290 F.3d 1006

Viscotti v. Woodford (9th Cir. 2002) 288 F.3d 1097

U.S. v. Day (9th Cir. 2002) 285 F.3d 1167

Karis v. Calderon (9th Cir. 2002) 283 F.3d 1117

Caro v. Woodford (9th Cir. 2002) 280 F.3d 1247

U.S. v. Baker (9th Cir. 2001) 256 F.3d 655

Lockhart v. Terrill (9th Cir. 2001) 250 F.3d 1223

Lambright v. Stewart (9th Cir. (Ariz.) 2001) 241 F.3d 1201

U.S. v. Christakis (9th Cir. 2001) 238 F.3d 1164

In re Crew (2011) 52 Cal.4th 126 [127 Cal.Rptr.3d 285]

In re Valdez (2010) 49 Cal.4th 715 [111 Cal.Rptr.3d 647]


People v. Doolin (2009) 45 Cal.4th 390 [87 Cal.Rptr.3d 209]

People v. Snow (2003) 30 Cal.4th 43 [132 Cal.Rptr. 2d 271]

In re Scott (2003) 29 Cal.4th 783 [129 Cal.Rptr.2d 605]

People v. Pope (1979) 23 Cal.3d 412, 425-426 [152 Cal.Rptr. 732]


In re Hill (2011) 198 Cal.App.4th 1008 [129 Cal.Rptr.3d 856]

In re Richardson (2011) 196 Cal.App.4th 647 [126 Cal.Rptr.3d 720]
that no reasonable doubt existed on factual issues in dispute

Tactical decision

Submission of case on preliminary hearing transcript

Stipulation by counsel as to chemical composition of contraband

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Davis v. Woodford (9th Cir. 2003) 333 F.3d 982

Hovey v. Ayers (9th Cir. 2006) 458 F.3d 892

Brown v. Ornoski (9th Cir. 2007) 503 F.3d 1006


In re Alex (2006) 137 Cal.App.4th 657 [40 Cal.Rptr.3d 491


Antiterrorism and Effective Death Penalty Act (AEDPA), before enactment

Pinholster v. Ayers (9th Cir. 2009) 590 F.3d 651

Douglas v. Woodford (9th Cir. 2003) 316 F.3d 1079

parental rights


relief can only be obtained by establishing that the trial
court’s order prohibiting counsel from sharing information in
a sealed witness’ declaration affected the reliability of the
trial process

People v. Hernandez (2012) 53 Cal.4th 1095 [139 Cal.Rptr.3d 606

showing of prejudice not necessary for reversal


Stipulation by counsel as to chemical composition of contraband


Submission of case on grand jury proceedings transcript

People v. Phillips (1973) 31 Cal.App.3d 483, 486 [107 Cal.Rptr. 386

Submission of case on preliminary hearing transcript


People v. Lucas (1969) 1 Cal.App.3d 637 [81 Cal.Rptr. 840

Summation by defense counsel includes concession to jury


Tactical decision


Cox v. Ayers (9th Cir. 2010) 613 F.3d 883

Brown v. Draper (9th Cir. 2007) 503 F.3d 1006


Davis v. Woodford (9th Cir. 2003) 333 F.3d 982

In re Valdez (2010) 48 Cal.4th 715 [111 Cal.Rptr.3d 647

People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771

People v. Doolin (2009) 45 Cal.4th 390 [87 Cal.Rptr.3d 209

People v. Snow (2003) 30 Cal.4th 43 [132 Cal.Rptr.2d 271

People v. Wade (1986) 43 Cal.3d 366 [233 Cal.Rptr. 732

People v. Henning (2009) 178 Cal.App.4th 388 [100 Cal.Rptr.3d 419

In re Alex (2006) 137 Cal.App.4th 657 [40 Cal.Rptr.3d 491

People v. Mendoza (2000) 78 Cal.App.4th 918 [93 Cal.Rptr.2d 216

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 358

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


not opposing dismissal of petition for unconditional release

no changed circumstances

People v. Reynolds (2010) 181 Cal.App.4th 1402 [105 Cal.Rptr.3d 560

presentation by defense counsel of prior robbery

Boyle v. Brown (9th Cir. 2005) 404 F.3d 1159

to waive marital privilege

Edwards v. Lamarque (9th Cir. 2007) 475 F.3d 1121

Test: beyond reasonable doubt that no prejudice resulted

U.S. v. Tucker (9th Cir. 1983) 716 F.2d 576

objective standard of reasonableness

United States v. Freeny (9th Cir. 1988) 841 F.2d 1000

Test for entitlement to a hearing on a conflict of interest

Sixth Amendment claim by habeas petitioner

U.S. v. Rodrigues (9th Cir. 2003) 347 F.3d 818

Testimony damaging to defendant elicited on cross-examination

by defense counsel

People v. Reeves (1980) 105 Cal.App.3d 444 [164 Cal.Rptr. 426

Three strikes cases


SD 1995-1

Trial attorney’s failure to advise defendant of his right to appeal

Lozada v. Deeds (9th Cir. 1992) 964 F.2d 956

Trial conducted by certified law student

People v. Perez (1979) 24 Cal.3d 133, 138 [155 Cal.Rptr. 176

Trial counsel strategy

Mayfield v. Calderon (9th Cir. 2000) 229 F.3d 895


Trial court denial of motion to substitute, denies right of effective
assistance of counsel

Schell v. Witek (1999) 181 F.3d 97

People v. Henning (2009) 178 Cal.App.4th 388 [100 Cal.Rptr.3d 419

People v. Turner (1992) 7 Cal.App.4th 1214


Trial court denial of motion to withdraw

court has discretion

People v. Turner (1992) 7 Cal.App.4th 913


Trial record inadequate to show illegality of search


Unauthorized practice of law

People v. Johnson (1990) 224 Cal.App.3d 948

Under 28 U.S.C. 2254

INEFFECTIVE ASSISTANCE OF COUNSEL IN NON-CRIMINAL CASES

Use of word “crazy” to characterize defendant not ineffective assistance because reference was followed by reasoned argument and was reasonable strategy
People v. Welch (1999) 20 Cal.4th 701, 976 [85 Cal.Rptr.2d 203]

Volunteering defendant’s multiple prior convictions during direct examination as a tactical decision found not to be ineffective assistance of counsel
People v. Mendoza (2000) 78 Cal.App.4th 918 [93 Cal.Rptr.2d 216]

Waiver of attorney-client privilege
Bittaker v. Woodford (9th Cir. 2003) 331 F.3d 715
McClure v. Thompson (9th Cir. (Or.) 2003) 323 F.3d 1233

Waiver of marital privilege
Edwards v. Lamarque (9th Cir. 2007) 475 F.3d 1121

Waiver of right to appeal includes waiver of right to argue ineffective assistance of counsel
U.S. v. Nunez (9th Cir. 2000) 223 F.3d 956
plea agreement which contains waiver of right to appeal found unenforceable
Washington v. Lampert (9th Cir. (Or.) 2005) 422 F.3d 864

Waiving trial by jury
People v. Armenta (1972) 22 Cal.App.3d 823, 827 [99 Cal.Rptr. 736]

Warning defendant before jury of possibility of impeachment with prior felonies

When defendant acts as co-counsel

Withdrawal of guilty plea

on basis of ineffective assistance of counsel

Withdrawal of insanity claim at NGI phase that had almost no chance of success

Withdrawal of nolo contendere plea
People v. Johnson (2009) 47 Cal.4th 668 [101 Cal.Rptr.3d 332]

Withdrawal of skilled co-counsel prejudices criminal defendant

Writ filed in Superior Court for factual determination of issues

INEFFECTIVE ASSISTANCE OF COUNSEL IN NON-CRIMINAL CASES

Family law cases
may not claim ineffective assistance during dissolution proceeding
In re the Marriage of Campi (2013) 212 Cal.App.4th 1565 [152 Cal.Rptr.3d 179]

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
Singh v. Holder (9th Cir. 2011) 658 F.3d 879

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
Salazar-Gonzalez v. Lynch (9th Cir. 2015) 798 F.3d 917

U.S. v. Lopez-Chavez (9th Cir. 2014) 757 F.3d 1033
Correa-Rivera v. Holder (9th Cir. 2013) 706 F.3d 1128
Torres-Chavez v. Holder (9th Cir. 2009) 567 F.3d 1096
Granados-Osqueuera v. Gonzales (9th Cir. 2008) 546 F.3d 1011
Moraless v. Mukasey (9th Cir. 2008) 514 F.3d 893
Ray v. Gonzales (9th Cir. 2006) 439 F.3d 582
Yeghiazaryan v. Gonzales (9th Cir. 2005) 431 F.3d 678
Maravilla v. Ashcroft (9th Cir. 2004) 381 F.3d 855
Rays v. Ashcroft (9th Cir. 2004) 358 F.3d 592
Lozada v. I.N.S. (9th Cir. 1998) 857 F.2d 10

equitable tolling of filing deadline
Salazar-Gonzales v. Lynch (9th Cir. 2015) 798 F.3d 917
Singh v. Holder (9th Cir. 2011) 658 F.3d 879
Gahremani v. Gonzales (9th Cir. 2007) 498 F.3d 993

exemption from statute of limitations period -not found
Tamang v. Holder (9th Cir. 2010) 598 F.3d 1083

failure to adequately advise clients in immigration matters
Salazar-Gonzalez v. Lynch (9th Cir. 2015) 798 F.3d 917
Gahremani v. Gonzales (9th Cir. 2007) 498 F.3d 993
U.S. v. Kwan (9th Cir. 2005) 407 F.3d 1005
People v. Kim (2009) 45 Cal.4th 1078 [90 Cal.Rptr.3d 355]

In the Matter of Gaddis (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416

failure to comply with Lozada requirement to provide proof of complaint filed with appropriate disciplinary authorities
Correa-Rivera v. Holder (9th Cir. 2013) 706 F.3d 1128

failure to file a brief, resulting in dismissal of appeal
Singh v. Gonzales (9th Cir. 2005) 416 F.3d 1006

failure to file a petition for review or a motion to reopen
Granados-Osqueuera v. Gonzales (9th Cir. 2008) 546 F.3d 1011

failure to file timely notice of appeal
Salazar-Gonzalez v. Lynch (9th Cir. 2015) 798 F.3d 917
U.S. v. Lopez-Chavez (9th Cir. 2014) 757 F.3d 1033
Siong v. Immigration and Naturalization Service (9th Cir. 2004) 376 F.3d 1011

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 is “presumption of prejudice”
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. Ashcroft, Lara Torres v. Gonzalez (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
California Code of Judicial Conduct  
California Constitution Article VI, section 18(a)  
Wills 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  
undignified 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  

Authority  
disqualify law firm  

Attorney fees, setting unreasonable amounts  

On partnerships  

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  

INTERFEREING WITH PROSPECTIVE ADVANTAGE  [See Practice of law.]  
INVOILUNTARY ENROLLMENT AS AN INACTIVE MEMBER OF  
THE STATE BAR  
Business and Professions Code section 6007  

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  
U.S. 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  
Iturribarría v. J.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  

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.  (2008) 163 Cal.App.4th 1533 [78 Cal.Rptr.3d 495]  

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 § 388 petition  

Standard of review  
Nehad v. Mukasey  (9th Cir. 2008) 535 F.3d 962  
Yeghiazaryan v. Gonzales  (9th Cir. 2005) 431 F.3d 678  

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  

INTERFERENCE WITH PROSPECTIVE ADVANTAGE  [See Practice of law.]  
INVOILUNTARY ENROLLMENT AS AN INACTIVE MEMBER OF  
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Business and Professions Code section 6007  

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

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Bias, appearance of, and prejudice of
Code of Civil Procedure section 170

- Rothstein v. Superior Court (2016) 3 Cal.App.5th 424
  [207 Cal.Rptr.3d 616]
- In the Matter of Scott (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446
- announced 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
- Pratt v. Pratt (1903) 141 Cal. 247, 250-251
- People v. Fatone (1985) 165 Cal.App.3d 1164 [211 Cal.Rptr. 288]
- In re Martin (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. Peyton (2014) 229 Cal.App.4th 1063 [177 Cal.Rptr.3d 823]
- 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
- United States v. Spangle (9th Cir. 2010) 626 F.3d 488
- not found, where the record fails to demonstrate bias
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  - In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

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  - 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 Gluckfield (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 201]
  - 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
  - In the Matter Concerning Judge Cory Woodward (2014) 2014 DJDAR 12203
  - Broadman v. Commission on Judicial Performance (1998) 11 Cal.4th 1079 [77 Cal.Rptr.2d 408]
  - Adams v. Commission on Judicial Performance (1994) 8 Cal.4th 630 [36 Cal.Rptr.2d 61; 882 P.2d 358]
  - In re Rasmussen (1987) 43 Cal.3d 536 [236 Cal.Rptr. 152]
  - In re Chargin (1970) 2 Cal.3d 617 [87 Cal.Rptr. 709, 471 P.2d 29]
- willful misconduct in office
- In the Matter Concerning Judge Cory Woodward (2014) 2014 DJDAR 12203
- 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]

See How to Use This Index, supra, p. i
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  * Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270, 275-276 [110 Cal.Rptr. 201, 515 P.2d 1]

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  * In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157
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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]
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Discipline
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-denyal of peremptory challenge deemed abuse of discretion when challenge was filed well within the specified 10-day period under section 170.6
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disqualification not mandated where a judge has officiated a litigant's counsel's wedding
-does not apply to administrative law judges
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-granting of motion in excess of 60 days after peremptory challenge to trial judge became effective

-judge is disqualified for speaking to previous judge who was disqualified

-only transfer of the case filed to another judge required because the judge had already resolved a
disputed factual issue in the earlier case (family law)
  Rothstein v. Superior Court (2016) 3 Cal.App.5th 424 [207 Cal.Rptr.3d 616]

-peremptory challenge filed timely where proceeding is new and where previous case was closed

-peremptory challenge takes effect instantaneously and irrevocably & later events do not cause a rescission of the
  challenge
  Little v. Kern County Superior Court (9th Cir. 2002) 294 F.3d 1075
  In re Georgetown Park Apartments (9th Cir. 1992) 143 B.R. 557
  Cybermedia Inc. v. Superior Court (1999) 72 Cal.App.4th 910 [82 Cal.Rptr.2d 126]
  Ng v. Superior Court (1997) 52 Cal.App.4th 1010 [61 Cal.Rptr.2d 49]
  People v. Whitfield (1986) 183 Cal.App.3d 299 [228 Cal.Rptr. 82]

-threat to reduce spousal support by 50% if wife appealed ruling
  In re the Marriage of Tharp (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 375]

-time period to file a peremptory challenge upon remand begins to run on the date a party or attorney has been
  notified of the assignment and does not begin on the date of issuance of the remittitur by appellate court

-timeliness of motion

-administrative law judge
  County of San Diego v. Alcoholic Beverage Control

-advice to another commissioner after disqualification

ilingual tribunal
-acting upon
  Code of Civil Procedure section 170a

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  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

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  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]

-peremptory challenge filed timely where proceeding is new and where previous case was closed

-in re the Marriage of Tharp (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
defendant’s bias
  Jorgensen v. Cassidy (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 ofCanon 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
  Mangini v. U.S. (9th Cir. (Mont.) 2003) 314 F.3d 1158
  Hayward v. Superior Court (2016) 2 Cal.App.5th 10 [206 Cal.Rptr.3d 102]


-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
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grounds for
California Code of Judicial Conduct, Canon 3.C
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-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
Ng v. Superior Court (1997) 52 Cal.App.4th 1010 [61 Cal.Rptr.2d 49]

-administrative law judge
-degree of affinity between husband and wife

Code of Civil Procedure section 170.1

-prejudice as
--procedure for establishing
Code of Civil Procedure section 170.6

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]
jurisdiction to proceed on subsequent “actions” once a proper challenge is made
master calendar judge is married to counsel involved in a case; previously represented police officers; or was formerly a police officer may be subject to disqualification
75 Ops. Cal. Atty. Gen. 32592; No. 911112
party may not exercise preemptory challenge because it failed to show it was opposed to another party who had previously used challenge under Code of Civil Procedure section 170.6

preliminary hearing judge not automatically disqualified from conducting criminal trial for same defendant

prior representation of defendant

statement of disqualification must be filed at earliest practical 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 (Forsty) (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 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 517]

Electoral campaign contributions to
-by attorney
--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

fund raising for
SF 1974-6
lawyer-candidate
-opposing incumbent
--may question incumbent’s qualifications

LA 304 (1968)

Error in jury instructions and sentencing
not found
U.S. v. Scott (9th Cir. 2011) 642 F.3d 791

reversible
People v. Chaolla (1983) 144 Cal.App.3d 422 [193 Cal.Rptr. 711]

Evaluation by local bar association

Ex parte communications with
In re Freeman (2006) 38 Cal.4th 630 [42 Cal.Rptr.3d 850


about matter on appeal
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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

listserv
LA 514 (2005)
trial judge and defense counsel

trial judge by prosecutor
McKenzie v. Risley (9th Cir. 1990) 915 F.2d 1396

Failure of judge to allow case to reach completion resulted in denial of due process.
In re Marriage of Carlsson (2008) 163 Cal.App.4th 281 [77 Cal.Rptr.3d 305]

Failure of trial counsel to appoint new counsel deprived defendant of effective assistance of counsel
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 Dis. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1171

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

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 DJDAR14999

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
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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
People 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
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People v. Fatone (1985) 165 Cal.App.3d 1164 [211 Cal.Rptr. 288]
district court made no inquiry at all
People v. Reed (2010) 183 Cal.App.4th 1137 [107 Cal.Rptr.3d 710]

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
JUDGE

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 [87 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)

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 of 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. Arrprieuler (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

removal -denied 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.
precludes any further action in the case by the judge.
reoccur 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

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, 825-826 [141 Cal.Rptr. 75]
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Davis v. Commission on Judicial Qualifications (1977) 73 Cal.App.3d 818 [141 Cal.Rptr. 75]

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burden of proof.
Geller v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270, 275 [110 Cal.Rptr. 201, 515 P.2d 1]
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"-conduct prejudicial to the administration of justice that brings the judicial office into disrepute."
Cannon v. Commission on Judicial Qualifications (1975) 14 Cal.3d 678 [122 Cal.Rptr. 778, 537 P.2d 898]
Spruance v. Commission on Judicial Qualifications (1975) 13 Cal.3d 778, 796, 797 [119 Cal.Rptr. 841, 532 P.2d 1209]
Geller 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 678 [122 Cal.Rptr. 778, 537 P.2d 898]

Geller 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.]
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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, 783 P.2d 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]
Davis v. Commission on Judicial Qualifications (1977) 73 Cal.App.3d 818 [141 Cal.Rptr. 75]
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-alternative to impeachment.
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-selection of special tribunal.
Represent/practise 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.
Williams 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]
JUDICIAL SALE

-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


Spruance 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 Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 889

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

Christopher v. State Bar (1945) 26 Cal.2d 663, 666-668 [161 F.2d 1] Cf. dissenting opinion of Carter, J.

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

Supreme Court Justice [See Removal.]

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 court

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


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 conference 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)
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]
State Bar of California
- nonprofit corporation not required to register as a law corporation
Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]

Report to State Bar
amendments to articles of incorporation
Business and Professions Code section 6162
annual report
Business and Professions Code section 6163
changes in directors, officers, employees performing professional services/share ownership
Business and Professions Code section 6162
Rules, The State Bar of California Law Corporation [A copy of the full text of these rules may be obtained by contacting the Law Corporation Department of the Office of Certification at the State Bar’s 180 Howard location in San Francisco.] authority to promulgate
Business and Professions Code section 6171
Shareholder who leaves firm has no ownership or lien interest upon fees owed to firm by client

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
investigation
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. 736
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 OFFICE

[See Advertising, law office. Practice of law.]
Announcement of formation of practice
mention that lawyer is legislator
LA 111 (1937)
Branch office
LA(I) 1973-2
Business operated from
accounting
LA 351 (1976), LA 225 (1955)
book publishing
LA 446 (1987)
notary public
LA 214 (1953)
real estate
sale of partnership interests
LA 199 (1952)
school that teaches how to obtain government loans
LA(I) 1976-5
stenography
LA 214 (1953)
By partnership
LA 325 (1972)
Dummy
LA 198 (1952)
Relocation of
announcement of
LA 104 (1936)
Share with
accountant
LA(I) 1968-1
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.]
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 IA., appendix A of this Compendium.]
Civil Code section 43.95
Revenue and Taxation Code section 23734d
Rule 2-102(B), Rules of Professional Conduct (operative until May 26, 1989)
Rule 1-600, Rules of Professional Conduct (operative as of May 27, 1989)
Participation in
LA(I) 1960-3
referrals to directors
SD 1977-5
Referral agreement with layperson unenforceable for non-compliance with Business and Professions Code § 6155

LAWYER’S ASSISTANCE PROGRAM OF THE STATE BAR OF CALIFORNIA
For confidential assistance with stress, anxiety, depression, substance abuse, contact:
Lawyer Assistance Program
(877) LAP-4HELP / (877) 527-4435
LAP@calbar.ca.gov
For information about program, contact:
State Bar of California
(415) 538-2000 / (213) 765-1000

LAY EMPLOYEE
[See Contingent fee. Division of fees.]
Accountant
SD 1974-17
Card, professional [See Advertising.]
Certified law student
People v. Perez (1979) 24 Cal.3d 133, 138 [155 Cal.Rptr. 176]
SD 1974-5
Client trust account
Gassman v. State Bar (1976) 18 Cal.3d 125, 128-130 [132 Cal.Rptr. 675]
Compensation of
division of fees
LA 222 (1954), LA 190 (1952)
percentage of income
LA(I) 1972-25

2018 (updated entries through 12/31/2017)
Confidential information disclosed, when employed by several law firms
CAL 1979-50
Executor for opposing party’s estate
LA 341 (1973)
Expert handwriting
LA 46 (1927)
Fee for services
LA(I) 1973-7, LA(I) 1968-4
Holding out as attorney
Business and Professions Code section 6126
Investigator
LA 172 (1950), LA(I) 1956-2
Particular acts by administrative agency practice
LA 143 (1943)
collections
SD 1978-4
correspondence
CAL 1971-24
LA(I) 1971-6
SD 1978-4
settlement
LA(I) 1972-19
Responsibility for acts of
Black v. State Bar (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288, 499 P.2d 968]
Moore v. State Bar (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161, 396 P.2d 577]
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
LA(I) 1976-1
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)
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
control over activities of
-by lawyer employees of
SD 1974-9, 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

See How to Use This Index, supra, p. i
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2018 (updated entries through 12/31/2017)
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]
Hilderbrand 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
CAL 1981-64
Legal services corporation including non-attorney shareholders
LA 444 (1987)
Partnership with non-lawyer living trust marketers
CAL 1997-148
Referral fees

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. 435), and in West's Annotated California Codes, Court Rules, vol. 23, pt 3, p. 751
Text available through State Bar's home page:
http://www.ca.gov
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]
International law
LA 230 (1955)
Lawyer referral service
Business and Professions Code section 6155
Rule 2-102, Rules of Professional Conduct
State Bar Minimum Standards for a Lawyer Referral Service, section 5.2
Legal accounting
LA(I) 1948-1
Legal research
LA 209 (1953)
Medical jurisprudence
LA(I) 1961-1
Part-time services
LA 258 (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)
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

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

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(l) 1960-1

Partnership
foreign lawyer or firm on
LA 332 (1973), LA 249 (1958), LA 230 (1955), LA(l) 1965-9,
SF 1974-1

former member shown on
-inactive partner
LA 310 (1969)
interstate
LA 230 (1955)
non-existent partnerships
LA(l) 1959-3

Professional corporation
SD 1976-4

Public office of former judge shown on
SF 1973-11

Public official’s reference to private practice
LA 260 (1959)

Qualifications on
academic degrees
SD 1974-10

accounting
LA 224 (1955)

membership
-bar association
LA 153 (1945)
in other professions
LA 349 (1975), LA(l) 1961-1

-specialties
LA 230 (1955), LA 168 (1948), LA(l) 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(l) 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 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 insured’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 Feldsott (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
LIMITING LIABILITY TO CLIENT


Priority of


CAL

U.S. 204 [122 S. Ct. 708]

901 [90 Cal.Rptr.3d 218]

231

83 Cal.App.4th 680 [83 Cal.Rptr.3d 460]


between contractual medical lien and an attorney lien for fees and costs of litigation in a contingency fee case


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 Wagener (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. 1990) 2 Cal. State Bar Ct. Rptr. 234

In the Matter of Bouser (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 Fonte (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


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

CAL 2012-185

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]

GeneThera, Inc. v. Troy and Gould (9th Cir. 2010) 611 F.3d 590

CAL 2012-185

See How to Use This Index, supra, p. i
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 & Surety Co. of America v. Hirsch (9th Cir. 2016) 831 F.3d 1179

filing of unredacted credit report is protected activity


civil 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

Keam v. Foley & Lardner, LLP (9th Cir. 2009) 590 F.3d 638

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 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


settlement negotiations are acts in furtherance of person’s right to petition under the statute


underlying policy

Bleich v. Demarest (2011) 196 Cal.App.4th 1533 [127 Cal.Rptr.3d 580]

Frivolous actions under CCP § 128.7

toxic tort action against manufacturer had sufficient evidentiary support for case to survive a nonsuit

Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150 [80 Cal.Rptr.3d 812]

Intervention by non-party holder of privilege is not necessary or required to assert Evidence Code section 954 privilege


Ligitation 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]


-Ligitation privilege should not be extended to litigating in the press


Mindys 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) 50 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


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

LOAN

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]

Principle 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(F) 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.


Vicious 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. 2009) 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 (1955)

MAIL

[See Advertising, Solicitation.]

MALICIOUS PROSECUTION

[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 complainant 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.


Argentieri v. Zuckenberg (2017) 8 Cal.App.5th 768 [214 Cal.Rptr.3d 358]

Karnazes v. Ares (2016) 244 Cal.App.4th 334 [198 Cal.Rptr.3d 155]

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See How to Use This Index, supra, p. i
MALICIOUS PROSECUTION

Associate attorney may also be held liable for malicious prosecution following a principal attorney’s instructions or a valid defense


Attorney may be held liable for continued prosecution of a case that lacks probable cause

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]

By attorney against former client
- dismissal of cross-complaint or counter claim by client in action to recover attorneys’ fees
- effect of voluntary dismissal of underlying case
- filing complaint for punitive damages
  - where prohibited by statute
    Umansky v. Urohur (1978) 84 Cal.App.3d 368 [148 Cal.Rptr. 547]
  - 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


Continuance of action by firm grounded for partner’s liability


Distinguished from abuse of process


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]
Daniels v. Robbins et al. (2010) 182 Cal.App.4th 204 [105 Cal.Rptr.3d 683]

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


Public entities are barred from bringing malicious prosecution suits but may recover costs defending against frivolous suits under CCP § 1032.
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

Acts constituting Action brought by criminal defendant against former counsel (Government Code section 900 et seq.)

Statute of limitations
Sanctions

Requiring favorable termination except as otherwise provided by statute

Recovery for defending against frivolous suits

Public entities are barred from bringing malicious prosecution

Aloy v. Mash (1985) 38 Cal.3d 312 [212 Cal.Rptr. 162]

 Acts of privately retained counsel and publicly appointed counsel that is not yet realized, does not serve to create a cause of action for professional negligence


Salisbury v. County of Orange (2005) 131 Cal.App.4th 756 [31 Cal.Rptr.3d 831]


not shown where cross-complaint pending in underlying action


Sanctions

Winick v. County of Sanitation District No. 2 of Los Angeles County (1986) 185 Cal.App.3d 1170, 1176 [230 Cal.Rptr. 289]

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 against public entity under California Tort Claims Act (Government Code section 900 et seq.)

failure to file late claim within one year after accrual of cause of action


under “delayed discovery rule” accrual date of cause of action is delayed until plaintiff becomes aware of injury and its cause


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]

-By awarding the parties their costs- in the underlying action

Aloy v. Marsh (1985) 38 Cal.3d 312 [212 Cal.Rptr. 162]

Moua v. Pultz et al. (2014) 228 Cal.App.4th 107 [174 Cal.Rptr.3d 662]
Wise v. DLJ Piper LLP (2013) 220 Cal.App.4th 1180 [164 Cal.Rptr.3d 54]

Sanctions


*Tamborjian v. Western Home Insurance Co. (1995) 46 Cal.Rptr.2d 370

issues resolved on routine sanction motion not entitled to collateral estoppel preclusive effect in later action for malicious prosecution


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actions against attorneys, under CCP 340.6


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Acts constituting

Wiley v. County of San Diego (1998) 19 Cal.4th 532 [79 Cal.Rptr.2d 672]

Aloy v. Marsh (1985) 38 Cal.3d 312 [212 Cal.Rptr. 162]
bankruptcy estate representative pursing 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. Provencer (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

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 undiscovered 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 spoilation 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

MALPRACTICE


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

Class action
standard of care to class action members
-counsel owed a duty, post certification, to advise clients of other claims related to but outside the scope of the representation

Co-counsel may not sue another for breach of fiduciary duty on theory that latter’s malpractice in handling their mutual client’s case reduced or eliminated the fees the former expected to realize from the case
Beck v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]

Collateral estoppel, effect of
-client is prohibited from re-litigating previously decided issues even if second suit raises different causes of action
collateral estoppel doctrine bars plaintiff from re-litigating 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

“Comparative fault” where client’s own conduct contributed to her own harm

Criminal defendant must prove actual innocence in action for
Coscia v. McKenna & Cuneo (2001) 25 Cal.4th 1194 [108 Cal.Rptr.2d 471]
Willy v. County of San Diego (1998) 19 Cal.4th 532 [79 Cal.Rptr.2d 672]
Salisbury v. County of Orange (2005) 131 Cal.App.4th 756 [31 Cal.Rptr.3d 831]

individual convicted of a criminal offense must obtain reversal of his or her conviction, or other exoneration by postconviction relief

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]

Dismissal of action may be a proper sanction where plaintiff allowed the entire file to be destroyed

Duty of attorney to client, not potential beneficiary

Duty to advise client of prior attorney’s malpractice
LA 390 (1981)

Elements of
Moua v. Pittullo et al. (2014) 228 Cal.App.4th 107 [174 Cal.Rptr.3d 662]
criminal matter
debt collection matter
Wise v. DL Piper LLP (2013) 220 Cal.App.4th 1180 [164 Cal.Rptr.3d 54]
patent matter

Emotional distress damages may not be recovered as a result of negligent legal malpractice

Emotional distress damages may be recoverable as part of a legal malpractice claim
LA 489 (1997)
Merenda v. Superior Court (1992) 3 Cal.App.4th 1

Equitable defense
unclean hands

-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
Uecker v. Zentll (2016) 244 Cal.App.4th 789 [198 Cal.Rptr.3d 620]

Estate planning
liability to intended beneficiary where attorney failed to advise client regarding requirements governing presumptively disqualified donees, resulting in damage to intended beneficiary

Exception to the California rule barring the assignment for the course of action for legal malpractice

Filing action not sufficient to preserve client’s right to trial de novo after award of fees in mandatory fee arbitration

Firm liable for acts of principal

Firm not liable to insured when insurer, under consent clause of policy, was entitled to settle without consulting insured

Insufficient remedy
Community Dental Services v. Tani (2002) 282 F.3d 1184

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

Medical 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(I) 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 advise 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

MALPRACTICE

No duty to agent of client who participated with attorney in the negotiation of a contract on behalf of their client


No triable issue of fact as to second attorney‘s assumption of responsibility for pending lawsuit during retained counselor’s illness


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’Oso (2014) 230 Cal.App.4th 834 [178 Cal.Rptr.2d 895]

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. Prencher (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) 364 F.3d 1024

legal malpractice claim brought by individual members dismissed because attorney wascourt 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

Statute of limitations
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 536]

dismissal reversed to determine whether client’s action against attorney arose from the performance of legal services

-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
  Real Bank, SSB v. Arter & Hadden, LLP (2007) 42 Cal.4th 503 [66 Cal.Rptr.3d 52]

- claims against former law firm not 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
  Coscia 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 1570 [51 Cal.Rptr.3d 381]

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

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MALPRACTICE


-criminal conviction constitutes appreciable harm or “actual injury"


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 of considerable settlement value 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) 61 Cal.4th 1226 [191 Cal.Rptr.3d 536]

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]


Foxen v. Carpenter (2016) 6 Cal.App.5th 284 [211 Cal.Rptr.3d 372]


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


“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 intent 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 claims against
former 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]

-tolled for bringing legal malpractice action while attorney
continues to represent plaintiff even where plaintiff knows
of attorney’s wrongful act/omission
Cal.Rptr.3d 660]

Cal.Rptr.3d 480]

Cal.App.4th 1509 [80 Cal.Rptr.2d 94]


-tolled if criminal malpractice claim is filed within one-year
or four-year limitations period to plaintiff to timely pursue
post-conviction remedies
Cal.Rptr.3d 248]

-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) 44
Cal.App.4th 1798 [52 Cal.Rptr.2d 645]


-unconditionally tolled while attorney represents client
Cal.Rptr.2d 669]

-while attorney-defendant was absent from California
Cal.App.4th 559 [107 Cal.Rptr.3d 539]

under “delayed discovery rule” accrual date of cause of
action is delayed until plaintiff becomes aware of injury and
its cause
Cal.Rptr.3d 710]

Cal.Rptr.3d 330]

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
Cal.Rptr.3d 758]

Cal.Rptr.3d 405]

Moore v. Anderson Zeigler Disharon Gallagher & Gray
Cal.Rptr.2d 335]

709]

attorney for corporation owes no duty of care to shareholders
Cal.App.3d 692, 703 [282 Cal.Rptr. 627]

intended beneficiaries of a testamentary instrument
Harrifeld v. Hancock (9th Cir. (Iowa) 2004) 364 F.3d 1024

Transaction 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
Cal.Rptr.3d 711]

Trust attorney owes no duty to non-client potential beneficiary
absent testator’s expressed intent to benefit non-client
Cal.Rptr.3d 758]

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(I) 1956-1

MISAPPROPRIATION  [See Clients’ trust account.]
MISCONDUCT  [See Candor. Contempt of court.
Corporations. Professional liability. Trial Conduct.]
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
in order to represent adverse interest
Cal.Rptr.3d 867]

Abdication of trust account responsibilities
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar
Ct. Rptr. 871
Active steps to prejudice client’s rights
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar
Ct. Rptr. 871
Acts of privately retained counsel and publicly appointed
counsel should be measured by the same standards, except as
otherwise provided by statute
Barner v. Leeks (2000) 24 Cal.4th 676 [102 Cal.Rptr.2d 97]
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(d) 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
Appearance on own behalf as plaintiff
by disbarred or suspended attorney
when action assigned subsequent to disbarment or
suspension order
Business and Professions Code § 6130
Appearing without authority for client
Business and Professions Code section 6104
Cal.Rptr.267]
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 [104 Cal.Rptr.2d 409, 17
P.3d 764]
MISCONDUCT

Attempting to prevent discovery

Attorney neglect
In the Matter of Freytd (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
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In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
imputed to client
Luna v. Kernan (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
payment to attorney for
United States v. Villalobos (9th Cir. 2014) 567 Fed.Appx. 541
Werner v. State Bar (1944) 24 Cal.2d 611 [150 P.2d 892]

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
Nunan-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
-misdeemeanor
Business and Professions Code section 6128(a)

Comments in court

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

Conspiracy
alleged by client against attorney and others

Conspiracy to commit offenses against the United States
In the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469

identity theft
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
waiver of procedural defense

“Contumacious” motion for substitution
United States v. Lee (9th Cir. 1983) 720 F.2d 1049

Conviction, felony or misdemeanor, moral turpitude
Business and Professions Code section 6101
dismissal or acquittal of criminal charges does not bar disciplinary proceedings covering the same facts
In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157
is basis for discipline, not a conviction
In re Gross (1983) 33 Cal.3d 561, 566 [189 Cal.Rptr. 848, 659 P.2d 1137]

Corruption
whether or not in course of relations as attorney
Business and Professions Code section 6106
-while attorney served on jury
In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

Counsel’s basis for reversal of judgment in judicial proceeding
report by clerk to State Bar
Business and Professions Code section 6086.7

Court
appearing in court while intoxicated
Ridge v. State Bar (1989) 47 Cal.3d 952 [254 Cal.Rptr. 803]
dishonesty to
In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141
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duty not to mislead
U.S. v. Sullivan (9th Cir. 2008) 522 F.3d 967
In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166
improper contact with juror
In re Possing (1984) 37 Cal.3d 163, 170 [207 Cal.Rptr. 543, 689 P.2d 115]

Court order
violation
Business and Professions Code section 6103
In re Ringgold (2006) 142 Cal.App.4th 1001 [48 Cal.Rptr.3d 507]

Criminal conviction
summary disbarment for attempted child molestation
In re Lesansky (2001) 25 Cal.4th 11 [104 Cal.Rptr.2d 409, 17 P.3d 764]
summary disbarment for forgery
  In re Paguirigan (2001) 25 Cal.4th 1 [104 Cal.Rptr.2d 402, 17 P.3d 758]

Deceit
  In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141
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  In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112
  consent to, with intent to deceive court or party
  -misdemeanor
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  People v. Rainey (1964) 224 Cal.App.2d 93, 94-98 [36 Cal.Rptr. 291]

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  failure to take action to set aside
  Moore v. State Bar (1964) 62 Cal.2d 74, 78 [41 Cal.Rptr. 161, 396 P.2d 577]
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  improperly obtaining
  Grove v. State Bar (1965) 63 Cal.2d 312, 314 [46 Cal.Rptr. 513, 405 P.2d 553]
  permitting without client’s authority

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
  Business and Professions Code section 6128(b)
  “Dirty tricks” disrupting political campaign in acts unrelated to attorney’s practice of law
  Segretti v. State Bar (1976) 15 Cal.3d 878 [126 Cal.Rptr. 793]

Disbarred attorney
  appearing as plaintiff on own behalf where action assigned to attorney subsequent to disbarment order
  Business and Professions Code section 6130
  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 disbarred in California after disbarment in Michigan
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  judge systemically and routinely sold his office and his public trust
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whether or not in course of relations as attorney
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Disregard for obligations to the legal profession and to clients
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District attorney
  advises, takes part in, or receives valuable consideration in criminal defense
  -where prosecuted action
    -misdemeanor
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Driving under influence of alcohol, conviction for
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Drunkenness in public
  In re Hickey (1990) 50 Cal.3d 671 [788 P.2d 684]

Duties of attorney, violation of
  Business and Professions Code sections 6068, 6103

Duty to report violation of Rules of Professional Conduct and/or related statutes

Evidence of debt
  purchase by attorney with intent to bring suit thereon
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Ex parte communication with judge
  judge engaged in improper ex parte conversations with parties and counsel about matters coming before him as a judge

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Exortion

attorney attempts to receive money from opposing party in return for client’s favorable testimony in criminal investigation is extortion

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Failing to maintain respect due courts

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Failure to appear in a probation violation proceeding

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Failure to communicate with client

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Holding out as specialist
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Knowledge of Rules of Professional Conduct is not an element of offense of misconduct
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advertising or holding out as entitled to practice law following disbarment or during suspension
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- advising, aiding, or promoting when partner is district attorney or public prosecutor
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dismissal or acquittal of criminal charges does not bar disciplinary proceedings covering the same facts

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for failure to pay federal marijuana transfer tax

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accepted fees for legal services but failed to perform such services or return the fees

In re Aquino (1989) 49 Cal.3d 1122

attorney delayed informing client on receipt of payment of judgment, then misappropriated such funds

Himmel v. State Bar (1971) 4 Cal.3d 786 [94 Cal.Rptr. 825]

attorney failed to reveal extent of his pre-existing indebtedness and financial distress to client

Benson v. State Bar (1975) 13 Cal.3d 581 [119 Cal.Rptr. 297]

attorney induced a woman to purchase royalty interest that he should have known had only speculative value

In re Langford (1966) 64 Cal.2d 489 [50 Cal.Rptr. 661, 413 P.2d 437]

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deleting language in a statement obtained from the beneficiary of a trust deed on real property


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judge intentionally misstated his address for improper financial benefit

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misrepresentations made to opposing counsel and the court

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misrepresentation and concealment of adverse and material facts


misrepresented the status of the contest proceeding and kept clients ignorant of his unauthorized dismissal

Foose v. State Bar (1951) 37 Cal.2d 127 [230 P.2d 617]

obtained a loan from the estate without securing approval of the probate court

Lane v. State Bar (1936) 7 Cal.2d 419, 422 [60 P.2d 845]

petitioner’s greater offense was his fraudulent and contrived misrepresentations to the State Bar

 Worth v. State Bar (1978) 22 Cal.3d 707, 711 [150 Cal.Rptr. 273]

practiced fraud and deceit on clients and a judge, and engaged in fraud on creditors

In re Wright (1973) 10 Cal.3d 374 [515 P.2d 292]

repeated practices of forgery, fraud, and deceit with clients and the Immigration and Naturalization Service

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repeatedly misrepresented facts to clients and made statements about their lawsuits which he knew were false

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- Actual injury
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- Associate assigned to client matters may not be blamed for attorney’s misconduct
  - Bernstein v. State Bar (1990) 50 Cal.3d 221

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- Declaration by attorney of his own negligence not credible

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    - Minnick v. City of Petaluma (2016) 3 Cal.App.5th 15 [207 Cal.Rptr.3d 350]
  - in-house counsel who is also corporate officer should not be treated differently in determining responsibility for default judgment taken against corporate client
  - lack of supervision over paralegal which led to late filing of opposition to summary judgment is not excusable neglect
  - reliance on opposing counsel’s oral agreement to extend time to file motion for attorney fees was excusable negligence
  - relief not available to in pro per party, under Code of Civil Procedure 473 et seq., from judgment or dismissal due to mistake, inadvertence, surprise, or neglect
    - Esther B. v. City of Los Angeles et al. (2008) 158 Cal.App.4th 1093 [70 Cal.Rptr.3d 596]

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Retention of unearned fees and abandonment
Shareholder by its of counsel
Bonus paid to attorney who is not a partner, associate, or

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Business and Professions Code sections 6067, 6068
Verifiable false
Special appearances

Rule 60(b)(6) warranted by extraordinary circumstances

Dishonesty to

Refer legal business to

Duty of care to the

May 26, 1989)
Rule 7-108, Rules of Professional Conduct (operative until
Rule 5-300, Rules of Professional Conduct (operative as of

Neglect was cause of default

Prevailing party law firm not entitled to attorney fees when

of own client

of possible malpractice on part of client

of intent to default

of own client’s entrapment of opposing counsel’s client

of counsel’s former counsel

of ethics by, not grounds for refusal to recognize as counsel

Communication with

adverse party represented by counsel

Rule 7-103, Rules of Professional Conduct (operative until May 26, 1989)
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general counsel of national corporation when suing subsidiary represented by local counsel

SD 1968-2
Complain about conduct of

LA 392 (1989)
Partnership as

Prevaling party law firm not entitled to attorney fees when represented by their own counsel


Out-of-state attorney as

LA 306 (1968), LA(I) 1967-8
conflict of interest

LA 392 (1989)
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Prevaling party law firm not entitled to attorney fees when represented by their own counsel


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Rule 5-300, Rules of Professional Conduct (operative as of May 27, 1989)

Advisors
do not settle attacked

LA 240 (1957)

SD 1968-2

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Complain about conduct of

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Consent for preparation of referee’s report to court

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Joins partnership during litigation

LA(I) 1962-2

Public interest law firm, induce supporters of to withdraw support from

LA 339 (1973)

Refer legal business to

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ORDINANCE VIOLATION

City council member represents in

LA 273 (1962)
SD 1969-1
Partner of council member represents in

SD 1969-1

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Membership in

barter association

CAL 1981-60, CAL 1977-44, LA(I) 1965-8
by partnership

LA 324 (1971), SD 1974-11
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Appearance as pro hac vice
Rule 9.40, California Rules of Court
Winterrourd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815
U.S. v. Watters (9th Cir. 2002) 309 F.3d 589
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attorney admitted to practice before district court prior to new local rule requiring bar membership must now comply with the rule or seek admission through pro hac vice
Gallo v. U.S. District Court of Arizona (2003) 349 F.3d 1169

attorney disciplined for misrepresentation on pro hac vice application regarding residency
attorneys not entitled to fees for work done prior to admission pro hac vice
residency requirement

Ghostwriting
OC 2014-1
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.

Absence agreement. Uniform Partnership Act applies

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(l) 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

alleges after partnership 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
LA 480

file
-attorney leaving 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(l) 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

See How to Use This Index, supra, p. i 385 2018 (updated entries through 12/31/2017)
PARTNERSHIP

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
  - when departing partner takes unfinished cases

File
- attorney leaving law firm may not remove client file prior to written notification of client
  LA 405 (1982)
- Firm name
  LA 290 (1965)
  - out-of-state attorney
    -- included in
    LA 295 (1966)
- Interstate
  LA 325 (1972), LA 230 (1955)
- Investment
  SD 1984-1
- Lawyer-physician
  LA 331 (1973)
- Liability
  for acts of former partners
    Blackmon v. Hale (1970) 1 Cal.3d 548, 556-560
    Redman v. Walters (1979) 88 Cal.App.3d 448 [152 Cal.Rptr. 42]
  for legal malpractice of partner
  vicarious liability for acts of a partner
    PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP (2007) 150 Cal.App.4th 384 [58 Cal.Rptr.3d 516]
- Malpractice
  by associate’s duty to disclose to client
    LA 383 (1979)
- Name [See Practice, name for.]
  LA 310 (1969)
  dead lawyer’s name in
    LA(I) 1962-5
  dead partner’s name in
    LA 265 (1959), LA 248 (1958), LA(I) 1974-15
    - used by sole survivor
      LA 265 (1959)
  former partner
    CAL 1986-90
  interstate partnership
    LA 295 (1966), SF 1975-1, SF 1974-5
  Non-existent
    held out as real
      CAL 1971-27
      LA(I) 1959-3
    “Of counsel” [See Of counsel.]
    Opposing counsel joins
      LA(I) 1962-2

Partner defined
LA 385 (1980)
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
    - city attorney
      LA 242 (1957), LA(I) 1975-4
    - city council member
      LA(I) 1975-4
    - prosecutor
      LA 377 (1978)
  represents
    estate
      - executor/trustee
        LA 219 (1954)
    in criminal matter
      - when associate is
        - prosecutor
          Business and Professions Code section 6131
          LA 377 (1978)
      - when member is
        - city attorney
          LA 242 (1957), LA(I) 1975-4
        - city council member
          LA(I) 1975-4
        - prosecutor
          LA 377 (1978)
        own member
          LA(I) 1956-8
      when associate
        - before joining acted for other side
          LA 363 (1976)
      when member
        - before joining acted for other side
Retirement agreements
  Rules 2-109 and 3-102, Rules of Professional Conduct (operative until May 26, 1989)
  Rules 1-500 and 1-320, Rules of Professional Conduct (operative as of May 27, 1989)
CAL 1975-34
Retirement plan
  may include lay employees
    Rule 1-320, Rules of Professional Conduct (operative as of May 27, 1989)
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)
PARTNERSHIP, BUSINESS

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]
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

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]

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

CERTIFIED PUBLIC ACCOUNTANTS
CAL 1959-5
SD 1974-17
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SD 1983-4
FINANCIAL MANAGEMENT COMPANY
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IN-DEBT COLLECTIONS
LA 96 (1936)
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IN THE MATTER OF BRAGG (REVIEW DEPT. 1997) 3 CAL. STATE BAR CT. RPTR. 615
INVESTMENT COMPANY
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LA 488 (1996)
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PROHIBITED, IF ANY ACTIVITIES OF PARTNERSHIP CONSTITUTE PRACTICE OF LAW
LA 96 (1936)
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LA 372 (1978)
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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 IN 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)
INCURED BY OR FOR A CLIENT
ISIN V. SUPERIOR COURT (1965) 63 CAL.2D 153, 164 [45 CAL.RPTR. 320, 403 P.2D 728]

PENDING PROCEEDINGS
BOOK PUBLISHED ABOUT
HARAGUCHI 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
HOLLYWOOD V. SUPERIOR COURT (2008) 43 CAL.4TH 721 [76 CAL.RPTR.3D 264]

PENSION PLAN [See Division of fees.]
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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
COOPER V. STATE BAR (1987) 43 CAL.3D 1016, 1020 [239 CAL.RPTR. 709, 741 P.2D 206]
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
COOPER V. STATE BAR (1987) 43 CAL.3D 1016, 1020 [239 CAL.RPTR. 709, 741 P.2D 206]
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

V. CITY AND COUNTY OF SAN FRANCISCO V. SWEET (1995) 12 CAL.4TH 105, 110, 115-117
LOVETT V. CARRASCO (1998) 63 CAL.APP.4TH 48 [73 CAL.RPTR.2D 496]
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

JUDICIAL OFFICE
CAMPAIGN CONTRIBUTIONS FOR
CAL(I) 1972-21

CANDIDATE
- MISREPRESENTATION BY
LA(I) 1974-11
- NO UNIFORM RULES REGULATING CONDUCT OF IN CALIFORNIA
SF 1974-6

ENDORSE OR SOLICIT ENDORSEMENTS FOR CANDIDATE
LA(I) 1972-21

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

2018 (updated entries through 12/31/2017)
POWER OF ATTORNEY

Post-sentencing comment by prosecutor
SD 1974-8

POWER OF ATTORNEY  [See Authority of attorney. Withdrawal.]
Annuit y 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 nuer’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. Hanlon (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
-by attorney
--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

State Bar of California

LA 195
OC 84-002
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
co-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)
Employee duties to employer
Labor Code section 2650 et seq.

Fee sharing agreement
between departing partner and firm
-found to violate Rules of Professional Conduct

Fictitious name, use of
by attorney or law firm
Jacob v. State Bar (1977) 19 Cal.3d 359, 366 [138 Cal.Rptr. 77]

CAL 1982-66, 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
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]

2014-190, CAL 1985-86

-due to death of partner
Little v. Caldwell (1894) 101 Cal. 553, 561 [36 P. 107]
Heywood v. Sooy (1941) 45 Cal.App.2d 423, 426

[114 P.2d 361]

-partner not entitled to compensation for good will

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


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]


--intangible assets, such as goodwill, not converted to community property where spouse did not buy into such assets


--use of “similarly situated professional” vs. “average salaried person” standards in calculating value of spouse’s goodwill in law firm


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 1106]

preservation of constitutional right

United States v. Condo (9th Cir. 1984) 47 Cal.App.3d 802 [121 Cal.Rptr. 194]

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 & Caudill v. Board of County Commissioners of the County of Fremont (1994) 868 F.Supp. 1228

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 1106]

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


[158 Cal.Rptr. 762]

[113 Cal.Rptr. 58]

and each partner had knowledge that the other was taking clients separate from the partnership


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 6180.14

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


LA 301 (1967)

Legal research service

operated by attorneys

-constitutes practice of law
Letterhead

use union emblem on

CAL 1971-24

Liability of firm for legal malpractice of partner


Liens [See Liens.]

Letter ticket

assignment of

-lo 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 399

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 (1966) 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, SD 1985-1

-not able to provide independent review as required under Probate Code section 21350


bail bond agency

SD 1972-13

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

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

-lo assist in advising client

LA 86 (1935)

holding out as

Business and Professions Code section 6126

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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


Valuation of a law practice when partnership dissolves


Work product [See Files and Work Product.]

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

Palmer v. Superior Court (Mireskandarian) (2014) 231 Cal.App.4th 1214 [180 Cal.Rptr.3d 620]

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 objecting 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

Examples

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


no implied exceptions to attorney-client privilege

Palmer v. Superior Court (Mireskandarian) (2014) 231 Cal.App.4th 1214 [180 Cal.Rptr.3d 620]

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


Inadvertent disclosure [See Confidences of the Client, inadvertent disclosure]

Ardon v. City of Los Angeles (2016) 62 Cal.4th 1176 [199 Cal. Rptr. 743]

McDermott Will & Emery, LLP v. Superior Court (Hausman) (2017) 10 Cal.App.5th 1083 [217 Cal.Rptr.3d 47]

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 demands letters under Civil Code section 47(b)


inapplicable in an action by a former client against an attorney for breach of professional duties


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]

predecessor trustee failed to establish that they communicated with counsel in their personal capacity


Qualified common interest privilege against defamation under Civil Code section 47(d) may not apply to plaintiff's unfair competition claim against attorney if plaintiff not a party to the earlier litigation

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

Murdock v. Castro (9th Cir. 2010) 609 F.3d 983

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]


Ingrum 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 egos 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


Agency


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 & McCartney (9th Cir. 2016) 825 F.3d 1069

client's agreement

- arbitration clause in attorney-client retainer agreement


-as condition to employment

Rule 3-400, Rules of Professional Conduct

CAL 1977-47
PROFESSIONAL LIABILITY

Assignability of chose in action for legal malpractice
White Mountains Reinsurance Company of America v.
Borton Petrin, LLP (2013) 221 Cal.App.4th 890 [164
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.
Borton Petrin, LLP (2013) 221 Cal.App.4th 890 [164
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
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
- prima facie evidence of existence of
People v. Toth (1989) 213 Cal.App.3d 689 [261
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
Cal.Rptr.3d 620]

standard of care
Cal.Rptr. 267]

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]

requirements to state a cause of action
Cal.Rptr.3d 422]

Cal.Rptr.3d 210]

Cal.Rptr.3d 471]

Cal.Rptr.3d 864]

New Plumbing Contractors, Inc. v. Edwards, Sooy &

Pierce v. Lyman (1991) 1 Cal.App.4th 1093

- claims to strike under anti-SLAPP statute
Hylton v. Frank E. Rogolenski, Inc. (2007) 177
Cal.App.4th 1264 [99 Cal.Rptr.3d 805]

violation of rules of professional conduct may be admitted as
evidence of fiduciary breach
Mirabile v. Liccardo (1992) 4 Cal.App.4th 41

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

Co-counsel's duty to report counsel's
LA 313 (1969)

Code of Civil Procedure section 340.6
Cal.Rptr.3d 166]

specially appearing attorney owes a duty of care to the
litigant
[82 Cal.Rptr.2d 193]

Collateral estoppel, effect of
client is prohibited from relitigating previously decided issues
even if second suit raises different causes of action
1075 [196 Cal.Rptr.3d 35]

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
1075 [196 Cal.Rptr.3d 35]

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
Cal.Rptr.3d 728]

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
CCR § 877
Cal.Rptr.3d 330]
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


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]
Salisbury v. County of Orange (2005) 131 Cal.App.4th 756 [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]

Damas
*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

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 before 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), 6096.8
PROFESSIONAL LIABILITY

duty owed in favor of third persons

- no duty to exonerate clients from fault in public eye

- no liability to counsel

- attorney advising client is liable to third party when
  reasonably foreseeable that advice will be transmitted to and
  received by adverse party


- liability to intended beneficiary where attorney failed to
  advise client regarding requirements governing
  escrow holder

\[ \text{Fox v. Pollack (1986) 181 Cal.App.3d 954 [226 Cal.Rptr. 538]} \]

- attorney's duty to client does not sustain damages for
  emotional distress suffered by client's children

\[ \text{Haldane v. Freedman (1962) 204 Cal.App.2d 475 [22 Cal.Rptr. 445]} \]

- escrow agents

- generally, no duty

\[ \text{St. Paul Title Co. v. Meier (1986) 181 Cal.App.3d 948 [226 Cal.Rptr. 538]} \]


Duty owed in favor of third persons

- no duty allowed


- attorney's active concealment or suppression of
  facts during a business negotiation is the equivalent of
  actual fraud

\[ \text{Schick v. Bach et al. (1987) 193 Cal.App.3d 1321, 1330 [238 Cal.Rptr. 902]} \]

- non-fiduciary

\[ \text{Melveny &} \]

- liability to intended beneficiary where attorney failed to
  advise client regarding requirements governing
  escrow holder

\[ \text{Johnstone v. State Bar (1966) 64 Cal.2d 153, 155-56 [49 Cal.Rptr. 97, 410 P.2d 617]} \]

- non-fiduciary whereINSURANCE CO. V. O'NELVY & MYERS (9TH CIR. 1992) 969 F.2D 44

- liability to intended beneficiary where attorney failed to
  advise client regarding requirements governing
  escrow holder


- liability to intended beneficiary where attorney failed to
  advise client regarding requirements governing
  escrow holder


- attorney's representation of assignee for the benefit of
  creditors does not give rise to a duty owed to the class of
  creditors


- 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

potential creditors of client
U.S. v. Limbs (9th Cir. 1975) 524 F.2d 799

prospective defendants
purchasers of client’s property
- 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
purchasers of client’s stock
spouse of client who was to receive portion of proceeds of
In re Marriage of Wagoneer (1986) 176 Cal.App.3d 936 [222 Cal.Rptr. 479]
standing for bringing action in professional negligence
testamentary beneficiaries
Harrigfeld v. Hancock (9th Cir. (Idaho) 2004) 364 F.3d 1024
Sodikoff v. State Bar (1975) 14 Cal.3d 422 [121 Cal.Rptr. 467, 535 P.2d 331]
Heyer v. Flaig (1969) 70 Cal.2d 223 [74 Cal.Rptr. 225]
Lucas v. Hamm (1961) 56 Cal.2d 583, 588 [15 Cal.Rptr. 821]
trust beneficiaries
Pierce v. Lyman (1991) 1 Cal.App.4th 1093
Duty owed to insured by attorney retained by insurer
Duty owed to insured by attorney retained by insurer
insurer’s attorney has duty to include insured’s independent counsel in settlement negotiations and to fully exchange information
Duty to refer client to a “specialist”
do no duty to consult medical specialist unless such consultations recommended by other doctors

Effect of violation of the Rules of Professional Conduct
Elements of cause of action
Emotional distress damages may be recoverable as part of a legal malpractice claim
LA 489 (1997)

Error
in preparing findings in support of judgment in favor of client
Existence of attorney-client relationship
Perkins v. West Coast Lumber Co. (1900) 129 Cal. 427 [62 P. 57]
Miller v. Metzinger (1979) 91 Cal.App.3d 31, 39 [154 Cal.Rptr. 22]
direct attorney-client relationship must be shown to exist between plaintiff and attorney-defendant when plaintiff alleges to be the intended beneficiar of a testamentary instrument
Harrigfeld v. Hancock (9th Cir. (Idaho) 2004) 364 F.3d 1024
specially appearing attorney forms an attorney-client relationship with the litigant
Streit v. Covington & Crowe (2000) 82 Cal.App.4th 441 [82 Cal.Rptr.2d 130]
Exonerating personal 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)
Failure to advise client of correct value of marital estate
Failure to advise clients of other claims related to but outside the scope of the representation
Failure to advise client of spouse’s community property
Failure to advise client to act promptly in retaining other counsel due to statute of limitations
Miller v. Metzinger (1979) 91 Cal.App.3d 31, 41 [154 Cal.Rptr. 22]
Failure to arrange for service of summons
Neel v. Magana, Olney, Levy, Cathcart & Gelfand (1971) 6 Cal.3d 176 [98 Cal.Rptr. 837, 491 P.2d 589]
Failure to assert interest of wife in retirement benefits of husband in dissolution proceedings
*Simpkins 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
PROFESSIONAL LIABILITY

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 district 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. Pahl (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

lawsyers 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 quiely 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 result

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. 496]

Liability of law firm
attorney as alter ego of law corporation is liable for debts of same matter
for acts of other partners after leaving law firm
PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP (2007) 150 Cal.App.4th 384 [58 Cal.Rptr.3d 516]

2018 (updated entries through 12/31/2017) 398 See How to Use This Index, supra, p. i
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]
Held v. Arant (1977) 67 Cal.App.3d 748 [134 Cal.Rptr. 422]

Liability of subsequent tortfeasors
Gibson, Dunn & Crutcher v. Superior Court (1979) 94 Cal.App.3d 347 [156 Cal.Rptr. 326]

Liability from discharge of his duties for employer (Labor Code section 2802)
attorney sued for malpractice is entitled to indemnification and successor counsel and of clients

Limited 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 902 (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

-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

attorney sued for malpractice is entitled to indemnification from law firm employer for costs of defending lawsuit arising from discharge of his duties for employer (Labor Code section 2802)

PROFESSIONAL LIABILITY

award of attorney’s fees

-alleged malpractice of attorney appointed by insurer did not render attorney liable for insured’s fees for independent counsel

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 no duty to class member to give notice beyond the court-approved settlement notice procedure
duty to advise client of prior attorney’s malpractice
LA 390 (1981)
error on trial court for failure to instruct jury on issue of severability in malpractice case
expert witness’s testimony admissible even though the attorney-expert possessed only related experience and not specific expertise

insurance company
American Home Assurance Co. v. Miller (9th Cir. 1983) 717 F.2d 1310
American Casualty Co. v. O’Flaherty (1997) 57 Cal.App.4th 1070 [67 Cal.Rptr.2d 539]

liability of firm for legal malpractice of partner
malpractice claim is barred due to mediation confidentiality statute when attorney’s alleged misconduct occurred during mediation
nob duty to agent of client who participated in the negotiation of a contract on behalf of their client
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
-breacht of contract action available if settlement agreement cannot be enforced under CCP § 664.6
specially appearing attorney owes a duty of care to the litigant


standing to sue

-out-of-state successor estate representative may sue
California attorneys retained by prior representative for alleged malpractice


-successor conservator, albeit non-client, may bring suit against a predecessor’s attorney for malpractice causing loss to the estate


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. Mx (2000) 22 Cal.4th 1 [91 Cal.Rptr.2d 273]


-doctrine of "equitable tolling" applies to legal malpractice limitation period


trussee of "sham" corporation has standing to sue corporate attorneys for legal malpractice

Loyd 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]

-necessary investigation of medical malpractice claim

-Gibson, Dunn & Crutcher v. Superior Court (1979) 95 Cal.App.3d 166 [156 Cal.Rptr. 745]

inference of emotional distress


-negligent misrepresentation to non-client


-non-fiduciary's actual 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 litigant


-third-party non-clients


No duty to consult medical specialist unless such consultations recommended by other doctors


Noer-Pennington immunity defined

Nunan-Tanedo v. East Baton Rouge Parish School Board (9th Cir. 2013) 711 F.3d 1138

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. Schaaf (1967) 251 Cal.App.2d 1 [58 Cal.Rptr. 817]

Moser v. Western Harness Racing Assn. (1948) 89 Cal.App.2d 1 [156 Cal.Rptr. 745]

Allegation of actual malpractice


-conflict of interest doctrine applies to legal malpractice Malpractice claim


-false representation and non-fiduciary therefore is held liable

Endnote: 108 Cal.Rptr.3d 799

No duty to consult medical specialist unless such consultations recommended by other doctors


Noer-Pennington immunity defined

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Offering incorrect advice to client


Eckert v. Schaaf (1967) 251 Cal.App.2d 1 [58 Cal.Rptr. 817]

Moser v. Western Harness Racing Assn. (1948) 89 Cal.App.2d 1 [156 Cal.Rptr. 745]

Allegation of actual malpractice


-conflict of interest doctrine applies to legal malpractice

Malpractice claim

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 when attorney’s allegedly wrongful conduct is not a substantial factor
not shown where criminal defendant actually guilty of crime for which convicted
Bradshaw v. Pardee (1978) 78 Cal.3d 567
Punitive damages
in underlying lawsuit
Ferguson v. Lieff, Cabraser, Heimann & Bernstein (2003) 30 Cal.4th 1037 [135 Cal.Rptr.4th 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 against employer’s attorney for discriminating against an employee filing a 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
Lucas v. Hamm (1961) 56 Cal.2d 583, 592 [15 Cal.Rptr. 821]
Rules of Professional Conduct as an ethical standard
Mirabilio v. Liccardo (1992) 4 Cal.App.4th 41
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
Speciality
specialty appearing attorney owes a duty of care to the litigant
Standard of care
PROFESSIONAL LIABILITY
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
-coneley v. Lieber (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 (1995)
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. Krasna (1975) 14 Cal.3d 502 [121 Cal.Rptr. 705]
Neel v. Magana, Oiney, Levy, Cathcart & Gelfand (1971) 6 Cal.3d 176, 190 [98 Cal.Rptr. 837]
Heyer v. Flaid (1969) 70 Cal.2d 233 [74 Cal.Rptr. 225]
Alter v. Michael (1966) 64 Cal.2d 480 [50 Cal.Rptr. 553]
Foxen v. Carpenter (2016) 6 Cal.App.5th 294 [211 Cal.Rptr.3d 372]
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. 350]
Eckert v. Schaal (1967) 251 Cal.App.2d 1, 4 [58 Cal.Rptr. 817]
Bustamante v. Hall (1963) 222 Cal.App.2d 413 [35 Cal.Rptr. 176]
Jensen v. Spring (1927) 84 Cal.App. 519
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 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

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

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
toled for bringing legal malpractice action while attorney still represents client on related matters, even if client knows of attorney’s negligence


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 pertains 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


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)

Succession 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


Transactional 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

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


Integrity of adversary system depends on the highest standard of ethics, civility, and professionalism in the practice of law

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 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 [See Estate. Purchasing property at probate, foreclosure, or 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)

Refusal to return other party’s

LA(I) 1966-8

PROSECUTOR [See Attorneys of government agencies. Conflict of interest.]

Communication with criminal defendant who is potential witness 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


PROSECUTORIAL MISCONDUCT [See Competence. Ineffective assistance of counsel. Judges, ex parte communication with. Trial conduct.]

[Note: This section is arranged according to the stage of the proceeding in which the conduct occurs.]

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 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)

Advocacy, proper


Appeal
timely objection required


Authority
effect of trial court discretion on

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

U.S. v. Manzo (9th Cir. 2012) 675 F.3d 1204


California county district attorney acted as state official for purposes of section 1983 claim when deciding whether to prosecute individual for criminal defense

Weiner v. San Diego County (9th Cir. 2000) 210 F.3d 1025

Closing argument [See 26 A.L.R. 3d 1909; 85 A.L.R. 2d 1132.]

admission into evidence of extrajudicial statement made by defendant in attempt to impeach defendant’s testimony

People v. Dishbro (1976) 16 Cal.3d 101 [127 Cal.Rptr. 360, 545 P.2d 272]


alleged racial slur


appeal jurors’ fear of friends and family condemnation, if jury finds in favor of defendant, was blatant misconduct


appeal to passion and prejudice

Zapata v. Vasquez (9th Cir. 2015) 788 F.3d 1106

Drayden v. White (9th Cir. 2000) 223 F.3d 704


See How to Use This Index, supra, p. i
comment during penalty phase that evidence favorable to defendant didn’t exist, when prosecutor knew that it did exist
In re Miranda (2008) 43 Cal.4th 541 [76 Cal.Rptr.3d 172]

comment in attempt to discredit defense witness on fact witness’s children had been taken from her because of neglect

comment of defense counsel, not prejudicial
Demirdjian v. Gipson (9th Cir. 2016) 832 F.3d 1060
People v. Friend (2009) 47 Cal.4th 1 [97 Cal.Rptr.3d 1]

comment on counsel for defendant’s failure to previously come forward with defense asserted at trial

comment on defendant’s bias and motive for lying

comment on defendant’s case
People v. Meneley (1972) 29 Cal.App.3d 41, 60 [105 Cal.Rptr. 432]

comment on defendant’s character and associates

comment on defendant’s choice of counsel

comment on defendant’s demeanor
Allen v. Woodford (9th Cir. 2005) 395 F.3d 979

witness/introduce evidence
People v. Beagle (1972) 6 Cal.3d 441 [99 Cal.Rptr. 313, 442 P.2d 1]

In re Banks (1971) 4 Cal.3d 337, 349-351 [93 Cal.Rptr. 591, 482 P.2d 215]
People v. Gray (1979) 91 Cal.App.3d 545, 551 [154 Cal.Rptr. 355]
People v. Demond (1976) 59 Cal.App.3d 574, 591 [130 Cal.Rptr. 590]
People v. VanVey (1973) 33 Cal.App.3d 630, 636 [109 Cal.Rptr. 276]

comment on defendant’s failure to reply to accusatory statement

comment on defendant’s failure to request live line-up

comment on defendant’s failure to testify
U.S. v. Preston (9th Cir. 2017) 873 F.3d 829
Hovey v. Ayers (9th Cir. 2006) 458 F.3d 892
Beardslee v. Woodford (9th Cir. 2004) 358 F.3d 560
Campbell v. Bledgett (9th Cir. 1992) 982 F.2d 1321
People v. Verdugo (2010) 50 Cal.4th 265 [113 Cal.Rptr. 3d 88]

People v. Vargas (1973) 9 Cal.3d 470 [108 Cal.Rptr. 15, 509 P.2d 959]

People v. Mesa (2006) 144 Cal.App.4th 1000 [50 Cal.Rptr.3d 875]
People v. Guzman (2000) 80 Cal.App.4th 1282 [96 Cal.Rptr.2d 87]

But see
In re Banks (1971) 4 Cal.3d 337, 349-351

People v. Parks (1973) 32 Cal.App.3d 143, 151 [108 Cal.Rptr. 34]
People v. Meneley (1972) 29 Cal.App.3d 41, 60 [105 Cal.Rptr. 432]


-comment to jury on why defense witness did not testify
People v. Gaines (1979) 54 Cal.App.4th 821 [63 Cal.Rptr.2d 188]

-comment indirectly commenting of defendant’s failure to testify
People v. Guzman (2000) 80 Cal.App.4th 1282 [96 Cal.Rptr.2d 87]

-sanity phase of trial
People v. Flores (1976) 55 Cal.App.3d 118

-statement that defendant’s exercise of his Fifth Amendment rights did not mean that he was innocent or that jury was supposed to find him not guilty

-comment on defendant’s prior jail time, brief and not prejudicial
People v. Friend (2009) 47 Cal.4th 1 [97 Cal.Rptr.3d 1]

-comment on defendant’s silence in face of accusation by private person

-comment on defense counsel’s failure to reveal alibi defense prior to trial

-comment on defense counsel’s tactics, implication of chicanery
People v. Doolin (2009) 45 Cal.4th 390 [87 Cal.Rptr.3d 209]
comment on failure of defense to call witnesses to advance alibi defense urged by defendant

comment on failure of defense to present evidence corroborating defendant’s asserted alibi
People v. Chandler (1971) 17 Cal.App.3d 798, 805-806 [95 Cal.Rptr. 146]

comment on lack of defense testimony

comment on lack of evidence presented by defense
Demirdjian v. Gipson (9th Cir. 2016) 832 F.3d 1060

comment on merit of evidence presented by defense

comment on possible sentence

comment on post-arrest silence
United States v. Lopez (9th Cir. 2007) 500 F.3d 840

comment on post-Miranda silence was harmless error
United States v. Lopez (9th Cir. 2007) 500 F.3d 840

comment on pre-arrest silence

comment on presentation of defendant’s case/choice of counsel/trial tactics

comment on prior judgments/convictions of defendant
People v. McDaniel (1976) 16 Cal.3d 156, 175-77 [127 Cal.Rptr. 467, 545 P.2d 843], cert. den. 429 U.S. 847 [50 L.Ed.2d 119, 97 S.Ct. 131]

*People v. Allums (1975) 47 Cal.App.3d 654, 661 [121 Cal.Rptr. 62]
People v. Martinez (1973) 31 Cal.App.3d 355, 358 [107 Cal.Rptr. 283]

comment on testimony
-of character of witnesses
*People v. Benton (1979) 100 Cal.App.3d 92, 97 [161 Cal.Rptr. 127]
People v. Bedolla (1979) 94 Cal.App.3d 1, 8 [156 Cal.Rptr. 171]
People v. Higuerido (1975) 45 Cal.App.3d 397, 405-06 [119 Cal.Rptr. 378]
People v. Meneley (1972) 29 Cal.App.3d 91, 60 [105 Cal.Rptr. 432]
People v. Luckett (1969) 1 Cal.App.3d 248, 255 [81 Cal.Rptr. 539]

-of defendant, comment as to veracity
People v. Green (1980) 27 Cal.3d 1, 27-36 [164 Cal.Rptr. 1, 609 P.2d 468]

comment on what would have been the testimony of uncalled witness

comment that SVP (sexually violent predator) would be placed in mental hospital
In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

commenting on reasonable doubt instructions

comments on defendants’ characters: “pack of wolves” “little punk” “what a tough guy you are”
Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897

comments on jury being “conscience of community,” lack of mercy shown victim, discounting of mitigating circumstances was not misconduct
People v. Cagande (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]

comments to jury regarding defendant living near schools, with his mother and without parole, allowed jury to consider consequences of their verdict, such considerations were wholly improper

comments within permissible argument
Beardslee v. Woodford (9th Cir. 2004) 358 F.3d 560

comparison of defendant to Hitler
Allen v. Woodford (9th Cir. 2005) 395 F.3d 979

conviction obtained on what appeared to be prosecutor’s misstatement of the evidence when in fact court reporter’s official transcript has since been corrected and no misstatement actually occurred
U.S. v. Magene (9th Cir. 2015) 786 F.3d 789

death penalty reversed due to prosecutor’s misleading closing argument

defendant’s failure to call certain witnesses/introduce evidence
In re Miranda (2008) 43 Cal.4th 541 [76 Cal.Rptr.3d 172]

disparaging remarks about defense counsel


erroneous statement of the law
U.S. v. Navarro (9th Cir. 2010) 608 F.3d 529

expression of belief in defendant’s guilt

expression of opinion as to defendant’s guilt
*Dubria v. Smith (9th Cir. 1999) 197 F.3d 390
People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]
People v. Lopez (2008) 42 Cal.4th 960 [71 Cal.Rptr.3d 253]
People v. Green (1980) 27 Cal.3d 1, 27-36 [164 Cal.Rptr. 1]
People v. La Fontaine (1979) 79 Cal.App.3d 175, 186 [144 Cal.Rptr. 729]
PROSECUTORIAL MISCONDUCT


People v. Calpito (1970) 9 Cal.App.3d 212, 222-23 [88 Cal.Rptr. 64]

expression of opinion as to a witness credibility

*Dubria v. Smith (9th Cir. 1999) 197 F.3d 390

United States v. Kerr (9th Cir. 1992) 981 F.2d 1050

false statement of fact to jury

US v. Reyes (9th Cir. 2009) 577 F.3d 1069


harmless error

U.S. v. Navarro (9th Cir. 2010) 608 F.3d 529

improper remarks as to defendant's character and as to consequences of acquittal


improper remarks directed against counsel for the defense

*People v. Perry (1972) 7 Cal.3d 756,789-91 [103 Cal.Rptr. 161, 499 P.2d 129]

-prosecutor's use of words, "conjured up" a witness effectively asserted that defense counsel suborned perjury


improper remarks regarding conduct of defendant


impugning defense counsel's tactics at trial and in argument

Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897


inciting the passions and prejudice of the jury


inferences and deductions


inferences and deductions drawn from facts ascertained at trial

People v. Preston (1973) 9 Cal.3d 308, 317 [107 Cal.Rptr. 300, 508 P.2d 300]


People v. Lawson (1979) 100 Cal.App.3d 60, 65-66 [161 Cal.Rptr. 7]

People v. Bedolla (1979) 94 Cal.App.3d 1, 8 [156 Cal.Rptr. 171]


People v. Meneleay (1972) 29 Cal.App.3d 41, 61 [105 Cal.Rptr. 432]

People v. Vatelli (1971) 15 Cal.App.3d 54, 63 [92 Cal.Rptr. 763]


misleading the jury that the defendant had committed other similar crimes


misstatement of law to jury

U.S. v. Navarro (9th Cir. 2010) 608 F.3d 529

People v. Centeno (2014) 60 Cal.4th 659 [180 Cal.Rptr.3d 649]


-district attorney so misrepresented the law that it infected the case with prejudicial error

People v. Cowan (2017) 8 Cal.App.5th 1152 [214 Cal.Rptr.3d 576]

misstatement/errorneous statement of law or fact


People v. Calpito (1970) 9 Cal.App.3d 212, 222 [88 Cal.Rptr. 64]

-prosecutor's statement that the burden was on the defendant to prove his innocence violated the defendant's 14th Amendment due process rights


no “guilt by association” argument where prosecutor made comments regarding sexual misconduct by Catholic priests

People v. Lopez (2008) 42 Cal.4th 960 [71 Cal.Rptr.3d 253]

no “stand in the shoes of the victim” comment where prosecutor presented hypothetical situations for jurors to imagine the inability to remember details

People v. Lopez (2008) 42 Cal.4th 960 [71 Cal.Rptr.3d 253]

objection by prosecutor to defense counsel’s statements regarding reasonable doubt as misstatement of the law not found to be prosecutorial misconduct

People v. Pierce (2009) 172 Cal.App.4th 567 [91 Cal.Rptr.3d 404]

penalty trial

-attempt to re-open issues resolved at guilt trial


prejudicial inflammatory comments during closing argument

Zapata v. Vasquez (9th Cir. 2015) 788 F.3d 1106

*Dubria v. Smith (9th Cir. 1999) 197 F.3d 390


-gang member entitled to habeas relief where his attorney failed to object to prosecutor’s inflammatory, fabricated and ethnically charged remarks therefore was ineffective

Zapata v. Vasquez (9th Cir. 2015) 788 F.3d 1106

prosecutor effectively calling defense counsel a liar

United States v. Rodriguez (9th Cir. 1998) 159 F.3d 439

reference to biblical passage sanctioning capital punishment not prejudicial

People v. Welch (1999) 20 Cal.4th 701, 976 [85 Cal.Rptr.2d 203]

reference to defendant as “smart thief” and “parasite on the community”


reference to defendant’s use of heroin

Hall v. Whitley (9th Cir. 1991) 935 F.2d 164

reference to facts not in evidence

People v. Galloway (1979) 100 Cal.App.3d 551, 563-564 [160 Cal.Rptr. 914]

People v. Pankv (1978) 82 Cal.App.3d 772, 781 [147 Cal.Rptr. 341]

People v. Baeske (1976) 58 Cal.App.3d 775, 783 [130 Cal.Rptr. 35]


People v. Meneley (1972) 29 Cal.App.3d 41, 62 [105 Cal.Rptr. 432]

People v. McDowell (1972) 27 Cal.App.3d 864, 880 [104 Cal.Rptr. 181]
PROSECUTORIAL MISCONDUCT


...reference to lack of witnesses/evidence presented by defense to corroborate asserted defense...

People v. Rollins (1975) 51 Cal.App.3d 125, 135-137 [123 Cal.Rptr. 883]

...remarks about defendant’s self-representation and statements to the effect that prosecutors are held to higher standards than others...


...soliloquy delivered in voice of murder victim from witness chair...

Drayden v. White (9th Cir. 2000) 223 F.3d 704

statements impugning defendant’s testimony...


...statement that “the defendant thinks it is funny” regarding facing criminal charges...


...statements designating the defense as a sham...

People v. Patino (1979) 95 Cal.App.3d 11, 29-31 [156 Cal.Rptr. 815]

...statements directed at the jury regarding its functions, duties, and conclusions properly drawn...

People v. Panky (1978) 82 Cal.App.3d 772, 780-781 [147 Cal.Rptr. 341]

...statements directed at the jury regarding its functions, duties, and conclusions properly drawn...

People v. Smith (1973) 33 Cal.App.3d 51, 70-71 [108 Cal.Rptr. 698]

...People v. Smith (1973) 33 Cal.App.3d 51, 70-71 [108 Cal.Rptr. 698]

...People v. Gay (1972) 28 Cal.App.3d 661, 675 [104 Cal.Rptr. 812]

...People v. Daniels (1971) 16 Cal.App.3d 36, 47-48 [93 Cal.Rptr. 628]

...People v. Calnito (1970) 9 Cal.App.3d 212, 222 [88 Cal.Rptr. 64]

...as to what the testimony of an uncalled witness would have been...


...defense counsel’s definition of reasonable doubt was a misstatement of the law...

People v. Pierce (2009) 172 Cal.App.4th 567 [91 Cal.Rptr.3d 404]

...use of visual aid in the form of a jigsaw puzzle to demonstrate reasonable doubt standard impermissibly misstated the law to the jury...

People v. Centeno (2014) 60 Cal.4th 659 [180 Cal.Rptr.3d 649]

...statements to effect that defendant lied, and that a co-defendant had “ice running through his veins”...


...suggestion that defendant has the burden of raising a reasonable doubt as to guilt...


...unsuppressed implication by prosecutor that defense counsel has fabricated a defense...


...use of visual aid in the form of a jigsaw puzzle to demonstrate reasonable doubt standard impermissibly misstated the law to the jury...

People v. Centeno (2014) 60 Cal.4th 659 [180 Cal.Rptr.3d 649]

...vouching by defense counsel not plain error...

U.S. v. Molina (9th Cir. 1991) 934 F.2d 1440...

...vouching for the credibility or prestige of the district attorney’s office...


...vouching for witness credibility...

Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897

Comments on defendant’s conduct...


Comments on lies by witnesses at a foreign extradition hearing...


Comments to jury concerning personal responsibility for death penalty...

People v. Fierro (1991) 1 Cal.4th 173

Communication with defendant...

People v. Manson (1976) 61 Cal.App.3d 102, 164 [132 Cal.Rptr. 265]

Conduct before a grand jury...


alleged prejudicial questioning concerning defendant’s use of involvement with narcotics...


arguing facts not in evidence...

People v. Barnes (1981) 30 Cal.3d 143,149 [177 Cal.Rptr. 861, 635 P.2d 455]

asking questions of defendant which implied that he was guilty of the charged offense where facts requisite to such a conclusion were not in evidence and had not been established...

People v. Romero (1977) 68 Cal.App.3d 543, 597-598 [137 Cal.Rptr. 675]

asking questions of defendant’s girlfriend, who had borne defendant’s daughter, and mother designed to show bias...


asking questions which infer that witness has fabricated her testimony...

PROSECUTORIAL MISCONDUCT

asking witness, in attempt to impeach, whether he had ever been convicted of a felony


attempt to discredit and impeach an alibi


attempt to discredit/impeach witness for defense regarding testimony as to defendant's mental/physical health at time of commission of the charged offense

People v. Mazoros (1977) 76 Cal.App.3d 32, 46-49 [142 Cal.Rptr. 599]  

attempt to impeach defendant on basis of his silence following arrest and Miranda warnings

United States v. Lopez (9th Cir. 2007) 500 F.3d 840 [160 Cal.Rptr. 914]  

bad faith may be manifested by prosecutor intentionally asking questions of witness, the answers to which he knows are inadmissible because of their prejudice to the accused, or by asking questions which he knows are improper and inadmissible

People v. Romero (1977) 68 Cal.App.3d 543, 548 [137 Cal.Rptr. 675]  

claim of improper questioning of defendant forfeited where no objection by counsel

People v. Friend (2009) 47 Cal.4th 1 [97 Cal.Rptr. 3d 1]  

comment on defendant being a "danger," prejudice cured by court's admonishment to jury

People v. Friend (2009) 47 Cal.4th 71 [97 Cal.Rptr. 3d 1]  

comment on defendant's right of silence

U.S. v. Sehnal (9th Cir. 1991) 930 F.2d 1420  

comment to defendant that "you stand an excellent chance of being convicted of first-degree murder"


detailed examination of defendant on matters testified to on direct examination

People v. Green (1979) 95 Cal.App.3d 991, 1007-1008 [157 Cal.Rptr. 520]  

directing improper questions to defendant

People v. Wong (1973) 35 Cal.App.3d 812, 833-835 [111 Cal.Rptr. 314]  

eliciting testimony concerning defendant's need for money as a motive for commission of charged offense


exceeding the scope of direct examination

*People v. Goss (1980) 105 Cal.App.3d 542, 546-547 [166 Cal.Rptr. 1]  

failed attempt to impeach witness by prior inconsistent statement

People v. Robinson (1970) 6 Cal.App.3d 448, 454-455 [86 Cal.Rptr. 56]  

failure to offer any evidence in rebuttal of defendant's denial of use of a false name

*People v. Chojnacky (1973) 8 Cal.3d 759, 766 [106 Cal.Rptr. 106, 505 P.2d 530]  

forcing defendant to characterize U.S. Marshall as liar

United States v. Sanchez (9th Cir. 1999) 176 F.3d 1214  

impeachment of defendant on a collateral matter

People v. Blair (1979) 25 Cal.3d 640, 664 [159 Cal.Rptr. 818, 602 P.2d 738]  

impeachment of defendant's testimony at trial on basis of statements made by him at time of arrest and after proper Miranda warnings


improper examination in order to place inadmissible prejudicial evidence before the jury

People v. Johnson (1978) 77 Cal.App.3d 866, 873 [143 Cal.Rptr. 852]  

insinuations, made during objection to questioning of defendant by his counsel, that prosecutor had in his possession undisclosed but highly relevant and damaging evidence regarding defendant's prior sexual conduct


laughing and juvenile behavior by prosecutor demeans office but was not prejudicial

People v. Friend (2009) 47 Cal.4th 1 [97 Cal.Rptr. 3d 1]  

presentation of rebuttal testimony regarding defendant's possession of a gun which was the basis of the charged offense


propriety of inquiries respecting prior convictions of defendant


propriety of questions to defendant regarding witness' truthfulness need not be decided where defendant did not show ineffective assistance of counsel


question asked of defendant in attempt to produce evidence that would clarify inconsistency in identification testimony where prosecutor had no evidence to support the innuendo contained in the question

People v. Lyons (1971) 18 Cal.App.3d 760, 779-80 [96 Cal.Rptr. 76]  

question by prosecutor, on cross-examination of defendant, as to whether defendant knew that another person who had been present during the execution of the search warrant was a heroin user

People v. Lovett (1978) 82 Cal.App.3d 527, 534 [147 Cal.Rptr. 136]  

questioning co-defendant concerning the involvement of a third person in the actual perpetration of the charged offense where such involvement was revealed for the first time at trial

People v. Love (1977) 75 Cal.App.3d 928, 933 [142 Cal.Rptr. 532]  

questioning defendant about post-arrest statements made which were inconsistent with his testimony on direct examination


questioning defendant about prior conviction for armed robbery


questioning defendant as to whether he had explained his alibi to arresting officers


questioning defendant concerning his post-arrest silence


questioning defendant concerning inconsistencies between the effect of his in-court testimony and his confession, where the matter was not raised on direct

People v. Blair (1975) 51 Cal.App.3d 480, 486 [124 Cal.Rptr. 123]  

questioning defendant on his activities after the date of the crime and while defendant was in another jurisdiction, where said subject had not been raised on direct

questioning defendant on his alleged use of marijuana at the scene of the crime absent any corroborative or independent evidence of such conduct

People v. Rocha (1971) 3 Cal.3d 893, 901-02 [92 Cal.Rptr. 172, 479 P.2d 372]

questioning defendant on the specifics of his asserted alibi defense


questioning defendant regarding post-Miranda silence was harmless error

United States v. Lopez (9th Cir. 2007) 500 F.3d 840

questioning defendant to ascertain his motive in taking murder weapon to a third person after commission of crime


questioning witness regarding a drug overdose for which she received emergency treatment

People v. Strahlen (1977) 71 Cal.App.3d 526, 536 [139 Cal.Rptr. 414]

questions concerning defendant's knowledge of how to use a knife, asked of defendant in prosecution for possession of dirk/dagger by a prisoner


questions eliciting fact that defendant was found with a newspaper of sexual orientation where defendant was charged with various sex offenses


questions relating to defendant's post-arrest silence

People v. Farris (1977) 66 Cal.App.3d 376, 387-88 [136 Cal.Rptr. 45]

questions which improperly suggest to jurors that prosecutor had a source of information unknown to them which corroborated the implication in questions that accused had engaged in extensive prior drug transactions

People v. Wagner (1975) 13 Cal.3d 612, 619 [119 Cal.Rptr. 457, 532 P.2d 105]

reference to fact that defendant's wife did not testify on his behalf in the first trial (on some charges) as a basis for impeachment


repeated questioning of defendant's psychiatric expert as to whether defendant had the requisite intent did not amount to prosecutorial misconduct

People v. Smitley (1999) 20 Cal.4th 936 [86 Cal.Rptr.2d 243]

used by prosecutor of defendant's voluntary pretrial exculpatory statement in which he failed to claim that he had been coerced by another into aiding in the killings (charged offense) to impeach his inconsistent defense of coercion at trial


See also:


Coercive effect of misconduct on defense decision to plea bargain or go to trial

U.S. v. Basalo (9th Cir. 2001) 258 F.3d 945

Deception of grand jury

United States v. Cordo (9th Cir. 1981) 741 F.2d 238

Delay, defendant not prejudiced

People v. Lomax (2010) 49 Cal.4th 530 [112 Cal.Rptr.3d 96]

Deliberately causing a witness to invoke his Fifth Amendment privilege to the detriment of the defendant

United States v. Lord (9th Cir. 1983) 711 F.2d 887, 891

Due diligence required


Duty to avoid prejudicial, non-relevant material by government witnesses

United States v. Long (9th Cir. 1983) 715 F.2d 1364

Effect subsequent trial for greater charge


Evidence

admission of defendant's statement, "I think I want a lawyer," made in response to question as to his whereabouts on the night of the crime; comment on defendant's silence

People v. Meneley (1972) 29 Cal.App.3d 41, 58 [105 Cal.Rptr. 432]

admission of evidence of another burglary in which defendant was involved

Boyd v. Brown (9th Cir. 2005) 404 F.3d 1159

People v. Carter (1972) 26 Cal.App.3d 862, 874-876 [103 Cal.Rptr. 327]

allegations of material evidence


alleged knowing use of perjured testimony

Jackson v. Brown (9th Cir. 2008) 513 F.3d 1057

People v. Carter (1972) 26 Cal.App.3d 862, 874-876 [103 Cal.Rptr. 327]

alleged suppression of evidence by prosecution’s failure to call unindicted co-conspirator as witness; alleged suppression of prosecution witness’s phone records


altering evidence in criminal trial


attempt to introduce arrest record of a defense witness, waving around what was apparently the witness’s rap sheet during argument at the bench


attempts to display to jury photographs of wounds sustained by victims where said photos had been ruled objectionable on basis of their prejudicial effect


Brady test not met where suppression of evidence is not materials

Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897

conversation, in bathroom between defendant and prosecutor where prosecutor allegedly offered fair treatment in exchange for cooperation found irrelevant at state court does not warrant evidentiary hearing

Beardslee v. Woodford (9th Cir. 2004) 358 F.3d 560

disclosure of rebuttal witnesses to defense’s potential witnesses is required by due process and assures reciprocity

People v. Gonzalez (2006) 38 Cal.4th 932 [44 Cal.Rptr.3d 237]

display of dangerous weapons to jury


displaying handguns and other items not admitted into evidence to the jury

People v. Chi Ko Wong (1976) 18 Cal.3d 698, 723 [135 Cal.Rptr. 392, 557 P.2d 976]

elicitation of inadmissible evidence

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


eliciting inadmissible testimony concerning defendant’s parole status and residence in a halfway house


fabricating

Miletin v. Cooley (9th Cir. 2001) 257 F.3d 1004

PROSECUTORIAL MISCONDUCT
fabricating evidence, filing false crime report, making comments to the media, and investigating crime against attorney may not be protected by absolute immunity

Mistein v. Cooley (9th Cir. 2001) 257 F.3d 1004

failure to accept proffered stipulation by defendant as to an element of the charged offense where proof introduced at trial would be rightly prejudicial

People v. Sherren (1979) 89 Cal.App.3d 752, 755-759
[152 Cal.Rptr. 828]

failure to clarify testimony susceptible of an interpretation known to be false by prosecutor

[129 Cal.Rptr. 554]

failure to comply with trial court’s order to delete references to defendant’s conduct on parole from an exhibit given to the jury, even where such failure is inadvertent

*People v. Piper (1980) 103 Cal.App.3d 102, 112-113
[162 Cal.Rptr. 833]

failure to correct perjured testimony

Heijman v. Ayers (9th Cir. 2010) 621 F.3d 1030

Jackson v. Brown (9th Cir. 2008) 513 F.3d 1057

failure to disclose deal between prosecutor and star witness, immunity for testimony, Brady violation

Horton v. Mayle (9th Cir. 2005) 408 F.3d 570

failure to disclose evidence

Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897

In re Baciaigalupo (2012) 55 Cal.4th 312 [145 Cal.Rptr.3d 832]

In re Miranda (2008) 43 Cal.4th 541 [76 Cal.Rptr.3d 172]

People v. Uribe (2008) 162 Cal.App.4th 1457 [76 Cal.Rptr.3d 829]


-sanctions for failure to provide discovery to the public defender


failure to disclose evidence to defense which is not favorable to the defendant, nor material to the probable cause determination does not violate due diligence

Bridgeforth v. Superior Court (2013) 214 Cal.App.4th 1074 [154 Cal.Rptr.3d 528]

failure to disclose information that was material as to either guilt or punishment, Prosecution’s withholding of favorable and material evidence violates due process “irrespective of the good faith or bad faith of the prosecution.”

In re Baciaigalupo (2012) 55 Cal.4th 312 [145 Cal.Rptr.3d 832]

failure to disclose whereabouts of informant upon whose testimony charges are founded; failure to produce informant at pretrial


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

Jackson v. Brown (9th Cir. 2008) 513 F.3d 1057

Hovey v. Ayers (9th Cir. 2006) 458 F.3d 892

Singh v. K.W. Prunty (C.D. Cal. 1998) 142 F.3d 1157

failure to present exculpatory evidence along with an admission by defendant contained in a taped telephone conversation, which had no bearing on the charges contained in defendant’s indictment

[136 Cal.Rptr. 429]

failure to preserve


failure to provide exculpatory evidence

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

failure to show that prosecution presented false evidence

Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897

improper vouching by federal prosecutor

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

Hayes 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


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 Rptr. 357, 461 P.2d 637]

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 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. Laverne (1971) 4 Cal.3d 735, 742-744 [94 Cal.Rptr. 405, 484 P.2d 77]

use of perjured testimony


failure to show that prosecution presented false evidence


failure to provide exculpatory evidence

In re Bacigalupo (2012) 55 Cal.4th 312 [145 Cal.Rptr.3d 832]

failure to present exculpatory evidence along with an admission by defendant contained in a taped telephone conversation, which had no bearing on the charges contained in defendant’s indictment

[136 Cal.Rptr. 429]

See How to Use This Index, supra, p. i
asking a 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. Chojnacky* (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. Mazoros* (1977) 76 Cal.App.3d 32, 48 [142 Cal.Rptr. 596]

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. Kerr (1992) 981 F.2d 1050

improper use of leading questions


inadvertently eliciting 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. Mazoros* (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


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


reference to defendant’s failure to surrender weapon (used in charged offense) to the police


reference to defendant’s pre-arrest silence


remarks properly dismissed as abuse of writ of habeas corpus

*Campbell v. Bledgett* [9th Cir. 1992] 982 F.2d 1321

repeated questioning of defendant’s psychiatric expert as to whether defendant had the requisite intent did not amount to prosecutorial misconduct

*People v. Smilhey* (1999) 20 Cal.4th 936 [86 Cal.Rptr.2d 243]

seeking legal conclusion from witness and accusing defense counsel of having told a “blatant lie”


statements by prosecutor in a murder trial which in effect accused defense counsel of causing a witness to prejudice himself

PROSECUTORIAL MISCONDUCT

Harmless misconduct
- People v. Fitzgerald (1972) 29 Cal.App.3d 296, 312 [105 Cal.Rptr. 458]
- People v. Burciaga (1978) 81 Cal.App.3d 151, 163-165 [146 Cal.Rptr. 236]

Failure to disclose evidence
- People v. Uribe (2008) 162 Cal.App.4th 1457 [76 Cal.Rptr.3d 829]

Sanctions for failure to provide discovery to the public defender

Failure to disclose exculpatory evidence
- Allen v. Woodford (9th Cir. 2005) 395 F.3d 979
- In re Miranda (2008) 43 Cal.4th 541 [76 Cal.Rptr.3d 172]

Failure to honor plea bargain
- U.S. v. Manzo (9th Cir. 2012) 675 F.3d 1204

Failure to know whereabouts of informant
- Twiggs v. Superior Court (1983) 34 Cal.3d 360

Failure to train
- pattern of conduct needed to prove prosecutor’s liability for failing to train employees in Brady obligations

Failure to use diligence in obtaining evidence

Frivolous or bad faith litigation
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. 2003) 315 F.3d 1176
- Goading a defendant to attempt an unsuccessful mistrial motion
- Greys v. Kellam (9th Cir. 1991) 937 F.2d 1409

Habeas petition
- standard for habeas relief based on prosecutorial misconduct
- Jones v. Ryan (9th Cir. 2012) 691 F.3d 1093

Harmless error
- U.S. v. Preston (9th Cir. 2017) 873 F.3d 829

Harmless misconduct
- Jackson v. Brown (9th Cir. 2008) 513 F.3d 1057
- United States v. Lopez (9th Cir. 2007) 500 F.3d 840
- United States v. Larrazolo (9th Cir. 1989) 869 F.2d 1354
- United States v. Condo (9th Cir. 1984) 741 F.2d 238
- People v. Verdugo (2010) 50 Cal.4th 265 [113 Cal.Rptr.3d 803]
- 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
- county district attorney may not be entitled to qualified immunity for infringement of subordinate attorney’s constitutionally protected speech in authoring a memorandum regarding police misconduct
- Geballos v. Garretti (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 lawyer’s claim that telephone wiretap was obtained by judicial deception in violation of Fourth Amendment
- Whitaker v. Garretti (9th Cir. 2007) 486 F.3d 572
- district attorney’s statements in a press release are privileged pursuant to prosecutorial immunity principles
- Ingram v. Flippo (1999) 74 Cal.App.4th 1280 [89 Cal.Rptr.2d 60]
- 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 “de facto 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. Ornoski (9th Cir. 2005) 431 F.3d 1158
- prosecutor’s fabrication of false confession in interrogation transcript prejudices defendant’s right to counsel
- 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]
- violation 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. Guitierrez (2017) 2 Cal.5th 1150 [218 Cal.Rptr.3d 289]
Ali 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. Guitierrez (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

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 girl 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

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]

reference to statement of separately tried co-defendant indicating a third party had committed the crime

reference to the fact 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

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
People v. Sandvall (1992) 4 Cal.4th 155 [14 Cal.Rptr.2d 342]

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
PROSECUTORIAL MISCONDUCT

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 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
Twinke v. Superior Court (1983) 34 Cal.3d 360, 368-369 [194 Cal.Rptr. 152, 687 P.2d 1165]

Prelim
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, 944
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
Pack 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 absence 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
Harauchi 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 forgiven, 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
People v. Lucious (1964) 153 Cal.App.3d 416, 421

Suppression of evidence
Hast. Const. L.Q. 715 (fall 1977)
advise[ing] 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 case
destruction of tapes containing recorded, incriminating statements to police by accused
failing 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 Bacigalupo (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) 603 F.3d 687
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 was 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 Bacigalupo (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]

PROSECUTORIAL MISCONDUCT

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 629]
pretrial suppression does not bar retrial
suppression of evidence of defendant’s mental state, by conditioning plea agreement with perpcitent 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 to co-defendant

Trial conduct
arguementative 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
-preumption 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
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
failure of district attorneys to inform appointed defense
counsel; encouraging defendant to reveal nothing of the prosecutor’s bargain to his counsel
People v. Moon (1976) 57 Cal.App.3d 437, 441 [129
Cal.Rptr. 279]
failure to indicate modification in standard jury instructions
Cal.Rptr. 208]

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
[133 Cal.Rptr. 731]

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
Cal.Rptr. 871]

material evidence bearing on credibility of key prosecution
witness
Cal.Rptr.3d 829]

offer of assistance to criminal defendant in exchange for
valuable consideration
Cal.Rptr. 914, 638 P.2d 1311]

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]

relevance, 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 intemperate and unprofessional conduct by
deput 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
Cal.Rptr.3d 335]

use of district attorney’s address as his own by prosecution
witness
Cal.Rptr. 839]

vouching for witness’ credibility
Davis v. Woodford (9th Cir. 2003) 333 F.3d 982
Cal.Rptr.3d 7]

Two-step analysis
Use of courtroom to eavesdrop on confidential attorney-client
communications requires severe sanctions
Cal.Rptr.3d 233]
Robert Lee Morrow v. Superior Court (1994) 30
Cal.App.4th 1252 [36 Cal.Rptr.2d 210]

Vindictiveness
United States v. Jenkins (9th Cir. 2007) 504 F.3d 694
Cal.Rptr. 563]

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 pers-
sons 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
Boyle v. Brown (9th Cir. 2005) 404 F.3d 1159
Cal.Rptr.2d 69]

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
People v. Rodgers (1979) 90 Cal.App.3d 368, 371-72
[153 Cal.Rptr. 382]

prosecutor’s peremptory challenge of sole black juror not a
showing of group bias
Cal.Rptr.2d 69]

reference to impeaching effect which defendant’s five prior
felony convictions would have
Cal.Rptr. 498]

selection of a “death penalty oriented” jury
People v. Wong (1973) 35 Cal.App.3d 812, 832-33 [111
Cal.Rptr. 314]

unsupported implication by prosecutor that defense counsel
has fabricated a defense
People v. Bain (1971) 5 Cal.3d 839, 847-52 [97
Cal.Rptr. 684, 489 P.2d 564]

using peremptory challenges for racially discriminatory
purposes
Ali v. Hickman (9th Cir. 2009) 571 F.3d 902
People v. Gutierrez (2017) 2 Cal.5th 1150 [218
Cal.Rptr.3d 298]
Cal.Rptr.2d 308]
Cal.Rptr.2d 200]
269]

- 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]

City attorney
acts as both advocate of city’s position and advisor to neutral decision maker

City council member
associate of
does not represent
City attorney

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

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

PUBLIC OFFICE
[See Administrative agency. Court. Judge. Political activity.]

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)

-attorney cannot be identified as an attorney
SF 1972-1

-lay publication
LA 181 (1951), LA(I) 1978-4
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
PURCHASING PROPERTY AT PROBATE, FORECLOSURE, OR JUDICIAL SALE

Biography
LA 268 (1960), SD 1973-4

Blogging by attorney
CAL 2016-196

Book
about case
Harauchi 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 book
LA 235 (1956)

Client’s counsel listed in
SF 1974-2

Column

law

-in newspaper
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, 535 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]

Permissibility 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

Estates of Witt (1926) 198 Cal. 407, 419-426 [245 P. 197]

“Probate sale” construed
Eschweig 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)

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 confidentiality


RECORDING

Rule 2-101(E), Rules of Professional Conduct (operative until 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. 2332(c)


Of conversation

California Penal Code section 632

Kimmell v. Goland (1990) 51 Cal.3d 202 [271 Cal.Rptr. 191]

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

Kimmell 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 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. Fee. 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)

Rule 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

-who specializes in field of law

CAL 1967-10

business to partner who is lawyer

CAL 1969-18

client’s employees

LA(I) 1973-10

customer 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)

lay entity

-by membership organization

LA 401 (1982)

-by religious organization

--employing attorney

---referred 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

physician

LA(I) 1949-1

real estate agent/broker

-in expectation of compensation

LA 18 (1922)

real estate business

LA 140 (1942)

-associated with lawyer

LA 140 (1942)

selling of legal services

LA 137 (1941)

suspended attorney

LA(I) 1937-1

traveler’s aid

-no charge

LA 73 (1934)

union representative who is spouse

LA(I) 1974-5

Civil case

duty to referring attorney

Mason v. Levy and Van Bourg (1978) 77 Cal.App.3d 60 [143 Cal.Rptr. 389]

Compensation in consideration for

by lawyers

Rule 2-108(B), Rules of Professional Conduct (operative until May 26, 1989)

Rule 2-200(B), Rules of Professional Conduct (operative as of May 27, 1989)

by non-lawyers

Rule 3-102(B), Rules of Professional Conduct (operative until May 26, 1989)

Rule 1-320(B), Rules of Professional Conduct (operative as of May 27, 1989)

by representative of the press

Rule 3-102(C), Rules of Professional Conduct (operative until May 26, 1989)

Rule 1-320(C), Rules of Professional Conduct (operative as of May 27, 1989)

Thank sources of

LA(I) 1968-2

To opposing counsel

LA(I) 1959-6

Traffic court appearances

SD 1974-2

REFERRAL SERVICES

Minimum standards [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 Jaurequi (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 56

See How To Use This Index, supra, p. i
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 unresolved tax delinquencies

In the Matter of Bode (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459

Not precluded by egregiousness of misconduct as law favors rehabilitation


In re Andreani (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 181

In re Gaffney (1946) 28 Cal.2d 761

Preston v. State Bar (1946) 28 Cal.2d 643

In re Andreani (1939) 14 Cal.2d 736

In the Matter of Bode (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 Bode (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459

Tax delinquencies not involving concealed assets

In the Matter of Bode (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 Bode (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

Resignation with disciplinary charges requires passage of professional responsibility examination and demonstration of rehabilitation, present moral qualifications, and present learning and ability in the general law as conditions of 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 Jaurequii (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 56

RESTRICTIVE COVENANT BETWEEN LAWYERS

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 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 not contrary per se 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. Helly & Blaiss (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. 592

RETAILER [See Client trust account, Non-refundable retainer. Contract for employment. Fee.]

Rule, 3-700(D)(2), California Rule of Professional Conduct


CAL 2009-176, CAL 2008-177

May 27, 1989)

Rule 2-109, Rules of Professional Conduct (operative until May 27, 1989)

Rule 1-500, Rules of Professional Conduct (operative as of May 27, 1989)


SF 2012-1

Business and Professions Code section 16602, applicability

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In the Matter of Respondent X (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592

RETAILER [See Client trust account, Non-refundable retainer. Contract for employment. Fee.]

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 (1997) 24 Cal.3d 153, 163


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

In the Matter of Fonte (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 752

SF 1983-1

RULE AGAINST PERPETUITIES

Lucas v. Hamm (1961) 56 Cal.2d 583, 592 [15 Cal.Rptr. 821]
RULES OF PRACTICE BEFORE THE STATE BAR COURT

Text is located in:
Deerings 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

Rule 290 [filing of post-trial motion]
In the Matter of Ozowksi (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) [trial transcript required for review]
In the Matter of Wu (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263

RULES OF PROCEDURE OF THE STATE BAR COURT

Text is located in:
Deerings 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

Rule 270(c) [Disclosure of private reproof]
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. 85

Rule 283(b) [costs recoverable by an exonerated attorney]
In the Matter of Wu (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263

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
may be required at the time of a ruling on a motion to end probation modification rulings
In the Matter of Sheppard (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 302

RULES OF PROFESSIONAL CONDUCT

[The full text of the rules are reprinted in part A above. The annotated Rules of Professional Conduct are found in:
Deerings Annotated California Codes, Rules of Court, State Bar Rules, and in West's Annotated California Codes, Court Rules, vol. 23, pt 3, p. 319]

Rule 662 In the Matter of MacKenzie (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56

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

Duty to abide with
Standing Com. on Disc. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1170
adopted as standard of professional conduct

In re Tewis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]
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
Dudugjian 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]
Benjamin v. State Bar (1976) 17 Cal.3d 1, 4 fn. 1 [276 Cal.Rptr. 176]
Dudugjian v. State Bar (1991) 52 Cal.3d 1092, 1094, fn. 1 [278 Cal.Rptr. 90]
King 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 [276 Cal.Rptr. 176]
CURRENT RULES OF PROFESSIONAL CONDUCT (operative May 27, 1989)

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354
In the Matter of Burkhardt (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

effect of expert testimony

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 (1996) 64 Cal.2d 787, 793 [51 Cal.Rptr. 825]


Rule

govern discipline of attorneys and do not create

Code of Civil Procedure section 1282.4

Cal. Rules of Prof. Conduct R 1-100

the legal profession

as the standard of professional conduct in the
district


*Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]
SD 2011-2, SD 1993-1, SD 1989-4

consideration of ethical rules of other jurisdictions

duty to abide with

-Central District of California has adopted the “State Bar Act, the Rules of Professional Conduct of the State of California” as the standard of professional conduct in the district


“lawyer” defined

purpose of the rules

-protection of the public and promotion of confidence in the legal profession


Rules of Professional Conduct serve as an expression of public policy to protect the public

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. 813
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. 458

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
CURRENT RULES OF PROFESSIONAL CONDUCT (operative May 27, 1989)

Rule 1-310 Forming a Partnership With a Non-Lawyer.
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

Rule 1-330 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 1-340 Communications About a Represented Client

Rule 1-400 Advertising and Solicitation.
In re Morse (1995) 11 Cal.4th 184 [44 Cal.Rptr.2d 620]
Rubin v. Green (1993) 4 Cal.4th 1187

Rule 1-500 Agreements Restricting a Member’s Practice.
In re J.T. Thorpe, Inc.; Thorpe Insulation Co.; Debtors

Rule 2-200 Financial Arrangements Among Lawyers

Rule 2-300 Use of Former Employer’s Client Lists for Solicitation Purposes
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]

Rule 2-500 Use of Former Employer’s Client Lists for Solicitation Purposes
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
CURRENT RULES OF PROFESSIONAL CONDUCT (operative May 27, 1989)


Rule 2-200 requirements
does 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
Chambers v. Kay (2002) 29 Cal.4th 142 [126 Cal.Rptr.3d 536]
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
Elijah 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

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. 2010) 5 Cal. State Bar Ct. Rptr. 171
In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93
In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41
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. 627
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
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 Dahlg (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269
In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220
In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 173
In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126
In the Matter of Laif (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831
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
In the Matter of Bragg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615
In the Matter of Sullivan, II (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 547
In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91
SD 2012-1, SD 2007-1, SD 1997-2
OC 2011-01, 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

See How to Use This Index, supra, p. i
attorney violates 3-110(A) when he failed to represent client with undivided loyalty, to exercise independent judgment on client’s behalf, and to act in client’s best interests

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

negligent legal representation by itself does not prove misconduct

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

Rule 3-120 Sexual Relations With Client

OC 2003-02

Rule 3-200 Prohibited Objectives of Employment.


In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112

CAL 1996-146


high ethical and professional standards of an attorney and an officer of the court require him to inform client that an attorney is precluded from pursuing an appeal that is frivolous or taken for the purpose of delay


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 Talant (9th Cir. 1998) 218 B.R. 58

Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 231]

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 525 [28 Cal.Rptr.2d 617]

In re Marriage of Murchison (2016) 245 Cal.App.4th 847 [199 Cal.Rptr.3d 600]

Fair v. Bakhtiari et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]


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

attorney purchases judgment from opposing party, then seeks enforcement of that judgment against former 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 767]

Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2005) 113 Cal.App.4th 796

*Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]

In re Marriage of Murchison (2016) 245 Cal.App.4th 847 [199 Cal.Rptr.3d 600]

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]
CURRENT RULES OF PROFESSIONAL CONDUCT (operative May 27, 1989)

Fremont Reorganization Corp. v. Faigin (2011) 198 Cal.App.4th 1153 [131 Cal.Rptr.3d 478]  See How to Use This Index, supra, p. i
In re Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117  CAL 1992-104,
In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774  CAL 1992-103,
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498  CAL 1992-102,
In the Matter of Wysak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70  CAL 1992-101,
In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 762  CAL 1992-100,
80 Ops. Cal. Atty. Gen. 36 (2/7/97; No. 96-301)  CAL 1992-99,
Kirk v. First American Title Ins. Co. (2010) 183 Cal.App.4th 776 [108 Cal.Rptr.3d 620] -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

Rules

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
First Interstate Bank of Arizona v. Murphy, Weir & Butler (9th Cir. 2000) 210 F.3d 983
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 844
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 896
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 936
In re Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

Rule 3-510 Communication of Settlement Offer.

Nehad v. Mukasey (9th Cir. 2008) 535 F.3d 962
In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788
LA 512 (2004)

Rule 3-600 Organization as Client

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126
In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831
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
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In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 698
In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
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 Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9
In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907
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In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
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In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788
In the Matter of Feldsott (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 754
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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
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In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708
OC 99-002
overdraft protection
CAL 2005-169
unilateral disbursement of funds without consent of corporate client
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
Rule 4-100 Preserving Identity of Funds and Property of a Client.
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
Rule 4-200 Fees for Legal Services
In re Silverton (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]
In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93
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SD 2013-3, OC 99-001, SF 1999-1
elder abuse cases
-Welfare and Institutions Code § 15657.1 incorporates rule 4-200 by reference
Conservatorship of Levitt (2001) 93 Cal.App.4th 544
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loan modification services
-collecting pre-performance fees in violation of the law
In the Matter of Swazi elKanzli Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221
Rule 4-210 Payment of Personal or Business Expenses Incurred by or for a Client.
Boccardo v. Commissioner of Internal Revenue (9th Cir. 1995) 56 F.3d 1016
CAL 1994-147
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Rule 4-300 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review.
CAL 2011-180
LA 462
Rule 5-100 Threatening Criminal, Administrative, or Disciplinary Charges.
Flatley v. Mauro (2006) 39 Cal.4th 299 [46 Cal.Rptr.3d 606]
In re Atkins (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 (Review 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)
CAL 1989-106, CAL 1991-24(I)
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 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 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]
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Rule 5-210 Member as Witness.
Rule 5-220 Suppression of Evidence.
R.S. Creative Inc. v. Creative Cotton Ltd., et al. (1999) 75 Cal.App.4th 486 [89 Cal.Rptr.2d 353]
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PRIOR RULES OF PROFESSIONAL CONDUCT (operative January 1, 1975 until May 26, 1989)
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Rule 7-107 Contact With Witnesses. [See Witness.]
CAL 1983-74, LA(I) 1975-3, SD 1984-4
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Rule 7-108 Contact With Officials. [See Contact with officials. Judges.]
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Rule 8-101 Preserving Identity of Funds and Property of a Client. [See Client trust account.]
In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708
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SF 1984-1

FORMER RULES OF PROFESSIONAL CONDUCT (effective 1928-1979)

Rule 2-101 General Prohibition Against Solicitation of Professional Employment. (Repealed by order of Supreme Court, effective April 1, 1979.)
LA 346 (1975), LA 342 (1973)

Rule 2-102 Publicity in General. (Repealed by order of Supreme Court, effective April 1, 1979.)
CAL 1975-32

Rule 2-103 Professional Notices, Letterheads, Offices, and Law Lists. (Repealed by order of Supreme Court, effective April 1, 1979.)

Rule 2-104 Recommendation for Professional Employment. (Repealed by order of Supreme Court, effective April 1, 1979.)
SF 1976-2, SF 1975-3

Rule 2-106 Specialization. (Repealed by order of Supreme Court, effective April 1, 1979.)

Rule 1 (Rules of Professional Conduct, In General)

Rule 2 (Advertising and Solicitation)

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Rule 7  (Representation of Conflicting Interests)
Rule 4  (Avoiding Adverse Interests)
Rule 5  (Accepting Employment Adverse to Client)
Rule 6  (Disclosure to a Client of Relation with Adverse Party
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Rule 8  (Purchase of Property at Probate, Foreclosure, or
Judicial Sale)
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See How to Use This Index, supra, p. i

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Business and Professions Code sections 6076, 6150-6154
Rule 2-101(C), Rules of Professional Conduct (operative until
May 26, 1989)
Rule 1-400, Rules of Professional Conduct (operative as of
May 27, 1989)
Runners and Cappers Act
In re Arnoff (1978) 22 Cal.3d 740 [150 Cal.Rptr. 479]
Goldman v. State Bar (1977) 20 Cal.3d 130, 134, 138 [141
Cal.Rptr. 447]
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CAL 1995-143

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Falsification of medical reports and bills
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SANCTIONS [See Acceptance of employment.]


Abuse of discovery


Abuse of discretion in imposing

Conservatorship of Becerra (2009) 175 Cal.App.4th 1474 [96 Cal.Rptr.3d 910]


People v. Superior Court (Meraz) (2008) 163 Cal.App.4th 28 [77 Cal.Rptr.3d 352]

28 U.S.C. § 1927 permits an award of sanctions against attorneys, not against law firms

Kaeser v. Wells Fargo Bank (9th Cir. 2015) 799 F.3d 1290

bankruptcy court abused its discretion by using its § 105(a)

Eskanos & Adler, P.C. v. Leetien (9th Cir. 2002) 309 F.3d 1210

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. 424

court cannot sanction pro hac vice attorney for misconduct in a manner that a California attorney could not be sanctioned


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


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)


Against attorney for conduct violative of American Bar Association standards but which is not addressed by California authorities are subject to reversal


Against attorney for failure to appear at oral argument without adequate justification

In re Aguilar and Kent (2004) 34 Cal.4th 386 [18 Cal.Rptr.3d 874]

Against attorney for failure to list asset on debtor’s bankruptcy schedule

In re Kayne (9th Cir. BAP 2011) 453 B.R. 372

Against attorney for motion to substitute in as a party against his former client in the same matter in which the attorney had represented the former client


Against attorney is reviewable only after final judgment is entered

Sanders Associates v. Summarographics Corp. (1993) 2 F.3d 394

order imposing sanctions on attorney pursuant to Federal Rule of Civil Procedure 37(a)(4) is not final decision


Against attorney for taking all actions necessary to protect his client’s rights


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

Mesirow 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


Agreement regarding allocation of future sanction payments may be ethical with adequate disclosure to the client

CAL. 1997-151

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

Falstaff Brewing Corp. v. Miller Brewing Co. (9th Cir. 1983) 702 F.2d 770

filing false documents under penalty of perjury


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

improper for violation of a Rule of Court


improper for violation of a Rule of Professional Conduct

Conservatorship of Becerra (2009) 175 Cal.App.4th 1474 [96 Cal.Rptr.3d 910]

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

-hereditary authority of appellate 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 powers

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 Bar 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) 453 B.R. 372
against law firm for violation of automatic stay imposed by bankruptcy court
In re H Granados Communications, Inc. (9th Cir. BAP 2013) 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

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. 424

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. Mansdorf (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. 424

instructions not to answer sanctionable
SANCTIONS

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 entities 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 2032(3)(b)(1)

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 Hessco 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

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]
for failure to comply with court order

Sanders v. Union Pacific Railroad Company (1998) 154 F.3d 1037
for flagrant and repeated violations of the court’s orders

Osborne v. Todd Farm Services (2016) 247 Cal.App.4th 43 [202 Cal.Rptr.3d 84]
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 file 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

Dissolution

In re He Marriage of Tharp (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 375]

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

Wolf 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 Nakhuda) (9th Cir. BAP 2016) 673 F.3d 1240

Federal Rule of Civil Procedure 11

cannot be awarded to a client against his own attorney

Mark Industries, Limited v. Sea Captain’s Choice (9th Cir. 1995) 50 F.3d 703

factually unfounded motions

Hammer v. Career College Association (9th Cir. 1992) 973 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

Truesell 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

Lyndon 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. Gedian (9th Cir. 1991) 923 F.2d 686

objective reasonableness standard

Unigard Security Insurance Co. v. Lakewood Engineering and Manufacturing Corp. (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

Lyndon 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

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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

SANCTIONS

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. Vernon (9th Cir. (Idaho) 2001) 255 F.3d 1118
[50 Fed. R. Serv.3d (Callaghan) 436]

Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996

failure to dismiss a defendant

MGIC Indemnity Corporation v. Moore (9th Cir. 1991) 952 F.2d 1120

intentional concealment of evidence


violation of protective order

when attorney disregarded clients’ instructions

Trulis v. Barton (9th Cir. 1993) 67 F.3d 779

willful actions/recklessness coupled with frivolousness, harassment, or 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


-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]

For contempt of court

against defendant contractor for failing to take reasonable steps to comply with settlement agreement

Kelly v. Wendler (9th Cir. 2016) 822 F.3d 1085

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

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]

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

it was improper for trial court to impose multiple punitive contempt judgments for attorney’s failure to pay discovery sanctions

In re Koehler (2010) 181 Cal.App.4th 1153 [104 Cal.Rptr.3d 877]

For default

Hamilton v. Neptune Orient Lines (9th Cir. 1987) 811 F.2d 498, 500

For delay

In re DeVille (9th Cir. 2004) 361 F.3d 539, 58

In re Silberkraus (9th Cir. 2003) 336 F.3d 864

Hamilton v. Neptune Orient Lines (9th Cir. 1987) 811 F.2d 498, 500
SANCTIONS

For discovery abuses

- Thompson v. Tega-Rand Intern. (9th Cir. 1984) 740 F.2d 762, 764
- In re DeVille (9th Cir. BAP 2002) 280 B.R. 483
- Musaeian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]

For failure to participate meaningfully in judicial arbitration


For failure to settle case

- Moncharsh v. Heily & Blase (1992) 3 Cal.4th 1

For failure to comply with court order


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
For frivolous motion

- order to pay former husband's fees by 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 warrant 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 not to discourage use of the writ
  
  In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]

- notification 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 the plaintiff showed a probability of prevailing on the merits and motion was found to be frivolous and without merit


For frivolous petition

- in re the 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

- Impounded 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


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

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

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

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

Business and Professions Code section 6068(o)(3) duty to report monetary sanctions over $1,000 except for bankruptcy

Law firm has standing to appeal monetary sanction on firm
Sarraf v. Standard Insurance Co. (9th Cir. 1996) 102 F.3d 991

Monetary

Code of Civil Procedure section 128.7

In re Blue Pine Group, Inc. (9th Cir. BAP 2011) 457 B.R. 64

Counsel for violation of in limine order was neither within court’s inherent powers nor was authorized by statute

juvenile proceeding

trials 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

See How to Use This Index, supra, p. i
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
Canatalla 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
Wyle 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
Kaess Law v. Wells Fargo Bank (9th Cir. 2015) 799 F.3d 1290

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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

filing a frivolous lawsuit
filing false documents under penalty of perjury
order must specify attorney misconduct
require written notice of hearing
“reasonable expenses” cannot be read to amount to consequential damages

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
Musaelian 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
calculated decision to violate a court order
imposition of monetary sanctions for failing to obey court order is within discretion of the trial court
SEARCH WARRANT FOR LAW OFFICE

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


sanctions resolved in court’s favor when attorney fails to provide adequate record transcript to support position


when attorney leaves courtroom after being told not to leave


Under Code of Civil Procedure sections 2030(1) and 2032(b)(1) discovery sanctions not available to attorney who litiates in propria persona


Under Code of Civil Procedure section 2033

Estate of Manuel (2010) 187 Cal.App.4th 400 [113 Cal.Rptr.3d 448]


[108 Cal.Rptr.2d 821]

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

Kinney v. Clark (2017) 12 Cal.App.5th 724 [219 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


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


SEMINARS

LA 286 (1965), LA 221 (1954)

SD 1974-16, SD 1974-21

SETTLEMENT

Acceptance of settlement offers

subsequent rejection


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

CAL 2012-185

Authority of attorney

Mallott & Peterson v. Director, Office of Workers’ Compensation Program (9th Cir. 1996) 98 F.3d 1170


[56 Cal.Rptr.2d 569]


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 1289 [135 Cal.Rptr.3d 591]

By attorney representing insured defendant for amount above policy limit

LA 239 (1957)

Check issued only to client, but delivered to attorney who has a lien

OC 99-002

Class action

abuse of discretion


class member has standing to appeal final award of costs and fees which were payable by defendants independently rather than from class settlement

Lobatz v. U.S. West Cellular (9th Cir. 2000) 222 F.3d 1142
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

Sinyard v. Commissioner of Internal Revenue (9th Cir. 2001) 268 F.3d 756

settlement shall not include attorney fees as portion of common fund established for benefit of class

Staton v. Boeing Co. (9th Cir. (Was.) 2003) 327 F.3d 938

withdrawal by counsel who previously represented members opposed to the settlement, then later represented those in favor, was not improper


Client cannot be located

LA 441 (1987)

Client may negotiate settlement with opposing party without authorization from the attorneys involved in the case

In re Marriage of Hasso (1991) 229 Cal.App.3d 1174

Client objects

LA 49 (1927)

Communication of written offer

Rule 5-105, Rules of Professional Conduct (operative until May 26, 1989)

Rule 3-510, Rules of Professional Conduct (operative as of May 27, 1989)

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708

Communication with opposing party about

SD 1978-8

by client

LA 375 (1978)

SF 1973-25

counsel of opposing party refuses to acknowledge offer

LA 350 (1975)

not represented by counsel

LA 340 (1974)

represented by agent counsel

SD 1968-2
represented by counsel
LA 350 (1975)

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]

In Re Marriage of Egedi (2001) 88 Cal.App.4th 17 [105 Cal.Rptr.2d 17]

Confidential settlement agreement

Enforceable where attorney stipulated to waiver of mediation
Partnerships (1999) 71 Cal.App.4th 1240 [84 Cal.Rptr. 2d 323 [58 Cal.Rptr.2d 791]

renders CCP § 998 offer invalid

Condition settlement on plaintiff’s attorney waiving fees

In the Matter of Davis (Review Dept 1992) 2 Cal. State Bar Ct. Rptr. 576

Deposition of opposing counsel to inquiry of bad or unreasonable conduct of defendant in settlement process

Deposit of opposing counsel to inquiry of bad or unreasonable conduct of defendant in settlement process
Spectra-Physics, Inc. v. Superior Court (1988) 198 Cal.App.3d 1487 [244 Cal.Rptr. 258]

Disclosure of death of client

LA 300 (1967)

Duty to inform opposing party of mistake
LA 380 (1979)

Endorsement of client check
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
Zalta v. Bilips (1979) 81 Cal.App.3d 183 [144 Cal.Rptr. 888]

Insurance defense matter

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

Joint clients
SD 2013-1

Judgment call
settlements are often protected judgment calls of attorney

Lay person who is adjuster, with
SD 1978-6

Lay person who is employee
LA 277 (1963), LA(I) 1972-19

Malpractice claim
breach of contract action available if settlement agreement cannot be enforced under CCP § 664.6

Marital settlement agreements
attorney approval not required for parties in dissolution matter to enter into a written marital settlement agreement

Minor’s compromise
trial court has jurisdiction to divide attorney fees between prior and current attorneys as part of minor’s settlement approval

Negotiation for an in propria persona litigant
LA 502 (1999)

Negotiations not to prosecute
CAL 1986-89

No client consent obtained
Sampson v. State Bar (1974) 12 Cal.3d 70 [115 Cal.Rptr. 43]

Offer

No client consent obtained
Bodisco v. State Bar (1962) 58 Cal.2d 495, 497 [24 Cal.Rptr. 835]

CAL 1994-136

fee-waiver offer to plaintiff is not ethically prohibited
CAL 2009-176

informing client of written offer to settle
Rule 3-510, Rules of Professional Conduct

plaintiff entitled to award of attorney fees as prevailing party

Post-settlement approvals
Sampson v. State Bar (1974) 12 Cal.3d 70 [115 Cal.Rptr. 43]

settlement offer silent as to right to recover attorney fees and costs does not constitute a waiver of that right
CAL 2009-176

settlement offer silent as to right to recover attorney’s fees and costs does not constitute a waiver of that right

settlement offer under Code of Civil Procedure section 998, that is silent as to right to recover attorney’s 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]

which include fee-waiver provisions under fee shifting statutes
CAL 2009-176

Oral acceptance of settlement offers

Represent in settlement when fee owed by client comes out of settlement
LA 350 (1975), SD 1975-4
SEXUAL RELATIONS WITH CLIENT

Requires client's consent


Sampson v. State Bar (1974) 12 Cal.3d 70, 82

Bodisco v. State Bar (1962) 58 Cal.2d 495, 497

LA 505 (2000)

 Restricts right of attorney to practice law

Rule 1-500, Rules of Professional Conduct

stipulation barring attorney from submitting claims to asbestos trust may be proper when attorney admits to conduct that casts doubt on his fitness to practice

In re J.T. Thope, Inc.; Thope Insurance Co., Debtors

Michael J. Mandelbrot: The Mandelbrot Law Firm: The Mandelbrot Settlement Trust; Thope Insurance Company Asbestos Settlement Trust; Charles B. Renfrew, Administrative Law Judge, Futures Representative, Appellees (9th Cir. 2017) 870 F.3rd 1121

Revocation of settlement offer


Scribener services by a single attorney for both husband and wife in dissolution of marriage requires informed written consent for potential conflict


Stop payment of check for

LA(I) 1966-5

Structured settlement, use of


70 A.B.A.J. 67 (May 1994)

CAL 1994-135, CAL 1987-94

Unauthorized settlement

client coerced into accepting settlement under threat of attorney's withdrawal

Nehad v. Mukasey (9th Cir. 2008) 535 F.3d 962

client may not accept benefits of a settlement negotiated by that client's attorney and, at the same time, disavow the settlement to the extent that it is against the client's perceived interest


no client consent or knowledge

Bambic v. State Bar (1985) 40 Cal.3d 314 [219 Cal.Rptr. 489]

Sampson v. State Bar (1974) 12 Cal.3d 70, 82 [115 Cal.Rptr. 43]

Bodisco v. State Bar (1962) 58 Cal.2d 495, 497 [24 Cal.Rptr. 835]

Alvarado Community Hospital v. Superior Court (1985)

173 Cal.App.3d 476, 480-481 [219 Cal.Rptr. 52]

CAL 1994-135

LA 441 (1987)

ratification, client enforcement of beneficial part of

City of Fresno v. Baboian (1975) 52 Cal.App.3d 753 [125 Cal.Rptr. 332]

Under Code of Civil Procedure 998

court has discretion in evaluating the reasonableness of the settlement offer or its refusal

Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150 [80 Cal.Rptr.3d 812]

expert witness fees awarded to public entity where plaintiffs failed to raise at trial the issue of the award's financial impact on them or to create a factual record to resolve the issue in their favor

Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150 [80 Cal.Rptr.3d 812]

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


withdrawal of oral acceptance


Workers' Compensation cases

claimant's attorney is not entitled to fees from settlement proceeds unless Labor Code §§ 3856 and 3860 if claimant received no benefit from the settlement

Drapier v. Aceto (2001) 26 Cal.4th 1086 [113 Cal.Rptr.2d 61]

Written offer of, communication to client

Rule 5-105, Rules of Professional Conduct (operative until May 26, 1989)

Rule 3-10, Rules of Professional Conduct (operative as of May 27, 1989)

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788

SEXUAL RELATIONS WITH CLIENT

Rule 3-120, Rules of Professional Conduct.

Business & Professions Code Section 6106.9


CAL 1987-92, OC 2003-02

SMALL CLAIMS COURT

Attorney's appearance in


LA 105 (1936)


Business and Professions Code sections 6150-6154, 6157

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Rule 1-400, Rules of Professional Conduct (operative as of May 27, 1989)

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LA(II) 1974-6, LA(I) 1972-16, LA(I) 1959-2, CAL 1988-9

LA 105 (1936)

Acceptance of employment resulting from unsolicited advice


Ambulance chasing

Tonini v. State Bar (1956) 46 Cal.2d 491, 497

Hildebrand v. State Bar (1941) 18 Cal.2d 816 [117 P.2d 860]

Waterman v. State Bar (1939) 14 Cal.2d 224 [93 P.2d 95]

McCue v. State Bar (1935) 4 Cal.2d 79 [47 P.2d 268]

Clark v. State Bar (1931) 214 Cal. 281, 284 [4 P.2d 944]

Dudney v. State Bar (1931) 214 Cal. 281, 284 [4 P.2d 770]


Irving v. State Bar (1931) 213 Cal. 61 [1 P.2d 2]

Howe v. State Bar (1931) 212 Cal. 222 [288 P. 25]

Smallberg v. State Bar (1931) 212 Cal. 113 [297 P. 916]

Shaw v. State Bar (1931) 212 Cal. 113 [297 P. 916]

Smith v. State Bar (1931) 212 Cal. 113 [297 P. 916]

Townsend v. State Bar (1931) 210 Cal. 362 [291 P. 837]

SD 2000-1

investigation service in personal injury matters

CAL 1995-144, LA 474 (1993)

Announcement to clients

of association of firm specializing in tax matters

LA 119 (1938)

Assigned counsel, by

Business and Professions Code section 6152(d)

SD 1986-4
Attorney remunerates another for soliciting or obtaining professional employment
Hildebrand v. State Bar (1950) 36 Cal.2d 504, 510 [225 P.2d 508]
Hildebrand v. State Bar (1941) 18 Cal.2d 816, 824 [117 P.2d 860]
Roth v. State Bar (1937) 8 Cal.2d 656, 659 [67 P.2d 337]

Bid for legal work
LA 342 (1973)

Blogging by attorney
CAL 2016-196

Broadcasting (See Advertising, Broadcasting and Solicitation, Radio or television.)

Brochure randomly distributed
LA 419 (1983)

Business activity as means for
LA 262 (1959), LA(I) 1965-3

By adjustment of fees
lower fees
-in return for guaranteed additional work
LA 322 (1971)

By attorney
of attorney
CAL 1981-61
of clients
- engaged in dual occupation
--- real estate business
CAL 1981-61
LA 446 (1987), LA 413 (1983), LA 140 (1942)
of those with interests similar to those of existing client
SD 1976-3

By attorney at hospital
Business and Professions Code sections 6150-6154
Chralk v. Ohio State Bar Association (1977) 436 U.S. 447, 450
Hildebrand v. State Bar (1941) 18 Cal.2d 816, 822 [117 P.2d 860]
Fish v. State Bar (1931) 214 Cal. 215, 221 [4 P.2d 937]

By attorney’s investigator
Rose v. State Bar (1989) 49 Cal.3d 646, 659
LA 474 (1993)
By business card delivered to accident victim at scene of accident
SD 2000-1

By heir hunter

Estate of Wright (2001) 90 Cal.App.4th 228 [108 Cal.Rptr.2d 572]
By insurance company attorney
representation of assured
LA 336 (1973)
By lay employee
LA 381 (1979)

By lay entity
Estate of Wright (2001) 90 Cal.App.4th 228 [108 Cal.Rptr.2d 572]
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LA 474 (1993)
attorney employed by
-to advise, counsel and represent employees of
LA 137 (1941)
client for own counsel
LA(I) 1975-1, SD 1974-20
contract to acquire tax title to property
-involving referral to lawyer for compensation
LA 135 (1941)
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LA 257 (1959)
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LA 446 (1987)
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LA 140 (1942)

-associated with attorney
LA 140 (1942)

-recommends particular lawyer
LA 314 (1970), LA 158 (1945), LA 155 (1945), LA 148 (1944), LA(I) 1934-1
SD 1983-4, SD 1973-8

-referral, systematic
LA 349 (1975), LA 262 (1959), LA 151 (1944), LA(I) 1948-3
SD 1983-4, SD 1974-21 1/2, SD 1973-8

By legal research service
operated by attorneys
- constitutes practice of law
LA 301 (1967)

By letter
In re Primus (1978) 436 U.S. 412, 416 [98 S.Ct. 1893, 56 L. Ed. 2d 417]
In re Morse (1995) 11 Cal.4th 184 [44 Cal.Rptr.2d 620]
Utz v. State Bar (1942) 21 Cal.2d 100, 105 [130 P.2d 377]

LA 342 (1975), LA 262 (1959), LA 151 (1944), LA(I) 1948-3
SD 1983-4, SD 1974-21 1/2, SD 1973-8

By member of trade association
-to announce resignation of public office and opening of private practice
LA 127 (1940)
-to announce specialized legal services
LA 127 (1940)

to other lawyers
-describing qualifications
LA 29 (1925)
-offering to represent in other jurisdictions
LA 71 (1933)
-requesting referral
CAL 1981-61, SF 1970-2

to prospective clients
CAL 1980-54, SD 1983-5

-advising of meritorious claims
LA 404 (1983), LA 62 (1930)
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- using contact information obtained from DMV records violated the Drivers Privacy Protection Act (DPPA)
- using contact information obtained from DMV records violated the Drivers Privacy Protection Act (DPPA)

By mail [See supra, by letter.]

- designation of specialized legal services
  LA 127 (1940)
  -to other lawyers
  LA 419 (1983), LA 127 (1940)

target mail


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

-statute that places conditions on use of public access of names and addresses of individuals arrested by police is not facially invalid


In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178

LA 474 (1993)

Card, professional

by mail

- to other lawyers
  "nominal fee" printed on
  LA 127 (1940)

LA 419 (1983)

Chat room

CAL 2004-166

Civil rights

In re Primus (1977) 436 U.S. 412, 422 [98 S.Ct. 1893, 56 L.Ed. 2d 417]

Class action

potential members of class

-prior to certification


In re McKesson HBOC, Inc. Securities Litigation (N.D. Cal. 2001) 126 F.Supp.2d 1239


Atari, Inc. v. Superior Court (1985) 166 Cal.App.3d 867 [212 Cal.Rptr. 773]

Collections

LA 96 (1936)

Communicate information about claims or actions in favor of parties

LA 158 (1945), LA(I) 1968-5

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LA 163 (1947)
Communication distinguished
SD 2000-1
Constitutional limitations
Faxing of unsolicited advertisements prohibited
Dual practices/occupation
Do-it-yourself clinics
Endorsement of commercial product
Employment solicited, of legal and other business
Endorsement of commercial product
Faxing of unsolicited advertisements prohibited
Fanning Ventures Limited v. Federal Communications Commission (9th Cir. 1995) 46 F.3d 54
Former attorney-employees
Chronic businesses prohibited
Chat room
Former attorney-employees
猬伤 of Uniform Trade Secrets Act (Civil Code § 3426 et seq.) if found to have misappropriated employer’s protected trade secret client list to solicit or to attain an unfair competitive advantage
Ex Parte Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
Group legal services as a means for
Homestead declarations
In re Morse (1995) 11 Cal.4th 184 [44 Cal.Rptr.2d 620]
In newspaper
Jacoby v. State Bar (1977) 19 Cal.3d 359 [138 Cal.Rptr. 77]
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- acceptance of employment to prosecute claims against corporation
LA 93 (1936)
- employed by attorney
LA 96 (1936)
In publications
notice of specialized service published in
LA 124 (1939)
In social setting
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Indirect
in newspaper
- series of articles on tax problems
LA 87 (1935)
Interference with prospective business advantage [See Practice of law, interference with prospective business advantage.]
Investigation of (out-of-state) accident before being retained as attorney
Honoroff v. State Bar (1958) 50 Cal.2d 202, 204 [323 P.2d 1003]
Internet advertising
a website is neither delivered in person nor by telephone and is not prohibited solicitation
CAL 2001-155
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CAL 2004-166
court order requiring attorney to remove her web pages was more restrictive than necessary, infringing on attorney’s free speech rights
In-person by attorney
Kelson v. State Bar (1976) 17 Cal.3d 1 at 4, 6 [130 Cal.Rptr. 29]
Tonn v. State Bar (1956) 46 Cal.2d 491, 493[297 P.2d 1]
Friday v. State Bar (1943) 23 Cal.2d 501 [144 P.2d 564]
Hildebrand v. State Bar (1941) 18 Cal.2d 816, 829 [117 P.2d 860]
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business card delivered to accident victim at scene of accident
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CAL 1981-61
through living trust marketer as an agent
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Law lists

cards, professional may be inserted in
-if approved by court
LA 90 (1935)

Litigation privilege

dismissal of defamation action against law firm justified
not a bar to cause of action for unlawful business practice resulting from law firm’s direct solicitation of clients

Lower fees

in return for referrals
Hildebrand v. State Bar (1950) 36 Cal.2d 504, 509 [225 P.2d 508]
SD 1974-21 1/2, SD 1974-20
in return for solicitation of business
Hildebrand v. State Bar (1950) 36 Cal.2d 504, 509 [225 P.2d 508]
to union members
Hildebrand v. State Bar (1950) 36 Cal.2d 504, 509 [225 P.2d 508]

Mailing letter to particular potential clients
In re Morse (1995) 11 Cal.4th 184 [44 Cal.Rptr.2d 620]

Mailing postcards to potential clients
Mayer v. State Bar (1934) 2 Cal.2d 71, 73 [39 P.2d 206]

Management consultant firm
LA 446 (1987)
Medical liaison
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Non-legal lecture engagements

advertising of
SD 1969-6
for client or other lay entity
LA 286 (1965), LA 96 (1936)

Non-profit organization

In re Primus (1977) 436 U.S. 412, 420 [98 S.Ct. 1893, 56 L.Ed. 2d 417]

Of claims against corporation by non-lawyer

-who will receive part of recovery
--acceptance of employment by lawyer
LA 93 (1936)

Potential members of class action
In re McKesson HBOC, Inc. Securities Litigation (N.D. Cal. 2001) 126 F Supp.2d 1239

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using contact information obtained from DMV records violated the Drivers Privacy Protection Act (DPPA)

Presentation

use of a living trust marketer to solicit clients for the attorney
CAL 1995-143

use of a medical liaison to give a presentation containing a promotional message to a group of doctors who might recommend patients to the lawyer
CAL 1997-148

Pro bono services

lawyer to provide
LA 55 (1928)

Public defender, exemption for
Business and Professions Code section 6152(d)
In re Brindle (1979) 91 Cal.App.3d 660, 682 [154 Cal.Rptr. 563]

Publishing company
LA 446 (1987)

Radio or television, use of
Committee on Professional Ethics and Conduct v. Humphrey (1986) 377 N.W.2d 643

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participation by attorney
-in radio or television programs
--answering questions on law submitted by listeners
LA 299 (1966)
--identification of name of lawyer
LA 299 (1966)
--televised trial
LA 404 (1983)

Random distribution
LA 419 (1983)
Recommend or designate other lawyer
LA 313 (1969), LA 216 (1953)

Referral

by lay entity
-religious organization members, referred to attorney employed by
LA 298 (1966)
by non-profit organization
-no charge
LA 73 (1934)

Referral, reciprocal agreement with lawyer
LA(I) 1959-3

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Linnick v. State Bar (1964) 62 Cal.2d 17, 20 [41 Cal.Rptr. 1, 396 P.2d 33]

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attorney agrees to use and compensate for services

Rubin v. Green (1993) 4 Cal.4th 1187 [17 Cal.Rptr.2d 828]


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attorney supplies "caper" with list of potential clients

Business and Professions Code section 6154

Rubin v. Green (1993) 4 Cal.4th 1187 [17 Cal.Rptr.2d 828]


LA 474 (1993)

contract secured by is void, use of

Brotherhood of Railroad Trainmen v. VA (1964) 377 U.S. 1 [845 S.Ct. 1113, 12 L.Ed.2d 89]


Rubin v. Green (1993) 4 Cal.4th 1187 [17 Cal.Rptr.2d 828]


In re Arnoff (1978) 22 Cal.3d 740 [150 Cal.Rptr. 479]

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LA 401 (1982)

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LA 494 (1998)

use of living trust marketer to solicit clients for the attorney

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Sign

location

-where no office

LA 134 (1940)

Social media

CAL 2012-186

Target mail


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


statute that places conditions on use of public access of names and addresses of individuals arrested by police is not facially invalid


CAL 1995-142. CAL 1988-105

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LA 40 (1927), LA(I) 1961-6

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participate in organized drafting

LA 196 (1952)

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Penal Code section 1524(c)


Penal Code section 1524(c)


Sheffield v. State Bar (1943) 22 Cal.2d 627 [140 P.2d 376]

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Hirsh v. Justices of the Supreme Court of the Supreme Court of the State of California (1995) 67 F.3d 708


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Disciplinary authority

Canatella v. California (9th Cir. 2002) 304 F.3d 843

In re Rose (2000) 22 Cal.4th 430 [83 Cal.Rptr.2d 298]

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power to discipline attorneys is held exclusively by the State Bar

Dues
Business and Professions Code sections 6140 et seq.
Ingels v. Riley (1936) 5 Cal.2d 154
government agency can pay "Hudson Fees" portion of the bar dues of agency attorneys
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In re Attorney Discipline System: Requests of the Governor and the State Bar (1999) 19 Cal.4th 582 [79 Cal.Rptr.2d 836, 967 P.2d 49]
municipality can assess business license fee, notwithstanding State Bar dues
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Keller v. State Bar (1980) 110 S.Ct. 2228
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-State Bar of Nevada may use dues to conduct a public information and education campaign on the role of lawyers in the judicial system
Gardner v. State Bar of Nevada (9th Cir. (Nevada) 2002) 284 F.3d 1040
Duty to comply with and be familiar with standards of professional conduct required of members of the State Bar of California, Civil Local Rule 11-4
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Equal protection
California's decision to regulate lawyers principally via a judicially supervised administrative body attached to the State Bar of California has a rational basis and is thus constitutional
Schwartz v. Kelly (9th Cir. (2015) 2016) 817 F.3d 1183
Federal courts may require membership in the State Bar of California to assure the character and moral fitness and to bring any misconduct to the attention of the State Bar
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- not required to register as a law corporation
-Frye v. Tendleroin Housing Clinic, Inc. (2008) 38 Cal.4th 23 [40 Cal.Rptr.3d 221
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May seek superior court's assumption of a resigned attorney's state administration practice but not his federal practice

Minimum Continuing Legal Education Program
no violation of equal protection rights of attorneys
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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

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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 adverse party
Code of Civil Procedure section 285
Notice of substitution
Gill v. Southern Pacific Co. (1916) 174 Cal. 84 [161 P. 1153]
On motion of trial court
People v. Lucey (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) 13 Cal.2d 580 [134 P.2d 251]
People v. Hook (1967) 248 Cal.App.2d 618 [56 Cal.Rptr. 683]

Pre-signed substitution forms
LA 371 (1977)

Procedure
Code of Civil Procedure section 284
Rule 8.36, California Rules of Court
Echlin v. Superior Court (1939) 13 Cal.2d 193 [134 P.2d 251]
Wright v. Security etc. Bank (1939) 13 Cal.2d 193 [134 P.2d 251]
O’Connell v. Superior Court (1935) 2 Cal.2d 418 [41 P.2d 334]
P. 2d 334]
Connell v. Superior Court (1935) 2 Cal.2d 418 [41 P.2d 334]

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
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
SUIT AGAINST CLIENT

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

Substantive 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

Alldrich v. San Fernando Valley Lumber Co. (1985) 170
Cal.App.3d 725, 741 [216 Cal.Rptr. 300]
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. 363

must be licensed at time services performed to recover fees

Hardy v. San Fernando Valley Chamber of Commerce
referred 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

Banalti 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

Banalti v. Commissioner of Internal Revenue (9th Cir. 2003)
340 F.3d 1074

Failure of attorney to pay

In re Fahey (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)
268 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

Cal.Rptr.3d 662]

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

866]

Compliance with rule 9.20, California Rules of Court, in
connection with disbarment

Bercovich v. State Bar (1999) 50 Cal.3d 116

SUSPENSION

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

Cal.Rptr.3d 370]
diligence of new counsel substituted in at the last minute

Yao v. Anaheim Eye Medical Group, Inc. (1992) 10
Cal.App.4th 1024 [12 Cal.Rptr.2d 856]
duty with respect to client’s file

LA(I) 1964-5, LA(I) 1959-4
SD 1970-3, SF 1975-4

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

Cal.Rptr.3d 871]

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

In re Fahey (1973) 8 Cal.3d 842, 849-854

For unpaid fee

LA 212 (1953), LA 109 (1936)

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

-purposes of imposition of requirement to comply with Rule
9.20

In the Matter of Copren (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

See How to Use This Index, supra, p. i
TERMINATION OF ATTORNEY-CLIENT RELATIONSHIP

Conflict of interest


Death or incapacity of attorney

appeal from judgment not extended by death of the attorney

Voinich v. Peg (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

Fallin 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. Dunne (1926) 196 Cal. 183 [244 P. 343]

relation of attorney-client not terminated by death of client in

insanity or incapacity of client terminates authority of attorney

Sullivan v. Dunne (1926) 196 Cal. 183 [244 P. 343]

in a special contract of employment

Estate of Malloy (1929) 99 Cal.App. 96 [278 P. 488]

retention or destruction of files

LA 491 (1997)

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 P.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 211]

-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 648]

-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”

People v. Metrim Corp (1960) 187 Cal.App.2d 289 [9 Cal.Rptr. 584]

-wrongfully discharged under contingent fee contract entitled same compensation as if completed contemplated services


criminal matters

Code of Civil Procedure 284

-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 Herz (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


-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 793 [97 Cal.Rptr.3d 998]

Not necessary to terminate prior agreement where there was only a framework for future representation, contract was not selfeffectuating, 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(I) 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 Elkins (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]


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

LA 469 (1992)

SD 2005-1

An 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

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 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
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. 8]

advising client to violate court order
arguing to jury that goal of defense and prosecution counsel is to misrepresent facts
Hansen v. Superior Court of Siskiyou County (2001) 91 Cal.App.4th 75 [109 Cal.Rptr.2d 782]

disrespectful reference to defense attorney
-prosecutor effectively calling defense attorney a liar
United States v. Rodrigues (9th Cir. 1987) 817 F.2d 511

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


disrespectful remarks concerning judge
Hogan v. State Bar (1951) 36 Cal.2d 807, 810 [228 P.2d 554]

falsely 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 969]

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 Ekin (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160

unwarranted charges of bias against superior court judges
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. 362, 459 P.2d 904]


In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844

In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9

misleading judge through knowing concealment of material facts


In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166

OC 95-001

misleading judge through the use of misleading, inaccurate, and incomplete responses to discovery requests and presentation of fraudulent evidence

Pumphrey v. K.W. Thompson Tool Co. (9th Cir. 1995) 62 F.3d 1128

misrepresentations made to the opposing counsel and the court

LA 482 (1995), OC 95-001

misrepresentation of appellate decision in opening brief


naming a person as a plaintiff in a lawsuit without the person’s knowledge or consent

Lebbos v. State Bar (1991) 53 Cal.3d 37

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96

no duty to disclose assistance to an in propria persona litigant unless a court rule requires disclosure

LA 502 (1999)

offensive gender based remarks to a government attorney

United States v. Wunsch (9th Cir. 1996) 84 F.3d 1110

offensive references to opposing parties and counsel


offering false evidence, subornation of perjury

In re Jones (1971) 5 Cal.3d 390, 400 [96 Cal.Rptr. 448, 487 P.2d 1016]

presentation of known false fact presumes intent to deceive


presentation of known false fact which tends to mislead sufficient for violation


presenting documents containing known false allegations


pretended non-participation in fraudulent claim made to insurance company


violation found even if attempt to mislead is unsuccessful

In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166

Business and Professions Code section 6068(f)

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

Rules 7-105, 7-106, 7-107, and 7-108, Rules of Professional Conduct (operative until May 26, 1989)

Rules 5-200, 5-320, 5-310, and 5-300, Rules of Professional Conduct (operative as of May 27, 1989)

Absence of attorney during jury deliberations not prejudicial to appellant


Administration of justice attempted interference with


In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166

Admonishment of defense counsel by trial court in front of jury was proper for numerous instances of misconduct amounting to unprofessional conduct throughout course of trial


Advising client to disobey court order


Advocacy of counsel money sanctions for violation of lawful court order not applicable to

Code of Civil Procedure section 177.5

Altering copy of court order

Lebbos v. State Bar (1991) 53 Cal.3d 37

Altering evidence in criminal trial


Attorney admitted to Supreme Court Bar in order to represent self in appeal from sanctions imposed by 9th Circuit

In the Matter of Admission of Christopher A. Brose (1983) 77 L.Ed.2d 1360

Attorney misconduct must sufficiently permeate an entire proceeding and affect result

McKinley v. City of Eloy (9th Cir. 1983) 705 F.2d 1110, 1117

Attorney sanctions for frivolous appeal

In re Marriage of Flaherty (1982) 31 Cal.3d 637 [183 Cal.Rptr. 508, 646 P.2d 179]


In re Scott (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446

Candor

client’s absence from court, attorney may not answer court’s inquiry if harmful to client

SD 2011-1
duty of
- advise adversary of contribution to campaign committee of presiding judge in case
LA 387 (1981)
- disclosure
-- counsel married to bailiff
MCAL 1987-93
-- counsel married to court reporter
CAL 1987-93
-- that client cannot be located
CAL 1989-111
- in admission proceedings
State Bar v. Lambert (1954) 43 Cal.2d 636, 642 [276 P.2d 596]
- in attorney disciplinary proceedings
In re Honoff (1958) 50 Cal.2d 202, 210 [323 P.2d 1003]
Burns v. State Bar (1955) 45 Cal.2d 296 [288 P.2d 514]
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
- in criminal matter defense counsel must turn over to law enforcement cash received from a client which are the actual bills used in a crime
LA 466 (1991)
electronic data, concealing in violation of law
SD 2012-1
Citing as controlling law a case not in point
Citing unpublished opinions
Ninth Circuit Rule 36-3(b), no sanctions ordered
Hart v. Massanari (9th Cir. 2001) 266 F.3d 1155
Sorchini v. City of Covina (9th Cir. 2001) 250 F.3d 706
Rule 8.1115, California Rules of Court
In the Matter of Mason (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639
Client’s role
Closing argument
conviction obtained on what appeared to be prosecutor’s misstatement of the evidence when in fact court reporter’s official transcript has since been corrected and no misstatement actually occurred
U.S. v. Mageno (9th Cir. 2015) 786 F.3d 768
defense counsel prohibited from expressing opinion as to defendant’s innocence
- misstatement of the law
- district attorney misrepresented the law that it infected the case with prejudicial error
People v. Cowan (2017) 8 Cal.App.5th 1152 [214 Cal.Rptr.3d 576]
prejudicial statement made during
United States v. Rodrigues (9th Cir. 1998) 159 F.3d 439
People v. Cowan (2017) 8 Cal.App.5th 1152 [214 Cal.Rptr.3d 576]
prosecutor’s use of a visual aid in the form of a jigsaw puzzle to demonstrate reasonable doubt standard impermissibly misstated the law to the jury
Collateral attack, defined
Communication with judge ex parte
filing brief without knowledge of opposing counsel
LA 56 (1928)
trial court had no authority to impose sanctions for attorney’s ex parte request to set date for status conference
Communication with juror
CAL 1988-100, CAL 1976-39
Communication with member of grand jury
Contempt of court
appointment of counsel as “advisor” to criminal defendant
-refusal to accept
attorney assists husband to assist subpoena service
In re Holmes (1983) 145 Cal.App.3d 934
contempt proceedings for impugning the integrity of the court are criminal in nature even though they arise from a civil action
In the Matter of Koven (2005) 134 Cal.App.4th 262 [35 Cal.Rptr.3d 917]
defense attorney’s isolated reference to the possible penalty did not warrant summary contempt
Watson v. Block (9th Cir. 1996) 102 F.3d 433
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
filing of a false affidavit of disqualification against judge
 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]
direct contempt
- presiding judge may defer contempt adjudication to another judge
Hanson v. Superior Court of Siskiyou County (2001) 91 Cal.App.4th 75 [109 Cal.Rptr.2d 782]
Court order
appointment of counsel as “advisor” to criminal defendant
- refusal to accept
In re Ronald Jackson (1985) 170 Cal.App.3d 773 [216 Cal.Rptr. 539]
attorney’s direct violation of court order by asking a witness for opinion on cause of an accident at trial does not warrant mistrial or new trial
compliance with to produce privileged material
- court may not find waiver of privilege when objecting
Hart v. Massanari (1996) 102 F.3d 433
- court may not find waiver of privilege when objecting
dismissal of action for flagrant and repeated violations of the court's orders is within the authority of the trial court
Osborne v. Todd Farm Services (2016) 247 Cal.App.4th 43 [202 Cal.Rptr.3d 84]
disobedience of void court order
Maltaman v. State Bar (1987) 43 Cal.3d 924
imposition of monetary sanctions for failing to obey court order is within discretion of the trial court
Court order, violation of
money sanctions
- not applicable to advocacy of counsel
Code of Civil Procedure section 177.5
Criminal proceedings
failure to file timely notice of appeal
- recusal of lawyer for conflict of interest
In re Fountain (1977) 74 Cal.App.3d 715 [141 Cal.Rptr. 654]
gender based peremptory challenge of venire persons violates Equal Protection Clause
United States v. De Gross (9th Cir. 1992) 960 F.2d 1433
misstatement of evidence by defense counsel in opening argument
tardy request to allow defendant-witness to change clothes before testifying
People v. Froehlig (1991) 1 Cal.App.4th 260
Criticism of the court
Matter of Humphrey (1917) 174 Cal. 290, 295 [163 P. 60]
Cross-complaint
duty to decline to file when totally meritless and frivolous
LA 464 (1991)
Cumulative effect of errors results in prejudice
U.S. v. Preston (9th Cir. 2017) 873 F.3d 829
Delays drilling tactics
Depositions
duty to protect client interest by asserting proper objections and consulting with client where appropriate to fulfill duty of competent representation
LA 497 (1999)
 instructions not to answer sanctionable
Destruction of evidence
Penal Code section 135
R.S. Creative, Inc. v. Creative Cotton Ltd., et al. (1999) 75 Cal.App.4th 486 [99 Cal.Rptr.2d 353]
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]
Duty to advise court of a violation of a court order by third party
LA 394 (1982)
Duty to disclose adverse case in controlling jurisdiction
Southern Pacific Transportation v. P.U.C. of the State of California (9th Cir. 1985) 716 F.2d 1285, 1291
failure to discuss more peremptory illegal authority
Duty to disclose expert witness notes
People v. Lamb (2006) 136 Cal.App.4th 575 [40 Cal.Rptr.3d 609]
Duty to inform court that corporate client is suspended
LA 408 (1982)
Duty to reveal altered evidence
SD 1983-3
Duty to reveal facts
failing to correct a judge's misapprehension of fact
Snyder v. State Bar (1976) 18 Cal.3d 286 [133 Cal.Rptr. 864, 555 P.2d 1104]
failure to file briefs on time
In re Young (9th Cir. 1976) 537 F.2d 326
failure to reveal harmful facts
Snyder v. State Bar (1976) 18 Cal.3d 286 [133 Cal.Rptr. 864, 555 P.2d 1104]
-client's prior criminal conviction
CAL 1986-87
negligent, not intentional misrepresentation, is still misrepresentation and attorney must inform court upon such realization
use of false evidence of perjured testimony
Penal Code sections 127, 132-135, 137
when asked directly, that client cannot be located
CAL 1989-111
Ex parte communication with judge
CAL 1984-82, CAL 1984-78
communications between agency prosecutor and agency judge
ex parte communications between trial judge and a deliberating jury are prohibited
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
trial court had no authority to impose sanctions for attorney's ex parte request to set date for status conference
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denial of defense request to voir dire on racial bias not an abuse of discretion peremptory challenge based on gender violated Equal Protection Clause
United States v. De Gross (9th Cir. 1992) 960 F.2d 1433
discriminatory exclusions of Hispanic juror results in reversal of convictions when Batson/Wheeler motion denied
People v. Guillen (2017) 2 Cal.5th 1150 [218 Cal.Rptr.3d 289]
proposition 115 restrictions on jury voir dire by counsel not in violation of U.S. Constitution
prosecutor’s peremptory challenge of sole black juror
People v. Christopher (1991) 1 Cal.App.4th 666
Withdrawal when client commits perjury
LA(I) 1974-7
Withdrawal when client intends to commit perjury
CAL 1983-74
LA 362 (1976)
OC 2003-01
Yield to rulings of court
Business and Professions Code section 6103
whether right or wrong
[116 Cal.Rptr. 713]

TRIAL PUBLICITY

Rule 5-120, Rules of Professional Conduct (operative October 1, 1995).
Statements found not in violation of rule

TRUST ACCOUNT

[See Client’s trust account.]

TRUSTEE

[See Assignment. Bankruptcy. Estate, trustee.]
Action brought by beneficiaries
against attorney for trustee
against trustee
Leader v. Cords (2010) 182 Cal.App.4th 1588 [107 Cal.Rptr.3d 505]

Attorney as trustee, client as beneficiary
Probate Code sections 15687 and 16004(c)
Schneider v. State Bar (1987) 43 Cal.3d 784
In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297
duty to third party
In re Marriage of Wagoner (1986) 176 Cal.App.3d 936 [222 Cal.Rptr. 479]

Attorney-client 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]
trust obligations between the United States and Indian tribes are defined by statute and are not comparable to a private trust relationship

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]
Fletcher v. Superior Court (1996) 44 Cal.App.4th 773 [52 Cal.Rptr.2d 65]

Breach of trustee fiduciary duty
Donovan v. Mazzola (9th Cir. 1983) 716 F.2d 1226, 1234
In the Matter of McCarthy (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364

Cannot assign legal malpractice claim by trustee of bankruptcy estate
Baum v. Duker, 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
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  

Receivables 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

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


successor fiduciary has the same powers and duties as the predecessor including the power to sue attorney for malpractice  

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)

Business and Professions Code section 6125

McGregor v. State Bar (1944) 24 Cal.2d 283, 287

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

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]


Farnham v. State Bar (1976) 17 Cal.3d 605, 612 [131 Cal.Rptr. 661, 552 P.2d 445]


Biakana v. Irving (1958) 49 Cal.2d 647, 651 [320 P.2d 16]


Woodriff v. McDonald’s Restaurants (1977) 75 Cal.App.3d 655, 658 [142 Cal.Rptr. 367]

Howard v. Superior Court (1975) 52 Cal.App.3d 722, 726


In re Steven C. (1970) 9 Cal.App.3d 255, 265

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In the Matter of Thompson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

76 Cal. Ops. Gen. 208 (8/17/93; 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 31]

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. 612, 442 P.2d 692]

Crawford v. State Bar (1960) 54 Cal.2d 659, 666 [7 Cal.Rptr. 746, 355 P.2d 490]

People v. Starks (2017) 7 Cal.App.5th 215 [212 Cal.Rptr.3d 622]


In the Matter of Thompson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

SD 1983-12, SD 1983-7

Advertising as entitled to practice law

Contempt of court

Business and Professions Code section 6127

lawyer disbarred or under suspension

Business and Professions Code section 6126

misdemeanor

Business and Professions Code section 6127(b)

unlawyers

Business and Professions Code section 6127(b)

Aiding and abetting


Griffith v. State Bar (1953) 40 Cal.2d 470, 472

Geibel v. State Bar (1938) 11 Cal.2d 424 [79 P.2d 1073]

Dudney v. State Bar (1937) 8 Cal.2d 555, 562

Smalberg 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 construction

CAL. 1969-18
UNAUTHORIZED PRACTICE OF LAW

attorney as employee of lay organization providing services to other attorneys
LA 359 (1976)
- independent contractor for
LA 327 (1972)
by client
LA 402 (1982)
client
collections
CAL 1982-68, LA 522 (2009)
contracts
- advising agent concerning legality of
- being negotiated by agent for fee
LA 80 (1935)
corporation provides paid legal services
- for employees
- directs employees to one attorney
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
employment agency
LA 359 (1976), LA 327 (1972)
financial management company, attorney as shareholder
LA 372 (1978)
foreign attorney
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 Bianco (2013) 221 Cal.App.4th 826
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]
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 Lenard (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 trial attorney resigns with charges pending from the bar
In re Johnson (1992) 1 Cal.4th 689 [4 Cal.Rptr.2d 170]
disbarred while
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
Wintenerw v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815
- lawyer renting office to
- where public might be misled 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

See How to Use This Index, supra, p. i
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]
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 their tribunals

sole proprietorship on appeal

Code of Civil Procedure section 904.3
to provide financial and other services
LA 372 (1978)

Defined:

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

In re Peterson (1994) 163 B.R. 665

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 (1979) 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. Starksi (2017) 7 Cal.App.5th 215 [212 Cal.Rptr.3d 622]


OC 94-002

inactive members of the bar

In the Matter of Tady (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121
LA 426 (1984), SD 1983-12

Definition of "attorney"


Department of Unauthorized Practice of Law. [See Complaints or Questions.]

Deposition in California for use in another state

Code of Civil Procedure sections 2026, 2029

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 petition 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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Eviction services

Expert witnesses provided by consulting service
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Federal court
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Russell v. Hug (9th Cir. 2002) 275 F.3d 812
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 2000) 222 F.3d 618
- Suspension from federal practice is not dictated by state rules
  In re Poole (9th Cir. BAP 1999) 231 B.R. 86
- 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)
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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

Federal district judge’s request for attorney fees in action to amend a local rule
Tashima v. Administrative Office of the United States Courts (9th Cir. 1991) 967 F.2d 1264

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
  Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]
  In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 986
- 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
Shapiro v. Paradise Valley Unified School District No. 69 (9th Cir. 2004) 374 F.3d 857

Non-attorney’s law firm representative of injured employee at workers’ compensation proceedings 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

Financing arrangements jointly controlled by buyer and seller may constitute unlawful, unfair, and fraudulent business practices

Foreign attorney in law office
Rule 9.44, California Rules of Court
LA 426 (1984)

Ghostwriting pleadings
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Guardian ad litem
J.W., a Minor, etc. v. Superior Court (1993) 17 Cal.App.4th 958 [22 Cal.Rptr.2d 527]

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 to 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 999 [9 Cal.Rptr.2d 358]
Honoric “ESQ” appended to a signature creates an impression that the person signing is presently able and entitled to practice law
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- 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 Nanev (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. 896
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. 896
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
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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
People v. Johnson (1990) 224 Cal.App.3d 52
in-house counsel representing insureds
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in personal injury matters
-not agree to collect any claim for damages
--not practice of law
LA 81 (1935)
Lay person
may not represent another
Simon v. Hartford Life, Inc. (9th Cir. 2008) 546 F.3d 661
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-assignment of debt for breach of contract did not create attorney-client relationship between assignor and assignee
may not represent unincorporated association in court
referral agreement with layperson unenforceable for non-compliance with Business and Professions Code § 6155
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resigned attorney may not represent parties in state administrative hearings
treble damages warranted for injury caused by unlicensed practice of law
Legal services corporation which includes non-attorney see shareholders
LA 444 (1987)
Corporations Code Section 13406(b) does not govern all nonprofit corporations providing legal services
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Lending name of attorney
to be used by non-lawyer
-in collection cases
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Lending to non-attorney
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in-house counsel for insurance company representing insureds
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Code of Civil Procedure section 1282.4
effect on underlying matter
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People v. Medler (1986) 177 Cal.App.3d 927 [223 Cal.Rptr. 401]

Gomez v. Roney (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

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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 [202 P. 47]


Giannini v. Real (9th Cir. 1990) 911 F.2d 354 -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

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In re Peterson (1994) 163 B.R. 665

bankruptcy petition preparers

In re Reynosa (9th Cir. 2007) 477 F.3d 1117 -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 1]

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LA 522 (2009)

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-Corporations Code Section 13406(b) does not govern all nonprofit corporations providing legal services

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

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-representation by, prohibited in court of law


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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 when 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.

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Giannini v. Real (9th Cir. 1990) 911 F.2d 354

In re McCue (1930) 211 Cal. 57, 67 [293 P. 47]


Cowan 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-
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

Daybreak Group, Inc. v. Three Creeks Ranch, LLC

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)

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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. Starks (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 212]


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

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

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

473 2018 (updated entries through 12/31/2017)
UNAUTHORIZED PRACTICE OF LAW

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. Starkey (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. Risie (9th Cir. 1996) 100 F.3d 1469
duties of associate counsel

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

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)

securities arbitration proceedings

workers’ compensation proceedings
Eagle Indemnity Co. v. Industrial Accident Commission (1933) 217 Cal. 244, 247 [18 P.2d 341]
CAL 1988-103

-disbarred or suspended attorney may be excluded from participation in Workers’ Compensation proceedings
Title 8 CA Administrative 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 825 [79 Cal.Rptr. 711]

Transaction matter

Treble damages in civil action caused by unlicensed persons
COP § 1029.8

Unfair business practices and unlawful advertising
Business and Professions Code section 17200
Unfair Competition Law
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 for intended beneficiary


Given to executor after incompetency of client
LA 229 (1955)

Person who must sign will is a client regardless of who has sought out 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

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]

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


Cannot provide level of advocacy required by rule 6-101


Class action

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

duty of class counsel runs to the class and, in the event of conflicts, withdrawal is appropriate


Client

appears to have abandoned case

CAL 1989-111
LA 441 (1987), LA(I) 1958-1

burden to prove

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

-perjury
CAL 1983-74
LA(I) 1974-7

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

leads attorney to believe client needs a conservator

OC 95-002

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. Bouchaud (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. 364]

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]

Helpe v. Kluge (1951) 104 Cal.App.2d 461 [231 P.2d 505]


Linn v. Superior Court (1926) 79 Cal.App. 721 [250 P. 197]

LA 251 (1958), LA 212 (1953)
SD 1983-6

Compentence 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. 576
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 withdrawing 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

following impeachment of a prosecution witness by prosecutor's own testimony
not required, defense counsel may Wendt appellate briefs instead
De facto withdrawal
In the Matter of Miller (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131
Delay in serving complaint excused, in part, because of a last minute change of attorneys
Dependency proceedings
In re Jesse C. (1999) 71 Cal.App.4th 1481 [84 Cal.Rptr.2d 609

inability to provide competent legal services because of disagreement with a minor client
LA 504 (2000)
Determination whether to grant or deny motion to withdraw as counsel of record lies within sound discretion of trial court

Discharge of attorney

Disclosure of client confidence or secret during withdrawal
CAL 2015-192, LA 498 (1999)

Disqualification of counsel
entire firm disqualified
trial court has power

Dissolution of law firm
CAL 2014-190
notice to clients
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
CAL 1985-86, LA 405 (1982)

Domestic relations case
Code of Civil Procedure section 285.1
Reynolds v. Reynolds (1943) 21 Cal.2d 580
SF 1973-5, SF 1977-2

Duties not altered by who terminates relationship

Duty to avoid foreseeable prejudice
Nehad v. Mukasey (9th Cir. 2008) 535 F.3d 962
Martin v. State Bar (1991) 52 Cal.3d 1055
Kapetus 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 (1988) 41 Cal.3d 700 [244 Cal.Rptr. 738]
Stuart v. State Bar (1985) 40 Cal.3d 838, 842 [221 Cal.Rptr. 557]
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
In the Matter of Dahiz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
CAL 2014-190, CAL 1992-127

rule barring withdraw from employment until the member has taken reasonable steps to 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]
WITHDRAWAL FROM EMPLOYMENT

Wolf 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 return unearned fees


Failure to communicate with clients regarding intention to withdraw

Wolf v. State Bar (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1

Failure to execute a substitution of attorney

Wolf 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. 652

Failure to move to withdraw as counsel paired with client’s belief that he was represented constitutes abandonment of client
Foley v. Biter (9th Cir. 2015) 793 F.3d 998

Failure to return client property
Martin v. State Bar (1991) 52 Cal.3d 1055

Failure to return unearned fees
Harford v. State Bar (1990) 52 Cal.3d 93

In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

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 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 Bach (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


In the Matter of Kaplan, II (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608

In the Matter of Kaplan, II (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 2007-174

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 private attorney, not party, objects to representation
LA(I) 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

Delgado 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 Davis (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)
WITHDRAWAL FROM EMPLOYMENT

Prejudice to client
Mackey v. Hoffman (9th Cir. 2012) 682 F.3d 1247
Nehad v. Mukasey (9th Cir. 2008) 535 F.3d 962
Delgado v. Lewis (9th Cir. 2000) 223 F.3d 976
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 (1990) 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 (1986) 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 Dahiz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269
In the Matter of Lais (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 Aguiluz (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 withdraw must be adequately addressed at the outset of the attorney-client relationship
OC 2011-01
Recusal of district attorney staff, conflict of interest
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)
WITNESS

Scope of representation

Skilled counsel prejudices criminal defendant

Substitution of attorney clause in retainer agreement
LA 371 (1977)

Suit for fees

Rule 2-111(A)(4) and (5), Rules of Professional Conduct for failure to communicate

Violation of the withdrawal rule is not inconsistent with discipline
United States v. Moore (9th Cir. 1993) 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) 50 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 as of May 26, 1989)

Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)


by third party
*Bradley v. Henry (9th Cir. 2005) 428 F.3d 811

CAL 1981-64
debtor’s pursuit of discharge in bankruptcy is not breach of duty to pay

no denial of effective assistance of counsel when defendant becomes indigent and retained counsel withdraws because court denies request to appoint the retained counsel

settlement, conflicting instructions from insured and assured
LA 344 (1974)

suit for fees

Violation of professional responsibility


failure to withdraw where required due to incapacity
Slavkin v. State Bar (1989) 49 Cal.3d 894 [264 Cal.Rptr. 131]

Violation of the withdrawal rule is not inconsistent with discipline for failure to communicate
In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196

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 3-700, Rules of Professional Conduct (operative as of 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 as of 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
Brandt v. Superior Court (1985) 37 Cal.3d 813, 820 fn.7 [210 Cal.Rptr. 211]


against criminal defendant

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

except 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]
- 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. Prantl (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
Contact with
Rule 7-107, Rules of Professional Conduct (operative until May 28, 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 warranted 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
- notification of attorney
- 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)
Rule 5-310, Rules of Professional Conduct (operative as of May 27, 1989)
Waterman v. State Bar (1936) 8 Cal.2d 17, 18-21 [63 P.2d 1133]
expert witness is former client of attorney
LA 513 (2005)
plaintiff’s attorney in civil matter communicated with criminal defendant witness without consent of defendant’s criminal defense attorney
In the Matter of Dale (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798
Contingent fee prohibited
Intimidation of
Earp v. Ornoski (9th Cir. 2005) 431 F.3d 1158

WORK PRODUCT
disbarment for soliciting intimidation of witness
In re Lee (1988) 47 Cal.3d 471 [253 Cal.Rptr. 570]
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
when testifying as witness in a case in which he presides must give advance notice and obtain consent of parties
Non-party recovery of costs of subpoena duces tecum
Payment to
Hare v. McGue (1918) 178 Cal. 740
Von Kesler v. Baker (1933) 131 Cal.App. 654
LA(I) 1954-6
by a criminal defendant for purposes of civil compromise
(Penal Code 1377-78) where payment is made to complaining witness/victim in criminal matter
expert
Davis v. City and County of San Francisco (9th Cir. 1992) 976 F.2d 1536
LA(I) 1969-7
non-expert
CAL 1997-149
transportation, meals, lodging
Heishman v. Ayers (9th Cir. 2010) 621 F.3d 1030
Perjury
Heishman v. Ayers (9th Cir. 2010) 621 F.3d 1030
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
Physician as expert witness
SD 1984-4
communication with opposing party’s medical expert who had been withdrawn as a witness but remained a consultant warranted disqualification
County of Los Angeles v. Superior Court (1990) 222 Cal.App.3d 647 [217 Cal.Rptr. 698]

Prosecution
client in another matter
SD 1974-15
former client is
United States v. Henke (9th Cir. 2000) 222 F.3d 633
prosecutor as witness to impeach testimony of prosecution witness’ testimony
CAL 1980-52
SD 1974-15
Purpose of rule 5-210
Smith, Smith & Kring v. Superior Court (1997) 60 Cal.App.4th 573 [70 Cal.Rptr.2d 507]
Request warrant for absent witness when responsible for non-appearance
LA(I) 1969-9
When counsel in case
partnership

WORK PRODUCT
Client’s right to
Rose v. State Bar (1989) 49 Cal.3d 646 [262 Cal.Rptr. 702]

See How to Use This Index, supra, p. i 481 2018 (updated entries through 12/31/2017)
WORK PRODUCT

Rumac v. Bottomley (1983) 143 Cal.App.3d 810, 812 In. 3 [192 Cal.Rptr. 104]

Common interest doctrine
determination of privilege under a joint prosecution or defense agreement
Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]
o no waiver of the privilege under a joint prosecution or defense agreement

Expert
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]

Federal Rule of Civil Procedure 26(b)(3)
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 900

Of attorney
California Code of Civil Procedure section 2018 (b), (c), (f)
Coito v. Superior Court (2012) 54 Cal.4th 480 [142 Cal.Rptr.3d 607]
Rico v. Mitsubishi (2007) 42 Cal.4th 807 [68 Cal.Rptr.3d 758]
Wells Fargo Bank v. Superior Court (Boltwood) (2000) 22 Cal.4th 201 [901 Cal.Rptr.2d 716]

2,022 Ranch, LLC v. Superior Court (2003) 113 Cal.App.4th 1377 [7 Cal.Rptr.3d 197]
State Farm Fire and Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625 [62 Cal.Rptr.2d 834]
Wells Fargo Bank v. Superior Court (Boltwood) (2000) 22 Cal.4th 201 [901 Cal.Rptr.2d 716]
Weiss v. Marcus (1975) 51 Cal.3d 590

-belongs to law firm and not associate of firm
Ellis v. Superior Court (Nelson) (2017) 220 Cal.Rptr.3d 382 [12 Cal.Rptr.5th 1233]
disclosure of putative class members’ identity does not violate
Tier v. Superior Court (2006) 139 Cal.App.4th 528 [43 Cal.Rptr.3d 121]
genereal (qualified) versus attorney’s impressions, conclusions, opinions, or legal research or theories (absolute)
Coito 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]
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)
intervention by non-party holder of privilege is not necessary or required to assert Evidence Code section 954 privilege
merely turning over documents prepared independently by party to attorney does not make them privileged
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 Hospital v. Superior Court (2006) 143 Cal.App.4th 1558 [50 Cal.Rptr.3d 129]
me standing to assert absolute or qualified privilege
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]

Privilege
by sending letters containing work product to auditors of client, lawyers did not waive the right to assert attorney work product protection
corporation may withhold from director documents that were generated in defense of a lawsuit that director filed against the corporation
deputy district attorney cannot assert attorney-client privilege as to documents prepared in official capacity when the attorney is subject of criminal investigation
fraud or crime exception does not apply to work product
State Farm Fire and Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625 [62 Cal.Rptr.2d 834]
CAL 2013-188

handicap test for non-opinion work product discovery
Holmgren 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

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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).

Snyder v. Superior Court (2007) 157 Cal.App.4th 1530 [69 Cal.Rptr.3d 600] must yield to a competing public purpose


Izagaza v. Superior Court (1991) 54 Cal.3d 356 restrictions on discovery of an attorney’s impressions, conclusions, opinions or legal research, (CCP § 2018.030)


- common interest doctrine


- corporation waived 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] - employer did not waive attorney-client or work product protections by providing sex discrimination claimant substantial discovery of employer’s non-attorney in-house investigation report

Kaiser Foundation Hospitals v. Superior Court (1998) 66 Cal.App.4th 1217 [78 Cal.Rptr.2d 543] - 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

Colto v. Superior Court (2012) 54 Cal.4th 480 [142 Cal.Rptr.3d 607]

WORKERS’ COMPENSATION

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

U.S. v. ChevronTexaco Corp. (2002) 241 F.Supp.2d 1065 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


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


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


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


Ct. Rptr. 61]

- 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]

class action - standing to pursue claim for interest on award of attorney’s fees


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


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]

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

Argentieri v. Zuckerberg (2017) 8 Cal.App.5th 768 [214 Cal.Rptr.3d 358]
Arias v. Raimondo (9th Cir. 2017) 860 F.3d 1185
Barry v. State Bar (2017) 2 Cal.5th 318 [212 Cal.Rptr.3d 124]
Decker v. Berryhill (9th Cir. 2017) 856 F.3d 659
Healthsmart Pacific v. Kabateck (2017) 7 Cal.App.5th 416 [212 Cal.Rptr.3d 589]
IAR Systems Software Inc. v. Superior Court /Shehayed/ (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
John PD Doe v. San Diego-Imperial Council; et al. (2017) 16 Cal.App.5th 301 [224 Cal.Rptr.3d 273]
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)
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]
Mashiri v. Epstein Grinnell & 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]
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. Gutierrez (2017) 2 Cal.5th 1150 [218 Cal.Rptr.3d 289]
People v. Lucero (2017) 18 Cal.App.5th 532 [226 Cal.Rptr.3d 660]
People v. Starski (2017) 7 Cal.App.5th 215 [212 Cal.Rptr.3d 622]
SD 2017-1
SD 2017-2
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