## COMPENDIUM UPDATE CASE LIST

**Publisher’s Note:** For your convenience, below is an alphabetical list of the cases added to the 2022 *California Compendium on Professional Responsibility* index. This list consists of cases decided from January 2021 to December 2021. Recently published state and county bar ethics opinions and some cases from prior years have also been added to this update.

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HOW TO USE THIS INDEX

SUBJECT LISTINGS AND HEADINGS

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

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

Primary heading: ARBITRATION
Cross reference: [See Fee arbitration.]
Subheading: Agreement with client to arbitrate any malpractice claim by client
Citation to subheading: CAL 1977-47
Next subheading: Arbitrator
Sub-subheading: appointment of law office associate as
Secondary sub-subheading: -by attorney representing claimant in same proceeding
Citation to preceding subheadings: LA 302 (1968)

CITATIONS

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

**SPECIAL NOTE**: --CASES PRECEDED BY AN ASTERISK (*) SHOULD BE CAREFULLY SHEPARDIZED, AS THEY ARE SUBJECT TO REVIEW (AT THE TIME OF PUBLICATION OF THIS 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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HOW TO USE THIS INDEX  (Cont'd.)

JURISDICTION  LEVEL OF COURT  ORDER

California (cont'd):  California Ethics Opinions  In alphabetical order, as follows: CAL, LA, OCBA, SD and SF. Most recent opinions first, descending chronologically to oldest opinions. Formal opinions precede informal opinions.

Selected California Attorney General Opinions  Most recent opinions first, descending chronologically to oldest cases.

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

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

EXAMPLE:  RULES OF PROFESSIONAL CONDUCT  [The full text of the rules are reprinted in part I A above; See below for former rules.]

Purpose of, generally

Zitny v. State Bar (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 6007  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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Segal v. State Bar (1988) 44 Cal.3d 1077 [245 Cal.Rptr. 404]
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By attorney
clients
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--associated with attorney
LA 140 (1942)
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LA 140 (1942)
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Canatella v. California (9th Cir. 2002) 304 F.3d 843
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-attorney fees awarded at discretion of trial court; absent clear abuse appeal of award is frivolous [See Sanctions.]
--mortgage foreclosure
Huber v. Shedlauuy (1919) 180 Cal. 311
--spousal support action
--attorney has responsibility not to pursue a client’s frivolous appeal because client demands
--definition of frivolous appeal
In re Marriage of Flaherty (1982) 31 Cal.3d 637
--delay in filing briefs caused unreasonable delay
Estate of Walters (1950) 99 Cal.App.2d 552 [222 P.2d 100]
--delay is frivolous if motive is to outlive the other party through appeals
--divorce actions
--alimony
--appeal for refusal to pay court ordered payments is meritless
--award of attorney’s fee not appealable absent clear abuse
--bifurcated action is complicated so appeal is not frivolous
Marriage of Fink (1976) 54 Cal.App.3d 357 [126 Cal.Rptr. 626]
--full faith and credit to out-of-state divorce decree
--repealed appeals
--evidentiary appeals
--complaint deemed sufficient in first appeal so second appeal on sufficiency is frivolous
Sipe v. McKenna (1951) 105 Cal.App.2d 373 [233 Cal.Rptr. 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
Crook v. Crook (1960) 184 Cal.App.2d 745 [7 Cal.Rptr. 892]
--new trial based on insufficient evidence will not be distributed by appellate court
ACCEPTANCE OF EMPLOYMENT

--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 3013 [143 Cal.Rptr. 325]
  --if federal jurisdiction clearly applies, then state court appeal is frivolous
    Miller v. RKA Management (1979) 99 Cal.App.3d 460 [160 Cal.Rptr. 164]
--lack of effort on appeal suggests improper motive
--even without actual proof
--motive improper if used to cloud title to property
  Blackmore Investment Co. v. Johnson (1971) 213 Cal. 148
--multi-judgment proceeding in divorce action; appeal not frivolous in light of complicated facts
  Marriage of Fink (1976) 54 Cal.App.3d 357 [126 Cal.Rptr. 626]
--multiple defendants in personal injury action; appeal frivolous as to one defendant
--multiple meritless appeals lead to substantial sanctions
--municipal court merit appeals must be heard by appellate court
  Gilbert v. Municipal Court (1977) 73 Cal.App.3d 723 [140 Cal.Rptr. 897]
--new facts leading trial court to vacate order of divorce is proper; therefore an appeal 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 Fialherty (1982) 31 Cal.3d 637

--partially frivolous appeal
--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(c), 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
--subjective bad faith or motive required
--simply meritless appeal is not frivolous
  Marriage of Fialherty (1982) 31 Cal.3d 637 [183 Cal.Rptr. 568]
Frivolous motion

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

In pro pria 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 [8 Cal.Rptr.3d 636]
ACCOUNTANT

Prohibited employment

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

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[38 Cal.Rptr.3d 759]

LA 195 (1952), LA 143 (1943)

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ADMINISTRATION OF LAW

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
histo ry 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 Multiracial Practice v. Berch (9th Civ. Ct. 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 [265 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 Pasyanos (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746

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

Mothershed v. Justice of the Supreme Court (9th Cir. 2005)
410 F.3d 602
Craig v. State Bar (9th Cir. 1998) 141 F.3d 1353
McEldowney, Jr. v. National Conference of Bar Examiners

Bar examination

accommodations for use of computer programs for legally blind
applicant, likely to be successful with Americans with
Disabilities Act
Enyart v. National Conference of Bar Examiners, Inc. (9th
Cir. 2011) 630 F.3d 1153

disbarment for taking Bar Examination for another
In re Lamb (1990) 49 Cal.3d 239 [260 Cal.Rptr. 856]

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

Business and Professions Code sections 6060-6067
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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 Laving (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
Benjamin J. Ramos dba University of Honolulu School of
Law v. California Commission of Bar Examiners (1994) 857
F.Supp. 702

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 Lybyert (1994 Review Dept.) 2 Cal. State
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Moral character proceedings (governed by Rules Proc. of State
Bar, Rule 880 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
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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]
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State Bar Ct. Rptr. 746
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discovery
In the Matter of Lapin (Review Dept. 1993) 2 Cal. State Bar
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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
religion and religious conflicts
Craig v. State Bar of California (9th Cir. 1998) 141 F.3d
1353

Privilege to practice law

Pro hac vice
Rule 9.40, California Rules of Court
Ninth Circuit Civ. L.R. 3.3(c)(5) [S.D.Cal.]

Winterrowd v. American General Annuity Insurance Co. (9th
Cir. 2009) 556 F.3d 815
Gallo v. U.S. District Court of Arizona (2003) 349 F.3d 1169
Paciulan v. George (9th Cir. 2000) 229 F.3d 1226

Attorney Grievance Commission of Maryland v. Joseph (Md.
2011) 422 Md. 670 [31 A.3d 137]

Daybreak Group, Inc. v. Three Creeks Ranch, LLC (2008)
162 Cal.App.4th 37 [75 Cal.Rptr.3d 365]
Cal.Rptr.2d 922]
People v. Cooks (1983) 141 Cal.App.3d 224, 290 [190
Cal.Rptr. 211]

Arizona requirement for pro hac vice admission could not be
waived orally by a hearing officer
Shapiro v. Paradise Valley Unified School District No. 69
(9th Cir. 2004) 374 F.3d 857

attorney not entitled to fees for work done prior to admission
pro hac vice
Shapiro v. Paradise Valley Unified School District No. 69
(9th Cir. 2004) 374 F.3d 857

1251 [190 Cal.Rptr.3d 337]

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
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.

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.


Property right

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


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


Reciprocity admission

Arizona Supreme Court’s 410 F.3d 602 rule allowing admission on motion (AOM) for out of state attorneys is constitutional because it does not discriminate against non-residents.

National Association for the Advancement of Multijurisdiction Practice v. Berch (9th Cir. 2014) 773 F.3d 1037

Rehabilitation

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

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

In re Hellicia (Rev. Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883

In the Matter of Bodell (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459

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In the Matter of Mackenzie (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 529

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

In the Matter of Bodell (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459

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

Residency requirements


Supreme Court of Virginia v. Friedman (1988) 487 U.S. 59 [108 S.Ct. 2260]

Supreme Court of New Hampshire v. Piper (1985) 470 U.S. 274


State Supreme Court’s rules governing bar admissions does not violate First Amendment right to petition.

Barnhart 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 furnishing the application of Rule 1-101, Rules of Professional Conduct (operative until May 26, 1989)

Rule 1-200, Rules of Professional Conduct (operative as of May 27, 1989)

ADOPTION

Family Code section 8800


Act for both parties

Civil Code section 225(m)

LA 284 (1964)

Award of attorney’s fees

fees denied under Code of Civil Procedure 1021.5 where litigant had done nothing to curtail a public right, but sought a judgment only to settle her private rights and those of her children, notwithstanding the public benefit to others whose adoptions were validated by the litigation.

Adoption of Joshua S. (2008) 42 Cal.4th 945 [70 Cal.Rptr.3d 372]

Independent adoption

Penal Code section 273

Represent

one party in, after advising the other

LA(I) 1958-6

ADVANCEMENT OF FUNDS

See Expenses. Fee.

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 deposit

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

Attorney’s fees from client failure to return unearned portion


Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)


In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668

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

SD 2019-3

-client entitled to a refund of entire advance fee amount because client received nothing of value.

In the Matter of Spitzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263

Bond

attorney acting as guarantor of client’s cost

C AL 1981-55

premium for absent guardian of minor

LA(I) 1954-5

By client

status as trust funds

SF 1980-1, SF 1973-14

-advance deposit

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

-advance payment retainer distinguished from true retainer

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


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

-of costs

Rule 8-101(A), Rules of Professional Conduct (operative until May 26, 1989)

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

Baranowski v. State Bar (1979) 24 Cal.3d 153, 163 [154 Cal.Rptr. 752, 593 P.2d 613]

-of legal fees to attorney

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


-of retainer fee

Rule 3-700(D)

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

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

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In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
SF 1980-1

Costs
LA 379 (1979), LA 149 (1944), SD 2013-3, SF 1985-2
billing
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
failure to return unused advanced costs
In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615
flat periodic fee or lump sum to cover disbursements may be allowable 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)
of litigation
CAL 1976-38
-on contingent contract
Rule 4-210, Rules of Professional Conduct (operative as of May 27, 1989)
Boccardo v. Commissioner of Internal Revenue (9th Cir. 1995) 56 F.3d 1016
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Rule 5-104(A), Rules of Professional Conduct (operative until May 26, 1989)
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Expenses of trial
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Explaining prohibitions of rule 5-104 to client
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Rule 4-210, Rules of Professional Conduct (operative as of May 27, 1989)
to client
-upon promise to repay
Dixon v. State Bar (1982) 32 Cal.3d 728, 733
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-in writing
Misappropriation of advanced fees and costs not maintained in trust account
In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1
Reimburse client
for damages recovered by opposing party
LA 76 (1934)
Reimbursement from client's fund
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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)
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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)
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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, transfer of associate to new firm
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
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Assumed or misleading name
Jacobv v. 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]
LA 530 (2018)
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 1997-150, CAL 1986-90
Bankruptcy
attorneys are “debt relief agencies” within meaning of BAPCPA 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)
Biography of lawyer, sale of book
SD 1973-4
Blogging by attorney
CAL 2016-196
Books relating to practice of law
LA 446 (1987)
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LA(I) 1970-8
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CAL 1972-29
radio or television, use of

See How to Use This Index, supra, p. i
7 2022 (updated entries through 12/31/2021)
Committee on Professional Ethics and Conduct v. Humphrey (1986) 377 N.W.2d 643
television trial
LA 404 (1983)
Brochures, random distribution of
LA 419 (1983)
Business activity
blogging by attorney
CAL 2016-196
business, acquainting public with services offered by lawyers
investment/portfolio manager
CAL 1999-154
lawyer or judge identified on
LA 286 (1965)
lawyer-officer identified on
LA 286 (1965), LA 256 (1959), LA 241 (1957)
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LA 446 (1987)
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use of terms “accountants” and “accounting”
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CAL 2016-196
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for lawyers to serve as guardians of minors
SD 1975-8
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-use of name of
LA 123 (1939)
degrees on
CAL 1999-154, SD 1969-5
delivered to accident victim at scene of accident
SD 2000-1
lay employee noted on
Griffith v. State Bar (1953) 40 Cal.2d 470, 471 [254 P.2d 122]
LA 381 (1979)
limitation of practice noted on
LA 168 (1948)
published in newspaper
-periodical
--mail
LA 404 (1982)
--random distribution
LA 419 (1983)
Change in the form of practice
LA(I) 1971-11
Chat room
CAL 2004-166
Check, profession shown on
LA(I) 1970-3
Class action
communication with potential class members prior to certification
In re McKesson HBOC, Inc. Securities Litigation (N.D. Cal. 2001) 126 F.Supp.2d 1239
constitutional analysis versus State Bar policy

Facsimile transmissions
Business & Professions Code section 17538.4

Fees
Business and Professions Code section 6157

free service
LA(I) 1979-3

low rates
LA(I) 1979-3

“no fees if no recovery”
Rule 1-400, std. 14, California Rules of Professional Conduct (operative May 11, 1994)
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CAL 1982-67

Fictitious name
Rule 1-400, stds. 6, 7, and 9, California Rules of Professional Conduct (operative September 14, 1992)
CAL 1982-66

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LA 421 (1983)

Firm name
CAL 2004-167, CAL 1997-150, CAL 1986-90
SD 1985-1

concurrent use of attorney’s name in two different law firms
LA 511 (2003)

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CAL 1986-90
LA 530 (2018)

of law office comprised of separate sole practitioners
CAL 1986-90
SD 1985-1

First Amendment protections

Rubin v. Green (1993) 344 Ill.6th 1178 [17 Cal.Rptr.2d 828]

blogging by attorney
CAL 2016-196

court order directing interactive website to remove challenged third party reviews from its website when not named as a defendant violated Communications Decency Act immunity to operator (47 U.S.C. Section 230)
Hassell v. Bird (2018) 5 Cal.5th 522 [234 Cal.Rptr.3d 867]
court order requiring attorney to remove her web pages was more restrictive than necessary, infringing on attorney’s free speech rights

scope of commercial speech exemption to the anti-SLAPP statute (Code of Civ. Proc. §§ 425.16, 425.17)
Healthsmart Pacific v. Kabateck (2017) 7 Cal.App.5th 416 [212 Cal.Rptr.3d 589]
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Foreign attorney
LA 156 (1945)

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SD 1983-5
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Group legal services
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Guardians, for lawyers to serve as
SD 1975-8

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SD 2000-1

Insurance company
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CAL 1987-91

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court order directing interactive website to remove challenged third party reviews from its website when not named as a defendant violated Communications Decency Act immunity to operator (47 U.S.C. Section 230)
Hassell v. Bird (2018) 5 Cal.5th 522 [234 Cal.Rptr.3d 867]
court order requiring attorney to remove her web pages was more restrictive than necessary, infringing on attorney’s free speech rights

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CAL 2012-186, SD 2018-1
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CAL 2004-166

Laudatory reference
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LA 25 (1923)
newspaper
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LA 87 (1935)

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Law
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LA 310 (1969)

Law practice
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-use of name of
LA 123 (1939), SD 1969-4
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-use of name of
CAL 1986-90, LA 530 (2018)
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Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
CAL 2020-201, CAL 1985-86

Lawyer referral service
SD 2021-1, SD 2019-2
referral occurs when an entity engages in the act of directing or sending a potential client to an attorney for purposes of Business and Professions Code section 6155

Lawyers to serve as guardians of minors
SD 1975-8

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CAL 1972-29
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LA(I) 1971-1
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CAL 1969-19, LA(I) 1971-1
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Legal services connected with senior citizen membership
SD 1976-11

Legal work for lawyers
LA 65 (1931)
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LA 167 (1948)

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In re Primus (1977) 436 U.S. 412, 422
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CAL 1982-67, CAL 1981-61, CAL 1980-54
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advising creditors of claims when creditors are unaware of existence
-offering to represent on percentage basis
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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-describing qualifications
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-offering to represent in other jurisdictions
CAL 1981-61
-requesting referrals
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target, direct mail solicitation to particular potential clients allowed
CAL 1995-142, CAL 1988-105
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LA 392 (1983)
affiliation with “correspondent firm” in another county
LA 430 (1984)
attribution
-use of by non-lawyer
LA 16 (1922)
corporation
-name of attorney on
LA 16 (1922)
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-use of name of
CAL 1993-129, CAL 1986-90
LA 123 (1939)
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other jurisdictions
-address of offices in
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CAL 1983-75, LA 404 (1983)
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CAL 1981-61

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-requesting referrals
CAL 1981-61
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SF 1979-1
target, direct mail solicitation to particular potential clients allowed
In re Morse (1995) 11 Cal.4th 184 [44 Cal.Rptr.2d 620]
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-using contact information obtained from DMV records violated the Drivers Privacy Protection Act (DPPA)
to non-clients
SD 1983-5
to prospective clients
-announcement of law office opening
LA 128 (1940)
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articles on tax problems, series of LA 87 (1935)
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misleading to the public
Standing Com. on Dis. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1173

scope of commercial speech exemption to the anti-SLAPP statute (Code of Civ. Proc. §§ 425.16, 425.17)
specialization – approval of
Standing Com. on Dis. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1172-1173

Non-legal services
CAL 1999-154

“Of Counsel”
other jurisdictions
- address of offices in
SD 1975-16

Pamphlets relating to the practice of law
LA 419 (1983)
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CAL 1967-10

Partnership
attorney as partner or employee of two law firms
LA 511 (2003)
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LA 331 (1973)

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In re McKesson HBOC, Inc. Securities Litigation (N.D. Cal. 2001) 126 F.Supp.2d 1239

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use of a living trust marketer to solicit clients for the attorney
CAL 1997-148
use of a medical liaison to give a presentation containing promotional messages to a group of doctors who might recommend patients to the lawyer
CAL 1995-143

Profiles on third-party directories
CAL 2019-199, SD 2021-1
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LA 494 (1998), SD 2000-1
management consulting firm incorporated by attorney to act as agent in solicitation of legal business
LA 446 (1987)
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books relating to practice of law
LA 446 (1987)
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LA 256 (1959)
directory
--biographical
LA(1) 1947-4
--organization
--fraternal
LA 184 (1951)
--State Bar website listing
SD 2006-1
--trade, business, etc.
LA 345 (1975)
distribution of
LA 244 (1957), LA(1) 1948-5, LA(1) 1948-4
--pamphlets
Palmquist v. State Bar (1954) 43 Cal.2d 428
--published by State Bar
CAL 1967-10
experiences of lawyer
--as public interest story
SD 1975-3
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--legal
LA 247 (1957), LA 156 (1945)
--trade
LA 158 (1945), LA(1) 1955-4
newsletter
--charitable organization
--offering free will service
LA 428 (1984)
newspaper
LA 45 (1927)
--legal
LA(1) 1975-8
--trade and business
LA(I) 1955-4
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LA 124 (1939)
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--attorney as author of
LA 307 (1968)
promotion of
LA 349 (1975), SD 1973-4
prospectus
--name of counsel giving opinion with regards to tax benefits required by Corporations Commission
CAL 1969-19
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--experience
LA 319 (1970)
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LA 319 (1970)
--inclusion in list of “approved” practitioners
LA(I) 1964-3
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SD 1977-4
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CAL 1982-67, CAL 1981-61
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Belli v. State Bar (1974) 10 Cal.3d 824, 835
Committee on Professional Ethics and Conduct v. Humphrey (1986) 377 N.W.2d 643
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--answering questions on law
LA 299 (1966)
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LA 299 (1966)
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LA 161 (1946), LA 156 (1945)
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CAL 1982-67
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LA 494 (1998)
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People v. Pastrano (1997) 52 Cal.App.4th 610 [60 Cal.Rptr.2d 620]
CAL 1997-150, CAL 1986-90, SD 1985-1
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branch office
LA(I) 1973-2
location
--where there is no office
LA 134 (1940)
shared with business
LA 198 (1952)
use of words “legal clinic” instead of “law office” deemed not misleading
Jacoby v. State Bar (1977) 19 Cal.3d 359, 366
LA 145 (1943)
Social media
CAL 2012-186, SD 2018-1
Specialization
Rule 1-400(E), standard no. 11, Rules of Professional Conduct (operative until May 31, 1997)
Rule 1-400(D)(6), Rules of Professional Conduct (operative June 1, 1997)
absolute prohibition may violate constitutional rights
application
In the Matter of Mudge (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536
LA(I) 1972-13
bar
CAL 1981-61, LA 156 (1945), LA(I) 1970-4
disclaimer explaining that the advertiser is not licensed may permit use of terms (i.e., “accountants”) which are normally used only by state licensees
Moore v. California State Board of Accountancy (1992) 2 Cal.4th 998 [9 Cal.Rptr.2d 12]
otice to profession
--to apprise of specialized services
LA 110 (1937)
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LA 168 (1948), LA 45 (1927)
Standards
standard 3, potential client who does not have requisite emotional or mental state to make a reasonable judgment about retaining counsel
CAL 2004-166
standard 6, reference to relationship with governmental agency in firm name, letterhead or business card
CAL 2004-167
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Target mail solicitation
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
using contact information obtained from DMV records violated the Drivers Privacy Protection Act (DPPA)
Telephone
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
CAL 1988-105
not prohibited if prospective client calls a qualified lawyer referral service because it is reasonable for a lawyer to conclude that the lawyer is communicating with a person who potentially wants to employ him or her
SD 2018-2
offer to conduct seminars
LA 494 (1998)
Telephone directory
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-another city
CAL 1967-7, SD 1975-9
-State Bar website
SD 2006-1
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LA(I) 1948-6
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LA(I) 1963-7, LA(I) 1956-3
-under spelling variations
LA(I) 1963-7
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LA(I) 1956-3
-out-of-town
CAL 1967-7
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-members or associates listed individually
SD 1975-9
patent agent
-employed by law firm
CAL 1970-20
patent attorney
CAL 1970-20
seminars conducted for existing clients
SD 1969-8
Workers’ Compensation
Labor Code sections 5430-5434
97 Ops. Cal. Atty. Gen. 258 (11/21/96; No. 96-309)
ADVISING INQUIRERS THROUGH MEDIA
ADVISING INQUIRERS THROUGH MEDIA
Rule 2-105, Rules of Professional Conduct [repealed effective February 20, 1985; former rule 18]
Generally
LA 191 (1952), LA 181 (1951), LA 148 (1944), LA 8 (1920)
Newspaper
-tax problems
-series of articles on, authored by attorney
LA 87 (1935)
Radio show
attorney answers legal questions submitted by listeners
LA 299 (1986)
attorney participating in
-audience may talk with attorney over airwaves
CAL 1969-17
Tax problems
-series of articles on, in newspaper
LA 87 (1935)
ADVISING VIOLATION OF LAW
Rule 3-210, Rules of Professional Conduct (operative as of May 27, 1989)
Snyder v. State Bar (1976) 18 Cal.3d 286, 288 [133 Cal.Rptr. 864, 555 P.2d 1104]
Townsend v. State Bar (1948) 32 Cal.2d 592, 593-598
Waterman v. State Bar (1937) 8 Cal.2d 17 [63 P.2d 1133]
In re Jones (1929) 208 Cal. 240, 241-243 [280 P. 964]
CAL 1996-146, LA 527 (2015), SD 1993-1
Advice regarding how the client should not violate state law is not advising client to violate federal law
Advocating civil disobedience
CAL 2003-162
Bankruptcy
Collections
LA 522 (2009)
Conflict between state and federal law
LA 527 (2015)
Judge solicited the commission of perjury in a federal investigation
In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157
Medical marijuana
attorneys may give legal advice and assistance limited to activities permissible under California state law provided the client is advised of possible liability under federal law and other potential adverse consequences
CAL 2020-202, LA 527, SF 2015-1
Negotiation of private agreement not to prosecute a crime
CAL 1986-89
Negotiation of private agreement to compromise civil claim arising from crime
CAL 1986-89
ALCOHOL ABUSE
Alcohol and drug addiction brought under control
In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 299
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

Significant professional discipline may be imposed for multiple misdemeanor convictions of driving under the influence
In the Matter of Guillory (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 402

AMERICAN BAR ASSOCIATION MODEL CODE OF PROFESSIONAL RESPONSIBILITY

Can be of assistance where California has not spoken
Paul E. Iacono Structural Engineering, Inc. v. Humphrey (9th Cir. 1983) 722 F.2d 435, 438

Can be of assistance where California has not spoken
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AMERICAN BAR ASSOCIATION MODEL RULES OF PROFESSIONAL CONDUCT

Can be of assistance where California has not spoken
Dieter v. Regents of the University of California (E.D. Cal. 1987) 963 F. Supp. 726
Frey v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]

Inadvertent disclosure of confidential information
Gomez v. Vernon (9th Cir. (Idaho) 2001) 255 F.3d 1118 [50 Fed. R. Serv.3d (Callaghan) 436]
Not binding in California
In re AFI Holding, Inc. (9th Cir. BAP 2006) 355 B.R.139
City and County of San Francisco v. Cobra Solutions, Inc. (2006) 36 Cal.4th 839 [43 Cal.Rptr.3d 771]
General Dynamics Corp. v. Superior Court (1994) 7 Cal.4th 1164, 1190, fn. 6

APPOINTMENT OF ATTORNEY BY COURT  [See Attorney-client relationship. Contract for employment.]

Business and Professions Code section 6068(h)
Standard 5.10 and standard 10.21, Standards of Judicial Administration
Bradshaw v. U.S. Dist. Court (9th Cir. 1984) 742 F.2d 515

Abuse of discretion
found when court removed and refused to reappoint the public defender in a juvenile proceeding absent showing that minor was not indigent or a conflict existed
not found when court held that defendant failed to establish good cause to depart from the statutory scheme for appointment of assigned counsel

Assigned counsel
contract for private employment
SD 1969-9
duty to maintain inviolate client’s confidence and secrets
LA 504 (2000)
duty with respect to costs and expenses
LA 379 (1979)

Attorney-client relationship

Civil proceedings
Yarbrough v. Superior Court (1985) 39 Cal.3d 197 [216 Cal.Rptr. 425]
Payne v. Superior Court (1976) 17 Cal.3d 908 [132 Cal.Rptr. 405]


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

Coercive appointment
Bradhav v. U.S. Dist. Court (9th Cir. 1984) 742 F.2d 515, 517-518

Conservatorship proceedings

Criminal and quasi-criminal proceedings
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]

People v. Fryhaat (2019) 35 Cal.App.5th 969 [248 Cal.Rptr.3d 39]
Yarbrough v. Superior Court (1985) 39 Cal.3d 197 [216 Cal.Rptr. 425]

CAL 1970-23
abandonment by appellate counsel was good cause for substantial delay in filing of habeas petition
In re Sanders (1999) 21 Cal.4th 697 [8? Cal.Rptr.2d 899]
abuse of discretion when court removed and refused to reappoint the public defender in a juvenile proceeding absent showing that minor was not indigent or a conflict existed

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]
appointment of additional
-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
court’s refusal to appoint indigent defendant’s chosen attorney at resentencing did not violate due process
  Gonzalez v. Knowles (9th Cir. 2008) 515 F.3d 1006
court’s refusal to appoint indigent defendant’s chosen attorney at retiral is not abuse of discretion
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
defense attorney
freeing minor from parental custody
  In re Rodriguez (1973) 34 Cal.App.3d 510 [110 Cal.Rptr. 56]
indigent defendants does not have the right to select court-appointed attorney
  People v. Noriega (2010) 48 Cal.4th 517 [108 Cal.Rptr.3d 74]
indigent defendants entitled to effective pro bono assistance
  Cunningham v. Superior Court (1986) 177 Cal.App.3d 336
narcotics commitment hearing
  *People v. Moore (1968) 69 Cal.2d 674 [72 Cal.Rptr. 800]
Defendant’s ability to afford private counsel
United States v. Condo (9th Cir. 1984) 741 F.2d 238
Dependency proceedings
In re Charles C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
In re Jesse C. (1999) 71 Cal.App.4th 1481 [84 Cal.Rptr.2d 609]
actual conflict amongst multiple siblings requires disqualification of appointed counsel from joint representation
attorney appointed for a dependent minor under California Rule of Court 5.660 may also function as the independent guardian ad litem
representation of a minor client
LA 504 (2000)
-attorney acting as guardian ad litem is holder of psychotherapist-patient privilege for minor client
-no ineffective assistance where counsel informed the court of the conflict between minor’s stated interest and what counsel believed was minor’s best interests
  In re Kristen B. (2008) 163 Cal.App.4th 1535 [78 Cal.Rptr.3d 495]
sanctions imposed against attorney for bringing frivolous conflict motions
Duties of appointed counsel
authority to bind conservatee-client who requests not to be present at hearing
  In re Conservatorship of the Person of John L. (2010) 48 Cal.4th 131 [105 Cal.Rptr.3d 424]
conservatorship proceedings
-duty of counsel to perform in an effective and professional manner is implicit in statute (Welf. & Inst. Code § 5365) providing for appointment of attorney for proposed conservatee
Fees
Good cause to relieve counsel appointed for a minor
  In re Jesse G. (1999) 71 Cal.App.4th 1481 [84 Cal.Rptr.2d 609]
Inadvertent disclosure of confidential information
city’s inadvertent disclosure of documents in response to Public Records Act request did not waive attorney-client privilege
  Ardon v. City of Los Angeles (2016) 62 Cal.4th 1176 [199 Cal. Rptr. 3d 743]
No absolute Sixth Amendment right to both pro bono counsel and assistance of counsel
  United States v. Condo (9th Cir. 1984) 741 F.2d 238
Preservation of constitutional rights
United States v. Condo (9th Cir. 1984) 741 F.2d 238
Pro bono publico service
Business and Professions Code sections 6068(h), 6103
Bradshaw v. U.S. Dist. Court (9th Cir. 1984) 742 F.2d 515
Yarbrough v. Superior Court (1985) 39 Cal.3d 197 [216 Cal.Rptr. 425]
Payne v. Superior Court (1976) 17 Cal.3d 908, 924
Lamont v. Solano County (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
ARBITRATION

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

arbitrator’s decision not subject to judicial interference
LA 415 (1983)
attorney fee provision severed from arbitration agreement as against public policy

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

arbitrator’s failure to disclose that attorney was member of administering dispute provider resolution organization is valid ground for vacating arbitration award
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]
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]

2022 (updated entries through 12/31/2021) 16 See How to Use This Index, supra, p. i
-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 contract 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]

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


standards for neutral arbitrators adopted by the Judicial Council


Attachment prior to


Attorney as arbitrator

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

LA 415 (1983)

while representing client on other matters

CAL 1984-80

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


Attorney fees

arbitration award corrections


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


arbitrator may not revise final arbitration award to include attorney fees after he already made substantive ruling in final award denying attorney fees


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 777 [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 award fees under the terms of the controlling arbitration

ARBITRATION

-pursuant to Civil Code section 1717
[145 Cal.Rptr.3d 641]

binding at county bar level
Schatz v. Allen Matkins Lock 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 Mandatory Fee Arbitration Act (MFARA) arbitration process is over
Schatz v. Allen Matkins Lock Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]
enforceable arbitration agreement is contained in an illegal contract, a party may avoid arbitration altogether
failure to comply with 6201(a) does not compel court to dismiss action
in other states
law firm obligated to pay attorney fees to its’ “of counsel” attorney for representation in fee dispute with client
notice of client’s right to arbitrate a dispute must be given after dispute has arisen
LA 521, OC 99-002
prevailing defendant not entitled to award of attorney fees where case brought under anti-hate crime statute
trial court procedures
Civil Code of Procedure section 1285 et seq.
trial de novo
Giorianni v. Crowley (2011) 197 Cal.App.4th 1462 [129 Cal.Rptr.3d 546]
Pickens v. Weaver (1985) 173 Cal.App.3d 550 [219 Cal.Rptr. 91]

Attorney’s associate as arbitrator in case in which attorney represents client
LA 302 (1968)
Authority of arbitration
Pacific Motor Trucking v. Automotive Machinists (9th Cir. 1983) 702 F.2d 176
Moncharsh v. Helly & Blase (1997) 3 Cal.4th 1 [10 Cal.Rptr.2d 183]

California Faculty Association v. Superior Court (1998) 63 Cal.App.4th 935 [75 Cal.Rptr.2d 1]

arbitration award need not be vacated when judge who ordered arbitration should have been disqualified

binding agreement
-arbitration in accordance with Business and Professions Code section 6200 et seq., is non-binding unless parties agree in writing to make it binding
Glaser, Weil, Fink, Jacobs and Shapiro, LLP v. Goff (2011) 194 Cal.App.4th 423 [125 Cal.Rptr.3d 268]

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

Authority of attorney to unilaterally bind client to binding arbitration with opposing party
Baktion v. Womencare (1985) 38 Cal.3d 396 [12 Cal.Rptr. 151]


Binding clause in law firm employment agreement
Davis v. O’Melveny & Myers (9th Cir. 2007) 485 F.3d 1066

Binding clause in retainer agreement
Schatz v. Allen Matkins Lock Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]
Aguilar v. Lerner (2004) 32 Cal.4th 974 [12 Cal.Rptr.3d 287]

CAL 1989-116, CAL 1981-56
LA 489 (1997)

binding private arbitration clause in attorney-client fee agreement may be enforced under the California Arbitration Act (CAA) once the Mandatory Fee Arbitration Act (MFARA) arbitration process is over
Schatz v. Allen Matkins Lock Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]

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)


Mandatory Fee Arbitration Act does not impliedly repeal California Arbitration Act
Schatz v. Allen Matkins Lock Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]

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

2022 (updated entries through 12/31/2021) 18
See How to Use This Index, supra, p. i
not applicable to business deal between attorney and client
[62 Cal.Rptr.2d 271]
Certification of non-resident, out-of-state attorney representatives
Code of Civil Procedure section 1282.4
Code of Civil Procedure section 1286.6 (authority to amend or correct a final award)
[107]
definition of “professional relationship” for purposes of statutory disclosure of information that could affect the arbitrator’s neutrality
[145 Cal.Rptr.3d 641]
denied when arbitrator fails to disclose a prior connection to attorney defendant of which arbitrator was not aware of
failure of arbitrator to disclose that his wife had worked for law firm that represents party to arbitration more than 2 years before firm represented that party, does not require vacatur of award
Johnson v. Gruma Corporation (9th Cir. 2010) 614 F.3d 1062
failure to disclose information that might indicate bias (CCP § 1281.9 et seq.)
United Health Centers of the San Joaquin Valley Inc. v. Superior Court (2014) 229 Cal.App.4th 63 [177 Cal.Rptr.3d 214]
[145 Cal.Rptr.3d 641]
--actual bias in an arbitrator is not required to trigger disclosure requirements; rather, the arbitrator’s duty to disclose is measured by an objective, reasonable person standard
--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]
--arbitration award should have been vacated by trial court when arbitrator failed to disclose that he had numerous matters with one of the parties’ law firm during pendency of an arbitration
--arbitrator’s failure to disclose that his resume listed one of the firm’s partners as a reference required vacation of arbitration award
--failure to disclose nature of professional responsibility practice
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]
no right of parties to seek arbitrator’s disqualification based on disclosure that was not statutorily required (CCP § 1281.9 et seq.)
nominee for service as a neutral arbitrator must disclose any matter that could cast doubt on his or her ability to be impartial
--disclosure of public censure while previously serving as judge not required
Haworth v. Superior Court (2010) 50 Cal.4th 372 [112 Cal.Rptr.3d 853]
not available when motion to disqualify is brought after ruling by arbitrator on any contested matter
 requires raising issue in a timely manner
United Health Centers of the San Joaquin Valley Inc. v. Superior Court (2014) 229 Cal.App.4th 63 [177 Cal.Rptr.3d 214]
vacatur of arbitration award denied where arbitrator’s voluntary disclosure of his membership in the same professional organization as the expert witness as such disclosure was not required by law (CCP § 1281.9 et seq.)


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

Enforcement of an arbitration agreement between plaintiff and original firm that they previously been resolved and where the arbitrator’s refusal 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


prevailing party seeking to enforce an arbitration award must petition the court to confirm the award (CCP §§ 1285 et seq.)


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


Fee arbitration [See Fee. Professional liability.]

Business and Professions Code section 6200 et seq.


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

Business and Professions Code section 6200 et seq.


accumulation of attorney fees incurred on behalf of an insured client


OC 99-002

affirmative duty of prior counsel to seek arbitration or judicial determination of attorney fee

CAL 2009-177

amount of money in controversy, determined by plaintiff’s claim

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

arbitration award becomes binding 30 days after notice of award


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

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

arbitration award corrections

ASSIGNED COUNSEL

Restrictive covenant in law firm’s employment contract disputed by a departing attorney
courts may not vacate an arbitration award except for statute
Moncharsh v. Heily & Blase (1992) 3 Cal.4th 1 [10 Cal.Rptr.2d 183]

[62 Cal.Rptr.2d 27]

Standards for neutral arbitrators adopted by the Judicial Council

ASSIGNED COUNSEL
Capital cases
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

Contract for private employment
SD 1969-9

Duty with respect to costs and expenses
LA 379 (1979)

ASSIGNMENT [See Trustee.]
Assignee represent against former client’s assignee in matter in which acted for client
LA(I) 1961-2

Assignee, lawyer
claim and client’s accounts for purpose of collection
LA 7 (1918)

client’s interest in estate to secure loan
LA 228 (1955)

Assignor
(1937) 13 LABB 67

Attorney-client relationship between assignor and attorney for assignee
Macri v. Carson Tahoe Hospital (1966) 247 Cal.App.2d 63
[55 Cal.Rptr. 276]

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

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

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

Legal malpractice claims are not assignable under California law and public policy

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


bankruptcy estate representative pursuing claim for the estate is not an assignee
Office of Statewide Health Planning and Development v. Musick, Peeler & Garrett (1999) 76 Cal.App.4th 830
[90 Cal.Rptr.2d 705]

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

Lottery ticket to attorney
LA 115 (1937)

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

Third-party of lawsuit in exchange for interest in proceeds
distinguished from buying a claim
CAL 2020-204

Tort claims for personal injuries are not assignable under
California law
Pony v. County of Los Angeles (9th Cir. 2006) 433 F.3d 1138
Cal.Rptr.2d 536]

ASSOCIATE

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

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

Definition
Rule 1-100(B)(4), Rules of Professional Conduct
where an outside lawyer functions on a particular matter
essentially on the same basis as an employee, the outside
lawyer is an associate for purposes of rule 2-200
Cal.Rptr.2d 619]

Division of fees
- attorney as partner or employee of two law firms
LA 511 (2003)
- Duty to represent a client competently
LA 383 (1979)
- Duty with respect to disabled employer’s practice
LA 348 (1975)
- Former attorney-employees liable for violation of Uniform Trade
Secrets Act (Civil Code § 3246 et seq.) if found to have
misappropriated employer’s protected trade secret client list for
solicitation
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
- Former attorney-employees may compete for the business of
former employer so long as such competition is fairly and legally
conducted
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
- Form for listing on announcements
SF 1973-18
- Practice by employer of when associate is prosecutor
LA 377 (1978)
- Represented other side
LA 363 (1976)

ASSOCIATE COUNSEL

Division of fees
- association of outside counsel not a basis for exemption from
2-200 requirements
- outsourcing legal services
LA 518 (2006)
- Employment as subject to approval of other attorney
LA 183 (1951)
- Employment as, subject to approval of client
SD 1974-2
- Outsourcing legal services
LA 518 (2006)

ATTACHMENT [See Fee, unpaid.]

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

ATTORNEY-ATTORNEY RELATIONSHIP

Business and Professions Code section 6068(f)
Civil Code section 472
Rules 2-100, 2-200, 2-300, and 2-400, Rules of Professional
Conduct
United States v. Wunsch (9th Cir. 1996) 84 F.3d 1110, 1119
In the Matter of Anderson (Review Dept. 1997) 3 Cal. State
Bar Ct. Rptr. 775, 786-787

Attorney as agent of another
Beck v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]
Cal.Rptr. 195]

Attorney as independent contractor
Cal.App.3d 384 [134 Cal.Rptr. 507]
Cal.Rptr. 511]
Otten v. San Francisco Hotel etc. Assn. (1946) 74
Cal.App.2d 341 [168 P.2d 739]
Associated Ind. Corp. v. Ind. Acc. Com. (1943) 56
Cal.App.2d 804 [133 P.2d 698]

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

Communications with the State Bar are privileged

Consultation with an independent attorney regarding the client’s
Case may be permitted
SD 1996-1

Division of fees
- attorneys’ oral agreement to form joint venture to share legal
fees held enforceable notwithstanding argument that such
arrangement may have violated rules of professional conduct
requiring clients’ consent to share fees and waiver of conflict
Of interest
Jorgensen v. Cassidy (9th Cir. 2003) 320 F.3d 906
by attorneys who represented each other in recovery of
contingent fee due under retainer agreement
Farmers Insurance Exchange v. Law Offices of Conrado
Joe Says, Jr. (9th Cir. 2001) 250 F.3d 1234

former shareholder of law firm has no ownership or lien
interest upon fees owed to firm by client
[84 Cal.Rptr.2d 361]

post-dissolution profits from unfinished partnership business
Cal.Rptr.3d 670]

Dickson, Carlson & Campillo v. Pole (2000) 83
Cal.App.4th 436 [99 Cal.Rptr.2d 678]
requires written disclosure to client and client’s written
consent
Cal.Rptr.2d 502]

successor attorney’s obligation to notify prior attorney of the
existence of a settlement
CAL 2008-175

terminated attorney could not recover attorney’s fees in
quantum meruit from former co-counsel notwithstanding
compliance with rule 2-200
Cal.Rptr.3d 460]

Employer may recover for tortious interference with employment
contracts of its at-will employees by third party (attorney-
employees) who induced personnel to terminate their
employment
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]

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
Dickson, Carlson & Campillo v. Pole (2000) 83
Cal.App.4th 436 [99 Cal.Rptr.2d 678]

fiduciary duty to protect the interest of clients does not extend
to co-counsel
Beck v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]
869 [87 Cal.Rptr.2d 405]

Group of attorneys circulating names of other attorneys who fail to
extend professional courtesies
LA 364 (1976)
ATTORNEY-CLIENT RELATIONSHIP

former attorney-employees may compete for the business of former employer so long as such competition is fairly and legally conducted


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

ATTORNEY-CLIENT RELATIONSHIP


Abstrac1
In re Ochse (1951) 38 Cal.2d 230, 231 [238 P.2d, 561]

Accusing opposing counsel of misrepresentation may be moral turpitude when done with gross neglect

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

Acts constituting malpractice

Acts in role other than as an attorney

Acts of client
corcurrency in or conspiracy with client's acts not inferred from the existence of attorney-client relationship itself

Contreras v. Dowling (2016) 4 Cal.App.5th 774 [208 Cal.Rptr.3d 707]

Advance fees and costs [See Fees, advance.]

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

Advising client of disability of attorney; associate's duty
LA 348 (1975)

Advising client of potential malpractice claims against oneself
CAL 2019-197, CAL 2009-178

Advise client of prior attorney's malpractice
LA 390 (1981)

Agency
exception – attorney neglect is punitive misconduct


normally client bound by acts of attorney agent, however, where gross negligence amounts to abandonment, client entitled to relief

Mackey v. Hoffman (9th Cir. 2012) 682 F.3d 1247

Allocation of authority
lawyer who disregards specific instructions from his or her client to file notice of appeal by failing to file in timely appeal acts in manner that is professionally unreasonable

In re A.R. (2021) 11 Cal.5th 234 [276 Cal.Rptr.3d 761]

Appellate counsel for minor
in a dependency matter, attorney has the authority to dismiss the child's appeal based on appellate counsel's assessment of minor's best interest only with approval of guardian ad litem

In re Josiah Z. (2005) 36 Cal.4th 664 [31 Cal.Rptr.3d 472]

Appointment of attorney for indigent


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

ATTORNEY-CLIENT RELATIONSHIP

As bank’s director, bank attorney

Association for particular case
Wells Fargo & Co. v. San Francisco (1944) 25 Cal.2d 37 [152 P.2d 625]
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
limited scope of representation as “appearance attorney” in an immigration proceeding is improper
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
specially appearing attorney undertakes a limited association with the litigant’s attorney of record
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

Attorney as agent
Echlin v. Superior Court (1939) 13 Cal.2d 368 [90 P.2d 6]
Sullivan v. Dunne (1926) 198 Cal. 183 [244 P. 343]
agent is also a wrongdoer when the principal is a wrongdoer
Mindy’s Cosmetics, Inc. v. Dakar (9th Cir. 2010) 611 F.3d 590
-concurrency in or conspiracy with client’s acts not inferred from the existence of attorney-client relationship itself
Contreras v. Dowling (2016) 4 Cal.App.5th 774 [208 Cal.Rptr.3d 707]
client has right and power to discharge at any time
O’Connell v. Superior Court (1935) 2 Cal.2d 418 [41 P.2d 334]
dissolves on suspension of attorney
exception when attorney has a present and co-existing interest in the object of representation
Echlin v. Superior Court (1939) 13 Cal.2d 368 [90 P.2d 63]
imputation of agency relationship
eglect imputed to client
notice to attorney
agent imputed to client
outside counsel for a corporation

Attorney as employee
Casselman v. Hartford etc. Co. (1940) 36 Cal.App.2d 700 [98 P.2d 539]
CAL 1993-132

Attorney as independent contractor
LA 473 (1992)
outside counsel for a corporation
outsourcing legal services
LA 518 (2006)
Attorney as trustee, client as beneficiary
Probate Code sections 16002 and 16004
Probate Code section 15687
*Civil Code section 2235 (repealed 7/1/87)
LA 496 (1998)
Attorney as witness
Attorney assumes personal obligation of reasonable care
specially appearing attorney owes a duty of care to the litigant
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
Attorney entitled to reasonable value of services rendered, quantum meruit
Attorney need not blindly follow desire of client
Summerlin v. Schring (9th Cir. 2005) 427 F.3d 623
Blanton v. Womanicare (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]
counsel has a professional responsibility not to pursue an appeal that is frivolous or taken for the purpose of delay just because client instructs him to do so
court’s advice to defendant that he follow his attorney’s advice did not impair defendant’s ability to waive his right to testify
United States v. Joelson (1993) 7 F.3d 174
Attorney neglect must be excused to avoid imputation to client
Attorney not liable to insured when insurer, under consent clause of policy, settles claim without consulting insured
Attorney of record
Singh v. Immigration and Naturalization Service (2003) 315 F.3d 1186
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

payment of attorney fees alone not determinative, only a factor
specially appearing attorney forms an attorney-client relationship with the litigant
Attorney's partner or employee
Little v. Caldwell (1894) 101 Cal. 553 [36 P.2d 107]
Attorney-client have co-existing interests
SD 1983-11
Authority of attorney
Levy v. Superior Court (1995) 10 Cal.4th 578 [41 Cal.Rptr.2d 878]
Blanton v. WomanCare (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]
Links v. Links (1969) 70 Cal.2d 272, 276 [74 Cal.Rptr. 544]
Provost v. Regents of the University of California (2011) 201 Cal.App.4th 1289 [135 Cal.Rptr.3d 591]
In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308
*In the Matter of Jennings (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 337
CAL 2002-160
client with diminished capacity
CAL 2021-207
commitment proceedings
-counsel for client found to be insane and dangerous to others may render informed tactical decisions over client's objections
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]
representation of a minor client in a dependency proceeding
LA 504 (2000)
-to enforce minor client's parental rights
to bind client
Code of Civil Procedure section 283
to settle lawsuit when client cannot be located
LA 441 (1987)
to settle lawsuit without client's consent
LA 550 (2000)
Board of education
may only appoint outside counsel, in addition to in-house counsel, for "special services"
86 Ops. Cal. Atty. Gen. 57 (4/25/03; No. 02-1005)
Borrowing from client on oral loan without complying with duties
In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349
Burdens to prove rests on client
Ferrara v. La Sala (1960) 186 Cal.App.2d 263 [9 Cal.Rptr. 179]
Business dealings with client must be fair and reasonable
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
all dealings between attorney and client that are beneficial to the attorney will be closely scrutinized with the utmost strictness for any unfairness
Fair v. Bakhtiari et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]
entire attorney-client business relationship was tainted by the attorney's failure to fully disclose to the client material terms of their transactions and to obtain the client's written consent
Fair v. Bakhtiari et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]
Probate Code, § 16004(c), prohibiting a fiduciary from obtaining an advantage from the beneficiary, applies to the attorney-client relationship
Fair v. Bakhtiari et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]
In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660
Business transaction with former client
no violation of rule 3-300 found in disciplinary action where attorney did not comply with rule re the transaction
In the Matter of Allen (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198
with funds obtained by the representation
In re 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
Client acts in reliance on advice of attorney
Client as beneficiary, attorney as trustee
Probate Code sections 16002 and 16004
Probate Code section 15687
*Civil Code section 2235 (repealed 7/1/87)
LA 496 (1998)
Client as co-counsel
People v. Dale (1978) 78 Cal.App.3d 722 [144 Cal.Rptr. 338]
Client assistance to counsel
People v. Matson (1959) 51 Cal.2d 777, 789 [336 P.2d 937]
payment to client
LA 437 (1985)
Client has right to discharge
Echlin v. Superior Court (1939) 13 Cal.2d 368 [90 P.2d 63]
absolutely right with or without cause in California
exception when attorney has a present and co-existing interest in the object of the representation
Echlin v. Superior Court (1939) 13 Cal.2d 368 [90 P.2d 63]
should not be tied to attorney after losing faith
Fracasse v. Brent (1972) 6 Cal.3d 784 [100 Cal.Rptr. 385, 494 P.2d 9]
Client's non-payment of fee [See Fee.]
withdrawal
Rule 2-111(C)(1)(f), Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)
ATTORNEY-CLIENT RELATIONSHIP

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

Client’s rights may not be deprived because of attorney neglect

**County of San Diego v. Manzi** (1984) 156 Cal.App.3d 641

**pro bono client**

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

Client’s right to choice of counsel

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

**People v. Ramirez** (2006) 39 Cal.4th 398 [46 Cal.Rptr.3d 677]


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

**CAL 2020-201**

**automatic vicarious disqualification of a firm would reduce the right of the client to choose an attorney**

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

**class actions**

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

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

client’s interests are paramount in any consideration of the relationship between attorney and client

**Fracasse v. Brent** (1972) 6 Cal.3d 784 [100 Cal.Rptr. 385, 494 P.2d 9]

**conservatorship proceedings**

**In re Conservatorship of Estate of David L.** (2008) 164 Cal.App.4th 701 [79 Cal.Rptr.3d 530]

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

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

defendant’s exclusion from an in-camera conference regarding defense counsel’s withdrawal deprived defendant of due process of law

**Bradley v. Henry** (9th Cir. 2005) 428 F.3d 811

defendant’s right to substitute attorneys of his choice, even after defendant was made aware that chosen counsel did not meet standards for appointed counsel and offer to defendant to consult with independent counsel was declined

**People v. Ramirez** (2006) 39 Cal.4th 398 [46 Cal.Rptr.3d 677]

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

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

must yield to considerations of ethics

**Comden v. Superior Court** (1978) 20 Cal.3d 906, 915 [145 Cal.Rptr. 9, 576 P.2d 971]

Client suffering from a mental disorder

client, previously found not guilty by reason of insanity, must act through counsel who may properly waive, over client’s objections, a jury trial in a proceeding to extend commitment


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


Communications

between attorney and inmate client

- prison officials opening mail


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

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


Competence of the client


**LA 509 (2002)**

Competent representation at time of representation


specially appearing attorney owes a duty of care to the litigant


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

Condominium associations


Confidence of client in attorney

**CAL 1987-93, CAL 1984-83**

Confidential in character


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

**Piuxeve Aircraft Co. v. Greenwood** (1943) 61 Cal.App.2d 21 [141 P.2d 933]

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

**CAL 2016-195**

Confidential in nature


Conflict of interest

based on relationship between class action counsel and class representative


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


client as beneficiary, attorney as trustee

**Probate Code sections 16002 and 16004**

**Probate Code section 15687**

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

**LA 496 (1998)**

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


disqualification of counsel and firm

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

- attorney disqualified for formerly representing the adverse party in the same litigation necessitates vicarious disqualification of the entire firm regardless of screening measures

ATTORNEY-CLIENT RELATIONSHIP

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 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
SD 2006-1

established by contract

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]


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

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

attorney’s duty to communicate includes the duty to advise

Butler v. State Bar (1986) 42 Cal.3d 323, 329 [228 Cal.Rptr. 499]
In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547
CAL 2005-168, CAL 2003-161

-dealing with constituents of an organization

burden rests on client to prove existence of
U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
Ferrara v. LaSalle (1960) 186 Cal.App.2d 263 [9 Cal.Rptr. 179]

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

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

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

none exists when trustee is also creditor
wife’s signature on post-nuptial agreement was tantamount to a written waiver of any potential conflict of interest
In re Marriage of Friedman (2002) 100 Cal.App.4th 65 [122 Cal.Rptr.2d 412]
Conservatorship proceedings
attorney initiated conservatorship proceedings, absent client consent

authority to bind conservatee-client who requests not to be present at hearing
In re Conservatorship of the Person of John L. (2010) 48 Cal.4th 131 [105 Cal.Rptr.3d 424]
reestablishing conservatorship by stipulation filed by conservatee’s attorney
In re Conservatorship of Deidre B. (2010) 180 Cal.App.4th 1306 [103 Cal.Rptr.3d 825]
right of prospective conservatee to effective assistance of counsel
Consultation with, prima facie case of existence of
Barton v. U.S. Dist. Court for Central Dist. of Cal. (9th Cir. 2005) 410 F.3d 110
United States v. Rowe (9th Cir. 1996) 96 F.3d 1294
Davis v. State Bar (1983) 33 Cal.3d 231 [188 Cal.Rptr. 441, 655 P.2d 1276]

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

In re Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483
CAL 1984-84, LA 465 (1991), SD 2006-1, SD 1977-6

attorney’s duty to communicate includes the duty to advise people who reasonably believe they are clients that they are, in fact, not clients
Butler v. State Bar (1986) 42 Cal.3d 323, 329 [228 Cal.Rptr. 499]
In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547
CAL 2005-168, CAL 2003-161

-dealing with constituents of an organization

burden rests on client to prove existence of
U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
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ATTORNEY-CLIENT RELATIONSHIP

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

Corporation as client
- against corporation’s outside counsel cannot proceed because attorney-client privilege precludes counsel from
  - mounting meaningful defense
- attorney for corporation does not represent shareholders
- court appointed counsel
directors have no power as individuals
- In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576

Dual purpose communication
- In re Grand Jury (9th Cir. 2021) 23 F.4th 1088
  - employee not entitled to personal claim of attorney-client privilege to protect his communications with corporate counsel
  - U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
  - outside counsel retained by corporation to defend against litigation was not agent of corporation for purposes of statute indemnifying persons used by reason of such agency for defense costs

Parent/subsidiary considered single entity for conflict purposes
  - CAL 1989-113, OC 2012-1

Prima facie case of fraud required to waive relationship
- Dickerson v. Superior Court (1982) 135 Cal.App.3d 93
  - relationship between corporate employees and corporate counsel
  - U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
  - shareholders derivative action

  - attorney not barred from continuing to represent insider of closely held company in a derivative lawsuit pursuant to
  - Forrest v. Baeza
  - bringing the derivative action, shareholder’s attorney is acting against the corporation’s wishes because the corporation refuses to pursue the claim

Totality of circumstances test used to determine whether
- management employees are clients
  - U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
  - unincorporated organization

Court appointed attorney for bankruptcy trustee may not be removed by spouse of bankrupt party
- Matter of Fonoilier (9th Cir. 1993) 707 F.2d 441, 442

Court appointed attorney to coordinate discovery in complex litigation
- no interference to parties’ right to counsel of choice

Court appointed for criminal defendant for a civil action

Creation of relationship
- United States v. Rowe (9th Cir. 1996) 96 F.3d 1294
- City of Petaluma v. Superior Court (2016) 248 Cal.App.4th 1023 [204 Cal.Rptr.3d 196]

SD 2006-1
- attorney-client relationship may exist when an attorney provides a legal service, including investigative fact-finding, without also providing advice
- City of Petaluma v. Superior Court (2016) 248 Cal.App.4th 1023 [204 Cal.Rptr.3d 196]
- between corporate employee and corporate counsel
  - U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
  - formed with bank when attorney writes an opinion letter for bank at the request of a client who is a customer of the bank

Law firms act through individual attorneys, and when a client retains an attorney, he or she retains the entire firm
- Roche v. Hyde (2020) 51 Cal.App.5th 757 [265 Cal.Rptr.3d 301]
- 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

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

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
- attorney disqualified for formerly representing the adverse party in the same litigation necessitates vicarious disqualification of the entire firm regardless of screening measures
- 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.]

Dual occupation
dual purpose communication (including both legal and non-legal advice) defined
In re Grand Jury (9th Cir. 2021) 23 F.4th 1088

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 Dahlg (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. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
LA 504 (2000)
to client
-specially appearing attorney owes a duty of care to the litigant
ATTORNEY-CLIENT RELATIONSHIP

- 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 the Matter of 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
  - *People v. McKenzie (1983) 34 Cal.3d 616 [194 Cal.Rptr. 462, 668 P.2d 769]*
  - 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
  - *Sharpe v. Superior Court (1983) 143 Cal.App.3d 469 [-192 Cal.Rptr. 16]*

- Effect on communication with opposing party on attorney-client relationship

- Established by contract

- Established by inquirers calling attorney telephone hotline for advice
  - LA 449 (1988)

- Estoppel
  - attorney continues to provide legal advice or services.

- Former client
  - Formal substitution ordinarily ends the attorney/client relationship.

- Fiduciary relationship
  - People v. Chapman (1984) 36 Cal.3d 98, 110

- Extent of privileged communications
  - 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]

- 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
  - Harrington 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

- Fiduciary relationship
  - Kears v. Fred Lavery Porsche Audi Co. (Fed. Cir. 1984) 745 F.2d 600, 603-605
  - Elan Transdermal, Ltd. v. Cygnus Therapeutic Systems (N.D. Cal. 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
  - business transaction with former client
    - no violation of rule 3-300 found in disciplinary action where attorney did not comply with rule re 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. 297
ATTORNEY-CLIENT RELATIONSHIP

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 Garcia (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


Governmental entities

Brown Act (CCP § 54956.9)

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

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

Guardian ad litem


SD 2017-2

Imputation of knowledge


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


presumption of shared confidences in a law firm

- rebuttable

County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 90

Imputed to client


In propria persona client and advisor counsel share handling of case

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

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


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 1108]

Incompetent client

attorney initiated conservatorship proceedings, absent client consent


duty of confidentiality compared with duty to be 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

by third party (district attorney and sheriff)

- results in dismissal of criminal accused’s case


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

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

Interference with economic advantage


Intervention by lay entity

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

See How to Use This Index, supra, p. i 31 2022 (updated entries through 12/31/2021)
ATTORNEY-CLIENT RELATIONSHIP

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


dividend 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


infective assistance of counsel for minor


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


Litigious client

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

Malpractice actions tolled while attorney continues to represent client


test for whether attorney continues to represent client in same matter


Malpractice claims are not assignable under California law and public policy


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


bankruptcy estate representative 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

Planton 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

CAL 2020-202, LA 527, SF 2015-1

Minor as client


LA 504 (2000)

delinquency proceeding


dependency proceeding


-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 Charlise 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

Butler v. State Bar (1986) 42 Cal.3d 323 [228 Cal.Rptr. 499]

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

Negligent attorney may not shift liability to another through indemnification

Munoz v. Davis (1983) 141 Cal.App.3d 420 [190 Cal.Rptr. 400]

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

ATTORNEY-CLIENT RELATIONSHIP


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 privileged subject matter that has been communicated to attorney


SD 2006-1

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


extends to communication relating to a client's matter or interests among and between multiple attorneys who are representing client

Fireman's Fund Insurance Co. v. Superior Court (2011) 196 Cal.App.4th 1263 [127 Cal.Rptr.3d 768]

extends to 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]

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]

former trustee was not entitled to withhold communications through trust's former counsel on ground of attorney-client privilege to successor trustee


government has burden of justifying withholding documents under any exemptions under the Freedom of Information Act (FOIA) SUSCA 552(b)

American Civil Liberties Union of Northern California v. United States Department of Justice (9th Cir. 2018) 880 F.3d 473

in camera review of communications to determine privilege

ATTORNEY-CLIENT RELATIONSHIP

may apply when 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
predecessor trustee failed to establish that they communicated with counsel in their personal capacity
survives client’s death
survives corporate merger
tripartite attorney-client privilege arises when title insurer hires law firm to prosecute action on behalf of its insured
Bank of America v. Superior Court of Orange County (2013) 212 Cal.App.4th 1076 [151 Cal.Rptr.3d 526]
Protection of
Publishing book [See Conflict of interest, literary rights.] attorney
accepting representation of criminal defendant
Maxwell v. Superior Court (1982) 30 Cal.3d 606 [180 Cal.Rptr. 177]
LA 287 (1965)
third party
--attorney furnishes information and material
--relating to representation of criminal defendant
LA 287 (1965)
Purchaser of client’s assets
LA 433 (1984)
Purpose
intention of confidentiality
Reasonable measures must be taken to determine the law at time of actions
*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. Mazuo (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. Waagner (9th Cir. (Ariz.) 2003) 339 F.3d 915
Right of defendant
People v. Davis (1984) 161 Cal.App.3d 796, 802
to counsel of choice
-defendant’s right to counsel of choice includes right to enter into legitimate financial arrangements with retained counsel, including retaining counsel only through preliminary examination
Right to appointed counsel ineffective assistance of counsel for minor
juvenile delinquency proceeding is sufficiently similar in substance and import to criminal prosecution that indigent juveniles are entitled to Fourteenth Amendment protections
Right to counsel of choice
Cohen v. United States District Court for the Northern District of California (9th Cir. 2009) 586 F.3d 703
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
applies to retained counsel, not appointed counsel
U.S. v. Brown (9th Cir. 2015) 785 F.3d 1337
[109 Cal.Rptr.3d 919]
automatic disqualification of a firm would reduce the right
County of Los Angeles v. United States District Court
(Forsyth) (9th Cir. 2000) 223 F.3d 990
Cal.App.4th 1112 [18 Cal.Rptr.3d 112]
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-right to lead plaintiff to select lead counsel under Private
Securities Litigation Reform Act
Cohen v. United States District Court for the Northern
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conservatorship proceedings
In re Conservatorship of Estate of David L. (2008) 164
Cal.App.4th 701 [79 Cal.Rptr.3d 530]
court did not abuse discretion in denying motion to substitute
in retained counsel; waiver was based on an inadequate
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Cal.Rptr.3d 559]
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
Cal.Rptr.3d 222]
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]
People v. Jones (2004) 33 Cal.4th 234 [14 Cal.Rptr.3d
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-improper due to insufficient conflict of interest
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Cal.Rptr.3d 842]
People v. Lara (2001) 86 Cal.App.4th 139 [103
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Cal.Rptr.3d 539]
-criminal defendant enjoys right to discharge retained counsel for any reason unless denial compelled by fair, efficient and orderly administration of justice
U.S. v. Brown (9th Cir. 2015) 785 F.3d 1337
defendant’s right to conflict free counsel required that new appointed counsel be present before conducting further proceedings in open court to hear PD’s request to be reappointed after being relieved for a conflict of interest
Cal.Rptr.3d 370]
-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 was not indigent or was a conflict existed.
[172 Cal.Rptr.3d 509]
may be forfeited by defendant’s conduct towards counsel only after a full due process proceeding is afforded
Cal.Rptr.2d 585]
may not be forfeited without defendant’s voluntary, knowing and intelligent waiver
Cal.Rptr.3d 671]
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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
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Sanctions may not be levied against attorney for taking all actions necessary to protect his clients
Cal.Rptr. 735]
Scope of representation
Cal.Rptr.3d 662]
Cal.Rptr.2d 293]
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-counsel owed a duty, post certification, to advise clients of other claims related to but outside the scope of the representation
Cal.App.4th 930 [14 Cal.Rptr.3d 751]
-counsel owed a duty, post-judgment, to pursue class claims through enforcement of judgment
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-counsel owed no duty to class member to give notice beyond the court-approved settlement notice procedure
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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
[5 Cal.Rptr.3d 700]
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Cal.Rptr.3d 662]
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.”
Cal.App.5th 1240 [208 Cal.Rptr.3d 428]
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-an associated attorney whose name is on filings cannot avoid liability by claiming ignorance facts that may lead to misleading prosecution claim
206 Cal.App.4th 1095 [142 Cal.Rptr.3d 646]
specially appearing attorney undertakes a limited association with the litigator's attorney of record
[82 Cal.Rptr.2d 193]
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]
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Statutory reduction of defendant’s control of the case
People v. Davis (1984) 161 Cal.App.3d 796, 802 fn. 2

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Substantial right of client may not be relinquished: exception – best discretion
Blanton v. Womancare (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]

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LA 371 (1977)

Substitution when conflicts of interest occur based on obligations to clients in different proceedings
Leversen v. Superior Court (1983) 34 Cal.3d 530

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

mere threat of malpractice suit against criminal defense attorney insufficient to create actual conflict of interest
United States v. Moore (9th Cir. 1998) 159 F.3d 1154

Trustees
existence of relationship for purposes of privilege
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-trust may not allow a former trustee to withdraw from successor attorney all communications between that former trustee and the trust’s legal counsel

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

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

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-disclosure in letter
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Willful failure to perform and communicate
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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

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

Assistants’ actions do not create official policy

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D’Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1 [112 Cal.Rptr. 786]

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Shapiro v. Board of Directors of Centre City Development Corp. (2005) 134 Cal.App.4th 170 [35 Cal.Rptr.3d 826]
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-city's inadvertent disclosure of documents in response to Public Records Act request did not waive attorney-client privilege
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-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
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- burden on public law office to show that effective screening measures were taken to protect and maintain client confidences

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Conservatorship of Early (1983) 35 Cal.3d 244, 255
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Jefferson v. Board of Assessment and Appeals No. 3 for Orange County (9th Cir. 2012) 695 F.3d 960
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Hambarian v. Superior Court (2002) 27 Cal.4th 826 [118 Cal.Rptr.2d 725]

People v. Ebanks (1996) 14 Cal.4th 580 [59 Cal.Rptr.2d 200]


- 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]

- district attorney’s office cannot be recused from case where alleged conflict was speculative and did not show actual unfairness


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- recusal of entire office

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

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People v. Vasquez (2006) 39 Cal.4th 47 [45 Cal.Rptr.3d 372]


- abuse of discretion found, where trial court failed to hold evidentiary hearing to determine whether prosecutor’s personal involvement in the case warranted recusal

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-disqualification not required where ethical wall would be effective alternative
-recusal of entire office
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--not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office
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*People v. Eubanks (1996) 14 Cal.4th 580
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
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-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
Ceballos v. Garcetti (9th Cir. 2004) 361 F.3d 1168
-county district attorney may not be entitled to qualified immunity for retaliatory measures taken against subordinate attorney in asserting his First Amendment right to free speech
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-district attorney acted as state official when deciding whether to prosecute individual for criminal defense
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-fabricating evidence, filing false crime report, comments made to the media, and investigating crime against attorney may not be protected by absolute immunity
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-may not apply when prosecutor is acting in an investigative or administrative capacity
-prosecutors afforded absolute immunity for parole recommendations
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-office employees are immune from liability for acts taken during investigations
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under the Noerr-Pennington doctrine
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-sham litigation exception
--law firm, as agent for school district in an eminent domain petition, may not be immune from liability if found to have engaged in represented misrepresentations and to have suppressed information relevant to the dispute
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U.S. v. Manchester Farming Partnership (9th Cir. (Mont.) 2003) 315 F.3d 1176

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- use of visual aid in the form of a jigsaw puzzle to demonstrate reasonable doubt standard impermissibly misstated the law to the jury


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absolute immunity does not protect prosecutor for comments made to the media

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absolute immunity for acts performed in scope of judicial process; qualified immunity for investigative or administrative acts


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absolute immunity for parole recommendations

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Pitts v. Kern (1998) 17 Cal.4th 340 [70 Cal.Rptr.2d 823]


absolute immunity may not be available when alleged false statements were made in application for search warrant

*Fletcher v. Kalina (9th Cir. 1996) 93 F.3d 653

absolute immunity may not be available where prosecutor gives advice to the police


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authorized by law to communicate with parties represented by counsel

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district attorney’s statements in a press release are privileged pursuant to prosecutorial immunity principles

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duty to seek justice not convictions

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for purposes of section 1983 claim, California county district attorney acted as state official when deciding whether to prosecute individual for criminal defense

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held to higher standards because of the unique function he or she performs in representing the interests, and in exercising the sovereign power, of the state


lawyers temporarily deputized to prosecute whose appointments were defective were “defacto deputy district attorneys” and thus their actions were in furtherance of a protected activity within the meaning of the anti-SLAPP statute


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


qualified immunity may not be available for executing search warrant against criminal defense attorney


reclusion 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

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State Bar has authority and jurisdiction to discipline

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strong public policy advising against interference by a bankruptcy court in the decisions of state prosecutors to pursue charges therefore prevents a bankruptcy court from granting sanctions against the district attorney


suppression of evidence of defendant’s mental state, by conditioning plea agreement with percipient witness/co-defendant that the witness not testify at trial was denial of defendant’s compulsory process rights under 6th and 14th amendments


suppression of evidence, no prejudice to defendant found

Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897

use of courtroom to eavesdrop on confidential attorney-client communications requires severe sanctions

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


acts of privately retained counsel and publicly appointed counsel should be measured by the same standards of care, except as otherwise provided by statute


appointment of deputy public defender by court to serve as “stand-by counsel” in the event defendant cannot continue with self-representation is impermissible under Government Code section 27705


Doodson v. Superior Court (2001) 25 Cal.4th 1097

can be sued under 42 U.S.C. 1983, not as “state actor” but as administrative head of office

Miranda v. Clark County, Nevada (9th Cir. ( Nev.) 2003) 279 F.3d 1102

conflict of interest

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


-conflict where compelled by excessive caseload to choose between the rights of the various indigent defendants he or she is representing


--one investigator shared among 12 contract defenders


-no prejudice where former client is witness against current client and Public Defender is able to impeach witness with other convictions

People v. Friend (2009) 47 Cal.4th 1 [97 Cal.Rptr.3d 1]

-not found where former member of public defender’s office had represented witness in current matter where defendant was represented by another member of public defender’s office and where office had received no confidential information of witness


-removal of public defender was proper where defendant made credible death threat against counsel


-representation of one co-defendant by public defender and representation of other co-defendant by alternate public defender


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-three strikes cases


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does not act under color of state law when lawyer for criminal defendant

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Miranda v. Clark County, Nevada (9th Cir. ( Nev.) 2003) 279 F.3d 1102

does not enjoy “discretionary immunity” pursuant to Government Code section 820.2


in-person contact with arrested person permissible

CAL 1977-42

not immune from legal malpractice under statute granting discretionary immunity to public employees


not independent contractors for purposes of a government tort claim


sanctions not imposed resulting from misleading emergency petition where factual omission resulted from mistake

Jones v. Superior Court (1994) 26 Cal.App.4th 92 [31 Cal.Rptr.2d 284]

Public employees

attorney employee investigated for misconduct can be compelled, under threat of job discipline, to answer questions regarding his job performance, so long as the employee is not required to waive the constitutional protection against criminal use of those answers

Spiebauer v. County of Santa Clara (2009) 45 Cal.4th 704 [88 Cal.Rptr.3d 590]

Recording a conversation

city attorney recording a conversation pursuant to Penal Code section 633 while prosecuting misdemeanor cases

79 Ops. Cal. Atty. Gen. 221 (9/16/96; No. 96-304)

Release dismissal agreements

CAL 1989-106

Representation of criminal defendant by member of firm acting as city prosecutor

LA 453

Retaining private counsel for special services


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

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


Rules of Professional Conduct, applicability to government attorneys


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


80 Ops. Cal. Atty. Gen. 221 (9/16/96; No. 96-304)

CAL 2002-158

When an attorney leaves employment of one firm

side switching


Chambers v. Superior Court (1981) 121 Cal.App.3d 893, 899 [175 Cal.Rptr. 975]

LA 501

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

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

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


CAL 2002-158

When an attorney leaves employment of one firm

side switching


Chambers v. Superior Court (1981) 121 Cal.App.3d 893, 899 [175 Cal.Rptr. 975]

LA 501

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

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

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

Bankruptcy 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 (1850) 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

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

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

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 98-002

attorney lien in relation to medical lien in contingency fee case

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

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

LA 496 (1998)

Enforcement of attorney lien in probate matter

Equitable lien for fees

Family law attorney’s real property lien
family law court has jurisdiction to resolve disputes over the propriety of existing FLARPLS whenever they may arise under Family Code section 2034(c)

In re Marriage of Bittenson (2019) 41 Cal.App.5th 333 [254 Cal.Rptr.3d 209]

lien expunged
In re the Marriage of Turkanis (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
Moltahedi 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
AUCTION

Notice of lien
CIPA 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

Possession
Huland v. State Bar (1972) 8 Cal.3d 440 [105 Cal.Rptr. 152]
Iris v. Superior Court (1965) 63 Cal.2d 153 [15 Cal.Rptr. 320]
Ex parte Kyle (1850) 1 Cal. 331
Wagner v. Sarioti (1943) 66 Cal.App.2d 693 [133 P.2d 430]
client’s 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
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.]

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]

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 (1985) 50 Cal. 43

Agency termination

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


Attorney of record must take legal steps

Epley v. Caliro (1958) 49 Cal.2d 849, 854 [323 P.2d 91]

Goezt v. Superior Court (1958) 49 Cal.2d 784, 786 [322 P.2d 217]

People v. Merkouris (1956) 46 Cal.2d 540, 554

Boca etc. R.R. Co. v. Superior Court (1907) 150 Cal. 153, 157 [88 P. 718]

Toy v. Haskell (1900) 128 Cal. 558, 560 [51 P. 89]

Wylie v. Sierra Gold Co. (1899) 120 Cal. 485, 487


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


Bind client

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


Kaslavage v. West Kern County Water District (1978) 84 Cal.App.3d 529, 536-537 [148 Cal.Rptr. 729]

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)

client with diminished capacity

CAL 2021-207

conservative 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]

CAL 2002-160

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

client with diminished capacity

CAL 2021-207

entered upon minutes of court

Code of Civil Procedure section 283, par. 1

to arbitration agreement


to stipulation without consent


Client

attorney may assume the client cannot act in his best interest and may act even contrary to the express desires of the client


CAL 2021-207

cannot be located


cedes to counsel the right to protect the client's vest interests and the client cannot be expected to correct counsel's behavior during examination of a witness in order to avoid inferences as to the client's actions


court's advice to client to follow attorney's advice

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

criminal defendants instructions cannot reduce an attorney's professional obligations

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

death of

-attorney may file notice of appeal on behalf of decedent

Code of Civil Procedure section 903

decides matters that affect substantive rights


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


LA 502 (1999)

diminished capacity

CAL 2021-207

endorse client's name

-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]
AUTHORITY OF ATTORNEY

People v. Flores (2019) 34 Cal.App.5th 270 [246 Cal.Rptr.3d 77]
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 Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32

CAL 2002-160
client with diminished capacity

2021-207
settlement decisions belong to client

Client suffering from a mental disorder
client, previously found not guilty by reason of insanity, must act through counsel who may properly waive, over client's objections, a jury trial in a proceeding to extend commitment

Compelling client to follow advice


Control of case
by client
Linsk v. Linsk (1969) 70 Cal.2d 272, 276 [74 Cal.Rptr. 544]
cross examination, manner in which attorney conducts, is within control of counsel
statutory reduction of client's control
People v. Davis (1984) 161 Cal.App.3d 796, 802 fn. 2

--commitment proceedings under Penal Code section 1026.5(b)
--counsel for client found to be insane and dangerous to others may render informed tactical decisions over client's objections


Lovret v. Seyfarth (1972) 22 Cal.App.3d 841 [100 Cal.Rptr. 143]

acts contrary to law, court rule or public policy
San Francisco Lumber Co. v. Bibb (1903) 139 Cal. 325 [73 P. 864]
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
Knidol 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]
Smith v. Whittier (1892) 95 Cal. 279 [30 P. 529]

Redsted v. Weiss (1945) 71 Cal.App.2d 660, 663 [163 P.2d 105]


--of advice attorney for in propria persona litigant
LA 502 (1999)

arguments raised at trial
criminal defense counsel can make all but a few fundamental decisions for defendant
People v. Lomax (2010) 49 Cal.4th 530 [112 Cal.Rptr.3d 96]
People v. Welch (1999) 20 Cal.4th 701, 976 [85 Cal.Rptr.2d 203]
People v. Carpenter (1997) 15 Cal.4th 312, 376
dismissal entered by fraudulent attorney

freedom from client's control
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
Merrit 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]
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Blanton v. Womancare Inc. (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]

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-not found when attorney stipulates to waiver of mediation confidentiality
-settlement decisions belong to client
Blanton v. Womancare, Inc. (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]
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Gagnon Co. v. Nevada Desert Inn (1955) 45 Cal.2d 448, 460 [289 P.2d 466]
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LA 300 (1967)
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In propria persona litigant
LA 502 (1999)
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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
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Gagnon Co. v. Nevada Desert Inn (1955) 45 Cal.2d 448 [289 P.2d 466]
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unless revocation of authority filed
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-acknowledge satisfaction of judgment
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Code of Civil Procedure section 283, par. 2
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Code of Civil Procedure section 283, par. 2
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CAL 2002-160

attorney may not sue client who decides on a “walk away” settlement, even when client promised to take case to trial or settlement to ensure attorney is paid for legal representation, because client cannot be constrained to pursue a lawsuit he wishes to abandon
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LA 502 (1999)

plaintiff's counsel in personal injury action may not enter into an agreement to defend and indemnify defendants against an action brought against them by third parties
LA 532 (2019)

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

Settlement negotiated by clients enforceable despite lack of attorney approval
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LA 505 (2000)

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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
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LA 505 (2000)

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AUTOMOBILE ACCIDENT CASE

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SD 2006-1

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

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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


In re LOCO Enterprises, Inc. (9th Cir. BAP 1995) 180 B.R. 567 [27 Bankr Cl. Dec. 201]


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

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

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

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

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

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

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

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

attorney's fees claim against lender's collateral barred where law firm negotiated and approved comprehensive waiver in loan agreement without barred surcharge or assessment against the collateral

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

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

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

attorney's fees from discharge action are disallowed

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

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


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

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

bankruptcy court did not abuse its discretion in overruling Chapter 7 debtor's objection to attorney fees awarded to nondischargeability complaint, where debtors failed to make specific objections to the fees claimed, specifically identifying defects or deficiencies in the hours requested.

In re Bartenwerfer (9th Cir. BAP 2020) 613 B.R. 730

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

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

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

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

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

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

chapter 7 bankruptcy

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


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

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

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

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

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

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

-automatic stay

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

-must benefit the estate

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

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

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

-trustee expenses incurred in marketing & selling property & in defending stay relief to prevent foreclosure properly chargeable to sales proceeds & trustee may withhold such proceeds pending resolution of claims by non-debtor, co-owner of property

In re Flynn (9th Cir. BAP 2003) 297 B.R. 599 [41 Bankr.Ct.Dec. 211]

-trustee may withhold non-debtor, co-owner’s share of proceeds from the sale of property pending resolution of claims by co-owner relating to such sale

In re Flynn (9th Cir. BAP 2003) 297 B.R. 599 [41 Bankr.Ct.Dec. 211]

chapter 9 (municipality bankruptcy)

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


-pre-petition attorney fee agreements may be dischargeable

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

-pre-petition debt is dischargeable

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

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

chapter 11 bankruptcy

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

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

chapter 13

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

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

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

contingent fee agreement

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

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

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


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

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

creditor may recover attorney’s fees via proof of claim without need to file application for compensation

In re Atwood (9th Cir. BAP (Nev.) 2003) 293 B.R. 227
delay in bankruptcy court’s approval of payment does not entitle enhanced attorney’s fees

In re Music Merchants, Inc. (C.D. Cal. 1997) 208 B.R. 926

dischargeability of a contempt judgment

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

disgorgement of attorney fees against firm and attorney employee is proper

Bankruptcy of Sand Oil (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


security retainer agreements require appropriate fee application made to the court

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

totality of circumstance test applied when awarding attorney’s fee

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

Bankruptcy petition preparers

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

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

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

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

In re Crawford (9th Cir. 1999) 194 F.3d 954 [3 Cal. App. 4th 672]
disgorgement of excessive fees for services constituting the unauthorized practice of law

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

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

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

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

Conflict of interest

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

In re 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]


lawyer may concurrently represent both creditor and debtor in unrelated matters without written consent when debtor-client is adequately prescreened through a pro bono program

CAL 2014-191

represent

-bankrupt/creditor

LA 50 (1927)

-receiver

-party in divorce and

LA 51 (1927)

-receiver/general creditor

LA 74 (1934)

successive representation

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

Debt relief agencies

includes attorneys, as they provide assistance under BAPCPA


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


Disciplinary action

abstention by a bankruptcy court from interference with a State Bar disciplinary proceeding

In re Franceschi (9th Cir. BAP 2001) 268 B.R. 219 [38 Bankr.Ct.Dec. 140]

attorney’s bankruptcy not a bar to an order to pay restitution

Brookman v. State Bar (1988) 46 Cal.3d 1004

In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231

bankruptcy court has authority to impose its own sanctions and to refer the matter to the State Bar

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

bankruptcy court has inherent power to suspend or disbar an attorney for misconduct

In re Lehtinen (9th Cir. 2009) 564 F.3d 1052

payment of costs to State Bar under 2003 amendments to Business & Professions Code § 6086.10 are not dischargeable

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

-intent of imposing attorney disciplinary costs was to promote rehabilitation and to protect the public and is not dischargeable

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

payment of costs to State Bar under Business & Professions Code § 6086.10 are dischargeable while payment of monetary sanctions under § 6086.13 are not dischargeable

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

Schultze v. Chandler (9th Cir. 2014) 765 F.3d 945

Legal malpractice claims cannot be assigned by trustee of bankruptcy estate


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

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


Majority shareholder’s attorney may represent debtor

In re Sidco (1993) 162 B.R. 299

Receiver entitled to attorney-client privilege


Represent

bankrupt/creditor

LA 51 (1927)

Sanctions

In re DeVille (9th Cir. 2004) 361 F.3d 539, 58

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

Hedgus 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) 280 B.R. 483

against attorney for failure to list asset on debtor’s bankruptcy schedule

In re Kayne (9th Cir. BAP 2011) 453 B.R. 372

bankruptcy court has inherent power to impose district-wide suspension of attorney

In re Brooks-Hamilton (9th Cir. 2009) 400 B.R. 238

bankruptcy court’s inherent power allows it to sanction “bad faith” or “willful misconduct” by attorneys

In re Lehtinen (9th Cir. 2009) 564 F.3d 1052

In re Blue Pine Group, Inc. (9th Cir. BAP 2011) 457 B.R. 64

In re Kayne (9th Cir. BAP 2011) 453 B.R. 372

consideration of ABA standards to categorize misconduct and to identify the appropriate sanction

In re Brooks-Hamilton (9th Cir. 2009) 400 B.R. 238

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

for delay

In re Silberkraus (9th Cir. 2003) 336 F.3d 864

for fraudulent transfers and misrepresentations by attorney debtor

In re Hansen (9th Cir. BAP 2007) 368 B.R. 868

for frivolous objection to creditor’s claim

In re Brooks-Hamilton (9th Cir. 2009) 400 B.R. 238

not appropriate against district attorney in debt collection matter, strong public policy advising against interference by bankruptcy court in state criminal matters


trustee lacked standing to appeal order awarding discovery sanctions against counsel

In re Hessco Industries, Inc. (9th Cir. BAP 2003) 295 B.R. 372

Trustee

attorney as bankruptcy trustee must file detailed proof of time spent in each role to receive fee award

In re Roderick Timber Co. (9th Cir. 1995) 185 B.R. 601

attorney serving as trustee was removed due to an indirect relationship with the debtor that violated the requirement that a trustee be

In re AFI Holding, Inc. (9th Cir. BAP 2006) 355 B.R.139
fees for trustee’s attorney may be denied if attorney lacks disinterestedness or represents interests adverse to the interest of the estate

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

standing to sue corporate attorneys of “sham” corporation for malpractice

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 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

Fidelity

post for client

SF 1973-16

Guarantor of

clients’ cost bond

-attorney acting as

CAL 1981-55

Indemnity

counsel for indemnity company acts against assured by way of subrogation

LA(I) 1966-1

counsel for indemnity company represents assured in defense of bond

LA(I) 1966-1

Statutory bond

prevailing party in a derivative action precluded from recovering fees and costs in excess of the bond posted pursuant to Corporations Code § 800


BONUS [See Division of fees. Fees, Bonus. Division of Fees, With Non-lawyers, bonus.]

BROADCASTING [See Advertising. Solicitation of business. Trial publicity.]


Accountant


LA 351 (1976), LA 225 (1955), LA(I) 1965-4

employment of

SD 1974-17

partnership with

LA(I) 1959-5, SD 1974-17

share office with

LA(I) 1968-1

shows both professions on card or letterhead

LA 224 (1955)

-on sign

LA 225

Adjusting

LA 216 (1953)

Advisor to radio and television scripts

LA(I) 1947-5

Agent, attorney acting as

for actors, theatrical agency

LA 84 (1935)

for corporation

CAL 1968-13

-to solicit athletic contracts

CAL 1968-13

Aviation consultants

law firm associates with

CAL 1969-18

Brokerage

LA(I) 1962-4

Business and Professions Code

§ 6068

LA 396 (1982)

§ 6068(e)

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

CAL 1994-135


SD 2008-1

Business operated by lawyer

discontinues active practice of law

-competition with former client

LA 98 (1936)

not engaged in active practice of law

-handling local matters gratuitously

LA 98 (1936)

Client’s business

promotion of

-by attorney

LA 91 (1936)

Client’s participation or work in

LA 176 (1950)

Collection agency

attorney operation of

Business and Professions Code section 6077.5

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


undertake collections for other attorneys

LA 124 (1939)

-when acts as counsel under fictitious name

LA 124 (1939)

-while operates law office

LA 124 (1939)

by attorney’s spouse

LA 120 (1938)

Collections

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

by inactive lawyer

LA 105 (1936)

Competition with former client

LA 98 (1936)

in non-legal business

-where lawyer ceased to engage in active law practice

LA 98 (1936)

Conform to professional standards of attorney

in whatever capacity


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

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824
Promotion
by attorney
-of client's business
--posting bail bonds
LA 91 (1936)

Publishing [See Conflict of interest, literary rights. Publication.]

Real estate [See This heading, dual occupation.]

§ 6000 et seq.

BANK AND PROFESSIONS CODE [The entire text of the State Bar Act (Business and Professions Code sections 6000 et seq.) is reprinted at Part I A of this Compendium.]

§ 6001.1
101 Ops. Cal. Atty Gen. 1 (04/03/18; No. 14-301)

§ 6002.1
In the Matter of Downey (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151
In the Matter of Miller (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110
In the Matter of Respondent AA (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220
In the Matter of Clinton (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63

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

§ 6007(b)(3)
Walker v. State Bar (1989) 49 Cal.3d 1107, 1119
Ballard v. State Bar (1983) 35 Cal.3d 274, 289
Newton v. State Bar (1983) 33 Cal.3d 480, 483-484
BUSINESS AND PROFESSIONS CODE

*In the Matter of Wolfgram* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 355

§ 6007(c)

Conway v. State Bar (1989) 47 Cal.3d 1107

In the Matter of Phillips (Review Dept.1999) 4 Cal. State Bar Ct. Rptr. 47

In the Matter of Smith (Review Dept.1995) 3 Cal. State Bar Ct. Rptr. 261

In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192

In the Matter of Mesce (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 658

§ 6007(c)(4)

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

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

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

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

§ 6007(d)

In the Matter of Tiernan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523

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

§ 6007(e)

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220

§ 6013

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

§ 6015


§ 6018


§ 6043.5


§ 6049

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

§ 6049.1

In the Matter of Romano (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391

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

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

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

§ 6050

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

§ 6051.1

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

§ 6060

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

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

§ 6060(b)

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

§ 6062(b)

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

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

§ 6064

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

§ 6067

[See Oath of attorney.]

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

LA 497 (1999)

§ 6068

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

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

CAL 1983-74, CAL 1983-72

LA 394 (1982)

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


subdivision (a)


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

Aronin v. State Bar (1990) 52 Cal.3d 276

In the Matter of Tishgart (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338

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

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

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

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

In the Matter of Dale (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 796

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

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

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

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

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


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


-no discipline for a negligent mistake made in good faith

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

subdivision (b)


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


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

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

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

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

2022 (updated entries through 12/31/2021)
In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775
In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430
In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211
In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179
-attorney commits a direct contempt when he impugns the integrity of the court by statements made in open court either orally or in writing
In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]
-attorney sanctioned for disregarding court’s ruling at sidebar
-attorneys are officers of the court and as such, must respect and follow court orders whether they are right or wrong
Osbourne v. Todd Farm Services (2016) 247 Cal.App.4th 43 [202 Cal.Rptr.3d 84]
-no discipline for factual statements unless the State Bar proves that such statements are false
Standing Committee on Discipline of the United States District Court v. Yagman (9th Cir. 1995) 55 F.3d 1430
In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775
-no discipline for rhetorical hyperbole incapable of being proven true or false
Standing Committee on Discipline of the United States District Court v. Yagman (9th Cir. 1995) 55 F.3d 1430
In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775
subdivision (c)
Canatella v. California (9th Cir. 2002) 304 F.3d 843
Canatella v. Stovitz (2005) 365 F.3d 843
Sorensen v. State Bar (1991) 52 Cal.3d 1036
In the Matter of Maloney and Virsik (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. 446
In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430
In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179
In the Matter of Fandey (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 430
In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179
In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 498
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In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9
In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430
In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211
In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96
SD 2017-1, SD 2012-1, SD 2011-2, SD 2011-1
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CRS Recovery, Inc. v. Laxton (9th Cir. 2010) 600 F.3d 1138

Debt

where attorney is owed a debt, client’s assignment to attorney does not constitute “buying of claim” for purposes of Business and Professions Code § 6129

Martin v. Freeman (1963) 216 Cal.App.2d 639 [31 Cal.Rptr. 217]

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

Third-party of lawsuit in exchange for interest in proceeds distinguished from buying a claim

CAL 2020-204

CHILD CUSTODY

Disclosure to court of conflict between client and child suggest appointment of separate counsel to court.

CAL 1976-37

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.

LA 504 (2000)

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

no ineffectiveness 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 483]

CHILD SUPPORT

Attorney’s fees not classified as gross income in calculating child support obligations.


Communicate with other party about

LA(I) 1958-3, SD 1972-5

Contingent fee for collecting

LA 275 (1963), LA 263 (1959), LA(I) 1969-1

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

LA(I) 1971-15

Failure of attorney to pay

Business and Professions Code section 6143.5

Duever

CAL 1982-73

Priority of child support obligations ordered by family court over fees deposited in client trust account to retain criminal defense attorney.

Brothers v. Kern (2007) 154 Cal.App.4th 126, 64 Cal.Rptr.3d 239

Stipulated order of foreign court does not modify prior California child support when modification issue not raised or ruled on.

In re Marriage of Ward (1994) 29 Cal.App.4th 1452

CHOSES OF ACTION

Buying of

with intent to bring suit on

Business and Professions Code section 6129

CRS Recovery, Inc. v. Laxton (9th Cir. 2010) 600 F.3d 1138

--where attorney is owed a debt, client’s assignment to attorney does not constitute “buying of claim” for purposes of Business and Professions Code § 6129

Martin v. Freeman (1963) 216 Cal.App.2d 639 [31 Cal.Rptr. 217]

Third-party funding of lawsuit in exchange for interest in proceeds distinguished from buying a claim

LA 500 (1999)

CLASS ACTION

Absent class members not liable for employer’s attorney’s fees in overtime dispute

CLASS ACTION

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

basis for court decision
-large fee reduction requires a relatively specific articulation of court's reasoning
Stetson v. Grissom  (9th Cir. 2016) 821 F.3d 1157

basis of award to an unnamed member of putative class who defeats class certification

clear sailing agreements
In re Consumer Privacy Cases  (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]

dispute among class counsel
Carder v. Patten  (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]

fee allocation among co-counsel subject to court approval
In re FPI/Agretech Securities Litigation  (9th Cir. 1997) 105 F.3d 469
Carder v. Patten  (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]

fees paid directly to plaintiff's counsel by defendant pursuant to ADEA's fee-shifting provision is taxable income to plaintiff
Powers v. Eichen  (9th Cir. 2000) 229 F.3d 1249

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 355
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

Carmacho v. Bridgepoint 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

AdTrader, Inc. v. Google LLC  (9th Cir. 2021) 7 F.4th 803
Staton v. Boeing Co.  (9th Cir. (Wash.) 2003) 327 F.3d 938
In re Consumer Privacy Cases  (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]
should be adequate to promote consumer class action


standing to appeal award of
Lobatz v. U.S. West Cellular  (9th Cir. 2000) 222 F.3d 1142
-class member lacks standing to object to attorney's fees and costs because attorney failed to demonstrate how the award adversely affected that member or the class

Glasser v. Volkswagen of America, Inc.  (9th Cir. 2011) 645 F.3d 1084
-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


-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

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Communication with potential members of class [See Advertising, Solicitation of business.]
Conflict of interest

Anti-SLAPP statute inapplicable to claims that attorney abandoned clients in order to represent adverse interests

class certification in unnamed class member's case paired with evidence that unnamed class member would be a witness in concurrent class action sufficient for findings that firm represented unnamed class member for conflicts of purposes

class counsel offers to dismiss case if defendant makes multi-million dollar payment to attorney personally

Cal Pak Delivery, Inc. v. United Parcel Service Inc. (1997) 52 Cal.App.4th 1
class representatives may waive conflicts of interest on behalf of potential class members

conflict of interest when law firm that represents class also employs an attorney who serves as class representative

defendant agrees to hire class counsel to monitor the proposed settlement agreement if approved

Linney v. Cellular Alaska Partnership (9th Cir. 1998) 151 F.3d 1234
disqualification is more likely in class action context because putative class counsel are subject to a 'heightened standard' which they must meet if they are to be allowed by the court to represent absent class members

disqualification not required when representing class in two cases since putative class members are not 'clients' and no conflict exists

Kullar v. Footlocker Retail, Inc. (2011) 191 Cal.App.4th 1201 [121 Cal.Rptr.3d 353]
duty of class counsel runs to the class and, in the event of conflicts, withdrawal is the appropriate course to take

withdrawal by counsel who previously represented members opposed to the settlement, then later represented those in favor, was not improper


incentive agreement between class representatives and class counsel

Rodriguez v. West Publishing Corporation (9th Cir. 2009) 563 F.3d 948

no automatic various disqualification of law firm when tainted attorney is properly screened

withdrawal by counsel who previously represented members opposed to the settlement, then later represented those in favor, was not improper


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

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

CLIENT SECURITY FUND


Defined
Evidence Code section 951
Moeller v. Superior Court (1997) 16 Cal.4th 1124 [69 Cal.Rptr.2d 317]
State Farm Fire and Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625 [62 Cal.Rptr.2d 834]
SD 2006-1

Scope of defamation action under anti-SLAPP statute (Code of Civil Procedure 426.16)
Murray v. Tran (2020) 55 Cal.App.5th 10 [269 Cal.Rptr.3d 231]

CLIENT SECURITY FUND
Business and professions code section 6140.5
Alvarado Community Hospital v. Superior Court (1985) 173 Cal.App.3d 476, 483-484 [219 Cal.Rptr. 52]
In the Matter of Mackenzie (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 529
In the Matter of Jauregui (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 56

Attorney must reimburse Client Security Fund prior to filing petition for reinstatement
In the Matter of Mackenzie (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 529

Former licensed attorney is ordered by court to pay restitution after conviction of embezzlement by an employee and is not entitled to an offset for payment to victim from CSF
People v. Hume (2011) 195 Cal.App.4th 265 [125 Cal.Rptr.3d 540]

State Bar’s subrogation rights

CLIENTS’ TRUST ACCOUNT
Business and professions code section 6210 et seq.
Code of Civil Procedure sections 283, par. 2, 1518
Rule 8-101, Rules of Professional Conduct (operative until May 26, 1989)
Rule 4-100, Rules of Professional Conduct (operative as of May 27, 1989)
State Bar of California. Legal Services Trust Fund Program
[See also Handbook on Client Trust Accounting For California Attorneys]

Accounting
Busines and Professions Code section 6091
failure to keep adequate records
Friedman v. State Bar (1990) 50 Cal.3d 235
Matthew v. State Bar (1989) 49 Cal.3d 784
In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239
In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93
In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126
In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1

failure to make to client
Friedman v. State Bar (1990) 50 Cal.3d 235
Silva-Vidor v. State Bar (1989) 49 Cal.3d 1071

Guzzetta v. State Bar (1987) 43 Cal.3d 962 [239 Cal.Rptr. 675]
Clark v. State Bar (1952) 39 Cal.2d 161, 169 [246 P.2d 1]
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
In the Matter of Yaaman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788
In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708
In the Matter of Aulakh (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690
In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547
In the Matter of Cacippio (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128
In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96

-attorney claims monies are non-refundable retainers
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

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

-attorneys claims oral permission to invest client’s funds
Himmel v. State Bar (1971) 4 Cal.3d 866, 600 P.2d 1326

-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 (1985) 121 Cal.Rptr. 376, 540 P.2d 219
-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's 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
-sancions
  --disbarment
    Narlian v. State Bar (1943) 21 Cal.2d 876 [136 P.2d 553]
  --public reprimand
  --suspension
    McCray v. State Bar (1985) 38 Cal.3d 257 [211 Cal.Rptr. 691, 696 P.2d 83]
    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
    McCray v. State Bar (1985) 38 Cal.3d 257 [211 Cal.Rptr. 691, 696 P.2d 83]

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
In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
SF 1980-1

failure to return unearned portion
Rule 3-700(D)(2), Rules of Professional Conduct (operative as of May 27, 1989)
Matthew v. State Bar (1989) 49 Cal.3d 784
Pineda v. State Bar (1989) 49 Cal.3d 314 [219 Cal.Rptr. 489]
Baranowski v. State Bar (1979) 24 Cal.3d 153, 163 [154 Cal.Rptr. 752, 593 P.2d 613]
Lester v. State Bar (1976) 17 Cal.3d 547 [131 Cal.Rptr. 225, 551 P.2d 841]
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
In the Matter of 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
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 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
SD 2019-3, SF 1980-1

-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

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

69 2022 (updated entries through 12/31/2021)
CLIENTS’ TRUST ACCOUNT

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 E (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 Moriarty (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
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]

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354

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
In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708
CAL 2005-169

overdraft protection
CAL 2005-169

Client cannot be located
Code of Civil Procedure section 1518

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
Lebbos 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]
In the Matter of Rubin (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 797

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416
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
Hamilton v. State Bar (1979) 23 Cal.3d 868, 874-876
[153 Cal.Rptr. 602, 591 P.2d 1254]

-collection agency receives funds on behalf of client but funds are used for attorney’s benefit
McGregor v. State Bar (1944) 24 Cal.2d 283, 284-288
[148 P.2d 865]

-failure to promptly disburse settlement funds from trust account

-money collected on a promissory note is not turned over to client
Lavin v. State Bar (1975) 14 Cal.3d 581, 583 [121 Cal.Rptr. 729, 535 P.2d 1185]

-right to retain funds pursuant to a fee agreement is disputed by client
Prime v. State Bar (1941) 18 Cal.2d 56, 59
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 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
[170 Cal.Rptr. 482, 620 P.2d 1030]

-dangers of offense realized even if violation is technically not committed
Clark v. State Bar (1952) 39 Cal.2d 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
CLIENTS’ TRUST ACCOUNT

--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, 595 P.2d 687]
--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 the Matter of Martin (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753
In re Ohleb (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. 515
--commingling occurs when an attorney opens a purported trust account but in fact uses it as a personal account
In the Matter of Martin (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753
--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 Responsible F. (Review Dept. 1992) 2 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
Aronin v. State Bar (1990) 52 Cal.3d 276
--attorney admits to commingling client’s funds in personal checking account
In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213
--attorney deposit settlement check in his personal account
Chasteen v. State Bar (1985) 40 Cal.3d 842, 709 P.2d 861
--attorney misleads client 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 Responsible F (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
--disbarment upheld due to multiple offenses including failure to place advances for fees and costs in client trust account
--earned fees received from clients deposited in trust account
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
--failure to maintain funds in trust account when attorney is unable to pay doctor bills because doctor refuses payment
Vaughn v. State Bar (1972) 6 Cal.3d 847, 854-865 [100 Cal.Rptr. 713, 494 P.2d 1257]
failure to maintain client funds in trust
In the Matter of 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. 2020) 5 Cal. State Bar Ct. Rptr. 239
--inadequate management of trust account
In re Lawrence (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 239
--failure to withdraw earned fees, after they become fixed, within reasonable time
CAL 2005-169
inadequate management of trust account
--aberrational failure of elaborate bookkeeping system
In the Matter of Responsible F (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716
--allowing a friend to use the account for business
In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420
--checks issued to clients from commingled accounts with insufficient funds
Alkow v. State Bar (1952) 38 Cal.2d 257, 259-261 [239 P.2d 871]
CLIENTS’ TRUST ACCOUNT

- 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. 273
- failure to keep adequate records
  Friedman v. State Bar (1990) 50 Cal.3d 235
  In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
- failure to notify client of receipt of funds from insurance company
- failure to notify workers’ compensation board that an advance of attorney’s fees was received from a claimant
- failure to oversee office manager’s record keeping and control over clients’ funds
  In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308
- layperson signatory okay if attorney ultimately responsible for integrity of account
  CAL 1988-97
- negligent banking practices
  Kelly v. State Bar (1991) 53 Cal.3d 509
- secretary blamed by attorney when clients’ funds are deposited in attorney’s office account
  Wells v. State Bar (1975) 15 Cal.3d 367 [124 Cal.Rptr. 218, 540 P.2d 58]
- secretary’s misdeposit of client’s funds into attorney’s operating account did not amount to misappropriation
  Kahn v. State Bar (1966) 64 Cal.2d 787, 793 [51 Cal.Rptr. 825, 415 P.2d 521]
- where attorney uses personal account for clients’ funds, mere bookkeeping entries will not be a sufficient protection of clients
  Bernstein v. State Bar (1972) 6 Cal.3d 909, 917 [101 Cal.Rptr. 369, 495 P.2d 1289]
- wife of attorney acts as bookkeeper and is told personal use of clients’ funds is okay
  Burns v. State Bar (1955) 45 Cal.2d 296, 300 [288 P.2d 514]
- mitigation and restitution efforts by attorney
  - actual financial detriment to a client is not an element and neither good faith nor restitution is a defense to commingling
    In the Matter of Martin (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753
  - little weight is given to an attorney’s restitution of client funds when it is done under pressure and as a matter of expediency
  - 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
    Schutz 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]
  - public reproval
    In the Matter of Martin (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753
- suspension
  - Burns v. State Bar (1955) 45 Cal.2d 296, 303
  - Alkow v. State Bar (1952) 38 Cal.2d 257, 264
  - Bennett v. State Bar (1945) 27 Cal.2d 31 36-37
  - Griffith v. State Bar (1945) 26 Cal.2d 273, 278
  - In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213
  - In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
- trust account never established
  - practice of designating accounts as “trust accounts” but not using them as such is a violation
    Cutler v. State Bar (1969) 71 Cal.2d 241, 244 [78 Cal.Rptr. 172, 455 P.2d 108]
- trust account not established or maintained
  - violation found when attorney’s procedure for disbursing client’s funds does not utilize a client trust account
- Control may be given to non-members of the State Bar
  LA 454 (1988)
- Costs advanced
  - status as trust funds
    Aronin v. State Bar (1990) 52 Cal.3d 276
    In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196
- Currency
  - holding client’s funds in

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CLIENTS' TRUST ACCOUNT

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 cash payments from any one person

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

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 (1986) 38 Cal.3d 337 [211 Cal.Rptr. 525]

In the Matter of McCarthy (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364
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In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
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In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708
In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547
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
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
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In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547
In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1
In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615

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]
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Vaughn v. State Bar (1972) 6 Cal.3d 847, 854-855 [100 Cal.Rptr. 713, 484 P.2d 1257]
In the Matter of Kaufman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213
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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

Failure to properly manage trust account

In the Matter of Rubin (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 797
CLIENTS’ TRUST ACCOUNT

In the Matter of Song (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273
In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9

Failure to release client funds
Friedman v. State Bar (1990) 50 Cal.3d 235

Failure to return unearned advance fees
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)

Cannon v. State Bar (1990) 51 Cal.3d 1103
Bernstein v. State Bar (1990) 50 Cal.3d 221 [786 P.2d 352]
Silva-Vidor v. State Bar (1989) 49 Cal.3d 1071
Slavkin v. State Bar (1989) 49 Cal.3d 894 [264 Cal.Rptr. 131]
Matthew v. State Bar (1989) 49 Cal.3d 784
Pineda v. State Bar (1989) 49 Cal.3d 753
Baranowski v. State Bar (1979) 24 Cal.3d 153, 163 [154 Cal.Rptr. 752, 593 P.2d 613]

In the Matter of Rubin (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 797
In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896
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Failure to return unused advanced costs
In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1
In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 576

Fiduciary obligation to directors of client corporation
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576

Fiduciary obligation to non-clients as “clients” to maintain records, render appropriate accounts, and make prompt disbursements
Guzetta 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

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1
In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17
In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 693

CAL 2009-177
Fixed rate for legal fees
SF 1980-1
Flat rate for legal fees
SD 2019-3, SF 1980-1

Funds having trust account status
CAL 2006-171

Funds property withdrawn from a client trust account under rule 4-100(A)(2) and later disputed by the client neither retain nor regain their trust account status and do not need to be re-deposited into the trust account
CAL 2006-171

Garnishment
Counsel discloses his possession of client’s money in a garnishment proceeding
LA(II) 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
- Gassman v. State Bar (1976) 18 Cal.3d 125, 128-130 [132 Cal.Rptr. 675]
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

use of rubber stamp of attorney’s signature
- 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


Maintained outside of California

LA 454

Med-pay


Misappropriation

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

Lipson v. State Bar (1991) 53 Cal.3d 1010

Brooke v. State Bar (1991) 53 Cal.3d 51

Grims v. State Bar (1991) 53 Cal.3d 21

Harford v. State Bar (1990) 52 Cal.3d 93

Edwards v. State Bar (1990) 52 Cal.3d 28

In re Naney (1990) 51 Cal.3d 186 [733 P.2d 54]

In re Ewaniszyk (1990) 50 Cal.3d 543 [788 P.2d 690]

Amanette 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

Walker v. State Bar (1989) 49 Cal.3d 1107


Pineda v. State Bar (1989) 49 Cal.3d 753


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

Garlow v. State Bar (1988) 44 Cal.3d 689 [244 Cal.Rptr. 452, 749 P.2d 1807]

Guzzetta 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. 806, 570 P.2d 1226]


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

Blackmon v. Hale (1970) 3 Cal.3d 348


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

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

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


Tatlow v. State Bar (1936) 5 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

In re Uria (1966) 65 Cal.2d 258, 260-262

attorney’s wife uses client funds for personal use


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


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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

breach of fiduciary duty
combined with other misconduct

checks issued with insufficient funds

English-speaking ability

- violation of rule 7-103
-vi olation in numerous separate instances accompanied with other dishonest acts
misappropriation together with fraud, commingling, and grand theft

misappropriation of partnership funds
Kaplan v. State Bar (1991) 52 Cal.3d 1067

misappropriation of partnership funds

misappropriation together with fraud, commingling, and grand theft
In re Demergian (1989) 48 Cal.3d 284 [256 Cal.Rptr 392, 768 P.2d 1069]
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-moral turpitude merits disbarment

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-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

failure to refund unearned funds advanced by client

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

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-refusal to make restitution
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-repeated and persistent misconduct in multiple cases

-violation in numerous separate instances accompanied with other dishonest acts
-violation of rule 7-103
CLIENTS’ TRUST ACCOUNT

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, (Rev. Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1

-extenuating circumstances insufficient to lessen discipline


-lack of intentional or premeditated conduct

-lenient discipline imposed
-Anderson v. State Bar (1941) 17 Cal.2d 375, 378 [110 P.2d 1]

-manic-depressive condition at time of improprieties
-McKnight v. State Bar (1991) 53 Cal.3d 1025

-mitigation not found from mere fact that attorney did not lie

-no financial loss to client is asserted by attorney
-Himmel v. State Bar (1971) 4 Cal.3d 786 [94 Cal.Rptr. 825, 484 P.2d 993]

-restitution in full is of no effect when made under pressure of litigation and discipline
-In re Ford (1988) 44 Cal.3d 810 [244 Cal.Rptr. 476]


-restitution works no special magic and the weight given is determined by actual attitude and financial ability of the attorney
-In re Andreani (1939) 19 Cal.2d 736, 750 [97 P.2d 456]

-youth and inexperience not factors in favor of mitigation
-Amante v. State Bar (1990) 90 Cal.3d 247

-multiple unauthorized withdrawals
-In the Matter of Song (Rev. Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273

-necessity and urgent financial difficulties is not a defense to a violation
-Cane v. State Bar (1939) 14 Cal.2d 597, 601 [95 P.2d 934]

-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 (Rev. Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456

-office procedures

-part of recovery allocated for hospital bills is put to attorney’s personal use
-Fielding v. State Bar (1973) 9 Cal.3d 446, 450 [107 Cal.Rptr. 561, 509 P.2d 193]
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Egan v. State Bar (1956) 46 Cal.2d 370 [294 P.2d
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-suspension
Amante v. State Bar (1990) 50 Cal.3d 247 [786 P.2d
375]
Snyder v. State Bar (1990) 49 Cal.3d 1302
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Cal.Rptr. 549]
Cal.Rptr. 629, 621 P.2d 253]
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[144 Cal.Rptr. 404, 575 P.2d 1186]
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[143 Cal.Rptr. 408, 573 P.2d 852]
Athearn v. State Bar (1977) 20 Cal.3d 232, 237 [142
Cal.Rptr. 171, 571 P.2d 628]
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, 904906 [126 Cal.Rptr. 785, 544 P.2d 921]

past conduct may be used in determining discipline
Hennessy v. State Bar (1941) 18 Cal.2d 685, 687 [117
P.2d 336]
pattern of deliberate and willful misconduct
Inniss v. State Bar (1978) 20 Cal.3d 552, 556 [143
Cal.Rptr. 408, 573 P.2d 852]
persistent refusal to account for
Jackson v. State Bar (1979) 23 Cal.3d 509, 513 [153
Cal.Rptr. 24, 591 P.2d 47]
records and accounting problems
-balance in trust account drops below amount entrusted
to attorney
Lowe v. State Bar (1953) 40 Cal.2d 564, 566
-inadequate account records evidencing a violation
Dreyfus v. State Bar (1960) 54 Cal.2d 799, 804-806 [8
Cal.Rptr. 356]
-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
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[169 Cal.Rptr. 581, 619 P.2d 1005]
In the Matter of Blum (Review Dept. 2002) 4 Cal.
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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
Bradpiece v. State Bar (1974) 10 Cal.3d 742, 744
[111 Cal.Rptr. 905, 518 P.2d 337]
repossession proceeds converted by attorney
Mrakich v. State Bar (1973) 8 Cal.3d 896 [106 Cal.Rptr.
497, 506 P.2d 633]
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-disbarment
Kaplan v. State Bar (1991) 52 Cal.3d 1067
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697]
In re Ewaniszyk (1990) 50 Cal.3d 543 [788 P.2d 690]
Bercovich v. State Bar (1990) 50 Cal.3d 116
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Cal.Rptr. 280]
608]
In re Ford (1988) 44 Cal.3d 810 [244 Cal.Rptr. 476]
Garlow v. State Bar (1988) 44 Cal.3d 689 [244
Cal.Rptr. 452, 749 P.2d 1307]
[181 Cal.Rptr. 903, 643 P.2d 486]
[170 Cal.Rptr. 482, 620 P.2d 1030]
Tardiff v. State Bar (1980) 27 Cal.3d 395, 403-405
[165 Cal.Rptr. 829, 612 P.2d 919]
Cal.Rptr. 362, 603 P.2d 464]
Jackson v. State Bar (1979) 25 Cal.3d 398, 404-405
[158 Cal.Rptr. 869, 600 P.2d 1326]
Weir v. State Bar (1979) 23 Cal.3d 564, 574-577 [152
Cal.Rptr. 921, 591 P.2d 19]
Worth v. State Bar (1978) 22 Cal.3d 707, 710-711
[150 Cal.Rptr. 273, 586 P.2d 588]
Allen v. State Bar (1977) 20 Cal.3d 172, 179 [141
Cal.Rptr. 808, 570 P.2d 1226]
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See How to Use This Index, supra, p. i


CLIENTS' TRUST ACCOUNT

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 of case and conversion of proceeds without client knowledge or consent


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 Robins (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

Johnstone v. State Bar (1966) 64 Cal.2d 153 [49 Cal.Rptr. 97, 410 P.2d 617]

LA 454

-estate funds are loaned out to other clients

Cutler v. State Bar (1969) 21 Cal.2d 241, 244 [78 Cal.Rptr. 172, 455 P.2d 108]

-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 Mappes (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

Haley v. State Bar (1963) 60 Cal.2d 404, 405 [33 Cal.Rptr. 609, 385 P.2d 1]

LA 454

-estate funds are loaned out to other clients

Cutler v. State Bar (1969) 21 Cal.2d 241, 244 [78 Cal.Rptr. 172, 455 P.2d 108]

-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 Mappes (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

Haley v. State Bar (1963) 60 Cal.2d 404, 405 [33 Cal.Rptr. 609, 385 P.2d 1]

-Unauthorized settlement of case and conversion of proceeds


to repay debt owed attorney by client

SD 1976-5

See How to Use This Index, supra, p. i
unilateral determination of attorneys’ fees

- 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


- an attorney may not unilaterally determine fees without client knowledge or consent

- Sternlieb v. State Bar (1990) 52 Cal.3d 317

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

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

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

- In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1

- In the Matter of Fonthe (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
LA 496 (1996)

- 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 Kroff (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

- 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


- “willful” requirement

- Brockway v. State Bar (1991) 53 Cal.3d 51
- Dudugjian 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 Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 652

- unilateral withholding of interest on a loan from client as security for fees improper


- violation for extended period


- willful failure to disburse client funds

LA 484 (1995)

- withdrawal of entrusted funds for personal use

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

- Mishandling of client funds

- Lawhorn v. State Bar (1987) 43 Cal.3d 1357


- In the Matter of Blum (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403

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

Non-refundable retainer defined

Rule 3-700 (D)(2), Rules of Professional Conduct

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

- in re Montgomery Drilling Co. (E.D. Cal. 1990) 121 B.R. 32
- Baranowski v. State Bar (1979) 24 Cal.3d 153, 164 at fn.4 [154 Cal.Rptr.752]

- 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 Fonthe (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
SF 1980-1

Notice to client of fees collected on client’s behalf
Alkow v. State Bar (1952) 38 Cal.2d 257, 259, 261
Rheo v. State Bar (1941) 17 Cal.2d 445, 446-450

LA 407 (1982)

Overdraft protection

- In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708
CAL 2005-169

Partner liability of

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

Physician’s liens

CAL 1989-101
Restoration of funds wrongfully withdrawn from a trust account is not “commingling” of attorney and client funds
Guzzetta v. State Bar (1987) 43 Cal.3d 962 [239 Cal.Rptr. 675]
CAL 2005-169

Retainer

SF 1980-1, SF 1973-14
Rule of Professional Conduct
Rule 8-101

Supervise client trust account
LA 488 (1996)
allow client to use and control trust account to commit fraud
Coppock v. State Bar (1988) 44 Cal.3d 665 [244 Cal.Rptr. 462]

Third party, recovery by attorney of fees on behalf of
Johnstone v. State Bar (1966) 64 Cal.2d 153, 155 [49 Cal.Rptr. 97, 410 P.2d 617]
In re Marriage of Wagoner (1986) 176 Cal.App.3d 936
In the Matter of McCarthy (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364

attorney not liable to insurance company for failing to turn over portions of third-party recoveries made on behalf of clients
child support obligations have priority over fees on funds from liquidated assets deposited in client trust account to retain criminal defense attorney
Brothers v. Kem (2007) 154 Cal.App.4th 126, 64 Cal.Rptr.3d 239
no duty to lender, where client owed no funds to the lender
In re Emery (9th Cir. 2003) 317 F.3d 1064 [40 Bankr.CI.Dec. 259]

Unclaimed client funds
Code of Civil Procedure section 1518
client cannot be located
CAL 1989-111, CAL 1975-36
LA 441 (1987)

Use of, and ownership of interest accrued
property of the clients and customers whose money is deposited into trust
Washington Legal Foundation v. Legal Foundation of Washington (9th Cir. 2001) 236 F.3d 1097
Withdrawal of client funds to pay disputed fee
LA 438 (1985)
Withdrawal of unrelated funds

Withholding funds of client
McGrath v. State Bar (1943) 21 Cal.2d 737, 741 [135 P.2d 1]
sanctions
-suspension
McGrath v. State Bar (1943) 21 Cal.2d 737, 741 [135 P.2d 1]
Withdrawal of client funds to satisfy attorney fees incurred in prior unrelated matters
LA 496 (1998)

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
-attorney operation of 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)

mailing of attorney form letter may be an Unfair Collection Practice
operated by attorney’s spouse
LA 120 (1938)

As business
LA(I) 1971-12, LA(I) 1967-7, LA(I) 1966-11, LA(I) 1965-6, LA(I) 1965-3, LA(I) 1952-1
Assignment of clients’ claims or accounts to lawyer for
LA 7 (1918)
Billing service, use of
LA 413 (1983), LA 374 (1978)
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., 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 1137
Confidences divulged in collection action
LA 452 (1988)
Default
-against client without consulting
LA 174 (1950)
-notification to opposing counsel
SD 1969-3
Division of fees
LA 35 (1927)
Dual profession
-operating law practice and licensed collection agency in same office
-card, 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
Federal judgment
-use of state procedure
In re Levander (9th Cir. 1999) 180 F.3d 1114
Fee
CAL 1982-68
client keeps
LA(I) 1955-1
contingent
LA 275 (1963), LA 263 (1959), (1931) 7 LABB 13
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
COMMUNICATE WRITTEN SETTLEMENT OFFER TO CLIENT

Rule 4.2 Communication with a represented person
Doe v. Superior Court of San Diego County (2019) 36 Cal.App.5th 199 [248 Cal.Rptr.3d 314]
Business and Professions Code § 6068(m)
In the Matter of Khishaveh (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564
Sturr v. State Bar (1959) 52 Cal.2d 125, 132-133 [338 P.2d 897]
Ex parte McDonough (1915) 170 Cal. 230 [149 P. 566]
Lyddikainen v. Ind. Acc. Com. (1939) 36 Cal.App.2d 298, 301
[97 P.2d 993]
McMunn v. Lehrke (1915) 29 Cal.App.298 [155 P. 473]
CAL 1965-3
LA 411 (1983)
SD 2005-1
About suit in “regular” court if small claims suit is not dropped
SD 1978-6
Advise on law
LA 350 (1975)
Advised
of possible malpractice by counsel of
LA 326 (1972)
After final decision on appeal
Carpenter v. State Bar (1930) 210 Cal. 520, 523 [292 P. 450]
After judgment
SD 1976-14
Agent of attorney, physician
City & County of San Francisco v. Superior Court (1951) 37 Cal.2d 227, 234 [231 P.2d 26]
Amicable solution suggested to
LA 334 (1973)
Attorney-client privilege [See Confidences of the client, privilege]
Attorney of record
McMunn v. Lehrke (1915) 29 Cal.App. 298, 308

COMMUNICATING WRITTEN SETTLEMENT OFFER TO CLIENT

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)

COMMUNICATION
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)

COMMUNICATING

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
Maslir 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)
law personnel, use of
LA 338 (1973)
Letter
computerized
LA 338 (1973)
counsel for corporation writes letters for
LA(l) 1968-3
form letter
-signed by lawyer
LA 338 (1973)
Letterhead
attorney letterhead used
CAL 1982-68
used by client
LA(l) 1968-3
Misleading debtor by letters
LA 19 (1922)
Seek payment by curtailling 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
Maslir 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
LA 122 (1939)

COMMUNICATING [See Clients’ trust account.]

COMMISSION
Counsel for buyer or seller receives part of broker’s
SD 1992-1, LA(l) 1972-23
Estate
executor shares with lay person
-from the sale of property
LA 317 (1970)
Real estate transaction

COMMUNICATE WRITTEN SETTLEMENT OFFER TO CLIENT

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)

COMMUNICATION
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)

violated where city attorney communicated directly with a represented police officer in an action against the city for harassment and retaliation

at client’s direction
settlement effected without consent
Turner v. State Bar (1950) 36 Cal.2d 155
Contact former expert witness of adverse party
County of Los Angeles v. Superior Court (1990) 222 Cal.App.3d 647 [271 Cal.Rptr. 678]
Copy of letter to adverse party sent to counsel of LA(I) 1958-3
Copy of letter to counsel of adverse party sent to opposing party LA 490 (1997), LA 350 (1975), LA(I) 1958-3
Corporation (homeowner’s association) where attorney is member of association and represents plaintiffs against association LA 397 (1982)
Criminal matter
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 interviewed by prosecutor
People v. Manson (1976) 61 Cal.App.3d 102, 164 [132 Cal.Rptr. 265]
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
post-indictment
-by government informant
United States v. Kenny (9th Cir. 1980) 645 F.2d 1323
pre-indictment
U.S. v. Lemonakis (D.C. 1973) 485 F.2d 941, 955-956
-grand jury witness initiated communication with Assistant U.S. Attorney
United States v. Talao (9th Cir. 2000) 222 F.3d 1133
-not at direction of U.S. attorney
United States v. Jamil (2nd Cir. 1983) 707 F.2d 638
qui tam action
Debt collection matters
debtor represented by party
Civil Code section 1788.14(c)
false representation that person is attorney
Civil Code section 1788.13(b)
in name of attorney
Civil Code section 1788.13(c)
on stationery of lawyer
Civil Code section 1788.13(c)
Debtor
SD 1978-4
Deception in initiating communication with a represented party
SD 2011-2
Direct
LA 365 (1977)
Disqualification of attorney from the action as proper sanction
County of Los Angeles v. Superior Court (1990) 222 Cal.App.3d 647 [217 Cal.Rptr. 698]
COMMUNICATION

choice of counsel
La Jolla Cove Motel and Hotel Apartments Inc. v. Superior Court (2004) 121 Cal.App.4th 773 [17 Cal.Rptr.3d 467]

no disqualification when opposing party is counsel of record in propria persona but has advisory counsel

no disqualification where separate counsel for officer of corporation has given permission for contact and where no confidential information was disclosed
La Jolla Cove Motel and Hotel Apartments Inc. v. Superior Court (2004) 121 Cal.App.4th 773 [17 Cal.Rptr.3d 467]

other possible sanctions for violation of the rule
-court could not impose monetary sanctions
-court may disqualify counsel from further participation, may exclude improperly obtained evidence, and may take other appropriate measures to ameliorate effect of improper conduct

District attorney’s authority as prosecutor to conduct criminal investigations
75 Ops. Cal. Atty. Gen. 223 (10/8/92; No. 91-1205)

Effect of violation of rule 4.2
Doe v. Superior Court of San Diego County (2019) 36 Cal.App.5th 199 [248 Cal.Rptr.3d 314]

Effect of violation of rule 7-103

In re Marriage of Wickander (1986) 187 Cal.App.3d 1364


Electronic communication technologies, utilization of
CAL 2020-203, OC 97-002

Employee

Palmer v. Pioneer Inn Associates, Ltd. (9th Cir. (Nev.) 2003) 338 F.3d 981


Doe v. Superior Court of San Diego County (2019) 36 Cal.App.5th 199 [248 Cal.Rptr.3d 314]


CAL 1991-125


SD 2011-2, SD 1984-5

SF 1973-4

current director
La Jolla Cove Motel and Hotel Apartments Inc. v. Superior Court (2004) 121 Cal.App.4th 773 [17 Cal.Rptr.3d 467]


LA 472 (1993), SD 2011-2

dissident director
CAL 1991-125

former employee


former secretary of opposing party

managing employees

non-managing employee
United States v. Talao (9th Cir. 2000) 222 F.3d 1133


LA 369 (1977)

SD 1984-5

-under ABA Model Rule 4.2

Palmer v. Pioneer Inn Associates, Ltd. (9th Cir. (Nev.) 2003) 338 F.3d 981

public officer exception to rule 2-100 not applicable where questions posed by attorney for opposing party to public employees were designed to obtain evidence for use in litigation


statements of sales manager and production director could not be imputed to employer and thus neither employee was deemed to be a represented party under rule 2-100


Employer in worker’s compensation case
when employer is dismissed from the worker’s compensation case by operation of law, whatever duties attorneys for employer’s carrier owed to employer ended at that point in time, including the duty to communicate a settlement offer


Employer of adverse counsel
LA 339 (1973)

Employer of adverse party

SD 2011-2

Entrapment purposes
LA 315 (1970)

Exclusion of information acquired by violation of rule 2-100 (former rule 7-103)
U.S. v. Thomas (10th Cir. 1973) 474 F.2d 110, 112


LA 472 (1993)

other possible sanctions for violation of the rule
-court could not impose monetary sanctions
-court may disqualify counsel from further participation, may exclude improperly obtained evidence, and may take other appropriate measures to ameliorate effect of improper conduct

[7 Cal.Rptr.3d 119]

Expert witness

Erickson v. Newmar Corp. (9th Cir. 1996) 87 F.3d 298
Rico v. Mitsubishi (2007) 42 Cal.4th 807 [68 Cal.Rptr.3d 758]
[54 Cal.Rptr.3d 207]
Cal.App.4th 1112 [18 Cal.Rptr.3d 112]
Western Digital Corp. v. Superior Court (1998) 60
Cal.App.4th 1471 [71 Cal.Rptr.2d 179]
Cal.App.4th 778 [54 Cal.Rptr.2d 22]
Shadow Traffic Network v. Superior Court (1994) 24
Cal.App.4th 1067 [29 Cal.Rptr.2d 693]
County of Los Angeles v. Superior Court (1990) 222
Cal.App.3d 647 [217 Cal.Rptr. 678]
LA 513 (2005)

information from defendant to plaintiff's counsel as a potential witness for plaintiff, disclosed no confidential witness, initially retained by defendant and later designated disqualification

County of Los Angeles v. Superior Court (1990) 222
Cal.App.3d 647 [217 Cal.Rptr. 698]
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


expert witness contacting opposing party

Lewis v. Telephone Employees Credit Union (9th Cir. 1996) 87 F.3d 1537
in violation of federal discovery regulations

Erickson v. Newmar Corp. (9th Cir. 1996) 87 F.3d 298

party moving to disqualify opposing counsel for improper contact with the moving party’s expert must establish that the expert possesses confidential information materially related to the proceedings before the court


Former attorney employee

LA 389 (1981)

Former employee

In re Coordinated Pre-Trial Proceedings (1981) 658 F.2d 1355
Continental Insurance Co. v. Superior Court (1995) 32
Cal.App.4th 94 [37 Cal.Rptr.2d 843]
Cal.Rptr. 144]

Funding agency of adverse counsel

LA 339 (1973)

Government attorney

United States v. Lopez (9th Cir. 1993) 4 F.3d 1455
Cal.App.3d 131 [261 Cal.Rptr.2d 493]
Cal.Rptr. 751]
CAL 1996-145, CAL 1979-49

city attorney’s direct communication with a represented police officer in an action against the city for harassment and retaliation during internal investigation violated 2-100
City of San Diego v. Superior Court (2018) 30
Cal.App.5th 457 [241 Cal.Rptr.3d 604]

rule prohibiting ex parte communications does not bar pre-indictment 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

Government official

CAL 1977-43
61 Minn. L.Rev. 1007 (1977)

Governmental unit

Cleland v. Superior Court (1942) 52 Cal.App.2d 530
CAL 1977-43, 61 Minn. L.Rev. 1007 (1977)

public officer exception to rule 2-100 not applicable where questions posed by attorney for opposing party to public employees were designed to obtain evidence for use in litigation

U.S. v. Sierra Pacific Industries (E.D. Cal. 2011) 759
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Lewis v. Telephone Employees Credit Union (9th Cir. 1996) 87 F.3d 1537
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Induce party to change law firms


Insurance coverage of with defendant insured

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Insurer of

insurer’s investigator contacts adverse party

LA 376 (1978)

Investigator, use of to contact adverse party

Cal.Rptr.2d 558]
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U.S. ex rel. O'Keefe v. McDonnell Douglas Corp. (8th Cir.
Mo. 1999) 132 F.3d 1252
People v. Stevens (1990) 218 Cal.App.3d 575
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75 Ops. Cal. Atty. Gen. (10/8/92; No. 91-1205)

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Matter of adverse interest, defined

Military commanding officer
SD 1978-9

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LA 504 (2000)

Not a basis for imposition of civil liability in damages

Not applicable to witnesses in a criminal proceeding

grand jury witness initiated communication with Assistant U.S. Attorney
United States v. Talao (9th Cir. 2000) 222 F.3d 1133

Not represented by counsel
CAL 1989-10

officer of public officer exception to rule 2-100 not applicable where
employees were designed to obtain evidence for use in litigation

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Abeles v. State Bar (1973) 9 Cal.3d 603, 606-611 [108 Cal.Rptr. 299, 507 P.2d 719]

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in propria persona party is attorney of record but has advisory counsel

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sales manager and production director not managing agents,
thus they were not represented parties and opposing counsel was not prohibited from interviewing them

Party/attorney communicating on own behalf with a represented party
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LA 490 (1997), SD 1983-9

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City & County of San Francisco v. Superior Court (1951) 37 Cal.2d 227, 234 [231 P.2d 26]

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County of Los Angeles v. Superior Court (1990) 222 Cal.App.3d 647 [217 Cal.Rptr. 698]

ex parte communications between defendants and plaintiff’s treating physician should be limited to the statutorily mandated manner
Torres v. Superior Court (1990) 221 Cal.App.3d 181 [270 Cal.Rptr. 401]

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Physician-patient waiver
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County of Los Angeles v. Superior Court (1990) 222 Cal.App.3d 647 [217 Cal.Rptr. 698]

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Represented by counsel

Graham v. U.S. (9th Cir. 1996) 96 F.3d 446

Abeles v. State Bar (1973) 9 Cal.3d 603, 606-611 [108 Cal.Rptr. 359, 510 P.2d 719]

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In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 684


actual vs. constructive knowledge of representation


communication by plaintiff’s attorney in civil matter communicated with criminal defendant witness without consent of defendant’s criminal defense attorney

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In re Marriage of Wickander (1986) 187 Cal.App.3d 1364

-attorney-client privileged not violated where employee informed opposing counsel that her declaration was rewritten under employer’s instructions


-city attorney’s direct communication with a represented police officer in an action against the city for harassment and retaliation during internal investigation violated 2-100


-court chooses not to speak on ethical issues

United States v. Springer (7th Cir. 1971) 460 F.2d 1344, 1354

-exclusion of information obtained

United States v. Thomas (10th Cir. 1973) 474 F.2d 110, 112

-may not be improper when opposing party is counsel of record in propria persona but has advisory counsel


-permitted when a party is seeking to hire new counsel or obtain a second opinion

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-permitted when not representing a party in the matter for the sole purpose of advising person of the competence of representation

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-plaintiff’s attorney in civil matter communicated with criminal defendant witness without consent of defendant’s criminal defense attorney

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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

--permitted to prevent subornation of perjury

United States v. Talao (9th Cir. 2000) 222 F.3d 1133

-standing to assert ethical violation

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-where a party has an attorney, in the action or proceeding, the services of papers, must be upon the attorney instead of the party, except service of subpoenas, of writs, and other process issued in the suit, and of papers to bring the party into contempt

Code of Civil Procedure section 1015

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-court could not impose monetary sanctions

Conservatorship of Becerra (2009) 175 Cal.App.4th 1474 [96 Cal.Rptr.3d 910]


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Service of paper

service may be made on the court clerk when the opposing party, who resides out of state, has appeared and has not attorney in the action or proceeding

Code of Civil Procedure section 1015

where a party has an attorney, in the action or proceeding, the services of papers, must be upon the attorney instead of the party, except service of subpoenas, of writs, and other process issued in the suit, and of papers to bring the party into contempt

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Lawyers Assistance Program of the State Bar of California for confidential assistance, contact:
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-Telephone: (877) LAP 4 HELP, (877) 527-4435
Email: LAP@calbar.ca.gov
Website: http://calbar.ca.gov/LAP
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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, 857-858 [100 Cal.Rptr. 713, 494 P.2d 1257]
Moore v. State Bar (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161, 396 P.2d 577]

Failure to advise client of other claims
Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708
Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657
CAL 1997-150

Failure to advise client of other claims
Wise v. DLA Piper LLP (2013) 220 Cal.App.4th 1180 [164 Cal.Rptr.3d 54]
In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920
SD 2005-1

Failure to advise client of other claims of prior attorney in matter
CAL 2008-175
class action
- counsel owed a duty, post certification, to advise clients of other claims related to but outside the scope of the representation

failure to advise client of collateral penalty (deportation) is not ineffective assistance of counsel
U.S. v. Fry (9th Cir. (Nev.) 2003) 322 F.3d 1198
People v. Camacho (2019) 32 Cal.App.5th 998 [244 Cal.Rptr.3d 398]

- under Penal Code section 1473.7, showed errors in information provided by counsel were damaging to his understanding of the immigration consequences of his content plea
People v. Camacho (2019) 32 Cal.App.5th 998 [244 Cal.Rptr.3d 398]

possible adverse implications of participating in collaborative family law agreement
OC 2011-01

Failure to advise client on immigration matter
Ghahremani v. Gonzales (9th Cir. 2007) 498 F.3d 993
attorney's incorrect advice on immigration matter resulted in alien being denied his right to appeal
Salazar-Gonzalez v. Lynch (9th Cir. 2015) 798 F.3d 917
not shown when client signed a form with boilerplate language about immigration consequences of guilty plea
People v. Olivera (2018) 24 Cal.App.5th 1112 [235 Cal.Rptr.3d 200]

Failure to advise/ misadvice about the immigration consequences of guilty plea
U.S. v. Rodriguez-Vega (9th Cir. 2015) 797 F.3d 781
U.S. v. Chan (9th Cir. 2015) 792 F.3d 1151
U.S. v. Biondi (9th Cir. 2011) 637 F.3d 980
People v. Kim (2009) 45 Cal.4th 1078 [90 Cal.Rptr.3d 355]
In re Resendiz (2001) 25 Cal.4th 230 [105 Cal.Rptr.4th 2431]
People v. Vivar (2019) 43 Cal.App.5th 216 [256 Cal.Rptr.3d 443]
People v. Chen (2019) 36 Cal.App.5th 1052 [249 Cal.Rptr.3d 360]
In re Hernandez (2019) 33 Cal.App.5th 530 [244 Cal.Rptr.3d 894]

People v. Espinoza (2018) 27 Cal.App.5th 908 [238 Cal.Rptr.3d 619]
People v. Aguilar (2014) 227 Cal.App.4th 60 [173 Cal.Rptr.3d 473]
because counsel informed defendant that her plea deal had potential to cause her to be removed from country and denied reentry, trial court properly denied motion to vacate plea and conviction
People v. Chen (2019) 36 Cal.App.5th 1052 [249 Cal.Rptr.3d 360]

expungement of state charges has no effect on the federal immigration consequences of a conviction of a felony
People v. Camacho (2019) 32 Cal.App.5th 998 [244 Cal.Rptr.3d 398]

Failure to appear at hearing to mitigate prejudice caused by attorney
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688
Failure to argue for reversal of judgment

Failure to cite case law or authorities in opposition brief
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

Failure to communicate with client before penalty phase of trial
Summerlin v. Schriro (9th Cir. 2005) 427 F.3d 623

Failure to communicate status of case to client
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

Failure to conduct discovery
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

Failure to consult experts
Richter v. Hickman (9th Cir. 2009) 578 F.3d 944

Failure to cooperate with discovery
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

Failure to deliver trust amendment to trustee before death of settlor

Failure to file lawsuit or negotiate a settlement
In the Matter of Khishaved (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564

Failure to file opposition to summary judgment motion

In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

attorney's opposition to summary judgment motion was prepared poorly due to his serious illness and heavy medication, court finds excusable neglect
Minick v. City of Petaluma (2016) 3 Cal.App.5th 15 [207 Cal.Rptr.3d 350]

Failure to file responsive pleading thereby causing harm to client

Failure to file timely notice of appeal
Canales v. Roe (9th Cir. 1998) 151 F.3d 1226 [949 F.Supp. 762]

In re A.R. (2021) 11 Cal.5th 234 [276 Cal.Rptr.3d 761]

Failure to inform client of denial of habeas petition constitutes abandonment
Foley v. Biter (9th Cir. 2015) 793 F.3d 998

Failure to interview and call witnesses
Miranda v. Clark County, Nevada (9th Cir. (Nev.) 2003) 279 F.3d 1102

Lord v. Wood (9th Cir. 1999) 184 F.3d 1083
Failure to investigate California and non-California law applicable to client’s case
  In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944

Failure to investigate potential client fraud
Federal Deposit Insurance Corporation v. O’Melveny & Myers (9th Cir. 1992) 969 F.2d 744

Failure to overrule criminal defendant’s decision to call witness not incompetent

Failure to provide competent legal services in bankruptcy matters
In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861

Failure to provide competent legal services in immigration matters
Ghahremani v. Gonzales (9th Cir. 2007) 498 F.3d 993
People v. Kim (2009) 45 Cal.4th 1078 [90 Cal.Rptr.3d 355]

In the Matter of Romano (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391
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

-qualification for non-lawyer immigration consultant
People v. Salcido (2019) 42 Cal.App.5th 529 [255 Cal.Rptr.3d 628]

Failure to provide competent legal services in patent matters

Failure to pursue breach of contract action on behalf of client

Failure to respond to cross-complaint
In re Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

Failure to return client’s multiple telephone messages
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 Freedl (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 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 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 2020-203, 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
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) 29 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
COMPETENCE

-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)
-involuntary 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
  -infirmary
    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
  [82 Cal.Rptr.2d 193]
Lack of zealous defense
a competent attorney would not have concealed the cause of death, where there were “tantamounting 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
  Jones v. Shino (9th Cir. 2019) 943 F.3d 1211
  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 of time and resources to represent pro bono client
  Segal v. State Bar (1988) 44 Cal.3d 1077 [245 Cal.Rptr. 404]
  Yarbrough v. Superior Court (1985) 39 Cal.3d 197 [216 Cal.Rptr. 425]
Licensed attorneys who are not active members of the State Bar of California

effect on underlying matter
  People v. Ngo (1996) 14 Cal.4th 30 [57 Cal.Rptr.2d 456]
  People v. Medler (1986) 177 Cal.App.3d 927 [223 Cal.Rptr. 401]

federal courts may require membership in State Bar of California to ensure a uniform minimum level of competence for lawyers
  Russell v. Hug (9th Cir. 2002) 275 F.3d 812

Limited preparation does not affect

LA 379 (1979)

Mere ignorance of law insufficient
  Zirny 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
  CAL 1989-115

Pro bono clients
  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 refile 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 Freidli (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 client with diminished capacity
  CAL 2021-207
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: People v. Munoz (2006) 138 Cal.App.4th 860 [41 Cal.Rptr.3d 842]
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

COMPLAINT
Business and Professions Code section 6043.5
Business and Professions Code section 6094

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 (1929) 206 Cal. 689, 693-694
CAL 2019-197
Arbitration agreements confidentiality provision within law firm employment agreement: Davis v. O'Melveny & Myers (9th Cir. 2007) 485 F.3d 1066

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

Attorney may make disclosures of client confidences to the extent relevant in determining malpractice: CAL 2019-197


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]
Miller v. Metzinger (1979) 91 Cal.App.3d 31 [154 Cal.Rptr. 22]
CAL 2016-195, SD 2006-1
between firm attorney and in-house counsel: CAL 2019-197
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 (Laff) (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: 2,022 Ranch, L.L.C. v. Superior Court (2003) 113 Cal.App.4th 1377 [7 Cal.Rptr.3d 197]
SD 2006-1
dual purpose communication: In re Grand Jury (9th Cir. 2021) 23 F.4th 1088
extends to communications between firm attorney and in-house counsel related to dispute with current client: Palmer v. Superior Court (Mireskandari) (2014) 231 Cal.App.4th 1214 [180 Cal.Rptr.3d 620]
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 tocorporate 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]
--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]
CONFIDENCES OF THE CLIENT

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 2016-196

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


court may not require disclosure of information to rule on claim of privilege

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

[200 Cal.Rptr.3d 937]

do not ordinarily protect the identity of the client

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

People v. Chapman (1984) 36 Cal.3d 98, 110

do not require DOJ to release certain sections of USA Book due to attorney work product exemption under Freedom of Information Act

American Civil Liberties Union of Northern California v. United States Department of Justice (9th Cir. 2018) 880 F.3d 473

extends to all communication relating to a client’s matter or interests among and between multiple attorneys who are representing client

Fireman’s Fund Insurance Co. v. Superior Court (2011) 196 Cal.App.4th 1263 [127 Cal.Rptr.3d 768]

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]

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


in camera review of communications to determine privilege

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


may apply to preliminary questionnaire

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

do 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)

not limited to litigation communications


opinion letter by outside counsel to corporate counsel covered by attorney-client privilege

Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]

report prepared by police officers in the performance of their duties are public record and are not privileged


Sixth Amendment’s Confrontation Clause vs. attorney-client privilege

Murdock v. Castro (9th Cir. 2010) 609 F.3d 983

People v. Ervine (2009) 47 Cal.4th 745 [102 Cal.Rptr.3d 786]

social media page

LA 529 (2017), SD 2011-2

source of funds in client trust account

SF 1974-3

tripartite attorney-client privilege arises when title insurer hires law firm to prosecute action on behalf of its insured under title insurance policy

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

use of courtroom to eavesdrop on confidential attorney-client communications

-dismissal of criminal complaint based on government’s use of law enforcement agents to eavesdrop on confidential attorney-client communications was not an appropriate remedy

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

Attorney-client relationship, existence of

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


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 [105 Cal.Rptr. 889]

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 [200 Cal.Rptr. 532 
[105 Cal.Rptr.2d 886]

American Civil Liberties Union of Northern California v. United States Department of Justice (9th Cir. 2018) 880 F.3d 473

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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

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
Tredder & 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 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
Dole v. Milonas (9th Cir. 1989) 889 F.2d 885
Baird v. Koerner (9th Cir. 1960) 279 F.2d 623
Hays v. Wood (1979) 25 Cal.3d 772 [160 Cal.Rptr. 102]
disclosure when doing conflicts check
CAL 2011-182

Co-defendants, representation of
People v. Kerfoot (1960) 184 Cal.App.2d 622

Communication by client
LA 417 (1983)

by letter
--disclosing violation of probation by leaving jurisdiction
LA 82 (1935)

Communication with client required under Probate Code section 21350, must be confidential

Communications made during confidential mediation cannot be disclosed without express waiver of parties

Communications which are privileged exceptions
--billing statements
Los Angeles County Bd. of Supervisors v. Superior Court (2016) 2 Cal.5th 282 [212 Cal.Rptr.3d 107]
--Public Records Act disclosure
Los Angeles County Bd. of Supervisors v. Superior Court (2016) 2 Cal.5th 282 [212 Cal.Rptr.3d 107]

-protects the confidentiality of invoices for work in pending and active legal matters
Los Angeles County Bd. of Supervisors v. Superior Court (2016) 2 Cal.5th 282 [212 Cal.Rptr.3d 107]

Compelled disclosure of client’s identity
Tredder & 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 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. Hirsch (9th Cir. 1986) 803 F.2d 493, 496, 497
Baird v. Koerner (9th Cir. 1960) 279 F.2d 623, 635
CONFIDENCES OF THE CLIENT

Cal.App.3d 1514 [237 Cal.Rptr. 242]
good faith requirement

not required where putative class members’ had right to
privacy when they responded to neutral letter from plaintiff’s
counsel

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. 1993) 511 F.2d 882, 892
Baird v. Koerner (9th Cir. 1990) 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]
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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
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withdrawal from case by attorney at sentencing phase
CAL 1983-74
witness perjury
CAL 2019-200

Discovery
Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]
Holm v. Superior Court (1954) 42 Cal.2d 500, 506 [267 P.2d 1025]
City of Petaluma v. Superior Court (2016) 248 Cal.App.4th 1023 [204 Cal.Rptr.3d 196]
In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179
CAL 1993-133
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
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]
extends to preliminary consultations by a prospective client with a view to retention of that lawyer although employment does not result
in enforcing judgment, creditor may not ask for information from other party’s attorney except regarding money owed to them
CONFIDENCES OF THE CLIENT

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]

not limited to proceedings at which testimony may be compelled by law

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

where third party funds lawsuit in exchange for interest in proceeds

LA 500 (1999)

Dismissal of an action

on basis that attorney-party’s due process right to present a claim or defense is compromised by inability to present confidential information


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

Disqualification

abuse of discretion not found where separate attorney for directors of corporation gave permission for adverse counsel’s communication with directors and no confidential information disclosed

La Jolla Cove Motel and Hotel Apartments Inc. v. Superior Court (2004) 121 Cal.App.4th 773 [17 Cal.Rptr.3d 467]

actual possession need not be proven-test

Knight v. Ferguson (2007) 149 Cal.App.4th 1207 [57 Cal.Rptr.3d 823]


Civil Service Comm. v. Superior Court (1985) 163 Cal.Supp.3d 70 [209 Cal.Rptr. 159]


attorney never performed services for former client of attorney’s former firm


Dieter v. Regents of the University of California (E.D. Cal. 1997) 963 F.Supp.908


automatic disqualification is not appropriate for mere exposure to the opposing party’s confidential information with no evidence that they attorney actually received or used such information


because of possibility of breach

Kearns v. Fred Lavery Porsche Audi Co. (C.A. Fed. 1984) 745 F.2d 600, 603


choice of counsel

La Jolla Cove Motel and Hotel Apartments Inc. v. Superior Court (2004) 121 Cal.App.4th 773 [17 Cal.Rptr.3d 467]

defense counsel disqualified when former co-defendant is called as the prosecution’s key witness and counsel’s ability to cross-examine former client is impaired

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

marital relationship does not create assumption that lawyers violate duty of confidentiality


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

no automatic various disqualification of law firm when tainted attorney is properly screened


no automatic vicarious disqualification of law firm when tainted attorney leaves the firm and there’s evidence that no one other than the departed attorney had any dealings with the client or obtained confidential information


no conflict of interest found where former member of public defender’s office represented witness in current matter where defendant was represented by another member of public defender’s office and where office received no confidential information of witness


not automatic where previous representation did not expose attorney to confidential information material to the current representation


not required when based on counsel’s alleged familiarity with claims procedures from a prior representation of the moving party


not required where attorney who handled adverse party’s prior matter has left firm and there is no evidence that confidential information was exchanged


not required where defendants had common interests and shared information


not required where firm-switching attorney’s relationship with client at former firm was peripheral or attenuated and documents relating to case that attorney accessed contained no confidential information


not required where plaintiff’s expert waived conflict where defense counsel had previously represented expert

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

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


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


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 the entire firm required when attorney formally represented an adverse party in the same litigation, regardless of the firm’s ethical screening measures

vicious 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


Distinguished from attorney-client privilege


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

CAL 2016-195, OC 97-002

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


Does not extend to communications intended to be confidential where party claiming privilege fails to explain who was the attorney and who was the client to communications


Dual professions, attorney engaged in

CAL 1999-154

Duty of loyalty to client may require attorney’s limited response to judge’s questions absent an affirmative duty to inform the court

OC 95-0001

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

SD 2011-1

Duty to assert attorney-client privilege

CAL 2015-193

Duty to divulge client fraud

Hinds v. State Bar (1941) 19 Cal.2d 87, 92-93

LA 436 (1985)

Duty to former client

Trone v. Smith (9th Cir. 1980) 621 F.2d 994, 998-999

Duty to protect client confidences and secrets

after death of client


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


after termination of attorney-client relationship


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


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


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

CAL 2016-195, CAL 1993-133


communication between defendant/minor and psychotherapist appointed to assist in his defense are confidential under attorney-client privilege

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

CONFIDENCES OF THE CLIENT
does not protect third party information unless third party is an agent of client


extends to e-discovery

CAL 2015-193

extends to judgment creditor’s request on debtor’s attorney’s other clients, firm’s billings on matters for these clients and possible alter ego entities of judgment debtor


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]


CAL 2021-205, CAL 2003-161

extends to questions submitted by potential client via website

CAL 2005-168

-does not extend to private information received from a non-client via an unsolicited email

SD 2006-1

handing discovery of electronically stored information (ESI)

CAL 2015-193

listserv postings should avoid including information regarding particular cases

LA 514 (2005)

minor defendant is entitled to assistance of expert psychotherapist, who will not report confidential information about child abuse or threats to authorities

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

not limited to proceedings at which testimony may be compelled by law

People v. Superior Court (Laff) (2001) 25 Cal.4th 703 [107 Cal.Rptr.2d 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 2020-203, CAL 2015-193, CAL 2007-174

SD 2012-1

E-mail

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

SD 2006-1

OC 97-002

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.) 2000) 217 F.3d 1084


People v. Meredith (1981) 29 Cal.3d 682, 695
CONFIDENCES OF THE CLIENT

People v. Superior Court (Fairbank) (1987) 192 Cal.App.3d 32, 39
People v. Lee (1970) 3 Cal.App.3d 514 [83 Cal.Rptr. 715]
CAL 1986-89, CAL 1984-76

Exceptions to rule of confidentiality
U.S. v. Sideman & Bancroft, LLP (9th Cir. 2013) 7104 F.3d 1197
McClure v. Thomson (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]

Expert
LA 513 (2005)
communication between defendant/minor and psychotherapist appointed to assist in his defense are confidential under attorney-client privilege
Elijah W. v. Superior Court of Los Angeles (2013) 216 Cal.App.4th 140 [156 Cal.Rptr.3d 592]
designation of a party as an expert trial witness is not in itself implied waiver of party’s attorney-client privilege
disqualification may be required if the expert possesses confidential information material to the pending litigation
Rico v. Mitsubishi (2007) 42 Cal.4th 807 [68 Cal.Rptr.3d 758]

Fraud
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

Identity of third party paying attorney’s fee

Fee agreement considered confidential communication
Business and Professions Code section 6149
LA 456

Fee arrangement not subject to attorney-client privilege, no revelation of confidential information
U.S. v. Bauer (9th Cir. 1997) 132 F.3d 504
United States v. Blackman (9th Cir. 1995) 72 F.3d 1418
Ralls v. U.S. (9th Cir. 1995) 52 F.3d 223
In re Grand Jury Proceedings v. U.S. (9th Cir. 1994) 33 F.3d 1060
Tormay v. U.S. (9th Cir. 1988) 840 F.2d 1424
U.S. v. Hirsch (9th Cir. 1988) 603 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 (1926)
Franchise group
franchisee law firms of franchise group obtaining confidences
LA 423 (1983)

Fraud
against client
upon client
Ghose v. State Bar (1953) 41 Cal.2d 399
Hinds v. State Bar (1941) 19 Cal.2d 87, 92-93

Fugitive
client’s absence from court, attorney may not answer court’s inquiry if harmful to client
SD 2011-1
harboring a fugitive
In the Matter of DeMassa (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737
LA(I) 1931-2

Historical background

Identity of third party paying attorney’s fee
Ralls v. U.S. (9th Cir. 1995) 52 F.3d 223
CONFIDENCES OF THE CLIENT

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
SD 2006-1
may result in duty of confidentiality
CAL 2005-168, CAL 2003-161

Imputed knowledge
to principal
Roche v. Hyde (2020) 51 Cal.App.5th 757 [265 Cal.Rptr.3d 301]

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]
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.4th 996 [79 Cal.Rptr.2d 862]

Inadverant 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.4th 996 [79 Cal.Rptr.2d 862]

Incompetent client
involuntary disclosure of documents in response to
Public Records Act request did not waive attorney-client privilege

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]

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


Mismanagement of funds

by client

- administrator

-- report to court

LA 132 (1940)

-- 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 Ct. Rptr. 387

Name of client [See Confidences of the client, client name.]

Obtained in unrelated matter

LA(I) 1963-1

Outside services, use of by attorney

CAL 2010-179

may involve disclosure of client confidences


-to outside lawyers or providers of outsourcing legal services

LA 518 (2006)

Partnership

Knight v. Ferguson (2007) 149 Cal.App.4th 1207 [57 Cal.Rptr.3d 823]


Perjury

by client


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


CAL 1983-74, LA 305 (1968), OC 2003-01

by witness

CAL 2019-200

disclosure of secret by attorney


People v. Guzman (1988) 45 Cal.3d 915 [248 Cal.Rptr. 467]


CAL 1983-74, LA 305 (1968), OC 2003-01

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]

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


withdrawal


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


rebuttable presumption

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


Possibility of breach, basis for disqualification

Trone v. Smith (9th Cir. 1980) 621 F.2d 994, 999

Prison officials may only open mail – not read it


Prisoner mail to foreign attorney


Privilege

Evidence Code sections 950 et seq.

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.5th 953 [238 Cal.Rptr.3d 765]

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


CAL 2016-195, CAL 2015-193, CAL 2013-188


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

United States v. Ruehle (9th Cir. 2009) 583 F.3d 600
CONFIDENCES OF THE CLIENT

-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]

-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

Colito v. Superior Court (2012) 54 Cal.4th 480 [142 Cal.Rptr.3d 607]

attorney-client and work product privileges are not limited by the prosecution seeking to discovery documents through a search warrant

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

attorney-client privilege applies even to disclosures to a court

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

attorney-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 1263 [127 Cal.Rptr.3d 768]

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


attorney-client 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]

bankruptcy proceedings

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


breach by attorney, no “fruit of the poisonous tree” remedy absent government misconduct


[204 Cal.Rptr. 234]

LA 519 (2006) attorney

-absolute work product and qualified work product defined

American Civil Liberties Union of Northern California v. United States Department of Justice (9th Cir. 2018) 880 F.3d 473

Colito v. Superior Court (2012) 54 Cal.4th 480 [142 Cal.Rptr.3d 607]

--risk when using social media

LA 529 (2017)

-absolute work product and qualified work product defined

American Civil Liberties Union of Northern California v. United States Department of Justice (9th Cir. 2018) 880 F.3d 473

Colito v. Superior Court (2012) 54 Cal.4th 480 [142 Cal.Rptr.3d 607]

-LA 525 (2012), SF 2014-1

 absolute work product and qualified work product defined

American Civil Liberties Union of Northern California v. United States Department of Justice (9th Cir. 2018) 880 F.3d 473

Colito v. Superior Court (2012) 54 Cal.4th 480 [142 Cal.Rptr.3d 607]

--risk when using social media

LA 529 (2017)

-absolute work product and qualified work product defined

American Civil Liberties Union of Northern California v. United States Department of Justice (9th Cir. 2018) 880 F.3d 473

Colito v. Superior Court (2012) 54 Cal.4th 480 [142 Cal.Rptr.3d 607]

--risk when using social media

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


See How to Use This Index, supra, p. i
CONFIDENCES OF THE CLIENT

Moeller v. Superior Court (1997) 16 Cal.4th 317 [69 Cal.Rptr.2d 317]
People v. Gionis (1995) 9 Cal.4th 1196 [40 Cal.Rptr.2d 456]
St. Croix v. Superior Court (City and County of San Francisco) (2014) 228 Cal.App.4th 434 [175 Cal.Rptr.3d 202]
State Farm Fire and Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625 [62 Cal.Rptr.3d 834]
- disqualified of law firm appropriate due to violation of ethical obligations regarding use of inadvertently disclosed privilege e-mail
  McDermott Will & Emery, LLP v. Superior Court (Hausman) (2010) 70 Cal.App.5th 1093 [217 Cal.Rptr.3d 47]
- email to attorney on client’s employer’s computer, where client warned that communication was neither private nor confidential
- fiduciaries: receivers, trustees, executors entitled to privilege
- file
- identity
  United States v. Blackman (9th Cir. 1995) 72 F.3d 1418
  Rails v. U.S. (9th Cir. 1995) 52 F.3d 223
  Alexiou v. United States (9th Cir. 1994) 39 F.3d 973
  In re Grand Jury Subpoena (Horn) (9th Cir. 1992) 976 F.2d 1314, 1317
  Doles v. Milonas (1993) 889 F.2d 885
  Baird v. Koerner (9th Cir. 1990) 779 F.2d 623, 629
  - in-house counsel may establish attorney-client relationship with law firm attorney
  CAL 2019-197
- joint clients
  -- common interest doctrine, no waiver of
  -- community of interest doctrine
  In re the Regents of the University of California (1996 Ind.) 101 F.3d 1386
  -- exception to privilege
  Evidence Code section 962
  -- joint defense agreement implied
  U.S. v. Gonzalez (9th Cir. 2012) 669 F.3d 974
  -- mass tort
  SF 2020-1
  -- no joint client privilege when parties have simply overlapping interests
  -- under joint defense agreement
  United States v. Henke (9th Cir. 2000) 222 F.3d 633
  -- when one of the joint clients sues their former attorney and not the other client, the non-suing client cannot prevent the parties to the lawsuit from introducing otherwise privileged attorney-client communications made in the course of the joint representation
  - joint defense agreement; documents shared before litigation
  - mass tort
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- common interest doctrine
  U.S. v. Gonzalez (9th Cir. 2012) 669 F.3d 974
  - based on waiver analysis; parties may share privileged information when it furthers the attorney-client relationship
  Bank of America v. Superior Court of Orange County (2013) 212 Cal.App.4th 1076 [151 Cal.Rptr.3d 526]
  - common interest doctrine, did not protect otherwise privileged communications disclosed between parties because their interests were fundamentally divergent
- communications which are privileged
  American Civil Liberties Union of Northern California v. United States Department of Justice (9th Cir. 2018) 880 F.3d 473
  U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
  In re Grand Jury Subpoena Issued to Mark Torf of Torf Environmental Management (9th Cir. (Idaho) 2004) 357 F.3d 900
  Rails v. U.S. (9th Cir. 1995) 52 F.3d 223
  Alexiou v. United States (9th Cir. 1994) 39 F.3d 973
  In re Grand Jury Subpoena Issued to Gerson S. Horn (9th Cir. 1992) 976 F.2d 1314
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  Doles v. Milonas (9th Cir. 1989) 889 F.2d 885
  Tornay v. U.S. (9th Cir. 1988) 840 F.2d 1424
  Baird v. Koerner (9th Cir. 1990) 279 F.2d 623, 629
  Hoffman v. City and County of San Francisco (N.D. Cal. 2013) 2013 WL 2403641
  Colto v. Superior Court (2012) 54 Cal.4th 480 [142 Cal.Rptr.3d 607]
  Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]
  Rico v. Mitsubishi (2007) 42 Cal.4th 807 [68 Cal.Rptr.3d 758]
  Wells Fargo Bank v. Superior Court (Boltwood) (2000) 22 Cal.4th 210 [901 Cal.Rptr.2d 716]
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CONFIDENCES OF THE CLIENT

- does not allow former trustee to withhold communications with trust’s former counsel on behalf of attorney-client privilege unless trustee retains his/her own counsel for personal services and pays fees out of pocket
  [233 Cal.Rptr.3d 647]
- does not protect third party information unless third party is an agent of client
- Behunin v. Superior Court (Schwab) (2017) 9 Cal.App.5th 833 [215 Cal.Rptr.3d 475]
- email to attorney was neither private nor confidential

-exceptions

- Murdoch v. Castro (9th Cir. 2010) 609 F.3d 983
- Arden v. State Bar (1959) 52 Cal.2d 310, 320
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- Clarke v. American National Commerce Bank (9th Cir. 1992) 974 F.2d 127
  -- attorney fee totals in legal matters that concluded long ago
- Los Angeles County Bd. of Supervisors v. Superior Court (2018) 2 Cal.5th 282 [212 Cal.Rptr.3d 107]
  -- Public Records Act disclosure
- Los Angeles County Bd. of Supervisors v. Superior Court (2016) 2 Cal.5th 282 [212 Cal.Rptr.3d 107]

-- 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 extend to otherwise unprivileged subject matter that has been communicated to attorney
  -- does not extend to employee’s personal claim of attorney-client privilege to protect his communications with corporate counsel
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American Civil Liberties Union of Northern California v. United States Department of Justice (9th Cir. 2018) 880 F.3d 473

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

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opinion letter by outside counsel to corporate counsel covered by attorney-client privilege

Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]

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


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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

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

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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]

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Ardon 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]

executive communications made during the decision making process are protected from disclosure by the deliberative process privilege

Labor & Workforce Development Agency v. Superior Court (2016) 19 Cal.App.5th 12 [227 Cal.Rptr.3d 744]

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


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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


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

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- corporation may withdraw 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]

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Transamerica Title Ins. Co. v. Superior Court (1986) 188 Cal.App.3d 1047


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-agreement requires disclosure

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

-agitation case

--privacy 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]

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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)

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--email to attorney was neither private nor confidential


-by corporation

United States v. Ruehe (9th Cir. 2009) 583 F.3d 600

-by public agency

--not found when executive communications were made during the decision making process and were protected by the deliberative process privilege

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-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

Titmas 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

Barton 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


-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. Amian (9th Cir. 1999) 169 F.3d 1189

Chevron Corporation v. Pennzoil Company (9th Cir. 1992) 974 F.2d 1156

Dietz v. Meisenheimer 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 773]

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 3702


-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 (2008) 165 Cal.App.4th 672 [81 Cal.Rptr.3d 186]

-not found

Gomez v. Vernon (9th Cir. (Iowa) 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 2403641


--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


--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


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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

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--third party communication, privilege only extends to those necessary to effectuate the client’s consultation

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- by sending letters containing work product to auditors of client, lawyers did not waive the right to assert attorney work product protection

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

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- 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
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  - County of Los Angeles v. Superior Court (1990) 222 Cal.App.3d 647 [217 Cal.Rptr. 698]

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- 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]

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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
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Solin v. O’Melveny & Myers, LLP (2001) 89
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-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
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. Meisheimer et al. (2009) 177 Cal.App.4th
771 [177 Cal.Rptr.3d 464]
in representation of another client
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SD 1976-10
parties may disclose to their respective counsel documents
containing potentially confidential or privileged information
of third party claims
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Cal.App.4th 1094 [176 Cal.Rptr.3d 389]
revelation to entertainment industry regarding client’s case
LA 409 (1983)
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CAL 2012-184

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consultation with opposing party related to fees only, not to issues of cause of action
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61 Ops. Cal. Atty. Gen. 18, 19 (1/5/78; No. CV 77-118)
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representation of criminal defendant in one matter and representation of another client in a related matter is an actual conflict
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LA 448 (1987)
representation of opposing party in the same matter without consent of former client
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acquiring former client’s collection business and clientele
advise of independent counsel
Connor v. State Bar (1990) 50 Cal.3d 1047
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attorney enters into partnership with client
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-judgment proceeds as source of attorney fee
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-selling information regarding case to entertainment industry
LA 409 (1983)
borrowing money from client
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-absence of security for a loan is an indication of unfairness
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-full disclosure and written consent required
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-strictly scrutinized for fairness

-rodgers v. state bar (1989) 48 cal.3d 300 [256 cal.rptr. 381]

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-bgj associates, l.l.c. v. wilson (2003) 113 cal.app.4th 1217 [7 cal.rptr.3d 140]


-in the matter of peavey (review dept. 2002) 4 cal. state bar ct. rptr. 206

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-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

-plummer v. day/eisenberg, llp (2010) 184 cal.app.4th 38 [108 cal.rptr.3d 455]

-compensation from third party affecting professional judgment

-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

-fergus v. songer (2007) 150 cal.app.4th 552 [59 cal.rptr.3d 273]

-in the matter of reiss (review dept. 2012) 5 cal. state bar ct. rptr. 206

-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

-by attorney’s spouse

-fergus v. songer (2007) 150 cal.app.4th 552 [59 cal.rptr.3d 273]

-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

-maltman v. state bar (1987) 43 cal.3d 924

-not found

-charging lien in contingency fee agreement does not create an adverse interest within the meaning of rule 3-300

-plummer v. day/eisenberg, llp (2010) 184 cal.app.4th 38 [108 cal.rptr.3d 455]

-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
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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 Silverton (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 [293 P. 788]
- CAL 1987-94

Taking business clientele from a former client


Adoption

- Civil Code section 225(m)
- LA 407 (1982)

Representation of natural parent and proposed adopting parents


Adverse interest

- LA 418 (1983)
- attorney acting as receiver for corporation and acting as attorney against same corporation

- LA 74 (1934)
- attorney both partner in partnership arrangement and counsel to partnership and another party

- Olivet v. Frisching (1980) 104 Cal.App.3d 831, 842 [164 Cal.Rptr. 87]
- 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

- Penix v. Winton (1943) 61 Cal.App.2d 761, 769-777 [143 P.2d 940]

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

- Sodikoff v. State Bar (1975) 15 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

- 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 matters 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]

Confession of judgment deemed detrimental to client

- Hulland 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 defined

- LA 496 (1998), SF 1997-1

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

disclosure and consent per rule 3-300 not a cure when matter is governed by probate code
SD 1969-2
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
Hammert v. McIntyre (1952) 114 Cal.App.2d 148 [249 P.2d 885]
litigation
-against former client
--concerning subject about which lawyer given legal advice
LA 27 (1925)
-with client regarding management of suit
SD 1978-1
litigation continued after contrary instructions from client
Johnson v. State Bar (1935) 4 Cal.2d 744 [52 P.2d 928]
loaning money received on behalf of estate to other clients without approval of administratrix
Black v. State Bar (1972) 7 Cal.3d 676, 681 [103 Cal.Rptr. 288, 499 P.2d 968]
no adverse interest when attorney’s fees come from settlement since client decided to accept settlement offer that would generate lower fees for attorney
-U.S.

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not found

-attorney’s investment in organization predated representation of organization
OC 2011-02
pecuniary interests adverse to client
-subject to rule 3-300 if attorney can extinguish the client’s property interest without judicial scrutiny
SF 1997-1
pending litigation
-attorney may post and guarantee fidelity bond for out-of-country client
SF 1973-16
promissory note as security for fees
CAL 1981-62
SF 1997-1
LA 492 (1998)
property purchased by wife of attorney subject matter of original client consultation
prospective client
CAL 2021-205
publication of article regarding client’s case
-no conflict found
LA 451 (1988)
purchase of property by attorney at a foreclosure sale
LA 455
represent city in prosecution of actions and represent city employee against city
-in unrelated matters
LA 77 (1934)
represent client before arbitrator while simultaneously representing arbitrator on unrelated matter
LA 415 (1983)
represent defendant client and attorney who represents plaintiff
-in unrelated matters
SD 1975-19
sale of real property by attorney to a client necessitates full disclosure of ownership interests
structured settlement, use of
CAL 1987-94
subpoena served on current client A, who is a witness in prospective client B’s matter
CAL 2011-182
when trustee is also creditor
Adverse party

attorney files motion to substitute in as a party against his former client in the same matter in which the attorney had represented the former client
atorney 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
Cordova v. State Bar (1978) 20 Cal.3d 788, 792 [144 Cal.Rptr. 404, 575 P.2d 1196]
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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 Alaska Partnership (9th Cir. 1998) 151 F.3d 1234 [41 Fed.R.Serv.3d 1079]

not found where attorney was the president and COO of adverse party; not disqualified based on successive representation where attorney did not have attorney-client relationship with previous employer

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

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
Fiat 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]

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. 759]

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 an immediately appealable final order

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

Appearence of conflict

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]

Hambarian v. Superior Court (2002) 27 Cal.4th 826 [118 Cal.Rptr.2d 200]


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

Haraguchi v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 250]
CONFlict of interest

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 92]


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 971]


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


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 AFI Holding, Inc. (9th Cir. BAP 2006) 355 B.R.139


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


In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660

OC 2012-1

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


Arisng 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 (1983)

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

-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]

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- 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
  Beery 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.3d 1]
- former client
  -- exists when transaction involves funds obtained by representation
  -- 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)

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 1999) 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)

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indemnity company counsel acts against assured by way of subrogation
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-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
Ritter v. State Bar (1985) 40 Cal.3d 595
CONFLICT OF INTEREST

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


stock promise to attorney is unenforceable


stricly scrutinized for fairness

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

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


unsecured promissory note does not give attorney a present interest in client's property to trigger rule 3-300


Business transaction with former client

no violation of rule 3-300 found in disciplinary action where attorney did not comply with rule regarding the transaction

In the Matter of Allen (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 196

using funds obtained in the representation

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

-attorney-client relationship continues to exist


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)

steps which must be taken to set up an effective screen


vicarious disqualification required despite screening measures when attorney switches sides and the attorney is not a former government attorney moving to private practice


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 city

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)

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


city attorney/county counsel


74 Ops. Cal. Atty. Gen. 155 (8/13/91; No. 91-201)

61 Ops. Cal. Atty. Gen. 18, 22-23 (1/5/78; No. CV 77-118)

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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
inscent agreement between class representatives and class counsel
Rodriguez v. Disner (9th Cir. 2012) 688 F.3d 645
Rodriguez v. West Publishing Corporation (9th Cir. 2009) 563 F.3d 948
no automatic various disqualification of law firm when tainted attorney is properly screened
withdrawal by counsel who previously represented members opposed to the settlement, then later represented those in favor, was not improper

Client
This heading is used for fact situations that do not easily fit under other, less abstract headings. Most conflict of interest matters involving clients are indexed under various other headings.
-act against
LA(l) 1972-15, SD 1976-10
-in related matter
-in unrelated matter
SD 1974-14

CONFLICT OF INTEREST

-witness
-against present client
-against present client
---in criminal proceedings
CAL 1979-49
--expert witness is former client of attorney
LA 513 (2005)
former
-act against
LA(l) 1972-5
--against present client
--in related matter
SD 1970-2
--in unrelated matter
SD 1974-14, SD 1974-12, SD 1970-2
--expert witness is former client of attorney
LA 513 (2005)
holder of the privilege
Evidence Code section 953
initiation of conservatorship proceedings against
multiple clients
Evidence Code section 962
of associate
-represent client in claim against
CAL 1981-57
SD 1972-15
-witness
--against present client
CAL 1980-52
represent
-despite client malpractice suit against attorney’s former law corporation
SD 1978-10
-self and
LA 39 (1927)
Co-counsel
-attorney’s self-interest does not create conflict with client when attorney seeks indemnification in malpractice action
Musser v. Provencher (2002) 28 Cal.4th 274 [121 Cal.Rptr.2d 373]
no fiduciary duty owed to co-counsel, where no collateral duties may interfere with duty of undivided loyalty and total devotion to client’s best interest
Beck v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]

Communicate with client
potential malpractice claim, facts related to
CAL 2019-197, CAL 2009-178
where attorney has professional or financial interest in the subject matter
CAL 2009-178

Communication with treating physician
SD 1983-9
sibling relationship between a lawyer and the opposing party’s physician is insufficient, standing alone, to preclude the lawyer from representing her client

Concurrent representation of clients with adverse interests
SD 2017-2
client as witness in another client’s case
witness, who is a client in a concurrent matter, has right to not have her counsel put her in such a position where she is portrayed in a negative manner
CONFLICT OF INTEREST

Condemnation
assist governmental body, former employer, when clients of partnership involved in the matter
LA 246 (1957)

Cone of silence

Confidential information
Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]
Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]
60 Ops. Cal. Atty. Gen. 206, 212-213 (7/7/77; No. CV 76-12)
59 Ops. Cal. Atty. Gen. 27 (11/76; No. CV 72-278)
CAL 2011-182, CAL 1976-37
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
actual versus potential disclosure
actual use or misuse not determinative – possibility of breach of confidence controls
-associate switches sides
-where former attorney in substantially same matter is now prosecutor

attorney cannot use confidences of former client to challenge client’s Chapter 7 discharge of fees owed
attorney for several clients involved in business enterprise later represents one of those clients against former associates
*Croce v. Superior Court (1937) 21 Cal.App.2d 18, 19 [68 F.2d 369]
attorney’s purchase of judgment from adverse party and his attempt to enforce that judgment against former client in the same matter established a certainty that attorney possessed confidential information that could be used against former client

“Chinese wall”
-attorney’s receipt of confidential information as settlement officer would bar attorney’s firm from representing the opposing party (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 Charlise C. (2008) 45 Cal.App.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
In re Complex Asbestos Litigation (1991) 232 Cal.Rptr. 572 [283 Cal.Rptr. 732]
-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 629 [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
CONFLICT OF INTEREST

- must be set up at a time when the potentially disqualifying event occurred
  Concat 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
  Alisi Corp. v. Seagate Technology (9th Cir. 1988) 847 F.2d 826
- separation between Public Defender and Alternate Public Defenders’ offices
  CAL 2002-158
- settlement confidentiality agreement
  LA 512 (2004)
- steps which must be taken to set up an effective screen
  Armstrong v. McAlpin (2d Cir. 1980) 625 F.2d 433
- public law office
  In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]
- switching sides in same matter
  -- attorney disqualified where attorney obtained privileged information related to pending litigation during his employment at adverse party
  -- vicarious disqualification where firm failed to rebut presumption of imputed knowledge
  -- 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]
  -- vicarious disqualification required despite screening measures when attorney switches sides and the attorney is not a former government attorney moving to private practice
    -- walloff of witness/employee of district attorney’s office is less drastic measure than disqualification
  -- when attorney is screened from participation in the matter to the satisfaction of adverse party
    LA 501 (1999)
  -- client and witness for co-defendant represented by same law firm
    Leversen v. Superior Court (1983) 34 Cal.3d 530 [94 Cal.Rptr. 448, 668 P.2d 755]
  common interest doctrine
    commonly known facts deemed not given in confidence
    -- conflict occurs when prosecution calls as witness former co-defendant with whom defense attorney had an attorney-client relationship under a joint defense agreement
    United States v. Henke (9th Cir. 2000) 222 F.3d 633
    county counsel representation of both parties
    -- detrimental use based on adverse positions as attorney for insurance company and counsel for opposing party
    Anderson v. Eaton (1930) 211 Cal. 113, 116 [293 P. 788]
    disclosure
CONFLICT OF INTEREST

disclosure of, based on prior relationship with former client now opposing party
LA 501 (1999)
disqualification based on double imputation of confidential knowledge not found when lawyer is two steps removed from attorney who has confidential information about a client Derivi Construction & Architecture Inc. v. Wong (2004) 118 Cal.App.4th 1266 [14 Cal.Rptr.3d 329]
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 Allen v. Perton (9th Cir. 1977) 565 F.2d 246
disqualification of attorney from representing debtor is not attributable to his firm under Bankruptcy Code In re S.S. Retail Stores Corp. (9th Cir. 2000) 216 F.3d 882 [36 Bankr.Ct.Dec. 79]
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 Ochoa v. Fordel, Inc. (2007) 146 Cal.App.4th 898 [53 Cal.Rptr.3d 277]
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 Roush v. Seagate Technology, LLC (2007) 150 Cal.App.4th 210 [58 Cal.Rptr.3d 275]
disqualification of attorney not required where record does not create reasonable probability that confidential information was divulged – attorney dating opposing firm’s secretary Gregort v. Bank of America (1989) 207 Cal.App.3d 291 [254 Cal.Rptr. 853]
disqualification of attorney not required where substantial relationship is not shown and actual confidences of the former client are not breached Med-Trans Corp., Inc. v. City of California City (2007) 156 Cal.App.4th 655 [68 Cal.Rptr.3d 17]
Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]
disqualification of attorney required where attorney actually possessed confidential information despite the fact that substantial relationship is not shown Costello v. Buckley (2016) 245 Cal.App.4th 748 [199 Cal.Rptr.3d 891]
disqualification of counsel not required when based on counsel’s familiarity with claims procedures from a prior representation of the moving party that was not substantial Liberty National Enterprises, LP v. Chicago Title Insurance Company (2011) 194 Cal.App.4th 839 [123 Cal.Rptr.3d 498]
disqualification of defense counsel not required where plaintiff’s expert witness was a former client of defense counsel and where expert waives conflict Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]
disqualification of law firm not required where attorney who handled adverse party’s prior matters has left firm and there is no evidence confidential information was exchanged Goldberg v. Warner/Chappell Music, Inc. (2005) 125 Cal.App.4th 752 [23 Cal.Rptr.3d 116]
disqualifying conflict may arise, with regard to an adverse non-client, by virtue of representing non-client’s attorney Acsacia Patent Acquisition, LLC v. Superior Court of Orange County (2015) 234 Cal.App.4th 1091 [184 Cal.Rptr.3d 583]
disqualifying the firm from the litigation is reversed and remanded where disqualified attorney departs from mega-firm during pendency of appeal Fluidmaster, Inc. v. Fireman’s Fund Ins. Co. (2018) 25 Cal.App.5th 545 [235 Cal.Rptr.3d 889]
dissemination of information to counsel for adversary by a third party San Gabriel Basin Water Quality Authority v. Aerogen-General Corp. (C.D. Cal. 2000) 105 F.Supp.2d 1095
Good v. Superior Court (1978) 83 Cal.App.3d 582, 590-592 [147 Cal.Rptr. 915]
duty to protect continues after formal attorney-client relationship ends Styles v. Mumbert (2008) 164 Cal.App.4th 1163 [79 Cal.Rptr.3d 880]
former counsel for opposing party
Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]
-for disqualification purposes, confidential information may include knowledge of a client’s internal operations, policies, and litigation philosophies
-no automatic 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 laws of franchise group obtaining confidences
LA 423 (1983)
impute knowledge to co-counsel

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

In re Airport Car Rental Antitrust Litigation (N.D. Cal. 1979) 470 F.Supp. 495, 501


LA 501 (1999)

-to all in firm

CAL 1998-152, LA 377 (1978)

imputed knowledge not found


imputed knowledge theory holds that knowledge by any member of a law firm is knowledge by all the attorneys, partners, and associates

In re S.S. Retail Stores Corp. (9th Cir. 2000) 216 F.3d 882 [36 Bankr.Ct.Cl. Dec. 79]

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


“joint-client” exception to lawyer-client privilege


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


CONFLICT OF INTEREST


SD 2006-1

obtaining during course of representation of opposing party in previous lawsuit

Wulchumna 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

Shaeffer 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 (7/7/77; No. CV 76-14)

presumption of possession

Trone v. Smith (9th Cir. 1980) 621 F.2d 994, 999

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


In re Airport Car Rental Antitrust Litigation (N.D. Cal. 1979) 470 F.Supp. 1396


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


Civil Service Comm. v. Superior Court (1985) 163 Cal.App.3d 70 [209 Cal.Rptr. 159]


-attorney never performed services for former client of attorney’s former firm


Dieter v. Regents of the University of California (E.D. Cal. 1997) 963 F.Supp. 908

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CONFLICT OF INTEREST

- attorney never performed services for former client of attorney's wife's previously disqualified firm  
- automatic disqualification is not appropriate for mere exposure to the opposing party's confidential information with no evidence that the attorney actually received or used such information  
- disqualification granted where family entanglements, potential misuse of confidential information, near certain prospect that counsel would testify, and preservation of integrity of the judicial system would require it  
  Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]  
- due to similarity between the two cases and the overlapping factual issues common to both, father and daughter should be treated as a single unit for determining whether a conflict exists  
  Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]  
- rebuttable 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  
  Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]  
- prior association with opposing party counsel by attorney for defendant  
  Earl Scheib, Inc. v. Superior Court (1967) 253 Cal.App.2d 703, 706 [61 Cal.Rptr. 386]  
- prior relationship with opposing party  
- prior representation of co-defendant  
- prior representation of defendant by district attorney while in private practice  
  People v. Lepe (1985) 164 Cal.App.3d 685 [211 Cal.Rptr. 432]  
- public defender may not set up separate division within office to represent criminal defendant  
  59 Ops. Cal. Atty. Gen. 27 (11/15/76; No. CV 72-278)  
- relationship with opposing party in unrelated litigation  
  Abbott v. United States IRS (9th Cir. 2005) 399 F.3d 1083  
  Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354  
  Flatt v. Superior Court (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537]  
  CAL. 2014-191  
- removal of expert for plaintiff not required where defense counsel had represented the expert ten years before and expert offered unqualified waiver of conflict  
  Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]  
- rule 3-310(E) requires court determination that a "member" has obtained confidential information for purpose of disqualification  
- settlement confidentiality agreement  
  - attorney disqualified for seeking to call former clients as witnesses in pending action who were subject to rules of professional ethics  
  - 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]  
CONFLICT OF INTEREST

CAL 1998-152
LA 363 (1976), LA(6) 1962-2
-associate switches sides
LA 363 (1976)
-attorney disqualified where attorney obtained privileged information related to pending litigation during his employment at adverse party
-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)
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
vicarious disqualification where firm failed to rebut presumption of imputed knowledge
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
LA 533 (2020)
advance waiver
-CAL 2021-205
-prospective client
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
CAL 1989-115
class action representatives may waive conflicts of interest on behalf of potential class members
class representative’s authority to make decisions concerning conflicts of interest for the entire class
Petway v. American Cast Iron Pipe Company (5th Cir. 1978) 576 F.2d 1157
-client’s consent to forbidden act insufficient
Ames v. State Bar (1973) 8 Cal.3d 910, 915 [106 Cal.Rptr. 489, 506 P.2d 625]
CAL 1988-105
conservatorship proceedings
OC 95-002, SF 1999-2
failure to object in a timely manner deemed to be a waiver
failure to object to district attorney as prosecutor when former counsel in action based on same facts; deemed to be waiver
[164 Cal.Rptr. 746]
franchise law firms of franchise group representing adverse or multiple clients
LA 423 (1983)
from buyer and seller where attorney is broker for both, but attorney to only one
LA 413 (1983)
implicated
-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. 524, 499 P.2d 968]
may not be sufficient in dual representation situations where actual, present, existing conflict
Klemm v. Superior Court (1977) 75 Cal.App.3d 893, 898 [142 Cal.Rptr. 509]
CONFLICT OF INTEREST

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


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

Cal.App.4th 843 [117 Cal.Rptr.2d 489]

necessity of


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

Cal.App.4th 843 [117 Cal.Rptr.2d 489]

of client

-of client

- after disclosure of former representation of adverse party

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- attorney’s relationship with courtroom personnel

CAL 1987-93

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

Cal.App.4th 237 [190 Cal.Rptr.3d 644]

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

-- of multiple parties

CAL 1975-35

LA 427 (1984), LA 22 (1923)

required for full disclosure


unrelated action

61 Ops. Cal. Atty. Gen. 18 (1/578; 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)

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


Blue Water Sunset, LLC v. Markowitz (2011) 192
Cal.App.4th 477 [122 Cal.Rptr.3d 641]
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 corporation officers personally
La Jolla Cove Motel and Hotel Apartments Inc. v. Superior Court (2004) 121 Cal.App.4th 773 [17 Cal.Rptr.3d 467]

representation of corporation or not deemed representation of minority shareholder

representation of former shareholders against former corporate client in related matters requires disqualification because of duty of loyalty and confidentiality

representation of minority shareholder and director in proxy fight by former corporate general counsel
Goldstein v. Lees (1975) 46 Cal.App.3d 614 [120 Cal.Rptr. 253]

represents
-corporation against director
LA(I) 1966-14
-corporation and board of directors in derivative suit
LA 397 (1982)
director of represents stockholder against
LA(I) 1966-14
-corporate
-later represent against one incorporator
SD 1974-13

shareholders derivative action

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shareholders derivative action
CONFLICT OF INTEREST


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

- attorney not barred from continuing to represent insider of closely held company in a derivative lawsuit pursuant to Forrest v. Baeza


stockholder
- director of corporation represents stockholder against corporation
LA(I) 1955-2

County counsel

attorney for governmental entity advises constituents with antagonistic positions
Strong v. Sutter County Bd. of Supervisors (2010) 188 Cal.App.4th 482 [115 Cal.Rptr.3d 498]

C AL 2001-156

collective bargaining by government attorneys
* Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]

conflict exists when county counsel represents both minor and county department of social services

LA(I) 1969-5

conflict of interest does not bar county counsel from suing county where no breach of duties of loyalty or confidentiality
* Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]

dispute between district attorney and county sheriff prevented county counsel from representing either party since the two were county public officers, thus, requiring independent counsel for sheriff
Rivero v. Lake County Board of Supervisors (2014) 232 Cal.App.4th 1187 [181 Cal.Rptr.3d 769]

giving advice to independent board of retirement
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)

outside counsel represents county in tort liability also may represent parties in actions against county if unrelated matter 61 Ops. Cal. Atty. Gen. 18 (1/578; No. CV 77-118)

representation of both child and Department of Children Services
LA 459 (1990)

representation of both Sheriff’s Department and Employment Appeals Board places burden on county to show effective screening or be disqualified
Howitt v. Superior Court of Imperial County (1992) 3 Cal.App.4th 1575

representation of county improper after prior representation of county commission in same matter

representation of county tax assessor and appeals board by separate branches of county counsel’s office proper, where effective screening procedures were shown
Jefferson v. Board of Assessment and Appeals No. 3 for Orange County (9th Cir. 2012) 695 F.3d 960

representation of district organized under Municipal Water District Act of 1911 incompatible with duties as county counsel, notwithstanding provision allowing outside private law practice

representation of social services department and of public conservator by separate branches of the county counsel office may not be a conflict of interest
In re Lee G. (1991) 1 Cal.App.4th 17 [1 Cal.Rptr.2d 375]

Creating a conflict

absent an actual conflict between an opposing attorney’s clients, a party should not be able to create one by merely filing a meritless cross-complaint

conflicts of interest may arise where an attorney assumes a role other than as an attorney adverse to an existing client


plaintiff’s expert waives potential conflict where defense counsel previously represented expert; need not be removed and defense counsel need not be disqualified
Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]

Creditor

counsel for represents debtor in resolving financial problems of
LA(I) 1969-5

counsel for uses assets of debtor in his possession to satisfy creditor’s claim
LA(I) 1969-5

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 creditor of former client against former client
SD 1974-12

Criminal proceedings

active representation of conflicting interests deprives defendant of effective assistance of counsel
McClure v. Thompson (9th Cir. (Or.) 2003) 323 F.3d 1233

Lockhart v. Terhune (9th Cir. 2001) 250 F.3d 1223

U.S. v. Christakis (9th Cir. 2001) 238 F.3d 1164


actual conflict that adversely affects defense counsel’s performance is required to find ineffective assistance of counsel
U.S. v. Rodrigues (9th Cir. 2003) 347 F.3d 818

People v. Perez (2018) 4 Cal.5th 421 [229 Cal.Rptr.3d 303]

People v. Ramirez (2006) 39 Cal.4th 398 [46 Cal.Rptr.3d 677]


Harris v. Superior Court (2014) 225 Cal.App.4th 1129 [170 Cal.Rptr.3d 780]

appointment of substitute or conflict counsel to evaluate a defendant’s claim of incompetent advice regarding entry of a guilty plea
People v. Sanchez (2011) 53 Cal.4th 80 [170 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. Terhune (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

2022 (updated entries through 12/31/2021)
Conflict of Interest

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 counsel and district attorney involved in personal relationship
defense counsel good friend of defendant’s roommate who was also a suspect
Plumlee v. Del Papa (9th Cir. 2005) 426 F.3d 1095
defense counsel in criminal matter is being prosecuted by district attorney in other matters
Campbell v. Rice (9th Cir. 2005) 408 F.3d 1166
Harris v. Superior Court (2014) 225 Cal.App.4th 1129 [170 Cal.Rptr.3d 780]
defense counsel left public defender’s office and went to DA’s office during case
Plumlee v. Del Papa (9th Cir. 2005) 426 F.3d 1095
defense counsel married to bailiff
CAL 1987-93
defense counsel testifies at penalty phase
People v. Dunkle (2005) 36 Cal.4th 861 [32 Cal.Rptr.3d 23]
defense counsel told defendant that he needed psychiatric treatment when counsel denied the existence of a bail order, later produced by DA’s office
Plumlee v. Del Papa (9th Cir. 2005) 426 F.3d 1095
defense counsel’s secretary dating plaintiff’s attorney
defense counsel’s separate retainer agreements with defendant and with defendant’s family did not create a conflict of interest that affected counsel’s performance
People v. Ramirez (2006) 39 Cal.4th 398 [46 Cal.Rptr.3d 677]
disqualification
- ineffective representation in covering attorney’s conduct in failing to file timely notice of appeal
In re Fountain (1977) 74 Cal.App.3d 715 [141 Cal.Rptr. 654]
- recusal of entire D.A.’s office unnecessary when screening measures in place and protection afforded from potential conflict
- when former co-defendant under a joint defense agreement is prosecution witness
United States v. Henke (9th Cir. 2000) 222 F.3d 633
district attorney
- recusal of entire office
People v. Dukaii (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]
-- not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office
People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]
former client
- now co-defendant
- disqualification
- now witness
-- against present client
Hovey v. Avers (9th Cir. 2006) 458 F.3d 892
United States v. Henke (9th Cir. 2000) 222 F.3d 633
People v. Lomax (2010) 49 Cal.4th 530 [112 Cal.Rptr.3d 96]
CONFLICT OF INTEREST


2022 (updated entries through 12/31/2021) 142 See How to Use This Index, supra, p. i
Criminal prosecution

certainty occurs when prosecution calls as witness former co-defendant with whom defense attorney had an attorney-client relationship under a joint defense agreement. United States v. Henke (9th Cir. 2000) 222 F.3d 633

defendant entitled to counsel free of conflict

Lockhart v. Terhune (9th Cir. 2001) 250 F.3d 1223

U.S. v. Christakis (9th Cir. 2001) 238 F.3d 1164

People v. Cornwall (2005) 37 Cal.4th 50 [33 Cal.Rptr.3d 117]


- client may waive right to conflict-free counsel so long as he understands the specific ramifications of his waiver

Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

- lump sum payment of fees and costs does not create inherent conflict

People v. Doolin (2009) 45 Cal.4th 390 [87 Cal.Rptr.3d 209]

district attorney

- recusal of entire office

-- not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA's office

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

dual representation of co-defendants

- by appointed counsel

Lockhart v. Terhune (9th Cir. 2001) 250 F.3d 1223


- by private counsel

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]

program where volunteer attorneys staff prosecutor's office on part-time basis

LA 377 (1978)

- active representation of conflicting interests deprives defendant of effective assistance of counsel


representation of criminal defendant by member of firm acting as city prosecutor

LA 453

representation of one co-defendant by public defender and representation of other co-defendant by alternate public defender


CAL 2002-158

- threats of possible prosecution against defense counsel and unlicensed investigator by district attorney, although serious, did not prejudice defendant


waiver of

- by defendant

--denied if showing of a serious potential conflict


- defendant may waive right to conflict-free counsel so long as he understands the specific ramifications of his waiver

Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

---Date-------------------

witness for prosecution former colleague and friend of defense counsel

CAL 1987-93

CONFLICT OF INTEREST

Dating/Social Relationships

34 Santa Clara L. Rev. 1157 (1994)

criminal defense lawyer dating prosecutor at time of trial


maried to bailiff

CAL 1987-93

plaintiff attorney dating secretary of law firm representing defendant


social contacts and dating conflicts of interest

34 Santa Clara L. Rev. 1157 (1994)

Defending and indemnifying opposing party

plaintiff's counsel in personal injury action may not enter into an agreement to defend and indemnify defendants against an action brought against them by third parties

LA 532 (2019)

Discharge of attorney

rights and obligations of client


Disclosure


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 445]

- confidences of the client, basis for disqualification

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


disqualification proper remedy for failure to disclose reasonably foreseeable adverse effects


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


potential malpractice claim, facts related to CAL 2009-178

requires full consent


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

LA 413 (1983)

to client

OC 2011-02

- arguments made by attorney on opposite sides of a controverted issue in different cases

CAL 1989-108

- attorney's relationship with courtroom personnel

CAL 1987-93

- former representation of adverse party


LA 406 (1982)

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

- Disqualification of counsel
  - People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]
  - appeal
    - disqualification counsel is collaterally estopped from re-litigating issue of his breach of an ethical violation that had already been decided by court that ordered the disqualification

- 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

- interest in subject matter of the representation
  - witness is former colleague of attorney
  - CAL 1987-93

- to court
  - attorney’s relationship with courtroom personnel
  - CAL 1987-93

- in child custody proceedings
  - conflict between client and interests of child
  - CAL 1976-37

- in welfare proceedings
  - conflict between child and state
  - CAL 1977-45

- of representation of related trust

- to former client
  - LA 6 (1918)

- where attorney has professional or financial interest in the subject matter
  - CAL 2019-197, CAL 2009-178, SD 2017-1

Disqualification of counsel

- People v. Dekraai (2016) 5 Cal.App.5th 1110 [210 Cal.Rptr.3d 523]
- absent an actual conflict between an opposing attorney’s clients, a party should not be able to create one by merely filing a meritless cross-complaint
- alleged protected activity under Anti-SLAPP statute (C.C.P. § 425.16) found to be incidental to conflict of interest
- appeal
  - disqualification counsel is collaterally estopped from re-litigating issue of his breach of an ethical violation that had already been decided by court that ordered the disqualification
  - disqualification order not appealable in the grand jury context
  - In re Grand Jury Investigation (9th Cir. 1999) 182 F.3d 668
  - from pre-trial order denying motion to disqualify counsel for conflict of interest
    - standard requires showing on appeal that order affected outcome of case
  - order disqualifying the firm from the litigation is reversed and remanded where disqualified attorney departs from mega-firm during pendancy of appeal
  - standing to challenge disqualification
attorney general – denied
attorney's former joint representation of parties justified
disqualification from representing one against the other
Western Continental Operating Co. v. Natural Gas Corp. (1989) 212 Cal.App.3d 752 [261 Cal.Rptr. 100]
based on 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
26 Cal.App.5th 966 [237 Cal.Rptr.3d 598]
Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]
based on relationship between class action counsel and class representative
between the party and the attorney sought to be disqualified
burden on client
Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100
-public law office
In re Charlise 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
People v. Municipal Court (Byars) (1978) 77 Cal.App.3d 294 [143 Cal.Rptr. 491]
city councilman as defense counsel in criminal action
1981-63
class action representatives may waive conflicts of interest on behalf of potential class members
-co-counsel
-case law does not support “double imputation” when lawyer is two steps removed from attorney who has confidential information about a client
-imputed knowledge to
Panduit Corp. v. All States Plastic Mfg. Co. (7th Cir. 1984) 744 F.2d 1564, 1578
In re Airport Car Rental Antitrust Litigation (N.D. Cal. 1979) 470 F.Supp. 495, 501
--to all in firm
LA 377 (1978)
-concurrent representation of clients with adverse interests
26 Cal.App.5th 966 [237 Cal.Rptr.3d 598]
-client's consent to dual representation must be based on disclosure of all material facts the attorney knows and can reveal
[237 Cal.Rptr.3d 424]
-if an attorney simultaneously represents two clients with adverse interests, disqualification is automatic
26 Cal.App.5th 966 [237 Cal.Rptr.3d 598]
-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. 515]
conflict occurs when prosecution calls as witness former co-defendant with whom defense attorney had an attorney-client relationship under a joint defense agreement
United States v. Henke (9th Cir. 2000) 222 F.3d 633
conflicting liabilities between insurers and insured
consultation with an independent attorney regarding the client’s case may prevent the consulted attorney from representing the party adverse to the client
SD 1996-1
county counsel not in conflict of interest when separate branches of the office represents potentially adverse interests
CONFLICT OF INTEREST

criminal proceeding
[45 Cal.Rptr.3d 464] 146
CAL 1980-52, CAL 1979-49
-public defender’s workload so excessive to warrant removal
Cumis counsel does not have attorney-client relationship with insurer for purpose of disqualification
defense counsel need not be disqualified where expert for plaintiff was former client of defense counsel but gives unqualified waiver
Montgomery v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]
denied following attorney’s waiver of interest in case
denied when the persons who are personally interested in the conflict filed written declarations waiving the conflict
dependency proceedings
-actual conflict amongst multiple siblings requires disqualification from joint representation
-factors determining whether disqualified 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]
discussion with party concerned fees only
denied disqualification where client received information from plaintiff’s former coworker who was litigant in unrelated case
disqualification denied where former legal secretary of defendant became a client, not an employee of attorney for plaintiff
disqualification granted where family entanglements, potential misuse of confidential information, near certain prospect that counsel would testify, and preservation of integrity of the judicial system would require it
Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]
disqualification may not be available when an attorney-client relationship never existed between the party and the attorney sought to be disqualified

-attorney-client relationship not always required for a party to have standing to bring a motion to disqualify
DCH Health Services Corp. (2002) 95 Cal.App.4th 829 [115 Cal.Rptr.2d 847]
disqualification not necessary where contract with city merely set forth a “framework” for representation and did not, by itself, create an attorney client relationship
-Banning Ranch distinguished
disqualification of attorney and attorney general denied where moving party had no reasonable expectation that confidential information shared with opposing party and party was advised and consented to disclosure
disqualification of attorney not required even if attorney received confidential information about defendant, did not meet burden of showing the information could give plaintiff an unfair advantage or affect outcome of litigation
disqualification of attorney not required from representing executor against beneficiary and law firm that drafted will
disqualification of attorney not required where attorney never performed services for attorney’s former firm
Dieter v. Regents of the University of California (E.D. Cal. 1997) 963 F.Supp. 908
disqualification of attorney not required where client never imparted confidential information to attorney -- now representing adverse party in same matter
disqualification of attorney not required where firm-switching attorney’s relationship with client at former firm was peripheral or attenuated and documents relating to case that attorney accessed contained no confidential information
disqualification of attorney not required where no confidential information was disclosed
La Jolla Cove Motel and Hotel Apartments Inc. v. Superior Court (2004) 121 Cal.App.4th 773 [17 Cal.Rptr.3d 467]
disqualification of attorney not required where record does not create reasonable probability that confidential information was divulged – attorney dating opposing firm’s secretary
disqualification of attorney required where attorney actually possessed confidential information despite the fact that substantial relationship is not shown
Costello v. Buckley (2016) 245 Cal.App.4th 748 [199 Cal.Rptr.3d 891]
disqualification of law firm not required where attorney who handled adverse party’s prior matter has left firm and there is no evidence confidential information was exchanged


disqualification when the misconduct or status has a continuing effect on judicial proceedings

Cal Pak Delivery, Inc. v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 Cal.Rptr.2d 207]
district attorney

Penal Code section 1424

- abuse of discretion found, where trial court failed to hold evidentiary hearing to determine whether prosecutor’s personal involvement in the case warranted recusal

Packer v. Superior Court (2014) 60 Cal.4th 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


[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 572]

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 [59 Cal.Rptr.2d 200]

People v. Conner (1983) 34 Cal.3d 141 [193 Cal.Rptr. 148, 666 P.2d 21]

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


[62 Cal.Rptr.2d 331]


- 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


[98 Cal.Rptr.3d 596]

- not required where prosecutor involved in making of film about capital murder case


[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


[202 Cal.Rptr. 333]

*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

CONFLICT OF INTEREST

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

- duty of loyalty requires

entire 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
  Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1996) 155 B.R. 740
  In re Charlisse C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]


- attorney disqualified for formerly representing the adverse party in the same litigation necessitates vicarious disqualification of the entire firm regardless of screening measures
  - city attorney and entire office disqualified from representing city in matter related to city attorney’s prior representation of private company
  City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]
  - disqualification of attorney from representing debtor is not attributable to his firm under bankruptcy code
  In re S.S. Retail Stores Corp. (9th Cir. 2000) 216 F.3d 882 [36 Bankr.Ct.Dec. 79]
  - limited exception where the tainted lawyer can show that there was no opportunity for confidential information to be divulged within the firm
  - no automatic various disqualification of law firm when tainted attorney is properly screened
  - not required when attorney at law firm covered depositions for independent counsel

- not required when attorney leaves firm and there’s evidence that no one other than the departed attorney had any dealings with the client or obtained confidential information

- not required where firm-switching attorney’s relationship with client at former firm was peripheral or attenuated and documents relating to case that attorney accessed contained no confidential information

- not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office
  People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]

- 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 1100

- failure to file notice of appeal and subsequent defense of that action
  In re Fountain (1977) 74 Cal.App.3d 715, 719

former clients, subject to confidential settlement, as witnesses in pending action
former state-employed attorney in law firm employed by plaintiff to sue state
immigration matters
-representation adverse to former corporate client’s employees and officers in immigration matters
marital relationship insufficient to deprive party of choice of counsel
DCH Health Services Corp. v. Waite (2002) 95 Cal.App.4th 829 [115 Cal.Rptr.2d 847]
mediator is generally not disqualified from litigating later cases against the same party
mere exposure to confidences of an adversary does not, standing alone, warrant disqualification
Cooke v. Superior Court (1978) 83 Cal.App.3d 582, 590 [147 Cal.Rptr. 915]
-prior representation of opposing party’s insurer
non-lawyer employee “switches sides”
ot 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
ot 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 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 (9th Cir. 1988) 847 F.2d 826
party of moving for disqualification of counsel absent an attorney-client relationship generally does not have standing to assert conflict of interest
-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. 584, 574 [155 P.2d 505]
Western Continental Operating Co. v. Natural Gas Corp. (1989) 212 Cal.App.3d 752 [261 Cal.Rptr. 100]
-attorney disqualified for formerly representing the adverse party in the same litigation necessitates vicarious disqualification of the entire firm regardless of screening measures
-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. 1998) 136 F.3d 1354
-in related matter
Charrisse 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]
CONFLICT OF INTEREST

California Self-Insurers' Security Fund v. Superior Court
(2018) 19 Cal.App.5th 1065 [228 Cal.Rptr.3d 546]

Fiduciary Trust International of California v. Superior
Court (2013) 218 Cal.App.4th 465 [160 Cal.Rptr.3d 1216]

Cal.App.4th 776 [108 Cal.Rptr.3d 620]

Cal.Rptr.3d 823]

Cal.Rptr.3d 277]

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

Brand v. 20th Century Insurance Company (2004) 124
Cal.App.4th 594 [21 Cal.Rptr.3d 380]

Cal.App.4th 671 [14 Cal.Rptr.3d 618]

810 [5 Cal.Rptr.3d 442]

698 [3 Cal.Rptr.3d 677]

[117 Cal.Rptr.2d 125]

Cal.App.4th 1832 [43 Cal.Rptr.2d 327]

[20 Cal.Rptr.2d 132]

Rosenfeld Construction Co., Inc. v. Superior Court (1991)
235 Cal.App.3d 566

Cal.Rptr. 671]

Global Van Lines v. Superior Court (1983) 144
Cal.App.3d 483 [192 Cal.Rptr. 609]

[32 Cal.Rptr. 188]

In the Matter of Lane (Review Dept. 1994) 2 Cal. State
Bar Ct. Rptr. 735


-associate switches sides

Cal.Rptr. 671]

LA 363 (1976)

-in matter relating to same transaction

Cord v. Smith (9th Cir. 1964) 338 F.2d 516

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

[117 Cal.Rptr.2d 125]

556 [20 Cal.Rptr.2d 132]

573, 577-578 [205 Cal.Rptr. 605]

-no automatic where previous representation did not
expose attorney to confidential information material to the
current representation

916 [155 Cal.Rptr.3d 532]

-representation of attorney/client against former attorney/client

LA 418 (1983), SD 1984-1

-substantial relationship to current matter not found

H.F. Ahmanson & Co. v. Salomon Brothers, Inc.
(Forsyth) (9th Cir. 1999) 229 Cal.App.3d 1445 [280 Cal.Rptr. 614]

prior representation of plaintiff's expert witness does not
require disqualification where expert waives conflict

1051 [112 Cal.Rptr.3d 642]

prosecutor's recusal not required where prosecutor
advocates but does not formally represent the interests of third
city

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

Cal.Rptr.3d 675]

raised on appeal from the final judgment

[250 Cal.Rptr. 802]

related matter, substantial relationship

Pandull Corp. v. All States Plastic Mfg. Co., Inc. (7th Cir.
1984) 744 F.2d 1546

Davis v. FMI Group Limited (N. D. Cal. 2013) 2013 WL
75781, 2013 U.S. Dist. Lexis 1642

Fiduciary Trust International of California v. Superior
Court (2013) 218 Cal.App.4th 465 [160 Cal.Rptr.3d 1216]

Cal.Rptr.3d 823]

[55 Cal.Rptr.3d 402]

Cal.App.4th 752 [23 Cal.Rptr.3d 116]

Brand v. 20th Century Insurance Company (2004) 124
Cal.App.4th 594 [21 Cal.Rptr.3d 380]

Cal.App.4th 671 [14 Cal.Rptr.3d 618]

698 [3 Cal.Rptr.3d 677]

[117 Cal.Rptr.2d 125]

1324 [104 Cal.Rptr.2d 116]

Montison Knudsen Corp. v. Hancock, Rotherh & Bunshoff,

Global Van Lines v. Superior Court (1983) 144
Cal.App.3d 483 [192 Cal.Rptr. 609]

-disqualification of attorney where same attorney was
previously disqualified in a related case

875 [55 Cal.Rptr.3d 902]

-no automatic where previous representation did not
expose attorney to confidential information material to the
current representation

916 [155 Cal.Rptr.3d 532]

-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

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

-vicarious disqualification of entire city attorney's office
where in related matter city attorney previously
represented private company

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

res judicata and collateral estoppel, effect of

Cal.App.4th 96 [116 Cal.Rptr.2d 644]

sibling relationship between a lawyer and the opposing party's physician is insufficient, standing alone, to preclude the
lawyer from representing her client

Cal.Rptr.3d 39]

standards

-difference for subsequent representation than for simultaneous

1051 [112 Cal.Rptr.3d 642]
standing to assert
-absent an attorney client relationship, party moving for disqualification generally does not have standing to assert a conflict of interest

In re Marriage of Murchison (2016) 245 Cal.App.4th 847 [199 Cal.Rptr.3d 600]

-no vicarious standing where action brought by member of entity against entity and its only other member is not a derivative action

-temporary judge lacks authority to order disqualification of lawyer

-timeliness of Marsden motion

CONFLICT OF INTEREST

Standing to assert

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Time of Motion to Disqualify

CRS Recovery, Inc. v. Laxton (9th Cir. 2010) 600 F.3d 1138
Earl Scheib, Inc. v. Superior Court (1967) 253 Cal.App.2d 703, 707-710 [61 Cal.Rptr. 386]

Trail court must determine if there is a substantial relationship between the prior and current representation based on facts of 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


-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

Cal Pak Delivery, Inc. v. United Parcel Service (1997) 52 Cal.App.4th 11 [60 Cal.Rptr.2d 207]

-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
CONFLICT OF INTEREST

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 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]

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

dispute between district attorney and county sheriff prevented county counsel from representing either party since the two were county public officers, thus, requiring independent counsel for sheriff
Rivero v. Lake County Board of Supervisors (2014) 232 Cal.App.4th 1187 [181 Cal.Rptr.3d 769]

district attorney’s office cannot be recused from case where alleged conflict was speculative and did not show actual unfairness

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

former -represents
-in criminal matters
Business and Professions Code section 6131
LA(i) 1958-9

former district 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]

married to bailiff
CAL 1987-93

personal animosity of district attorney towards co-defendant
*People v. Battin (1978) 77 Cal.App.3d 635, 670-672 [143 Cal.Rptr. 731]

police officer assigned to the district attorney’s office related to informant
People v. McPartland (1988) 243 Cal.Rptr. 752

proceedings to have child of defendant in criminal case declared ward of court
People v. Superior Court (Martin) (1979) 98 Cal.App.3d 515 [159 Cal.Rptr. 825]

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. 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 time
-erroneous denial of recusal motion is harmless error if it does not involve due process violation
People v. Vasquez (2006) 39 Cal.4th 47 [45 Cal.Rptr.3d 372]
-improper absent evidence that prosecutor would employ discretionary powers to deprive defendant of fair trial
People v. McPartland (1988) 243 Cal.Rptr. 752
-not necessary when defendant and victim exchange roles in concurrent cases
-not required where ethical wall would be effective alternative
-not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA's office
People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]
-prosecutor's recusal not required when prosecutor advocates but does not formally represent the interests of a third party
People v. Superior Court (Humerto) (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. 476, 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
CAL 1977-45
threats of possible prosecution against defense counsel and unlicensed investigator by district attorney, although serious, did not prejudice defendant
Divorce
community property, contingent fee
CAL 1983-72
post-nuptial agreement enforceable despite law firm's dual representation of husband and wife on estate plan
In re Marriage of Friedman (2002) 100 Cal.App.4th 65 [122 Cal.Rptr.2d 412]
represent
both parties
Klemm v. Superior Court (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509]
Istizarna 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 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-nupial agreement unenforceable
In re Marriage of Friedman (2002) 100 Cal.App.4th 65
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
atorney acting as Federal Rule 30(b)(6) spokesperson
atorney as director and as attorney for organization
OC 2011-02
attorney for plaintiff formerly had borrower-lender relationship with defendant
lobbyist and legal counsel for a state agency may be permissible
Dual professions
CAL 1982-69
SD 1992-1
85 Ops. Cal. Atty. Gen. 115 (6/7/02; No. 01-1107)
Dual representation
aspiration of 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

Sabe y v. City of Pomona (2013) 216 Cal.App.4th 489 [155 Cal.Rptr.3d 452]


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


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

concurrent representation of adverse parties in separate matters is not cured by ending relationship with previous client


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

*Santa Clara County Counsel Attorneys Assn v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]


CAL 2003-163

concurrent representation of adverse parties in separate matters may be permissible if cases are totally unrelated

Abbott v. United States IRS (9th Cir. 2005) 399 F.3d 1083

-lawyer may concurrently represent both creditor and debtor in unrelated matters without written consent when debtor-client is adequately prescreened through a pro bono program

CAL 2014-191

consent to potential conflict

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

Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100

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


SD 2017-1, SF 2020-1

corporation and board of directors in derivative suit

LA 397 (1982)

corporation and director of corporation as co-defendants


CAL 1999-153, LA 471 (1992)

corporation and directors


SD 2017-1

corporation and officers


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

CAL 1999-153, SD 2017-1

dependency proceedings

-no separate counsel needed where attorney represented two siblings with different plans. In this case, even if separate counsel had been appointed, the result would have been the same.

In re T.C. (2011) 191 Cal.App.4th 1387 [120 Cal.Rptr.3d 569]

-separate counsel must be appointed when actual conflict exists among minor clients or when there is a reasonable probability that a potential conflict will become actual

In re Celine R. (2003) 31 Cal.4th 45 [1 Cal.Rptr.3d 432]


franchisee law firms of franchisor group representing multiple clients

LA 471 (1992), LA 423 (1983)

insurance company

-aged

CONFLICT OF INTEREST

Knight v. Ferguson (2007) 149 Cal.App.4th 1207 [57 Cal.Rptr.3d 823]
Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]
Jeffery v. Pounds (1977) 67 Cal.App.3d 611 [87 Cal.Rptr.2d 204]
CAL 2011-182, CAL 2003-163
SD 2013-1
OC 2012-1
actual conflict distinguished from direct conflict in evaluating ineffective assistance of counsel claim
U.S. v. Rodrigues (9th Cir. 2003) 347 F.3d 818
attorney should not represent client if representation may be materially limited by attorney's duties to another client
Abbott v. United States IRS (9th Cir. 2005) 399 F.3d 1083
to properly represent the client
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 based on divided loyalties when law firm that represents class also employs an attorney who serves as class representative
CONFLICT OF INTEREST

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
Cal.Rptr.2d 585]
does not apply where defense counsel had previously
represented plaintiff’s expert
1051 [112 Cal.Rptr.3d 642]
here attorney has professional or financial interest in the subject matter
U.S. Dist. Lexis 33394
indefeasibility 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
LA 506 (2001)
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
Beck 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. Provenerch (2002) 28 Cal.4th 274 [121
Cal.Rptr.2d 373]
where attorney has professional or financial interest in the subject matter
CAL 2009-178
Duty to both insured and insurer
1388 [120 Cal.Rptr.2d 392]
Gulf Insurance Co. v. Berger, Kahn et al. (2000) 79
Cal.App.4th 114 [93 Cal.Rptr.2d 534]
State Farm Mutual Automobile Insurance Company v.
Cal.Rptr.2d 20]
McGee v. Superior Court (1985) 176 Cal.App.3d 221 [221
Cal.App.4th 421]
San Diego Navy Federal Credit Union v. Cumis Insurance
LA 528 (2017)
cumis counsel does not have attorney-client relationship with insurer for purposes of disqualification
San Gabriel Basin Water Quality Authority v. Aerojet-
General Corp. (C.D. Cal. 2000) 105 F.Supp.2d 1095
Assurance Co. of America v. Haven (1995) 32
Cal.App.4th 78, 90 [38 Cal.Rptr.2d 25]
extends to uninsured courtesy defense client
Mosier v. Southern California Physicians Insurance
Exchange (1998) 63 Cal.App.4th 1022 [74 Cal.Rptr.2d
550]
LA 344 (1974)
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. 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
LA 344 (1974)
Duty to withdraw
Vangsness v. Superior Court (1984) 159 Cal.App.3d 1087,
1090 [206 Cal.Rptr. 45]
duty to prospective client
CAL 2001-205
timeliness
Yorn v. Superior Court (1979) 90 Cal.App.3d 669, 676
[153 Cal.Rptr. 295]
Pennix v. Winton (1943) 61 Cal.App.2d 761, 773-775
[145 P.2d 561]
Effect of mere prior professional relationship
Allen v. Academic Games League of America (1993) 831
F.Supp.785
Johnson v. Superior Court (1984) 159 Cal.App.3d 573, 577-
578 [205 Cal.Rptr. 605]
Effect of time lapse
Johnson v. Superior Court (1984) 159 Cal.App.3d 573, 577-
578 [205 Cal.Rptr. 605]
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
Bank of America v. Angel View Crippled Children's
Foundation (1998) 72 Cal.App.4th 451 [85 Cal.Rptr.2d
117]
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
[173 Cal.Rptr. 93]
-represents
--administrator
---as contestant in probate
LA 193 (1952)
--as such and as heir
CAL 1976-41
LA 237 (1956), LA 193 (1952), LA 44 (1943), LA(I)
1967-6
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

False apportioning fees where conflict between insurer and insured

LA 424

attorney engaged in representing conflicting parties without obtaining informed written consent not entitled to recover fees

Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354

Carl 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) 33 Cal.4th.61 [14 Cal.Rptr.3d 58]

-contingency fee agreements distinguished


COAL, 2006-170

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 Chadlon (1970) 8 Cal.App.3d 34, 43 [86 Cal.Rptr. 866, 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


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
CONFLICT OF INTEREST

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
Strolow v. Strolow, Inc. (9th Cir. 1987) 813 F.2d 997
-by insuror of client
LA 439 (1986), LA 352 (1976)
-by prosecution’s witness who testified against criminal defendant
Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989
-estate attorney charging personal representative personally for services performed
LA 347 (1975)
-public agency attorney participation in a bonus program tied to savings by the agency
SD 1997-2
-union pays for representation of potential class members
referred
-paid to an attorney by client in an unrelated matter
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
101 Ops. Cal. Atty Gen. 1 (04/03/18; No. 14-301)
CAL 1993-132, CAL 1981-63

-not created by receipt of private information from potential client via an unsolicited email
SD 2006-1
presumption of undue influence
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 Hullman (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
-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. 196
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
-witness in related case
Former office represents client
Franchisee law firms of franchise group
LA 423 (1983)
Gifts to attorney as
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

CONFLICT OF INTEREST

Government code section 1090
outside contractor attorney may be treated as an employee

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 668

Guardian
attorney for
-deemed to represent minor
CAL 1988-96
-former represents against as counsel for wife of deceased ward
LA(I) 1962-5

Homeowner’s association – where attorney is member of association and represents plaintiffs against association
LA 387 (1982)

Immigration matters
representation adverse to former corporate client’s employees and officers in immigration matters

Impropriety, appearance of
*People v. Municipal Court (Wolfe) (1975) 69 Cal.App.3d 714 [138 Cal.Rptr. 236]
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 fees were paid by the defendant
U.S. v. Wells (9th Cir. (Mont.) 2005) 394 F.3d 725

no ineffective assistance of counsel unless attorney’s performance was adversely affected by the conflict of interest
Campbell v. Rice (9th Cir. 2005) 408 F.3d 1166

Insurance cases

Civil Code section 2860


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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 existed. (LA 501 (1994)


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 disqualification

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 insurer's expense
disqualifying conflict of interest between insurer and insured ceased to exist, therefore, insurer did not have a duty to continue to provide and pay for Cumis counsel
duty owed to insured and insurer
MGIC Indem. Corp. v. Weissman (9th Cir. 1986) 803 F.2d 500


payment of insurer's reimbursement claims without client's consent may create conflict of interest

fees
-"cumis counsel" fee dispute requires mandatory arbitration

-insurer's ability to recover from insured

for independent counsel to be required, the conflict of interest must be significant and actual

full disclosure of conflict of interests required in representation of insurer and insureds by same attorney
C.A. 1988-6, CAL 1987-92

-insured's right to be informed of conflict of interest
Manzanita Park, Inc. v. I.N.A. (9th Cir. 1988) 857 F.2d 549

-independent counsel's ability to represent insureds interest against insurer in coverage actions
independent judgment

- failure to use
SD 1974-21

-insurance company attorney

-former acts against company in related matter
LA 217 (1953)
-reinsurer did not have attorney-client relationship with insured in the absence of an express agreement
-sanction disclosure of client confidences
-obligation of counsel to exchange information does not
-insurer and insured

liable -assurance of two insureds with potentially divergent

insurer's right to control defense provided to insured

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Sheldon Appel Co. v. Albert & Oliker (1989) 47 Cal.3d
863, 875 [254 Cal.Rptr. 336]
261 [253 Cal.Rptr. 596]
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(1987) 189 Cal.App.3d 1265, 1277 [235 Cal.Rptr. 34]
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[211 Cal.Rptr. 421]
San Diego Navy Federal Credit Union v. Cumis Insurance
CAL 1995-13
-insurer that voluntarily provided courtesy defense but no

Mosier v. Southern California Physicians Insurance
Exchange (1998) 63 Cal.App.4th 1022 [74 Cal.Rptr.2d
550]
-insurer's attorney has duty to include insured's

278 [91 Cal.Rptr.2d 453]
-insurer's control over insured's selected counsel

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rule 3-310 requires informed consent for continued
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case on behalf of insurer

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Joint powers arrangement
Government Code section 6500 et seq.
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60 Ops. Cal. Atty. Gen. 206, 212-213 (77/77; No. CV 76-
14)
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corporation and corporate director as co-defendants
LA 471 (1992)
Joint venture
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appearance before judge is also the personal counsel of
the judge
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failure of judge to disqualify himself after having previously
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appeal following appellant’s earlier failure to seek writ review
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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
CONFLICT OF INTEREST

Litigating 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. Hearest (N.D. Cal. 1978) 466 F. Supp. 1068

attorney's litigating rights to trial adverse to client's interests

"life story" fee agreement all right if accused knowingly and intelligently waives potential conflicts

litigating rights agreement not found neither prior to nor during actual trial

publication of factual account of crime did not create disqualifying conflict for prosecutor or district attorney's office
Haraguchi v. Superior Court (2008) 43 Cal.4th 706 [76 Cal.Rptr.3d 250]

without showing of conflict, censure or sanctions appropriate where prosecutor involved in making of film about capital murder case

Lobbying firm
dual capacity of a lobbyist and legal counsel for a state agency may be permissible

Maintaining independence of professional judgment
Rule 1-600, Rules of Professional Conduct
Rule 3-310(F), Rules of Professional Conduct (operative as of September 14, 1992)
LA 500 (1999)

Malpractice case based, in part, on claimed breach of loyalty

Marvin agreement
representation of husband and wife on estate plan, later husband on Marvin agreement with another woman
LA 448 (1987)

May arise from an attorney relationship with a non-client if attorney owes duty of fidelity


101 Ops. Cal. Atty. Gen. 1 (04/03/18; No. 14-301)
CAL 1993-132

Mediator

attorney acts as mediator to both parties but favors one over the other due to attorney-client relationship

attorney who mediates one case is generally not disqualified from litigating later cases against the same party

Minor's counsel
no ineffectiveness assistance where counsel informed the court of the conflict between minor's stated interest and what counsel believed was minor's best interests
In re Kristen B. (2008) 163 Cal.App.4th 1535 [78 Cal.Rptr.3d 495]

Motion to vacate 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


SAL 2011-182, CAL 1993-132
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SF 2020-1, SF 1973-26, SF 1973-15

absent an actual conflict between an opposing attorney's clients, a party should not be able to create one by merely filing a meritless cross-complaint

-mortgagee and mortgagee

actual versus potential conflict

LA 471 (1992), LA 427 (1984), SD 2013-1

administrative proceeding

advance waiver of potential future conflict contained in a joint defense agreement found enforceable
In re Shared Memory Graphics (9th Cir. 2011) 659 F.3d 1336

assistant district attorney representing county and private citizen
Dettamanti v. Lompoc Unions District (1956) 143 Cal.App.2d 715 [300 P.2d 78]

attorney acts as both advocate and advisor to decision maker

Quintero v. City of Santa Ana (2003) 114 Cal.App.4th 810 [7 Cal.Rptr.3d 896]

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

attorney for former business associates later represents one of those clients against the others in a matter directly related to earlier representation
*Croce v. Superior Court (1937) 21 Cal.App.2d 18, 19 [68 P.2d 369]

attorney partner in a partnership arrangement acting as counsel for both sides in a leasing transaction
Olivet v. Frisching (1980) 104 Cal.App.3d 831 [164 Cal.Rptr. 87]

attorney representing conflicting issues in litigation

McClure v. Donovan (1947) 82 Cal.App.2d 664, 666 [186 P.2d 718]

attorney represents two insureds with potentially divergent interests
Spindle v. Chubb/Pacific Indemnity Group (1979) 89 Cal.App.3d 706, 713 [152 Cal.Rptr. 776]
LA 395 (1982)
CONFLICT OF INTEREST

attorney’s former joint representation of parties did not require disqualification where valid waiver found
attorney’s former joint representation of parties justified disqualification from representing one against the other
Western Continental Operating Co. v. Natural Gas Corp. (1989) 212 Cal.App.3d 752 [281 Cal.Rptr. 100]
both sides
Olivet v. Frischling (1980) 104 Cal.App.3d 831 [164 Cal.Rptr. 87]
SD 1976-16
business firm and clients of business
-when attorney is partner in business
CAL 1969-18
class action representatives may waive conflicts of interest on behalf of potential class members
clients each demand the original file
LA 493 (1998)
concurrence of representation of adverse parties in separate matters may be permissible if cases are totally unrelated
Abbott v. United States IRS (9th Cir. 2005) 399 F.3d 1083 -lawyer may concurrently represent both creditor and debtor in unrelated matters without written consent when debtor-client is adequately prescreened through a pro bono program
CAL 2014-191
concurrence of representation of clients with adverse interests
In the Matter of Maloney and Vink (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774
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LA 528 (2017)
consent of all parties
Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70
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In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752
LA 22 (1923), SD 1976-1, SD 1987-1, SF 2020-1
-in house counsel represented employer and employee concurrently (to the employee’s detriment) without obtaining informed consent
consultation with attorney, evidence of relationship
[See Attorney-Client Relationship, Consultation with, prima facia case of existence of.]
corporate director/attorney representing client in transaction with corporation
CAL 1993-132
corporation and board of directors on derivative suit

corporation and directors
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
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Pringle v. La Chappelle (1999) 73 Cal.App.4th 1000 [87 Cal.Rptr.2d 90]
CAL 1999-153, SD 2017-1
county counsel represents a department of the county and an individual
In re Lee G. (1991) 1 Cal.App.4th 17 [1 Cal.Rptr.2d 375]
LA 459 (1990)
creating a conflict by the mere filing of a meritless cross-complaint should not establish a conflict between opposing attorney’s clients where no previous conflict existed
criminal defendants by public defender’s office
59 Ops. Cal. Atty. Gen.27, 28 (1/15/76; No. CV 72-278)
criminal proceeding
People v. Amaya (1986) 180 Cal.App.3d 1 [225 Cal.Rptr. 313]
criminal prosecution
-co-defendants entitled to separate representation
United States v. Moore (9th Cir. 1998) 159 F.3d 1154
People v. Mroczko (1983) 35 Cal.3d 86 [197 Cal.Rptr. 52]
-privately retained counsel representing co-defendants
People v. Cook (1975) 13 Cal.3d 663, 670-673 [119 Cal.Rptr. 500, 532 P.2d 148]
People v. Amaya (1986) 180 Cal.App.3d 1 [225 Cal.Rptr. 313]
Dependency Court Legal Services may represent multiple parties with adverse interests

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dependency proceeding
- actual conflict amongst multiple siblings requires disqualification of appointed counsel from joint representation
- no separate counsel needed where attorney represented two siblings with different plans. In this case, even if separate counsel had been appointed, the result would have been the same.
  In re T.C. (2011) 191 Cal.App.4th 1387 [120 Cal.Rptr.3d 569]
- sanctions imposed against attorney for bringing frivolous conflict motions
- separate counsel must be appointed when actual conflict exists among minor clients or when there is a reasonable probability that a potential conflict will become actual
  In re Celine R. (2003) 31 Cal.4th 45 [1 Cal.Rptr.3d 432]
- disqualification order not appealable in the grand jury context
  In re Grand Jury Investigation (9th Cir. 1999) 182 F.3d 668

dissolution of marriage
Ishmael v. Millington (1966) 241 Cal.App.2d 520 [50 Cal.Rptr. 592]
divorce action
- party and receiver appointed in same action
  LA 52 (1927)
- post-nuptial agreement enforceable despite law firm’s dual representation of husband and wife in estate plan
  In re Marriage of Friedman (2002) 100 Cal.App.4th 65 [122 Cal.Rptr.2d 412]
- employer and employee-alien in an immigration matter
  LA 465 (1991)

estate planning matter
- representation of testator and beneficiary
  SD 1990-3
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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
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insurance company
- and insured
  MGIC Indem. Corp v. Weisman (9th Cir. 1986) 803 F.2d 500

LA 528 (2017)
  -- actual conflict
  LA 528 (2017)
  -- and another party
  Hammett v. McIntyre (1952) 114 Cal.App.2d 148 [249 P.2d 885]
  -- attorney must withdraw if attorney obtains information from insured that could be provide basis for insurance carrier to deny coverage
  LA 528 (2017)
  -- attorney who is director subject to same conflicting interests as attorney for carrier
  SF 1979-2
--Cumis counsel does not have attorney-client relationship with insurer for purposes of disqualification
--disqualifying conflict of interest between insurer and insured counsel ceased to exist, therefore, insurer did not have a duty to continue to provide and pay for Cumis counsel
  -- withdrawal
  --and party adverse to insurer
  Anderson v. Eaton (1930) 211 Cal. 113 [293 P. 788]
  --no actual conflict
  --providing courtesy defense
  -- insurer that voluntarily provided courtesy defense but no indemnification had duty to defend uninsured as if they had been insured

limited and general partnerships
LA 461 (1990)
malpractice found where attorney failed to advise elder client of conflict where attorney also represented another person claiming to be the nephew of the elder in obtaining a loan against property owned by elder client’s trust
minor and guardian
CAL 1988-96
CONFLICT OF INTEREST

no joint representation, where parties have simply overlapping interests
on-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 termination sibling visitation issues
In re Clifford B. (2000) 81 Cal.Rptr.4th 415 [96 Cal.Rptr.2d 778]
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
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without consent of client
1In 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 1463
Not automatic where previous representation did not expose attorney to confidential information material to the current representation
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)
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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
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Opposing counsel
joins partnership
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represent
-client against after obtaining information from
LA 193 (1952)
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city council member represents in
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Outside counsel or providers of outsourced legal services, use of
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LA 510 (2003)
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attorney for
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CAL 1994-137
-does not necessarily have an attorney-client relationship with an individual partner for purposes of conflict of interest rules
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-represents all partners
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no conflict exists for attorney in representation when client partners pursue a common business goal
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-prosecutor
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-when member is
--city attorney
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LA 377 (1978)
prior representation re partnership agreement held not conflict in subsequent litigation covering partnership asset
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LA 412 (1983)
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-against
--when associate before joining acted for other side
LA 363 (1976)
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LA(I) 1956-8
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--when member before joining acted for other side
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-----city attorney
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LA(I) 1975-4
-----prosecutor
LA 377 (1978)
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LA(I) 1963-9
Personal interest in client’s case
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PERSONAL RELATIONSHIP WITH CLIENT
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Physician
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--client’s physician against client for unpaid witness’s fee
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also lawyer
LA 94 (1936)
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LA 94 (1936)
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-between co-defendants
CAL 1970-22
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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
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-practice by
LA 377 (1978)
-represents
--in criminal cases
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LA 377 (1978)
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-district attorney engaged in
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LA 453
Prospective client
CAL 2021-205
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
CONFLICT OF INTEREST

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 further proceedings in open court to hear PD’s request to be re-appointed after being relieved for a conflict of interest

-excessive caseload and limited resources may require removal or substitution


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

-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

removal of public defender was proper where defendant made credible death threat against counsel

representation of criminal defendant by separate division within office does not alleviate conflict
59 Ops. Cal. Atty. Gen. 27 (1/15/76; No. CV 72-278)
withdrawal


Public office
duality of
38 Ops. Cal. Atty. Gen. 121, 123 (10/9/61; No. 61-91)

Government Code section 1090
-city council may not contract with a law firm to represent the city when a member of the city council is also a member of the law firm, even where the firm will receive no fees for the representation
101 Ops. Cal. Atty Gen. 1 (04/03/18; No. 14-301)

Publication of article regarding client’s case
no conflict found
LA 451 (1988)

Purpose of rule 3-300

*Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]

SF 1997-1

Purpose of rule 3-310

*Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]


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


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

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(1) 1987-10

Recusal of district attorney
People v. Vasquez (2006) 39 Cal.4th 47 [45 Cal.Rptr.3d 372]

People v. Eubanks (1996) 14 Cal.4th 580 [59 Cal.Rptr.2d 200, 927 P.2d 310] (mod. at 14 Cal.4th 1262d)


Williams v. Superior Court (1988) 198 Cal.App.3d 960 [244 Cal.Rptr. 88]


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

*Younger v. Superior Court* (1978) 77 Cal.App.3d 592 [144 Cal.Rptr. 34]  
eerroneous 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]  
note 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]  

[3 Cal.Rptr.3d 877]  

Relationship with opposing counsel
Rule 3-320, Rules of Professional Conduct  
Manley v. Fireman’s Fund Insurance Co. (9th Cir. 1989) 883 F.2d 747  
34 Santa Clara L.Rev. 1157 (1994)  
CAL 1984-83, SD 1989-4, SD 1976-12, OC 2012-1  
disqualification of attorney where same attorney was previously disqualified in a related case

Relationship with previously disqualified counsel and law firm

Relative partnership represents member against relative of client
LA(I) 1956-8  
represent -against client’s relative
LA(I) 1956-8  
-daughter against son-in-law
SF 1973-6  

spouse -represent -client’s in divorce
LA 207 (1953), LA 192 (1952)  

-remedy 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  
Abbot v. United States IRS (9th Cir. 2005) 399 F.3d 1083  
Vina U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100  
Flatt v. Superior Court (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537]  
CAL 2014-191, LA 207 (1953), LA 192 (1952)  
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. (Mont.) 2005) 394 F.3d 725
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. Omoski (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]
- **Great Lakes Construction Inc. v. Burman (2010)** 186 Cal.App.4th 1347 [114 Cal.Rptr.3d 301]
- **State Water Resources Control Bd. v. Superior Court (2002)** 97 Cal.App.4th 907 [118 Cal.Rptr.2d 784]
- **DCH Health Services Corp. v. Walte (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]
- **101 Ops. Cal. Atty Gen. 1 (04/03/18; No. 14-301)**

**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.**

- **Federal Home Loan Mortgage Corporation v. La Conchita Ranch Company (1998)** 68 Cal.App.4th 856 [80 Cal.Rptr.2d 634]
- **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**
CONFLICT OF INTEREST

Laches
CRS Recovery, Inc. v. Laxton (9th Cir. 2010) 600 F.3d 1138


Litigation lacking 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 defined

where an attorney's continued representation threatens an opposing litigant lacks standing to assert a third party's conflict of interest claim against opposing counsel


between representation of current client(s) and prior representation of opposing party

Dammron v. Herzog (9th Cir. 1995) 67 F.3d 211

Tremaine v. Smith (9th Cir. 1994) 50 F.3d 903 [5 Cal.Rptr.3d 442]

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. 1998) 199 F.3d 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]


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

Momannon 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 85, 87

Trone v. Smith (9th Cir. 1980) 621 F.2d 994, 998

Cord v. Smith (9th Cir. 1984) 338 F.2d 516


In re Airport Crystal Mid Valley 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]

Sheffield v. State Bar (1943) 22 Cal.2d 627 [140 P.2d 374]

Galbraith v. State Bar (1933) 22 Cal.2d 357 [23 P.2d 291]


Fremont Indemnity Co. v. Fremont General Corp. (2006) 143 Cal.App.4th 50 [49 Cal.Rptr.3d 82]
Goldstein v. Lees (1975) 46 Cal.App.3d 614 [120 Cal.Rptr. 239]
-attorney not barred from continuing to represent insider of closely held company in a derivative lawsuit pursuant to Forrest v. Baeza
-presumption of the exchange of confidential information
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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CONFLICT OF INTEREST


between the cases
Keams v. Fred Lavery Porsche Audi Co. (C.A. Fed. 1984) 745 F.2d 600, 603

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]

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

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


-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]

- presumption of the exchange of confidential information

modified substantial relationship test

motion to disqualify must be based on application of substantial relationship test


2022 (updated entries through 12/31/2021)
CONFLICT OF INTEREST

represented defendant’s brother on prior rape charges [112 Cal.Rptr.3d 642]

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

allow a plea of not guilty by reason of insanity

appointed substitute counsel after learning counsel would not

matter, and law firm now represents a current client adverse

representation

in related matter city attorney previously represented private

attorney to confidential information material to the current representation


no substantial relationship found

Murtle Norman Cosmetics, Inc. v. United States District Court (9th Cir. 1988) 856 F.2d 98

Substitution of counsel

no automatic where previous representation did not expose attorney to confidential information material to the current representation


no automatic where previous representation did not expose attorney to confidential information material to the current representation


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


against former client as the adverse party in the same matter in which the attorney had represented that client


dependency proceeding

Factors determining whether disqualification of appointed counsel and entire public law office is required in substantially related successive representations

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

prior representation of government witness impaired defense counsel’s duty to fully cross examine witness

Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

Suit against client

*Santa Clara County Counsel Attorneys Assn. v. Woodside (1994) 7 Cal.4th 525 [28 Cal.Rptr.2d 617]

Support action, represent wife, former client in divorce, after representing former husband in unrelated matter

SF 1973-19

Tactical abuse of disqualification proceeding

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


Taking business clientele of a former client


Three strikes cases


SD 1995-1

Thrust upon conflict defined

OC 2012-1

Undue influence

absent independent legal advice in attorney/client transaction


advantage to attorney when client disadvantaged

Plxweve Aircraft Co. v. Greenwood (1943) 61 Cal.App.2d 21 [141 P.2d 933]

attorney as trustee, client as beneficiary

Probate Code sections 15687, 16002, 16004, 21350 et seq.

attorney beneficiary of trust

CONFLICT OF INTEREST

unfair advantage to attorney
Carlson v. Lantz (1929) 208 Cal. 134 [280 P. 531]

where city council member who is also a member of a law firm which seeks to represent the city raises the possibility that the member’s personal considerations may conflict with the exercise of official judgment or discretion (Government Code section 1085).


Vicarious disqualification of entire law firm [See Disqualification.]

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


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


CAL 1998-152

LA 501 (1999)

attorney and associates involved in matters


city attorney and entire office disqualified from representing city in matter related to city attorney’s prior representation of private company

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

district attorney

-recusal of entire office
--not required where screening measures in place and where witness/victim was former non-attorney employee in separate branch of DA’s office

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

double imputation of confidential knowledge


hardship to client

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


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


See How to Use This Index, supra, p. i 173 2022 (updated entries through 12/31/2021)
CONFLICT OF INTEREST

Voluntary withdrawal

prior relationship with adverse party

not required where attorney never performed services for former client of attorney's former 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


Vacant。


prior relationship with adverse party

Quaglino v. Quaglino (1979) 88 Cal.App.3d 542, 550 [152 Cal.Rptr. 47]

Waiver of

advance waiver of potential future conflict contained in a joint defense agreement found enforceable even though the waiver does not specifically state the exact nature of the future conflict

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

both confidentiality and conflict of interest

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


CAL 1998-152, CAL 1989-115

AS 2020-1

not found


by criminal defendant


-client must be advised of the full range of the dangers and possible consequences of the conflicted representation and he must understand the ramifications of his waiver

Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

-court has discretion to deny substitution because of serious potential conflict


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


valid waiver found


--no evidence that defendant understood any of the specific ramifications of his waiver

Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989


valid waiver found

Visa U.S.A. Inc. v. First Data Corp. (N.D. Cal. 2003) 241 F.Supp.2d 1100

Welfare proceeding

conflict between state and child

-disclosure by district attorney to court

CAL 1977-45

Will

attorney as beneficiary of trust


attorney beneficiary of holographic will

Maltaman v. State Bar (1987) 43 Cal.3d 924

attorney drafts will making secretary executor, then represents executor for fee

LA 382 (1979)

attorney who drafted was later employed as attorney for executor


Will drafting

attorney as beneficiary under terms of gift instrument

Probate Code sections 15687, 21350 et seq.


attorney drafts will making secretary executor, then represents executor for fee

LA 382 (1979)

counsel for organization drafts for those leaving money to

executors of organization

attorney who drafted was later employed as attorney for executor


attorney drafts will making secretary executor, then represents executor for fee

LA 382 (1979)

counsel for organization drafts for those leaving money to

executors of organization

attorney who drafted was later employed as attorney for executor


attorney drafts will making secretary executor, then represents executor for fee

LA 382 (1979)

counsel for organization drafts for those leaving money to
CONSERVATORSHIP PROCEEDINGS

---in criminal proceeding

CAL 1980-52

-witness

-against present client

---in criminal proceeding

CAL 1979-49

--former co-defendant as key witness for the prosecution

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

criminal case


-no conflict found where defense counsel previously represented wife of prosecution witness

People v. Cornwall (2005) 37 Cal.4th 50 [33 Cal.Rptr.3d 117]

defense attorney consults in confidence one defendant who becomes witness against other co-defendants

--attorney may not represent other co-defendants

LA 366 (1974)

expert witness for plaintiff previously represented by defense counsel, need not be removed and defense counsel need not be disqualified where expert waives conflict

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

CONSERVATORSHIP PROCEEDINGS

Attorney initiated conservatorship proceedings, absent client consent


Attorney owes no duty to beneficiaries to evaluate and ascertain client’s testamentary capacity to draft or amend a will


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


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

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

Compared with child dependency proceedings

LA 504 (2000)

Conservatee cannot obligate conservatorship estate for payment of attorney’s fees

Young, etc. v. Thomas (1989) 210 Cal.App.3d 812 [258 Cal.Rptr. 574]

Constructive attorney-client relationship not formed between conservatee and her conservator’s designated attorney

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

Fees

value of an estate in an elder abuse case is a factor in setting fees and is consistent with rule 4-200

Conservatorship of Levitt (2001) 93 Cal.App.4th 544 [113 Cal.Rptr.2d 294]

Reestablishing conservatorship by stipulation filed by conservatee’s attorney

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

Right of prospective conservatee to effective assistance of counsel


CONSULTATION WITH CLIENT [See Attorney-client relationship.]
CONTACT WITH JURORS

Rule 7-107, Rules of Professional Conduct (operative until May 26, 1989)

Rule 5-310, Rules of Professional Conduct (operative as of May 27, 1989)

Rule 5-310, Rules of Professional Conduct (operative as of November 1, 2018)

Rule 4.2, Rules of Professional Conduct (operative as of May 27, 1989)

Rule 4.2, Rules of Professional Conduct (operative as of May 27, 1989)

Rule 7-103 and 7-108, Rules of Professional Conduct (operative until May 26, 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)

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)

Rule 7-106, Rules of Professional Conduct (operative until May 26, 1989)

Rule 2-100 and 5-300, Rules of Professional Conduct (operative as of May 27, 1989)

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

Rule 7-103 and 7-108, Rules of Professional Conduct (operative until May 26, 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)

Rule 7-106, Rules of Professional Conduct (operative until May 26, 1989)

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

Rule 4.2, Rules of Professional Conduct (operative as of November 1, 2018)

Doe v. Superior Court of San Diego County (2019) 36 Cal.App.5th 199 [248 Cal.Rptr.3d 314]

With treating physician of opposing party

CAL 1975-33, SD 1983-9

CONTEMPT OF COURT

Code of Civil Procedure sections 178, 1209

Code of Civil Procedure sections 1211

In re Ringgold (2006) 142 Cal.App.4th 75 [109 Cal.Rptr.3d 736, 368 P.2d 360]

Advancement of funds

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

LA 275 (1963), LA 263 (1959), LA(i) 1969-1, SF 1971-1

Attorney’s fees paid in tort-based action were excludable from client’s gross income

Bananis v. Commissioner of Internal Revenue (9th Cir. 2003) 340 F.3d 1074

Award of attorney fees statutes may not allow a computation which increases the award to account for the client’s retention of attorneys on a contingent fee basis


Bankruptcy court’s award of fees based on a pre-approved contingent fee agreement

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

Charging liens

contingency fee agreements distinguished from hourly fee agreements


CAL 2006-170

created by contract


Child support, overdue

CAL 1983-72

LA 275 (1963), LA 263 (1959)

Civil rights

fee arrangement allowed providing fees in excess of court awarded fee


Client discharges attorney quantum meruit


Collections

LA 275 (1963), LA 263 (1959)

percentage of amount charged creditor

LA 4 (1917)

Compensation for actual, necessary services under bankruptcy law

Yermakov v. Fitzsimmons and Weldon (9th Cir. 1983) 718 F.2d 1465

Contract

ambiguity is a question of law


attorney abandonment of case

-quantum meruit


attorney may pay litigation costs for clients if representing on a charitable basis

SF 1974-4

CONTINGENCY FEE {[See Fee.}

Business and Professions Code section 6147

"Additional fees" authorization could not be a contingency fee agreement because of failure to comply with Business and Professions Code section 6147, subdivision (a)

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

Adequacy of consideration is to be determined at time of contract formation

Rader v. Thrasher (1962) 57 Cal.2d 244, 252 [18 Cal.Rptr. 736, 368 P.2d 360]
between city and private attorney
County of Santa Clara v. Superior Court (2010) 50 Cal.4th 35 [112 Cal.Rptr.3d 697]
People ex rel. Clancy v. Superior Court (1985) 39 Cal.3d 740 [218 Cal.Rptr. 24]
Business and Professions Code section 6147 applies only to fee agreements with litigation plaintiffs and not to clients generally who have non-litigation matters
statement that fee is negotiable required under Business and Professions Code section 6147(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)
contract formation is governed by objective manifestations, not subjective intent of parties
county attorney, private contingency fee contract
County of Santa Clara v. Superior Court (2010) 50 Cal.4th 35 [112 Cal.Rptr.3d 697]
discharged attorney limited to quantum meruit, premise
evaluated as of time of making
In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
CAL 2007-170, CAL 1994-135
hybrid, hourly and contingent
SF 1999-1
hybrid, reverse contingency
interest charged on advanced costs from payment until billing
LA 499 (1999)
lenders to attorneys for percentage of settlement
SF 1981-1
offset recovery not actually received by client
LA 458
recovery is in the form of an annuity
CAL 1987-94
-attorney entitled to percentage of periodic payments
Sayble v. Feinman (1978) 76 Cal.App.3d 509 [142 Cal.Rptr. 895]
-attorney entitled to percentage of present value of periodic payments award best represented by cost of annuity
-medical malpractice action under Business and Professions Code section 6146
recoverable only in event of favorable settlement
SF 1985-2
recovery of, based upon occurrence of contingency
SF 1985-2
strictly construed against attorney
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
voidable at option of client if Business and Professions Code section 6147(b) not complied with
Costs
LA 517 (2006)
recovery of
LA 495 (1998)
Court award rebate to client
Court not bound by contract for
Deceased attorney
Estate of Linnick (1985) 171 Cal.App.3d 752 [217 Cal.Rptr. 552]
Determination of based on offset recovery which client does not actually receive
LA 458
cannot be determined in summary or ex parte proceedings
Dissolution
CAL 1983-72
Divorce
award of legal fees tied to division of community property
discipline not imposed for attorney entering into
not violative of public policy
Krieger v. Bulpit (1953) 40 Cal.2d 97 [251 P.2d 673]
In re Marriage of Gonzales (1975) 51 Cal.App.3d 340 [124 Cal.Rptr. 278]
CAL 1983-72
void as against public policy
Hill v. Hill (1943) 23 Cal.2d 82, 92 [142 P.2d 417, 421]
Newman v. Freitas (1900) 129 Cal. 283 [61 P. 907]
CONTINGENCY FEE

Ayres v. Lipschutz (1924) 68 Cal.App. 134, 139 [228 P. 720]
SF 1971-1, LA 188 (1952)
when no other recovery
Effect of discharge or withdrawal

Estate
LA 144 (1943)
Failure to comply with Business and Professions Code section 6147, subdivision (a) prevented an authorization for “additional fees” from being a contingency fee agreement

Insist upon
Former shareholder of law firm has no right on interpleader to

Favored in California
Newman v. Freitas (1900) 129 Cal. 283, 292 [61 P. 907]
Fees received before contingency fee reduced to a writing
In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 252

Favored in non-litigation matters

Hybrid, hourly and contingent

Hybrid, reverse contingency

Insist upon
LA(!) 1970-11

Lay person hired on basis of expert
LA 45 (1927)
paralegal receives bonuses
LA 457
secretary
LA 222 (1954), LA 190 (1952)

Malpractice
[31 Cal.Rptr.3d 831]

attorney’s failure to comply with legislative mandates under Business and Professions Code section 6146 et seq. may give rise to a cause of action for professional negligence

In the Matter of Harney (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 266

Medical injury tort claims
Business and Professions Code section 6146
Counsel not automatically entitled to the maximum contingency percentages under § 6146, which establishes caps on the recovery, not guarantees of the attorney’s fees

periodic payments to plaintiff
-attorney entitled to percentage of present value of periodic payments award best represented by cost of annuity

Medical malpractice action
limitation on amount
-Business and Professions Code section 6146
--attorney not automatically entitled to the maximum contingency percentages under § 6146, which establishes caps on the recovery, not guarantees of the attorney’s fees

-federal tort claims act preempts California Business and Professions Code section 6146 fee limitation
Jackson v. United States (9th Cir. 1989) 881 F.2d 707
CAL 1987-94

-fee in excess of MICRA limitations may be pursued if MICRA causes of action are brought together with non-MICRA causes of action
Waters v. Bourhis (1985) 40 Cal.3d 424
Barris v. County of Los Angeles (1997) 60 Cal.App.4th 471 [70 Cal.Rptr.2d 281]
*Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266

-medical-legal consulting firms may contract for a contingency fee
Ojeda v. Sharp Cabrillo Hospital (1992) 8 Cal.App.4th 1

-test for determining attorney fees based on periodic payments

Minor's compromise
Probate Code sections 3500 et seq., 3600 et seq.


trial court has jurisdiction to divide fees between prior and current attorneys as part of settlement approval
Modification of contract  
Baron v. Mare (1975) 47 Cal.App.3d 304 [120 Cal.Rptr. 675]  
Not unconscionable  
Notice of lien  
Offset recovery  
LA 458  
One hundred percent of the amount of liens compromised is an unreasonable and unconscionable fee  
in re Silverton (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]  
Paid to expert witness  
CAL 1984-79  
Patent prosecution  
LA 507 (2001)  
Paternity action  
void as against public policy  
Kyne v. Kyne (1943) 60 Cal.App.2d 326 [140 P.2d 866]  
Plaintiff agreement voidable at option of, where attorney fails to comply with Business and Professions Code section 6147  
Business and Professions Code section 6147(b)  

terms of written contract  
Business and Professions Code section 6147(a)(1)-(5)  
workers' compensation  
-exception for requirements of written contract  
Business and Professions Code section 6147(c)  
written contract and terms  
-workers' compensation exception  
Business and Professions Code section 6147(c)  
written contract to represent  
Business and Professions Code section 6147(a)(1)  
Presumptively invalid if attorney does not explain and client does not understand  
LA 458  
Probate  
attorney's lien for fees based on settlement obtained on behalf of deceased client in probate case  
extraordinary attorney's fees for settlement of claims against estate of decedent under a contingency fee agreement must be approved by the court after noticed hearing  
Public entities may contract with private attorneys on contingency fee basis under certain circumstances, supervision by neutral governmental attorneys who retain control  
County of Santa Clara v. Superior Court (2010) 50 Cal.4th 35 [112 Cal.Rptr.3d 697]  
Quantum meruit  
FraCASES v. Brent (1972) 6 Cal.3d 784 [100 Cal.Rptr. 385, 494 P.2d 9]  
SF 1989-1  
determination of reasonable fee  
-trier of fact may not consider contingency nature of fee in determination of quantum meruit  
division of fees when amount allowed is insufficient for quantum meruit claims of past and existing counsel  
expert witness testimony permitted  
incapacitation of attorney who was associated (became judge) entities firm to quantum meruit fees (formula for determination of fees)  
precise calculations of an attorney's time spent on a client's matters are not required to support a claim for attorney fees; fair approximations based on personal knowledge will suffice  
voluntary withdrawal of counsel without cause  
Reasonableness of  
Crawford v. Asture (9th Cir. 2009) 586 F.3d 1142  
People v. Millard (2009) 175 Cal.App.4th 7 [95 Cal.Rptr.3d 751]  
under 42 U.S.C. § 406(b) (social security benefits)  
Parrish v. Commissioner of Social Sec. Admin. (9th Cir. 2012) 698 F.3d 1215  
Crawford v. Asture (9th Cir. 2009) 586 F.3d 1142  
under California Rules of Court, rule 7.955, a 10% attorney's fee was not reasonable for trial court to award because it failed to look at other factors, such as one attorney had 47 years of experience in aviation accidents and both attorneys had many years of experience as pilots  
Reasonableness of in light of legislative activity  
Salton Bay Marina, Inc. v. Imperial Irrigation Dist. (1985) 172 Cal.App.3d 914 [218 Cal.Rptr. 839]  
Rebate portion of fee to client  
Recovery is in the form of an annuity  
attorney entitled to percentage of periodic payments  
Savble v. Feinman (1978) 76 Cal.App.3d 509 [142 Cal.Rptr. 895]  
Refferal fee, duty to pay on occurrence of contingency  
Mason v. Levy & Van Bourg (1978) 77 Cal.App.3d 60 [143 Cal.Rptr. 389]  

See How to Use This Index, supra, p. i 179  
2022 (updated entries through 12/31/2021)
CONTRACT

Settlement

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

Strictly construed against the attorney

  - In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
  - LA 489 (1999)

Structured settlement

- Sayble v. Feinman (1978) 76 Cal.App.3d 509 [142 Cal.Rptr. 895]

- CAL 1987-94
  - medical malpractice action under Business and Professions Code section 6146

Validity

- Estate of Kerr (1966) 63 Cal.2d 875 [48 Cal.Rptr. 707, 409 P.2d 931]


- Estate of Raphael (1951) 103 Cal.App.2d 792 [230 P.2d 436]
  - Estate of Schnell (1947) 82 Cal.App.2d 170 [185 P.2d 854]
  - Swanson v. Hempstead (1944) 64 Cal.App.2d 681 [149 P.2d 404]

- evaluated as of time of making

Voidable

- at option of plaintiff where provisions of Business and Professions Code section 6147 not complied with
  - Business and Professions Code sections 6068(h), 6146, 6147

  - -statement that fee is negotiable required under Business and Professions Code section 6147(a)(4) applies to certain non-litigation matters


Workers’ compensation cases exempted from provisions for written fee contract

- Business and Professions Code section 6147(c)

CONTRACT

- [See Contract for employment, fee.]

Changing terms, pro bono to paying

- SD 1983-6

Client must understand

- Denton v. State Bar (1951) 101 Cal.2d 226 P.2d 723
  - In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 198

- Client waiver of attorney violation of Rules of Professional Conduct
  - CAL 1988-105

- Construe contract for prospective client of corporations when attorney acting as business agent for corporation
  - CAL 1968-13

Contract making material changes to existing contingency fee contract must comply with Business and Professions Code § 6147


- Damages in contract causes of actions between partners of a dissolved partnership equitable maxim to “do equity” does not preclude the recovery of damages


Draft for both parties

- SF 1973-26

- transaction between son and other party
  - SF 1973-26

Effect on contingent fees of attorney withdrawal


For reporter’s services

- no intention to pay
  - CAL 1979-48

Implied-in-fact

- CAL 2003-161

Plain language reference to whether an attorney-client relationship is formed where potential client submits legal question via website

- CAL 2005-168

- relationship not created based on receipt of private information from potential client via an unsolicited email

SD 2006-1

CONTRACT ATTORNEY

Compensation paid to non-employee attorney hired to render services to firm’s client

- CAL 1994-138


- out-of-state attorney who merely assists California lawyer may recover attorney fees

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

Costs


- LA 518 (2006)

- Ghostwriting by OC 2014-1

- Non-lawyers compensated for placing “temporary” attorneys with law firm
  - CAL 1992-126

- Outsourcing legal services
  - LA 518 (2006)

- Use of contract attorney, disclosure to client

- ghostwriting
  - OC 2014-1

CONTRACT FOR EMPLOYMENT

- [See Attorney-client relationship.]

- Business and Professions Code sections 6068(h), 6146, 6147

- Code of Civil Procedure section 1021

- Rule 2-107, Rules of Professional Conduct (operative until May 26, 1989)

- Rule 4-200, Rules of Professional Conduct (operative as of May 27, 1989)


Agreement providing that attorney waives specified fees if arbitration fee
Appointment by court not a contract
Agency relationship
Agreement evidenced parties’ intent to establish an ongoing agreement and under conditions that included attorney’s return of all property and funds to the client
settlement permitted if client retains the authority to settle the
Agreement to divide statutory award of attorney’s fees
LA 505 (2000)
Agreement to divide statutory award of attorney’s fees between attorney and client
LA 523 (2009)
Agreement to limit personal 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
Arnelle v. City and County of San Francisco (1983) 141 Cal.App.3d 693 [190 Cal.Rptr. 490]
Arbitration fee binding
CAL 1981-56
binding private arbitration clause in attorney-client fee agreement may be enforced under the California Arbitration Act (CAA) once the Mandatory Fee Arbitration Act (MFAA) arbitration process is over
Schatz v. Allen Matkins Leck Gamble & Mallory LLP (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]
binding private arbitration clause in attorney-client fee agreement not effective where client requested mandatory arbitration pursuant to State Bar rules for fee disputes
if an otherwise enforceable arbitration agreement is contained in an illegal contract, a party may avoid arbitration altogether
Arbitration for professional liability of lawyer
LA 489 (1997)

See How to Use This Index, supra, p. i 181 2022 (updated entries through 12/31/2021)
CONTRACT FOR EMPLOYMENT

LA 499 (1999)
to represent plaintiff
-tens of
Business and Professions Code section 6147(a)
-voidable at option of plaintiff where Business and Professions Code, § 6147 not complied with
Business and Professions Code section 6147(b)
-voidable at option of plaintiff where Business and Professions Code section 6147(b)

Evidence of value of attorney's services
Criminal defense services
Fees may not be raised by a law firm without notification to client

Evidence of value of attorney's services

People v. Barboza (1981) 29 Cal.3d 548, 561 fn. 8

Feeds may not be raised by a law firm without notification to clients


Formal contract
Jackson v. Campbell (1932) 215 Cal. 103 [8 P.2d 845]
additional compensation must not be too vague

construe liberally in favor of client
discharged attorney
formed after attorney-client relationship established
Preston v. Herminghaus (1930) 211 Cal. 1 [292 P. 953]

implied contract to exercise due care, skill, and knowledge
promise note was not valid contract for payment of legal services rendered absent valid underlying attorney-client agreement
strictly construed against the attorney
Leighton v. Forster (2017) 8 Cal.App.5th 467 [213 Cal.Rptr.3d 899]

void as against public policy

SF 197-1
-divorce case
Newman v. Freitas (1900) 129 Cal. 283 [61 P. 907]
Ayres v. Lipschutz (1924) 68 Cal.App. 134, 139 [228 P. 720]

-examine factual background of each case
Hill v. Hill (1943) 23 Cal.2d 82, 92 [142 P.2d 417, 421]

-however, attorney entitled to reasonable value of his services

voidable
-at option of plaintiff where provisions of Business and Professions Code section 6147 not complied with
Business and Professions Code section 6147(b)


void as against public policy

costs

in the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96

Leighton v. Forster (2017) 8 Cal.App.5th 467 [213 Cal.Rptr.3d 899]


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

In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
without specific agreement to do a major adjustment, agreement based on fixed hourly rate which provides for possible increase is valid, but only authorizes minor adjustments

unconscionable contract
Swanson v. Hempstead (1944) 64 Cal.App.2d 681 [149 P.2d 404]

OC 99-001
- arbitration provision within law firm employment agreement
Davis v. O’Melveny & Myers (9th Cir. 2007) 485 F.3d 1066

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

Banning Ranch distinguished

Government contract
requiring attorney’s clients to waive attorney-client and work product privileges
LA 435 (1985)

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

2022 (updated entries through 12/31/2021) 182 See How to Use This Index, supra, p. 1
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
quamation merit upon recovery
Rosenberg v. Lawrence (1938) 10 Cal.2d 590 [75 P.2d 1082]
when void, implied contract arises
Impediment of agency relationship
Indigent defendant constitutionally entitled to counsel’s best argument for appeal before court rules on withdrawal
United States v. Griffy (9th Cir. 1990) 895 F.2d 561
Indigent, non-contractual is statutory
Armelle v. City & County of San Francisco (1983) 141 Cal.App.3d 693 [190 Cal.Rptr. 490]
Informal contract
ambiguity in contract construction
Miller v. Lantz (1937) 9 Cal.2d 544 [71 P.2d 585]
equitable lien created if fee not stated
Wagner v. Sariotti (1943) 56 Cal.App.2d 693[71 P.2d 585]
equitable lien created if fee not stated
Wagner v. Sariotti (1943) 56 Cal.App.2d 693 [191 Cal.Rptr. 300]
intrusive evidence to establish fee
intention of parties
Houge v. Ford (1955) 44 Cal.2d 706
interpretation of agreement
Benjamin v. Frenke (1940) 40 Cal.App.2d 736 [105 P.2d 591]
modification of agreement
promissory note was not valid contract for payment of legal services rendered absent valid underlying attorney-client agreement
terms not in written agreement
McKee v. Lynch (1940) 40 Cal.App.2d 216
Invalid agreement
advertising legal services for reduced rates
SD 1975-13
attorney entitled to reasonable value of services rendered
Calvert v. Stoner (1948) 33 Cal.2d 97, 104 [199 P.2d 297]
fixed fee if suit dismissed
Hall v. Orloff (1920) 49 Cal.App. 745, 749 [194 P.2d 296]
Law firm employment agreements
arbitration provision
Davis v. O’Melveny & Myers (9th Cir. 2007) 485 F.3d 1066
Modification of contract

CONTRACT FOR EMPLOYMENT

Baron v. Mare (1975) 47 Cal.App.3d 304 [120 Cal.Rptr. 675]
LA 499 (1999), LA 479 (1994)
authorization for “additional fees” could not be a contingency fee agreement because of failure to comply with Business and Professions Code section 6147, subdivision (a)
In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252
lien against recovery in unrelated matter to secure fees owed
LA 496 (1998)
modified fee agreement that lacked attorney’s signature, contingency rate and costs, and provision stating that fees were negotiable and not established by law is voidable by client
must be in writing
In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
no duty to separately explain arbitration agreement when attorney changes firms and client signs new fee agreement when client is a sophisticated businessperson
virtual law office (VLO) representation may require modification when services can no longer be provided via VLO, due to complexity or inability to provide services except in a traditional setting
CAL 2012-184
without specific agreement to do a major adjustment, agreement based on fixed hourly rate which provides for possible increase is valid, but only authorizes minor adjustments
Ooral agreements
Thomson v. Casaudoumecq (1962) 205 Cal.App.2d 549, 551 [23 Cal.Rptr. 189]
Hardy v. San Fernando Valley Chamber of Commerce (1953) 119 Cal.App.2d 523 [259 P.2d 728]
Harvey v. Ballagh (1940) 38 Cal.App.2d 348 [101 P.2d 147]
between attorney and beneficiary
between in-house attorney and client are voidable under Business and Professions Code section 6147
discussion of trial court
Kendrick v. Gould (1921) 51 Cal.App. 712 [197 P. 681]
reasonable value of services rendered
Stuart v. Preston (1934) 2 Cal.App.2d 310 [38 P.2d 155]
trial court has wide discretion in fixing fee
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
CONTRACT FOR EMPLOYMENT

Providing for consequences of third-party funding of lawsuit
LA 500 (1999)

Providing for court awarded attorney fees
absent agreement, fees awarded pursuant to California FEHA belong to attorneys who labored on case and not to client

attorney fees awarded under contract to law firm seeking to collect unpaid legal bills
district court had authority to award attorney fees for work done outside confines of litigation before court
Wininger v. SI Management, L.P. (9th Cir. 2002) 301 F.3d 1115
except for fees specifically provided by statute, the measure and mode of compensation of attorneys is left to the agreement, express or implied of the parties (Code of Civil Procedure 1021)
vacation of judgment as part of post-judgment settlement effectively eliminates fee award

Providing for disposition of client files upon termination
LA 493 (1998)

Providing for repayment of costs of litigation
LA 495 (1998)
prevaling 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
Spencer v. Collins (1909) 156 Cal. 298 [104 P.2d 320]

Providing for trial court determination of prevailing party and award of attorney fees
Provision 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)

Public policy, contrary to; is a question of law
Quantum meruit
statute of limitations for claims of
Leighton v. Forster (2017) 8 Cal.App.5th 467 [213 Cal.Rptr.3d 899]
76 Cal.App.4th 990 [90 Cal.Rptr.2d 665]
where services have been rendered under a contract which is unenforceable because it was not in writing
76 Cal.App.4th 990 [90 Cal.Rptr.2d 665]

Question of law
Reasonable value implied when no fee specified
Buck v. Ewoka (1899) 124 Cal. 61 [56 P. 621]
Stuart v. Preston (1934) 2 Cal.App.2d 310 [38 P.2d 155]
in absence of agreement
Batcheller v. Whitlitter (1909) 12 Cal.App. 262 [107 P. 141]
nothing said as to payment
Cusick v. Boyne (1905) 1 Cal.App. 643 [182 P. 985]
valid contract but no agreement as to compensation
Elconin v. Yalen (1929) 208 Cal. 546 [282 P. 791]
when attorney unable to complete performance
Boardman v. Christin (1924) 65 Cal.App. 413 [224 P. 97]

Scope of representation

Severability of contract
decision of severance inapplicable where the attorney’s services in business transactions with his client could not be separated into lawful and unlawful activities
Fair v. Bakhtiari et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]

Sports Service Contracts
Business and Professions Code section 6106.7
Substitution of attorney clause included by attorney
LA 371 (1977)

Term void as against public policy
agreement providing that attorney 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)
clause regarding dismissal of suit without both client and attorney’s consent
Hall v. Orloff (1920) 49 Cal.App. 745

Unenforceable contract
incompetent person
Estate of Doyle (1932) 126 Cal. App. 646, 647 [14 P.2d 920]
minor may disaffirm
Spencer v. Collins (1909) 156 Cal. 298 [104 P.2d 320]
not in writing
-action will generally lie upon a common count for quantum meruit
76 Cal.App.4th 990 [90 Cal.Rptr.2d 665]
-attorney entitled to reasonable value of services where there is no written fee contract

not signed by any party
Leighton v. Forster (2017) 8 Cal.App.5th 467 [213 Cal.Rptr.3d 899]

Use of “Contract Attorney Services”
CAL. 2004-165
ghostwriting
OC 2014-1

Void if consideration is unlawful

Voidable
agreement voided where the attorney failed to disclose to the client material terms of their business transactions and to obtain the client’s written consent, as required under rule 3-300
Fair v. Bakhtiari et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]
contingent attorney’s fee agreement to represent plaintiff
-at option of plaintiff where provisions of Business and Professions Code section 6147 not complied with
Business and Professions Code section 6147(b)
corporation on behalf of the corporation and directors ...

- owes 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) - advices officer that his conduct was illegal
    U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
  - dissolution
    Cal.Rptr. 185]
  - duty to prevent client’s communications with opposing party
    LA(I) 1966-16
    - represents
      -- against corporation
      LA(I) 1936-1
      -- against officers
      LA 139 (1941)

in-house attorneys come within the mandatory relief from default or dismissal provision of CCP § 473
Cal.App.4th 551 [108 Cal.Rptr.3d 864]

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 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
Cal.App.4th 96 [12 Cal.Rptr.3d 656]

no automatic attorney-client relationship between corporate
counsel and corporate directors
National Football League Properties, Inc. v. Superior
Court (Raiders) (1998) 65 Cal.App.4th 100 [75
Cal.Rptr.2d 893]
propriety of being
- represents
  -- corporation against director
  LA(I) 1966-14
  -- employees
  SD 1972-3

relationship between corporate employee and corporate
counsel
U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
rendering legal services to corporation employees
SD 1975-18

role of attorney as
Woods v. Superior Court (1983) 149 Cal.App.3d 931,
935-936 [197 Cal.Rptr. 185]
shareholder derivative suit
LA 397 (1982)
- prevailing party awarded attorney’s fees under
Corporations Code section 800
Cal.Rptr.3d 534]
subsidary also represented by corporate counsel
SD 1976-6
suspended corporation
- duty to inform the court of corporation’s status
Palm Valley Homeowners Association, Inc. v. Design
LA 408 (1982)

Director represents stockholder against corporation
LA(I) 1955-2
Enjoy attorney-client privilege
Commodity Futures Trading Commission v. Weinbraub
United States v. Rowe (9th Cir. 1996) 96 F.3d 1294
Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th
725 [101 Cal.Rptr.3d 758]
Tritek Telecom, Inc. v. Superior Court (2009) 169
Cal.App.4th 1385 [87 Cal.Rptr.3d 455]
Zurich American Ins. Co. v. Superior Court (2007) 155
Cal.App.4th 1485 [66 Cal.Rptr.3d 833]
Cal.App.4th 96 [12 Cal.Rptr.3d 656]
Cal.App.4th 1229 [9 Cal.Rptr.3d 812]
[135 Cal.Rptr.2d 126]
National Football League Properties, Inc. v. Superior Court
(Raiders) (1998) 65 Cal.App.4th 100 [75 Cal.Rptr.2d 893]

See How to Use This Index, supra, p. i 185

2022 (updated entries through 12/31/2021)
displaced managers in merger may not assert the privilege over the wishes of current managers.

investigate activities by in-house counsel that do not involve legal advice may not be covered by the privilege.

privilege extends to opinion letter by outside counsel to corporate counsel which court could not require in camera disclosure for ruling on claim of privilege.

Costo Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]
relationship between corporate employee and corporate counsel.

LA 397 (1985)
LA 412 (1983)
LA(I) 1955-2
LA 499 (1999), SD 2013-3

U.S. v. Graf (9th Cir. 2010) 610 F.3d 1148
shareholder derivative action against corporation does not entitle shareholders to attorney-client privilege.

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

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)
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 497]
LA 389 (1981), SD 2008-1
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(II) 1955-2
may not pierce the privilege in that capacity.

Titmaz v. Superior Court of Orange County (2001) 87 Cal.App.4th 738 [104 Cal.Rptr.2d 803]
minority, not deemed represented by counsel for corporation.

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)
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In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196
CAL 1976-38
LA 517 (2006), LA 379 (1979)
Advanced costs by a law firm per terms of contingency fee agreement deductible as business expenses.

Boccardo v. Commissioner of Internal Revenue (9th Cir. 1995) 56 F.3d 1016
Apportioning costs between insurer and insured.

LA 424 (1984)
Arbitration.

law firm required to pay arbitration cost of former clients who sued firm, where client is of limited economic means.

Assigned counsel’s duty with respect to.

LA 379 (1979)
Attorney’s fees as costs.

Scott Co. of California v. Blount Co. (1999) 20 Cal.4th 1103 [86 Cal.Rptr.2d 614]
Attorney’s fees do not include expert witness fees.

Billing for costs and expenses.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
LA 499 (1999), SD 2013-3
Common fund doctrine.

attorney acting in propria persona may recover costs.

Contract attorney

**Shafer v. Superior Court (1995)** 33 Cal.App.4th 993

outsourcing of legal services

LA 518 (2006)

Costs incurred by the State Bar may be imposed on respondents under Business and Professions Code section 6086.10

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

**Gadda v. State Bar (9th Cir. 2007)** 511 F.3d 933

**In re Taogart (2001)** 249 F.3d 987

**In the Matter of Mackenzie (Review Dept. 2007)** 5 Cal. State Bar Ct. Rptr. 571

**In the Matter of Chen (Review Dept. 1993)** 2 Cal. State Bar Ct. Rptr. 615

**In the Matter of Respondent J (Review Dept. 1993)** 2 Cal. State Bar Ct. Rptr. 273

**Interest charged on advanced costs from payment until billing**

**Expert witness fees obtained through a medical-legal consulting firm**

properly pled and proved

**Failure to refund unused advanced costs**

**Criminal proceedings**

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

**Gadda v. State Bar (9th Cir. 2007)** 511 F.3d 933

**In re Taogart (2001)** 249 F.3d 987

**In the Matter of Mackenzie (Review Dept. 2007)** 5 Cal. State Bar Ct. Rptr. 571

**In the Matter of Chen (Review Dept. 1993)** 2 Cal. State Bar Ct. Rptr. 615

**In the Matter of Respondent J (Review Dept. 1993)** 2 Cal. State Bar Ct. Rptr. 273

**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. 815

**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)

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**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**

**Chelios v. Kaye (1990)** 219 Cal.App.3d 75 [268 Cal.Rptr. 38]

**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**

**Kobroff 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**

**Clark v. American Residential Services LLC (2009)** 175 Cal.App.4th 785 [96 Cal.Rptr.3d 441]


bankruptcy court abused its discretion by reducing documented fees without explanation

**Fry v. Dinan (9th Cir. BAP 2011)** 448 B.R. 775

bankruptcy court abused its discretion by using its § 105(a) inherent powers as alternative authority for sanctioning attorney

**Eskanos & Adler, P.C. v. Leetien (9th Cir. 2002)** 309 F.3d 1210

**Abuse of Judicial process**

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

**Appointment of defense attorney for criminal defendant**


**Attorney’s acts under Civil Code section 47(2) not privileged where damages do not stem directly from those acts**


**Attorney’s deception in collection of debt not protected by inherent powers as alternative authority for sanctioning attorney**

**Eskanos & Adler, P.C. v. Leetien (9th Cir. 2002)** 309 F.3d 1210

**Authority**

**Code of Civil Procedure section 128**
COURT

appellate court

LA 88 (1935)

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

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

to impose sanctions

Lahir v. Universal Music and Video (9th Cir. 2010) 606 F.3d 1216
Fink v. Gomez (9th Cir. 2001) 230 F.3d 989
Standing Com. on Dis. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1170-1173
court cannot sanction pro hac vice attorney for bad faith misconduct in a manner that a California attorney could not be sanctioned

court had no authority to award costs of future depositions as monetary sanction for coaching plaintiff during deposition where those costs had not yet been incurred

court has no statutory authority to impose monetary sanctions against pro hac vice attorney for bad faith misconduct

for delay

In re Silberkraus (9th Cir. 2003) 336 F.3d 864
In re Deville (9th Cir. BAP 2002) 280 B.R. 483
to order ancillary criminal defense services

to order second defense counsel


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

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

Chooses not to speak on ethical issues

United States v. Springer (7th Cir. 1971) 460 F.2d 1344, 1354
Client's cross-examination of witnesses

People v. Davis (1984) 161 Cal.App.3d 796, 802-804
Discretion

court has discretion to take into consideration a criminal defendant's desire to have a particular attorney appointed at the public's expense

unreasonable application of clearly established federal law

Howard v. Clark (9th Cir. 2010) 608 F.3d 563

Discretion with respect to attorney-client relationship

People v. Davis (1984) 161 Cal.App.3d 796, 802
Duty to determine presence of coercive element in plea bargaining

In re Ibarra (1983) 34 Cal.3d 277 [193 Cal.Rptr. 538, 666 P.2d 980]
Duty to inform aid court in avoiding error

Furlong v. White (1921) 51 Cal.App. 265, 271
attorney ghostwriter's involvement

OC 2014-1 by witness

SD 1983-8 of a known misrepresentation

of perjury by the client

CAL 1983-74
Electronic devices in courtroom Rule 1.15, California Rules of Court
Failure to take judicial notice of statute pursuant to Evidence Code section 451 is trial court error


Federal courts
district court's reliance upon distinction that State Bar makes between active and inactive members to limit practice of inactive attorneys is not improper exercise of court's rulemaking authority

In re North (9th Cir. 2004) 383 F.3d 871
have inherent and broad regulatory authority to make rules respecting admission, practice, and discipline of attorneys appearing in those courts

Russell v. Hug (9th Cir. 2002) 275 F.3d 812

Cohn v. Rosenfeld (9th Cir. 1994) 733 F.2d 625, 631
new district court rule requiring that attorneys appearing before it must be members of that jurisdiction does not deprive attorney of his constitutionally-protected property interest in his license to practice law

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

Fraud on the court must harm the integrity of the judicial process

In re Levander (9th Cir. 1999) 180 F.3d 1114
Indigent defendant constitutionally entitled to counsel's best argument for appeal before court rules on withdrawal

United States v. Gruffy (9th Cir. 1990) 895 F.2d 561
Information disclosed to

LAL(1) 1972-3

Informed about fee agreement

LA 261 (1959)

Jurisdiction

California Code of Civil Procedure 1008
-circumscribes courts' jurisdiction over applications to reconsider is strictly applied to applications or motions for reconsiderations and renewals of previous motions and not to any order to revisit an earlier ruling


California may exercise personal jurisdiction over out-of-state law firm that employs California member performing legal services governed by California law

court’s reservation of jurisdiction over the enforcement of a settlement agreement extends to attorneys who represent class members other than as class counsel

refusal of a California court to give foreign state judgment full faith and credit where a party to the Arizona proceeding was denied due process under the Fifth and Fourteenth Amendments due to attorney’s conflict of interest


Powers
to 
attorney attire in courtroom

court has no statutory power to discipline pro hac vice attorney; that power rests exclusively with the Supreme Court and with the State Bar

Reciprocity admission
Arizona Supreme Court rule allowing admission on motion (AOM) for out of state attorneys is constitutional because it does not discriminate against non-residents

National Association for the Advancement of Multi-jurisdiction Practice v. Berch (9th Cir. 2014) 773 F.3d 1037
Responsibility, to ensure high standards of ethics

Comden v. Superior Court (1978) 20 Cal.3d 906, 912 [145 Cal.Rptr. 9, 576 P.2d 971]
Unification of municipal and superior courts not intended to fundamentally alter existing rights and procedures or parity of treatment of the parties


COURT REPORTER
Duty to pay court reporter
CAL 1979-48
Improper to condition delivery of deposition transcripts on the former client’s paying the reporter’s fees

LA 425 (1984)
Ministerial officers of the court subject to the court’s inherent authority over judicial proceedings

Serrano v. Stefan Merli Plastering Co., Inc. (2011) 52 Cal.4th 1018 [132 Cal.Rptr.3d 358]

CREDIT CARD
[See Fee, financing of.]
Borrowing money without intent to repay it

In the Matter of Petulla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231

CREDITOR
[See Collections. Conflict of interest, creditor.]
CRIMINAL CASE
[See Conflict of interest, criminal proceeding.]
Ineffective assistance of counsel. Prosecutorial misconduct.

Penal Code section 1473.7
counsel must be appointed if a defendant’s presence was waived or good cause exists to excuse a defendant’s presence, such as when a defendant is confined in federal immigration custody or defendant is indigent and in federal custody

People v. Fryhaat (2019) 35 Cal.App.5th 969 [248 Cal.Rptr.3d 39]
Abandonment
Brooks v. Yates (9th Cir. 2016) 818 F.3d 532

Foley v. Biter (9th Cir. 2015) 793 F.3d 998
by appellate counsel was good cause for substantial delay in filing of habeas petition

In re Sanders (1999) 21 Cal.4th 697 [87 Cal.Rptr.2d 899]

Adequacy of appointed counsel
People v. Mendoza (2008) 161 Cal.App.4th 1362 [75 Cal.Rptr.3d 162]
People v. Mejia (2008) 159 Cal.App.4th 1081 [72 Cal.Rptr.3d 76]

Appeal
California use of Wendt no-issue briefs is acceptable procedure for protecting indigent defendant when appointed attorney concludes that appeal would be without merit and otherwise frivolous

Appointment of deputy public defender by court to serve as “stand-by counsel” in the event defendant cannot continue with self-representation is impermissible under Government Code section 27706

Communication with a represented party
rule prohibiting ex parte communications does not bar discussions initiated by employee of defendant corporation with government attorney for the purpose of disclosing that corporate officers are attempting to suborn perjury and obstruct justice

United States v. Talao (9th Cir. 2000) 222 F.3d 1133
Defense counsel must turn over to law enforcement cash received from a client which are the actual bills used in a crime

United States v. Kellington (9th Cir. (Or.) 2000) 217 F.3d 1084

LA 466 (1991)

Defense counsel’s declarations regarding informant


Facts surrounding a violation of Insurance Code section 750, subdivision (a) involved moral turpitude

In the Matter of Duxbury (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61

Habeas petition
federal habeas petition based on alleged ineffective assistance of counsel

Jones v. Ryan (9th Cir. 2012) 691 F.3d 1093
tolling of habeas petition deadline when prisoner did not have access to file

Lott v. Mueller (9th Cir. 2002) 304 F.3d 918
Indigent defendant constitutionally entitled to counsel’s best argument for appeal before court rules on withdrawal

Delgado v. Lewis (9th Cir. 2000) 223 F.3d 976

United States v. Gruffy (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

Private prosecution
California law does not permit private prosecution of criminal case without presence of public prosecutor

People v. Dehle (2008) 166 Cal.App.4th 1380 [83 Cal.Rptr.3d 461]
Represent
defendant
-after representing party who is now prosecution witness

LA 366 (1977)
-defendant’s right to conflict free counsel required that new appointed counsel be present before conducting further proceedings in open court to hear PD’s request to be re-appointed

when client is complaining witness

SD 1974-15

Right of criminal defendant to consult privately with counsel

People v. Torres (1990) 218 Cal.App.3d 700 [267 Cal.Rptr. 213]
Right to ancillary defense services under Penal Code section 987.9


Right to counsel
U.S. v. Yamashiro (9th Cir. 2015) 788 F.3d 1231
U.S. v. Walters (9th Cir. 2002) 309 F.3d 589

United States v. Edward E. Allen (9th Cir. 1998) 157 F.3d 661
People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
People v. Clemmons (1990) 224 Cal.App.3d 1500
CROSS REFERENCE TABLES

court has latitude to remove counsel where potential conflict exists, over objection by defendant. People v. Jones (2004) 33 Cal.4th 234 [14 Cal.Rptr.3d 579].
defendant has right to counsel of choice and includes right to discharge retained counsel.

U.S. v. Brown (9th Cir. 2015) 785 F.3d 1337
People v. Lara (2001) 86 Cal.App.4th 139 [103 Cal.Rptr.2d 201]

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

do not attach at arrest or at an extradition hearing

Anderson v. Alameida (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. Ervine (2009) 47 Cal.4th 745 [102 Cal.Rptr.3d 786]
Sixth Amendment right to conflict-free representation

U.S. v. Walter-Erze (9th Cir. 2017) 869 F.3d 891
Daniels v. Woodford (9th Cir. 2005) 428 F.3d 1181
People v. Henning (2009) 178 Cal.App.4th 388 [100 Cal.Rptr.3d 419]
Sixth Amendment right violated when counsel not present during the allocution phase of sentencing proceeding.

U.S. v. Yamashiro (9th Cir. 2015) 788 F.3d 1231
Sixth Amendment right violated where attorney pursued defenses that did not comport with defendant’s insistence that he did not commit the alleged criminal act

People v. Flores (2019) 34 Cal.App.5th 270 [246 Cal.Rptr.3d 77]
under 18 U.S.C. § 3005
-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
waiver of right must be knowing and intelligent

U.S. v. Gerritsen (9th Cir. 2009) 571 F.3d 1001

CROSS REFERENCE TABLES

History of Rules of Professional Conduct of the State Bar of California [See part III.D. of this Compendium.]
State Bar Act of 1939 [See part I.A. to this Compendium at “Cross Reference Table.”]

DAMAGES

Damages in tort and contract causes of actions between partners of a dissolved partnership equitable maxim to “do equity” does not preclude the recovery of damages

Data processing, information about cases given for purpose of

CAL 1971-25
LA 374 (1978)
Recovery of emotional suffering damages


DEBTOR [See Collections.]

DECEASED LAWYER

Business and Professions Code section 6180 et seq.
Division of fees with estate of, spouse of

Rule 3-102(A)(1), Rules of Professional Conduct (operative until May 26, 1989)
Rule 1-320, Rules of Professional Conduct (operative as of May 27, 1989)
Little v. Caldwell (1894) 101 Cal. 553, 561 [86 P. 107]
Estate of Linnick (1985) 171 Cal.App.3d 752 [217 Cal.Rptr. 552]
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LA 361 (1976), LA 162 (1947), LA(l) 1974-15
SD 1969-4, SD 1968-5
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LA 361 (1976)
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Rule 2-300, California Rules of Professional Conduct
[See Practice of Law.]

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CAL 1986-90
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LA(l) 1962-5
-use of deceased or retired attorneys on
CAL 1986-90
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-by sole survivor
LA 265 (1959)
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SD 1969-4
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Rule 2-300, California Rules of Professional Conduct
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LA 361 (1976), SD 1968-5

DEGREES [See Advertising, academic degrees.]

Rule 3-110, Rules of Professional Conduct (operative as of May 27, 1989)
Spindell v. State Bar (1975) 13 Cal.3d 253 [118 Cal.Rptr. 480, 530 P.2d 168]
In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263
In the Matter of Dahlz (Review Dept. 2004) 1 Cal. State Bar Ct. Rptr. 269
In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631
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Business and Professions Code section 6128(b)
Until fees are paid
CAL 1968-16
SD 1973-3

Associate’s duties with respect to practice of
LA 348 (1975)

DISBARMENT [See Disciplinary Action. Resignation. Suspension.]
Attorney appeared telephonically during suspension
In the Matter of Burke (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448
Misappropriation generally warrants disbarment unless clearly extenuating circumstances are present
In the Matter of Freydi (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349

Multiple acts involving moral turpitude and dishonesty warrant disbarment
In the Matter of Rubi (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 797
In the Matter of Hoffman (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698

In the Matter of Schooler (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494
In the Matter of Romano (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391

In the Matter of Tishgart (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338
In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141
In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70

Necessary when attorney was previously disbarred for serious misconduct
In re Silverton (2005) 36 Cal.4th 81 [29 Cal.Rptr.3d 766]
Not reserved for attorneys with prior disciplinary record
In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70

Offenses concerning the administration of justice are serious
In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70

Reciprocal disbarment
In re Kramer (9th Cir. 2002) 282 F.3d 721

Reinstatement
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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
In the Matter of Ainsworth (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894
In the Matter of McCray (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373

Summary disbarment
attempted child molestation
In re Lesansky (2001) 25 Cal.4th 11 [104 Cal.Rptr.2d 409, 17 P.3d 764]

Business and Professions Code section 6102(c) cannot be applied retroactively to summarily disbar an attorney for felony convictions
In the Matter of Curtis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601
In the Matter of Jebya (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51
In the Matter of Paguirigan (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 936
In the Matter of Jolly (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740
In the Matter of Salameh (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729
In the Matter of Segall (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71

deserved for only those crimes which inherently involved moral turpitude
In re Oneb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920

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In re Paguirigan (2001) 25 Cal.4th 1 [104 Cal.Rptr.2d 402, 17 P.3d 758]

no evidentiary hearing
In re Lesansky (2001) 25 Cal.4th 11 [104 Cal.Rptr.2d 409, 17 P.3d 764]
In re Paguirigan (2001) 25 Cal.4th 1 [104 Cal.Rptr.2d 402, 17 P.3d 758]
DISCIPLINARY ACTION

[See Misconduct. Moral Turpitude.]

Business and Professions Code sections 6075-6087

Rules 1-100 and 9-101, Rules of Professional Conduct
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Rules 1-100 and 1-110, Rules of Professional Conduct
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Abandonment of client

Acts committed by attorney outside of professional capacity

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Rule 1-100 a nd 1-110, Rules of Professional Conduct

Rule 1-100 and 9-101, Rules of Professional Conduct

Business and Professions Code sections 6075-6087

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rules

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871

Acts committed by attorney outside of professional capacity

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In the Matter of Peavay (Review Dept. 1999) 5 Cal. State Bar Ct. Rptr. 19

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In the Matter of Lenard (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250

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

failure to accept responsibility for or understand wrongfulness of actions

Gadda v. State Bar (1990) 50 Cal.3d 344 [876 P.2d 95]

Bernstein v. State Bar (1990) 50 Cal.3d 221 [876 P.2d 352]


In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112

In the Matter of Lais (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 112

In the Matter of Pasyanos (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 221

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In the Matter of school

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In the Matter of school

In the Matter of school

failure to file timely pre-trial statement

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In the Matter of school

In the Matter of school

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In the Matter of school

In the Matter of school

In the Matter of school

failure to cooperate with disciplinary investigation

In the Matter of school

In the Matter of school

failure to disclose misdemeanor on Moral character application

In the Matter of school

In the Matter of school

failure to file timely pre-trial statement

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failure to make restitution

In the Matter of school

In the Matter of school

failure to report criminal charges or convictions to bar

In the Matter of school

In the Matter of school

In the Matter of school

failure to cooperate with disciplinary investigation

In the Matter of school

In the Matter of school

failure to disclose misdemeanor on Moral character application

In the Matter of school

In the Matter of school

failure to file timely pre-trial statement

In the Matter of school

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failure to make restitution

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In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171
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In the Matter of Moriarity (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511
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(800) 843-9053

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-statute of limitations, Rule 51

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Standing Com. on Dis. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1170
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-entitled to very little weight when attorney had practiced law for only seven years before start of misconduct

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 608

-may be considered as a mitigating factor although the present misconduct is serious

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774

-not mitigating factor where attorney only in practice for a brief time

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lack of prior disciplinary record, no bar to discipline when numerous serious acts of misconduct


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In the Matter of DeMassa (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737

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-slight credit

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In re Crooks (1990) 51 Cal.3d 1090

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In the Matter of Gorman (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567

youth and inexperience not mitigating in misappropriation setting

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

Monetary sanctions against law firm for aiding in unauthorized practice of law


Multiple acts involving moral turpitude and dishonesty warrant disbarment

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 464

Multiple complaints

Smith v. State Bar (1986) 38 Cal.3d 525 [213 Cal.Rptr. 236]

Need to maintain high ethical standards

Comden v. Superior Court (1978) 20 Cal.3d 906, 915

Nolo contendere plea sufficient proof of guilt

Business and Professions Code section 6101

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In the Matter of Respondent E (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17

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

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Post-misconduct behavior
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Federal law does not preempt State Bar of California’s authority to discipline attorney for misconduct in immigration matters
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

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Brotsky v. State Bar (1962) 57 Cal.2d 287

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In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697
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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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+In the Matter of John Michael Brown (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233
Publication of member disciplinary records
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In the Matter of Murphy, Jr. (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571
-showing may be imposed even when doing so may extend the length of stayed suspension
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Sovereign immunity of the State Bar as an arm of the state
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Copy of results given to another lawyer with some interest in matter
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Carehouse Convalescent Hospital v. Superior Court (2006) 143 Cal.App.4th 1558 [50 Cal.Rptr.3d 129]
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Sanctions appropriate for willful failure to comply with discovery order
Sanctions not available against attorney whose client unreasonably denies a request for admissions under CCP section 2033.420
Estate of Manuel (2010) 187 Cal.App.4th 400 [113 Cal.Rptr.3d 448]
Sanctions not available to attorney who litigates in propria persona under CCP sections 2033(1) and 2023(b)(1)

DISCRIMINATORY CONDUCT IN A LAW PRACTICE

Rule 2-400, Rules of Professional Conduct (operative as of March 1, 1994)

DISQUALIFICATION [See Conflict of interest, disqualification. Termination of attorney-client relationship. Withdrawal from employment.]

Attorney general – denied
Attorney retained by insurer to represent insured does not have attorney-client relationship for purposes of
Attorney retained by insurer to represent insured has attorney-client relationship with insurer for purposes of
Attorney-client relationship must have existed before disqualification is proper
Authority of court
Comden v. Superior Court (1978) 20 Cal.3d 906, 914 fn. 4 [145 Cal.Rptr. 9, 576 P.2d 971]
Doe v. Vim (2020) 55 Cal.App.5th 573 [269 Cal.Rptr.3d 613]
Clark v. Superior Court (2011) 196 Cal.App.4th 37 [125 Cal.Rptr.3d 361]
Cal Pak Delivery, Inc. v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 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

DISCRIMINATORY CONDUCT IN A LAW PRACTICE

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

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]

McDermott Will & Emery, LLP v. Superior Court (Hausman) (2017) 10 Cal.App.5th 1083 [217 Cal.Rptr.3d 47]
LA 531 (2019)
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
McDermott Will & Emery, LLP v. Superior Court (Hausman) (2017) 10 Cal.App.5th 1083 [217 Cal.Rptr.3d 47]
LA 531 (2019)
more exposure to does not, standing alone, warrant disqualification
DP Pham LLC v. Cheadle (2016) 246 Cal.App.4th 653 [200 Cal.Rptr.3d 937]

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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]

LA 531 (2019)

-disdocuments 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


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


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]

Disclosure of confidences of the client


Disqualification affirmed

alleged protected activity under Anti-SLAPP statute (C.C.P. § 425.16) found to be incidental to conflict of interest


Disqualification denied because former legal secretary of defendant became a client, not an employee of attorney for plaintiff


Disqualification denied where attorney received information from plaintiff’s former coworker who was litigant in unrelated case


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


district attorney’s office cannot be recused from case where alleged conflict was speculative and did not show actual unfairness


entire office

Penal Code section 1424

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

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 720]

People v. Eubanks (1996) 14 Cal.4th 580


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


Examine circumstances of each case


reconsideral not required where ethical wall would be effective alternative


experts witness

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


DISQUALIFICATION

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


Motion must be timely filed

Kears 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


Grand jury

Sixth Amendment right to counsel of one's choice does not apply

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

Inadvertent disclosure requires disqualification

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

Interest in subject matter of the representation disqualification granted where payment of attorney legal services were paid from allegedly tainted funds


do not 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

attorney-client relationship not always required for a party to have standing to bring a motion to disqualify

DISQUALIFICATION

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]
Possibility of breach of client confidences
Trone v. Smith (9th Cir. 1980) 621 F.2d 994, 999
Presumption of shared confidences
rebuttable
County of Los Angeles v. United States District Court (Forsyth) (9th Cir. 2000) 223 F.3d 990
Prior relationship with opposing party
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Western Continental Operating Co. v. Natural Gas Corp. (1989) 212 Cal.App.3d 752 [261 Cal.Rptr. 100]
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alleged protected activity under Anti-SLAPP statute (C.C.P. § 425.16) found to be incidental to conflict of interest
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City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]
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
not automatic where previous representation did not expose attorney to confidential information material to the current representation
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]
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Prior representation of plaintiff’s expert witness does not required disqualification where expert waives conflict
Oaks Management Corp. v. Superior Court (2010) 186 Cal.App.4th 1051 [112 Cal.Rptr.3d 642]
Public defender
juvenile court had no power to remove public defender absent a showing that minor was not indigent or a conflict existed
prior representation of witness by former member of public defender’s office where another public defender currently represents defendant and where the office had received no confidential information of the witness, no conflict of interest
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
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Services never performed for former client of attorney’s wife’s previously disqualified firm
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no right to counsel of one’s choice in a grand jury investigation
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In re Marriage of Murchison (2016) 245 Cal.App.4th 847 [199 Cal.Rptr.3d 800]
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--not required when 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]
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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
not required, when firm-switching attorney’s relationship with client at former firm was peripheral or attenuated and documents relating to case that attorney accessed contained no confidential information
where attorney at law firm covers depositions for independent counsel

where “of counsel” attorney and law firm represented opposing parties and where “of counsel” attorney obtained confidential information and provided legal services to client

When attorney acts as witness
Comden v. Superior Court (1978) 20 Cal.3d 906, 914 fn. 4 [145 Cal.Rptr. 9, 576 P.2d 971]
Doe v. Yim (2020) 55 Cal.App.5th 573 [269 Cal.Rptr.3d 613]

When misconduct or status has a continuing effect on judicial proceedings
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- post-dissolution profits from unfinished partnership business
  - right to share in proceeds from future business of new partnership

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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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Advise client of partner and firm’s malpractice
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Advise client of prior attorney’s malpractice
LA 390 (1981)
Advise client of reasonably apparent legal problems outside the scope of representation
LA 502 (1999)
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LA 527, SF 2015-1
Adviser client of settlement and liability exposure
Adviser client of significant developments in case
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OC 95-001
Adviser court of violation of court order by third party
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Adviser court to correct known misrepresentation
Agent
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Beck v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]
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lawyer who disregards specific instructions from his or her client to file notice of appeal by failing to file in timely appeal acts in manner that is professionally unreasonable
In re A.R. (2021) 11 Cal.5th 234 [276 Cal.Rptr.3d 761]
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Appeal
counsel must consult defendant about appeal when either a rational defendant would appeal or defendant shows interest in appealing


In re A.R. (2021) 11 Cal.5th 234 [276 Cal.Rptr.3d 761]
defendant expressly requested an appeal and counsel’s performance was deficient by disregarding the defendant’s request despite an appeal waiver


**United States v. Fabian-Baltazar** (9th Cir. 2019) 931 F.3d 1216

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 6088(d)

**Rule 5-200(B), Rules of Professional Conduct**

Associated 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

** Attempt to effectuate settlement where standards of professional
care compel that most reasonable manner of disposing of action**

is settlement

**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

**Streit v. Covington & Crowe** (2000) 82 Cal.App.4th 441 [82 Cal.Rptr.2d 193]

Class action
conflict of interest based on divided loyalties when law firm that represents class also employs an attorney who serves as class representative

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**Barboza v. West Coast Digital GSM Inc.** (2009) 17 Cal.App.4th 540 [102 Cal.Rptr.3d 295]

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**CAL** 2021-207

prospective clients

**CAL** 2021-205

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Business and Professions Code section 6088(m)

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-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

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

**C Foley v. Biter** (9th Cir. 2015) 793 F.3d 998

**Lai v. State of California** (9th Cir. 2010) 610 F.3d 518 [87 Cal.Rptr.2d 719]

**CAL** 1983-74

Communicate with clients
Business and Professions Code section 6088(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

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**CAL** 1983-74
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In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269
In the Matter of 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 Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585
In the Matter of Nunez (Review Dept. 1997) 3 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
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
United States v. Fabian-Baltazar (9th Cir. 2019) 931 F.3d 1216
counsel testator regarding the nature and consequences of a gift to disqualified person under Probate Code section 21350
digitally stored document preservation obligations, litigation hold
SD 2012-1
discovery sanctions against the attorney and client may be a significant development which should be communicated to the client
CAL. 1997-151
duty to preserve client confidences and trust in attorney
CAL. 2020-203
failed to respond to client’s status inquiries
In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632
failure to advise or inform client whether to accept plea bargain
failure to communicate due to assigned associates inability to speak Spanish
In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354
failure to communicate for two and a half years does not reasonably mean that client should have known that attorney had withdrawn or abandoned the case for purposes of tolling the statute of limitations on filing a malpractice action
failure to communicate with board of corporation
In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
gross negligence in failing to communicate may be deemed abandonment
Mackey v. Hoffman (9th Cir. 2012) 682 F.3d 1247
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
may supersede an attorney’s right to claim work product privilege as to material the attorney knows is relevant to former client’s defense
SD 2004-1
misleading client deliberately and depriving client of opportunity to preserve rights
Community Dental Services v. Tani (2002) 282 F.3d 1164
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. 2019-197, 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 incurrence of debt in contemplation of filing a bankruptcy case. The inhibition of frank discussion serves no conceivable purpose within the statutory scheme
radio call-in show format is unlikely to support a reasonable expectation of confidentiality, loyalty or competence
CAL. 2003-164
“reasonable status inquiry” for purposes 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
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
DUTIES OF ATTORNEY

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)
Rule 5.2, Rules of Professional Conduct (operative as of November 1, 2018)
CAL 2021-206, OC 2011-01, SF 2011-1

Confidences of client
- duty of counsel to maintain in confidence information that was obtained in a professional capacity
- duty to follow a minor client’s instruction not to disclose confidential information

Comply with and be familiar with standards of professional conduct required of members of the State Bar of California, Civil Local Rule 11-4

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 the Matter of Chavez (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 783
In the Matter of Amponsah (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646
In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920

Conflict of duties may require withdrawal

Conflict of duties may require withdrawal

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]

Control communications of employees under attorney’s letterhead and signature
Oasis West Realty, LLC v. Goldman (2011) 51 Cal.4th 811 [124 Cal.Rptr.3d 256]

Control communications of employees under attorney’s letterhead and signature
- after termination of the attorney-client relationship
LA 519 (2006)

Costs
- no duty to advance for pro bono client
LA 379 (1979)

Courteous and prompt performance of services
LA 414 (1983)
- after termination of attorney-client relationship

Course of conduct established from facts
- fundamental ethical obligation not changed by court appointment to represent minor in dependency proceeding
LA 504 (2000)

Control of conduct established from facts

Consult governing legal authorities and make a reasonable determination of the amount attorney is entitled to receive

Consult governing legal authorities and make a reasonable determination of the amount attorney is entitled to receive

Conflict to avoid or resolve

DUTIES OF ATTORNEY
DUTIES OF ATTORNEY

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
Business and Professions Code section 6068(b)
respectfully yield to rulings of court, whether right or wrong
In re Mahoney (2021) 65 Cal.App.5th 376 [ 280 Cal.Rptr.3d 2]

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 Charlissee C. (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 587]
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LA 504 (2000)

Depositions, representing client at
instructions not to answer sanctionable
reconciling potentially divergent duties
LA 497 (1999)

Disclosure
CAL 1969-19
SD 1983-8
altering evidence to oppose
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
vioilation of court order by third party
LA 394 (1982)

Dispute
conflict of interest not created by
CAL 2009-178

District attorney

Document review, use and understanding of technology assisted review (TAR)
SD 2018-3

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
incapacitated lawyer
CAL 2021-206

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)
In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511
Rule 5-200, Rules of Professional Conduct
Levine v. Berschneider (2020) 56 Cal.App.5th 916 [270 Cal.Rptr.3d 768]
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

Exercize 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

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
DUTIES OF ATTORNEY

Failure of counsel to investigate and file a federal tort claim imputed to client

Failure to disclose expert witness notes
People v. Lamb (2006) 136 Cal.App.4th 575 [40 Cal.Rptr.3d 609]

Failure to perform duties
Rossman v. State Bar (1985) 39 Cal.3d 539 [216 Cal.Rptr. 919]
In the Matter of Freedyl (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

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)

Fidelity to client
80 Cal.Rptr.2d 219
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
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. 367
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. 196
actions based on breach of duties owed to client are not
SLAPP suits

adverse party
Stemlieb v. State Bar (1990) 52 Cal.3d 317
Guzzetta v. State Bar (1987) 43 Cal.3d 962 [239 Cal.Rptr. 675]
Crooks v. State Bar (1970) 3 Cal.3d 346
Johnstone v. State Bar (1966) 64 Cal.2d 153 [49 Cal.Rptr. 97]
In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17

adverse party or non-client

Failure of counsel to investigate and file a federal tort claim

Failure to disclose expert witness notes

Failure to perform duties

Fairness to opposing counsel

False statement of fact or law

Fidelity to client

Fidelity to non-client

Fiduciary

adverse party

adverse party or non-client


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


**attorney acting as director and as attorney for organization

**attorney’s purchase of judgment from adverse party and his attempt to enforce that judgment against former client in the same matter was a violation of the confidential relationship between attorney and client


**breach of duty to a former client

Oasis West Realty, LLC v. Goldman (2011) 51 Cal.4th 811 [124 Cal.Rptr.3d 256]


**civil judgment for fraud and breach of fiduciary duty establishes moral turpitude

In the Matter of Kittrell (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195

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 plain-tiff’s suit


no duty to co-counsel

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

Saunders v. Weissburg & Arnonson (1999) 74 Cal.App.4th 869 [87 Cal.Rptr.2d 405], as modified (August 9, 1999 and September 8, 1999) 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


San Gabriel Basin Water Quality Authority v. Aerojet-General Corp. (C.D. Cal. 2005) 105 F.Supp.2d 1095 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


Stoll v. Superior Court (1992) 9 Cal.App.4th 1362 successor counsel to prior counsel

CAL 2009-177 to client’s prior attorney

CAL 2008-175 to non-client joint ventures

Galardi v. State Bar (1987) 43 Cal.3d 683 [238 Cal.Rptr. 774] 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


[See Files.]

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. 185 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


Brooks v. Yates (9th Cir. 2016) 818 F.3d 532

Honesty
decent and concealment amounting to moral turpitude


In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141 fundamental rule of ethics, common honesty


Hartford v. State Bar (1990) 50 Cal.3d 1139 Improve and enhance the rule of law

Capotosto v. Collins (1991) 235 Cal.App.3d 1439 Indigent duty to represent


SD 1986-4 Inform court [See Court.] correct known misrepresentation


CAL 2019-200, SD 1983-8 of client perjury

CAL 1983-74 Insist that trustee receivers keep accurate records

Southwestern Media, Inc. v. Rau (9th Cir. 1983) 708 F.2d 419 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

Cooper v. Equity General Insurance (1990) 219 Cal.App.3d 1252 [268 Cal.Rptr. 692] Insured’s attorney owes no duty to insurer to turn over portions of third-party recoveries made on behalf of client

Farmers Insurance Exchange et al. v. Smith (1999) 71 Cal.App.4th 660 [83 Cal.Rptr.2d 911] Insurer’s attorney has duty to include insurer’s independent counsel in settlement negotiations and to fully exchange information

DUTIES OF ATTORNEY

- Investigate financial affairs of clients who might be permitted to be willfully ignorant of 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.

- Investigate potential securities fraud.
  - *Federal Deposit Insurance Corporation v. O’Melveny & Myers* (9th Cir. 1992) 969 F.2d 744

- Investigate prior to filing lawsuit.
  - *Johnson v. Baldwin* (9th Cir. 1997) 114 F.3d 835
  - *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615

- Investigate statements made by own client.
  - *United States v. Kellington* (9th Cir. (Or.) 2000) 217 F.3d 1084

- VLO practice may require particular caution in verifying client’s identity and that the type of case can be handled in a VLO setting.
  - CAL 2012-184

- Joint ventures.

- Judge.
  - never to mislead with artifice or false statement.
  - *Business and Professions Code section 6068(d)*
  - *Rule 5-200(B), Rules of Professional Conduct*

- Judicial office.
  - maintain respect due.
  - *Business and Professions Code section 6068(b)*
    - *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 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*

- Litigation privilege.
  - *Civil Code section 47(b)*
    - *-insures’ attorney improperly transmitting insureds’ tax return to insurer after mistakenly receiving returns from insureds’ accountant constituted communicative conduct protectable by litigation privilege*

- Loyalty.
  - *Flatt v. Superior Court* (1994) 9 Cal.4th 275, 284 [36 Cal.Rptr.2d 537]

- SD 2011-12, SD 2011-13, SD 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.

- Litigation privilege.
  - 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]

- client’s absence from court, attorney may not answer court’s inquiry if harmful to client.
  - SD 2011-1
DUTIES OF ATTORNEY

Conflict of interest based on divided loyalties when law firm that represents class also employs an attorney who serves as class representative


do 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 supervise 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

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

owed to one client does not consume that owed the other client


personal duty not delegable


Baum v. Duckor Spradling & Metzger (1999) 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 in malpractice action


LA 389 (1981)

Make available client files on withdrawal

CAL 1994-134

SD 1997-1, SD 1984-3, SD 1977-3

exemption: Penal Code 1054.2 requires court consent before release of address or telephone number of a victim or witness

Penal Code 1054.2

exemption: Penal Code 1054.10 requires court consent before release of copies of child pornography

Penal Code 1054.4.10

Mandatory bar membership

Morrow, et al. v. State Bar (9th Cir. 1999) 188 F.3d 1174

MCLE (Minimum Continuing Legal Education)

Warden v. State Bar (1999) 21 Cal.4th 628


In the Matter of Yee (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330

superior court research attorneys are exempt from mandatory continuing education

Oubbard v. State Bar of California (2020) 48 Cal.App.5th 345 [262 Cal.Rptr.3d 16]

Mediator

Mediator 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

CAL 2020-202, LA 527, SF 2015-1

Meritorious claims and contentions

Roche v. Hyde (2020) 51 Cal.App.5th 757 [265 Cal.Rptr.3d 301]

Misappropriation of funds

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

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70

Misleading judge or judicial officer


court responsible for ascertaining attorney’s role in preparation and presentation of sham evidence


duty not to mislead by an artifice or false statement of fact or law

Rule 5-200(B), Rules of Professional Conduct

Business and Professions Code section 6088(d)

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511


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 self-interest of attorney does not interfere with duty to client


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

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DUTIES OF ATTORNEY

filing quiet title action in spite of injunction not to do so

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

law firm violated injunction by depositing client's check into client trust account

Commodity Futures Trading Commission v. Co. Petro Mktg. (9th Cir. 1983) 700 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 of contempt for advising client-witness not to produce incriminating material based on 5th Amendment


Obey oath


Of discharged attorney

to sign settlement draft/check to facilitate former client's receipt of settlement proceeds

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

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509

CAL 2009-177

Of succeeding attorneys

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


attorneys, by virtue of their professional position, must undertake certain special duties to avoid conduct that undermines the integrity of the adjudicative process

Federal Trade Commission v. Network Services Depot, Inc., et al. (9th Cir. 2010) 617 F.3d 1127

On withdrawal not affected by who terminates the relationship


Opposing counsel

disclose death of client during settlement negotiation


LA 300 (1967)

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


attorney has duty to avoid knowingly making false statements and misrepresentations to non-clients


attorney may be liable to a non-client if the attorney's actions went beyond his role as legal representative

Panoutsopoulos v. et al., v. Chamblish et al. (2007) 157 Cal.App.4th 297 [68 Cal.Rptr.3d 647]

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

-insurer's attorney improperly transmitting insurers' tax return to insurer after mistakenly receiving returns from insurers' accountant constituted communicative conduct protectable by litigation privilege


-absolute and procedurally attorney from tort actions based on misleading statements made to opposing side


--criminal proceedings

People v. Toledoano (2019) 36 Cal.App.5th 715 [248 Cal.Rptr.3d 100]

--dissolution proceedings

Silbera v. Anderson (1990) 50 Cal.3d 205

--in all torts except malicious prosecution


--settlement negotiation


-justifies dismissal of defamation action against law firm

Argenti v. Zuckenberg (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


-not limited to statements made during trial or other proceedings


-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


DUTIES OF ATTORNEY

- 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)
  does 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.]
  attorney for corporation owes no duty to shareholders
  attorney owes no duty to beneficiaries to evaluate and ascertain client’s testamentary capacity to draft or amend a will
  attorney’s representation of assignee for the benefit of creditors does not give rise to a duty owed to the class of creditors
  non-fiduciary who is asked for or volunteers information in the course of a business negotiation must be truthful to non-client
  settlement negotiations
  CAL 2015-194
  Partner’s malpractice
  associate’s duty to disclose to client
  LA 383 (1979)
- Partnership dissolution
  Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
  CAL 2020-201, 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
  McMorrin 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)
  Privileged communication
  tax returns are privileged from disclosure; is not absolute and will not be upheld under certain conditions
- 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]
- Proceeding
  encouraging commencement or continuance from corrupt motive of passion or interest
  Business and Professions Code section 6068(g)
  legal or just
  -duty to counsel or maintain only
    Business and Professions Code section 6068(c)
  Professionalism
  LA 339 (1973), LA 272 (1962)
- Prosecutor
  People v. Gamache (2010) 48 Cal.4th 347 [106 Cal.Rptr.3d 771]
  People v. Eubanks (1996) 14 Cal.4th 580 [59 Cal.Rptr.2d 200 927 P.2d 310] (mod. at 14 Cal.4th 1282D)
  People v. Conner (1983) 34 Cal.3d 141 [193 Cal.Rptr. 148, 666 P.2d, 5]
  People v. Manson (1976) 61 Cal.App.3d 102, 164
duty to seek justice, not merely to convict
- Protect a client in every possible way
  Federal Deposit Insurance Corporation v. O’Melveny & Myers (9th Cir. 1992) 969 F.2d 744
- Public agency attorneys
  participation in bonus program tied to savings by agency
  SD 1997-2
- Public defender
  acts of privately retained counsel and publicly appointed counsel should be measured by the same standards of care, except as otherwise provided by statute
  Barber v. Leeds (2000) 24 Cal.4th 676 [102 Cal.Rptr.2d 97]
- Radio call-in show format 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
- Improperity of another attorney
  Business and Professions Code section 6100 et seq.
  LA 440 (1986)
  SD 1992-2, SF 1977-1

2022 (updated entries through 12/31/2021)  230  See How to Use This Index, supra, p. i
DUTIES OF ATTORNEY

- Represent client zealously
  - Business and Professions Code section 6068.1
  - Civil judgment for fraud, misrepresentation and breach of fiduciary duty in a professional capacity
  - Judgment against attorney for moral turpitude
  - Business and Professions Code section 6068(c)(5)
  - Imposition of discipline
  - Statutory duty to assist indigent
  - Statutory requirement for service on attorney
  - Statutory requirement for notification of settlement
  - Business and Professions Code section 6068(e)
  - Duty to supervise
  - Business and Professions Code section 6068(e)

- Serve indigent client without compensation
- Settlemnet attorney who has a lien
- Successor attorney's obligation to notify prior attorney of the existence of a settlement

- Market
  - Business and Professions Code section 6068(o)(3)
  - Eskanos & Adler, P.C. v. Lee (9th Cir. 2002)
  - Sarraf v. Standard Insurance Co. (9th Cir. 1996)
  - Satterfield v. Standard Insurance Co. (9th Cir. 1996)

- Duties to the IRS
  - Income from attorney's fees
  - Statutory requirement for notification of settlement

- Duties to the State Bar
  - Address of attorney
  - Business and Professions Code section 6068(b)
  - Business and Professions Code section 6068(c)
  - Business and Professions Code section 6068(d)

- Duties to Clients
  - Business and Professions Code section 6068(e)
  - Business and Professions Code section 6068(f)
  - Business and Professions Code section 6068(g)
  - Business and Professions Code section 6068(h)

- Duties to the Public
  - Business and Professions Code section 6068(i)
  - Business and Professions Code section 6068(j)
  - Business and Professions Code section 6068(k)
  - Business and Professions Code section 6068(l)

- Duties to the Court
  - Business and Professions Code section 6068(m)
  - Business and Professions Code section 6068(n)
  - Business and Professions Code section 6068(o)

- Duties to the Profession
  - Business and Professions Code section 6068(p)
  - Business and Professions Code section 6068(q)
  - Business and Professions Code section 6068(r)

- Duties to the Bar
  - Business and Professions Code section 6068(s)
  - Business and Professions Code section 6068(t)
  - Business and Professions Code section 6068(u)

- Duties to Other Professionals
  - Business and Professions Code section 6068(v)
  - Business and Professions Code section 6068(w)
  - Business and Professions Code section 6068(x)

- Duties to the State
  - Business and Professions Code section 6068(y)
  - Business and Professions Code section 6068(z)

- Duties to the Community
  - Business and Professions Code section 6068(aa)
  - Business and Professions Code section 6068(bb)
  - Business and Professions Code section 6068(cc)

- Duties to the Public Interest
  - Business and Professions Code section 6068(dd)
  - Business and Professions Code section 6068(ww)
  - Business and Professions Code section 6068(xx)

- Duties to the State
  - Business and Professions Code section 6068(yy)
  - Business and Professions Code section 6068(zz)

- Duties to the Bar
  - Business and Professions Code section 6068(aaa)
  - Business and Professions Code section 6068(bbb)
  - Business and Professions Code section 6068(ccc)

- Duties to the Community
  - Business and Professions Code section 6068(ddd)
  - Business and Professions Code section 6068(www)
  - Business and Professions Code section 6068(xxx)

- Duties to the Public Interest
  - Business and Professions Code section 6068-yyyy
  - Business and Professions Code section 6068-zzzz
DUTIES OF ATTORNEY

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
- 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. 1997) 3 Cal. State Bar Ct. Rptr. 608
In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509
In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1
In the Matter of Whitehead (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
- pattern of similar constitutional violations by untrained employees was necessary to demonstrate deliberate indifference for purposes of failure to train, where exculpatory evidence was not produced as requested under Brady
outside lawyers or providers of outsourced legal services
- CAL 2004-165, CAL 1994-138
LA 518 (2006)
SD 2007-1
paralegal
- Pincay v. Andrews (9th Cir. 2004) 389 F.3d 853
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 6066(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
- Harrifeld v. Hancock (9th Cir. (Idaho) 2004) 364 F.3d 1024
- estate planning
- - duty to act with due care as to the interests of the intended beneficiary
- - no duty owed to non-client potential beneficiary absent testator’s express intent to benefit non-client
- no duty to 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 Bankr.Ct.Dec. 259]
- - non-fiduciary who is asked for or volunteers information in the course of a business negotiation must be truthful to non-client
- - not to convert funds
LA 454
- reasonable duty to communicate with a lienholder as to the subject of the fiduciary obligation
- In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196
To adverse party
To clients
- In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252
- In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 252
- advice attorney to in propria persona litigants
- LA 502 (1999)
- breach warrants discipline
class action
- counsel owed a duty, post certification, to advise clients of other claims related to but outside the scope of the representation
-counsel owed a duty, post-judgment, to pursue class claims through enforcement of judgment  
duty owed to client, not to potential beneficiary  
good faith and fiduciary duty owed to clients  
Gassman v. State Bar (1976) 18 Cal.3d 125, 130  
In the Matter of Gillis (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387  
In the Matter of Kittrell (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195  
specially appearing attorney owes a duty of care to the litigant  
To co-clients  
To non-counsel  
specially appearing attorney undertakes a limited association with the litigant’s attorney of record  
LA 454  
To communicate  
McMorris v. State Bar (1983) 35 Cal.3d 78  
policy limits to client  
LA 350 (1975)  
with client  
In the Matter of Freyd (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349  
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315  
In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269  
CAL 1983-77  
basis for calculating fees  
OC 99-001  
To former client’s insurer  
To honor medical lien when client consents  
To insure when retained by insurer  
do not duty to turn over portions of third-party recoveries made on behalf of client  
To judge  
mislead about facts relating to actions of opposing counsel  
Levine v. Berschneider (2020) 56 Cal.App.5th 916 [270 Cal.Rptr.3d 768]  
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]  

DUTIES OF ATTORNEY

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/earnings 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  
attorney 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  
attorney who overstates his client’s rights or position violates no independent duty of care to the client’s adversary  
attorney’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  
Harrigfield v. Hancock (9th Cir. (Idaho) 2004) 364 F.3d 1024  
estate planning  
-attorney has duty to act with due care as to the interests of the intended beneficiary  
-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  
EDUCATIONAL ACTIVITY

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, as 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
  - attorney has duty to act with due care as to the interests of the intended beneficiary

Truth, employ means only consistent with Business and Professions Code section 6068(d)

Rule 5-200, California Rules of Professional Conduct

In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166


Truthfulness

advice to client to terminate co-counsel

SF 2011-1

Undivided loyalty to client

Commercial Standard Title Co. v. Superior Court (1979) 92 Cal.App.3d 934, 945 [155 Cal.Rptr. 393]

LA 428 (1984)

Unpaid settlement negotiations do not require attorney to withdraw

CAL 2009-178

Use such skill and diligence as others in the profession commonly used


Violations of California Rules of Professional Conduct

SD 1992-2, LA 440 (1986), SF 1977-1

Withdrawal [See Conflict of interest. Substitution. Withdrawal.] forseeable prejudice to client’s rights

CAL 2014-190

reasonable steps to avoid reasonably foreseeable prejudice to client’s rights

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

In the Matter of Dahiz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269

- attorney’s active steps to prejudice client’s rights
  In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 877

violation of professional responsibility


Witness

honor of

- advance no fact prejudicial to
  Business and Professions Code section 6068(f)

reputation of

- advance no fact prejudicial to
  Business and Professions Code section 6068(f)

EDUCATIONAL ACTIVITY [See Broadcasting. Business activity. Publication.]

Lectures, seminars, teaching, etc.

Bell v. State Bar (1974) 10 Cal.3d 824
Warden v. State Bar (1999) 21 Cal.4th 628

CAL 1972-29

SD 1974-21, SD 1974-16, SD 1969-8, SD 1969-6

ELECTIONS [See Political activity.]

ELECTRONIC SERVICE; ELECTRONIC TRANSMISSION;
ELECTRONIC NOTIFICATION

Defined

- Code of Civil Procedure section 1010.6(1)(A)-(C)

ELECTRONIC SURVEILLANCE [See Recording.]

EMBEZZLEMENT [See Client trust fund, misappropriation. Misappropriation. Misconduct.]

EMPLOYEE [See Fee, lay person. Lay employee. Unauthorized Practice of Law.]

Disclosure of client confidences [See Confidences of the client.]

CAL 1979-50

Duty of attorney to adequately supervise

- attorney is responsible for calendaring error regardless of whether the error was made by the attorney or paralegal
  Pinca 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
  Pinca v. Andrews (9th Cir. 2004) 389 F.3d 853

- employees’ repeated neglect of client’s case
  Moore v. State Bar (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161, 396 P.2d 577]

- improper correspondence sent by staff

- lapses in office procedure deemed willful
  Trousi 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
  Wawsman v. State Bar (1986) 41 Cal.3d 452 [224 Cal.Rptr. 101]

- 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

Spielbauer 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

2022 (updated entries through 12/31/2021)

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 1957-1

Lawyer employee for escrow company prepares escrow documents for customers of employer
LA 205 (1953)

Sue client for damages while holding client’s stock in
LA 266 (1959)

ESTATE  [See Conflict of interest, estate. Fee. Will.]

Administrator
beneficiary under will
Probate Code section 21350 et. seq.
own employee for opponent’s estate
LA 341 (1973)

Administrator’s attorney
buys property for estate
LA 238 (1956)
extraordinary attorney’s fees for settlement of claims against estate of decedent under a contingency fee agreement must be approved by the court after noticed hearing
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

EMPLOYMENT WANTED

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) 1968-2
-fee 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), LA 347 (1975)
-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)
ETHICS COMMITTEES

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 successor 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)

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) 538-2116

California Lawyers Association
Ethics Committee
400 Capitol Mall, Suite 650, Sacramento, California 95814
Telephone: (916) 516-1760

Los Angeles County:
Professional Responsibility and Ethics Committee
Los Angeles County Bar Association
444 South Flower Street, Suite 2500, Los Angeles, California 90071
Telephone: (213) 627-2727

Orange County:
Professionalism and Ethics Committee
Orange County Bar Association
P.O. Box 6130, Newport Beach, California 92658
Telephone: (949) 440-8700

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
201 Mission Street, Suite 400, San Francisco, California 94105
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. Kelling (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 1883-3

Immaterial that evidence used is embarrassing to opponent
Rule 5-220, Rules of Professional Conduct
LA 208 (1953)

Inadequate evidence to determine conflict of interest
Pringle v. La Chappelle (1999) 79 Cal.App.4th 1000 [87 Cal.Rptr.2d 90]

Intervention by non-party holder of privilege is not necessary or required to assert Evidence Code section 954 privilege

No error in excluding evidence of attorney’s willingness to stipulate to reasonable discipline
In the Matter of Silver (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902

Objections must be timely and specific
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

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EX PARTE COMMUNICATION WITH JUDGE


Rule 5-300, Rules of Professional Conduct (operative as of May 27, 1989)

Publication of article regarding pending case

Rule 4-102, Rules of Professional Conduct (operative effective May 27, 1989)

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

Advance

Advanced costs by law firm per contingency fee agreement

Attorney’s dismissal of fee action was an attempt to evade both mandatory fee arbitration award and the arbitral process as a whole

SAFETY OF PROFESSIONAL CONDUCT

ARBITRATION IN ACCORDANCE WITH CODE

Binding agreement

Arbitration in accordance with Business and Professions Code section 6200 et seq. is non-binding unless parties agree in writing to make it binding

Arbitration award becomes binding 30 days after notice of award

Arbitration award becomes binding 30 days after notice of award

Arbitration award becomes binding 30 days after notice of award

Arbitration award becomes binding 30 days after notice of award

Arbitration award becomes binding 30 days after notice of award

Arbitration award becomes binding 30 days after notice of award

Binding clause in retainer agreement

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


Binding contract provision


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

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

Aguilar v. Lerner (2004) 34 Cal.4th 974 [12 Cal.Rptr.3d 287]

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Client's fee guarantor entitled to arbitrate fee dispute


Correction of arbitration award

FEES

Insurer is not a “client” for purposes of mandatory fee arbitration and may not demand an arbitration of attorney’s fees incurred on behalf of an insured client National Union Fire Insurance Co. of Pittsburgh v. Stites Professional Law Corp. (1991) 235 Cal.App.3d 1718 [1 Cal.Rptr.2d 570]

Notice of client’s right to arbitrate a dispute must be given after dispute has arisen Huang v. Chen (1998) 66 Cal.App.4th 1230 [78 Cal.Rptr.2d 550]


Accounting failure to provide accounting under 4-100(b)(3) In the Matter of Rubin (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 797 In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632

Actions for recovery of compensation [See] 88 A.L.R.3d 246 court cannot determine fees at ex parte or summary proceeding Overrell v. Overrell (1937) 18 Cal.App.2d 499 [64 P.2d 483]


“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


Agreement acquisition of adverse interest, in general Fletcher v. Davis (2004) 33 Cal.4th 81 [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 Beard v. Goodrich (2003) 110 Cal.App.4th 1031 [2 Cal.Rptr.3d 160]

arbitration clause


billing practices CAL 1996-147, OC 99-001 charging liens


court informed of LA 261 (1959) divorce


In CAL 2006-170

2022 (updated entries through 12/31/2021) 238 See How to Use This Index, supra, p. i
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(t) 1966-4

presumption of undue influence
- contract between attorney and client giving attorney interest in subject matter of representation
  Cooley v. Miller & Lux (1914) 168 Cal. 120 [142 P. 83]
- fee contract with client after creation of attorney-client relationship – attorney carried burden to demonstrate fairness
- lien agreement assigning anticipated statutory fees in one case to satisfy fees incurred in another unrelated case does not give rise to
  LA 496 (1998)
- presumption does not attach where fee agreement reached before or at creation of attorney-client relationship
- presumption of overreaching is rebuttable
  Estate of Raphael (1951) 103 Cal.App.2d 792, 796 [230 P.2d 436]
- presumption that contract is without sufficient consideration
  Lady v. Worthingham (1943) 57 Cal.App.2d 557, 560 [135 P.2d 205]

statutory clauses required

strictly construed against attorney

In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668
- without specific agreement to do a major adjustment, agreement based on fixed hourly rate which provides for possible increase is valid, but only authorizes minor adjustments

to divide statutory award of attorney’s fees between attorney and client
LA 523 (2009)

Appeal of dismissal required to obtain appellate ruling
Mitchell v. City of Los Angeles (9th Cir. 1994) 741 F.2d 281

Appeal of order denying fees
Nutrition Distribution LLC v. IronMag Labs, LLC (9th Cir. 2020) 978 F.3d 1068


on the basis of excusable negligence
Iopa v. Saltchuk-Young Brothers, Limited (9th Cir. 2019) 916 F.3d 1298

order denying attorney’s fees under Civil Code section 2424.12 is not appealable
order denying award of attorney fees to plaintiff who successfully opposes an anti-Slapp motion is not immediately appealable

Appeal renders award not final
Christensen v. Stevedoring Services of America, Inc. (9th Cir. (Or.) 2005) 430 F.3d 1032

Appealable 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


See How to Use This Index, supra, p. i  239

2022 (updated entries through 12/31/2021)
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

binding agreement
-arbitration in accordance with Business and Professions Code section 6200 et seq., is non-binding unless parties agree in writing to make it binding
Glaser, Weil, Fink, Jacobs and Shapiro, LLP v. Goff (2011) 194 Cal.App.4th 423 [125 Cal.Rptr.3d 26]

clarification of award suggested that attorney’s fees were not included

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

fees incurred on behalf of an insured client

basis for any difference

-attorney properly discharged for cause entitled to
quantum meruit.
Huang v. Chen (1998) 66 Cal.App.4th 1230 [78 Cal.Rptr.3d 504]

-client waived right to arbitration under Mandatory Fee Arbitration Act (MFAA) when he failed to request

revision of award suggested that attorney’s fees were not included

failure to comply with 6201(a) does not compel court to

confirmation of award suggested that attorney’s fees were not included

client is protected petitioning activity covered by the anti-SLAPP statute

promotion of activity covered by the anti-SLAPP statute

insurer is not a “client” for purposes of mandatory fee arbitration and may not demand an arbitration of attorney’s fees incurred on behalf of an insured client

notice of client’s right to arbitrate a dispute must be given after dispute has arisen

LA 521 (2007), OC 99-002

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

-attorney incorrectly discharged attorney entitled only to 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]

-attorney discharged attorney entitled to quantum meruit for unearned flat fee
--discharged attorney refuses to accept offer of reasonable value of services from substituted attorney
--pro rata formula used where contingent fee insufficient to meet quantum meruit claims of both discharged and existing counsel
duty of succeeding attorney
--action to recover LA 109 (1937)
--award of attorney fees based on expert testimony fixing reasonable value of services
--award of attorney fees based on reasonable value of services supported by expert testimony
Mattheisen v. Smith (1936) 16 Cal.App.2d 479-482
--by associate attorney
--Civil Code section 2235 dealing with the presumption of invalidity in contracts between trustee and beneficiary does not apply to attorney/client contracts (Civil Code section 2235 was repealed 7/1/87)
Probate Code sections 16002 and 16004
Walton v. Broglio (1975) 52 Cal.App.3d 400, 403-404
[125 Cal.Rptr.123]
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
--contracts between attorney-client; client cannot escape full payment of fees merely because attorney’s services prove less valuable than contemplated
--determination of reasonable attorney fees primarily a question of fact for trial court; expert testimony unnecessary
--discretion of trial court in setting value of services and in considering expert testimony; review by appeals court
--effect of express contract on fees where attorney performs additional services beyond contract
Biaggi v. Sawyer (1946) 75 Cal.App.2d 105, 111-112
[170 P.2d 678]
--evidence considered in determining attorney fees
Deberry v. Cavalier (1931) 113 Cal. App. 30, 35-36
[297 P. 611]
--expert opinion by attorney on value of services questions of fact for jury; overhead office expenses may be considered in fixing value of services
--expert testimony on value of services admissible, but not essential
Spencer v. Collins (1909) 156 Cal. 298, 306-307 [104 P. 320]
--factors considered by court in determining reasonable value of attorney fees; when appeals court may modify award
--fee arbitration
Business and Professions Code §§ 6200-6206

FEES

--power of jury to use independent judgment in fixing value of attorney services irrespective of expert testimony
Lady v. Ruppe (1931) 113 Cal.App. 606, 608 [298 P. 859]
--suit for reasonable value of services under oral contract; trial court’s power to determine value independently
--trial court determines what constitutes reasonable attorney fees; factors considered
--where no finding of fact made as to reasonable value of services by trial court, but evidence exists in records, Supreme Court will enter finding
--power of jury to use independent judgment in fixing value of attorney services irrespective of expert testimony
Lady v. Ruppe (1931) 113 Cal.App. 606, 608 [298 P. 859]
--suit for reasonable value of services under oral contract; trial court’s power to determine value independently
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--where no finding of fact made as to reasonable value of services by trial court, but evidence exists in records, Supreme Court will enter finding

post-judgment interest on attorney fees
--quantum meruit
--attorney’s lien not payable in circumvention of the Bankruptcy Code
--legal services rendered to executor in individual capacity
reasonable value of services
--attorney not entitled to lodestar multiplier in divorce action where seeking the reasonable value of his services and where there was no risk that attorney would not receive compensation under a contingency fee agreement
--effect of contract for attorney fees made after attorney-client relationship exists
Estate of Mallory (1929) 99 Cal.App. 96, 103 [278 P. 488]
Countryman v. California Trona Co. (1917) 35 Cal.App. 728, 735 [170 P. 1069]
--reasonable rate component of lodestar determination not required where the hourly rate is specified in a valid fee agreement
Pech v. Morgan (2021) 61 Cal.App.5th 841 [276 Cal.Rptr.3d 97]
--reasonable rate component of lodestar determination not required where the attorney has entered into a valid fee agreement with the client
Pech v. Morgan (2021) 61 Cal.App.5th 841 [276 Cal.Rptr.3d 97]
--under invalid contingent fee contract, attorney entitled to reasonable value of services
Calvert v. Stoner (1948) 33 Cal.2d 97, 104-105 [199 P.2d 297]
--under invalid contract with client, attorney may secure reasonable value of services
Hall v. Orloff (1920) 49 Cal.App. 745, 749-750 [194 P. 296]

Attorney applies to all causes of action arising from malpractice claim
Waters v. Bourhis (1985) 40 Cal.3d 424 [220 Cal.Rptr. 668]
FEES

illegal

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rpr. 220

Attorney obliged to do their best for their clients whatever the fee arrangement and are duty bound to maximize results and expedite resolution; anything less would be unethical and dishonorable


Attorney sued for malpractice is entitled to indemnification from law firm employer for costs of defending lawsuit arising from claims made by a former client


Attorney’s fees agreed to by contract


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


allowed to oversee 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 Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rpr. 252

contract formation is governed by objective manifestations, not subjective intent of parties


corporate in-house counsel entitled to reasonable fees under Civil Code section 1717

PLCM Group, Inc. v. Drexler (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


Advisor/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


Authority of arbitrator to award fees under the terms of the controlling arbitration agreement


Authority of attorney

attorney had no right to file proposed fee order after discharge and substitution out of case

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

Authority of court to compensate counsel
court may appoint counsel, but may not compensate without statutory authorization

San Diego County Dept. of Social Services v. Superior Court (2005) 134 Cal.App.4th 761 [36 Cal.Rptr.3d 294]

Award of attorney’s fees

Civil Code section 51 (Unruh Civil Rights Act)


Civil Code section 54 et seq. (Disabled Persons Act)


absent a contract determining a different disposition, attorney fees awarded under Labor Code section 1194, should be made payable directly to the attorney


absent agreement, fees awarded pursuant to California FEHA belong to attorneys who labored on case and not to client

Flannery v. Prentice (2001) 26 Cal.4th 572 [110 Cal.Rptr.2d 360]

adjustment of award to account for unsuccessful claims


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. Wiedeman (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 forbids 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 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 [142 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 Whiteley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]
  Doe v. Westmont College (2021) 60 Cal.App.5th 753 [274 Cal.Rptr.3d 882]


San Diego Municipal Employees Association v. City of San Diego (2016) 244 Cal.App.4th 906 [196 Cal.Rptr.3d 355]


Samantha C. v. State Department of Developmental Services (2012) 207 Cal.App.4th 71 [142 Cal.Rptr.3d 625]

--denied in action brought under Government Code section 12974
  Dept. of Fair Employment and Housing v. Cathy’s Creations, Inc. (2020) 54 Cal.App.5th 404 [269 Cal.Rptr.3d 1]

--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 147 [56 Cal.Rptr.3d 582]

--denied where benefit does not affect general public
  Villarreal v. Gordon (2020) 44 Cal.App.5th 233 [256 Cal.Rptr.3d 940]

--fees should sometimes be awarded even where litigant’s own benefits exceed its’ actual costs

--must be successful party
  Samantha C. v. State Department of Developmental Services (2012) 207 Cal.App.4th 71 [142 Cal.Rptr.3d 625]

--not disqualified for fee award under private attorney general statute based on work done in proceedings

--respondent’s successful arguments resulted in significant public benefit, warranting private attorney general fee award
  City of Los Angeles v. Metropolitan Water District (2019) 42 Cal.App.5th [255 Cal.Rptr.3d 202]

--suspended corporation is not entitled to attorney fees
  City of San Diego v. San Diegans for Open Government (2016) 3 Cal.App.5th 568 [207 Cal.Rptr.3d 703]

--trial court is not permitted to use a public entity’s status to negate a lodestar that would otherwise be appropriate
  Rogel v. Lynwood Redevelopment Agency (2011) 194 Cal.App.4th 1319 [125 Cal.Rptr.3d 267]

-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) 529 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 699
  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 award warranted when reckless conduct is combined with and additional factor, such as frivolousness, harassment, or improper purpose
  Rodriguez v. US (9th Cir. 2008) 542 F.3d 704

--may be awarded only if it is an “adversary adjudication” governed by Administrative Procedure Act’s formal adjudication requirements
  2-Bar Ranch Limited Partnership v. United States Forest Service (9th Cir. 2021) 996 F.3d 984
FEES

- under Government Code § 12989.2
  -- fees denied to prevailing defendants in housing discrimination action brought by non-party regulatory agency because Government Code § 12989.2 disallows an award of fees to or against the state
  Department of Fair Employment and Housing v. Mayr et al (2011) 192 Cal.App.4th 719 [120 Cal.Rptr.3d 939]
- under Hyde Amendment (18 U.S.C. § 3006A)
  U.S. v. Hristov (9th Cir. (Ne.) 2005) 396 F.3d 1044
  U.S. v. Manchester Farming Partnership (9th Cir. (Mont.) 2003) 315 F.3d 1176
  - under U.S.C.A. § 7430
    Morrison v. Commissioner of Internal Revenue (9th Cir. 2009) 565 F.3d 658
    Pacific Fisheries Inc. v. U.S. (9th Cir. (Wash.) 2007) 484 F.3d 1103

against party, not attorney, for "costs of proof" in discovery requests for admission

Estate of Manuel (2010) 187 Cal.App.4th 400 [113 Cal.Rptr.3d 448]

agreement providing that trial court will determine prevailing party and award of attorney fees is valid and enforceable


Indian tribe sovereign immunity argument used in construction contract fee dispute


allocation of fees

- not required where attorney also represented other parties who had no written contracts because work pertained to legal issues common to all the parties and separation of attorney’s activities into compensable and non-compensable time units was impossible

“American Rule” that each party must bear its own legal fees

- city manager, analogous to a corporate employee, not liable for attorney’s fees based upon conduct on behalf of employer
- does not apply where each parties have agreed to allocate attorney fees by contract

-exceptions
  Abouab v. City and County of San Francisco (2006) 141 Cal.App.4th 643 [46 Cal.Rptr.3d 206]
  --public interest and substantial benefit doctrine
  --doctrine does not require a fee award merely because the litigation produced changes which were relatively minor and had no actual or concrete impact on the actions taken by the adverse party

-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

--prevailing party in nonpayment of wages action could not recover attorney fees despite the wage claim’s overlap with a breach of contract claim for which fees were also incurred

--no equitable exception where party prevailed in showing that written contract was voided for lack of mutual assent
  Golden Pisces, Inc. v. Wahl Marine Construction (9th Cir. 2007) 495 F.3d 1078

- rule applies to regents of defendant university who are constitutionally immune from the statutory fee-shifting provision of Labor Code § 218.5

- statutory authority for

"- third-party tort" exception

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


Schneider, Friedman, Collard, Poswell & Virga (1991) 232 Cal.App.3d 1276

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. Sobneck, 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 defamation action

- arising out of malicious prosecution action
  Daniels v. Robbins et al. (2010) 182 Cal.App.4th 1542 [104 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).

Marshall v. Webster (2020) 54 Cal.App.5th 275 [268 Cal.Rptr.3d 530]


---complaint did not arise from protected speech or petitioning activities, but from the nonpayment of a bill

Personal Court Reporters, Inc. v. Rand (2012) 205 Cal.App.4th 182 [140 Cal.Rptr.3d 301]

appeal renders award not final

Christensen v. Steverdng 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 et al. 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 prevailiing 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


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


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

Pony v. County of Los Angeles (9th Cir. 2006) 433 F.3d 1138
FEES

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
Gerling Global Reinsurance Corp. v. America v. Garamendi (9th Cir. 2005) 400 F.3d 803

in re Marriage of Ankola (2020) 53 Cal.App.5th 369 [267 Cal.Rptr.3d 569]


In re Estate of Drummond (2007) 149 Cal.App.4th 46 [56 Cal.Rptr.3d 691]


-abstain 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]

-trial court reduced an attorney fee award based on its reasonable determination that routine, non-complex case was overstuffed to a degree that significant inefficiencies and inflated fees resulted

-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

-attorney's fees that are recoverable as compensatory damages
Mai v. HKT (2021) 66 Cal.App.5th 504 [281 Cal.Rptr.3d 255]

-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 Levander (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 650

automotive 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 when underlying claim is in violation of stay
In re Miller (9th Cir. (Mont.) 2005) 397 F.3d 26
-award of fees to unsecured creditor incurred post-petition but based on a pre-petition contract

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

-bankruptcy court did not abuse its discretion in declining to decide post-dismissal motion to enforce fee agreement between debtor and attorney

In re Elias (9th Cir. BAP 1999) 188 F.3d 1160 [34 Bankr.Ct.Dec. 1229]

-bankruptcy court erred in awarding debtor’s attorney fees and costs under statute

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

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

In re 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 Copek, 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 1053 [35 Bankr.Ct.Dec. 63]

-chapter 11 debtor’s counsel entitled to attorney’s fees only for services benefitting the estate

In re Xebec (9th Cir. 1992) 147 B.R. 518

-claims for attorney fees and costs incurred in post-petition are not discharged where post-petition, the debtor voluntarily commences litigation or otherwise voluntarily returns to the fray

In re Ybarra (9th Cir. 2005) 424 F.3d 1018

-contingent fee agreement, pre-approved by the bankruptcy court, should control the amount of compensation awarded unless it is determined that the agreement was “improvident” in light of unforeseeable developments

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

-court may enhance fee in exceptional circumstance

In re Manoa Finance Company (9th Cir. 1988) 853 F.2d 687

-creditor may recover attorney’s fees via proof of claim without need to file application for compensation

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

-creditor’s efforts to recover post-judgment attorney’s fees incurred to enforce a judgment


-debtor awarded appellate attorney’s fees pursuant to 11 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. BAP 2003) 295 B.R. 609

-dischargeability of a contempt judgment

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

-disgorgement of attorney fees against firm and attorney employee is proper

In re Schwartz-Tallard (9th Cir. 2014) 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 982 [36 Bankr.Ct.Dec. 79]

-disgorgement of attorney fees is allowed after violation of bankruptcy code and rules

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

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

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

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

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

-failure to seek relief from the bankruptcy court to characterize fees owing in a family law matter as nondischargeable resulted in a dischargeable debt


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

In re Comfort California Sunbelt Developers, Inc. (9th Cir. BAP 1999) 238 B.R. 475 [34 Bankr.Ct.Dec. 1219]

-fees incurred in opposing objections to final fee application for winding up estate properly disallowed

In re Riverside-Linden Investment Co., (9th Cir. 1991) 945 F.2d 320

-fees recoverable if they are linked to litigation seeking to enforce a contract


-in accordance with state law

In re Coast Trading Co., Inc. (9th Cir. 1984) 744 F.2d 686, 693

-involuntary, debtors entitled to fees, costs and punitive damages in obtaining dismissal under 11 U.S.C. 303, though not for post-dismissal motions themselves

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

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


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

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

In re County of Orange (C.D. Cal. 1999) 241 B.R. 212

FEES

- 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 fees
  
  Higgins v. vortex Fishing Systems Inc. (9th Cir. 2004) 379 F.3d 701

- trustee fees not proper for duties that are not practice of law
  
  In re Garcia (9th Cir. BAP 2005) 335 B.R. 717

- waiver of fees and costs
  
  -- entitlement to fees and costs upon dismissal of an involuntary bankruptcy petition may be waived if all parties consent or if debtor waives relief
  
  In the Matter of Maple-Whitworth (9th Cir. 2009) 556 F.3d 742

based on bad faith actions
  
  Hyde v. Midland Credit Management, Inc. (9th Cir. 2009) 567 F.3d 1137

- McElwaine v. US West, Inc. (9th Cir. (Ariz.) 1999) 176 F.3d 1167

Association of Flight Attendants, AFL-CIO v. Horizon Air Industries, Inc. (9th Cir. 1992) 976 F.2d 541


Cassim v. Allstate Insurance Company (2004) 33 Cal.4th 780 (16 Cal.Rptr.3d 374)

Brandt v. Superior Court (1985) 37 Cal.3d 813 [210 Cal.Rptr. 57]


- bad faith cannot be inferred from fact that party was unsuccessful


[110 Cal.Rptr.2d 903]

- Fair Debt Collection Practice Act (FDCPA), does not authorize award of attorney’s fees against attorneys representing debtors

Hyde v. Midland Credit Management, Inc. (9th Cir. 2009) 567 F.3d 1137

- injured third party who had been assigned insured’s bad faith action against liability insurer was entitled to recover attorney’s fees incurred in recovering policy benefits wrongfully withheld


- trial court did not abuse its discretion in declining to assess attorney fees against colleague under objective standard


based on underlying suit

Stanwood v. Green (9th Cir. 1984) 744 F.2d 714

basis for court decision

- attorney conduct
  
  -- justified by the vexatious, oppressive, obdurate, and bad faith conduct of litigation

  Landsberg v. Scrabble Crossword Game Players, Inc. (9th Cir. 1984) 736 F.2d 485

  Kinney v. Clark (2017) 12 Cal.App.5th 724 [219 Cal.Rptr.3d 247]

  -- limits zealous advocacy

  Lone Ranger Television v. Program Radio Corp. (9th Cir. 1984) 740 F.2d 718, 727

- attorney’s fees may be reduced if prevailing defendant in anti-SLAPP action claims work not related to the motion to strike


- condition precedent must be met


- court may award costs and reasonable attorney fees in a judicial proceeding to confirm or vacate an arbitration award


- court misapplied the factors on which it focused while omitting analysis of other factors that may have allowed award of attorney fees

  Glacier Films (USA), Inc. v. Turchin (9th Cir. 2018) 896 F.3d 1033

- court must articulate factors used to calculate award

  Pettland v. Conrad Credit Corp. (9th Cir. 2001) 244 F.3d 1143

  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


- criteria for award of fees

  Vergas v. Howell (9th Cir. 2020) 949 F.3d 1188

- 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]
-large fee reduction requires a relatively specific articulation of court’s reasoning
  Vargas v. Howell (9th Cir. 2020) 949 F.3d 1188
-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. 2016) 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]
-trial court has its own expertise in the value of legal services performed in a case; expert unnecessary
  Pech v. Morgan (2021) 61 Cal.App.5th 841 [276 Cal.Rptr.3d 97]
-trial court may make its own determination of the value of the legal services performed; expert unnecessary
  Pech v. Morgan (2021) 61 Cal.App.5th 841 [276 Cal.Rptr.3d 97]
-trial court properly reduced attorney fee award based on size of settlement

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-Salipa Corp. v. City of Hailey (9th Cir. 2006) 452 F.3d 1055
McElwaine v. US West, Inc. (9th Cir. 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]
-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 Skie v. Director, Office of Workers’ Compensation Programs (2009) 557 F.3d 1041
-consideration of indigent losing party’s financial condition
  People v. Rodriguez (2019) 34 Cal.App.5th 641 [246 Cal.Rptr.3d 392]

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-court must articulate factors used to calculate award
  Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973
  Tutor-Salipa 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
  Ferdinand v. Conrad Credit Corp. (9th Cir. 2001) 244 F.3d 1145
  Beatty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607
--no general rule requiring trial courts to explain their decisions on motions seeking attorney fees

-degree of success achieved by civil rights plaintiff a critical factor in determining the proper amount of attorney’s fees
-district court erred by reducing attorney fee award by almost 37% without sufficiently explaining its reason for the reduction
  Carter v. Caleb Brett LLC (9th Cir. 2014) 757 F.3d 866
-district court may cut the hours where lawyer does unnecessary duplicative work
  Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106

-extent of plaintiff’s success
  Cinevison Corp. v. City of Burbank (9th Cir. 1984) 745 F.2d 560, 581

-fees awards in federal securities fraud actions must be reasonable in relation to plaintiffs’ recovery
  Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249
-hours that are not properly billed to one’s client are also not properly billed to one’s adversary pursuant to statutory authority
  Association of California Water Agencies v. Evans (9th Cir. 2004) 386 F.3d 579

-in Title VII action
  Porter v. Winter (9th Cir. 2010) 603 F.3d 1113
  Maldonado v. Lehman (9th Cir. 1987) 811 F.2d 1341

-martial dissolution cases
  In re the Marriage of Tharp (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 370]
-negative multiplier decreasing the lodestar is justified where amount of time attorney spent on class action case was unreasonable and duplicative
-
-prevailing market rate in relevant community
--action by corporate in-house counsel under Civil Code section 1717
  PLCM Group, Inc. v. Drexlcr (2000) 22 Cal.4th 1084 [95 Cal.Rptr.2d 198] as modified (June 2, 2000)
--award may exceed actual hourly rate
  Pasztorack v. McCullough (2021) 65 Cal.App.5th 1050 [280 Cal.Rptr.3d 538]
FEES


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

Catalyst Theory, LLC v. City of San Francisco (9th Cir. 2010) 609 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]

People v. Fulton (2002) 99 Cal.App.4th 1292 [121 Cal.Rptr.2d 828]—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


Brown Act—court has discretion to award attorney fees where it found that legislative body of a local agency has violated the Brown Act

Galbis v. Orosi Public Utility Dist. (2008) 167 Cal.App.4th 1063 [84 Cal.Rptr.3d 788]—defendant must show that special circumstances exist to make award unjust


Los Angeles Times Communications v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1313 [5 Cal.Rptr.3d 776]—catalyst theory


Mundy v. Neal (2010) 186 Cal.App.4th 256 [111 Cal.Rptr.3d 551]—did not apply since the merits of customer’s claims were thoroughly litigated to a final judgment


civil rights cases

Civil Code section 51 (Unruh Civil Rights Act)

Kittok v. Leslie’s Poolmart, Inc. (C.D. Cal. 2012) 687 F.Supp.2d 953—fees denied where prevailing defendant intertwined its claims under two related but different code sections that permitted fee awards only to prevailing plaintiffs


Kimbrough v. California (9th Cir. 2010) 609 F.3d 582

Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106

Aguirre v. Los Angeles Unified School District (9th Cir. 2008) 461 F.3d 1114—award of fees in excess of damages justified where successful litigation causes conduct to be exposed and corrected

Harman v. City and County of San Francisco (2007) 158 Cal.App.4th 407 [69 Cal.Rptr.3d 750]—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 895—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 Unified School District v. City and County of San Francisco (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. Wengler (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

Morrison v. Vineyard Creek (2011) 193 Cal.App.4th 1254 [123 Cal.Rptr.3d 414]—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-sponsors
Rickle 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
Chavez v. County of Orange (2001) 86 Cal.App.4th 312 [103 Cal.Rptr.2d 339]
--three factors test
Mahah-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 693
-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
-proportionality of a fee award to the amount of damages recovered not an issue where plaintiff is able to isolate the time spent on successful claim or claims
Hamman v. City and County of San Francisco (2007) 158 Cal.App.4th 407 [69 Cal.Rptr.3d 750]
-settlement offers containing a fee-waiver provision under fee shifting statutes
CAL 2009-176
-spouse, attorney who represents spouse entitled to fees
Rickle 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
LA 445 (1987)
-absent class members not liable for employer’s attorney fees in overtime dispute
-amount of fees determined to be reasonable in light of quality and quantity

-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
Pipefitters Local No. 636 v. Oakley, Inc. (2010) 180 Cal.App.4th 1542 [104 Cal.Rptr.3d 78]
-awarded pursuant to Civil Code section 1717
-basis of award to an unnamed member of putative class who defeats class certification is not entitled to attorney’s fees
-court could not rely upon in camera review of time sheets and billing records that were not disclosed to opposing party in awarding attorney fees and costs
-extra award allowed lawyer who creates common fund
Paul v. Grauity (9th Cir. 1989) 886 F.2d 268
-fee allocation among co-counsel subject to court approval
In re FPI/Agretech Securities Litigation (9th Cir. 1997) 105 F.3d 469
-fees paid directly to plaintiff’s counsel by defendant pursuant to ADEA’s fee-shifting provision is taxable income to plaintiff
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
Winer 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
Cantua 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
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

-the practice of setting the deadline for class members to object to fee awards before the actual motion for fees may deprive the court of 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.

Glassser 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 1354

-client security fund

--assisting applicant


-collections

LA 522 (2009)

-common fund/equitable apportionment doctrine

Wininger v. St 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


-exceptions

--attorney acting in propria persona

Leiper v. Gallegos (2021) 69 Cal.App.5th 284 [284 Cal.Rptr.3d 349]

-passive beneficiary


-computation of under Code of Civil Procedure 998 offer congressional intent


-constitutional immunity

--regents of defendant university, as an arm of the state, are immune from the fee-shifting provision of Labor Code § 218.5


-contingency fee, court not limited to


-contract for


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


--attorney fees awarded under contract to law firm seeking to collect unpaid legal bills.


--award of attorney fee provision in contract applies to third-party beneficiary.


--basis for


--complete mutuality of remedy when contract purports to make recovery of attorney fees available to one or more parties.


--defendant-sellers in real estate case are not required to seek mediation prior to recovery of attorney fees.


--did not provide for entitlement to fees award for either party under such facts.


--governed by equitable principles.


-reciprocal provision

Westwood Homes, Inc. v. AGCIII Villa Salerno Member (2021) 65 Cal.App.5th 922 [280 Cal.Rptr.3d 417]

FEES

-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 fee award based on contract

contactual

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

-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

-attorney fees awarded under contract to law firm seeking to collect unpaid legal bills

-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 Savas, Jr. (9th Cir. 2001) 250 F.3d 1234

-available for successfully defending or prosecuting an appeal

-award may be proper under broadly-worded attorney fee provision even where claim did not arise out of the agreement

-award of fees to legal aid foundation pursuant to contract, not by statute or common law right, does not violate ban on awards to recipients of Legal Services Corporation funding under 45 C.F.R. § 1642.2

-broadly worded attorney fee provision construed against drafting party

-claim for attorney’s fees on a breach of contract action must be based on a specific right agreed to by the contracting parties

-condition precedent must be met to recover attorney fees

-denial of attorney fees where party is non-signatory under contract and denied third-party beneficiary status

-denial of fees where party prevailed in enforcing contract that contained no attorney’s fees provision while losing party championed another contract with a fees provision

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-fees set by contract not binding where contract was deemed to have been drafted to circumvent court’s authority to fix compensation under Labor Code § 4906

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-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

Burkhelter Kessler Clement & George LLP v. Ham (2016) 19 Cal.App.5th 396 [222 Cal.Rptr.3d 154]


Scott Co. of California v. Blount Co. (1999) 20 Cal.4th 1103 [96 Cal.Rptr.2d 614]

--decedent’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

--vacation of judgment as part of post-judgment settlement effectively eliminates fee award based on contract


--where attorney’s fees clause in contract is phrased broadly enough, it may support an award of fees to prevailing party in an action alleging both contractual and tort claims


--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 Conrado Joe Sayas, Jr. (9th Cir. 2001) 250 F.3d 1234


--award on contract claims in accordance with Civil Code § 1717

In re Penrod (9th Cir. 2015) 802 F.3d 1084


Yoon v. Cam IX Trust (2021) 60 Cal.App.5th 388 [274 Cal.Rptr.3d 506]


Burkhelter Kessler Clement & George LLP v. Hamilton (2018) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]

Hjelm v. Prometheus Real Estate Group, Inc. (2016) 3 Cal.App.5th 1105 [208 Cal.Rptr.3d 394]


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limitation on contingency contract under MICRA as codified in Bus. & Prof. Code § 6146

Roa v. Lodi Medical Group, Inc. (1985) 37 Cal.3d 920, 925-926 [211 Cal.Rptr. 77]

misuse of attorney fee claims sometimes leads to protracted litigation that consumes judicial resources and client money, serves no public purpose, and impairs image of legal profession


party 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]

prevailing party entitled to attorney’s fees under Civil Code section 1717 if opposing party has sought attorney’s fees under


prevailing party entitled to fees under Code of Civil Procedure section 1032 even where no net recovery by prevailing party


prenuptial agreement allowing recovery of attorney’s fees over statuteuory 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


-section 800 is a bond or security statute, not a liability statute, and as such, prevailing defendant was precluded from recovering fees and costs in excess of the posted bond


cost of litigation includes attorney fees and expert witness fees for purposes of applying automatic stay provisions


court could not rely upon 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

Fabbri v. City of Dunsmuir (9th Cir. 2011) 631 F.3d 1298

court has discretion to consider the success or failure of the litigation as one factor in assessing attorney fees

Beatty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607


court may require declaration before ordering


depends upon whether plaintiff is entitled to fees and whether court has discretion

Powell v. United States Dept. of Justice (N.D. Cal. 1983) 569 F.Supp. 1192

court of appeal will not disturb trial court’s decision on a party’s request for attorney fees unless it is clearly an abuse of discretion


-trial judge in best position to evaluate value of attorney’s services in courtroom

Pech v. Morgan (2021) 61 Cal.App.5th 841 [276 Cal.Rptr.3d 97]


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. Kelly (2020) 59 Cal.App.5th 1172 [274 Cal.Rptr.3d 158]

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 U.S. (9th Cir. 2002) 307 F.3d 997

despite party’s failure to file noticed motion


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discretion of district court abuse where quality of representation was used to reduce lodestar amount Van Genwin 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
applying a contingent risk 1.4 multiplier to entire lodestar amount where the case is only partially contingent The Sonoma Land Trust v. Thompson (2021) 63 Cal.App.5th 978 [278 Cal.Rptr.3d 324]
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 Marcus & Millichap Real Estate Investment Brokerage Co. v. Woodward Investment Group (2005) 129 Cal.App.4th 508 [28 Cal.Rptr.3d 584]
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 Chooate v. County of Orange (2001) 86 Cal.App.4th 312 [103 Cal.Rptr.2d 338]
determining number of hours attorneys reasonably expended for calculating lodestar The Sonoma Land Trust v. Thompson (2021) 63 Cal.App.5th 978 [278 Cal.Rptr.3d 324]
district court abused its discretion when it denied attorney’s fees based in part on court’s exasperation with other, similar but unrelated suits Glacier Films (USA), Inc. v. Turchin (9th Cir. 2018) 896 F.3d 1033
-FEHA matter Chavez v. City of Los Angeles (2010) 47 Cal.4th 970 [104 Cal.Rptr.3d 710]
court denied plaintiff attorney fees even though plaintiff suffered adverse employment decision in which discrimination was a motivating factor Bustos v. Global P.E.T., Inc. (2018) 19 Cal.App.5th 558 [227 Cal.Rptr.3d 205]
-not required to reduce lodestar amount based on fees covered by insurance policy The Sonoma Land Trust v. Thompson (2021) 63 Cal.App.5th 978 [278 Cal.Rptr.3d 324]
to apply hourly rates to lodestar analysis that exceeded hourly rate actually paid for attorney’s defense Pasternack v. McCullough (2021) 65 Cal.App.5th 1050 [280 Cal.Rptr.3d 538]
to award fees, but only when just Martin v. Franklin Capital Corp. (2005) 546 U.S. 132 [126 S.Ct. 704]
trial judge in best position to evaluate value of attorney’s services in courtroom Pech v. Morgan (2021) 61 Cal.App.5th 841 [276 Cal.Rptr.3d 397]
trial judge’s discretion to issue a fee reduction Morris v. Hyundai Motor America (2019) 41 Cal.App.5th 24 [253 Cal.Rptr.3d 592]
-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
Pech v. Morgan (2021) 61 Cal.App.5th 841 [276 Cal.Rptr.3d 397]
Conservatorship of Levitt (2001) 93 Cal.App.4th 544 [113 Cal.Rptr.2d 294]
district court required to consider twelve factors Labores’ 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 Cytodyn, Inc. v. Amerimmune Pharmaceuticals, Inc. (2008) 160 Cal.App.4th 298 [72 Cal.Rptr.3d 600]
each party is expected to pay own fees Gray v. Don Miller & Associates, Inc. (1984) 35 Cal.3d 498, 504-509
effect of an appeal on Silver Creek, LLC v. Blackrock Realty Advisors, Inc. (2009) 173 Cal.App.4th 1533 [93 Cal.Rptr.3d 864]

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elder abuse by attorney

elder abuse cases

- fees denied where plaintiffs failed to prove causation by clear and convincing evidence

- value of an estate is a factor in setting fees
Conservatorship of Levitt (2001) 93 Cal.App.4th 544 [113 Cal.Rptr.2d 294]

enforcement of foreign judgment

entitlement

- based on contract or statute
Riverside Sheriff's Ass'n v. County of Riverside (2007) 152 Cal.App.4th 414 [61 Cal.Rptr.3d 295]


- entitlement to attorney's fees, but not the amount of the fee award is interlocutory. An appeal from a post judgment order awarding attorney's fees may be reviewed as to the entitlement and the amount of the fees awarded.

- 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) 865 F.3d 659
Toboler v. Colvin (9th Cir. 2014) 749 F.3d 850
Le v. Astrue (9th Cir. 2008) 529 F.3d 1200
U.S. v. Real Property at 2659 Roundhill Drive, Alamo, California (9th Cir. 2002) 283 F.3d 1146
U.S. v. Maroff (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

- may be awarded only if it is an "adversary adjudication" governed by Administrative Procedure Act's formal adjudication requirements
2-Bar Ranch Limited Partnership v. United States Forest Service (9th Cir. 2019) 996 F.3d 984

- 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. 2010) 567 F.3d 1128

- may be awarded only if it is an "adversary adjudication" governed by Administrative Procedure Act's formal adjudication requirements
2-Bar Ranch Limited Partnership v. United States Forest Service (9th Cir. 2021) 996 F.3d 984

- 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; nevertheless 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 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

failure to request fees at time that she requested and obtained default judgment did not forfeit right to seek attorney fees in landlord tenant breach of contract action, where trial court's grant of lessee's motion to vacate the default made case into contested adversarial proceeding,
lessee filed an answer, became a party, and initiated litigation to which lessor had to respond, and lessor incurred attorney fees to protect her judgment


Fair Debt Collections Practices Act (15 U.SC. § 1692 et seq.)

Rouse 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 to 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]

-bankruptcy court has exclusive jurisdiction in determining whether family law matters are exempted from the automatic bankruptcy stay.


-breach of spouse's fiduciary duty

In re Marriage of Fossum (2011) 192 Cal.App.4th 336 [121 Cal.Rptr.3d 195]

-fees based on totality of the circumstances

In re the Marriage of Turkantis (2013) 213 Cal.App.4th 332 [152 Cal.Rptr.3d 498]

--domestic violence restraining order

In re Marriage of Ankola (2020) 53 Cal.App.5th 369 [267 Cal.Rptr.3d 569]

-fees denied based on totality of the circumstances


-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)


-fees denied where the court's findings were made in an analysis of the circumstances

In re the Marriage of Turkantis (2013) 213 Cal.App.4th 332 [152 Cal.Rptr.3d 498]

--domestic violence restraining order

In re Marriage of Ankola (2020) 53 Cal.App.5th 369 [267 Cal.Rptr.3d 569]

-fees denied based on totality of the circumstances


---refusal to award fees due to failure to comply with the requirements of Family Code section 7604 and 7605

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


---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


---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


family law court fee awards must be reasonable and based on factual showings


In re Marriage of Keech (1999) 75 Cal.App.4th 860 [89 Cal.Rptr.2d 525]

fee arbitration


fee award for appeal proper after paternity adjudication


FEHA matter

Caldera v. Department of Corrections and Rehabilitation (2020) 48 Cal.App.5th 601 [261 Cal.Rptr.3d 835]


---courts discretion to deny attorney fees


Chavez v. City of Los Angeles (2010) 47 Cal.4th 970 [104 Cal.Rptr.3d 710]

---prevailing defendant under this statute can only recover fees upon a showing that the plaintiff's action was frivolous, unreasonable, or without foundation

Lopez v. Routt (2017) 17 Cal.App.5th 1006 [225 Cal.Rptr.3d 851]

final judgment determining the prevailing party is a prerequisite for the district court to have jurisdiction to rule on a petition for fees

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


---vacation of judgment as part of post-judgment settlement effectively eliminates fee award based on contract


for number of hours worked

White v. City of Richmond (N.D. Cal. 1982) 559 F.Supp. 127, 131


frivolous appeal


general right to

In re Coast Trading Co., Inc. (9th Cir. 1984) 744 F.2d 686, 693

generally should be awarded pursuant to Equal Access to Justice Act (EAJA) where government's underlying action was unreasonable even if government advanced reasonable litigation position

Ibrahim v. U.S. Department of Homeland Security (9th Cir. 2019) 912 F.3d 1147

Handicapped Children's Protection Act

---retroactive application of attorney's fees recovery permissible

Agu-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. 1988) 136 F.3d 1354
in bankruptcy proceedings permitted unless court abused discretion or erroneously applied the law
In re Intern. Environmental Dynamics, Inc. (9th Cir. 1983) 718 F.2d 322

-interest in post-petition attorney fees
In re Riverside-Linden Investment Co. (9th Cir. BAP 1990) 111 B.R. 298

in collective bargaining contract arbitration case preempted by federal law

inappropriate when opponent lacked notice
Mayer v. Wedgewood Neighborhood Coalition (9th Cir. 1983) 707 F.2d 1020

-amended party must be given opportunity to respond and contest personal liability before judgment is entered against him

indemnification clause
-fees denied where clause makes no reference to attorney’s fees which were incurred under circumstances not addressed in the agreement

Indian tribal law

Individuals with Disabilities Education Act
Irvine Unified School District v. K.G. (9th Cir. 2017) 853 F.3d 1087

T.B. ex rel. Brenneise v. San Diego Unified School District (9th Cir. 2015) 806 F.3d 1114

Weissberg 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

...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 award of 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 statute is prohibited by Code of Civil Procedure section 386.6

-from dispute between client and medical providers
Shayan v. Spine Care and Orthopedic Physicians (2020) 44 Cal.App.5th 167 [257 Cal.Rptr.3d 437]

-interpleader action allows courts to adjudicate competing claims to disputed settlement funds under Code of Civil Procedure section 386.6
Shayan v. Spine Care and Orthopedic Physicians (2020) 44 Cal.App.5th 167 [257 Cal.Rptr.3d 437]

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 1133

Bertolini v. Commissioner Internal Revenue Service (9th Cir. 1991) 930 F.2d 759

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

labor management dispute
-denial of fees where district court erred in remanding case to state court
Dahl v. Rosenfeld (9th Cir. 2003) 316 F.3d 1074

landlord-tenant cases

liability for, regardless who the recipient is

limits on


Thayer v. Wells Fargo Bank (2001) 978 F.2d 1133, mod. at 930 F.2d 759


Thayer v. Wells Fargo Bank (2001) 978 F.2d 1133, mod. at 930 F.2d 759


-prevaling 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

“lodestar” multiplier method of fee calculation

Carter v. Caleb Brett LLC (9th Cir. 2014) 757 F.3d 866

McCown v. City of Fontana (9th Cir. 2008) 565 F.3d 1097

Christensen v. Stevedoring 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. 2007) 307 F.3d 997

Wininger v. SL Management, L.P. (9th Cir. 2002) 305 F.3d 1115

Beaty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607

Van Gerwin v. Guarantee Mutual Life Co. (9th Cir. 2000) 257 F.3d 942

Thayer v. Wells Fargo Bank (2001) 978 F.2d 1133, mod. at 930 F.2d 759


-prevaling 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
- court must articulate factors used to calculate award
- Gonzalez v. City of Maywood (9th Cir. 2013) 729 F.3d 1196
- Ferland v. Conrad Credit Corp. (9th Cir. 2001) 244 F.3d 1145
- detailed billing statements are not always necessary to support award of attorney fees under lodestar method
- district court erred by awarding an inconsistent fee based on the lodestar and a flat fee method
- Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973
- even though prevailing party was charged a reduced rate
- 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
  Environmental Protection Information Center v. California Department of Forestry and Fire Protection (2010) 190 Cal.App.4th 217 [118 Cal.Rptr.3d 582]
  -- lodestar enhancement is discretionary, not mandatory
  -- lodestar methodology not applicable where fees are not shifted to the losing party
  Crawford v. Astue (9th Cir. 2009) 586 F.3d 1142
  -- reasonable rate component not required where the attorney’s hourly rate is specified in a valid fee agreement
  Pech v. Morgan (2021) 61 Cal.App.5th 841 [276 Cal.Rptr.3d 97]
  -- not required where the attorney has entered into a valid fee agreement with the client
  Pech v. Morgan (2021) 61 Cal.App.5th 841 [276 Cal.Rptr.3d 97]
  -- 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
  -- 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

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--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 unreasonably prolonged the litigation and counsel’s time was not reasonably incurred
--trial court erred in reducing of attorney’s fees and costs in party’s refusal to accept an unreasonable or invalid offer under CCP § 998
--trial court reduced attorney fee award based on its’ reasonable determination that routine, non-complex case was overstated to a degree that significant inefficiencies and inflated fees resulted
--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

--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. Rosenfield (9th Cir. 2003) 316 F.3d 1074
market rate prevailing in relevant community used to determine award of attorney’s fees
Gonzalez v. City of Maywood (9th Cir. 2013) 729 F.3d 1196
Christensen v. Stevedoring Services of America (9th Cir. 2009) 557 F.3d 1049
Camacho v. Bridgeport Financial, Inc. (9th Cir. 2008) 523 F.3d 973
United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 896 F.2d 403
Center for Biological Diversity et al. v. County of San Bernardino (2010) 188 Cal.App.4th 603 [115 Cal.Rptr.3d 762]
--corporate in-house counsel entitled to reasonable fees under Civil Code section 1717
PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084 [95 Cal.Rptr.2d 198] as modified (June 2, 2000)
may be imposed when the lawsuit is frivolous, unreasonable, or without foundation
Gibson v. Office of the Attorney General (9th Cir. 2009) 561 F.3d 920
Tutor-Saliba Corp. v. City of Hailey (9th Cir. 2006) 452 F.3d 1055

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]
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may include fees for appellate and post-remand services
--court instructions not necessary
Newhouse v. Roberts’ Illima Tours, Inc. (9th Cir. 1983) 708 F.2d 436, 441
Med-pay
memorandum of costs not required where party seeking contractual attorney fees pursuant to Civil Code section 1717 and Code of Civil Procedure section 1033.5
--more favorable judgment test determines whether an appellant is “unsuccessful in the appeal”
Smith v. Rae-Venter Law Group (2002) 29 Cal.4th 345 [127 Cal.Rptr.2d 516]
municipal court
--court may award attorneys’ fees in excess of $25,000 jurisdictional amount
must be reasonable
Sealy Inc. v. Easy Living, Inc. (9th Cir. 1984) 743 F.2d 1376, 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
mutuality of remedy when contract permits recovery of attorney fees
need for recovery 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
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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


no recovery of attorney's fees where petitioner fails to provide pre-lawsuit notification
Aubub v. City and County of San Francisco (2006) 141 Cal.App.4th 643 [46 Cal.Rptr.3d 206]


not imposed when plaintiff presents a colorable claim and adverse jury verdict is less than unanimous

not limited by terms of contingency fee contract
Clark & Bunker v. City of Los Angeles (9th Cir. 1986) 803 F.2d 987


not recoverable beyond surety's penal sum


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nuisance abatement actions
City of Monte Sereno v. Padgett (2007) 149 Cal.App.4th 1530 [58 Cal.Rptr.3d 218]

out-of-state attorney fees
out-of-state attorney who merely assists California lawyer may recover attorney fees
Winterrwd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815

paid by surety

party awarded nominal damages not entitled to attorney fees where statute provided award of fees for actions to recover damages to personal or real property

Patent Act Section 145 specifying that expenses of proceedings shall be paid by applicant does not authorize the Patent and Trademark Office to recover a share of the salaries of attorney and paralegal employees of the PTO who worked on the case. The statutory language referencing expenses was not sufficient to rebut the "American Rule" presumption that parties are responsible for their own attorney's fees

pension cases
Smith v. CMT-AIAM Pension Trust (9th Cir. 1984) 746 F.2d 587

periodic payment

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

pleading and proof required

plus cost
Smith v. CMT-AIAM Pension Trust (9th Cir. 1984) 746 F.2d 587

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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-defined
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Glacier Films USA, Inc. v. Turchin (9th Cir. 2018) 896 F.3d 1033

Richardson v. Continental Grain Co. (9th Cir. 2003) 336 F.3d 1103


De La Cuesta v. Benham et al. (2011 ) 193 Cal.Rptr.3d 644


-prevaling


prevailing defendant-attorneys on an anti-SLAPP motion are not entitled to attorney fees because they represented themselves

-defining

Lefemine v. Wideman (2012) 568 U.S. 1 [133 S.Ct. 9]

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--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.

--party prevailing on a contract claim generally entitled to attorney’s fees under the reciprocal contractual attorney fee statute.

Westwood Homes, Inc. v. AGCP III Villa Salemo Member (2021) 65 Cal.App.5th 922 [280 Cal.Rptr.3d 417]
--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]
--respondent’s successful arguments resulted in significant public benefit, warranting private attorney general fee award.

City of Los Angeles v. Metropolitan Water District (2019) 42 Cal.App.5th [255 Cal.Rptr.3d 202]
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People ex rel. Becerra v Shine (2020) 46 Cal.App.5th 288 [259 Cal.Rptr.3d 700]
Heron Bay Homeowners Assn. v. City of San Leandro (2018) 19 Cal.App.5th 376 [227 Cal.Rptr.3d 685]
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 are 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.

Pipefitters Local No. 636 v. Oakley, Inc. (2010) 180 Cal.App.4th 1542 [104 Cal.Rptr.3d 78]

Save Open Space Santa Monica Mountains v. Superior Court (County of Los Angeles) (2000) 84 Cal.App.4th 235 [100 Cal.Rptr.2d 725]
--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.

--class action judgment against bank warrants award of attorneys’ fees.

--criteria for award of fees.

Ingram v. Orendian (9th Cir. 2011) 647 F.3d 925
Adoption of Joshua S. (2008) 42 Cal.4th 945 [70 Cal.Rptr.3d 372]
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]
Abouab v. City and County of San Francisco (2006) 141 Cal.App.4th 643 [46 Cal.Rptr.3d 206]
Save Open Space Santa Monica Mountains v. Superior Court (County of Los Angeles) (2000) 84 Cal.App.4th 235 [100 Cal.Rptr.2d 725]

--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]
--denied on the grounds that in pro per party’s petition for fees was untimely.

Esther B. v. City of Los Angeles et al. (2008) 158 Cal.App.4th 1093 [70 Cal.Rptr.3d 596]

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- includes work reasonably performed by attorney to establish and defend own fee claim
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- party that prevailed on change in forum from probate court to another court to hear petition for fees not deemed prevailing party
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- trust beneficiaries are entitled to attorney fees from trustee whose opposition to the contest was without reasonable cause and in bad faith
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-rate determined by current rates where there was delay, rather than by adding interest, and hourly rates were based on relevant community of attorneys engaged in similar complex litigation was not abuse of discretion
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-rate determined by lodestar calculation reasonable even where may have exceeded actual hourly rate
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statutory to prevailing party
Labostest, Inc. v. Bonta (9th Cir. 2002) 297 F.3d 892
Oregon Natural Resources Council v. Madigan (1992) 980 F.2d 1330
--award of fees to prevailing plaintiff in an action brought by the Consumer Legal Remedies Act is mandatory, even
where the litigation was resolved by a pretrial settlement agreement
-Cal.App.4th 170 [56 Cal.Rptr.3d 780]
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
third-party claimant who was not intended beneficiary of attorney fee clause in contract denied award
--award of attorney fee provision in contract applies to third-party beneficiary
third-party liability
--judgment creditor entitled to recover fees and costs from third-party who helped judgment debtor hide assets
Cardinale v. Miller (2014) 222 Cal.App.4th 1020 [166 Cal.Rptr.3d 546]
third-party tortfeasor doctrine
Mega RV Corporation v. HWH Corporation (2014) 225 Cal.App.4th 1318 [170 Cal.Rptr.3d 861]
Vacco Industries, Inc. v. Van Den Berg (1992) 5 Cal.Rptr.3d 546 [6 Cal.Rptr.2d 602]
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
--time limits for filing motion for attorney’s fees do not commence to run until entry of judgment at the conclusion of litigation
--under Family Code section 271, award of attorney fees as sanction against party who frustrates policy to promote settlement, encourage cooperation and reduce cost of litigation
timeliness for filing of fees
--relief from default
to prevailing party
Caldera v. Department of Corrections and Rehabilitation (2020) 48 Cal.App.5th 601 [261 Cal.Rptr.3d 835]
Mejia v. City of Los Angeles (2007) 156 Cal.App.4th 151 [67 Cal.Rptr.3d 228]

-absent a contract determining a different disposition, attorney fees awarded under Labor Code section 1194, should be made payable directly to the attorney

-absent a definition of prevailing party under CCP § 405.38, court resorted to a practical approach by analyzing the extent to which each party realized its litigation objectives in determining which was the prevailing party

-absent agreement, fees awarded pursuant to California FEHA belong to attorneys who labored on case and not to client

--limited to cases where the parties do not have an agreement as to award of fees

-absent an express waiver of attorney’s fees & costs in an CCP section 998 offer, prevailing party is entitled to compensation of expenses incurred in the lawsuit

-action dismissed as part of post-judgment settlement effectively eliminates fee award based on contract

-action dismissed but fees awarded under contractual provision

-action for negligent performance of contractual duties

-action on contract
Valley Bible Center v. Western Title Ins. Co. (1983) 138 Cal.App.3d 931, 933 [188 Cal.Rptr. 335]

--abuse of discretion where the court held there was no prevailing party even though the result was lopsided in favor of the plaintiff

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

-Americans with Disabilities Act
--district court could not deny fees based on a finding that prevailing party had unreasonably prolonged the litigation, but the court could consider prevailing party’s actions in reducing fees
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

FEES
FEES
--court may award costs and reasonable attorney fees in a judicial proceeding to confirm or vacate an arbitration award


--prevailing party in action to foreclose arbitration


--attorney represented by other members of his law firm is entitled to recover attorney fees where the representation involved the attorney’s personal interests and not those of the firm


--attorney who acted per se in contract action may recover reasonable attorney fees for legal services of assisting counsel


--attorney’s fees may be awarded to attorneys who represent each other in fee dispute with client that attorneys jointly represented

Farmers Insurance Exchange v. Law Offices of Conrado Joe Sayas, Jr. (9th Cir. 2001) 250 F.3d 1234


--attorney’s fees may be awarded to taxpayer who incurred attorney’s fees even if initially paid by others

Morrison v. Commissioner of Internal Revenue (9th Cir. 2009) 565 F.3d 658

--bankruptcy matter

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

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

--bond not required to stay award pending an appeal


--California Public Records Act


--trial court abused its discretion by applying an inapposite decision to deny attorney fees without prior notice to the plaintiff


--class actions

--absent class members not liable for employer’s attorney’s fees in overtime dispute


--attorney’s fees for securities class action suits should be based on individual case risk

In re Quantum Health Resources, Inc. (C.D. Cal. 1997) 962 F.Supp. 1254

--attorney’s fees should be adequate to promote consumer class action


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

Winingen 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 matter


--fees incurred by defendant during its unsuccessful defense of a private party Clean Water Act lawsuit are not allowable as costs under the Federal Acquisition Regulation statute

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 fee provision not applicable to breach of limited partnership agreement


--contrary provision in lease contract


--corporate in-house counsel entitled to reasonable fees under Civil Code section 1717

PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084 [95 Cal.Rptr.3d 198] as modified (June 2, 2000)

--court was obligated to determine which of the litigants was the prevailing party where the statutory language makes a fees award mandatory, even though the lawsuit was resolved by a settlement agreement


--Davis-Stirling Common Interest Development Act

--determination of reasonable attorney’s fees and costs


--defendant entitled to reasonable attorney’s fees arising from defendant’s petition to compel arbitration of a dispute between the parties arising under a lease agreement


--defendant in SLAPP action despite plaintiff’s voluntary dismissal with prejudice


--defendant prevails in Title VII action brought by EEOC

Equal Employment Opportunity Commission v. Bruno’s Restaurant (9th Cir. 1992) 976 F.2d 521

--defendants entitled to attorney’s fees even though plaintiffs dismissed appeal

-defendants who fail to file an anti-SLAPP motion before the voluntary dismissal of all causes of actions against them cannot recover fees or costs

-definition of prevailing party under Code of Civil Procedure § 1032 et seq.
  deSaulles v. Community Hospital of the Monterey Peninsula (2016) 62 Cal.4th 1140 [202 Cal.Rptr.3d 429]
  Goodman et al. v. Lozano et al. (2010) 47 Cal.4th 1327 [104 Cal.Rptr.3d 219]

-denied where litigant was unable to materially alter the legal relationship of the parties by judgment or by consent decree
  Kasza v. Whitman (9th Cir. ( Nev.) 2003) 325 F.3d 1178

-district court may review attorney’s “billing judgment” and reduce fees if some tasks should have been delegated to associate or paralegal

-does not preclude recovery of appellate attorney fees by prevailing defendant-respondent

-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. I.N.S. (9th Cir. 2005) 429 F.3d 894

--standing to contest an offset where attorney fees awarded to prevailing party not to attorney

--under 28 U.S.C.A. 2412(d)(1)(A)
  Parrish v. Commissioner of Social Sec. Admin. (9th Cir. 2012) 698 F.3d 1215
  Citizens for Better Forestry v. U.S. Dept. of Agriculture (9th Cir. 2009) 567 F.3d 1128

-ERISA matter

--computerized research may be recovered as attorney fees
  Trustees of the Construction Industry v. Summit Landscape Companies, Inc. (9th Cir. 2006) 460 F.3d 1253

--either party may recover, not just prevailing party; claimant must show some degree of success on the merits

--under 29 U.S.C. 1123(g)(1)
  Welch v. Metropolitan Life Ins. Co. (9th Cir. 2007) 480 F.3d 842

McElwaine v. US West, Inc. (9th Cir. (Ariz.) 1999) 176 F.3d 1167
Cann v. Carpenters’ Pension Trust Fund for Northern California (1993) 989 F.2d 313
Downey Community Hospital v. Wilson (9th Cir. 1992) 977 F.2d 470
Bogue v. Ampex Corporation (9th Cir. 1992) 976 F.2d 1319

--under 29 U.S.C. 1332(g)(1)
  Simonia v. Glendale Nissan/Infinite Disability Plan (9th Cir. 2010) 608 F.3d 1118

--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

-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 in FEHA matter
  Beaty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607
  Chavez v. City of Los Angeles (2010) 47 Cal.4th 970 [104 Cal.Rptr.3d 710]
  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
FEES

--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 enforce inverse condemnation judgment against city

Government Code section 6259(d)
--hour s that are not properly billed to one’s adversary pursuant to Government Code section 6259(c)

Government Code section 6250

Government Code section 6250(c)

Government Code section 12965(b)
Beaty v. BET Holdings, Inc. (9th Cir. 2000) 222 F.3d 607

Government Code section 25845

Handicapped Children’s Protection Act
Barlow/Gresham Union High School District v. Mitchell (9th Cir. 1991) 940 F.2d 1280

hours that are not properly billed to one’s client are also not properly billed to one’s adversary pursuant to statutory authority

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. Brenneise 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
V.S. ex rel. A.O. v. Los Gatos-Saratoga Joint Union High School Dist. (9th Cir. 2007) 404 F.3d 1230
Aguirre v. Los Angeles Unified School District (9th Cir. 2006) 461 F.3d 1114
Z. A. v. San Bruno Park School District (9th Cir. 1999) 165 F.3d 1273

--attorney-parent not entitled to recover attorney fees for representing their children in IDEA proceedings
Ford v. Long Beach Unified School District (9th Cir. 2006) 461 F.3d 1087
--child and parent may be entitled to attorney fees as the prevailing party
Park ex rel. Park v. Anaheim Union High School Dist (9th Cir. 2006) 464 F.3d 1025

--includes a defendant in whose favor a dismissal is entered

-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]
--“more favorable judgment” test determines whether an appellant is “unsuccessful in the appeal”
Smith v. Rae-Venter Law Group (2002) 29 Cal.4th 345 [127 Cal.Rptr.2d 516]

-law providing for fees and cost to prevailing plaintiff applies to either party

-legal malpractice matter

--prevailing defendant

--prevailing party subject to reduction in fees for attorney’s work on unsuccessful or unrelated claims to the legal relationship of the parties
Barlow/Gresham Union High School District v. Mitchell (9th Cir. 1991) 226 Cal.App.3d 1355

--absent a definition of prevailing party under CCP § 405.38, court resorted to a practical approach by analyzing the extent to which each party realized its litigation objectives in determining which was the prevailing party

--multiple prevailing parties

--prevailing party where planning committee did not have the authority to enact attorney fees as part of the CC&Rs

--prevailing defendant when plaintiff dismissed all claims against defendants before motion to strike was filed by defendants

--prevailing defendant where dismissal without prejudice by plaintiff in copyright case does not alter the legal relationship of the parties
Cadin v. Loomis (9th Cir. 2009) 569 F.3d 1142

--not entitled to award of attorney’s fees under CC § 1717 where party brings tort action on the grounds that the action was not an action to enforce the contract

--notice of appeal may subsume later order setting the amounts of the award

--out-of-state attorney who merely assists California lawyer may recover attorney fees
Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2008) 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
  [65 Cal.Rptr.3d 242]
- party is 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
  [193 Cal.Rptr.3d 644]
- party prevails if he was able to achieve most or all of his litigation objectives
- party refusing to mediate where contract provision conditioning recovery of attorney’s fees upon acceptance of mediation is barred from recovering such fees
- peer review lawsuit
- petition for relief from fee judgment permitted if underlying merits of judgment is reversed and party has paid adversary’s attorney fees
  California Medical Association v. Shalala (9th Cir. 2000) 207 F.3d 578
- plaintiff not entitled to fees where request was not included in default judgment
- plaintiff not prevailing party entitled to attorney fees when successful on defendant’s appeal from denial of attorney fees
- plaintiff obtained some relief on merits of claim
  Gerling Global Reinsurance Corp. v. America v. Garamendi (9th Cir. 2005) 400 F.3d 803
- pleadings
- prevailing defendant-attorneys on an anti-SLAPP motion are not entitled to attorney fees because they represented themselves
- prevailing party as defined by statute versus one defined by contract
- prevailing party is ascertained by pragmatic assessment of the party’s ultimate positions vis à vis their litigation objectives, not by technicalities of pleading and procedure
  In re Estate of Drummond (2007) 149 Cal.App.4th 46 [56 Cal.Rptr.3d 691]
- prevailing party may recover attorney fees in state court following dismissal of bankruptcy proceeding
- prevailing party status irrelevant when defendant was not a party to the underlying contract
  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. 2006) 456 F.3d 943
- proper to award attorney fees to defendant attorney even though he was representing himself
  attorney fees may not be awarded as a sanction to an attorney representing himself
  Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]
- proper where statute provides for fees in action to enforce documents, even where documents not proven under the statute
  Tract 19051 Homeowners Assn. v. Kemp (2015) 60 Cal.4th 1135 [184 Cal.Rptr.3d 701]
- property owner is entitled to attorney’s fees as prevailing party in action to enforce inverse condemnation judgment against city
  [103 Cal.Rptr.2d 644]
- reasonable fees under Davis-Stirling Common Interest Development Act
- real estate purchase agreement
- settlement agreement
  --parties to settlement agreement can validly specify a prevailing party
- SLAPP action
  --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
- 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
  -- U.S. v. Real Property at 2659 Roundhill Drive, Alamo, California (9th Cir. 2002) 283 F.3d 1146
  U.S. v. Marriot (9th Cir. 2002) 277 F.3d 1156
  U.S. v. One 1997 Toyota Land Cruiser (9th Cir. 2001) 248 F.3d 699
  Beach v. Smith (9th Cir. 1984) 743 F.2d 1303, 1306-1307
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McQuistion v. Marsh (9th Cir. 1983) 707 F.2d 1085, 1085

- summary judgment on motion 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


Octane Fitness, LLC v. Icon Health & Fitness, Inc. (2014) 572 U.S. 545 [134 S.Ct. 1749]


Prison Legal News v. Schwarzenegger (9th Cir. 2010) 608 F.3d 446

Mahach-Watkins v. Depes (9th Cir. 2010) 593 F.3d 1054

Beames v. City of Visalia (2019) 43 Cal.App.5th 741 [256 Cal.Rptr.3d 841]

- under 42 U.S.C. § 12205 (ADA)

-- fees denied to prevailing defendant where such award under state law is pre-empted by federal law

Hubbard v. Sobreck, LLC (9th Cir. 2009) 554 F.3d 742

- under Business and Professions Code § 809.9


- under California Education Code § 44944(f)

-- application of lodestar methodology in determining reasonable attorney’s fees


- under California Tort Claims Act

-- CCP § 1038 does not authorize imposition of defense costs against the plaintiff’s attorney


- under Civil Asset Forfeiture Reform Act

U.S. v. King (9th Cir. 2015) 797 F.3d 696

- under Civil Code section 798.85

Canyon View Ltd. v. Lakeview Loan Servicing, LLC (2019) 42 Cal.App.5th 1096 [256 Cal.Rptr.3d 233]


- under Civil Code section 1354


- under Civil Code section 1717

In re Paned (9th Cir. 2015) 802 F.3d 1084


Yoon v. Cam IX Trust (2021) 60 Cal.App.5th 388 [274 Cal.Rptr.3d 506]


Burkhalter Kessler Clement & George LLP v. Hamilton (2018) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]

Hjelm v. Prometheus Real Estate Group, Inc. (2016) 3 Cal.App.5th 1155 [208 Cal.Rptr.3d 394]


SCI California Funeral Services Inc. v. Five Bridges Foundation (2012) 203 Cal.App.4th 549 [137 Cal.Rptr.3d 693]


Pueblo Radiology Medical Group, Inc. v. J. Dalton Gerlach et al. (2008) 163 Cal.App.4th 826 [77 Cal.Rptr.3d 880]


-- absent a contractual fees provision, a party cannot recover attorney’s fees, even if it prevails in litigation


-- arbitration must be completed and prevailing party determined when awarding attorney fees on motion to compel arbitration


-- attorney fees may be awarded to more than one prevailing party in a breach of contract dispute

Burkhalter Kessler Clement & George LLP v. Hamilton (2018) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]

-- attorney fees may not be awarded to a prevailing attorney acting in pro se


-- decedent’s successor in interest may be liable for attorney’s fees under a contract entered into by decedent


-- denial of attorney fees where party is non-signatory under contract and denied third-party beneficiary status


-- denied where action was voluntarily dismissed


-- does not allow firm to recover fees incurred in suit to recover unpaid fees from client when client had already paid entire contractual debt to firm before trial

--no appointment 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 Brescia (9th Cir. BAP 2014) 505 B.R. 903

--prevailing party law firm not entitled to attorney fees when represented by their own counsel


--voluntary dismissal of one contract claim does not preclude recovery of attorney’s fees on another claim

CDF Firefighters v. Maldonado (2011) 200 Cal.App.4th 158 [132 Cal.Rptr.3d 544]

under Civil Code section 1942.4


under Civil Code section 1942.5


under Civil Code section 3496


under Civil Code section 5975

Champir, LLC. v. Fairbanks Ranch Association (2021) 66 Cal.App.5th 583 [281 Cal.Rptr.3d 286]

Coley v. Eskaton (2020) 51 Cal.App.5th 943 [264 Cal.Rptr.3d 740]

under Civil Rights 1983

Roberts v. City and County of Honolulu (9th Cir. 2019) 938 F.3d 1020

under Code of Civil Procedure section 128.7

--attorney fees may not be awarded as a sanction to an attorney representing himself

Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]

In re Marriage of Emdt and Terhorst (2021) 59 Cal.App.5th 898 [273 Cal.Rptr.3d 765]

--criteria for recovery of fees and costs in opposing motion for sanctions

In re Marriage of Emdt and Terhorst (2021) 59 Cal.App.5th 898 [273 Cal.Rptr.3d 765]


under Code of Civil Procedure section 340.1


under Code of Civil Procedure section 403.38

--in lis pendens action, court resorted to a practical approach by analyzing the extent to which each party realized its litigation objectives in determining which was the prevailing party


--in lis pendens action, to challenge attorney fee award to prevailing party on motion to expunge, requires petition for writ of mandate, not appeal


under Code of Civil Procedure section 425.16

Pastemack v. McCullough (2021) 65 Cal.App.5th 1050 [280 Cal.Rptr.3d 538]

Changsha Metro Group Co. v. Xufeng (2020) 57 Cal.App.5th 1 [270 Cal.Rptr.3d 853]


Personal Court Reporters, Inc. v. Rand (2012) 205 Cal.App.4th 182 [140 Cal.Rptr.3d 301]

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]


--attorney’s fees may be reduced if prevailing defendant in anti-SLAPP action claims work not related to the motion to strike


--defendant’s motion to strike under the anti-SLAPP statute was frivolous, thus the granting of plaintiff’s 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

Richmond Compassionate Care Collective v. 7 Stars Holistic Foundation (2019) 33 Cal.App.5th 38 [244 Cal.Rptr.3d 636]


--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 Whitley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 542]

Doe v. Westmont College (2021) 60 Cal.App.5th 753 [274 Cal.Rptr.3d 882]


La Mirada Ave. v. City of Los Angeles (2018) 22 Cal.App.5th 1149 [232 Cal.Rptr.3d 338]

Conservatorship of People v. Investro, Management & Development LLC (2018) 22 Cal.App.5th 443 [231 Cal.Rptr.3d 595]

San Diego Municipal Employees Association v. City of San Diego (2016) 244 Cal.App.4th 906 [198 Cal.Rptr.3d 355]


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Riverwatch v. County of San Diego Dep't of Environmental Health (2009) 175 Cal.App.4th 678 [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


---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

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 Whitley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]

---must be successful party


---no award of attorney's fees under Code of Civil Procedure section 1021.5 where benefit did not affect general public

Villarreal v. Gordon (2020) 44 Cal.App.5th 233 [256 Cal.Rptr.3d 940]

---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


---respondent's successful arguments resulted in significant public benefit, warranting private attorney general fee award

City of Los Angeles v. Metropolitan Water District (2019) 42 Cal.App.5th [255 Cal.Rptr.3d 202]

---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 566 [207 Cal.Rptr.3d 703]

---trial court is not permitted to use a public entity's status to negate a lodestar that would otherwise be appropriate

Rogel v. Lynwood Redevelopment Agency (2011) 194 Cal.App.4th 1319 [125 Cal.Rptr.3d 267]

---under Code of Civil Procedure section 1021.9


---under Code of Civil Procedure section 1032


---under Code of Civil Procedure section 1038

---CCP § 1038 does not authorize imposition of defense costs against the plaintiff's attorney


---no attorney fees are to be paid for successful defense of section 1983 claims, a federal civil rights law


---under Code of Civil Procedure section 1021.5

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

In re Marriage of Erickson and Simpson (2006) 141 Cal.App.4th 707 [46 Cal.Rptr.3d 253]

---under Freedom of Information Act

Schoenberg v. Federal Bureau of Investigation (9th Cir. 2001) 217 F.3d 577

Poulsen v. Department of Defense (9th Cir. 2001) 994 F.3d 1046

---under Government Code section 800

---finding of arbitrary and capricious action against school district


---under Health Care Decisions Law

Humboldt County Adult Protective Services v. Superior Court (2016) 4 Cal.App.5th 548 [208 Cal.Rptr.3d 666]
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- under Labor Code § 218.5
  Cruz v. Fusion Buffet, Inc. (2020) 57 Cal.App.5th 221 [271 Cal.Rptr.3d 269]
-- 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

-- prevailing party in nonpayment of wages action could not recover attorney fees despite the wage claim’s overlap with a breach of contract claim for which fees were also incurred


- under Labor Code § 1194
  Cruz v. Fusion Buffet, Inc. (2020) 57 Cal.App.5th 221 [271 Cal.Rptr.3d 269]

- under Labor Code § 4607
  Smith v. WCAB (2009) 46 Cal.4th 272 [92 Cal.Rptr.3d 894]

- under Lanham Act
  SunEarth Inc. v. Sun Earch Solar Power Co. (9th Cir. 2016) 839 F.3d 1179
  People v. Millard (2009) 175 Cal.App.4th 7 [95 Cal.Rptr.3d 751]

- 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 Probate Code section 17211(b)
  Leader v. Cords (2010) 182 Cal.App.4th 1588 [107 Cal.Rptr.3d 505]

- under Revenue and Taxation Code section 1611.6
  Chinese Theatres, LLC v. County of Los Angeles (2021) 59 Cal.App.5th 484 [273 Cal.Rptr.3d 640]

- under Song Beverly Act
  Reck v. FCA US LLC (2021) 64 Cal.App.5th 682 [279 Cal.Rptr.3d 175]
  Pulliam v. HNL Automotive Inc. (2021) 60 Cal.App.5th 596 [274 Cal.Rptr.3d 547]

- under Uniform Foreign Money Judgments Recognition Act

- under Uniform Trade Secrets Act

- under Vehicle Leasing Act

- under Welfare and Institutions Code section 10962

- unsuccessful plaintiff

to prevailing party buyers of real property denied attorney fees as offset against purchase price


- 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


“tort of another” theory

Mai v. HKT (2021) 66 Cal.App.5th 504 [281 Cal.Rptr.3d 255]

trial court need not issue a statement of decision if record reflects lodestar or touchstone method was used


trial court properly denied request when it was unreasonable in comparison to the actual damages awarded


tribal law may require tribal remedy exhaustion in contract disputes


under 11 U.S.C. § 303

In re Southern California Sunbelt Developers, Inc. (9th Cir. 2010) 608 F.3d 456

under 11 U.S.C. § 330

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

under 15 U.S.C. § 15

Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1254

under 15 U.S.C. § 784(a)(6)

- 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

under 15 U.S.C. § 1117(a), fees may be awarded in exceptional trademark cases

K and N Engineering, Inc. v. Bulat (9th Cir. 2007) 510 F.3d 1079

Watec Co., Ltd. v. Liu (9th Cir. 2005) 403 F.3d 645

under 15 U.S.C. § 1117(c)

- 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

under 15 U.S.C. § 1692k(a)(3)
-Hyde v. Midland Credit Management, Inc. (9th Cir. 2009) 567 F.3d 1137

under 17 U.S.C. § 505 (Copyright Act)
Shame On You Productions, Inc. v. Banks (9th Cir. 2018) 893 F.3d 661

under 18 U.S.C. § 3006A (Hyde Amendment)
-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

under 22 U.S.C. § 1291
Tashima v. Administrative Office of the United States Courts (9th Cir. 1999) 967 F.2d 1264

under 28 U.S.C. § 1447(c)
Moore v. Permanente Medical Group, Inc. (9th Cir. 1992) 981 F.2d 443

under 28 U.S.C. § 412(d)
Jones v. Espy (1993) 10 F.3d 690

Oregon Natural Resources Council v. Madigan (9th Cir. 1992) 980 F.2d 1330

-sessional 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

Synvard v. Commissioner of Internal Revenue (9th Cir. 2001) 288 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 943

under 29 U.S.C. § 1132(g)(1)

under 31 U.S.C. § 3729(a)(1), False Claims Act
-court must provide detailed findings in support of any award
Pflinton v. Ronan Engineering Co. (9th Cir. 2002) 284 F.3d 999

under 33 U.S.C. § 921(d)
Christensen v. Stevedoring Services of America, Inc. (9th Cir. (Or.) 2005) 430 F.3d 1032

under 33 U.S.C. § 1365

Octane Fitness, LLC v. Icon Health & Fitness, Inc. (2014) 572 U.S. 545 [134 S.Ct. 1749]


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
Mahach-Watkins v. Depes (9th Cir. 2010) 593 F.3d 1054
Beames v. City of Visalia (2019) 43 Cal.App.5th 741 [256 Cal.Rptr.3d 841]

under 42 U.S.C. § 1988
Vargas v. Howell (9th Cir. 2020) 949 F.3d 1188
Rickle 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
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-denied
Kimbrough v. California (9th Cir. 2010) 609 F.3d 1027
-lump sum settlement offer that includes attorney's fees may violate plaintiff's implied federal right to contract with an attorney for the right to seek statutory attorney's fees
Bernhardt v. Los Angeles County (9th Cir. 2003) 339 F.3d 920

-plaintiff who wins state claim but loses federal claim not awarded attorney fees
-pro se attorney-defendant cannot recover statutory attorney's fees as prevailing party in civil rights case
Elwood v. Drescher (9th Cir. 2006) 456 F.3d 943

-standing to pursue an award of fees, attorneys lack
Churchill Village LLC v. General Electric (9th Cir. 2004) 361 F.3d 566

-superior performance in appropriate civil rights cases may allow for increase in fees beyond amount determined by lodestar calculation

-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

Kasuga v. Whitman (9th Cir. (Nev.) 2003) 325 F.3d 1178

under 42 U.S.C. § 667
-awards reversed for denial of attorney's fees because of unresolved bad-faith issue


under 42 U.S.C. § 10007(f)
-award of a reasonable hourly rate based on the prevailing rates in the community where plaintiff's counsel practices

Caras v. Farmers Ins. Co. (9th Cir. 1995) 807 F.2d 801

under 42 U.S.C. § 1402


under 42 U.S.C. § 1402

-Churchill Village LLC v. General Electric (9th Cir. 2004) 361 F.3d 566

-under 42 U.S.C. § 1402

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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
- fees awarded to defendant required to defend against plaintiff’s groundless state court claim following dismissal of federal court case
- fees denied to prevailing defendant where such award under state law is pre-empted by federal law
  Hubbard v. Sobreck, LLC (9th Cir. 2009) 554 F.3d 74
  -- 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
  Citizens for Better Forestry v. U.S. Dept. of Agriculture (9th Cir. 2009) 567 F.3d 1128
under 28 U.S.C.A. § 2412(d)(1)(B)
  -- 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)
  -- denial 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
  People ex rel. City of Santa Monica v. Gabriel (2010) 186 Cal.App.4th 882 [112 Cal.Rptr.3d 574]
  -- district attorney may hire private counsel to pursue civil penalties under California’s Unfair Competition Law
  American Bankers Management Company, Inc. v. Heryford (9th Cir. 2018) 885 F.3d 629
under California Education Code § 4944(f)
  -- application of lodestar methodology in determining reasonable attorney’s fees
under California 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]
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  -- 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 55
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  -- 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
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  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
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In re Marriage of Adams (1997) 52 Cal.App.4th 911 [60 Cal.Rptr.2d 811]
-award agreement providing that trial court will determine prevailing party and award of attorney fees is valid and enforceable
-arbitration must be completed and prevailing party determined when awarding attorney fees on motion to compel 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 pro se in contract action may recover reasonable attorney’s fees for legal services of assisting counsel
-attorney’s fees denied because prevailing party’s tort action was not an action to enforce the contract
-the attorney’s fees denied to transferee of patent and trademark rights on the basis of reciprocity, because licensor would not have been entitled to recovery of fees if it had prevailed
-the 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
-the attorney’s representation by associates of his firm precluded recovery of attorney fees after winning case against former client
-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)
-corporate in-house counsel entitled to reasonable fees
PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084 [95 Cal.Rptr.2d 198] as modified (June 2, 2000)
-court ruled permitted trial court to exercise its discretion in awarding higher fees based on “lodestar” method under statute authorizing attorney fee awards
-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
-denied where action was voluntarily dismissed
-equitable principles applied to reduce fees by 90% where court found prevailing litigant had unnecessarily prolonged the litigation and counsels time was not reasonably incurred
-memorandum of costs not required where party seeking contractual attorney fees pursuant to Civil Code section 1717 and Code of Civil Procedure section 1033.5
-no apportionment of fees between co-defendants is necessary when calculating attorney fees because same defenses applied to both of them
-no statutory authority to impose forfeiture. the forfeiture here barred plaintiff from her statutory right under section 1717 to seek attorney fees for ultimately prevailing post-default judgment on her contract cause of action
-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

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- 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
  - precluded where plaintiff voluntarily dismisses unlawful detainer matter sounding in contract
  - trial court must determine if an attorney-client relationship existed between co-plaintiffs before awarding attorney fees to pro se attorney in contempt proceedings
- 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 1798.46(b)
  - application of lodestar methodology by court in determining “reasonable attorney’s fees”
  - 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]
  - 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
- 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
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- 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
  Mahach-Watkins v. Depes (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
    Guv 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 fn. 2
    Aguirre 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
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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. 342, 429 fn. 2 Benigni v. City of Hemet (9th Cir. 1998) 853 F.2d 1519

Boatowners and Tenants Ass'n, Inc. v. Port of Seattle (9th Cir. 1983) 716 F.2d 669, 674 Parks v. Watson (9th Cir. 1983) 716 F.2d 646, 665 - 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


under Code of Civil Procedure 340.1


-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 S.B. Beach Properties v. Berti (2006) 39 Cal.4th 374 [46 Cal.Rptr.3d 380]

-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 Baharian-Mehr v. Smith (2010) 189 Cal.App.4th 265 [117 Cal.Rptr.3d 153]


-litigant who only partially successful on anti-SLAPP motion entitled to recover attorney fees Richmond Compassionate Care Collective v. 7 Stars Holistic Foundation (2019) 33 Cal.App.5th 38 [244 Cal.Rptr.3d 636]


-motion to strike found to be frivolous or solely intended to cause unnecessary delay Carpenter v. Jack In The Box Corp. (2007) 151 Cal.App.4th 454 [59 Cal.Rptr.3d 839] -- complaint did not arise from protected speech or petitioning activities, but from the nonpayment of a bill Personal Court Reporters, Inc. v. Rand (2012) 205 Cal.App.4th 182 [140 Cal.Rptr.3d 301]

-party prevailing on an anti-SLAPP motion may seek fee award through three different avenues Carpenter v. Jack In The Box Corp. (2007) 151 Cal.App.4th 454 [59 Cal.Rptr.3d 839]
prevailing defendant attorneys are not entitled to attorney fees because they incurred no attorney fees in representing themselves


-trial court had jurisdiction to award anti-SLAPP fees in dismissing attorney’s challenge to State Bar discipline

Barry v. State Bar (2017) 2 Cal.5th 318 [212 Cal.Rptr.3d 124]

-withdrawal of funds was not protected conduct because it was neither communicative nor connected with an issue of public interest


under Code of Civil Procedure section 425.18

-fees not recoverable


under Code of Civil Procedure section 473

-attorney may not amend complaint during trial seeking more fees against former client


-un timely 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

Highland Springs Conference, etc. v. City of Banning (2019) 42 Cal.App.5th 416 [255 Cal.Rptr.3d 331]


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

Franklin & Franklin v. 7-Eleven Owners for Fair Franchising (2000) 85 Cal.App.4th 1168 [102 Cal.Rptr.3d 770]

under Code of Civil Procedure section 998


Chinn v. KMR Property Management (2008) 166 Cal.App.4th 175 [82 Cal.Rptr.3d 586]


-denied where settlement offer did not provide for sufficient time for acceptance


-entitled to award of attorney’s fees where sum of jury damage award and defendant’s post-settlement offer exceeded defendant’s pre-trial settlement offer


-plaintiff not liable for paying defendant’s costs in defamation suit if defendant’s offer of settlement is conditioned on confidentiality


-prevaling 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]


-trial court erred in reducing of attorney’s fees and costs in party’s refusal to accept an unreasonable or invalid offer under CCP § 998


under Code of Civil Procedure section 1021


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-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 Whitney (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]
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La Mirada Ave. v. City of Los Angeles (2018) 22 Cal.App.5th 1149 [232 Cal.Rptr.3d 338]
San Diego Municipal Employees Association v. City of San Diego (2016) 244 Cal.App.4th 908 [198 Cal.Rptr.3d 355]
Rogel v. Lynnwood Redevelopment Agency (2011) 194 Cal.App.4th 1319 [125 Cal.Rptr.3d 267]
Wilson v. San Luis Obispo County Democratic Central Committee (2011) 192 Cal.App.4th 918 [121 Cal.Rptr.3d 731]
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]
Mejia v. City of Los Angeles (2007) 156 Cal.App.4th 151 [67 Cal.Rptr.3d 228]
Abouab v. City and County of San Francisco (2006) 141 Cal.App.4th 643 [46 Cal.Rptr.3d 206]

Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of Supervisors (2000) 79 Cal.App.4th 505 [94 Cal.Rptr.2d 205]

-administrative appeal

-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]

-against police department following plaintiff's voluntary release of civil liability by stipulation

-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

-family law
--fees denied where litigant had done nothing to curtail a public right other than to raise an issue in private litigation that resulted in an important legal precedent
Adoption of Joshua S. (2008) 42 Cal.4th 945 [70 Cal.Rptr.3d 372]

--fees awarded to prevailing public entity against another public entity

-fees denied where benefit did not affect general public
Villarreal v. Gordon (2020) 44 Cal.App.5th 233 [256 Cal.Rptr.3d 940]

-fees denied where remand to an administrative agency to reconsider a perceived procedural defect did not result in a change in the agency's decision
Center for Biological Diversity v. California Fish and Game Commission (2011) 195 Cal.App.4th 128 [124 Cal.Rptr.3d 467]

-fees limited to persons who pursue public interest litigation at a cost that is out of proportion to any personal interests they might have in the outcome
People ex rel. Brown v. Tehama County Board of Supervisors (2007) 149 Cal.App.4th 422 [56 Cal.Rptr.3d 582]

-must be successful party
-no provision under this statute, unlike CCP 128.5, giving courts authority to impose sanctions in the form of attorney fees for vexatious or "obdurate behavior"

People ex rel. Brown v. Tehama County Board of Supervisors (2007) 149 Cal.App.4th 422 [56 Cal.Rptr.3d 582]

-requires a full fee award unless special circumstances would render such award unjust


-respondent's successful arguments resulted in significant public benefit, warranting private attorney general fee award

City of Los Angeles v. Metropolitan Water District (2019) 42 Cal.App.5th 255 [225 Cal.Rptr.3d 202]

-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

Highland Springs Conference etc. v. City of Banning (2019) 42 Cal.App.5th 416 [255 Cal.Rptr.3d 331]


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

-may be awarded for trespass on agricultural land being cultivated even where defendant did not damage crops or interfere with agricultural operations


-party awarded nominal damages not entitled to attorney fees where statute provided award of fees for actions to recover damages to personal or real property


under Code of Civil Procedure section 1032 et seq.

desaulles v. Community Hospital of the Monterey Peninsula (2016) 62 Cal.4th 1140 [202 Cal.Rptr.3d 429]


under Code of Civil Procedure section 1033.5

-memorandum of costs not required where party seeking contractual attorney fees pursuant to Civil Code section 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 (2016) 187 Cal.App.4th 400 [113 Cal.Rptr.3d 448]

under Corporations Code section 312

-fees denied on the grounds that employer is a limited liability company and as such is governed by the Limited Liability Company Act (Corporations Code § 17000 et seq.) which contains no provision similar to section 317 in mandating indemnification for claims against its agents and employees

Nicholas Laboratories, LLC v. Chen (2011) 199 Cal.App.4th 1240 [132 Cal.Rptr.3d 223]

-outside counsel retained by corporation to defend against litigation was not agent of corporation for purposes of statute indemnifying persons sued by reason of such agency for defense costs


under Corporations Code section 800


under Corporations Code section 8337

-failure to award fees to plaintiff wrongfully denied access to the defendant association's meeting minutes constituted abuse of discretion


under Corporations Code section 15634

Berti v. Santa Barbara Beach Properties et al. (2006) 145 Cal.App.4th 70 [51 Cal.Rptr.3d 364]

under Corporations Code section 16701

-no abuse of discretion found in denying discretionary attorney fees


under Davis-Stirling Common Interest Development Act

Tract 19051 Homeowners Assn. v. Kemp (2015) 80 Cal.4th 1135 [184 Cal.Rptr.3d 701]
under Family Code section 271
-award of attorney fees as sanction against party who frustrates policy to promote settlement, encourage cooperation and reduce cost of litigation
under Family Code section 272
under Family Code section 1101(g)
  In re Marriage of Fossum (2011) 192 Cal.App.4th 336 [121 Cal.Rptr.3d 195]
under Family 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
under Federal Rule of Civil Procedure section 11
  In re Marriage of Beneditti (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. Rosenpreis (9th Cir. 2011) 638 F.3d 1177
under Federal Rule of Civil Procedure Section 23(h)
-practice of setting the deadline for class members to object to fee awards before the actual motion for fees borders on denial of due process in that the class is denied the full and fair opportunity to examine and oppose the motion
  In re Mercury Interactive Corp. (9th Cir. 2010) 618 F.3d 988
under Federal Rule of Civil Procedure section 37(c)(2)
  Estate of Manuel (2010) 187 Cal.App.4th 400 [113 Cal.Rptr.3d 448]
under Federal Rule of Civil Procedure section 58(e)
-under Lanham Act
  Nutrition Distribution LLC v. IronMag Labs, LLC (9th Cir. 2020) 978 F.3d 1068
  untimely filing of motion for fees
  Nutrition Distribution LLC v. IronMag Labs, LLC (9th Cir. 2020) 978 F.3d 1068
under Federal Rule of Civil Procedure section 69(a)
  Carnes v. Zaman (9th Cir. 2007) 488 F.3d 1057
under Freedom of Information Act
  Schoenberg v. Federal Bureau of Investigation (9th Cir. 2021) 2 F.4th 1270
  Poulsen v. Department of Defense (9th Cir. 2021) 994 F.3d 1046
under Government Code section 800
-founding of arbitrary and capricious action against school district
under Government Code section 6250
under Government Code section 12989.1 et seq.
  (discrimination in housing)
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
-fees not recoverable unless they are specifically authorized by contract, statute, or law
under Health & Safety Code section 17980.7
under Health Care Decisions Law
  Humboldt County Adult Protective Services v. Superior Court (2016) 4 Cal.App.5th 548 [208 Cal.Rptr.3d 666]
under Information Practices Act (California)
-lodestar method in calculating attorney’s fees
under Labor Code § 98.2
-former employee’s attorneys entitled to attorney’s fees even if they represent party without charge
  Lolley v. Campbell (2002) 28 Cal.4th 367 [121 Cal.Rptr.3d 571]
under Labor Code § 218.5
  Cruz v. Fusion Buffet, Inc. (2020) 57 Cal.App.5th 221 [271 Cal.Rptr.3d 269]
under Labor Code § 510
-failure to pay overtime compensation
under Labor Code § 1194
  Cruz v. Fusion Buffet, Inc. (2020) 57 Cal.App.5th 221 [271 Cal.Rptr.3d 269]
-absent a contract determining a different disposition, attorney fees awarded under Labor Code section 1194, should be made payable directly to the attorney
-arbitrator improperly awarded defendant employer attorney’s fees for defeating plaintiff’s overtime claim prohibited by labor code
-manager who prevailed on employee’s unpaid minimum and overtime claims on grounds he was not employee’s employer was not entitled to recover attorney fees from employee even though manager and employee were employed by same employer
under Labor Code § 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

-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 Firstories 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 USCS section 928

Shirrod v. Director, Office of Workers' Compensation Programs (9th Cir. 2015) 809 F.3d 1082

Christianen v. Stevedoring Services of America (9th Cir. 2009) 557 F.3d 1049

-under Welfare and Institutions Code § 10962


-under Welfare and Institutions Code §§ 15600 et seq.

Conservatorship of Levitt (2001) 93 Cal.App.4th 544 [113 Cal.Rptr.2d 294]

-denial of fees to prevailing defendant where statute contains a unilateral fee shifting provision


-under Welfare and Institutions Code § 15657

Conservatorship of McQueen (2014) 59 Cal.4th 602 [174 Cal.Rptr.3d 55]


-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

City of Monte Sereno v. Padgett (2007) 149 Cal.App.4th 1530 [58 Cal.Rptr.3d 218]

-United States liability for

Lauritzen v. Lehman (9th Cir. 1984) 736 F.2d 551

waiver of


LA 445 (1987)

-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


-vehAITious(c)*"'ominant' !atu*es does not authorize attorney fees award where complaint is dismissed for failure to post security bond

void
- in violation of stay
  In re Miller (9th Cir. (Mont.) 2005) 397 F.3d 726
- waiver of
  - settlement agreements which include fee-waiver provisions under fee shifting statutes
    In re Sacramento Water Bd. (9th Cir. 2009) 567 F.3d 1122
- will not be disturbed absent abuse of discretion
- Americans with Disabilities Act
  -- district court could not deny fees based on a finding that prevailing party had unreasonably prolonged the litigation, but the court could consider prevailing party's actions in reducing fees
    Jankey v. Poop Deck (9th Cir. 2008) 537 F.3d 866
- court abused discretion by denying attorney fees to successful party in copyright lawsuit
  Traditional Cat Ass'n, 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) 20147 F.3d 1465, 1473
- trial court abused discretion in limiting award of attorney's fees
  United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1996) 896 F.2d 403
  Workers' Compensation lien fund and trial court's authority to allocate amount for attorney fees

Workers' Compensation

  [86 Cal.Rptr.2d 303]
- 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 Skie v. Director, Office of Workers' Compensation Programs (2009) 557 F.3d 1041
  - claimant's attorney is not entitled to fees from settlement proceeds if claimant received no benefit from the settlement
    Draper v. Aceto (2001) 26 Cal.4th 1086 [113 Cal.Rptr.2d 61]
  - non-attorney's law firm representative of injured employee may not be entitled to same fees as licensed attorney
  - successful claimant entitled to attorney fees under Longshore and Harbor Workers' Compensation Act
    Seachris v. Brady-Hamilton Stevedoring Company (9th Cir. 2021) 994 F.3d 1066
    Dyer v. Centex 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]

Award of compensation for law clerk and paralegal time reasonably spent on plaintiff's case

United Steelworkers of America v. Phelps Dodge Corp. (9th Cir. 1990) 896 F.2d 403

ERISA matter under 29 U.S.C. 1332(g)(2)(D)
  Trustees of the Construction Industry v. Summit Landscape Companies, Inc. (9th Cir. 2006) 460 F.3d 1253

Bankruptcy

- attorney award of fees and costs for bad faith
  In re DeVille (9th Cir. 2004) 361 F.3d 539, 58
- attorney cannot use confidences of former client to challenge client's discharge of fees owed
- attorney employed by a trustee is entitled to compensation for legal services
  In re Garcia (9th Cir. BAP 2005) 335 B.R. 717
- attorney fees and costs awarded against debtors for dragging proceedings 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 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 that lacked standing to challenge 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 Shorb (1989) 101 B.R. 185
- attorney's fees claimed against lender's collateral barred where law firm negotiated and approved comprehensive waiver in loan agreement which barred surcharge or assignment against the collateral
  In re Cooper Commons LLC (9th Cir. 2008) 512 F.3d 650
- attorney's fees are administrative expenses that must be paid first
  In re Shorty (1989) 101 B.R. 185
- attorney's fees claim against lender's collateral barred where law firm negotiated and approved comprehensive waiver in loan agreement which barred surcharge or assignment against the collateral
  In re Cooper Commons LLC (9th Cir. 2008) 512 F.3d 650
- 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 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. (9th Cir. (Texas) 2012) 690 F.3d 650
  automatic stay not applicable to attorney's efforts to collect previously agreed-upon fees for post-petition services
  In re Hines (9th Cir. BAP 1998) 198 B.R. 769
- award of fees is void when underlying claim is in violation of stay
  In re Miller (9th Cir. (Mont.) 2005) 397 F.3d 726
award of fees to unsecured creditor incurred post-petition but
based on a pre-petition contract
In re SNTL Corp. (9th Cir. BAP 2007) 380 B.R. 204
awarding interim fees to attorney in bankruptcy action
In re International Environmental Dynamics (9th Cir. 1983) 716 F.2d 322
bankruptcy court did not abuse its discretion in declining to
decide post-dismissal motion to enforce fee agreement
between debtor and attorney
In re Elias (9th Cir. BAP 1999) 188 F.3d 1160 [34 Bankr.Ct.Dec. 1229]
bankruptcy court erred in awarding debtor’s their attorney
fees and costs under statute
In re Faitalia (9th Cir. BAP 2016) 561 B.R. 767
bankruptcy court erred in discharging unpaid attorney fees
when debtor agreed in writing to personally pay fees upon
completion of plan payments
In re Johnson (9th Cir. BAP 2006) 344 B.R. 104
bankruptcy court has jurisdiction to approve post-petition
attorney fees
In re Knudson Corporation (1988) 84 B.R. 668
bankruptcy court’s authority to order disgorgement of
debtor’s counsel’s prepetition security retainer
In re Dick Cepek, Inc. (9th Cir. BAP 2006) 339 B.R. 730
bankruptcy court’s jurisdiction to amend award of attorney’s
fees under CCP § 187 and the inherent power of federal
courts
In re Levander (9th Cir. 1999) 180 F.3d 1114
bankruptcy petition preparers (BPP) (11 U.S.C.A. § 110(h))
-bankruptcy court required under the bankruptcy code to
disallow any fee paid to BPP found to be in excess of the
value of services
Scott v. United States (In re Doser) (9th Cir. 2005) 412 F.3d 1056
-BPP can only transcribe and type bankruptcy forms that
debtor alone must prepare without assistance and may
charge only what professional typists or word processors
would charge
Scott v. United States (In re Doser) (9th Cir. 2005) 412 F.3d 1056
chapter 7 debtor’s attorney may receive professional fees
from bankruptcy estate for post-petition services
In re Century Cleaning Services, Inc. (9th Cir. BAP 1999) 195 F.3d 1053 [35 Bankr.Ct.Dec. 63]
chapter 7 estate trustee’s attorney may be denied fees if
attorney lacks disinterestedness or represents interests
adverse to the interest of the estate
In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]
chapter 9 fee agreement based on fixed hourly rate but
provides for possible increase found valid
chapter 13
In re Eliapo (Boone v. Derham-Burk) (9th Cir. BAP 2006) 468 F.3d 592
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
court had authority under tax code to pay debtor’s attorney
fees
In re Germaine (1993) 152 B.R. 619
creditor may be ordered to pay chapter 11 debtor’s fees
upon dismissal of involuntary petition under Bankruptcy Code § 305
In re Macke International Trade, Inc. (9th Cir. BAP 2007) 370 B.R. 236
creditor’s claim for attorney’s fees incurred during the state
court litigation after confirmation of debtor’s Chapter 11 plan
was discharged by debtor’s bankruptcy
In re Castellino Villas, A. K. F., LLC (9th Cir. BAP 2016) 836 F.3d 1028
debtor awarded appellate attorney’s fees pursuant to 11
USCA § 362(k)
In re Schwartz-Tallard (9th Cir. 2014) 765 F.3d 1096
delay in bankruptcy court’s approval of payment does not
entitle enhanced attorney’s fees
In re Music Merchants, Inc. (C.D. Cal. 1997) 208 B.R. 944
disgorgement of attorney fees against firm and attorney
employee is proper
Bankruptcy of Sandoval (9th Cir. 1995) 186 B.R. 490
disgorgement of attorney fees against firm not proper where
law firm representation was approved by court
In re S.S. Retail Stores (9th Cir. 2000) 216 F.3d 882 [36 Bankr.Ct.Dec. 79]
disgorgement of attorney fees for professional misconduct
Price v. Lehtinen (In re Lehtinen) (9th Cir. BAP 2005) 332 B.R. 404
disgorgement of attorney fees is allowed after violation of
bankruptcy code and rules
In re Peterson (1994) 163 B.R. 665
Bankruptcy of Basham (9th Cir. 1997) 208 B.R. 926
expenses incurred by petitioning creditors in connection with
filing an involuntary bankruptcy petition may be reimbursed
by debtor’s estate
In re Wind N’ Wave (9th Cir. 2007) 509 F.3d 938
failure to obtain court approval for employment of counsel
may operate to deny payment of attorney fees
In re Shirley (1992) 134 B.R. 940
fee provision in security agreement did not serve as ground
for awarding fees and costs to overscored creditor following
its successful defense of adversary preference proceeding
In re Connolly (9th Cir. BAP 1999) 238 B.R. 475 [34 Bankr.Ct.Dec. 1219]
fees awarded to party who prevailed, not necessarily on all
issues, but on “disputed main issue”
In re Hoopai (9th Cir. BAP 2007) 369 B.R. 506
fees for wife’s attorney in dissolution dischargeable in
bankruptcy
In re Gibson (1989) 103 B.R. 218
fees recoverable if they are linked to litigation seeking to
enforce a contract
following dismissal of involuntary petition, debtor did not
have to join all creditors in order to move for award of
reasonable attorney fees and costs
In re Maple-Whitworth, Inc. (9th Cir. BAP 2007) 375 B.R. 558
no recovery of attorney’s fees if chapter 7 bankruptcy estate
trustee’s attorney lacks disinterestedness or represents interests
adverse to the interest of the estate
In re Tevis (9th Cir. BAP 2006) 347 B.R. 679 [39 Cal.Rptr.3d 1]
prevailing party may recover attorney fees in state court
following dismissal of bankruptcy proceeding
pro rata sharing of attorney fees properly awarded against
co-owners
In re Flynn (9th Cir. BAP 2003) 297 B.R. 599 [41 Bankr.Ct.Dec. 211]
security retainer agreements require appropriate fee
applications made to the court
In re Montgomery Drilling Co. (E.D. Cal. 1990) 121 B.R. 32
totality of circumstance test applied when awarding
attorney’s fee
In the Matter of Maple-Whitworth (9th Cir. 2009) 556 F.3d 742
Higgins v. Vortex Fishing Systems Inc. (9th Cir. 2004) 379 F.3d 701
trustee expenses incurred in marketing & selling property &
defending stay relief to prevent foreclosure 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 fees not proper for duties that are not practice of law
In re Garcia (9th Cir. BAP 2005) 335 B.R. 717
trustee may withhold non-debtor, co-owner’s share of
proceeds from sale of property pending resolution of claims by
co-owner relating to such sale
In re Flynn (9th Cir. BAP 2003) 297 B.R. 599 [41 Bankr.Ct.Dec. 211]
waiver of fees and costs
-entitlement to fees and costs upon dismissal of an
 involuntary bankruptcy petition may be waived if all
parties consent or if debtor waives relief
In the Matter of Maple-Whitworth (9th Cir. 2009) 556 F.3d 742
Bankruptcy action
In re DeVille (9th Cir. 2004) 361 F.3d 539, 58
Based on agreement
Tarver v. State Bar (1984) 37 Cal.3d 122
In the Matter of Silverton (Review Dept. 2001) 4 Cal. State
Bar Ct. Rptr. 252
Based on bad faith action
In re DeVille (9th Cir. 2004) 361 F.3d 539, 58
Basis for court decision
In re DeVille (9th Cir. 2004) 361 F.3d 539, 58
large fee reduction requires a relatively specific articulation of
court’s reasoning
Stetson v. Grissom (9th Cir. 2016) 821 F.3d 1157
Between attorneys
the merits of a declaratory relief action must be resolved in
the trial court’s discretion
Carder v. Patten (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]
Billing
billing service, use of
LA 423 (1983), LA 374 (1978)
clients must understand and consent to billing practices
CAL 1996-147, OC 99-001
“double billing”
CAL 1996-147, OC 99-001
fee agreement based on fixed hourly rate but provides for
possible increase found valid
justification
-in billing for paralegal work, court, in its discretion, may
not allow hearsay by attorney as the sole justification for
award such fees
Muniz v. United Parcel Services Inc. (9th Cir. 2013) 738 F.3d 214
“over-billing”
-district court may not reduce fees without identifying the
hours spent inefficiently or providing any explanation of
the particular degree of reduction
Perland v. Conrad Credit Corp. (9th Cir. 2001) 244 F.3d 1145
-district court may review attorney’s “billing judgment” and
reduce fees if some tasks should have been delegated to
associate or paralegal
OC 99-001
-fiduciary duty to clients, both civil and criminal, requires
that fee agreements and billings be fair, reasonable, and
fully explained to the client
Bird, Marella, Boxer & Wolpert v. Superior Court
-preparation of false and misleading billing statements
involves moral turpitude
In re Matter of Berg (Review Dept. 1997) 3 Cal. State
Bar Ct. Rptr. 725
LA 522 (2009)
-trial court reduced the rates based on findings that the
matter was not complex, that it did not go to trial, that the
same partners were doing work that could have been
done by lower-billing attorneys and that all attorneys were
doing work that could have been done by paralegals
rates originally agreed to by a client may not be raised by a
law firm without first notifying the client
LA 479 (1994)
services of law clerks, legal assistants (paralegal), and
secretaries
974 F.2d 127
CAL 2002-159
Bonus
to lay employee
LA 457
Brandt fees
R & R Sails, Inc. v. Insurance Co. of Pennsylvania
(9th Cir. 2012) 673 F.3d 1240
Charge interest
CA Constitution Art. 15, Usury § 1, par. 2
-on past due receivables
SD 1983-1, SD 1976-8, SF 1970-1
Child custody cases
fee-shift of attorney’s fees pursuant to Family Code section
7605
post-divorce child custody fee order requires trial court to first
consider parties’ relative circumstances
[81 Cal.Rptr.3d 241]
Child support
attorney’s fees not classified as gross income in calculating
child support obligations
child support act
-putative father’s successful defense of paternity/ reimbursement action does not include right to attorney fees
no abuse of discretion when award of attorney fees to mother in child support dispute was based on parties’ needs, income, assets and abilities
CivCode section 51 et seq. (Unruh Civil Rights Act)
party championed another contract with a fees provision
fees denied where prevailing defendant intertwined its claims under two related but different code sections that permitted fee awards only to prevailing plaintiffs
CivCode section 1717
absent a contractual fees provision, a party cannot recover attorney’s fees, even if it prevails in litigation
abuse of discretion where the court held there was no prevailing party even though the result was lopsided in favor of the plaintiff
attorney litigating in propria persona
-attorney litigating in propria persona cannot be said to incur compensation for his time and lost business opportunities
award of discovery sanctions under CCP § 2030(1) analogized to award of attorney’s fees under CO § 1717
-may recover reasonable attorney fees for legal services of assisting counsel
attorney represented by other members of his law firm is entitled to recover attorney fees where the representation involved the attorney’s personal interests and not those of the firm
-attorney’s fees may be awarded to attorneys who represent each other in fee dispute with client that attorneys jointly represented
Farmers Insurance Exchange v. Law Offices of Conrado Joe Sayas, Jr. (9th Cir. 2001) 250 F.3d 1234
award of attorney’s fees applies mutually and equally to all parties even if written agreement is unenforceable
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)
deen 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
maturity of remedy when contract permits recovery of attorney fees
party that prevails is entitled to attorney’s fees only if it can prove it would have been liable for such fees if the opposing party had prevailed
plaintiff not prevailing party entitled to attorney fees when successful on defendant’s appeal from denial of attorney fees
plaintiffs who were assigned developer’s express indemnity cross-action against subcontractor were liable for attorney fees to subcontractor who prevailed in trial
standard third-party indemnity clause not within scope
voluntary dismissal of one contract claim does not preclude recovery of attorney’s fees on another claim
CDF Firefighters v. Maldonado (2011) 200 Cal.App.4th 158 [132 Cal.Rptr.3d 544]
Class action
absent class members not liable for employer’s attorney’s fees in overtime dispute
amount of attorney’s fees determined to be reasonable in light of quantity and quality
attorney’s failure to disclose fee-splitting agreement to court before obtaining approval of attorney’s fees in class action settlement barred later enforcement of the agreement
attorney’s fees approved by the trial court in a class action settlement are presumed to be reasonable where defendant agreed not to oppose award of certain amount to class counsel
In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]
attorney’s fees for securities class action suits should be based on individual case risk
In re Quantum Health Resources, Inc. (C.D. Cal. 1997) 962 F.Supp. 1254
attorney’s fees should be adequate to promote consumer class action
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award of attorney’s fees denied where shareholder’s class action against corporation did not confer sufficient benefits to shareholders under the substantial benefit doctrine and where plaintiff did not engage in reasonable effort to resolve dispute prior to litigation

Pipefitters Local No. 636 v. Oakley, Inc. (2010) 180 Cal.App.4th 1542 [104 Cal.Rptr.3d 78]

awarded pursuant to Civil Code section 1717

basis for court decision

Stetson v. Grissom (9th Cir. 2016) 821 F.3d 1157
basis of award to an unnamed member of putative class who defeats class certification

clear sailing agreements

In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]
common fund doctrine defined

AdTrader, Inc. v. Google LLC (9th Cir. 2021) 7 F.4th 803
dispute among class counsel

Carder v. Patten (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]
district court presiding over settlement fund had equitable power to award attorney fees for work outside litigation immediately before court where that work helped create settlement fund

Wininger v. SI Management, L.P. (9th Cir. 2002) 301 F.3d 1115
large fee reduction requires a relatively specific articulation of court’s reasoning

Stetson v. Grissom (9th Cir. 2016) 821 F.3d 1157
“lodestar” multiplier method when risk was slight

negative multiplier decreasing the lodestar is justified where amount of time attorney spent on case was unreasonable and duplicative

no abuse of discretion where trial court granted a temporary restraining order to prevent firm from distributing fees to itself without court approval

settlement shall not include attorney fees as portion of common fund established for benefit of class

AdTrader, Inc. v. Google LLC (9th Cir. 2021) 7 F.4th 803
Staton v. Boeing Co. (9th Cir. (Wash.) 2003) 327 F.3d 938
In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 [96 Cal.Rptr.3d 127]
standing to appeal awards of

Stetson v. Grissom (9th Cir. 2016) 821 F.3d 1157
Lobatz v. U.S. West Cellular (9th Cir. 2000) 222 F.3d 1142
-class member lacks standing to object to attorney’s fees and costs because attorney failed to demonstrate how the award adversely affected that member or the class

Glasser v. Volkswagen of America, Inc. (9th Cir. 2011) 645 F.3d 1084
-objector has standing to appeal deial of own claim for fees even if objector did not submit a settlement claim

Stetson v. Grissom (9th Cir. 2016) 821 F.3d 1157
trial court acted within its discretion in awarding 33.33 percent of common fund as reasonable attorney fees

under Code of Civil Procedure section 916
-former attorneys enjoined from prosecuting suit for fees against litigants while judgment was pending on appeal

under Federal Rule of Civil Procedure 23(h), the practice of setting the deadline for class members to object to fee awards before the actual motion for fees borders on denial of due process in that the class is denied the full and fair opportunity to examine and oppose the motion

In re Mercury Interactive Corp. (9th Cir. 2010) 618 F.3d 988
Collection of [See Collections.]

CAL 1982-68

attorney collection agency

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

bankruptcy action

bankruptcy court must scrutinize a law firm’s unsecured claim for attorney’s fees

In re Marquam Investment Corporation (9th Cir. 1991) 942 F.2d 1462
billing service, use of

LA 423 (1983), LA 374 (1978)
collection agency, use of

LA 522 (2009), LA 373 (1978)
use of state procedure to execute federal judgment

In re Levander (9th Cir. 1999) 180 F.3d 1114
Confession of judgment signed by client to assure fee collection

improper

Hulland v. State Bar (1972) 8 Cal.3d 440 [105 Cal.Rptr. 152]
In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735
Conflict of interest

Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354
United States ex. Rel. Alnoor Virani v. Jerry M. Truck Parts & Equipment, Inc. (9th Cir. 1996) 89 F.3d 574
Cal Pak Delivery, Inc. v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 Cal.Rptr.2d 207]
Conservatorship of Chilton (1970) 8 Cal.App.3d 34, 43 [86 Cal.Rptr. 860, 866]

attorney engaged in conflicting representation without obtaining informed written consent not entitled to recover fees

Rodriguez v. Disner (9th Cir. 2012) 688 F.3d 645
Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354
fees paid by third-party

-litigation funding

CAL 2020-204
lump sum payment of fees and costs does not create inherent conflict

People v. Doolin (2009) 45 Cal.4th 390 [87 Cal.Rptr.3d 208]
no recovery of attorney’s fees where attorney engaged in conflicting representation without obtaining informed written consent
Rodriguez v. Disner (9th Cir. 2012) 688 F.3d 645
Image Technical Services v. Eastman Kodak Co. (9th Cir. 1998) 136 F.3d 1354
where the attorney’s ethical violation in question is a conflict of interest between the attorney and the client, the appropriate fee is zero
Fair v. Bakhtiari et al. (2011) 195 Cal.App.4th 1135 [125 Cal.Rptr.3d 765]
Conflict of interest, fees paid by co-defendant
U.S. v. Wells (9th Cir. (Mont.) 2005) 394 F.3d 725
Conflict of interest, fees paid by third party
Strolov v. Strolov, Inc. (9th Cir. 1987) 813 F.2d 997
CAL 1975-35
Conservatorship
Attorney fees are not awarded when matter is resolved or settled without the actual appointment of a conservator
Conservatorship of Brokken (2021) 61 Cal.App.5th 944 [275 Cal.Rptr.3d 892]
Conservatee cannot obligate conservatorship estate for payment of attorney’s fees
Young, etc. v. Thomas (1989) 210 Cal.App.3d 812 [258 Cal.Rptr. 574]
Contingent [See Contingent Fee.]
Contract
Attorney fees awarded under contract to law firm seeking to collect unpaid legal bills
award of fees may be proper under broadly-worded attorney fee provision even where claim did not arise out of the agreement
contingency lawyer may negotiate a fee contract that gives first proceeds to the lawyer and imposes on client greater risk of non-payment
LA 526 (2015)
contract making material changes to existing contingency fee contract must comply with Business and Professions Code § 6147
contrary to law, policy, or morals
defendant-sellers in real estate case are not required to seek mediation prior to recovery of attorney fees
denial of attorney fees where party is not-signatory under contract and denied third-party beneficiary status
denial of award of fees where each party agreed under written contract to pay their own attorney’s fees for arbitration and ancillary judicial proceedings
denial of fees where contract is deemed to be entirely voided versus award of fees where a contract is found to be divisible, voidable, or rescindable
Golden Piscos, Inc. v. Wahl Marine Construction (9th Cir. 2007) 495 F.3d 1078
denial of fees where party prevailed in enforcing contract that contained no attorney’s fees provision while losing party championed another contract with a fees provision
fee agreements and billings must be fair, reasonable, and fully explained to the client
In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980
members of dissolved LLC are liable for attorney fees up to amount distributed upon dissolution for breach of contract by LLC
no recovery of attorney’s fees when contractual condition of mediation prior to court action not satisfied
recovery of attorney’s fees may be awarded notwithstanding an invalid contract except when parties are in pari delicto
social security cases
Crawford v. Astue (9th Cir. 2009) 586 F.3d 1142
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In re Penrod (9th Cir. 2015) 802 F.3d 1084
Scott Co. of California v. Blount Co. (1999) 20 Cal.4th 1103 [86 Cal.Rptr.2d 614]
Yoon v. Cam IX Trust (2021) 60 Cal.App.5th 388 [274 Cal.Rptr.3d 506]
Burkhalter Kessler Clement & George LLP v. Hamilton (2018) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]
Hjelm v. Prometheus Real Estate Group, Inc. (2016) 3 Cal.App.5th 1155 [208 Cal.Rptr.3d 394]
Pueblo Radiology Medical Group, Inc. v. J. Dalton Gerlach et al. (2008) 163 Cal.App.4th 826 [77 Cal.Rptr.3d 880]
-attorney fees may be awarded to more than one prevailing party in a breach of contract dispute
Burkhalter Kessler Clement & George LLP v. Hamilton (2018) 19 Cal.App.5th 38 [228 Cal.Rptr.3d 154]
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-attorney fees may not be awarded to a prevailing attorney acting in pro se
  Cal.App.4th 431 [124 Cal.Rptr.3d 637]

-denial of attorney fees where party is non-signatory under contract and denied third-party beneficiary status

-denial of fees where party prevailed in enforcing contract that contained no attorney’s fees provision while losing party championed another contract with a fees provision

-distinction between prevailing in the underlying claim of breach of contract and prevailing in proving the contract contains an applicable attorney fee provision

-equitable principles applied to reduce fees by 90% where court found prevailing litigant had unnecessarily prolonged the litigation and counseled time was not reasonably incurred

-limited success of plaintiff’s enforcement of consent decree should have resulted in denial of attorney fees

-misuse of attorney fee claims sometimes leads to protracted litigation that consumes judicial resources and client money, serves no public purpose, and impairs image of legal profession

-party claiming entitlement to fees estopped from later challenging the fees provision


-party that prevails is entitled to attorney’s fees only if it can prove it would have been liable for such fees if the opposing party had prevailed


Copyright Act
  Ryan v. Editions Limited West, Inc. (9th Cir. 2015) 786 F.3d 754

Caldkin v. Loose (9th Cir. 2009) 569 F.3d 1142

-court misapplied the factors on which it focused while omitting analysis of other factors that may have allowed award of attorney fees
  Glacier Films (USA), Inc. v. Turchin (9th Cir. 2018) 896 F.3d 1033

-does not preempt California law permitting contractual fees-shifting provisions
  Ryan v. Editions Limited West, Inc. (9th Cir. 2015) 786 F.3d 754

-use of block billing rather than listing separately time expended to perform each task
  Ryan v. Editions Limited West, Inc. (9th Cir. 2015) 786 F.3d 754

Costs

-bail bond forfeiture proceedings

-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

-district erred in allowing for award of pro hac vice fees as taxable costs and costs for editing and synchronizing deposition video tapes
  Kalitta Air L.L.C. v. Central Texas Airborne System Inc. (9th Cir. 2013) 741 F.3d 955

County beneficiary of SSI benefits in debtor-creditor relationship with recipients of county funds no duty to share costs of plaintiff’s attorney’s fees
  Neal v. County of Stanislaus (1983) 141 Cal.App.3d 534 [190 Cal.Rptr. 324]

-court has discretion to award under Criminal Justice Act
  Matter of Baker (9th Cir. 1982) 693 F.2d 925

-court must consider relevant guidelines in setting fees
  Fitzharris v. Wolf (9th Cir. 1983) 703 F.2d 836

-Criminal law matter

-court imposed on criminal defendant [a criminal laboratory analysis fee] and a drug program fee under Penal Code § 128(a) which constituted punishment pursuant to Legislature’s intent
  People v. Ruiz (2018) 4 Cal.5th 1100 [232 Cal.Rptr.3d 714]

-court may award crime victim attorney’s fees in a restitution order when the victim incurred the expenses to participate in law enforcement’s investigation and prosecution of defendant
  U.S. v. Evraud (9th Cir. 2015) 809 F.3d 462

—lodestar method not applicable in determining attorney fees in crime victim restitution awards
  People v. Taylor (2011) 197 Cal.App.4th 757 [128 Cal.Rptr.3d 399]

—Delay of client’s matter to collect [See Unpaid fee.]
  Business and Professions Code section 6128
  CAL 1968-16

—when court awards none
  LA(I) 1962-4

-Demand from third party

—LA 226 (1955)
  award of attorney fee provision in contract applies to third-party beneficiary


—third-party claimant who was not intended beneficiary of attorney fee clause in contract denied award

-Derivative action


-Determination of [See Bid for legal work.]

-agreement
  -in divorce
  LA 226 (1955)
  by statute and contract
  Code of Civil Procedure section 1021
charge less than
-allowed by court
  LA 65 (1931)
-schedule, custom, or statute
  LA 102 (1937)
charge more than allowed by court
  LA(0) 1962-4
quote specific amount for certain services
  LA 342 (1973)
rates increased during representation
  235 Cal.App.3d 1569
  LA 479 (1994)
-fee agreement based on fixed hourly rate but provides
  for possible increase found valid
  In re County of Orange (C.D. Cal. 1999) 241 B.R. 212
Discharge of attorney with cause
  attorney entitled to collect for services rendered prior to
  misconduct
  attorney's behavior which undermines trust may be grounds
  for discharge
  Moser v. Western Harness Racing Association (1948) 89
  Cal.App.2d 1, 8 [200 P.2d 7]
  client has implied right to discharge
  Fracasse v. Brent (1972) 6 Cal.3d 784 [100 Cal.Rptr. 385]
  failure to use ordinary care furnishes cause for discharge
  Salopek v. Schoemann (1942) 20 Cal.2d 150, 153 [124
  P.2d 21]
Disclosure in bankruptcy proceeding
  LA 452
  lien against client file
  -void
  Cal.App.3d 999, 1006 [124 Cal.Rptr. 668]
Discounted as consideration for referrals
  CAL 1983-75
Discretion of trial judge to award in county actions for recovery
  of support payments
  County of Kern v. Ginn (1983) 146 Cal.App.3d 1107 [194
  Cal.Rptr. 512]
Disgorgement of excessive fees by bankruptcy petition preparer
  for engaging in unauthorized practice of law
  Taub v. Weber (9th Cir. 2004) 366 F.3d 966
Disgorgement of fees and costs as equitable relief
  In re S.S. Retail Stores (9th Cir. 2000) 216 F.3d 882 [36
  Bankr.Ct.Dec. 79]
  Cal.Rptr.3d 60]
  funds derived from illegal activity and used to pay attorney's
  fees may be subject to forfeiture
  (9th Cir. 2010) 617 F.3d 1127
Disgorgement of fees in bankruptcy matter as amount paid
  exceeds reasonable value of work performed
  Shalaby v. Mansdorf (In re Nakhuda) (9th Cir. BAP 2016)
  544 B.R. 886
Dispute
  absent a contract determining a different disposition, attorney
  fees awarded under Labor Code section 1194, should be
  made payable directly to the attorney
  Henry M. Lee Law Corporation v. Superior Court (Chang)
  (2012) 204 Cal.App.4th 1375 [139 Cal.Rptr.3d 712]
  absent agreement, fees awarded pursuant to California
  FEHA belong to attorneys who labored on case and not to
  client
  Flannery v. Prentice (2001) 26 Cal.4th 572 [110
  Cal.Rptr.2d 808, 28 P.3d 860]
  -limited to cases where the parties do not have an agreement as to award of fees
  [2 Cal.Rptr.3d 160]

  action brought by criminal defendant against former counsel
  for billing improprieties is not necessarily a claim of legal
  malpractice
  106 Cal.App.4th 419 [130 Cal.Rptr.2d 782]
  attorney cannot use confidences of former client to challenge
  client's Chapter 7 discharge of fees owed
  In re Rindlisbacher (9th Cir. BAP 1998) 225 B.R. 180 [33
  between law firm and former shareholder
  -former shareholder has no ownership or lien interest
  upon fees owed to firm by client
  1114 [84 Cal.Rptr.2d 361]

  binding private arbitration clause in attorney-client fee
  agreement may be enforced under the California Arbitration
  Act (CAA) once the Mandatory Fee Arbitration Act (MFAA)
  arbitration process is over
  Schatz v. Allen Matkins Leck Gamble & Mallory LLP
  (2009) 45 Cal.4th 1034 [87 Cal.Rptr.3d 700]
  Greenberg Glusker Flaman Claman & Machtinger LLP v.
  Rosenson (2012) 203 Cal.App.4th 688 [137 Cal.Rptr.3d
  489]

  binding private arbitration clause in attorney-client fee
  agreement not effective where client requested mandatory
  arbitration pursuant to State Bar rules for fee disputes
  1034 [79 Cal.Rptr.2d 567]

  client given benefit of doubt regarding modified contract for fees
  Baron v. Mare (1975) 47 Cal.App.3d 304[120 Cal.Rptr.
  675]

  conflict of interest not created by
  LA 521 (2007)

  criminal defendant need not allege that he was innocent of the
crime charged in order to bring an action against former
law firm over a fee dispute
  106 Cal.App.4th 419 [130 Cal.Rptr.2d 782]

  funds properly withdrawn from a client trust account under
rule 4-100(A)(2) and later disputed by the client do not need
  to be re-deposited into the trust account
  CAL 2006-171

governmental entity

  -municipal indebtedness or liability limitations under
article XVI, section 18 of the California Constitution
  --contingency fee contract between attorney and city
did not violate the constitutional municipal debt
  limitation because attorney's fees were neither a charge
  against the city's general fund nor an obligation
to be by tax levies
  1361 [8 Cal.Rptr.3d 680]

jurisdiction issues
  In re County of Orange (C.D. Cal. 1999) 241 B.R. 212 [4

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
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  1460 [78 Cal.Rptr.3d 483]

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

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with co-counsel
- terminated attorney could not recover attorney’s fees in quantum meruit from former co-counsel notwithstanding compliance with rule 2-200

Dissolution
  In re the Marriage of Tharp (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 375]
  In re Marriage of Munguia (1983) 146 Cal.App.3d 853 [194 Cal.Rptr. 199]
  fees for wife’s attorney in dissolution dischargeable in bankruptcy
  In re Gibson (9th Cir. 1989) 103 B.3d 218
  no abuse of discretion when award of attorney fees to mother in child support dispute was based on parties’ needs, income, assets and abilities
  post-divorce child custody fee order requires trial court to first consider parties’ relative circumstances
  rationale for awarding attorney’s fees in dissolution of marriage cases
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    In re the Marriage of Tharp (2010) 188 Cal.App.4th 1295 [116 Cal.Rptr.3d 375]

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    Jeff D. v. Evans (9th Cir. 1984) 743 F.2d 648, 650-651

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  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

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  Carder v. Patten (2010) 189 Cal.App.4th 92 [116 Cal.Rptr.3d 652]

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  post-dissolution profits from unfinished partnership business
  Heller Ehrman LLP v. Davis Wright Tremaine LLP (2018) 4 Cal.5th 467 [229 Cal.Rptr.3d 371]
    -dissolved law firm no property interest in the fees or profits associated with unfinished hourly fee matters

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
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  hold client’s papers
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  unilateral withdrawal of funds by attorney
  LA 438 (1985)

Division when partnership dissolves
  valuation of buyout price for dissociating partner

Donation of legal fees
  LA 434 (1984)
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  LA 428 (1984)
  for charitable auction
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Driver License Compact
  no award of attorney’s fees under Code of Civil Procedure section 1021.5 where benefit did not affect general public
  Villarreal v. Gordon (2020) 44 Cal.App.5th 233 [256 Cal.Rptr.3d 940]

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

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  value of an estate is a factor in setting fees and is consistent with rule 4-200

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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]

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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
Cal.Rptr.2d 39]
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
Cal.Rptr.2d 723]
administrator’s attorney’s fee for representing administrator
as heir
LA 237 (1956)
atorney for administrator claiming fees for extraordinary
services
Cal.Rptr.3d 573]
FEES

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 419
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
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
CAL 1996-147, CAL 1994-135
OC 93-002
fee charged in excess of reasonable value of services does not of itself warrant discipline
Herracher v. State Bar (1935) 4 Cal.2d 399, 401-402 [49 P.2d 832]
gross overcharge by attorney may warrant discipline
Bushman v. State Bar (1974) 11 Cal.3d 558, 562, 564
[113 Cal.Rptr. 904, 522 P.2d 312]
In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 380
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
Bennett v. State Bar (1990) 50 Cal.3d 221
Ballard v. State Bar (1983) 35 Cal.3d 274
In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861
In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 349
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
more than minimal preliminary services required to justify retention of advanced fees
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315

(2022 (updated entries through 12/31/2021) 300 See How to Use This Index, supra, p. i
FEES

until after disciplinary action initiated.
Segal v. State Bar (1988) 44 Cal.3d 1077 [245 Cal.Rptr. 404]

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
do 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.
Pfingsten v. Ronan Engineering Co. (9th Cir. 2002) 284 F.3d
999
defendant entitled to attorney’s fees when claim filed by county
found to be frivolous and brought to harass defendant.
Cal.Rptr.3d 837]

Family law
In re Marriage of Erickson and Simpson (2006) 141
Cal.App.4th 797 [46 Cal.Rptr.3d 253]

abuse of discretion where court refused and failed exercise
discussion; 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.
Cal.Rptr.3d 239]

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.
In re Marriage of Sprague & Speigal-Sprague (2003) 105
Cal.App.4th 215 [129 Cal.Rptr.2d 261]

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 of Joshua S. (2008) 42 Cal.4th 945 [70
Cal.Rptr.3d 372]

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)

91]

Sedgwick v. Midland Credit Management (9th Cir. 2009)
707 [46 Cal.Rptr.3d 253]

1462 [2 Cal.Rptr.3d 546]

authorizer’s authority to determine own jurisdiction
-authority to rule on the issue does not always mean
authority to make a binding (and hence unreviewable)
ruling on the issue.

In re Marriage of Sprague & Speigal-Sprague (2003) 105
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Code §§ 7604 and 7605)

Cal.Rptr.3d 676]

If the attorney has ceased to be the attorney for the party in
whose behalf the order was made, the attorney may enforce
the order only if it appears of record that the attorney has
given to the former client or successor counsel 10 days'
written notice of the application for enforcement of the order.
During the 10-day period, the client may file in the
proceeding a motion directed to the former attorney for
partial or total reallocation of fees and costs to cover the
services and cost of successor counsel. On the filing of the
motion, the enforcement of the order by the former attorney
shall be stayed until the court has resolved the motion.

Family Code section 272

no abuse of discretion when award of attorney fees to
mother in child support dispute was based on parties' needs,
income, assets and abilities.
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]

subject to subdivision (c), the order providing for payment of
the attorney’s fees and costs may be enforced directly by the
attorney in the attorney’s own name or by the party in whose
behalf the order was made.

Family Code section 272

where the court orders one of the parties to pay attorney’s
fees and costs for the benefit of the other party, the fees and
costs may, in the discretion of the court, be made payable in
whole or in part to the attorney entitled thereto.

Family Code section 272

Fees arbitration
Business and Professions Code sections 6200-6206
Cal.App.4th 821 [54 Cal.Rptr.3d 685]

91]

1462 [2 Cal.Rptr.3d 546]

authorizer’s authority to determine own jurisdiction
-authority to rule on the issue does not always mean
authority to make a binding (and hence unreviewable)
ruling on the issue.

Glaser, Weil, Fink, Jacobs and Shapiro, LLP v. Goff
(2011) 194 Cal.App.4th 423 [125 Cal.Rptr.3d 26]

attorney fees may be awarded to attorneys who represent
each other in fee dispute with client that attorneys jointly
represented.

[133 Cal.Rptr.3d 274]

binding agreement
-arbitration in accordance with Business and Professions
Code section 6200 et seq. is non-binding unless parties
agree in writing to make it binding.

Glaser, Weil, Fink, Jacobs and Shapiro, LLP v. Goff
(2011) 194 Cal.App.4th 423 [125 Cal.Rptr.3d 26]

independent review on issue of whether the parties
agreed to binding arbitration.

Glaser, Weil, Fink, Jacobs and Shapiro, LLP v. Goff
(2011) 194 Cal.App.4th 423 [125 Cal.Rptr.3d 26]

binding clause in retainer agreement

Cal.App.4th 821 [54 Cal.Rptr.3d 685]

correction of arbitration award

Cal.App.4th 1 [97 Cal.Rptr.3d 329]

notice of client’s right to arbitrate a dispute must be given
after dispute has arisen.
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.

Glaser, Weil, Fink, Jacobs and Shapiro, LLP v. Goff
(2011) 194 Cal.App.4th 423 [125 Cal.Rptr.3d 26]

waiver of due to filing pleading for affirmative relief.

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

Cal.App.4th 1351 [95 Cal.Rptr.3d 252]

Cal.Rptr. 95]
FEES

Financing

**CAL 2007-172, CAL 2002-159, CAL 1980-53**
LA 308 (1968), SD 1983-1
Board Policy Statement (April 20, 1967) Ill.A.1., supra
credit card
LA(1) 1972-26, SD 1974-6, SD 1972-13, SD 1972-10
Board of Governors Policy Statement (April 20, 1967) Ill.A.1., supra
through banks
LA 288 (1965)
through lending institutions
LA 288 (1965)

Finder’s fee

**Tuohey & Barton v. Anaheim Memorial Hospital** (1986) 187 Cal.App.3d 609 [231 Cal.Rptr. 706]
For
alimony payments, processing of
LA(1) 1969-1
child support payments, processing of
LA(1) 1969-1
collections
LA 275 (1963), LA 263 (1959), LA(1) 1955-1
service of process by lay employee
LA(1) 1968-4

Foreclosures

attorney fees awarded where borrowers obtained TRO
in an action seeking to prevent a nonjudicial foreclosure, the borrowers “prevailed” for purposes of attorney fees pursuant to Civ. Code § 2924.12, subd. (i), because they obtained preliminary, not solely permanent, injunctive relief against a trustee’s sale of their home
statutory fees limitation applies to both judicial and non-judicial foreclosures

Forwarding fees

Rule 2-108(A), Rules of Professional Conduct (operative until May 26, 1989)

Rule 2-200, Rules of Professional Conduct (operative as of May 27, 1989)
CAL 1994-138, LA 486, LA 467

Freedom of Information Act

Kasz v. Whitman (9th Cir. (Nev.) 2003) 325 F.3d 1178
fees awardable if public benefit outweighs economic benefit
United Assn. of Journeymen Apprentices v. Department of the Army (9th Cir. 1998) 841 F.2d 1459

Frivolous action under Code of Civil Procedure section 128.7
Mccluskey v. Henry (2020) 56 Cal.App.5th 1197 [270 Cal.Rptr.3d 803]

Government

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
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 prevailing party
**City of Monte Sereno v. Padgett** (2007) 149 Cal.App.4th 1530 [58 Cal.Rptr.3d 218]
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
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 582]
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
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
Morison v. Commissioner of Internal Revenue (9th Cir. 2009) 565 F.3d 568
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
FEES

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(i) 1971-9
SD 1973-7

Guidelines for courts to follow [See Award of attorneys’ fees. Sanctions.]

29 U.S.C section 1132(q)

Hummell 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 1068, 1073

Handicapped Children’s Protection Act

attorneys’ 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

Homeowners Bill of Rights (HOBR)
request for attorney fees

Hybrid, hourly and contingent
OC 99-001
SF 1999-1

Illegal fee
Coviello v. State Bar (1953) 41 Cal.2d 273
Estate of Gilkison (1998) 65 Cal.App.4th 1443, fn. 2 [77 Cal.Rptr.2d 463]

In the Matter of DeClue (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437
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 (1991), 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 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

In the Matter of DeClue (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437

collecting pre-performance fees in violation of the law

In the Matter of Gordon (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610
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. 2005) 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

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)
CAL 1981-64, SF 1974-4

additional fee 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 should consider indigent losing party’s financial condition before awarding reasonable attorney’s fees to prevailing party
People v. Rodriguez (2019) 34 Cal.App.5th 641 [246 Cal.Rptr.3d 392]

criminal cases

-right to ancillary defense services under Penal Code section 967.9
litigation cost not limited as tool to deny pro per 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
FEES

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’ 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 section 386.6


-fees denied where party failed to satisfy criteria for interpleader action pursuant to Code of Civil Procedure section 386.6


-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


IRS matter

Morrison v. Commissioner of Internal Revenue (9th Cir. 2005) 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


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’s written retainers 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
client may by agreements to secure fees
United States v. Stonehill (9th Cir. 1983) 702 F.2d 1288
common fund doctrine does not apply to contractual medical lien holders in personal injury matters
City and County of San Francisco v. Sweet (1995) 12 Cal.4th 105, 110, 115-117
declaratory relief action to determine prior attorney’s right to fees is not subject to anti-SLAPP motion because suit does not arise from a protected activity
duty to pay medical lien with client’s consent
Rule 4-210(A), Rules of Professional Conduct
equitable lien for fees
equitable lien theory does not apply to contractual lienholders in personal injury matters
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
no lien in absence of contract
Echlin v. Superior Court (1939) 13 Cal.2d 368 [90 P.2d 63]
physician’s
CAL 1988-101
LA 368 (1977), LA 357 (1976)
prior attorney’s lien
CAL 2008-175
priority of attorney liens
-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]

FEES

-attorney’s lien superior to claims of other creditors against a bankruptcy distribution
-attorney’s lien, if valid, on proceeds of client’s subsequent judgment has priority over judgment creditor’s lien on same judgment
in relation to medical lien in contingency fee case
security for fees
Fletcher v. Davis (2004) 33 Cal.4th 61 [14 Cal.Rptr.3d 58]
CAL 2006-170, CAL 1981-62
settlement check issued only to client, but delivered to attorney who has a lien
OC 99-002
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

“Lodestar” multiplier method of fee calculation

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
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]
Rogel v. Lynwood Redevelopment Agency (2011) 194 Cal.App.4th 1319 [125 Cal.Rptr.3d 267]
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
FEES

class action cases
Wininger 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
Mandatory arbitration
Med-pay
Mediation
agreement containing attorney fee provision was inadmissible, judicial estoppel 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
Roa v. Lodi Medical Group, Inc. (1985) 37 Cal.3d 920 [211 Cal.Rptr. 77]
federal tort claims act preempt California Business and Professions Code section 6146 only if litigation is 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. Rosenrem (9th Cir. 2011) 638 F.3d 1177
trial court erred in reducing attorney’s fees in a complex aviation case where it failed to look at other factors such as one attorney had 47 years of experience in aviation accidents and both attorneys had many years of experience as pilots
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
None charged
charitable, educational, and religious organizations
SD 1974-19
for referrals from health plan
LA(I) 1931-3
for will
-leaving money for cause
LA 314 (1970), LA 196 (1952)
-to bank’s customers
SD 1974-21 ½
-to insurance broker’s clients
SD 1976-6
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 lodestar/risk factor
Beaty 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)
959]
Note without without deed of trust may not require compliance with rule
SF 1997-1
Paid by others

Rule 1.8.6
-litigation funding
CAL 2020-204
Rule 3-310(F), Rules of Professional Conduct
accessory of client in felony
LA(I) 1964-1
by corporation to minority shareholder’s attorney
Strotlow v. Strotlow, 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
FEES

-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

People v. Salcido (2019) 42 Cal.App.5th 529 [255 Cal.Rptr.3d 628]

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 201 [901 Cal.Rptr.2d 716]

disclosure of identity


Ralls 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

litigation funding

CAL 2020-204

not privileged information

Ralls 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

LA 471 (1992), LA 456 (1990)

Paid with funds belonging to receivership

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

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 unenforceable


Partnership dissolution

CAL 2020-201, 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 fees 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 enforcement

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

Carnes 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's 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


FEES

absent agreement, fees awarded pursuant to California FEHA belong to attorneys who labored on case and not to client


limited to cases where the parties do not have an agreement as to award of fees


abuse of discretion where the court held there was no prevailing party even though the result was lopsided in favor of the plaintiff

Glacier Films (USA), Inc. v. Turchin (9th Cir. 2018) 896 F.3d 1033 [123 Cal.Rptr.3d 453]

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 anti-SLAPP motion to strike are not entitled to attorney fees because they represented themselves


-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]

FEES

-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 where case brought in a constructive contract action
-attorney fee awarded to party who obtained court order incorporating settlement agreement which includes the requested remedy
  In re Starky (9th Cir. 2014) 522 B.R. 220
-award of fees improper where statute provides for fees in action to enforce documents, even where documents not proven under the statute
  Cal.App.4th 1135 [184 Cal.Rptr.3d 701]
-bankruptcy matter
civil rights cases
  deSaulles v. Community Hospital of the Monterey Peninsula (2016) 62 Cal.4th 1140 [202 Cal.Rptr.3d 429]
-class actions
  absent class members not liable for employer’s attorney’s fees in overtime dispute
-attorney’s fee 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 where 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 party in prevailing party under Civil Rights 1983
  Roberts v. City and County of Honolulu (9th Cir. 2019) 938 F.3d 1020
definition of prevailing party under Code of Civil Procedure § 1021.5
-definition of prevailing party under Civil Code § 1780 et seq.
-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]
-definition of prevailing party under Code of Civil Procedure § 1032 et seq.
  Goodman et al. v. Lozano et al. (2010) 47 Cal.4th 1327 [104 Cal.Rptr.3d 219]
-definition of prevailing party under Civil Rights 1983
denied where litigant is unable to materially alter the legal relationship of the parties by judgment or by consent decree
  Kasra v. Whitman (9th Cir. (Nev.) 2003) 325 F.3d 1178
-entitled to attorney’s fees even without formal judgment
  Rutherford v. Pitchess (9th Cir. 1983) 713 F.2d 1416
-entitled to award of attorney’s fees where sum of jury damage award and defendant’s post-settlement offer exceed defendant’s pre-trial settlement offer
ERISA matter
-both parties may recover, not just prevailing party; claimant must show some degree of success on the merits
- under 29 U.S.C. section 1132(a)(3)  
  
  Castillo v. Metropolitan Life Insurance Co. (9th Cir. 2020) 970 F.3d 1224

family law  

- court ordered attorney’s fees and costs  
  
  Family Code section 272

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]

Calderas v. Department of Corrections and Rehabilitation (2020) 48 Cal.App.5th 601 [261 Cal.Rptr.3d 835]


- court denied plaintiff attorney fees even though plaintiff suffered adverse employment decision in which discrimination was a motivating factor  
  

- prevailing defendant under this statute can only recover fees upon a showing that plaintiff's action was frivolous, unreasonable, or without foundation  
  
  Lopez v. Routt (2017) 17 Cal.App.5th 1006 [225 Cal.Rptr.3d 851]

fees awarded under CCP § 1021.5-rationale for award  


fees 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 granted for action that served to vindicate an important right  


fees granted for litigating a separate case in which defendants were not parties, but where the issue was central to both actions  

Armstrong v. Davis (9th Cir. 2003) 318 F.3d 965

general rule that pro se litigants, attorneys or not, cannot recover statutory attorney’s fees  

Elwood v. Drescher (9th Cir. 2006) 456 F.3d 943

homeowner association dispute over election of board of directors  


jurisdiction of court  

-trial court has jurisdiction to rule on defendant’s motion for attorney fees after motion to quash granted for lack of personal jurisdiction  
  

legal malpractice matter  


may seek attorney’s fees notwithstanding an invalid contract  


need not be named in contract to be entitled to fees  


no fees to prevailing party where planning committee did not have the authority to enact attorney fees as part of the CC&Rs  


no prevailing party status  

Cadkin v. Loose (9th Cir. 2009) 569 F.3d 1142

Escobar v. Bowen (9th Cir. 1998) 857 F.2d 644

Harris v. Rojas (2021) 66 Cal.App.5th 817 [281 Cal.Rptr.3d 462]

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  

Chocate v. County of Orange (2001) 86 Cal.App.4th 312 [103 Cal.Rptr.3d 339]

-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 267]

-plaintiff not prevailing party entitled to attorney fees when successful on defendant’s appeal from denial of attorney fees  


-prevaling party must be determined when awarding attorney fees on motion to compel arbitration  


-voluntary dismissal  


-defendant awarded attorney fees for defending of all claims when dismissal is based on plaintiff's poor reasoning  


- no prevailing defendant where dismissal without prejudice by plaintiff in copyright case does not alter the legal relationship of the parties  

Cadkin v. Loose (9th Cir. 2009) 569 F.3d 1142

-voluntary dismissal of suit against defendant did not necessarily establish defendant’s entitlement to attorney’s fees as prevailing party  


-voluntary dismissal of suit after defendant withdrew disputed rule  

Citizens for Better Forestry v. U.S. Dept. of Agriculture (9th Cir. 2009) 567 F.3d 1128

partially prevailing plaintiff in civil rights action awarded fees where successful claim is isolated from unrelated or unsuccessful claims  


-party prevails if he was able to achieve most or all of his litigation objectives  


party refusing to mediate where contract provision conditioning recovery of attorney's fees upon acceptance of mediation is barred from recovering such fees  


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)
prevailing buyers of real property denied attorney fees as
offset against purchase price
prevailing party as defined by statute versus one defined by
contract
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Watson v. County of Riverside (9th Cir. 2002) 300 F.3d 1092
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following dismissal of bankruptcy proceeding
Prison Reform Litigation Act does not entitle former inmate
to award of attorney fees merely by paying 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
-party 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
Richmond Compassionate Care Collective v. 7 Stars Holistic Foundation (2019) 33 Cal.App.5th 38 [244 Cal.Rptr.3d 636]
-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 federal securities fraud action
Powurs v. Eichen (9th Cir. 2000) 229 F.3d 1249
trial court need not issue a statement of decision if record
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-fees paid directly to plaintiff's counsel by defendant
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Sinyard v. Commissioner of Internal Revenue (9th Cir. 2001) 268 F.3d 756
Octane Fitness, LLC v. Icon Health & Fitness, Inc. (2014) 572 U.S. 545 [134 S.Ct. 1749]
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Canyon View Ltd. v. Lakeview Loan Servicing, LLC (2019) 42 Cal.App.5th 1096 [256 Cal.Rptr.3d 233]
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Yoon v. Cam IX Trust (2021) 60 Cal.App.5th 368 [274 Cal.Rptr.3d 506].

Hjelm v. Prometheus Real Estate Group, Inc. (2016) 3 Cal.App.5th 1155 [208 Cal.Rptr.3d 394].


- absent a contractual fees provision, a party cannot recover attorney's fees, even if it prevails in litigation.
- attorney's fees may be awarded to more than one prevailing party in a breach of contract dispute.
- attorney's fees may not be awarded to a prevailing attorney acting in pro se.


- attorney's fees denied because prevailing party's tort action was not an action to enforce the contract.
- attorney's fees may be awarded to attorneys who represent each other in fee dispute with client that attorneys jointly represented.


- decedent's successor in interest may be liable for attorney's fees under a contract entered into by decedent.


- denial of attorney fees where party is non-signatory under contract and denied third-party beneficiary status.


- denied where action was voluntarily dismissed.


- does not allow firm to recover fees incurred in suit to recover unpaid fees from client when client had already paid entire contractual debt to firm before trial.


- 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.

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

-prevailing party law firm not entitled to attorney fees when represented by their own counsel

-reduction of fees by 90% where court found litigant had unnecessarily prolonged the litigation and counsel's time was not reasonably incurred

-voluntary dismissal of one contract claim does not preclude recovery of attorney's fees on another claim

CDF Firefighters v. Maldonado (2011) 200 Cal.App.4th 158 [132 Cal.Rptr.3d 544]
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Roberts v. City and County of Honolulu (9th Cir. 2019) 938 F.3d 1020
-criteria for award of fees

Roberts v. City and County of Honolulu (9th Cir. 2019) 938 F.3d 1020
under Civil Code section 5975

Coley v. Eskaton (2020) 51 Cal.App.5th 943 [264 Cal.Rptr.3d 740]
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. 2010) 608 F.3d 582
Aguirre v. Los Angeles Unified School District (9th Cir. 2006) 461 F.3d 1114

-in civil rights case, district court abused discretion in reducing attorney fee award

Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106
under Clean Water Act

-fees incurred by defendant during its unsuccessful defense of a private party Clean Water Act lawsuit are not allowable as costs under the Federal Acquisition Regulation statute

Southwest Marine, Inc. v. U.S. (9th Cir. 2008) 535 F.3d 1012
under Code of Civil Procedure section 340.1

under Code of Civil Procedure section 405.38

-in action to expunge a lis pendens, challenging attorney fee award to prevailing party requires petition for writ of mandate, not appeal


-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) 52 Cal.4th 1018 [132 Cal.Rptr.3d 358]
Early v. Becerra (2021) 60 Cal.App.5th 726 [274 Cal.Rptr.3d 866]

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 240]
Center for Biological Diversity v. California Fish and Game Commission (2011) 195 Cal.App.4th 128 [124 Cal.Rptr.3d 467]

Rogel v. Lynnwood Redevelopment Agency (2011) 194 Cal.App.4th 1319 [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 90]
Ramova v. County of Santa Clara (2009) 173 Cal.App.4th 915 [93 Cal.Rptr.3d 278]
Mejia v. City of Los Angeles (2007) 156 Cal.App.4th 151 [67 Cal.Rptr.3d 228]

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Guesada v. Thomason (9th Cir. 1988) 850 F.2d 537
-discovery may be allowed by the trial court
Save Open Space Santa Monica Mountains v. Superior Court (County of Los Angeles) (2000) 84 Cal.App.4th 235 [100 Cal.Rptr.2d 725]
-fee award subsumes novelty, experience, complexity, and results obtained
-fees awarded under CCP § 1021.5 – rationale for award
Vendelkamp v. Whitehouse (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]
Ramon v. County of Santa Clara (2009) 173 Cal.App.4th 915 [93 Cal.Rptr.3d 278]
-limited success against defendants may not warrant reduction of lodestar
Corder v. Gates (9th Cir. 1991) 947 F.2d 374
-multiplier to lodestar ensures counsel’s acceptance of civil rights contingency cases
Bernardi v. Yeutter (9th Cir. 1991) 942 F.2d 562
-multiplier to lodestar no necessary to attack lawyers to meritotious contingency fee cases
-objective
-over billing by attorney
Gates v. Deukmejian (9th Cir. 1992) 977 F.2d 1300
-state obligation to reimburse county
-trial court must make findings to show lodestar calculation applied in welfare benefits litigation
-trial court need not issue a statement of decision if record reflects lodestar or touchstone method was used
-under Civil Code section 1717
causal connection between lawsuit and relief obtained required
Center for Biological Diversity v. California Fish and Game Commission (2011) 195 Cal.App.4th 128 [124 Cal.Rptr.3d 467]
criteria for awarding
  Serrano v. Stefan Merli Plastering Co., Inc. (2011) 52 Cal.4th 1018 [132 Cal.Rptr.3d 358]
  Adoption of Joshua S. (2006) 42 Cal.4th 945 [70 Cal.Rptr.3d 372]
  Wilson v. San Luis Obispo County Democratic Central Committee (2011) 192 Cal.App.4th 918 [121 Cal.Rptr.3d 731]
  Abouab v. City and County of San Francisco (2006) 141 Cal.App.4th 643 [46 Cal.Rptr.3d 206]
  Families Unaffraid to Uphold Rural El Dorado County v. El Dorado County Board of Supervisors (2000) 79 Cal.App.4th 505 [94 Cal.Rptr.2d 205]
denied on the grounds that in pro per party’s petition for fees was untimely
  Esther B. v. City of Los Angeles et al. (2008) 158 Cal.App.4th 1093 [70 Cal.Rptr.3d 596]
denied when no important right or interest was vindicated by the plaintiff’s action
  King v. Lewis (1990) 219 Cal.App.3d 552 [268 Cal.Rptr. 277]
-lawsuit to compel an agency to give a detailed explanation of its decision did not qualify as either a significant benefit or enforcement of an important right affecting the public interest
  Center for Biological Diversity v. California Fish and Game Commission (2011) 195 Cal.App.4th 128 [124 Cal.Rptr.3d 467]
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]
discretion of trial court

enforcement effort alone did not justify fee award
entitled to fees because action resulted in enforcement of an important right affecting the public interest
Serrano v. Stefan Merli Plastering Co., Inc. (2011) 52 Cal.4th 1018 [132 Cal.Rptr.3d 358]
fee award improper where de minimus public benefit
Pipefitters Local No. 636 v. Oakley, Inc. (2010) 180 Cal.App.4th 1542 [104 Cal.Rptr.3d 78]
Save Open Space Santa Monica Mountains v. Superior Court (County of Los Angeles) (2000) 84 Cal.App.4th 235 [100 Cal.Rptr.2d 725]
fees allowed where court held that proceedings involving modification of a permanent injunction were not “final judgments” that would trigger time limits for attorney fees
fees granted for action that served to vindicate an important right
-factors considered under CCP § 1021.5
Serrano v. Stefan Merli Plastering Co., Inc. (2011) 52 Cal.4th 1018 [132 Cal.Rptr.3d 358]
Conservatorship of Whiteley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]
Doe v. Westmont College (2021) 60 Cal.App.5th 753 [274 Cal.Rptr.3d 862]
Early v. Becerra (2021) 60 Cal.App.5th 726 [274 Cal.Rptr.3d 866]
La Mirada Ave. v. City of Los Angeles (2018) 22 Cal.App.5th 1149 [232 Cal.Rptr.3d 338]
Riverwatch v. County of San Diego Dept. of Environmental Health (2009) 175 Cal.App.4th 768 [96 Cal.Rptr.3d 362]
Choi v. Orange County Great Park Corporation (2009) 175 Cal.App.4th 524 [96 Cal.Rptr.3d 90]
Ramon v. County of Santa Clara (2009) 173 Cal.App.4th 915 [93 Cal.Rptr.3d 278]
Mejia v. City of Los Angeles (2007) 156 Cal.App.4th 151 [67 Cal.Rptr.3d 228]
Abouab v. City and County of San Francisco (2006) 141 Cal.App.4th 643 [46 Cal.Rptr.3d 206]
Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of Supervisors (2000) 79 Cal.App.4th 505 [94 Cal.Rptr.2d 205]
FEES

--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
--must be successful party
--fee awarded under CCP § 1021.5 – rationale for award

Serrano v. Stefan Merti Plastering Co., Inc. (2011) 52 Cal.4th 1018 [132 Cal.Rptr.3d 358]
Conservatorship of Whitley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]
Doe v. Westminster College (2021) 60 Cal.App.5th 753 [274 Cal.Rptr.3d 882]
Early v. Becerra (2021) 60 Cal.App.5th 726 [274 Cal.Rptr.3d 866]
La Mirada Ave. v. City of Los Angeles (2018) 22 Cal.App.5th 1149 [232 Cal.Rptr.3d 338]
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]
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 [231 Cal.Rptr.3d 295]
Families Unaffraid to Uplift Rural El Dorado County v. El Dorado County Board of Supervisors (2000) 79 Cal.App.4th 505 [94 Cal.Rptr.2d 205]

Bartling v. Glendale Adventist Medical Center (1986) 184 Cal.App.3d 97, 102-103 [228 Cal.Rptr. 847]
--award of fees improper when plaintiff has personal interest or individual stake in the matter
Adoption of Joshua S. (2008) 42 Cal.4th 945 [70 Cal.Rptr.3d 372]

--non-pecuniary aesthetic interest are sufficient to block an award of attorney's fees otherwise appropriate under section 1021.5
Conservatorship of Whitley (2010) 50 Cal.4th 1206 [117 Cal.Rptr.3d 342]
--requires a full fee award unless special circumstances would render such award unjust
--fees and costs awarded for sheriff's distribution of anti-Bird material
--indirect benefit not sufficient
Smith v. County of Fresno (1990) 219 Cal.App.3d 532 [268 Cal.Rptr. 351]
--limited to successful litigants utilizing judicial process
--on remand, trial court to reevaluate fee award in light of party's success on appeal
Guardians of Turlock's Integrity v. Turlock City Council (1983) 149 Cal.App.3d 584, 601
includes fees for appeal
must be reconsidered on remand of case
--no award of attorney's fees under Code of Civil Procedure section 1021.5 where pecuniary interest of public entity outweighed burden of litigation
--prison inmate's case, successfully litigated

statutory authority
under Code of Civil Procedure 1021.5
Heron Bay Homeowners Assn. v. City of San Leandro (2018) 19 Cal.App.5th 376 [227 Cal.Rptr.3d 885]
--denied in action brought under Government Code section 12974
Dept. of Fair Employment and Housing v. Cathy's Creations, Inc. (2020) 54 Cal.App.5th 404 [269 Cal.Rptr.3d 1]
--fees awarded under CCP § 1021.5 – rationale for award
Heron Bay Homeowners Assn. v. City of San Leandro (2018) 19 Cal.App.5th 376 [227 Cal.Rptr.3d 885]

Pro bono
appointment of counsel for incarcerated, indigent civil defendant
Yarbrough v. Superior Court (1985) 39 Cal.3d 197 [216 Cal.Rptr. 425]
court impressing attorney to represent pro bono an indigent client denies attorney equal protection under Fourteenth Amendment
partial pro bono fee arrangement did not preclude award of fees under C.C.P. § 425.16
Pasterneck v. McCullough (2021) 65 Cal.App.5th 1050 [280 Cal.Rptr.3d 538]
Probate

Probate fee, statutory scale

Probate Code section 10800


Probate Code section 10810

out-of-state attorney entitled to statutory and extraordinary fees as deemed reasonable by the court


Probate Code section 10811

-extraordinary attorney’s fees for settlement of claims against estate of decedent under a contingency fee agreement must be approved by the court after noticed hearing


Promissory note or deed of trust

-ordinary/extraordinary fees distinguished

People v. Manchester Farming Partnership (9th Cir. 2003) 315 F.3d 1176

Public defenders

reimbursable cost of public defender’s service is actual cost to county, not reasonable attorneys’ fees


Public interest case


attorney’s fees paid by losing party in  Code of Civil Procedure section 1021.5

Serrano v. Stefan Merli Plastering Co., Inc. (2011) 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

Ramon v. County of Santa Clara (2009) 173 Cal.App.4th 915 [93 Cal.Rptr.3d 278]

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 Code section 10800


Probate Code section 10810

out-of-state attorney entitled to statutory and extraordinary fees as deemed reasonable by the court


Probate Code section 10811

-extraordinary attorney’s fees for settlement of claims against estate of decedent under a contingency fee agreement must be approved by the court after noticed hearing


Promissory note or deed of trust

attorney take as security for fees

CAL 1981-62

LA 492, SF 1997-1

enforcement of a promissory note in federal court

Federal Savings and Loan Insurance Corporation v. Ferrante (9th Cir. 2004) 364 F.3d 1037

Prosecutorial misconduct

denial of attorney’s fees where government’s litigation position, although substandard, was not vexatious, frivolous, or pursued in bad faith

U.S. v. Manchester Farming Partnership (9th Cir. (Mont.) 2003) 315 F.3d 1176

Public defenders

reimbursable cost of public defender’s service is actual cost to county, not reasonable attorneys’ fees


Public interest case


attorney’s fees paid by losing party in Code of Civil Procedure section 1021.5

Serrano v. Stefan Merli Plastering Co., Inc. (2011) 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

Ramon v. County of Santa Clara (2009) 173 Cal.App.4th 915 [93 Cal.Rptr.3d 278]
FEES

- party may receive attorney's fees incurred in an administrative hearing
  
  Edna Valley v. County of San Luis Obispo (2011) 197 Cal.App.4th 1312 [129 Cal.Rptr.3d 249]

exception to award of attorney's fees

- denial of fees to shareholder who brought shareholder
  class action suit against corporation where the shareholder failed to show an actual and concrete impact
  on corporate action

  Pipetti's Local No. 636 v. Oakley, Inc. (2010) 180 Cal.App.4th 1542 [104 Cal.Rptr.3d 78]
  - where the public entity is the state itself & acts through its
    Attorney General whose public responsibility is to serve the interests of the state at large

  People ex rel. Brown v. Tehama County Board of Supervisors (2007) 149 Cal.App.4th 422 [56 Cal.Rptr.3d 582]

fee shifting

  Ketchum v. Moses (2001) 24 Cal.4th 1122 [104 Cal.Rptr.2d 377]

  Serrano v. Priest (1977) 20 Cal.3d 25 [141 Cal.Rptr. 315, 569 P.2d 1363]

  - no fee shifting in a class action suit against corporation where the shareholder failed to show an actual and concrete impact on corporate action

  Pipetti's Local No. 636 v. Oakley, Inc. (2010) 180 Cal.App.4th 1542 [104 Cal.Rptr.3d 78]
  - successful Brown Act plaintiffs may be denied attorney's fees if defendant can show the existence of special circumstances that would render the award unjust

  Los Angeles Times Communications v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1713 [5 Cal.Rptr.3d 776]
  - trial court ruled that because County Committee did not violate the California Voting Rights Act, it was not liable for attorney fees and costs

  - fees award to consumer group for its participation and work before a public utilities commission on rate stabilization

  - fees denied where remand to an agency of the litigation under the California Endangered Species Act to reconsider a perceived procedural defect did not result in change in the agency's decision

  Center for Biological Diversity v. California Fish and Game Commission (2011) 195 Cal.App.4th 128 [124 Cal.Rptr.3d 467]
  - under Proposition 3, section 1861.10

  State Farm General Insurance Company v. Lara (2021) 71 Cal.App.5th 197 [286 Cal.Rptr.3d 124]

Quantum merit

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

  In re Monument Auto Detail, Inc. (9th Cir. BAP 1998) 226 B.R. 219 [33 Bankr.Cl. Dec. 419]
  - award upheld and not prejudicial even though trial court erred in voiding the contingent fee contract

  - discharged attorney attempts to enforce contingent fee contract made with substituted counsel

  - discharged attorney entitled to reasonable value of services

  Fracasse v. Brent (1972) 6 Cal.3d 784, 792 [100 Cal.Rptr. 385, 484 P.2d 9]


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

  In the Matter of Respondent H (Review Dept.1992) 2 Cal. State Bar Ct. Rptr.234

  CAL 2009-177

  division of fees when amount allowed is insufficient for quantum merit claims of past and existing counsel

  - failure to comply with rule 2-200 does not preclude a quantum merit recovery for services rendered in reliance on an unenforceable fee-sharing agreement


  - attorney precluded from recovering from client

  - failure to comply with rule 2-200 but still permitting a quantum merit recovery distinguished from failure to comply with rule 3-300 which disallows a quantum merit recovery

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

  legal services rendered to executor in individual capacity

  - newspaper did not bring an action against the city to compel disclosure under the Public Records Act and, therefore, not entitled to fees


  no obligation for successor attorney to reserve funds in trust to satisfy the prior attorney's lien


  In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234

  partnership entitled to

  - for unfinished cases taken by departing partner


  precise calculations of an attorney's time spent on a client's matters are not required to support a claim for attorney fees; fact approximation based on personal knowledge will suffice


  prior counsel not required to endorse a settlement check that is jointly payable to attorney pending resolution of dispute.

  Attorney has affirmative duty to seek arbitration or judicial determination of the amount attorney is entitled to receive without delay

  CAL 2009-177

  proper basis for calculating quantum meruit value of client referral is how much of a benefit the previous attorney conferred on successor attorney that the latter unjustly retained

  Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP (9th Cir. 2011) 646 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 merit 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
Cali. 2008-175
under Code of Civil Procedure 1021.5
Doe v. Westmont College (2021) 60 Cal.App.5th 753 [274 Cal.Rptr.3d. 882]
under contingent fee contract, discharged attorney limited to quantum meruit recovery
[204 Cal.Rptr. 531]
under occurrence of contingency, discharged attorney entitled to quantum meruit recovery for reasonable value of services
Cal Pak Delivery, Inc. v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 Cal.Rptr.2d 207]
under 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]
voluntary withdrawal without cause forfeits recovery
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]

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 of a 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. Eichen (9th Cir. 2000) 229 F.3d 1249
Reasonableness of
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
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 Alwood (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
[173 Cal.Rptr. 248]
-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. Eichen (9th Cir. 2000) 229 F.3d 1249
-named member of putative class who defeats class certification
contingent
Rule 2-107, Rules of Professional Conduct (operative until May 26, 1989)
Rule 4-200, Rules of Professional Conduct (operative as of May 27, 1989)
-because contract gamble on result, it may ask for greater compensation than would otherwise be reasonable
Ketchum v. Moses (2001) 24 Cal.4th 112 [104 Cal.Rptr.2d 377]
Rader v. Thrasher (1962) 57 Cal.2d 244, 253 [18 Cal.Rptr. 736, 368 P.2d 360]
FEES


*In re Marriage of Lopez (1974) 38 Cal.App.3d 93, 113-114 [113 Cal.Rptr. 58]

-the 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]

-discussion of and experience to determine fees vested in trial court


-a factors considered by trial court

Dietrich v. Dietrich (1953) 41 Cal.2d 497, 506 [261 P.2d 269]


-family law court fee awards must be reasonable and based on factual showings


-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


-reasonableness of attorney's 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

-May include factors other than hourly rates charged by top law firms


-scope of appellate review


-trial judge has discretion to set reasonable fee – factors considered – appellate standard of review


FEES

-Fees of attorneys for executors, administrators and guardians fixed by court – court has discretionary power to set fee

-Pennie v. Roach (1892) 94 Cal. 515, 518-519 [29 P. 956, 30 P. 106]

-opinions of professional witnesses not binding on court

-Estate of Dorland (1983) 63 Cal. 218, 282

-reasonable fee primarily question of fact for trial court expert testimony unnecessary – appellate standard of review


-Estate of Schnell (1947) 82 Cal.App.2d 170, 175-176

-[185 P.2d 854]

-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


-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. 1996) 896 F.2d 403


-rate determined by current rates where there was delay, rather than by adding interest, and hourly rates were based on relevant community of attorneys engaged in similar complex litigation was not abuse of discretion

-Prison Legal News v. Schwarzenegger (9th Cir. 2010) 608 F.3d 446

-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

-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

to respective parties

FEES

trial judge in best position to determine value of services
Pech v. Morgan (2021) 61 Cal.App.5th 841 [276 Cal.Rptr.3d 97]

trusts
Crocker v. Crocker First National Bank of San Francisco (1943) 60 Cal.App.2d 725, 730 [141 P.2d 482]
-inefficient and duplicative not permitted

under 42 U.S.C. § 406(b) (social security benefits)

Parnish v. Commissioner of Social Sec. Admin. (9th Cir. 2012) 698 F.3d 1215
Crawford v. Astrue (9th Cir. 2009) 586 F.3d 1142

under Civil Code 3186, “reasonable cost of any litigation thereunder” excludes attorney fees
Tri-State, Inc. v. Long Beach Community College District (2012) 204 Cal.App.4th 224 [138 Cal.Rptr.3d 529]

unrelated claims, unsuccessful
McCown v. City of Fontana (9th Cir. 2009) 565 F.3d 1097

welfare proceedings

whole amount of the recovery
SD 1975-4

Reduced to match award
Chromalloy American Corp. v. Fischmann (9th Cir. 1983) 716 F.2d 683

Reduction of 90% of attorney’s fees is not intended to punish a party’s litigation conduct; rather, it is to reflect fees that were not reasonably expended

Referee’s Code of Civil Procedure section 1023
Referral fees [See Division of fees.]

Rules of Professional Conduct 2-200

Refund of fee advanced
In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349

SD 2019-3

attorney who undertakes representation of conflicting interests without consent must refund fees received after conflict arose

flat fee advanced
SD 2019-3

if unearned, except true retainer fee
In the Matter of Roger M. Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668

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

Represent in settlement when fee owed by client comes out of settlement
SD 1975-4

Represent self and co-counsel re contingent fee assigned to third party
SD 1972-1

Request for attorney’s fees under Code of Civ. Proc. § 4370 standing to appeal denial of appeal
mod. 203 Cal.App.3d 895e

Retainer
Matthew v. State Bar (1989) 49 Cal.3d 784, 787-788
Baranowski v. State Bar (1979) 24 Cal.3d 151, 164, fn. 4
Knight v. Russ (1888) 77 Cal. 410, 412 [19 P. 698]

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907
In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757

earned portion to be removed from trust account
SF 1973-14

paid by insurance broker to provide free wills to clients
SD 1976-6

“true” retainer is paid to secure an attorney’s availability over a given time period and is not billed against as services are performed
In the Matter of Anjos (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576

Retroactive application of city ordinance providing for recovery of attorney’s fees found invalid
City of Monte Sereno v. Padgett (2007) 149 Cal.App.4th 1530 [58 Cal.Rptr.3d 218]

RICO

funds for retention of private counsel not exempted from forfeiture of drug defendant’s assets

Sanctions [See Sanctions.]


Cornerstone Realty Advisors, LLC v. Summit Healthcare (2020) 56 Cal.App.5th 771 [270 Cal.Rptr.3d 653]
criteria for recovery of fees and costs in opposing motion for sanctions
In re Marriage of Ermdt and Terhorst (2021) 59 Cal.App.5th 898 [273 Cal.Rptr.3d 765]
frivolous appeal challenging trial court’s denial of an extraordinary fee request

for delay
In re Silberkraus (9th Cir. 2003) 336 F.3d 864

Thompson v. Tega-Rand Intern. (9th Cir. 1984) 740 F.2d 762, 764


-attorney’s fees may not be awarded as a sanction under CCP § 128.7 to a prevailing attorney acting in pro se
Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]

In re Marriage of Ermdt and Terhorst (2021) 59 Cal.App.5th 898 [273 Cal.Rptr.3d 765]

-award of “reasonable expenses” as sanction under CCP § 437(c) does not include authority to include attorney’s fees


frivolous action

-action not frivolous under CCP § 128.7 when it was supported by sufficient evidence to sustain a favorable jury verdict and where it was not prosecuted for an improper purpose

Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150 [80 Cal.Rptr.3d 812]

improper when awarded as full compensation of all attorney fees for violation of a Rule of Court


information in report was protected by confidentiality statute and attorney’s disclosure was intentional, malicious, reckless, and not in the best interest of the child

In re Marriage of Anka & Yaeger (2019) 31 Cal.App.5th 1115 [242 Cal.Rptr.3d 894]
no statutory authority under CCP § 177.5 for imposition of fees against prosecutor for submitting to the court a copy of opposing counsel’s disciplinary record without first providing a copy to opposing counsel


Security for


attorney having a valid but unperfected security interest has priority over other unsecured creditors where the People failed to substantially comply with Penal Code § 186.11


client’s property falsely reported as stolen

LA 329 (1972)

confession of judgment

Huland 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 retainers 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 Turkans (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]

-rule 3-300


In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615

LA 492 (1998)

priority of attorney’s liens


promissory note

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

CAL 1981-62, SF 1997-1

security agreements

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

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

trial court’s award of attorney’s fees against plaintiff’s counsel for violation of an in limine order was neither within the court’s inherent powers nor was authorized by statute

Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150 [80 Cal.Rptr.3d 812]

trust deed

LA(I) 1975-8, LA(I) 1972-2, SD 1976-8

unsecured promissory note does not give attorney a present interest in client’s property to trigger rule 3-300


Settlement

Attorney General may appeal attorney fees in a settlement under Proposition 65


award of fees to prevailing plaintiff in an action brought by the Consumer Legal Remedies Act is mandatory, even where the litigation was resolved by a pretrial settlement agreement


condition settlement on plaintiff’s attorney waiving fees


Pony v. County of Los Angeles (9th Cir. 2006) 433 F.3d 1138

Bernhardt v. Los Angeles County (9th Cir. 2003) 339 F.3d 920

CAL 2009-176

LA 445 (1987)

employer entitled to attorney’s fees from employee suing for employment discrimination where employee initiated litigation following signing of general release of all claims

Linsley v. Twentieth Century Fox Films Corp. (1999) 75 Cal.App.4th 762 [89 Cal.Rptr.2d 429]

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

Sineryard 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]


FEES
FEES

burden of proving fees were covered by award following successful motion to strike

-attorney conducting real estate business
SD 1969-2
with franchisor
LA 423 (1983)
Sports service contracts
Business and Professions Code section 6106.7
Standards applicable to attorney’s fees
Church of Scientology of California v. United States Postal Service (9th Cir. 1983) 700 F.2d 486
Statutory attorney’s fees to prevailing party
Corporations Code section 317
-outside counsel retained by corporation to defend against litigation was not agent of corporation for purposes of statute indemnifying persons sued by reason of such agency for defense costs
Church of Scientology of California v. United States Postal Service (9th Cir. 1983) 700 F.2d 486

Standings applicable to lawyer’s fees

-plaintiff’s counsel

-plaintiff’s letter to defendant is extortion as a matter of law, therefore it is not protected under the anti-SLAPP statute
[173 Cal.Rptr.3d 173]
-pro bono fee arrangement did not preclude award of fees
Pasternack v. McCullough (2021) 65 Cal.App.5th 1050 [280 Cal.Rptr.3d 538]

Splitting
[See Division of fees.]

fees recovered attorney fees

-plaintiff’s voluntary dismissal of all causes of actions against defendants who fail to file an anti-SLAPP motion before strike
doctor by attorneys that would otherwise come within the scope of the anti-SLAPP statute does not lose its coverage simply because it is alleged to have been unlawful or unethical
Contreras v. Dowling (2016) 4 Cal.App.5th 774 [208 Cal.Rptr.3d 707]
defendants not entitled to attorney fees when plaintiff dismissed all claims against defendants prior to motion to strike
defendants who fail to file an anti-SLAPP motion before plaintiff’s voluntary dismissal of all causes of actions against them may not recover attorney fees or costs
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Splitting
[See Division of fees.]

fees recovered attorney fees

-plaintiff’s counsel
hours that are not properly billed to one’s client are also not properly billed to one’s adversary pursuant to statutory authority


plaintiff mandatorily entitled to fees where defendant’s anti-SLAPP motion failed to meet threshold burden of establishing the challenged cause of action arose from protected activity and motion was found to be frivolous


under Civil Code section 405.38


under Penal Code § 1202.4(f)(3), victim of convicted drunk driving was entitled to restitution for attorney services incurred to recover both economic and noneconomic damages


under Vehicle Leasing Act


under Song Beverly Act


Statutory limit


limitations for services performed before and after effective date of Prison Litigation Reform Act


limitations on attorney fees for post-judgment monitoring services performed after effective date of Prison Litigation Reform Act
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United States District Court has ancillary jurisdiction over fee disputes arising from litigation pending before the district court

Curry v. Del Priore (9th Cir. 1991) 941 F.2d 730
unnamed class member who failed to intervene at trial in a federal securities fraud action had standing to appeal the trial court’s award of attorney fees

Powers v. Eichel (9th Cir. 2000) 229 F.3d 1249
withdraw before suing for fees

Trial court improperly withheld past due SSI benefits for payment of attorney’s fees

Trial court’s discretion to grant under Brown Act

court has discretion to deny fees if defendant can show the existence of special circumstances that would render such an award unjust

Los Angeles Times Communications v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1313 [5 Cal.Rptr.3d 776]
Tribal law may require tribal remedy exhaustion in contract disputes


Trustee

entitled to reimbursement for attorney’s fees only if litigation is necessary to preserve the trust

Terry v. Conlan (2005) 131 Cal.App.4th 1445 [33 Cal.Rptr.3d 603]
reasonableness of fees in trust administration, inefficient and duplicative not permitted


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 505 (2000)
contingent fee percentage calculation in view of de minimis time and labor

LA 458
court may refuse to enforce unconscionable contingent fee

Seltzer v. Robinson (1962) 57 Cal.2d 213, 218
discipline imposed for unconscionable fee


In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980
In the Matter of Kroff (Review Dept. 1995) 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 disbarment or discipline.

Herrsch v. State Bar (1935) 4 Cal.2d 399, 401-402

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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 Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 768
gross overcharge by attorney may warrant discipline
[113 Cal.Rptr. 904]
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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. 836
law firm’s costs are irrelevant to claim of unconscionable attorney fees charged to client
LA 518 (2006)
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In re Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296
In the Matter of Swazi Elnazin 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. Rosenkranz (9th Cir. 2011) 638 F.3d 1177
offset recovery used as basis for contingent fee calculation
LA 458
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-preparation of false and misleading billing statements involves moral turpitude
In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725
OC 99-001
partnership agreement
-allocation of fees for unfinished cases taken by departing partner
-contract term providing that if attorney leaves firm and takes clients, then 80% of the subsequent fees shall be paid to the firm may be enforceable
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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
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whether contingent fee charged is unconscionable determined at time contract entered into
[303 P.2d 637]
Swanson v. Hemstead (1944) 64 Cal.App.2d 681, 688
[149 P.2d 404]
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In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896
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trust beneficiaries must generally pay their own attorney’s fees incurred challenging a trustee’s conduct, even if they succeed
under the substantial benefit exception, trial court may award attorney fees to challenging beneficiary where the action substantially benefited all beneficiaries
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Doe v. Westmont College (2021) 60 Cal.App.5th 753 [274 Cal.Rptr.3d 882]
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Doe v. Westmont College (2021) 60 Cal.App.5th 753 [274 Cal.Rptr.3d 882]
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In re Imran Q. (2008) 158 Cal.App.4th 1316 [71 Cal.Rptr.3d 121]
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lien agreement assigning anticipated statutory fees in one case to satisfy fees incurred in another unrelated case does not give rise to
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-denial of fees based on special circumstances under the traditional prevailing party analysis
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-Prison Reform Litigation Act does not entitle former inmate to award of attorney fees merely by obtaining prevailing party status
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Waiver of right to appeal includes waiver of right to argue ineffective assistance of counsel
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- 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
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- not available if attorney abandoned case

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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]

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

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*Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

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*People v. Friend (2009) 47 Cal.4th 1 [97 Cal.Rptr.3d 1]

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*Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

- no valid waiver found


*Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

*People v. Easley (1988) 46 Cal.3d 712 [250 Cal.Rptr. 855]


- no waiver found


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Foote v. Del Papa (9th Cir. (Nevada) 2007) 492 F.3d 1026

*Campbell v. Rice (9th Cir. 2001) 265 F.3d 878

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*Lewis v. Mayle (9th Cir. 2004) 391 F.3d 989

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United States v. Cruz - Mendoza (9th Cir. 1998) 147 F.3d 1069

Defense attorney’s performance was ineffective when attorney failed to adequately investigate, develop, and present mitigating evidence to the jury at the penalty phase of defendant’s capital punishment trial

Washington v. Ryan (9th Cir. 2019) 922 F.3d 419

In re Gay (2020) 8 Cal.5th 1059 [258 Cal.Rptr.3d 363]
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Delay, defendant not prejudiced where counsel required time to adequately prepare
People v. Lomax (2010) 49 Cal.4th 530 [112 Cal.Rptr.3d 96]

Denial of effective assistance of counsel

Dependency proceedings ineffective assistance of counsel claim requires showing of likelihood of more favorable ruling

Disbarred or suspended attorney before trial began status of attorney at time of trial was not dispositive of ineffective assistance of counsel
U.S. v. Ross (9th Cir. 2003) 338 F.3d 1054

Dishonesty habeas petitioner may be entitled to equitable tolling of statute where attorney had engaged in dishonesty and bad faith in representation of prisoner
Porter v. Ollison (9th Cir. 2010) 620 F.3d 952

Disqualification

Drug addiction is not per se ineffective assistance of counsel

Duty to consult with client about whether to appeal
United States v. Fabian-Ballazar (9th Cir. 2019) 931 F.3d 1216

Duty to pursue meritorious defenses
People v. Monzingo (1983) 34 Cal.3d 926 [196 Cal.Rptr. 212]
People v. Hennings (2009) 178 Cal.App.4th 388 [100 Cal.Rptr.3d 419]

Effect of tactical decision
Edwards v. Lanarque (9th Cir. 2007) 475 F.3d 1121

Entry of plea bargain

Erroneous advice
U.S. v. Day (9th Cir. 2002) 285 F.3d 1167

Evidentiary hearing not required where claims were grounded in speculation, no mitigating evidence
Gonzalez v. Knowles (9th Cir. 2008) 515 F.3d 1006

Ex parte communication between defendant attorney and sentencing court

Excessive caseload and/or limited resources


Failure by public defender to introduce newly-discovered evidence
Salisbury v. County of Orange (2005) 131 Cal.App.4th 756 [31 Cal.Rptr.3d 831]

Failure of appellate defense attorney to file intelligible and supporting briefs has unreasonably interfered with and disrupted the orderly process of the appeal

Failure of counsel to point out to court that defendant had not been warned that prior conviction would constitute a strike where court presumed the defendant had been warned

Failure of court to substitute appointed counsel


Failure of defense counsel to assert objection to an erroneous prior enhancement constituted forfeiture of right to appeal and ineffective assistance of counsel
People v. Lavnie (2018) 29 Cal.App.5th 875 [240 Cal.Rptr.3d 825]

Failure of defense counsel to disclose he was being prosecuted by same district attorney and was arrested by same police officer
Harris v. Superior Court (2014) 225 Cal.App.4th 1129 [170 Cal.Rptr.3d 780]

Failure of trial counsel to appoint new counsel deprived defendant of effective assistance of counsel
Plumlee v. Del Papa (9th Cir. 2005) 426 F.3d 1095

Failure on appeal to raise failure of trial counsel to request certain jury instruction
*People v. Scobie (1973) 36 Cal.App.3d 97 [111 Cal.Rptr. 600]

Failure to act as an advocate at the probation and sentence hearing
People v. Cropper (1979) 89 Cal.App.3d 716 [152 Cal.Rptr. 555]

Failure to act on behalf of client at trial after defendant expressed desire to represent himself
*People v. McKenzie (1983) 34 Cal.3d 616 [194 Cal.Rptr. 462, 668 P.2d 769]

Failure to adequately consult with client
Summerlin v. Schriro (9th Cir. 2005) 427 F.3d 623


Failure to adequately investigate
Hernandez v. Chappell (9th Cir. 2018) 878 F.3d 843
Andrews v. Davis (9th Cir. 2015) 798 F.3d 759
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Cox v. Ayers (9th Cir. 2010) 613 F.3d 883
Pinholster v. Ayers (9th Cir. 2009) 590 F.3d 651
Hamilton v. Ayers (9th Cir. 2009) 583 F.3d 1100
Richter v. Hickman (9th Cir. 2009) 578 F.3d 944
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Visciotti v. Woodford (9th Cir. 2002) 288 F.3d 1097
Karst v. Calderon (9th Cir. 2002) 283 F.3d 1117
Garro v. Woodford (9th Cir. 2002) 280 F.3d 1247
Hart v. Gomez (9th Cir. 1999) 174 F.3d 1057
Johnson v. Baldwin (9th Cir. 1997) 114 F.3d 835
Thompson v. Calderon (C.D. Cal. 1997) 120 F.3d 1045
In re Long (2002) 101 Cal.4th 326 [257 Cal.Rptr.3d 33]
People v. Doolin (2009) 45 Cal.4th 390 [87 Cal.Rptr.3d 209]
In re Scott (2003) 29 Cal.4th 783 [129 Cal.Rptr.2d 605]
In re Cudjo (1999) 20 Cal.4th 673 [85 Cal.Rptr.2d 436]
In re Hill (2011) 198 Cal.App.4th 1008 [129 Cal.Rptr.3d 856]
In re Vargas (2000) 83 Cal.App.4th 1125 [100 Cal.Rptr.2d 265]

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attorney declined trial court's offer of continuance to allow for investigation of new evidence
cause of death, "tantalizing indications" that autopsy specimens had been contaminated raised serious questions, 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
childhood abuse
Hernandez v. Chappell (9th Cir. 2018) 878 F.3d 843
Stankewitz v. Wong (9th Cir. 2012) 698 F.3d 1163
Stankewitz v. Woodford (9th Cir. 2004) 365 F.3d 706
Karis v. Calderon (9th Cir. 2002) 283 F.3d 1117
Caro v. Woodford (9th Cir. 2002) 280 F.3d 1247
In re Lucas (2004) 33 Cal.4th 682 [16 Cal.Rptr.3d 331]
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Andrews v. Davis (9th Cir. 2015) 798 F.3d 759
Stankewitz v. Wong (9th Cir. 2012) 698 F.3d 1163
Pinholster v. Ayers (9th Cir. 2009) 590 F.3d 651
Boye v. Brown (9th Cir. 2005) 404 F.3d 1159
confession
McClure v. Thompson (9th Cir. (Or.) 2003) 323 F.3d 1233

mitigating evidence
Stankewitz v. Wong (9th Cir. 2012) 698 F.3d 1163
Earp v. Oromski (9th Cir. 2005) 431 F.3d 1158
-carefully tailored to preserve exclusion of damaging evidence
pesticide and chemical exposure
Caro v. Woodford (9th Cir. 2002) 280 F.3d 1247
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Hovey v. Ayers (9th Cir. 2006) 458 F.3d 892
Douglas v. Woodford (9th Cir. 2003) 316 F.3d 1079
Lambright v. Stewart (9th Cir. (Ariz.) 2001) 241 F.3d 1201
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potential alibi defense
In re Alcox (2006) 137 Cal.App.4th 657 [40 Cal.Rptr.3d 491]
potential exculpatory evidence
Cannedy v. Adams (9th Cir. 2013) 706 F.3d 1148
potential exculpatory evidence, medical evidence of alleged victim
In re Hill (2011) 198 Cal.App.4th 1008 [129 Cal.Rptr.3d 856]
reasonable professional judgment does not require interviewing all living relatives and therapists who treated defendant’s parents
reward, whether witnesses knew that they would receive
Reynoso v. Giurbino (9th Cir. 2006) 462 F.3d 1099
seriological evidence potentially exculpatory as to the penalty phase, although not to the conviction as there was other evidence placing the defendant at the crime scene
Duncan v. Oromski (9th Cir. 2008) 528 F.3d 1222
social history
Heishman v. Ayers (9th Cir. 2010) 621 F.3d 1030
Douglas v. Woodford (9th Cir. 2003) 316 F.3d 1079
strategy only, not ineffective assistance
Beardslee v. Woodford (9th Cir. 2004) 358 F.3d 560
Failure to adequately investigate or prepare for penalty phase
Hernandez v. Chappell (9th Cir. 2018) 878 F.3d 843
Andrews v. Davis (9th Cir. 2015) 798 F.3d 759
Stankewitz v. Wong (9th Cir. 2012) 698 F.3d 1163
Heishman v. Ayers (9th Cir. 2010) 621 F.3d 1030
Belmontes v. Ayers (9th Cir. 2007) 503 F.3d 1006
Summerlin v. Schurie (9th Cir. 2005) 427 F.3d 623
Allen v. Woodford (9th Cir. 2005) 395 F.3d 979
Stankewitz v. Woodford (9th Cir. 2004) 365 F.3d 706
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People v. Doolin (2009) 45 Cal.4th 390 [87 Cal.Rptr.3d 209
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Failure to adequately prepare for criminal trial
Failure to adequately research relevant law
*People v. McDowell (1968) 69 Cal.2d 737 [71 Cal.Rptr. 1]
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Failure to advise client in immigration matters

People v. Kim (2009) 45 Cal.4th 1078 [90 Cal.Rptr.3d 355]
People v. Chen (2019) 36 Cal.App.5th 1052 [249 Cal.Rptr.3d 360]

Failure to advise client to deny prior convictions

Failure to advise client to deny prior convictions

In re Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498
because counsel informed defendant that her plea deal had potential to cause her to be removed from country and denied reentry, trial court properly denied motion to vacate plea and conviction

People v. Chen (2019) 36 Cal.App.5th 1052 [249 Cal.Rptr.3d 360]

Failure to advise client that making false statements on rental property application did not support conviction for making falsified financial statement


Failure to advise client to deny prior convictions

Failure to advise client to deny prior convictions

In re Yurko (1974) 10 Cal.3d 857, 866 [112 Cal.Rptr. 513]

Failure to advise of consequences of guilty plea, record does not provide evidence of whether attorney was ineffective or not

U.S. v. Teran (9th Cir. 2005) 398 F.3d 1149, 1155

Failure to advise or inform client whether to accept plea bargain

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U.S. v. Leonti (9th Cir. (Hawaii) 2003) 326 F.3d 1111

In re Vargas (2000) 83 Cal.App.4th 1125 [100 Cal.Rptr.2d 265]
Failure to advise plea offer was an incorrect calculation of sentence enhancements

Johnson v. Uribe (9th Cir. 2012) 682 F.3d 1238

Failure to advise that conviction rendered deportation virtually certain as opposed to advising of the potential for deportation constitutes ineffective assistance of counsel

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U.S. v. Kwan (9th Cir. 2005) 407 F.3d 1005
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People v. Espinoza (2018) 27 Cal.App.5th 908 [238 Cal.Rptr.3d 619]
People v. Aguilar (2014) 227 Cal.App.4th 60 [173 Cal.Rptr.3d 473]
People v. Chien (2008) 159 Cal.App.4th 1283 [72 Cal.Rptr.3d 448]

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Failure to advise or inform client whether to accept plea bargain

Nunes v. Mueller (9th Cir. 2003) 350 F.3d 1045
U.S. v. Leonti (9th Cir. (Hawaii) 2003) 326 F.3d 1111

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defendant must establish trial attorney’s performance was both deficient and prejudicial
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surviving victim of crime charged
Howard v. Clark (9th Cir. 2010) 608 F.3d 563
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Failure to call the defendant to testify
Failure to challenge improper ruling of court
Failure to challenge suggestive lineup identifications on appeal
In re Smith (1970) 3 Cal.3d 192 [90 Cal.Rptr. 1]
Failure to challenge witness’ invocation of Fifth Amendment
Fogg v. Woodford (9th Cir. 2006) 463 F.3d 982
Failure to claim privilege in camera to admission of critical evidence
People v. Dorsey (1975) 46 Cal.App.3d 706, 718 [120 Cal.Rptr. 508]
Failure to communicate plea bargain accurately
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Summerlin v. Shrung (9th Cir. 2005) 427 F.3d 623
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court restricted defendant from conferring, consulting or communicating with counsel
Failure to communicate with client between arraignment and sentencing
People v. Goldman (1966) 245 Cal.App.2d 376 [53 Cal.Rptr. 810]
Failure to communicate with non-English speaking clients
Delgado v. Lewis (9th Cir. 2000) 223 F.3d 976
Failure to consult and present experts in firearms evidence, serology and pathology, no prejudice shown therefore no need to decide whether counsel acted unreasonably
Richter v. Hickman (9th Cir. 2008) 521 F.3d 1222
Failure to consult blood evidence expert within wide range of reasonable professional assistance
Failure to consult client about whether to appeal
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Failure to consult time of death expert regarding time of victim’s death
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Failure to correct courts mistaken belief that defendant had been warned that prior conviction would constitute a strike
Failure to deny defendant’s guilt during closing argument to the jury
Failure to develop relationship of trust with petitioner and his family
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Failure to disclose parole consequences of a guilty plea
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Failure to disclose various pre-sentence reports to expert neurologist
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Failure to elicit through cross-examination, that the witnesses knew they would receive a reward
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Failure to enter pleas of not guilty by reason of insanity
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Failure to examine probation file before revocation hearing
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Failure to exercise peremptory challenges
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Failure to expressly state a claim
Failure to file a brief in compliance with applicable procedures
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Failure to have semen sample taken from victim subjected to genetic typing

Failure to impeach witness
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Failure to inform client of the possible defenses available
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People v. O’Hearn (2020) 57 Cal.App.5th 280 [270 Cal.Rptr.3d 901]
trial counsel’s failure to inform defendant of the defense of consent was not ineffective assistance of counsel
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Failure to introduce evidence which did not result in undermining of confidence in the outcome
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Failure to introduce exculpatory evidence
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by interviewing and calling surviving victim of crime charged
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Failure to investigate purported childhood sexual abuse
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Failure to make a closing argument
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Failure to make all objections possible to prosecutor’s questioning of witnesses

Failure to make an opening statement
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Failure to make arguments or file documents at automatic application to modify verdict stage is not error warranting reversal
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Failure to make motions

Failure to move for a change of venue
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Failure to move for a continuance

Failure to move for a dismissal of charges utimely raised in a superceding indictment
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Failure to move for a mistrial following revelation of jurors’ premature discussion of case
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Failure to move for a severance
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People v. Doebbe (1969) 1 Cal.App.3d 931, 937 [81 Cal.Rptr. 391]

Failure to move for acquittal during trial
no error when motion was obviously a losing motion
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Failure to move for substitution

Failure to move for the identity of an informant to be disclosed
People v. Cooper (1979) 94 Cal.App.3d 672, 681 [156 Cal.Rptr. 846]

Failure to move that victim be ordered to submit to psychiatric examination

Failure to move to dismiss case based on precharging delay
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Failure to move to disqualify judge
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Failure to move to suppress witness in-court identification of defendant
Failure to move to withdraw guilty plea
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Failure to move to withdraw guilty pleas when court failed to treat offense as misdemeanor as part of a plea bargain
Failure to move to withdraw where defender was provided inadequate investigative services by county
Failure to object and request an admonition on each occasion that hearsay evidence was offered which was admissible only against a co-defendant
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Failure to object to a structural error, not a frivolous claim
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*People v. Ottombrino (1982) 127 Cal.App.3d 574, 582 [179 Cal.Rptr. 676]
In re Lower (1979) 100 Cal.App.3d 144, 147 [161 Cal.Rptr. 24]
Failure to object to admission of evidence of other crimes allegedly committed by defendant

People v. Mendoza (2000) 78 Cal.App.4th 918 [93 Cal.Rptr.2d 216]
Failure to object to admission of identification made as result of an allegedly suggestive lineup
In re Banks (1971) 4 Cal.3d 337 [93 Cal.Rptr. 591, 482 P.2d 215]
Failure to object to admission of incriminating statements made by defendant
Beardslee v. Woodford (9th Cir. 2004) 358 F.3d 560
In re Wilson (1992) 3 Cal.4th 945 [13 Cal.Rptr.2d 269]
to cellmate
People v. Whitte (1984) 36 Cal.3d 724 [205 Cal.Rptr. 810]
Failure to object to admission of Miranda waiver and subsequent statement
defendant’s attorney was ineffective for failing to file suppression motion on Miranda grounds while defendant was in custody and interrogated by police
Leavitt v. Arave (9th Cir. (Idaho) 2012) 682 F.3d 1138
Failure to object to admission of prior convictions
People v. Taylor (1990) 52 Cal.3d 719 [801 P.2d 1142]
People v. Mendoza (2000) 78 Cal.App.4th 918 [93 Cal.Rptr.2d 216]
Failure to object to filing of amended information
People v. Lavole (2018) 29 Cal.App.5th 875 [240 Cal.Rptr.3d 825]
Failure to object to improper impeachment of defendant by prosecutor
Failure to object to introduction into evidence of arguably prejudicial pretrial identifications of defendant
Failure to object to jury instructions did not violate due process
Karis v. Calderon (9th Cir. 2002) 283 F.3d 1117
defendant must establish trial attorney’s performance was both deficient and prejudicial
Leavitt v. Arave (9th Cir. (Idaho) 2012) 682 F.3d 1138
Failure to object to jury instructions given
People v. Rhoden (1972) 6 Cal.3d 519 [99 Cal.Rptr. 751]
Failure to object to motion to amend the information
Failure to object to prejudicial judicial conduct
Failure to object to prosecutor as witness and prosecutor’s statements


Failure to object to prosecutor’s closing 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 prosecutor’s misconduct defendant must establish trial attorney’s performance was both deficient and prejudicial

Demirdjian v. Gipson (9th Cir. 2016) 832 F.3d 1060

Failure to object to prosecutor’s prejudicial remarks during closing argument

Demirdjian v. Gipson (9th Cir. 2016) 832 F.3d 1060

Zapata v. Vasquez (9th Cir. 2015) 788 F.3d 1106

Failure to object to prosecutor’s questions to defendant


Failure to object to prosecutor’s reference to inculpatory testimony

U.S. v. Molina (9th Cir. 1991) 934 F.2d 1440

Failure to object to prosecutorial misconduct

defendant must establish trial attorney’s performance was both deficient and prejudicial

Zapata v. Vasquez (9th Cir. 2015) 788 F.3d 1106

Leavitt v. Arave (9th Cir. (Idaho) 2012) 682 F.3d 1138

People v. Centro (2014) 60 Cal.4th 659 [180 Cal.Rptr.3d 649]

Failure to object to relevancy of drug use

Plascencia v. Alameida (9th Cir. 2006) 467 F.3d 1190

Failure to object to service of juror not ineffective assistance of counsel

Kimes v. United States (9th Cir. 1991) 939 F.2d 776

Failure to object to testimony of witness, who identified defendant as killer in recording but changed story at trial, results in ineffective assistance

Griffin v. Harrington (9th Cir. 2013) 727 F.3d 940

Failure to object to the shackling of defendant during the trial

Cox v. Ayers (9th Cir. 2010) 613 F.3d 883


Failure to object to witness

defendant must establish trial attorney’s performance was both deficient and prejudicial

Leavitt v. Arave (9th Cir. (Idaho) 2012) 682 F.3d 1138

Failure to obtain blood test


Failure to obtain certificate of probable cause for appeal of conviction after guilty plea may result in dismissal

People v. Johnson (2009) 47 Cal.4th 668 [101 Cal.Rptr.3d 332]

Failure to obtain complete transcript of motion to suppress for purposes of appeal

People v. Barton (1978) 21 Cal.3d 513 [146 Cal.Rptr. 727, 579 P.2d 1043]

Failure to obtain DNA test in rape case did not constitute ineffective assistance of counsel


Failure to obtain investigator


Failure to participate in trial proceedings


Failure to perform with reasonable competence


[203 Cal.Rptr. 412]

Failure to persuade a defendant to plead guilty by insanity

People v. Geddes (1991) 1 Cal.App.4th 448

Failure to prepare

Viscitioli v. Woodford (9th Cir. 2002) 288 F.3d 1097

Failure to prepare adequately for change of venue motion

In re Miller (1973) 33 Cal.App.3d 1005

Failure to prepare medical health expert at penalty phase

Pinholster v. Ayers (9th Cir. 2008) 529 F.3d 834

Failure to prepare witnesses

Hamilton v. Ayers (9th Cir. 2008) 529 F.3d 834

Failure to present and explain to jury the significance of all mitigating evidence

Cox v. Ayers (9th Cir. 2010) 613 F.3d 883

Bermontes v. Ayers (9th Cir. 2008) 529 F.3d 834

Mayfield v. Woodford (9th Cir. 2001) 270 F.3d 915

Failure to present any mitigating evidence during death penalty phase of trial


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

Allen v. Woodford (9th Cir. 2005) 395 F.3d 979

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Evans v. Bramlett (9th Cir. 1988) 855 F.2d 631

In re Lucas (2004) 33 Cal.4th 682 [16 Cal.Rptr.3d 331]

People v. Snow (2003) 30 Cal.4th 43 [132 Cal.Rptr.2d 271]

In re Visciotti (2002) 33 Cal.4th 325 [58 Cal.Rptr.2d 801]

In re Marquez (1992) 1 Cal.4th 594

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People v. Durham (1969) 70 Cal.2d 171, 192 [74 Cal.Rptr. 262, 449 P.2d 198]

In re Jackson (1992) 4 Cal.App.4th 1107

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chronic substance abuse

Frierson v. Woodford (9th Cir. 2006) 463 F.3d 982
did not constitute basis for granting new trial motion

People v. Hoyt (2020) 8 Cal.5th 892 [257 Cal.Rptr.3d 784]
evidence of childhood sexual abuse could not have been discovered where defendant did not mention it until after conviction

In re Crew (2011) 52 Cal.4th 126 [127 Cal.Rptr.3d 285]
evidence that is potentially cumulative, not necessary


halfhearted mitigation only


ineffective assistance of counsel 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 86 [172 Cal.Rptr.3d 578]

Failure to present at jury trial defendant’s own theories that the effect of tax laws did not render ineffective assistance of counsel

United States v. Cochrane (1993) 985 F.2d 1027

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In re Walker (2007) 147 Cal.App.4th 533 [54 Cal.Rptr.3d 411]

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- Frierson v. Woodford (9th Cir. 2006) 463 F.3d 982

In re Cordero (1988) 46 Cal.3d 161, mod. 46 Cal.3d 795b

Failure to present evidence of childhood abuse
- People v. Haskell (1982) 30 Cal.3d 841, 852 [180 Cal.Rptr. 640, 640 F.2d 776]
- People v. Ramos (1982) 30 Cal.3d 553, 584-85 [180 Cal.Rptr. 266, 639 F.2d 908]

Failure to present evidence of mental instability
- McGill v. Shinn (9th Cir. 2021) 16 F.4th 666
- Stankewitz v. Wong (9th Cir. 2012) 698 F.3d 1163
- Hamilton v. Ayers (9th Cir. 2009) 590 F.3d 651
- Lambright v. Schirico (9th Cir. 2007) 490 F.3d 1103
- Viscottt v. Woodford (9th Cir. 2002) 288 F.3d 1097
- Karis v. Calderon (9th Cir. 2002) 283 F.3d 1117
- Caro v. Woodford (9th Cir. 2002) 280 F.3d 1247

Evidence of childhood sexual abuse could not have been discovered where defendant did not mention it until after conviction
- In re Crew (2011) 52 Cal.4th 126 [127 Cal.Rptr.3d 285]

Failure to present evidence of mental instability
- White v. Ryan (9th Cir. 2018) 895 F.3d 641
- Hernandez v. Chappell (9th Cir. 2018) 878 F.3d 843
- Pinholster v. Ayers (9th Cir. 2009) 590 F.3d 651
- Hamilton v. Ayers (9th Cir. 2009) 583 F.3d 1100
- Lambright v. Schirico (9th Cir. 2007) 490 F.3d 1103
- United States v. Howard (9th Cir. 2004) 381 F.3d 873
- Caro v. Woodford (9th Cir. 2002) 280 F.3d 1247
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- Hendricks v. Vasquez (9th Cir. 1992) 974 F.2d 1099
- Evans v. Bramlett (9th Cir. 1998) 855 F.2d 631
- defendant not prejudiced by attorney’s failure to present a mental state defense where proffered evidence does not undermine confidence in the jury’s findings of guilt
- Ben-Sholom v. Ayers (9th Cir. 2012) 674 F.3d 1095

Failure to present prejudicial evidence
- People v. O’Hearn (2020) 57 Cal.App.5th 280 [270 Cal.Rptr.3d 901]
- People v. O’Hearn (2020) 57 Cal.App.5th 280 [270 Cal.Rptr.3d 901]
- Failure to present evidence of pesticide and chemical exposure
- Caro v. Woodford (9th Cir. 2002) 280 F.3d 1247
- Failure to present evidence of time and date of alibi
- Alcala v. Woodford (9th Cir. 2003) 334 F.3d 862
- Failure to present evidence on ability to form intent necessary for first-degree murder
- Jennings v. Woodford (9th Cir. 2002) 290 F.3d 1006

Failure to present evidence when there is no demonstration of any substantial or credible evidence is not ineffective assistance
- In re Cudjo (1999) 20 Cal.4th 673 [85 Cal.Rptr.2d 436]
- Failure to present exculpatory expert testimony on blood evidence
- Richter v. Hickman (9th Cir. 2009) 578 F.3d 944
- Failure to present exculpatory statement
- People v. Foster (1992) 6 Cal.App.4th 1 [7 Cal.Rptr.2d 748]
- Failure to present psychiatric testimony at guilt phase did not prejudice defendant at penalty phase
- People v. Welch (1999) 20 Cal.4th 701, 976 [85 Cal.Rptr.2d 203]

Failure to present psychiatric testimony at penalty phases of capital cases did not constitute ineffective assistance of counsel
- Pinholster v. Ayers (9th Cir. 2009) 590 F.3d 651
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Failure to present psychiatric testimony at penalty phase of capital case was ineffective assistance of counsel
- White v. Ryan (9th Cir. 2018) 895 F.3d 641
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- Failure to prevent defendant from testifying

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Failure to request a crucial jury instruction
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Failure to seek evidence
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*People v. Ottombrino (1982) 127 Cal.App.3d 574, 582 [179 Cal.Rptr. 676]
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*Filing of no issue appellate brief so that court may determine whether appeal is frivolous may also be applied to minor in juvenile delinquency proceedings
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Habitual disregard for needs of clients
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advisory counsel
Inability of counsel to forthrightly admit deficient legal assistance or to withdraw when not provided with adequate support services. A principled public defender may lose her/his job
Inactive attorney
People v. Ngo (1996) 14 Cal.4th 30 [57 Cal.Rptr.2d 456]
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absent showing of prejudice, inactive status does not result in ineffective assistance of counsel
Indigent defendant constitutionally entitled to counsel’s best argument for appeal before court rules on withdrawal Delgado v. Lewis (9th Cir. 2000) 223 F.3d 976
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Insufficient declaration for appointment of second counsel under Keenan motion, no abuse of discretion found for denial of motion
People v. Verdugo (2010) 50 Cal.4th 265 [113 Cal.Rptr.3d 803]
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Juvenile dependency proceeding father accused of sexual abuse is entitled to effective assistance of counsel
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Lack of incompetence
inadequately advised client regarding possibility of deportation
U.S. v. Chan (9th Cir. 2015) 792 F.3d 1151
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Lack of experience in capital cases
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prior representation of government witness impaired defense
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Loyalty to client
People v. Snow (2003) 30 Cal.4th 43 [132 Cal.Rptr.2d 271]
Mitigation strategy was factually unsupported and portrayed client inaccurately and unflatteringly
Visciotti v. Woodford (9th Cir. 2002) 288 F.3d 1097
Motion
evidence hearing not required in motion to vacate sentence because of ineffective assistance of counsel
Shah v. United States (9th Cir. 1989) 878 F.2d 1156
No ineffective assistance of counsel where both trial attorney and court explained consequences of plea and defendant pleaded as agreed
No right to counsel in habeas proceedings and hence no right to effective assistance of counsel
*“No-merit brief” by appellate attorney does not violate constitutional right to effective assistance of counsel
*“No-merit brief” by appellate attorney may violate constitutional right to effective assistance of counsel
*Davis v. Kramer (9th Cir. 1999) 167 F.3d 494
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United States v. Fredman (9th Cir. 2004) 390 F.3d 1153
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defendant not prejudiced by attorney’s failure to present a mental state defense where proffered evidence does not undermine confidence in the jury’s findings of guilt
Ben-Sholom v. Ayers (9th Cir. 2012) 674 F.3d 1095
defendant was not denied effective assistance of counsel because his counsel’s decision to admit in opening statement to some of defendant’s criminal wrongdoing
United States v. Fredman (9th Cir. 2004) 390 F.3d 1153
failure to advise client of collateral penalty (deportation)
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failure to argue and urge minimum sentence
failure to call expert on unreliability of eyewitness testimony
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failure to conduct direct exam of witnesses because of perjury concern
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failure to focus on exculpatory evidence in closing is not ineffective assistance of counsel
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failure to investigate and present diminished capacity defense not ineffective assistance of counsel
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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. Lamarque (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 86 [172 Cal.Rptr.3d 576] where ample evidence of crime existed

People v. Wong (9th Cir. 2013) 704 F.3d 1143 where attorney fails to anticipate changes in the law

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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 where defense counsel conceded that his client was guilty of felony murder charge

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In re Vargus (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 People v. Chen (2019) 36 Cal.App.5th 1052 [249 Cal.Rptr.3d 360] because counsel informed defendant that her plea deal had potential to cause her to be removed from country and denied reentry, trial court properly denied motion to vacate plea and conviction

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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.


Public defenders immune from suit.

Federal Civil Procedure section 1983

Glover v. Tower (9th Cir. 1970) 700 F.2d 556, 558

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

Barner v. Leards (2000) 24 Cal.4th 676 [102 Cal.Rptr.2d 97]

Public defender’s office representing defendant had previously represented a witness in the case.

People v. Anderson (1976) 59 Cal.App.3d 831, 843

Reduction of conviction makes allegation moot.


Refusal to allow defendant to testify.

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 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 first 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.


timely request to substitute retained counsel for court appointed counsel.


to discharge retained counsel.


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

to effective assistance of counsel.

White v. Ryan (9th Cir. 2018) 895 F.3d 641

Daniels v. Woodford (9th Cir. 2005) 428 F.3d 1181

Lewis v. Mayle (9th Cir. 2004) 391 F.3d 899

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


-court had not sua sponte duty to ensure that defendant would be represented by qualified, effective counsel after defendant was made aware that chosen counsel did not meet standards for appointed counsel and court’s offer to defendant to consult with independent counsel was declined.

People v. Ramirez (2006) 39 Cal.4th 398 [46 Cal.Rptr.3d 677]

-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 107]


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. Alamande (9th Cir. 2005) 397 F.3d 1175

during interrogation.


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McGill v. Shinn (9th Cir. 2012) 744 F.3d 466
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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]
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Submission of case on grand jury proceedings transcript
People v. Phillips (1973) 31 Cal.App.3d 483, 486 [107 Cal.Rptr. 386]
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Summation by defense counsel includes concession to jury that no reasonable doubt existed on factual issues in dispute
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Suspension for non-payment of dues not enough to disqualify
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client’s claim of ineffective assistance of counsel fails when defense attorney, for tactical reasons, did not seek a time-value discount on victim’s restitution claim
People v. Are (2014) 226 Cal.App.4th 924 [172 Cal.Rptr.3d 364]
defense attorney made a strategic decision to address prosecutor’s comments directly in closing arguments instead of objecting
Demirdjian v. Gipson (9th Cir. 2016) 832 F.3d 1060
ineffective assistance found where tactical decision was made without adequate investigation
not opposing dismissal of petition for unconditional release where no changed circumstances
People v. Reynolds (2010) 181 Cal.App.4th 1402 [105 Cal.Rptr.3d 560]
presentation by defense counsel of prior robbery
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to waive marital privilege
Edwards v. Lamarque (9th Cir. 2007) 475 F.3d 1121.
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

INESFFECTIVE ASSISTANCE OF COUNSEL IN NON-CRIMINAL CASES

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

Ellis v. Harrison (9th Cir. 2018) 891 F.3d 1160

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

People v. O’Hearn (2020) 57 Cal.App.5th 280 [270 Cal.Rptr.3d 901]

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 1094

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 52

Under 28 U.S.C. 2254


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. Mendroza (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 on ineffective assistance of counsel


Withdrawal of plea bargain—no coercion found

People v. Montoya (2021) 68 Cal.App.5th 980 [284 Cal.Rptr.3d 318]

trial counsel’s failure to inform defendant of the defense of consent was not ineffective assistance of counsel

People v. Montoya (2021) 68 Cal.App.5th 980 [284 Cal.Rptr.3d 18]

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

People v. Gzikowski (1982) 32 Cal.3d 580 [186 Cal.Rptr. 339, 651 F.2d 1145]

Writ filed in Superior Court for factual determination of issues

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Torres-Chavez v. Holder (9th Cir. 2009) 567 F.3d 1096
Granados-Oseguera v. Gonzales (9th Cir. 2008) 546 F.3d 1011
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INTERFERENCE WITH PROSPECTIVE ADVANTAGE

See How to Use This Index, supra, p. i
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. Uribé (9th Cir. 2012) 682 F.3d 1238

Administrative Law Judge

law firm retained by school district personnel commission cannot substitute for ALJ


-party cannot be compelled to accept a decision upon the facts a judge who did not hear the evidence in the case


Admonishment

comments at sentencing reflected a biased and insensitive view about sexual assault


dismissal where substantial evidence of wrongful conduct


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


Attorney as temporary judge, referee, or court-appointed arbitrator

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

Attorney fees, setting unreasonable amounts


Authority to disqualify law firm


limits on


-under CCP § 664.6, the court’s authority is to either approve or disapprove a settlement agreement but not to modify its’ terms


to impose sanctions by referee in juvenile proceedings


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


Board of directors permits use of name

LA 116 (1937)

LA 116 (1937)

LA 116 (1937)

LA 116 (1937)
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Bribes
judge accepted
In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

Censure
causes for
-conduct prejudicial to the administration of justice that brings the judicial office into disrepute
  Broadman v. Commission on Judicial Performance (1998) 18 Cal.4th 1079 [77 Cal.Rptr.2d 408]
  In re Norman W. Gordon (1996) 13 Cal.4th 472 [53 Cal.Rptr.2d 788]
  In re Rasmussen (1987) 43 Cal.3d 536 [236 Cal.Rptr. 152]
  In re Stevens (1981) 28 Cal.3d 873 [172 Cal.Rptr. 676, 625 P.2d 219]
  In re Glickfield (1971) 3 Cal.3d 891 [92 Cal.Rptr. 278, 479 P.2d 638]
  In re Chargin (1970) 2 Cal.3d 617 [87 Cal.Rptr. 709, 477 P.2d 29]

-failure to perform duties within the meaning of Cal. Constitution, Art. VI, section 18
  In re Jensen (1978) 24 Cal.3d 72 [152 Cal.Rptr. 503, 593 P.2d 200]
-former judge is barred from receiving an assignment, appointment, or reference of work from any California court

-injudicious conduct
-participation in negotiations for employment as dispute resolution neutral

-publicly commenting on pending cases
  Broadman v. Commission on Judicial Performance (1998) 18 Cal.4th 1079 [77 Cal.Rptr.2d 408]

-willful misconduct in office
In the Matter Concerning Judge Scott Steiner (2014) 2014 DJDAR 12197
In the Matter Concerning Judge Cory Woodward (2014) 2014 DJDAR 12203
Broadman v. Commission on Judicial Performance (1998) 18 Cal.4th 1079 [77 Cal.Rptr.2d 408]
Adams v. Commission on Judicial Performance (1994) 8 Cal.4th 630 [34 Cal.Rptr.2d 641, 882 P.2d 358]
Kloepfer v. Commission on Judicial Performance (1989) 49 Cal.3d 826 [264 Cal.Rptr. 100]
In re Chavez (1973) 9 Cal.3d 846 [109 Cal.Rptr. 79, 512 P.2d 303]
In re Sanchez (1973) 9 Cal.3d 844 [109 Cal.Rptr. 78, 512 P.2d 302]
Commission on Judicial Performance (formerly Commission on Judicial Qualifications)

confidentiality of proceedings
  Mosk v. Superior Court (1979) 25 Cal.3d 474 [159 Cal.Rptr. 494, 601 P.2d 1030]

disclosure of the votes of individual commission members on issues of judicial discipline following formal proceeding
judge is publicly admonished for treating attorneys in sarcastic and belittling manner while presiding over civil cases
jurisdiction [See Scope of authority.]
-location of hearings
-membership
  -propriety of lay persons on commission
moral turpitude
  Adams v. Commission on Judicial Performance (1994) 8 Cal.4th 630 [34 Cal.Rptr.2d 641]
procedure
-discovery
-notice, effect of procedural defect
-purpose is protection of the public, enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity of the judicial system
qualified to act as judge pro tempore
-may do so only on stipulation of all parties
requirement under Proposition 190 to disclose the votes of individual commission members in disciplinary proceeding against a judge
review of findings/recommendations by Supreme Court
  -power to make independent findings of fact/impose sanctions
  Spruance v. Commission on Judicial Qualifications (1975) 13 Cal.3d 778, 782-784 [119 Cal.Rptr. 841, 532 P.2d 1209]
  Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270 [110 Cal.Rptr. 201, 515 P.2d 1]
  Stevens v. Commission on Judicial Qualifications (1964) 61 Cal.2d 886 [39 Cal.Rptr. 397, 393 P.2d 709]
scope of authority
  Broadman v. Commission on Judicial Performance (1998) 18 Cal.4th 1079 [77 Cal.Rptr.2d 408]
  Mosk v. Superior Court (1979) 25 Cal.3d 474 [159 Cal.Rptr. 494, 601 P.2d 1030]
  Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270, 275-276 [110 Cal.Rptr. 201, 515 P.2d 1]
-power to compel testimony
  McComb v. Superior Court (1977) 68 Cal.App.3d 89 [137 Cal.Rptr. 233]
  Communication with judicial officers
  about court clerk
  SF 1973-2
  about pending matter
  LA(I) 1979-2
  -judge engaged in improper ex parte conversations
    In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157
  -judge had discussions and resolved son's case in nonpublic areas of the courthouse and outside the normal process, the judge created an appearance of impropriety which undermines public confidence in the impartiality of the judiciary
  administrative law judge
  -not within the compass of the term "judicial officer"
  another judge regarding the case
  -impermissible even if attorney is not counsel
  LA(I) 1979-2
  -impermissible when no case is pending
  by attorney
  ex parte
  Rule 5-300, Rules of Professional Conduct (operative as of May 27, 1989)
  LA 387 (1980), SD 2013-2
  by prosecutor
  ex parte discussion with
  -judge engaged in improper ex parte conversations
  In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157
  -listserv
    LA 514 (2005)
  -rehabilitation consultant
    CAL 1985-85
  filing briefs
  -without knowledge of opposing counsel
    LA 56 (1928)
  hearing officer/administrative law judge
  CAL 1984-82
  judge is disqualified for speaking to previous judge who was disqualified
  publication of article regarding pending case
  socializing outside the work environment
  OC 94-001
  upon merits of a contested issue over which he presides in absence of opposing counsel
  Rule 5-300, Rules of Professional Conduct (operative as of May 27, 1989)
  In re Winnetka V. (1980) 28 Cal.3d 587, 592-593 and n.5 [169 Cal.Rptr. 713, 620 P.2d 163]
  In re Darrell P. (1981) 121 Cal.App.3d 916 [175 Cal.Rptr. 682]
  In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157
  SD 2013-2
  -contested issue construed
  while case is pending judge engaged in improper ex parte conversations
  In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157
  CAL 1984-78
  with jury
  -district court’s failure to notify defense counsel about jury note and to give counsel opportunity to be heard before court responds violates rule requiring defendant’s presence at every trial stage
  U. S. v. Martinez (9th Cir. 2017) 850 F.3d 1097
  Compelled retirement [See Retirement and Retirement benefits.]
  Conduct
  prejudicial conduct insufficient to support recommendation of sanctions
  People v. Rideney (1961) 55 Cal.2d 236 [10 Cal.Rptr. 625, 359 P.2d 23]
  People v. Lancellotti (1957) 147 Cal.App.2d 723 [305 P.2d 926]
  People v. Williams (1942) 55 Cal.App.2d 696 [131 P.2d 851]
  *People v. Montgomery (1941) 47 Cal.App.2d 1 [117 P.2d 437]
JUDGE

Contempt, power to punish for contempt
Code of Civil Procedure section 178
Court proceedings
radio broadcast of
LA 88 (1935)
Defendant’s right to have trial completed does not outweigh
dis qualitative abuse under “fair and just reason” standard
radio broadcast of
LA 88 (1935)

Discipline
judge is publicly admonished for treating attorneys in
sarcastic and belittling manner while presiding over civil cases
Public Admonishment of Judge Ronald M. Sohigian
(2014) 2014 DJDAR 5984
limitations on, grounds for
Cal.3d 27, 47-48 [207 Cal.Rptr. 171]
(suspension and removal) 68 A.L.R.3d 248
(1973) (grounds for disqualification)]
confidentiality of proceedings
37 Cal.3d 27, 59-62 [207 Cal.Rptr. 171]
Discretion
unreasonable application of clearly established federal law
Howard v. Clark (9th Cir. 2010) 608 F.3d 563
Discipline, abuse of discretion by refusing to follow an opinion
certified for publication, especially one that spoke to the
conditions or practices occurring in that particular courtroom
1093 [46 Cal.Rptr.3d 798]
denial of pre-sentencing motion to withdraw plea was
abuse under “fair and just reason” standard
U.S. v. Bonilla (9th Cir. 2011) 637 F.3d 980
failure to hold evidentiary hearing
Douglas v. Woodford (9th Cir. 2003) 316 F.3d 1079
failure to hold hearing on Marsden motion
People v. Sanchez (2011) 53 Cal.4th 80 [133
Cal.Rptr.3d 564]
judge’s abrupt ending of trial before completion resulted in
denial of due process
[77 Cal.Rptr.3d 305]
Discretion, acts within
In re Scott (2003) 29 Cal.4th 783 [129 Cal.Rptr.2d 605
Discretion, class action
Cal.App.4th 772 [40 Cal.Rptr.3d 575]
Disqualification
California Code of Judicial Conduct, Canon 3.C.
Code of Civil Procedure section 170
143 Cal.App.4th 310 [49 Cal.Rptr.3d 296]
Tri Counties Bank v. Superior Court (2008) 167
Cal.App.4th 1332 [84 Cal.Rptr.3d 835]
-denial of peremptory challenge deemed abuse of
discretion where challenge was filed well within the
specified 10-day period under section 170.6
Jonathon M. v. Superior Court (2006) 141
Cal.App.4th 1093 [46 Cal.Rptr.3d 798]
denied when judge failed to disclose ownership interest
in various insurance industry companies which were not
involved in case
Brown v. American Bicycle Group, LLC (2014) 224
Cal.App.4th 665 [168 Cal.Rptr.3d 850]
disqualification not mandated when a judge has
officiated a litigant’s counsel’s wedding
384 [168 Cal.Rptr.3d 605]
does not apply to administrative law judges
County of San Diego v. Alcoholic Beverage Control
Cal.Rptr.3d 59]
-granting of motion in excess of 60 days after
peremptory challenge to trial judge became effective
immediately was a nullity
Davcon Inc. v. Roberts & Morgan et al. (2003) 110
Cal.App.4th 1355 [2 Cal.Rptr.3d 782]
-judge is disqualified for speaking to previous judge who
was disqualified
767 [37 Cal.Rptr.3d 718]
-only transfer of the later-filed case 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
382 [104 Cal.Rptr.3d 787]
-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
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Cal.Rptr.2d 49]
Sunkyong Trading (H.K.) Ltd. v. Superior Court (1992)
9 Cal.App.4th 282 [11 Cal.Rptr.2d 504]
People v. Whitfield (1986) 183 Cal.App.3d 299 [228
Cal.Rptr. 82
Cal.Rptr. 54]
Penthouse International Ltd. v. Superior Court (1982)
137 Cal.App.3d 975 [187 Cal.Rptr. 535]
-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
1463 [136 Cal.Rptr.3d 544]
-timeliness of motion
Entente Decision, Inc. v. Superior Court (2013) 214
Cal.App.4th 385 [154 Cal.Rptr.3d 216]
1463 [136 Cal.Rptr.3d 544]
Tri Counties Bank v. Superior Court (2008) 167
Cal.App.4th 1332 [84 Cal.Rptr.3d 835]
administrative law judges
[235 Cal.Rptr.3d 382]
County of San Diego v. Alcoholic Beverage Control
advice to another commissioner after disqualification
***Gubler v. Commission on Judicial Performance (1984)*** 37
Cal.3d 27, 52-55 [207 Cal.Rptr. 171]
appellate tribunal
-acting upon
  -Code of Civil Procedure section 170a
  -superior court
  -Code of Civil Procedure section 170.7
attorney as judge presides over a criminal defendant who
had previously supplied him with illegal drugs
***In re Scott*** (1991) 52 Cal.3d 968
based on race
***People v. Superior Court*** (1992) 8 Cal.App.4th 873 [10
Cal.Rptr.2d 873]
bias or prejudice
***Mangini v. U.S.*** (9th Cir. (Mont.) 2003) 314 F.3d 1158
***Little v. Kern County Superior Court*** (9th Cir. 2002) 294
F.3d 1075
19 Cal.4th 865 [61 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]
[168 Cal.Rptr.3d 605]
***In re the Marriage of Tharp*** (2010) 188 Cal.App.4th 1295
[116 Cal.Rptr.3d 375]
***County of San Diego v. Alcoholic Beverage Control
143 Cal.App.4th 310 [49 Cal.Rptr.3d 296]
Cal.Rptr. 398]
684-685 [203 Cal.Rptr. 290]
- not required on due process grounds where mere
appearance of bias; probability of actual bias required
Cal.Rptr.3d 823]
-plaintiff’s remarks regarding his social contacts with
presiding judge are not necessarily determinative of
judge’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]
Cal.Rptr.3d 823]
-trial judge’s adverse legal rulings and denial of a request
for a continuance do not reflect personal bias
Cal.App.4th 665 [168 Cal.Rptr.3d 850]
by criminal defendant
Cal.Rptr. 427]
disqualification of temporary judge based on violation of
Canon 6D(5)(a), failure to disclose known relationships
with parties or lawyers
***Hayward v. Superior Court*** (2016) 2 Cal.App.5th 10 [206
Cal.Rptr.3d 102]
disqualified presiding judge loses jurisdiction over the
matter and all subsequent orders and judgments are void
***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]
Cal.Rptr.3d 315]
***In re Jenkins*** (1999) 70 Cal.App.4th 1162 [83
Cal.Rptr.2d 232]
duties to call own witnesses but may not shift balance
[193 Cal.Rptr. 397]
effect on rulings
Cal.App.4th 1125 [102 Cal.Rptr.3d 206]
Cal.App.4th 1353 [58 Cal.Rptr.3d 141]
***North Beverly Park Homeowners Association v. Bisno
(2007) 147 Cal.App.4th 762 [54 Cal.Rptr.3d 644
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
Cal.Rptr.2d 755]
frivolous motions to disqualify
Cal.Rptr.2d 376]
gaming by
LA(i) 1976-6, LA(i) 1958-4
grounds for
California Code of Judicial Conduct, Canon 3.C
Code of Civil Procedure section 170
***Entente Decision, Inc. v. Superior Court*** (2013) 214
Cal.App.4th 385 [154 Cal.Rptr.3d 216]
Cal.App.4th 1353 [58 Cal.Rptr.3d 141]
-multiple similar parties limited to one peremptory
challenge per side
***Orion Communications, Inc., et al. v. Superior
Court*** (2014) 226 Cal.App.4th 152 [171 Cal.Rptr.3d 596]
-when local superior court rules conflict with the
Code of Civil Procedure, local rule is void
***Shaffeur v. Superior Court*** (2012) 202
Cal.App.4th 1463 [136 Cal.Rptr.3d 544]
Code of Civil Procedure section 170.6
***First Federal Bank of California v. Superior Court***
***Ng v. Superior Court*** (1997) 52 Cal.App.4th 1010 [61
Cal.Rptr.2d 49]
[27 Cal.Rptr.2d 274]
-administrative law judge
***County of San Diego v. Alcoholic Beverage Control
Cal.Rptr.3d 59]
-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
***Sunkyong Trading (H.K.) Ltd. v. Superior Court*** (1992) 9
Cal.App.4th 282 [11 Cal.Rptr.2d 504]
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
-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
***Orion Communications, Inc., et al. v. Superior Court
(2014)*** 226 Cal.App.4th 152 [171 Cal.Rptr.3d 596]

See How to Use This Index, supra, p. i
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 (Forsyth) (9th Cir. 2000) 223 F.3d 990

Disruptive and offensive conduct in courtroom of a judge who had recused himself from an attorney’s case


Duty

obligation of judge by his oath to maintain the respect due to the court and to protect the integrity of the judiciary from groundless, insulting, contemptuous, scandalous, or impertinent attacks

In the Matter of Koven (2005) 134 Cal.App.4th 262 [35 Cal.Rptr.3d 917]

Election campaign

contributions to

- 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

CAL 304 (1968)

Error in jury instructions and sentencing

not found

U.S. v. Scott (9th Cir. 2011) 642 F.3d 791

reversible

People v. Chagolla (1983) 144 Cal.App.3d 422 [193 Cal.Rptr. 711]

Evaluation by local bar association


Ex parte discussion with

In re Freeman (2006) 38 Cal.4th 630 [42 Cal.Rptr.3d 850


about matter on appeal

CAL 1984-78

administrative law judge


deliberating jurors


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. Riley (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 Maricden hearing


People v. Mendez (2008) 161 Cal.App.4th 1362 [75 Cal.Rptr.3d 162]

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

court made no inquiry at all

People v. Reed (2010) 183 Cal.App.4th 1137 [107 Cal.Rptr.3d 710]

Failure to perform duties [See Censure, causes for, this section.]

Frivolous allegations against, attorney disciplined for

Standing Com. on Disc. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 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 DJDAR 14999

Injudicious conduct [See Censure, causes for, this section.]

Spruance v. Commission on Judicial Qualification (1973) 13 Cal.3d 777 [119 Cal.Rptr. 841, 532 P.2d 1209]

Judge as prior prosecutor, same case


“Judge” defined


CAL 1984-82

Judicial officer defined

local bar association’s arbitration panel is not a judicial officer

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838

Juvenile court proceedings

referee, assuming the function of both judge and advocate in presenting and questioning the witness and in adjudicating a minor’s status, acts in violation of minor’s constitutional right to procedural due process

Law lectures; delivery of
LA 129 (1940)

Liability
absolute immunity applies to defamatory statements made by judge during settlement conference, but not to statements made during newspaper interview
absolute immunity from for acts done in performance of official duties
Kimes v. Stone (9th Cir. 1996) 84 F.3d 1121
Stanislaus Food Products Co. v. P.U.C. (N.D. Cal. 1982)
560 F.Supp. 114, 117
immunity extended to state agencies that act in judicial capacity
Stanislaus Food Products Co. v. P.U.C. (N.D. Cal. 1982)
560 F.Supp. 114, 117

Listserv
communication with judicial officers
LA 514 (2005)

May rehear a pretrial issue when magistrate’s order is clearly erroneous and contrary to law
May rehear a pretrial issue when magistrate’s order is clearly erroneous and contrary to law
In re Marriage of Carlsson (2008) 163 Cal.App.4th 281 [77 Cal.Rptr.3d 305]

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

trials 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(1) 1959-7

Perjury
judge solicited the commission of perjury in a federal investigation
In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157
Prejudicial conduct [See Removal, causes for. Censure, causes for. Conduct, prejudicial conduct insufficient to support recommendation of sanctions.]
extraction of attorney fees from bail deposits
judge’s abrupt ending of trial without allowing party to present case in chief was denial of due process
In re Marriage of Carlsson (2008) 163 Cal.App.4th 281 [77 Cal.Rptr.3d 305]
judge’s discussions with court clerk and presiding judge about son’s case through channels not available to the public, even if not done in bad faith, created an appearance of impropriety undermining public confidence in the impartiality and integrity of the judiciary
ordering appearances of defendants for fee collection purposes
prejudicial jury instructions, standard of miscarriage of justice

Presiding judge
authority to rule on opinion of another judge

Promotion of corporation by
shares offered for sale to public
LA 53 (1927)
JUDGE

Public confidence diminished
comments at sentencing reflected a biased and insensitive view about sexual assault
Quasi-judicial function of parole officials gives immunity relative to function prompting action
Anderson v. Boyd (9th Cir. 1983) 714 F.2d 906
Radio broadcast of court proceedings
LA 88 (1935)
Recall
superior court judges are not state officers therefore petition for recall does not have to be reviewed and certified for circulation by Secretary of State

Recusal
based on alleged violation of defendant’s due process rights
People v. Freeman (2010) 47 Cal.4th 993 [103 Cal.Rptr.3d 723]
People v. Peyton (2014) 229 Cal.App.4th 1063 [177 Cal.Rptr.3d 823]
California Supreme Court held that judge’s refusal to recuse himself was not required because only the most “extreme facts” would require judicial disqualification on due process grounds
People v. Freeman (2010) 47 Cal.4th 993 [103 Cal.Rptr.3d 723]
commissioner’s bias against attorney
contempt proceedings involving attorney
-criminal
In re Martin (1977) 71 Cal.App.3d 472 [139 Cal.Rptr. 451]
effect on rulings prior to judge’s recusal
failure of judge to disclose participation in substantial negotiations for employment as dispute resolution neutral
failure of judge to disqualify himself after having previously represented one party as attorney was not reviewable on appeal following appellant’s earlier failure to seek writ review
general notice 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. Ampriester (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
-denied when judge officiates counsel’s wedding but has no personal or social relationship with counsel
not required on due process grounds where mere appearance of bias; probability of actual bias required
People v. Peyton (2014) 229 Cal.App.4th 1063 [177 Cal.Rptr.3d 823]
precludes any further action in the case by the judge
recurso 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 [141 Cal.Rptr. 718]
review of findings as to fitness to hold judicial office
Davis v. Commission on Judicial Qualifications (1977) 73 Cal.App.3d 818 [141 Cal.Rptr. 75]
Removal
California Constitution Article VI, section 18(c)
burden of proof
Geller v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270, 275 [110 Cal.Rptr. 201, 515 P.2d 1]
causes for
-“conduct prejudicial to the administration of justice that brings the judicial office into disrepute”
Spruance v. Commission on Judicial Qualifications (1975) 13 Cal.3d 778, 796, 797 [119 Cal.Rptr. 841, 532 P.2d 1208]
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]
Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270, 284-287 [110 Cal.Rptr. 201, 515 P.2d 1]

discovery  [See  Commission on Judicial Performance, procedure - discovery.]

jury trial

effect on rulings

nature of proceedings

- non-criminal

- not constituting civil action

- persistent and pervasive conduct prejudicial to the administration of justice
Kloepfer v. Commission on Judicial Performance (1989) 49 Cal.3d 826 [264 Cal.Rptr. 100]

procedure  [See  Commission on Judicial Performance, procedure.]

retirement for disability
In re Roick (1978) 24 Cal.3d 74 [154 Cal.Rptr. 413, 592 P.2d 1165]

Davis v. Commission on Judicial Qualifications (1977) 73 Cal.App.3d 818 [141 Cal.Rptr. 75]
special proceedings

- alternative to impeachment

standard of proof required
Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270, 275 [110 Cal.Rptr. 201, 515 P.2d 1]

Supreme Court Justice
California Constitution Article VI, section 18(e)

- selection of special tribunal

Represent/practice before
LA(1) 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
as valuable property right
Davis v. Commission on Judicial Qualifications (1977) 73 Cal.App.3d 818, 825-826 [141 Cal.Rptr. 75]
effect of criminal charges/conviction

interest on, withheld pending litigation as to entitlement
judges may hold public office or engage in public employment after they resign or retire, even if time remains in judicial term for which they were selected
pension rights  [See  Retirement, benefits.]

“salary” construed
subsequent representation of one of the parties

Right to hire private counsel when county counsel has conflict of interest

Sanctions  [See  Removal. Censure. Automatic disqualification.]
contempt of court  [See  Contempt.]
dismissal of criminal complaint based on intentional eavesdropping by law enforcement was not an appropriate remedy
People v. Shrier (2010) 190 Cal.App.4th 400 [118 Cal.Rptr.3d 233]

improper when court uses mediator’s report in violation of Evidence Code Section 1121 (mediation confidentiality)

mitigating factors
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
Yapman 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. 888
Judicial Sale

State Supreme Court authority to appoint judges of the State Bar Court not impaired by permissible appointment mechanisms specified by the legislature

Obrien et al. v. Jones et al. (2000) 23 Cal.4th 40 [96 Cal.Rptr.2d 205, 999 P.2d 95]

Carlson, Judge, Censure, causes for.

United States v. Nelson (9th Cir. 1983) 718 F.2d 315

Suspension pending appeal from criminal conviction

In re Tindall (1963) 60 Cal.2d 469 [34 Cal.Rptr. 849, 386 P.2d 473]

Pending criminal prosecution

In re Tindall (1963) 60 Cal.2d 469 [34 Cal.Rptr. 849, 386 P.2d 473]

Trial conduct
district court improperly participated in defendant’s plea discussions by prematurely committing itself to a sentence of specific severity

U.S. v. Kyle (9th Cir. 2013) 734 F.3d 956

judge is publicly admonished for treating attorneys in sarcastic and belittling manner while presiding over civil cases


judge who testifies as a witness in a case in which he presides must give advance notice and obtain consent of parties


judge’s abrupt ending of trial without allowing party to present case in chief was denial of due process

In re Marriage of Carlsson (2008) 163 Cal.App.4th 281 [77 Cal.Rptr.3d 305]

may not exclude a party to an action


Use of judge’s name for promotion of corporation

LA 53 (1927)

Willful misconduct in office [See Judge, Censure, causes for. Judge, removal, causes for.]

Witness
designate 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 collaborated in an ex parte communication to exclude certain prospective jurors from jury 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)

In re Possing (1984) 37 Cal.3d 163 [207 Cal.Rptr. 543, 689 P.2d 115]

Noland v. State Bar (1965) 63 Cal.2d 298, [46 Cal.Rptr. 305, 405 P.2d 129]


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

CAL 1988-100

After trial

CAL 1987-95, CAL 1976-39

Court-imposed, post-trial restrictions pursuant to trial court’s inherent authority

Townsel v. Superior Court (1999) 20 Cal.4th 1084 [86 Cal.Rptr.2d 602]

Ex parte communications between trial judge and a deliberating jury are prohibited


Jurors have absolute right to refuse to discuss deliberations or verdict with defense counsel

Jones v. Superior Court (1994) 26 Cal.App.4th 92 [31 Cal.Rptr.2d 264]

Mock jury research

SD 2010-1

“Venire” defined

SD 2010-1

Labor Union

Emblem of on law firm letterhead

CAL 1971-24

Lawyer, government employee as member of

LA 337 (1973)

Lay employee shows membership in after signature

CAL 1971-24

Law Corporations

[See Professional corporations.]

Business and Professions Code sections 6125, 6126, 6127, 6160 et seq.

Attorney held liable for law corporation’s debts as alter ego where corporation was being used by attorney to escape personal liability


Bound by applicable statutes, rules, and regulations to the same extent therein as a member of the State Bar


Bound by rules prohibiting aiding the unauthorized practice of law by resigned attorneys


Failure to register as a professional law corporation has no effect on fees charged by a law firm or partnership


Former shareholder’s name

LA 530 (2018)

Inapplicable to duly certified professional corporation

Business and Professions Code section 6127.5

Business and Professions Code sections 6160-6172

Application for

Business and Professions Code section 6161
LAW CORPORATIONS RULES OF THE STATE BAR OF CALIFORNIA

Text may be obtained from:
Law Corporations Department
State Bar of California
180 Howard Street, San Francisco, California 94105
Telephone: (888) 800-3400

Nonprofit corporation
not required to register with State Bar of California as a law corporation
Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221

LAW FIRM  [See Corporation, professional. Partnership, advertising. Practice of law].

LAW OFFICE  [See Advertising, law office. Practice of law.]

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
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
In the Matter of Yee (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330
-superior court research attorneys are exempt from mandatory continuing education
Obbard v. State Bar of California (2020) 48 Cal.App.5th 345 [262 Cal.Rptr.3d 16]
Mandatory bar membership
Morrow v. State Bar (9th Cir. 1999) 188 F.3d 1174

Obbard v. State Bar of California (2020) 48 Cal.App.5th 345 [262 Cal.Rptr.3d 16]

Mandatory bar membership
Morrow, et al. v. State Bar (9th Cir. 1999) 188 F.3d 1174

Obbard v. State Bar of California (2020) 48 Cal.App.5th 345 [262 Cal.Rptr.3d 16]

Mandatory bar membership
Morrow, et al. v. State Bar (9th Cir. 1999) 188 F.3d 1174

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)

Referral of legal business.

Rule 2-102, Rules of Professional Conduct (operative until May 26, 1989)
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Mandatory bar membership
Morrow, et al. v. State Bar (9th Cir. 1999) 188 F.3d 1174

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Mandatory bar membership
Morrow v. State Bar (9th Cir. 1999) 188 F.3d 1174

Obbard v. State Bar of California (2020) 48 Cal.App.5th 345 [262 Cal.Rptr.3d 16]
trade, advise members of
LA 155 (1945)
Communicate with opposing party through
LA 315 (1970)
Consulting firm, advise customers of
LA 194 (1952)
Corporation
represent customers of
LA 262 (1959)
Family counseling corporation, represent clients of
LA 270 (1962)
Interpreters in court
People v. Shaw (1984) 35 Cal.3d 535 [198 Cal.Rptr. 72]
Labor union, represent members of
LA 151 (1944)
Bankruptcy petition preparers (BPP) (11 U.S.C.A. § 110(h))
BPP can only transcribe and type bankruptcy forms that debtor alone must prepare without assistance and may charge only what professional typists or word processors would charge
Scott v. United States (In re Doser) (9th Cir. 2005) 412 F.3d 1056
IRS agents not entitled to absolute immunity
sanction of person when taking action provoking lawsuit
Ortho 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
Self-representation
trustees representing themselves where the matter is
between trustees and trust beneficiaries in the context of
probate proceeding is not an unauthorized practice of law
Donkin v. Donkin (2020) 47 Cal.App.5th 469 [260 Cal.Rptr.3d 844]
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

See How to Use This Index, supra, p. i 369 2022 (updated entries through 12/31/2021)
LEGAL SPECIALIZATION

Referral fees
unregistered networking group
SD 2021-1

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:
Deerings Annotated California Codes, Rules of Court, State Bar Rules (p. 433), and in
West’s Annotated California Codes, Court Rules, vol. 23, pt 3, p. 751
Text available through State Bar’s home page:
http://www.calbar.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
-referral occurs when an entity engages in the act of directing or sending a potential client to an attorney for purposes of 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

Of client, counsel shown on

“Of counsel” on
Rule 1-400, std. 8, Rules of Professional Conduct
CAL 1993-129, CAL 1986-88

Of office sharers [See Law office.]
CAL 1971-27

Of organization, lawyer-officer of identified on
LA 286 (1965), LA 256 (1959)

Out-of-state attorney or firm on

Out-of-state attorney’s
LA(I) 1960-1

Partnership
foreign lawyer or firm on
former member shown on
inactive partner
LA 310 (1969)

interstate
LA 230 (1955)
non-existent partnerships
LA(I) 1959-3

Professional corporation
SD 1978-4

Public office of former judge shown on
SF 1973-11

Public official’s reference to private practice
LA 260 (1959)
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 fees 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 insurer’s lien on insured’s settlement

LA 352 (1976)

Judgment creditor denied recovery of attorney’s fees incurred against another judgment creditor as to priorities 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. 1997) 3 Cal. State Bar Ct. Rptr. 754

CAL 2009-177, CAL 2008-175

attorney may choose to file notice of lien in an underlying action against debtor/client, although attorney is not required to do so


Physician


Priority of


attorney having a valid but unperfected security interest has priority over other unsecured creditors where the People failed to substantially comply with Penal Code § 186.11


attorney’s lien is subordinate to an adverse party’s right to offset judgments

Pou Chen Corporation v. MTS Products (2010) 183 Cal.App.4th 188 [197 Cal.Rptr.3d 57]

attorney’s lien, if valid, on proceeds of client’s subsequent judgment has priority over judgment creditor’s lien on same judgment


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

LIMITING LIABILITY TO CLIENT

child support obligations have priority over attorney's fees on funds from liquidated assets deposited in attorney's client trust account in anticipation of legal services
Brothers v. Kern (2007) 154 Cal.App.4th 126, 64 Cal.Rptr.3d 239
equitable lien for fees
exceptions to priority of attorney’s lien
judgment creditor's application for proceeds of judgment bears burden of persuading court that it should be granted to satisfy judgment creditor's lien over an attorney's potentially senior claim of lien on same proceeds

LIMITING LIABILITY TO CLIENT

judgment creditor's lien did not cover commercial tort claims

Third party
CAL 2008-175

attorney as third-party lien claimant entitled to proceeds, over other claimants, from disposition of property where the People failed to substantially comply with this statute
duty of attorney
U.S. v. Limbs (9th Cir. 1975) 524 F.2d 799
Johnstone v. State Bar (1966) 64 Cal.2d 153, 155 [49 Cal.Rptr. 97, 410 P.2d 617]


In re Marriage of Wagoner (1986) 176 Cal.App.3d 936 [222 Cal.Rptr. 479]

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9
In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91
In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234
In the Matter of Brewer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404

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

LITIGATION

Anti-SLAPP cases
Mindy's Cosmetics, Inc. v. Dakar (9th Cir. 2010) 611 F.3d 590

Daniels v. Robbins et al. (2010) 182 Cal.App.4th 204 [105 Cal.Rptr.3d 683]

allegations of conspiring in or aiding and abetting tenant harassment insufficient where the only acts attorney was shown to have committed were giving advice to client and writing a letter to opposing counsel which are unquestionably protected activities

Contreras v. Dowling (2016) 4 Cal.App.5th 774 [208 Cal.Rptr.3d 707]
declaratory relief action to determine prior attorney's right to fees is not subject to anti-SLAPP motion because suit does not arise from a protected activity
defendant's general counsel's statement to press accusing plaintiff's attorney of wrongdoing is protected under the fair and true reporting privilege
Argentieri v. Zuckerberg (2017) 8 Cal.App.5th 768 [214 Cal.Rptr.3d 358]
denial of anti-SLAPP motion appealable and proper where insurer's complaint did not arise from counsel's litigation-related conduct, but rather form his post-settlement conduct
Travelers Casualty Insurance Co. of America v. Hirsch (9th Cir. 2016) 831 F.3d 1179

denied for failure to show probability of success in underlying matter

filing of unredacted credit report is protected activity

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
Kearnley 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

See How to Use This Index, supra, p. i
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 (Mendoza v. Hamzeh (2013) 215 Cal.App.4th 799 [155 Cal.Rptr.3d 832]).

motion granted on the basis that there was no evidence that attorneys harbored malice in pursuing the underlying action (Dunning v. Clevs (2021) 64 Cal.App.5th 156 [278 Cal.Rptr.3d 607]).

plaintiff’s letter to defendant is extortion as a matter of law, therefore it is not protected under the anti-SLAPP statute (Stenehjem v. Sareen (2014) 226 Cal.App.4th 1405 [173 Cal.Rptr.3d 173]).

settlement negotiations are acts in furtherance of person’s right to petition under the statute (Seltzer v. Barnes (2010) 182 Cal.App.4th 953 [106 Cal.Rptr.3d 290]).

Intervention by non-party holder of privilege is not necessary or required to assert Evidence Code section 954 privilege (Silberg v. Anderson (1990) 50 Cal.3d 205, 211-216).

Kimmel v. Goland (1990) 51 Cal.3d 202 [271 Cal.Rptr. 191].


Kimmel v. Goland (1990) 51 Cal.3d 202 [271 Cal.Rptr. 191].

Litigation privilege


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]).

malicious prosecution

LOAN


protected activities under anti-SLAPP statute are not coextensive with the range of statements protected by the litigation privilege


settlement negotiations

underlying policy


Ligation privilege does not protect attorney's alleged fraudulent statements about insurance coverage


Litigation privilege versus strategic lawsuits against public participation (SLAPP) action


Public official's authority with respect to initiating

LA(I) 1974-3

Specially appearing attorney undertakes a limited association with the litigant's attorney of record, forms an attorney-client relationship with the litigant, and owes the litigant a duty of care


Vicarious disqualification of a firm does not automatically follow the personal disqualification of the tainted attorney, a former settlement judge

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

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]
Dunning v. Clews (2021) 64 Cal.App.5th 156 [278 Cal.Rptr.3d 607]
Reyes v. Kruger (2020) 55 Cal.App.5th 58 [269 Cal.Rptr.3d 549]
Daniels v. Robbins et al. (2012) 182 Cal.App.4th 204 [105 Cal.Rptr.3d 683]


motion granted on the basis that there was no evidence that attorneys harbored malice in pursuing the underlying action

Dunning v. Clews (2021) 64 Cal.App.5th 156 [278 Cal.Rptr.3d 607]

scope of commercial speech exemption to the anti-SLAPP statute (Code of Civ. Proc. §§ 425.16, 425.17)

Argentierv. Zuckerberg (2017) 8 Cal.App.5th 768 [214 Cal.Rptr.3d 368]
Karnazes v. Ares (2016) 244 Cal.App.4th 344 [198 Cal.Rptr.3d 155]

Associate attorney may also be held liable for malicious prosecution following a principal attorney's instructions is not a valid defense

MALICIOUS PROSECUTION

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]

Golden State Seafood In. v. Schloss (2020) 53 Cal.App.5th 21 [266 Cal.Rptr.3d 608]

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

By law firm

- filing complaint for punitive damages
  - where prohibited by statute
    Umansky v. Urquhart (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
  grounds 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]
Sheldon Appel Co. v. Albert & Oliker (1986) 47 Cal.3d 863 [232 Cal.Rptr. 567]
[254 Cal.Rptr. 336]
Golden State Seafood In. v. Schloss (2020) 53 Cal.App.5th 21 [266 Cal.Rptr.3d 608]

Probable cause element

Zamos v. Stroud (2004) 32 Cal.4th 958 [12 Cal.Rptr.3d 54]
Golden State Seafood In. v. Schloss (2020) 53 Cal.App.5th 21 [266 Cal.Rptr.3d 608]

Americanism

attorney evaluating whether to file a case may generally rely on information provided by the attorney’s client

client provided information
each claim advanced must be supported by
pleading on “on information and belief” not a shield from liability
test is whether reasonable attorney would have thought the claim objectively tenable
Zamos v. Stroud (2004) 32 Cal.4th 958 [12 Cal.Rptr.3d 54]
Golden State Seafood In. v. Schloss (2020) 53 Cal.App.5th 21 [266 Cal.Rptr.3d 608]

inferring malice from lack of probable cause

Fees

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

Inadequate investigation of medical malpractice claim by attorney

dismissal of medical malpractice claim for failure to prosecute gave rise to
Weaver v. Superior Court (1979) 95 Cal.App.3d 166 [156 Cal.Rptr. 745]
mere reliance on client’s description

In-depth investigation by attorney negates malicious prosecution for defamation action


Judgment reversed


Premature where cross-complaint pending in underlying action


See How to Use This Index, supra, p. i 375 2022 (updated entries through 12/31/2021)
MALPRACTICE


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

MALPRACTICE

[S e  Neglect. Professional liability.]

MALPRACTICE

Requires favorable termination reflecting the merits of the underlying action under CCP § 1038

Action against public entity under California Tort Claims Act

Statute of limitations

Sanctions

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


-governs malicious prosecution claims against attorneys who perform professional services in the underlying litigation


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]

Aloy v. Mash (1985) 38 Cal.3d 312 [212 Cal.Rptr. 162]

Michaels v. Greenberg Traurig, LLP (2021) 62 Cal.App.5th 512 [277 Cal.Rptr.3d 1]


Wise v. DLA Piper LLP (2013) 220 Cal.App.4th 1180 [164 Cal.Rptr.3d 54]


Salisbury v. County of Orange (2005) 131 Cal.App.4th 756 [31 Cal.Rptr.3d 831]


Statute of limitations

Actions against attorneys, under CCP 340.6


-governs malicious prosecution claims against attorneys who perform professional services in the underlying litigation

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
Cal.Rptr.3d 422]
client must prove causation in transactional matters
Michaels v. Greenberg Traurig LLP (2021) 62
Cal.App.5th 512 [277 Cal.Rptr.3d 1]
to third parties
[110 Cal.Rptr.2d 691]
Cal.Rptr. 905]
Acts of privately retained counsel and publicly appointed
counsel should be measured by the same standard of care,
except as otherwise provided by statute
Agreement to limit professional liability
CAL 2009-178, LA 489 (1997)
Anti-SLAPP
actions based on breach of duties owed to clients are not
SLAPP suits
Cal.Rptr.3d 492]
definitional focus of this statute is not the form of the
plaintiff’s cause of action; rather, it is the defendant’s
activity that gives rise to his or her asserted liability and
whether that activity constitutes protected speech or petitioning
Mindy’s Cosmetics, Inc. v. Dakar (9th Cir. 2010) 611
F.3d 590
litigation tactics protected under Anti-SLAPP statute
Cal.Rptr.3d 407]
PrediWave Corp. v. Simpson Thacher & Bartlett, LLP
(2009) 179 Cal.App.4th 1204 [102 Cal.Rptr.3d 245]
Peregrine Funding, Inc. v. Sheppard Mullin Richter &
Cal.Rptr.3d 31]
malpractice claims involve breach of duty by neglecting to
do an act or doing an act, not the right of petition;
therefore, malpractice claim may not be struck under the
anti-SLAPP statute
Cal.Rptr.3d 451]
statute not applicable to malpractice claim based on
attorney’s breach of loyalty
Mindy’s Cosmetics, Inc. v. Dakar (9th Cir. 2010) 611
F.3d 590
Cal.Rptr.3d 407]
Cal.Rptr.3d 385]
PrediWave Corp. v. Simpson Thacher & Bartlett, LLP
(2009) 179 Cal.App.4th 1204 [102 Cal.Rptr.3d 245]
Klyton v. Frank E. Rogozinski, Inc. (2009) 177
Cal.App.4th 1264 [99 Cal.Rptr.3d 805]
Kolar v. Donahue, McIntosh & Hammerton (2006) 145
Cal.App.4th 1532 [52 Cal.Rptr.3d 712]
Cal.App.4th 1179 [20 Cal.Rptr.3d 621]
statute not applicable to malpractice claim based on
attorney’s breach of professional duties in a non-litigation setting
Fremont Reorganization Corp. v. Faigin (2011) 198
Cal.App.4th 1153 [131 Cal.Rptr.3d 478]
Arbitration provisions of retainer agreement are enforceable
and applicable to legal malpractice action
Powers v. Dickson, Carlson & Campillo (1997) 54
Cal.App.4th 1102 [63 Cal.Rptr.2d 261]
CAL 1989-116
LA 489 (1997)

arbitrator’s decision to dismiss legal malpractice case due to
plaintiff’s inability to pay should have allowed case to proceed in federal court
Tillman v. Tillman, Rheingold Valet, Rheingold, Shkolnik & McCarty (9th Cir. 2016) 625 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
Mk. Holyoke Homes, L.P. v. Jeffer Mangels Butler &
Cal.Rptr.3d 597]
Assignability
Cal.Rptr.2d 536]
Baum v. Duckor, Spradling & Metzger (1999) 72
Cal.App.4th 54 [84 Cal.Rptr.2d 703]
bankruptcy estate representative pursing claim for the
estate is not an assignee
Office of Statewide Health Planning and Development
v. Musick, Peeler & Garrett (1999) 76 Cal.App.4th 830
[90 Cal.Rptr.2d 705]
exception to the California rule barring the assignment for the
cause of action for legal malpractice
Cal.Rptr.3d 912]
shareholder’s derivative action does not transfer the cause of action from the corporation to the shareholders
McDermott, Will & Emory v. Superior Court (James)
Attorney self-interest does not interfere with duty to client
when attorney seeks indemnification from co-counsel in malpractice action
Musser v. Provencher (2002) 28 Cal.4th 749 [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
Cal.Rptr.2d 78]
Cal.Rptr.2d 644]
Attorney sued by former corporate client for malpractice is not
entitled to receive costs of defense pursuant to Corporations
Code section 317
Attorney’s failure to raise inapplicable argument
Cal.App.4th 1048 [77 Cal.Rptr.2d 250]
Breach of fiduciary duty, failure to advise of conflict, failure to
advise that an investment was inappropriate for client or refer to
independent advisor, obtaining undisclosed profit from transaction
Cal.Rptr.3d 877]
Burden of proof
Cal.Rptr.3d 692]
Cal.Rptr.3d 23]
Cal.Rptr.3d 471]
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]
Michaels v. Greenberg Traurig, LLP (2021) 62 Cal.App.5th 512 [277 Cal.Rptr.3d 1]

error on trial court for failing to instruct jury on issue of severability in legal malpractice case

plaintiff failed to prove that any judgment she might have obtained in her “case within a case” would have been collectible

plaintiff must prove that, but for the negligence of the attorney, a better result could have been obtained in the underlying matter


By partner
associate’s duty to disclose to client
LA 383 (1979)
Calculation of damages based on comparative fault of prior and successor counsel and of guardians ad litem pursuant to CCP § 877.


“Case within a case” methodology must be used when legal malpractice involves negligence in the prosecution or defense of a legal claim


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 receive from the case

Back 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

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]

individual convicted of a criminal offense must obtain reversal of his or her conviction, or other exoneration by post conviction 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

no duty found
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. DLA 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

Deflatable 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. Zentli (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 cause 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


Insurance

Firm's deadline to report malpractice claim to insurance carrier quitably tolled


firm's insurance doesn't cover attorney's alleged malpractice occurring outside conduct of firm's business


Insurance carrier cannot bring malpractice action against attorney it did not retain to defend insured

American Casualty Company v. O'Flaherty (1997) 57 Cal.App.4th 1070 [67 Cal.Rptr.2d 539]

insurance company has right to bring malpractice action against the counsel it hired to defend its insured


Malpractice actions tolled while attorney continues to represent client


Malpractice occurring outside of firm's business


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

MALPRACTICE

communication with physician of opposing party
SD 1983-9
no duty to consult medical specialist unless such
consultations recommended by other doctors
Cal.Rptr.2d 637]
represent
-against former physician client
LA(1) 1965-5
statute of limitations 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]
Meritless claims
no obligation to allege or advise a client on an unmeritorious claim
Cal.Rptr.3d 728]
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
Cal.Rptr.2d 142]
No duty to agent of client who participated with attorney in the negotiation of a contract on behalf of their client
[79 Cal.Rptr.2d 613]
No triable issue of fact as to second attorney’s assumption of responsibility for pending lawsuit during retained counsel’s illness
Cal.Rptr.2d 615]
Omission
Cal.Rptr. 703]
by one member of law firm imputed to others when more than one attorney works on case
Cal.Rptr. 771]
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
Cal.Rptr.3d 276]
successor conservator, albeit non-client, may bring suit against a predecessor’s attorney for malpractice causing loss to the estate
Cal.Rptr.3d 895]
Professional malpractice distinguished from negligence
Cal.Rptr.2d 894]
Proximate cause
not shown when attorney’s allegedly wrongful conduct is not a substantial factor
Cal.Rptr.3d 583]
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
Cal.Rptr.2d 78]
Public policy concerns do not bar concurrent counsel from seeking indemnification from co-counsel in malpractice action
Musser v. Provencher (2002) 26 Cal.4th 274 [121
Cal.Rptr.2d 373]
Punitive damages
in underlying lawsuit
Ferguson v. Lieff, Cabraser, Heimann & Bernstein (2003) 30 Cal.4th 1037 [135 Cal.Rptr.2d 46]
Expansion Pointe Properties Limited Partnership v.
Procopio (2007)152 Cal.App.4th 42 [61 Cal.Rptr.3d 166]
Right to jury trial
Cal.Rptr.2d 88]
Sanctions imposed on client for filing a frivolous appeal does not constitute malpractice as a matter of law
Cal.Rptr.2d 689]
Scope of expert testimony
Cal.Rptr.2d 88]
Settlement
breach of contract action available if settlement agreement cannot be enforced under CCP § 684.6
Harris v. Rudin, Richman & Appel (1999) 74
Cal.App.4th 299 [97 Cal.Rptr.2d 822]
Cal.Rptr.3d 175]
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
242]
Signature of plaintiff’s attorney omitted on complaint may not warrant dismissal of action with prejudice
Cal.Rptr.2d 829]
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
injury suffered by absent class members

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

legal malpractice claim brought by individual members dismissed because attorney was court appointed to represent the unsecured creditors’ committee not the individual members
Schultz 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
Stine v. Dell’Oso (2014) 230 Cal.App.4th 834 [178 Cal.Rptr.3d 895]

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 the 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.)
-requirement of one full year after accrual of cause of action

claims against former law firm not tolled based on continuous representation where client requested that its files be immediately delivered to replacement counsel, thereby consenting to firm’s express withdrawal

claims against attorney not tolled where attorney fails to act in a manner required for there to be a continuing attorney-client relationship

claims against former law firm not tolled when client continues to be represented in the same matter by the attorney who left the firm
Beal Bank, SSB v. Arter & Hadden, LLP (2007) 42 Cal.4th 503 [66 Cal.Rptr.3d 52]

claims against former law firm tolled when client not continually represented in the same matter

doctrine of “equitable tolling” applies to legal malpractice limitation period


does not begin to run until client suffers actual harm
Coscia v. McKenna & Cuneo (2001) 25 Cal.4th 1194 [108 Cal.Rptr.2d 471]


MALPRACTICE

Laird v. Blacker (1994) 2 Cal.4th 606

Caballero v. Gibson, Dunn & Crutcher (1997) 54 Cal.App.4th 1457 [63 Cal.Rptr.2d 594]
Fantazia v. County of Stanislaus (1996) 41 Cal.App.4th 1444 [49 Cal.Rptr.2d 177]
Robinson v. McGinn (1987) 195 Cal.App.3d -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]
Costa v. McKenna & Cuneo (2001) 25 Cal.4th 1194 [108 Cal.Rptr.2d 471]
Samuels v. M.C. (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]
--sustained at the time when client discovered the facts supporting her malpractice claim; client's legal malpractice lawsuit was filed more than one year after section 340.6's statute of limitation had commenced and was time-barred
Sharon v. Patterson (2010) 41 Cal.App.5th 1 253 Cal.Rptr.3d 840]
-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
  991 F.2d 1501
  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. (Idaho) 2004) 364 F.3d
  1024
  Transactional matters
  client must prove causation
  Viner v. Sweet (2003) 30 Cal.4th 1232 [135 Cal.Rptr.2d
  629]
  Michaels v. Greenberg Traurig, LLP (2021) 62
  Cal.App.5th 512 [277 Cal.Rptr.3d 1]
  Trial court error can negotiate elements of legal malpractice
  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.]
  Debarer, whereabouts disclosed
  LAL 1956-1

MISAPPROPRIATION  [See  Clients’ trust account.]


Abandonment of client
  In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar
  Ct. Rptr. 220
  In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar
  Ct. Rptr. 871
  in order to represent adverse interest
  Cal.Rptr.3d 687]

Abdication of trust account responsibilities
  In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar
  Ct. Rptr. 871

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MISCONDUCT

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

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
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 (1988) 48 Cal.3d 236 [256 Cal.Rptr. 97]

Attempted child molestation
In re Lesansky (2001) 25 Cal.4th 11 [104 Cal.Rptr.2d 409, 17 P.3d 764]

Attempting to prevent discovery

Attorney neglect
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imputed to client
Luna v. Keran (9th Cir. 2015) 784 F.3d 640
not necessarily binding on client

Attorney refused to dismiss defendants when he knew they were not involved—violation of Business and Professions Code section 6068(c)
In the Matter of Burke (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448

Break 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
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Business transaction, improper
In the Matter of Silverton (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252

Carrying a concealed weapon
In re Hickey (1990) 50 Cal.3d 571 [788 P.2d 684]

Chose in action
purchase by attorney with intent to bring suit thereon
Business and Professions Code section 6129

Client reliance on attorney

Collateral order doctrine defined
Nunag-Tanedo v. East Baton Rouge Parish School Board (9th Cir. 2013) 711 F.3d 1136
Hanna v. Mercedes-Benz USA, LLC (2019) 36 Cal.App.5th 493 [228 Cal.Rptr.3d 654]

Collusion
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-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

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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. 195
is basis for discipline, not a conviction
In re Gross (1983) 33 Cal.3d 561, 568 [189 Cal.Rptr. 848, 659 P.2d 1137]

Corruption
whether or not in course of relations as attorney
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-while attorney served on jury
In the Matter of Fahy (Review Dept. 2009) 5 Cal.
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Counsel’s basis for reversal of judgment in judicial proceeding
report by clerk to State Bar
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Court
appearing in court while intoxicated
Ridge v. State Bar (1989) 47 Cal.3d 952 [254 Cal.Rptr. 803]
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Bar Ct. Rptr. 315
In the Matter of Johnson (Review Dept. 2000) 4 Cal.
State Bar Ct. Rptr. 179
duty not to mislead
U.S. v. Sullivan (9th Cir. 2008) 522 F.3d 967
-while attorney served on jury
In the Matter of Chestnut (Review Dept. 2000) 4 Cal.
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improper contact with juror
In re Possino (1984) 37 Cal.3d 163, 170 [207 Cal.Rptr. 543, 689 P.2d 115]

Court order
violation
Business and Professions Code section 6103
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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
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-misdemeanor
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Decorum in courtroom
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Deception and concealment amounting to moral turpitude
In the Matter of Kittrell (Review Dept. 2000) 4 Cal. State Bar
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Cal.Rptr. 513, 405 P.2d 553]
permitting without client’s authority
Cal.Rptr. 257, 356 P.2d 529]

Defense in criminal action aiding, promoting, or advising where partner is district attorney or public prosecutor
Business and Professions Code section 6131(a)

Delay
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-with view to attorney’s gain
--misdemeanor
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“Dirty tricks” disrupting political campaign in acts unrelated to attorney’s practice of law
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Disbarred attorney
appearing as plaintiff on own behalf where action assigned to attorney subsequent to disbarment order
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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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Dishonesty
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judge systemically and routinely sold his office and his public trust
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- filing false documents under penalty of perjury
- making misrepresentation to judge while attorney served on a jury
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Business and Professions Code section 6106

Disregard for obligations to the legal profession and to clients
In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349

District attorney
advocates, takes part in, or receives valuable consideration in criminal defense
- where prosecuted action
Business and Professions Code section 6131(b)

Driving under influence of alcohol, conviction for
In re Carr (1988) 46 Cal.3d 1089
In the Matter of Herich (Review Dept. 2001) 5 Cal. State Bar Ct. Rptr. 820
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significant professional discipline may be imposed for multiple misdemeanor convictions of driving under the influence
In the Matter of Guillery (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 402

Drunkenness in public
In re Hickey (1990) 50 Cal.3d 571 [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
Business and Professions Code section 6129

Ex parte communication with judge
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

Extortion
attorney attempts to receive money from opposing party in return for client's favorable testimony in criminal investigation is extortion
United States v. Villalobos (9th Cir. 2014) 567 Fed.Appx. 541

Failure to appear in a probation violation proceeding
In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349

Failure to communicate with client
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In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 348

Failure to cooperate in disciplinary investigation
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Failure to cooperate with first appointed attorney
Franklin v. Murphy (9th Cir. 1984) 745 F.2d 1221, 1236

Failure to fulfill statutory duties as a juror
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Failure to keep the State Bar advised of current address
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Failure to maintain respect due to courts
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Failure to preserve confidences and secrets
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Failure to properly prevent direct contact with represented parties by correspondence of employees

Failure to redact opposing party's personal information

Failure to release client funds
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Fee split with non-lawyer


Felony involving moral turpitude

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Forgery

no violation found when successor attorney authorizes an employee to simulate the prior attorney’s signature on a settlement draft

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Frolicious filing in bankruptcy matter

Shalaby v. Mansdorf (In re Nakhuda) (9th Cir. BAP 2016) 544 B.R. 886

Gifts and favors from litigants and counsel

judge improperly accepted

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Grand theft


In re Doe (1978) 20 Cal.3d 550 [143 Cal.Rptr. 253]

Gross carelessness and negligence constitutes a violation of an attorney’s oath


appearing for party without authority

Business and Professions Code section 6104

Holding out as specialist

Rule 1-400(D)(6), Rules of Professional Conduct (operative 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 [121 Cal.Rptr. 194]

Ignoring pro bono clients

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

Illegal drug transactions


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

Inadequate supervision of associate by attorney
duty to supervise

Moore v. State Bar (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161, 396 P.2d 577]
MISCONDUCT

Incompetent representation
appellant’s briefs generally lacked cogent legal argument, legal authority, and proper citations, and sufficient evidence supported the judgment and order of dismissal based on join misconduct by attorney and client.


basis for reversal of judgment in judicial proceeding
-report by clerk to State Bar
Business and Professions Code section 6086.7

Intimidation of witness
In re Lee (1988) 47 Cal.3d 471 [253 Cal.Rptr. 570]

Issuing checks with insufficient funds in account
Rhodes v. State Bar (1989) 49 Cal.3d 50 [260 Cal.Rptr. 266]

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


Alkow v. State Bar (1952) 36 Cal.2d 257 [92 Cal.Rptr. 278]

In the Matter of Starke (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708
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overdraft protection
CAL 2005-169

Knowledge of Rules of Professional Conduct is not an element of offense of misconduct

Zitny v. State Bar (1966) 64 Cal.2d 787, 793 [51 Cal.Rptr. 825, 415 P.2d 521]

Lending name to non-attorney to be used as attorney
Business and Professions Code section 6105

Loan modification services
In the Matter of DeClue (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437

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

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
CAL 2020-202, LA 527, SF 2015-1

Minors involved in illicit conduct as a result of attorney’s activities
In re Duggan (1976) 17 Cal.3d 416 [130 Cal.Rptr. 715]

In re Plotner (1971) 5 Cal.3d 714 [97 Cal.Rptr. 193]

In the Matter of Deierling (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552

Misappropriation of client funds
In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213

Misappropriation of law partnership funds

In re Basinger (1988) 45 Cal.3d 1348 [249 Cal.Rptr. 110, 756 P.2d 833]

Misappropriation of non-client funds
In the Matter of Saxon (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728

Misdemeanor
advertising or holding out as entitled to practice law following disbarment or during suspension
Business and Professions Code section 6126

collision or consent to collusion with intent to deceive court or party
Business and Professions Code section 6128(a)

deceit or intent to deceive any court or party
Business and Professions Code section 6128(a)
defense in criminal action
-advising, aiding, or promoting when partner is district attorney or public prosecutor
Business and Professions Code section 6131(a)

delay of client’s suit for attorney’s own gain
Business and Professions Code section 6128(b)

failure to obtain court approval before release of copies of child pornography
Penal Code 1054.10

failure to obtain court approval before release of victim or witness information
Penal Code 1054.2

for district attorney or public prosecutor to advise, take part in or receive valuable consideration in criminal defense
Business and Professions Code section 6131(b)
purchase or interest in evidence of debt or thing in action, with intent to bring suit thereon
Business and Professions Code section 6129

receive funds for which attorney not laid out or become answerable for
Business and Professions Code section 6128(c)

Misdemeanor child endangerment conviction
In the Matter of Jensen (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283

Misdemeanor involving moral turpitude
Business and Professions Code section 6101

Misrepresentation
concealing terms of an insurance policy during settlement negotiation

-of counsel
--basis for reversal of judgment in judicial proceeding
--report by clerk to State Bar
Business and Professions Code section 6086.7

settlement negotiations
CAL 2015-194
to judge while attorney served on a jury
In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

Misrepresentation by suppressing exculpatory evidence
In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

Misrepresentation made to other side regarding insurance coverage

Moral turpitude [See Moral Turpitude.]

act involving
-whether or not in course of relations as attorney
Business and Professions Code section 6106

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

--misrepresentation to judge while attorney served on a jury
In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

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
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borrowing money without intent to repay it
In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231

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

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MISCONDUCT

- prohibited if partnership activities constitute practice of law

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)

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

Pattern of misconduct

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871

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 intimations may not amount to the advancement of prejudicial facts

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

Prejudicial statements during closing argument

United States v. Velazquez (9th Cir. 2021) 1 F.4th 1132

Jackson v. Park (2021) 66 Cal.App.5th 1196 [281 Cal.Rptr.3d 634]


Presentation of false or fraudulent insurance claims

Business and Professions Code section 6106.5(a)

Prior to admission to the State Bar

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

Stratmore v. State Bar (1975) 14 Cal.3d 887 [123 Cal.Rptr. 101]

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

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

In the Matter of Passenheim (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62

Pro bono client, ignoring

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

Pro hac vice attorney

Attorney disciplined for misrepresentation on pro hac vice application regarding residency


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


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

censure for failure to follow local court rules

United States v. Summet (9th Cir. 1986) 862 F.2d 784

court cannot sanction pro hac vice attorney for bad faith misconduct in a manner that a California attorney could not be sanctioned


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


residency requirement


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

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MISCONDUCT

Public employees
attorney employee investigated for misconduct can be compelled, under threat of job discipline, to answer questions regarding his job performance, so long as the employee is not required to waive the constitutional protection against criminal use of those answers
-Spiebauer v. County of Santa Clara (2009) 45 Cal.4th 704 [88 Cal.Rptr.3d 590]

Public prosecutor
advises, takes part in or receives valuable consideration in criminal defense
-where acted as prosecutor in matter
   Business and Professions Code section 6131(b)
Purchase, with intent to bring suit
chosen in action
   Business and Professions Code section 6129
evidence of debt
   Business and Professions Code section 6129
Receipt of funds
on account for which not laid out or become answerable for
-misconduct
   Business and Professions Code section 6128(c)
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
Recording a conversation (Penal Code section 632)
   Kimmel v. Goland (1990) 51 Cal.3d 202 [271 Cal.Rptr. 191]
   In re Lotus (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
   applicability to city attorney while prosecuting misdemeanor cases (Penal Code section 633)
   79 Ops. Cal. Atty. Gen. 221 (9/16/96; No. 96-304)
telephone
   Kimmel v. Goland (1990) 51 Cal.3d 202 [271 Cal.Rptr. 191]
   CA 1966-5, LA 272 (1962), LA 182 (1951)
Repeated violations of Rules of Professional Conduct
Report of immigration status
   In the Matter of Rubin (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 797
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
Reversal of judgment
based upon counsel's
   -mandatory report by clerk to State Bar
   Business and Professions Code section 6086.7
Sanctions
   Code of Civil Procedure section 128.5
   [249 Cal.Rptr.3d 601]
Settling a case without authority
   In the Matter of Kaufman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213
Suspension attorney
   appearing as plaintiff on own behalf where action assigned to attorney subsequent to order of suspension
   Business and Professions Code section 6130
Terminating sanctions imposed for repeated violation of the court's order
   Osborne v. Todd Farm Service (2016) 247 Cal.App.4th 43
   [202 Cal.Rptr.3d 84]
   Threat to report immigration status
   In the Matter of Rubin (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 797
Unauthorized access to opposing party's data
   LA 531 (2019)
Unauthorized representation
Violating five separate court orders warranted suspension
   In the Matter of Collins (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551
Violence against spouse and others
   In re Hickey (1990) 50 Cal.3d 571 [788 P.2d 684]
   In the Matter of Ozowski (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 67
Willful failure of suspended attorney to comply with California Rule of Court 9.20
   In the Matter of Chavez (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 783
   In the Matter of Amponsah (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646
   Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287
   In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192
   In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593
   In the Matter of Friedman (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527
   In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480
   In the Matter of Grueneicha (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439
   does not require bad faith or knowledge of provision violated
   non-compliance with rule 9.20(c), Rules of Court
   In the Matter of Braun (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738
Willful failure to file tax return
absent finding of moral turpitude
   In re Morales (1983) 35 Cal.3d 1
   In re Rohan (1978) 21 Cal.3d 195 [145 Cal.Rptr. 855, 578 P.2d 102]
   In the Matter of Weber (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942
   +In the Matter of John Michael Brown (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 246
   in re Michael Brown (1995) 12 Cal.4th 205
   concealing personal funds improperly maintained in a client trust account
   In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615
Willful failure to perform and communicate
   Stevens v. State Bar (1990) 51 Cal.3d 283 [794 P.2d 925]
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   Bernstein v. State Bar (1990) 50 Cal.3d 221 [786 P.2d 352]
   Gary v. State Bar (1988) 44 Cal.3d 820 [244 Cal.Rptr. 482]
   Garlow v. State Bar (1988) 44 Cal.3d 689 [244 Cal.Rptr. 452, 749 P.2d 1807]
   Kent v. State Bar (1987) 43 Cal.3d 729 [239 Cal.Rptr. 77]
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ignoring pro bono clients
Sequel v. State Bar (1988) 44 Cal.3d 1077 [245 Cal.Rptr. 404]
Willful violation of court order
Nilsson v. Louisiana Hydrolec (9th Cir. 1988) 854 F.2d 1538
Willful violation of oath and duties as attorney
failure to notify client of change of address, telephone number
practicing law while suspended
tendering checks without sufficient funds
Willful violation of oath and duties of attorney in court of law
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established by showing attorney acted or omitted to act purposely
Beery v. State Bar (1987) 43 Cal.3d 802 [239 Cal.Rptr. 121]
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MODEL CODE OF PROFESSIONAL RESPONSIBILITY [See American Bar Association Model Code of Professional Responsibility.]

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Abandonment of clients’ interest
Mackey v. Hoffman (9th Cir. 2012) 682 F.3d 1247
In re Billings (1990) 50 Cal.3d 358 [787 P.2d 617]
Slavkin v. State Bar (1989) 49 Cal.3d 894 [264 Cal.Rptr. 131]
Matthew v. State Bar (1989) 49 Cal.3d 784 [263 Cal.Rptr. 660]

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Stuart v. State Bar (1985) 40 Cal.3d 838, 842-843 [221 Cal.Rptr. 557]
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In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
refusal of defense counsel to pursue client’s desire to withdraw guilty plea not abandonment when done for ethical reasons
Abortion, procuring
In re Plotner (1971) 5 Cal.3d 714, 726-727 [87 Cal.Rptr. 193, 488 P.2d 385]
Acceptance of employment adverse to a former client
Sheffield v. State Bar (1943) 22 Cal.2d 627 [140 P.2d 376]
Accepting a bribe
In re Bar Association of San Francisco (1921) 185 Cal. 621, 636 [dismissal] [198 P.7]
Accepting fees during suspension
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Accepting fees without performing work [See Fees.]
Alkow v. State Bar (1971) 3 Cal.3d 924, 934-935 [92 Cal.Rptr. 278]
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acquisition of
Advertising [See Advertising and Solicitation of Business.]
Alcoholism
In re Kelley (1990) 52 Cal.3d 487 [801 P.2d 1126]
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In the Matter of Herch (Review Dept. 2001) 5 Cal. State Bar Ct. Rptr. 820
Allowing non-attorney to sign up clients
In re Oehler (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920
Alteration of evidence presented in a criminal trial
Alteration of name of grantee on deed
Hinds v. State Bar (1941) 19 Cal.2d 87, 89-93 [119 P.2d 134]
Altering will so as to be admitted to probate
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In re Lessansky (2001) 25 Cal.4th 11 [104 Cal.Rptr.2d 409, 17 P.3d 764]
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Attorney’s attempt to kill former client equals moral turpitude
In re Mostman (1989) 47 Cal.3d 725 [254 Cal.Rptr. 286]
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Attorney’s name, allowing lay employee to use McGregor v. State Bar (1944) 24 Cal.2d 283, 288-289 [148 P.2d 865]
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Breach of fiduciary duty
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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
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In re Severo (1986) 41 Cal.3d 493 [224 Cal.Rptr. 106]
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Skelly v. State Bar (1973) 9 Cal.3d 502 [dismissal] [108 Cal.Rptr. 6, 509 P.2d 950]
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Charging and accepting exorbitant fee Goldstone v. State Bar (1931) 214 Cal. 490, 496-497 [6 P.2d 513]
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Choate v. State Bar (1953) 41 Cal.2d 399 [260 P.2d 609]

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Lantz v. State Bar (1931) 212 Cal. 213 [296 P. 497]

Aydelotte v. State Bar (1930) 209 Cal. 737, 740 [290 P. 41]


accepted fees for legal services but failed to perform such services or return the fees

Ridley v. State Bar (1972) 6 Cal.3d 551 [99 Cal.Rptr. 873]

advising the conveyance of property for the purpose of defrauding the creditor of his client

Townsend v. State Bar (1948) 32 Cal.2d 592 [197 P.2d 326]

arranging sham marriages

In re Aquino (1969) 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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Marlowe v. State Bar (1965) 63 Cal.2d 304 [46 Cal.Rptr. 326, 405 P.2d 150]

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Sevin v. State Bar (1973) 8 Cal.3d 641, 646-647 [105 Cal.Rptr. 513, 504 P.2d 449]

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CAL 2015-194, LA 482 (1995)

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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

Laney v. State Bar (1936) 7 Cal.2d 419, 422 [60 P.2d 845]

petitioner’s greater offense was his fraudulent and contrived misrepresentation 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]

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Prevailing party law firm not entitled to attorney fees when represented by their own counsel  

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professional. Fees. Practice of law.]
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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

LA 530 (2018)

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)

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Practices when member is

-city attorney

LA 242 (1957), LA(I) 1975-4

-city council member

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- when associate is
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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

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.
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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]
81]

Associate changing firms
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
Cal.Rptr. 671]
CAL 2020-201, 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


LA 195

CAL 2020-201, OC 94-002, SD 1983-4, SD 1983-7, SF 2021-1

advisory counsel

-pro se defendants given assistance in courtroom without actual conduct of trial

Locks v. Summer (9th Cir. 1983) 703 F.2d 403, 407

co-counsel attorney may participate in trial with pro se defendant

Locks v. Summer (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.]

In re Grand Jury (9th Cir. 2021) 23 F.4th 1088

CAL 1999-154, CAL 1982-69, CAL 1968-13


SD 1992-1, SD 1969-2

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

attorney also certified public accountant


LA 351 (1975), LA 225 (1955)

attorney also concert promoter


attorney also dentist

SF(i) 1973-7

attorney also legal publisher operating out of attorney’s office

LA 446 (1987)

attorney also physician

LA 477

attorney as sports agent

CAL 1968-13

city council member and deputy county counsel

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

collection agency and law practice

Business and Professions Code section 6077.5

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


LA 124 (1939)

corporation director

OC 2011-02

insurance agency and law practice

SD 1974-18

investment/portfolio manager

CAL 1999-154

management consulting company

-may not form company that acts as attorney’s agent in solicitation of business

LA 446 (1987)

motion picture and theatrical agency and law practice

LA 84 (1935)

multidisciplinary practice

LA 510 (2003)

police officer badge and card while practicing law

-adverse interest

--accepting employment in criminal defense case

LA 94 (1936)

real estate and law practice


CAL 1982-69


SD 1992-1, SD 1969-2

-acceptance of legal business referred from real estate business

LA 140 (1942)

standard applied in dual purpose communications

In re Grand Jury (9th Cir. 2021) 23 F.4th 1088

Duty to 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 95]


Black v. State Bar (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288]

Moore v. State Bar (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161, 396 P.2d 577]


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

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509

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

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354

CAL 1988-103, LA 488 (1996), OC 94-002

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


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 (1993)
Goodwill of

**Rule 2-300, Rules of Professional Conduct (operative as of May 27, 1989)** defined

Business and Professions Code section 14100


_Lyon v. Lyon_ (1966) 246 Cal.App.2d 519 [54 Cal.Rptr. 829]


**dissolution of partnership**


_Lyon v. Lyon_ (1966) 246 Cal.App.2d 519, 524 [54 Cal.Rptr. 829]

_CAL 2020-21, CAL, 2014-190, CAL 1985-86

**-due to death of partner**

_Little v. Caldwell_ (1894) 101 Cal. 553, 561 [36 P. 107]


-**partner not entitled to compensation for 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**

-lo 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 Aufmuth_ (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) 741 F.2d 238

_waiver of right of counsel*

_United States v. Gerritsen_ (9th Cir. 2009) 571 F.3d 1001

_in propria persona client and advisor counsel share handling of case*

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

_People v. Bloom_ (1989) 48 Cal.3d 1194 [259 Cal.Rptr. 669]


_capital defendant who chooses to be represented by counsel is generally not entitled to present his case personally or to act as co-counsel at trial*

_In re Barnett_ (2003) 31 Cal.4th 466 [3 Cal.Rptr.3d 108, 73 P.3d 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


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


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.]

Lawy person may not represent another


Legal research service operated by attorneys

--constitutes practice of law

--advertising of

LA 301 (1967)

--incorporation

LA 301 (1967)

Letterhead

use union emblem on

CAL 1971-24

Liability of firm for legal malpractice of partner


Liens

[See Liens.]

Lottery ticket

assignment of

--to attorney

LA 115 (1937)

purchase of

--by attorney

LA 115 (1937)

Names

[See Fictitious names.]

Non-payment of fee

withdrawal from representation

--notice to client

LA 125 (1940)

--protect client’s position in litigation

LA 125 (1940)

Non-resident member performing legal services governed by California law


Of counsel

[See Of counsel.]

Omissions by one member of law firm imputed to others when more than one attorney works on case


Partner leaves firm and takes clients with him

allocation of fee

--former firm entitled to quantum meruit


Partnership

[See Partnership.]

Physician-lawyer

LA 477

employed by law firm

LA 114 (1937)

Preparation of legal documents

In re Garcia (9th Cir. BAP 2005) 335 B.R. 717

[CA 2020-201]

Preparation of petition to be presented by client in propria persona in other state improper

LA 218 (1953)

Pro bono

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

Professional courtesy

circulating names of attorneys who fail to extend professional courtesies

LA 364 (1976)

Public interest law firm

LA 339

Referral agreement with layperson unenforceable for non-compliance with Business and Professions Code § 6155


Referral of legal business

[See Referral of legal business.]

Sale of


Lyon v. Lyon (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) 1981-4

another attorney not a partner

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

CAL 1997-150, CAL 1986-90

LA(I) 1981-4

SD 1985-1

not able to provide independent review as required under Probate Code section 21350

bail bond agency
SD 1974-23
conflict of interest
CAL 1997-150, CAL 1986-90, CAL 1979-50
LA 216 (1953), LA(I) 1972-15
SD 1985-1
insurance company
LA 215 (1953), SD 1972-7
investigator
LA(I) 1963-8, SD 1974-23
land developer
LA(I) 1968-1
management consulting company
LA 446 (1987)
publishing company
LA 446 (1987)
real estate broker
CAL 1982-69
LA 384 (1980), LA 140 (1942)
separate sole practitioners
CAL 1997-150, CAL 1986-90, SD 1985-1
when representing opposing sides
SD 1972-15
with non-lawyers
In the Matter of Valinoti (Review Dep't 2002) 4 Cal. State Bar Ct. Rptr. 498
Sign
location
-where no office
LA 134 (1940)
Small claims court
appearance by attorney in
LA 105 (1936), SD 1983-4
Specialist
Holding out as
Rule 1-400(D)(6), Rules of Professional Conduct
(operative as of June 1, 1997)
Rule 1-400, std. 11, Rules of Professional Conduct
(operative May 27, 1989 until May 31, 1997)
Wright v. Williams (1975) 47 Cal.App.3d 802
Statutory service on attorney and employees
Tax specialist
employment of
- to assist in advising client
LA 86 (1935)
holding out as
Business and Professions Code section 6126
Trade name, use of
Rule 1-400, standards 6, 7, 8, 9, 12, Rules of Professional Conduct
by attorney or law firm
CAL 1982-66, LA 9 (1921)
Valuation of a law practice in a marital dissolution proceeding
Valuation of a law practice when partnership dissolves
Work product [See Files and Work Product.]
PREPAID LEGAL SERVICES [See Group legal services.]
PRIVILEGED COMMUNICATIONS [See Confidences of the client, privilege]
Evidence Code section 950 et seq.
communications between Agricultural Labor Relations Board and Board’s general counsel when request is made under the Public Record Act
Agricultural Labor Relations Board v. The Superior Court of Sacramento County (2016) 4 Cal.App.5th 675 [209 Cal.Rptr.3d 243]
communications between defendant/minor and psychotherapist appointed to assist in his defense are confidential under attorney-client privilege
Elijah W. v. Superior Court of Los Angeles (2013) 216 Cal.App.4th 140 [156 Cal.Rptr.3d 592]
communications between firm attorney and in-house counsel related to dispute with current client may be privileged
CAL 1997-197
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
Los Angeles County Bd. of Supervisors v. Superior Court (2016) 2 Cal.5th 282 [212 Cal.Rptr.3d 107]
- attorney fee totals in legal matters that concluded long ago
Los Angeles County Bd. of Supervisors v. Superior Court (2016) 2 Cal.5th 282 [212 Cal.Rptr.3d 107]
- confidentiality of invoices for work in pending and active legal matters protected
Los Angeles County Bd. of Supervisors v. Superior Court (2016) 2 Cal.5th 282 [212 Cal.Rptr.3d 107]
- Public Records Act disclosure
Los Angeles County Bd. of Supervisors v. Superior Court (2016) 2 Cal.5th 282 [212 Cal.Rptr.3d 107]
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 returns) 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
PRIVILEGED COMMUNICATIONS

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


Defined

United States v. Sammina Corporation (9th Cir. 2020) 968 F.3d 1107

Electronic communication technologies, utilization of

LA 529 (2017), OC 97-002

Exceptions

corporation waived attorney-client and work product privileges when it shared documents with government


defendant did not waive attorney-client and work product privileges when it shared documents with government

Regents of University of California v. Superior Court (2008) 165 Cal.App.4th 672 [81 Cal.Rptr.3d 186]

defendant’s former attorney allowed to testify as to defendant’s threats to commit act likely to result in death or substantially bodily harm

U.S. v. Alexander (9th Cir. (Mont.) 2002) 287 F.3d 811


independent third party digital forensic expert’s report do not reflect an attorney’s impressions, conclusions, opinions, legal research and theories, thus, not protected from discovery as work product


no implied exceptions to attorney-client privilege


when one of the joint clients sues their former attorney and 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]


Intervention by non-party holder of privilege is not necessary or required to assert Evidence Code section 954 privilege


Ligitation privilege


Litigation privilege does not insulate an attorney from disciplinary proceedings based on his in-court actions


Litigation privilege extends to demand letters under Civil Code section 47(b)


inapplicable in an action by a former client against an attorney for breach of professional duties

Fremont Reorganization Corp. v. Faigin (2011) 198 Cal.App.4th 1153 [131 Cal.Rptr.3d 478]

may not apply to plaintiff’s unfair competition claim against attorney if plaintiff not a party to the earlier litigation


Litigation privilege is absolute and extends to alleged misrepresentations by opposing side


Probate Code section 16060 et seq., confidential communications between a trustee and the trust’s attorney are privileged and need not be disclosed to trust beneficiaries

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

former trustee cannot withhold communications with trust’s former counsel on ground of attorney-client privilege to successor trustee


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


trust may not allow a former trustee to withhold from a successor trustee all communications between that former trustee and the trust’s legal counsel


Qualified common interest privilege against defamation under Civil Code section 47(c) protects statements made on subject of mutual interest to parties sharing common interest

Hui v. Sturbaum (2014) 222 Cal.App.4th 1109 [166 Cal.Rptr.3d 599]

Reports in public journals of judicial proceedings under Civil Code section 47(d)


Sharing memoranda authored by corporate in-house counsel with outside law firm for non-legal purpose waived attorney-client privilege

United States v. Sammina Corporation (9th Cir. 2020) 968 F.3d 1107

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]

Tripartite attorney-client privilege arises when title insurer hires title insurer’s 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]
PRO BONO

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

Assignability of choice in action for legal malpractice


exception to the California rule barring the assignment for the cause of action for legal malpractice


legal malpractice claims sounding in tort or contract not assignable


Attorney's dissemination of information produced by adverse party and covered by protective order does not constitute tort


Attorney's failure to raise inapplicable argument


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


deputy attorney general immune from liability to person wrongfully accused following grand jury investigation


Attorney-client relationship consultation

- prima facie evidence of existence of
  Miller v. Metzinger (1979) 97 Cal.App.3d 31 [154 Cal.Rptr. 22]

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


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

Uecker v. Zentil (2016) 244 Cal.App.4th 789 [198 Cal.Rptr.3d 620]

standard of care


Breach of fiduciary duty claims to strike under anti-SLAPP statute

Karnazes v. Ares (2016) 244 Cal.App.4th 344 [198 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
  Karnazes v. Ares (2016) 244 Cal.App.4th 344 [198 Cal.Rptr.3d 155]

requirements to state a cause of action


Under Civil Code section 47

Hui v. Sturbaum (2014) 222 Cal.App.4th 1109 [166 Cal.Rptr.3d 569]


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

Pasternack v. McCullough (2021) 65 Cal.App.5th 1050 [280 Cal.Rptr.3d 538]


Pro bono-type representation, even by a law firm with financial resources to absorb the cost of litigation, does not necessarily justify a reduction in fees award


Slight mitigating credit for pro bono service which was not great and was remote in time

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269

Slight mitigating credit for pro bono work

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

PROBATE [See Estate. Purchasing property at probate, foreclosure or judicial sale.]


Code of Civil Procedure section 187

trial court held attorney liable for law corporation's debts as alter ego where corporation was being used by attorney to escape personal liability

Wells Fargo Bank, National Association v. Weinberg (2014) 227 Cal.App.4th 1 [173 Cal.Rptr.3d 113

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

See How to Use This Index, supra, p. i 413 2022 (updated entries through 12/31/2021)
PROFESSIONAL LIABILITY

Pierce v. Lyman (1991) 1 Cal.App.4th 1093
-claims to strike under anti-SLAPP statute

violation of rules of professional conduct may be admitted as evidence of fiduciary breach

Burden of proof

attorney charged with spoliation of evidence has burden of showing that his negligence did not result in loss of meritorious case
Michaels v. Greenberg Traurig, LLP (2021) 62 Cal.App.5th 512 [277 Cal.Rptr.3d 1]

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

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

Co-counsel not liable for other counsel’s fees due to his own malpractice which reduced or eliminated fees of other counsel

“Continuity of representation” test

Continuous representation tolls statutes

Contributory negligence of client

Corporate counsel retained by corporation to defend against litigation was not agent of corporation for purposes of Corporations Code section 317
Counsel who may benefit from malpractice action informs party who may have such action against her counsel
LA 326 (1972)

Criminal defendant must prove actual innocence in action for Willey v. County of San Diego (1998) 19 Cal.4th 532 [79 Cal.Rptr.2d 672]
Salsbury v. County of Orange (2005) 131 Cal.App.4th 756 [31 Cal.Rptr.3d 831]

Duty owed in favor of third persons

Slate v. Pierce (1975) 13 Cal.3d 349, 361 [118 Cal.Rptr. 621]

as counsel did not represent ordinary tort victim


assumption of fiduciary duty for escrow holder


prior counsel

CAL 2009-177

attorney advising client is liable to third party when reasonably foreseeable that advice will be transmitted to and relied upon by third party


attorney employer

client of

Donald v. Garry (1971) 19 Cal.App.3d 769 [97 Cal.Rptr. 191]

-disclosure that counsel represented only executor-trustee

PROFESSIONAL LIABILITY

- liability to intended beneficiaries of amended trust resulting from attorney's failure to deliver amendment to trustee prior to death of settlor
  

attorney's duty of loyalty to client assignee for the benefit of creditors cannot be divided or diluted by a duty owed to the class of creditors
  

attorney's representation of assignee for the benefit of creditors does not give rise to a duty owed to the class of creditors
  

children of client in dissolution
  

children of criminal client
  
  - attorney's duty to client does not sustain damages for emotional distress suffered by client's children
    

- escrow agents
  
  - generally, no duty
    

first attorney who was to receive a percentage of fee of second attorney
  
  Mason v. Levy & Van Bourg (1978) 77 Cal.App.3d 60 [143 Cal.Rptr. 389]

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

investors in client's securities offering
  
  Federal Deposit Insurance Company v. O'Melveny & Myers (9th Cir. 1992) 969 F.2d 44

liability to intended beneficiary where attorney failed to advise client regarding requirements governing presumptively disqualified donees, resulting in damage to intended beneficiary
  

lienholder
  

In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 223

negligent misrepresentation to non-client
  

- non-fiduciary's active concealment or suppression of facts during a business negotiation is the equivalent of false representation and non-fiduciary therefore is held liable
  

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


- attorney's representation of assignee for the benefit of creditors does not give rise to a duty owed to the class of creditors
  

- law firm not liable to reinsurer where contract was between insurer and law firm and where the insurer was not the intended beneficiary of the contract
  

- non-fiduciary who commits actual fraud in his dealings with a third party in the course of a business negotiation is not relieved of liability even if non-fiduciary does so in his capacity as attorney for a client
  

patient of attorney's psychologist client
  

potential creditors of client
  
  U.S. v. 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 Wagoner (1986) 176 Cal.App.3d 936 [222 Cal.Rptr. 479]

standing for bringing action in professional negligence
  

testamentary beneficiaries
  
  Harrigfeld v. Harwell (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) 58 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 insurer by attorney retained by insurer
  
Failure to consult medical specialist where such consultation was not recommended by other medical specialists


Bay Cities Paving & Grading, Inc. v. Lawyer’s Mutual Insurance Co. (1991) 233 Cal.App.3d 1184


Failure to file cross-complaint


Failure to file late claim against public entity within one year after accrual of cause of action


Failure to file petition for change in client disability rating


Failure to file petition for discharge in bankruptcy

Feldesman v. McGovern (1941) 44 Cal.App.2d 566 [112 P.2d 645]

Failure to file responsive pleadings


Failure to file timely notice of a motion for a new trial


Failure to include husband’s assets as community property


Failure to obtain trial setting preference for aged client


Failure to offer evidence to court about which attorney had serious doubts


Failure to prepare a valid “Clifford Trust”


Failure to prepare or cause entry of judgment or verdict

Chavez v. Carter (1967) 256 Cal.App.2d 577 [64 Cal.Rptr. 350]

Failure to properly draft stipulation, order and judgment in divorce action

McGee v. Weinberg (1979) 97 Cal.App.3d 798 [159 Cal.Rptr. 86]

Failure to raise a defense of anti-deficiency statute


Failure to raise available defenses in a criminal prosecution


Failure to research law


Failure to serve summons and complaint


First attorney prohibited from cross-complaining for indemnity against the successor attorney


First attorney cross-complaint for indemnity against former associate/successor attorney based on fraud proper


Fraudulent scheme

attorney providing services to client not liable under racketeering law

Baumer v. Pachi (1993) 8 F.3d 1341

PROFESSIONAL LIABILITY
outside contractor attorney may be held liable to government agency for acts of dealing
Imunity
attorney accused of conspiracy with a judge not entitled to federal law immunity
Kimes v. Stone (9th Cir. 1996) 84 F.3d 1121
attorney not entitled to judicial immunity for preparing order for judge
Burton v. Infinity Capital Management (9th Cir. 2014) 753 F.3d 954
lawyers temporarily deputized to prosecute whose appointments were defective were “defacto deputy district attorneys” and thus their actions were in furtherance of a protected activity within the meaning of the anti-SLAPP statute
public entity is not liable for injury resulting from an act or omission from an employee of the public entity
Indemnification of attorneys who represented same client on same matter
Gibson, Dunn & Crutcher v. Superior Court (1979) 94 Cal.App.3d 347 [156 Cal.Rptr. 326]
Insurance
attorney’s deadline to report malpractice claim to insurance carrier quitably tolled
no law firm 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. Grey (1977) 77 Cal.App.3d 284 [143 Cal.Rptr. 496]
Jurisdiction
California court has subject matter jurisdiction where damages arise from attorney’s negligence, not violation of federal patent law
California courts have jurisdiction under “minimum contacts test” if the “quality and nature” of the defendant’s activity is such that it is “reasonable” and “fair” to require him to conduct his defense in this state
California courts non-disciplinary jurisdiction over non-resident California attorney
Legal negligence
plaintiff must prove “but for” alleged negligence, he would have obtained a more favorable results
plaintiff must prove “but for” alleged negligence, the resulting contract would have been more favorable
Michaels v. Greenberg Traurig, LLP (2021) 62 Cal.App.5th 512 [277 Cal.Rptr.3d 1]
Liability of court appointed counsel to federal criminal defendant for negligence
Fern v. Ackerman (1979) 444 U.S. 193 [62 L.Ed.2d 355; 100 S.Ct. 402]
Liability of law firm
attorney as alter ego of law corporation is liable for debts of corporation where it was used by attorney to escape personal liability
for malicious prosecution based on acts of principal
not liable to insured when insurer, under consent clause of policy, was entitled to settle without consulting insured
vicarious liability for acts of a partner
Liability of partner for attorney negligence
Blackmon v. Hale (1970) 1 Cal.3d 548 [83 Cal.Rptr. 194]
for acts of other partners after leaving law firm
Commercial Standard Title Co. v. Superior Court (1979) 92 Cal.App.3d 934 [155 Cal.Rptr. 393]
Redman v. Walters (1979) 88 Cal.App.3d 448 [152 Cal.Rptr. 42]
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]
calculation of damages based on comparative fault of prior and successor counsel and of clients
Limiting liability to client
CAL 2009-178
agreement to waive a conflict of interest
CAL 1989-115
assistance to an in propria persona litigant in preparing pleading or negotiating settlement
LA 502 (1999)
attorney declares bankruptcy
-judgment may be non-dischargeable
In re Keller (9th Cir. 1989) 106 B.R. 639
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
professional malpractice distinguished from negligence
punitive damages in underlying case recoverable as compensatory damages in malpractice suit against negligent law firm
sanctions imposed on client for filing a frivolous appeal does not constitute malpractice as a matter of law
settlement of claims for
-breach of contract action available if settlement agreement cannot be enforced under CCP § 664.6
specially appearing attorney owes a duty of care to the litigant
standing to sue
-out-of-state successor estate representative may sue California attorneys retained by prior representative for alleged malpractice
Smith v. Cimmet et al. (2011) 199 Cal.App.4th 1381 [132 Cal.Rptr.3d 276]
-successor conservator, albeit non-client, may bring suit against a predecessor’s attorney for malpractice causing loss to the estate
statute of limitations does not begin to run until client suffers actual harm
-settlement of claims for
-out-of-state successor estate representative may sue California attorneys retained by prior representative for alleged malpractice
Samuels v. Mix (2000) 22 Cal.4th 1 [91 Cal.Rptr.2d 273]
-doctrine of “equitable tolling” applies to legal malpractice limitation period
stakeholder 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
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
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
Malpractice claims
-no obligation to allege or advise a client on an unmeritorious claim
Necessity for expert testimony

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


Necessity for proof of actual damages


Negligence

attorney’s breach of duty as escrow holder deemed actionable for negligence


client damages

-crooss-complaint against plaintiff’s attorney


Gibson, Dunn & Crutcher v. Superior Court (1979) 94 Cal.App.3d 347 [156 Cal.Rptr. 326]

inadequate investigation of medical malpractice claim

-no cause of action against attorney by physician

Weaver v. Superior Court (1979) 95 Cal.App.3d 166 [156 Cal.Rptr. 745]

infliction of emotional distress


negligent misrepresentation to non-client


-no-fiduciary’s active concealment or suppression of facts during a business negotiation is the equivalent of false representation and non-fiduciary therefore is held liable


specially appearing attorney owes a duty of care to the litigant


third-party non-clients


No duty to consult medical specialist unless such consultations recommended by other doctors


Noor-Pennington immunity defined

Nunag-Tanedo v. East Baton Rouge Parish School Board (9th Cir. 2013) 711 F.3d 1136

No 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]


Personal


Predecessor attorney/malpractice defendant may not cross-complain for equitable indemnity against successor attorney


Privilege of judicial proceedings


Proceedings of State Bar against licensee of the bar


liability for

Business and Professions Code section 6180.11

Proximate cause


Ishmael v. Millington (1966) 241 Cal.App.2d 520, 529 [50 Cal.Rptr. 592]


Feldesman v. McGovern (1941) 44 Cal.App.2d 566 [112 P.2d 645]

not shown 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. Lief, Cabraser, Heimann & Bernstein (2003) 30 Cal.4th 1037 [135 Cal.Rptr.2d 46]


Recovery of emotional suffering damages


Reliance on one attorney’s advice does not preclude malpractice suit later


Retaliation

employee may proceed with retaliation action 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


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

**Standard of care**

- **Special appearances**
  - specially appearing attorney owes a duty of care to the litigant

- **Statute of limitations**
  - failure to establish prima facie case
    - no expert testimony
      - Conley v. Leder (1979) 97 Cal.App.3d 646 [58 Cal.Rptr. 770]
    - no duty to consult medical specialist unless such consultations recommended by other doctors
  - for advice attorney to an in propria persona litigant
    - LA 502 (1999)
  - for legal specialist
    - Wright v. Williams (1975) 47 Cal.App.3d 802, 809, 810 [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, Olney, Levy, Cathcart & Geldard (1971) 6 Cal.3d 176, 190 [99 Cal.Rptr. 837]
  - Heyer v. Flaig (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 284 [211 Cal.Rptr.3d 372]

**PROFESSIONAL LIABILITY**

- **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. Schaeel** (1967) 251 Cal.App.2d 1, 4 [58 Cal.Rptr. 817]
- **Bustamante v. Hunt** (1963) 222 Cal.App.2d 413 [35 Cal.Rptr. 176]
- **Jensen v. Sprigg** (1927) 84 Cal.App.2d 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]
  - -dismission 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]

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PROFESSIONAL SOCIETIES

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 when there were extraordinary circumstances; attorney who resigns, running "writ mill" may be extraordinary
Porter v. Ollison (9th Cir. 2010) 620 F.3d 952
told for bringing legal malpractice action while attorney still represents client on related matters, even if client knows of attorney's negligence

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Rule 5-103, Rules of Professional Conduct (operative until May 27, 1989)
Rule 4-300, 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
non-judicial foreclosure
prevailing borrower defined under Civil Code section 2924.12
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(1) 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

PROFESSIONAL SOCIETIES

Committees established for the maintenance of professional standards

immunity for liability
Civil Code section 43.7
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


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
Authorit y
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. Disbrow (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
Dryden v. White (9th Cir. 2000) 223 F.3d 704

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. Gibson (9th Cir. 2016) 832 F.3d 1060
People v. Friend (2009) 47 Cal.4th 1 [97 Cal.Rptr.3d 1]

comment on defense counsel’s expert witness as a “hired mouthpiece” not found denigrating to defense and witness
People v. Dworak (2021) 11 Cal.5th 881 [281 Cal.Rptr.3d 176]

comment on counsel for defendant
Allen v. Woodford (9th Cir. 2005) 395 F.3d 979
People v. Meneley (1972) 29 Cal.App.3d 41, 60 [105 Cal.Rptr. 432]

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 his associates

comment on defendant’s choice of counsel

comment on defendant’s demeanor
Allen v. Woodford (9th Cir. 2005) 395 F.3d 979

comment on defendant’s failure to call certain witness/introduce evidence
People v. Beagle (1972) 8 Cal.3d 441 [99 Cal.Rptr. 313, 442 P.2d 1]
PROSECUTORIAL MISCONDUCT

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. 555]
People v. Demond (1976) 59 Cal.App.3d 574, 591 [130 Cal.Rptr. 590]

People v. Vargas (1973) 9 Cal.3d 470 [108 Cal.Rptr. 15, 509 P.2d 959]
People v. Mesta (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 [93 Cal.Rptr. 591, 482 P.2d 215]
People v. Parks (1973) 32 Cal.App.3d 143, 151 [108 Cal.Rptr. 34]
People v. Meneley (1972) 29 Cal.App.3d 41 [105 Cal.Rptr. 432]

-comment to jury on why defense witness did not testify
People v. Gaines (1997) 54 Cal.App.4th 821 [63 Cal.Rptr.2d 186]

Indirectly commenting of defendant’s failure to testify
People v. Guzman (2000) 80 Cal.App.4th 1282 [96 Cal.Rptr.2d 87]

-Indirectly commenting of defendant’s failure to testify
People v. Guzman (2000) 80 Cal.App.4th 1282 [96 Cal.Rptr.2d 87]

-sanitary 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 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/tribal tactics

-comment on prior judgments/convictions of defendant [See Prior judgments/convictions.]
People v. Bolton (1979) 23 Cal.3d 208, 212-15 [152 Cal.Rptr. 141, 589 P.2d 396]
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. 284]

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

PROSECUTORIAL MISCONDUCT

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 to jury that they were being “groomed” or manipulated by the defendant was improper


comments within permissible argument

Beardslee v. Woodford (9th Cir. 2004) 358 F.3d 560

companion of defendant to Hiller

Allen v. Woodford (9th Cir. 2009) 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. Mageno (9th Cir. 2015) 786 F.3d 768

depth 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


during closing argument, a prosecutor may make reasonable inferences based on the evidence presented at trial

U.S. v. Wijegunaratna (9th Cir. 2019) 922 F.3d 983

erroneous statement of the law

U.S. v. Navarro (9th Cir. 2010) 608 F.3d 529

People v. Doane (2021) 66 Cal.App.5th 965 [281 Cal.Rptr.3d 594]

People v. Collins (2021) 65 Cal.App.5th 333 [279 Cal.Rptr.3d 407]


expression of belief in defendant’s guilt


expression of opinion as to defendant’s guilt

Ford v. Perry (9th Cir. 2020) 976 F.3d 1032


People v. La Fontaine (1978) 79 Cal.App.3d 176, 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. Kerl (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

**People v. Blagg** (1970) 10 Cal.App.3d 1035, 1040 [89 Cal.Rptr. 446]

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, 308 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. Meneley** (1972) 29 Cal.App.3d 41, 61 [105 Cal.Rptr. 432]

**People v. Valleti** (1971) 15 Cal.App.3d 54, 63 [92 Cal.Rptr. 763]

**People v. Rice** (1970) 10 Cal.App.3d 730, 743 [89 Cal.Rptr. 200]


misleading the jury that the defendant had committed other similar crimes


misstatement of law to jury

**Ford v. Perry** (9th Cir. 2020) 976 F.3d 1032

U.S. v. Navarro (9th Cir. 2010) 608 F.3d 529

**People v. Centeno** (2014) 60 Cal.4th 659 [180 Cal.Rptr.3d 649]

**People v. Doane** (2021) 66 Cal.App.5th 965 [281 Cal.Rptr.3d 594]

**People v. Medellin** (2020) 45 Cal.App.5th 519 [258 Cal.Rptr.3d 867]


-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/erroneous statement of law or fact

United States v. Velazquez (9th Cir. 2011) 1 F.4th 1132


**People v. Doane** (2021) 66 Cal.App.5th 965 [281 Cal.Rptr.3d 594]

**People v. Collins** (2021) 65 Cal.App.3th 333 [279 Cal.Rptr.3d 407]


**People v. Calpito** (1970) 9 Cal.App.3d 212, 222 [88 Cal.Rptr. 64]

-prosecutor did not misstate intent element of crime charged in closing argument

**People v. Sanchez** (2019) 38 Cal.App.5th 907 [251 Cal.Rptr.3d 496]

-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** (2004) 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


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. Rodrigues (9th Cir. 1998) 159 F.3d 439

prosecutorial misconduct to repeatedly use “cockroaches” to describe defendants and other gang members, suggested guilt by association


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”

**People v. Rodriguez** (1970) 10 Cal.App.3d 18, 36 [88 Cal.Rptr. 789]
reference to defendant’s use of heroin
Hall v. White (9th Cir. 1991) 935 F.2d 164
reference to facts not in evidence
U.S. v. Wijegoonaaratna (9th Cir. 2019) 922 F.3d 983
People v. Galloway (1979) 100 Cal.App.3d 551, 563-564 [160 Cal.Rptr. 914]
People v. Panky (1976) 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]
reference to lack of witnesses/evidence presented by defense to corroborate asserted defense
People v. Roberts (1975) 51 Cal.App.3d 125, 135-137 [123 Cal.Rptr. 893]
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Drayden v. White (9th Cir. 2000) 223 F.3d 704
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*Dubria v. Smith (9th Cir. 1999) 197 F.3d 390
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People v. Doane (2021) 66 Cal.App.5th 965 [281 Cal.Rptr.3d 594]
People v. Collins (2021) 65 Cal.App.5th 333 [279 Cal.Rptr.3d 407]
People v. Patino (1979) 95 Cal.App.3d 11, 29-31 [156 Cal.Rptr. 815]
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People v. Romero (1977) 68 Cal.App.3d 543, 597-598 [137 Cal.Rptr. 675]

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People v. Galloway (1979) 100 Cal.App.3d 551, 556-560 [160 Cal.Rptr. 914]

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*People v. Goss (1980) 105 Cal.App.3d 542, 546-547 [166 Cal.Rptr. 1]

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*People v. Choinacky (1973) 8 Cal.3d 759, 766 [106 Cal.Rptr. 106, 505 P.2d 530]

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People v. Lyons (1971) 18 Cal.App.3d 760, 779-80 [96 Cal.Rptr. 76]

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People v. Lovett (1978) 82 Cal.App.3d 527, 534 [147 Cal.Rptr. 136]

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People v. Love (1977) 75 Cal.App.3d 928, 933 [142 Cal.Rptr. 532]

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People v. Blair (1975) 51 Cal.App.3d 480, 486 [124 Cal.Rptr. 123]

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People v. Rocha (1971) 3 Cal.3d 893, 901-02 [92 Cal.Rptr. 172, 479 P.2d 372]

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United States v. Lopez (9th Cir. 2007) 500 F.3d 840
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People v. Wagner (1975) 13 Cal.3d 612, 619 [119 Cal.Rptr. 457, 532 P.2d 105]

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attempt to introduce arrest record of a defense witness, waving around what was apparently the witness’s rap sheet during argument at the bench

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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

- People 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

- People v. Thornton (1974) 11 Cal.3d 762 [114 Cal.Rptr. 467, 523 P.2d 267]

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. Daniel (9th Cir. 2003) 325 F.3d 1054

eliciting inadmissible testimony concerning defendant’s parole status and residence in a halfway house


fabricating

- Milstein v. Cooley (9th Cir. 2001) 257 F.3d 1004

fabricating evidence, filing false crime report, making comments to the media, and investigating crime against attorney may not be protected by absolute immunity

- Milstein 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. Sheren (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


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


failure to correct perjured testimony

- Heishman 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

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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 820]


-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 duty to disclose

- Bridgeforth v. Superior Court (2013) 214 Cal.App.4th 1074 [154 Cal.Rptr.3d 528]

failure to disclose information to defense 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 Bacigalupo (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


failure to preserve


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

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- Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897

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- United States v. Edwards (9th Cir. 1998) 154 F.3d 915

intentional destruction of capital defense strategy tape not violative of due process

- People v. Zapien (1993) 4 Cal.4th 929 [17 Cal.Rptr.2d 122]

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- People v. Harris (1977) 71 Cal.App.3d 959, 967 [139 Cal.Rptr. 776]

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

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- 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


In the Matter of Murray (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479

statements by prosecutor during direct examination, inferring that defendant was the “Hillside Strangler”


suppression by prosecutor of statement by victim to the effect that a third person, identified as a perpetrator, had been involved in the crime

- People v. Bauer (1969) 1 Cal.3d 368, 375 [82 Cal.Rptr. 357, 461 P.2d 637]

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suppression of letter to witness that would not be prosecuted for selling marijuana

Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897
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use by prosecutor of allegedly perjured testimony of defendant’s accomplice

People v. Lavergne (1971) 4 Cal.3d 735, 742-744 [94 Cal.Rptr. 405, 484 P.2d 77]
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Examination of witness or defendant

alleged influence of witness, even if true would not have resulted in actual prejudice and was harmless

Karla v. Calderon (9th Cir. 2002) 283 F.3d 1117
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People v. Qui Mei Lee (1975) 48 Cal.App.3d 516, 528 [122 Cal.Rptr. 43]
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*People v. Chojnacky (1973) 8 Cal.3d 759, 766 [106 Cal.Rptr. 106, 505 P.2d 530]
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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

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*People v. Romo (1975) 47 Cal.App.3d 976, 987-88 [121 Cal.Rptr. 684]
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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
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district attorney's statements in a press release are privileged pursuant to prosecutorial immunity principles
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People v. Berryman (1993) 6 Cal.4th 1048 [25 Cal.Rptr.2d 867]

People v. Sanchez (2019) 38 Cal.App.5th 907 [251 Cal.Rptr.3d 496]

using 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
mischaracterization of the amount 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’s guilt

reference to change in appearance
Cunningham v. Wong (9th Cir. 2013) 207 F.3d 1143


People v. Weford (1970) 10 Cal.App.3d 18, 35 [88 Cal.Rptr. 789]


People v. Powell (1974) 40 Cal.App.3d 557, 531-33


PROSECUTORIAL MISCONDUCT

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]
Permissable advocacy
must contribute materially to the verdict
Pervasive misconduct was harmless
People v. Friend (2009) 47 Cal.4th 397 [7 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
jury trial, communication with
Rule 5-320, Rules of Professional Conduct (operative as of May 27, 1989)
post trial declaration of victim recanting allegation
People v. Uribe (2008) 162 Cal.App.4th 1457 [76 Cal.Rptr.3d 829]
Prejudice to appellant
assertion without proof that defense counsel fabricated a defense
lack of diligence re introducing prior convictions until after prosecutors case closed
not shown, where prosecution failed to turn over to defense, a letter stating that witness would not be prosecuted for selling marijuana
Hein v. Sullivan (9th Cir. 2010) 601 F.3d 897
Prejudice to defendant
People v. Uribe (2008) 162 Cal.App.4th 1457 [76 Cal.Rptr.3d 829]

multiple instances of prosecutorial misconduct and trial conduct error deprived capital defendant of a fair trial
People v. Hill (1996) 17 Cal.4th 500 [72 Cal.Rptr.2d 656]

prosecutors' fabrication of false confession in interrogation transcript prejudices defendant's right to counsel
[185 Cal.Rptr.3d 286]

In the Matter of Murray (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479
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
Twiggs v. Superior Court (1983) 34 Cal.3d 360, 368-369
[194 Cal.Rptr. 152, 667 P.2d 1165]
Pretrial
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. Patejdl (1973) 35 Cal.App.3d 936, 946
comment on prior judgments/convictions of defendant
People v. Force (2019) 39 Cal.App.5th 506 [251 Cal.Rptr.3d 834]
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
Improper comments by prosecutor that undermine a defenses witness' willingness to testify
People v. Force (2019) 39 Cal.App.5th 506 [251 Cal.Rptr.3d 834]

inappropriate warning that if appellant testified in a manner inconsistent to prior testimony, he could be prosecuted for perjury
People v. Force (2019) 39 Cal.App.5th 506 [251 Cal.Rptr.3d 834]

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

deliberately altered an interrogation transcript
In the Matter of Murray (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479
must disclose and/or conduct an investigation when the prosecutor is presented with "new, credible and material" evidence of a wrongful conviction
Rule 5-110(f), Rules of Professional Conduct (operative as of May 1, 2017)
must exercise reasonable care to prevent persons under the prosecutor's supervision from making an extrajudicial statement the prosecutor would be prohibited from making under rule 5-120
Rule 5-110(E), Rules of Professional Conduct (operative as of May 1, 2017)
must make reasonable efforts to assure the accused has been advised of the right to, and the procedure for, obtaining counsel, and has been given reasonable opportunity to obtain counsel probate matters
Rule 5-110(B), Rules of Professional Conduct (operative as of May 1, 2017)
must not seek to obtain from an unrepresented accused a waiver of pretrial rights, unless the tribunal has approved the accused’s appearance in pro per

Rule 5-110(C), Rules of Professional Conduct (operative as of May 1, 2017)
must seek to remedy a conviction when the prosecutor “knows of clear and convincing evidence” establishing that a wrongful conviction occurred

Rule 5-110(G), Rules of Professional Conduct (operative as of May 1, 2017)

Questions which are sufficient for reversal


Recusal

conflict of interest

-abuse of discretion found, where trial court failed to hold evidentiary hearing to determine whether prosecutor’s personal involvement in the case warranted recusal

Packer v. Superior Court (2014) 60 Cal.4th 695 [181 Cal.Rptr.3d 41]
defendant may not disqualify prosecutor on ground that defendant had some degree of relationship with prosecutor’s children at some point in time


improper absent evidence that prosecutor would employ discretionary powers to deprive defendant of fair trial


no recusal required where prosecutor wrote a novel containing factual similarities of the underlying case

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

not required where less drastic alternatives such as wailing off of witness/employee of district attorney’s office would be effective


not required where prosecutor advocates but does not formally represent the interests of third party

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

Relocation costs for witness, paid by prosecution not disclosed till after trial, no reasonable probability that disclosure would have altered the trial results, no Brady violation

People v. Verdugo (2010) 50 Cal.4th 265 [113 Cal.Rptr.3d 803]

Restitution hearing

California law does not permit private prosecution of criminal case without presence of public prosecutor

People v. Dehle (2008) 166 Cal.App.4th 1380 [83 Cal.Rptr.3d 461]

Retaliation against defendant

Morley v. Walker (1999) 175 F.3d 756


Suppression of evidence

Hast. Const. L.Q. 715 (fall 1977)


advising rape victim of her right to refuse a psychiatric examination

People v. Mills (1978) 87 Cal.App.3d 302, 308 [151 Cal.Rptr. 71]

Brady and Napue claims, no reasonable probability that the outcome of the guilt phase would have been different

Hamilton v. Ayers (9th Cir. 2009) 583 F.3d 1100

defendant is not required to show that prosecutor failed to turn over discovery materials it was obligated to produce at trial in order to obtain post-conviction discovery in capital crime case


destruction of tapes containing recorded, incriminating statements to police by accused


failure to call informant to testify for People


failure to disclose deal between prosecutor and star witness, immunity for testimony, Brady violation

Horton v. Mayle (9th Cir. 2005) 408 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) 601 F.3d 897

failure to disclose to prosecution reasonably accessible address of prospective witness

In re Littlefield (1993) 5 Cal.4th 122 [19 Cal.Rptr.2d 248]

failure to inform counsel for defense that evidence critical to asserted defense had been falsified, causing defendant to abandon the defense, where prosecutor knew that facts would sustain the defense if truthfully disclosed

People v. Dena (1972) 25 Cal.App.3d 1001, 1010 [102 Cal.Rptr. 357]

failure to produce a prior statement of prosecution witness to police which incriminated defendant in a way different in factual detail but not in effect from witness’s statement

People v. Green (1971) 3 Cal.3d 981, 991 [92 Cal.Rptr. 494, 479 P.2d 998]

failure to produce evidence favorable to defendant

In re 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]

material evidence bearing on credibility of key prosecution witness

People v. Ruthford (1975) 14 Cal.3d 399, 406-409 [121 Cal.Rptr. 261, 534 P.2d 1341]

People v. Uribe (2008) 162 Cal.App.4th 1457 [76 Cal.Rptr.3d 829]

pretrial suppression does not bar retrial


suppression of evidence of defendant’s mental state, by conditioning plea agreement with peripient witness/co-defendant that the witness not testify at trial was denial of defendant’s compulsory process rights under 6th and 14th amendments


suppression of exculpatory fingerprint


suppression of extra-judicial statement of defendant as to co-defendant


PROSECUTORIAL MISCONDUCT

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PROSECUTORIAL MISCONDUCT

Trial conduct
argumentative 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 invite 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
-presumption of innocence in closing argument
People v. Cowan (2017) 8 Cal.App.5th 1152 [214 Cal.Rptr.3d 576]
confering 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
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 disavowal of the attorney-client relationship by disparaging defendant’s counsel; encouraging defendant to reveal nothing of the prosecutor’s bargain to his counsel
failure to indicate modification in standard jury instructions
failure to inform defense of an agreement to provide benefits to key state witness in return for testimony in the case violates defendant’s right to a fair trial
Singh v. K.W. Prunty (C.D. Cal. 1998) 142 F.3d 1157
inadvertent violation of court order prohibiting reference to highly prejudicial evidence
inconsistency in referring to date of commission of charged offense where prosecutor alternately referred to two dates and defense was predicated on alibi accounting for only one of those
*People v. Chojnacky (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
misleading testimony to which defendant had objected
People v. Utter (1972) 24 Cal.App.3d 535, 554 [101 Cal.Rptr. 214]
prejudicial comments
United States v. Medina-Gasca (9th Cir. 1984) 739 F.2d 1451, 1455
People v. Centeno (2014) 60 Cal.4th 659 [180 Cal.Rptr.3d 649]
reference in criminal proceedings under juvenile court law, to fact that defendant’s father was facing criminal charges
reference to fact that two of defendant’s fellow gang members had been convicted of charges arising out of the same murders in which defendant was charged
repeated acts of intemperate and unprofessional conduct by district attorney, including personal attacks and threats against defense counsel, ridicule of defendants and their defense, and refusal on occasion to comply with trial court’s orders
People v. Kelley (1977) 75 Cal.App.3d 672, 680-690 [142 Cal.Rptr. 457]
statements insinuating that defendant was involved in a prostitution ring
*People v. Hathcock (1973) 8 Cal.3d 599, 610-11 [105 Cal.Rptr. 540, 504 P.2d 476]
threats of possible prosecution against defense counsel and unlicensed investigator by district attorney, although serious, did not prejudice defendant
use of district attorney’s address as his own by prosecution witness
vouching for witness’ credibility
Davis v. Woodford (9th Cir. 2003) 333 F.3d 982
Two-step analysis
Use of courtroom to eavesdrop on confidential attorney-client communications requires severe sanctions
People v. Shrier (2010) 190 Cal.App.4th 400 [118 Cal.Rptr.3d 233]
Vindictiveness
United States v. Jenkins (9th Cir. 2007) 504 F.3d 694
Voir dire
leaving police officer’s file in position where plainly visible to members of venire
People v. Luckett (1969) 1 Cal.App.3d 248, 255 [81 Cal.Rptr. 539]
peremptory challenge based on gender violated Equal Protection Clause
United States v. De Gross (9th Cir. 1992) 960 F.2d 1433
peremptory challenges on unmarried female venire persons violated defendant’s right to equal protection
United States v. Omoruyi (1993) 7 F.3d 880
prosecutor’s peremptory challenge of sole black juror not a showing of group bias
Boyle v. Brown (9th Cir. 2005) 404 F.3d 1159
prosecutor speculating as to whether defendant would elect to take the stand; statement that in event of evidentiary conflict defendant would only have to take the witness stand and deny the charges
People v. Rodgers (1979) 90 Cal.App.3d 368, 371-72 [153 Cal.Rptr. 3d 452]
reference to impeaching effect which defendant’s five prior felony convictions would have
selection of a “death penalty oriented” jury
People v. Wong (1973) 35 Cal.App.3d 812, 832-33 [111 Cal.Rptr. 3d 452]
unsupported implication by prosecutor that defense counsel has fabricated a defense
People v. Guiterrez (2017) 2 Cal.5th 1150 [218 Cal.Rptr.3d 289]
-witness’s recanting of claims
People v. Uribe (2008) 162 Cal.App.4th 1457 [76 Cal.Rptr.3d 829]
PUBLIC OFFICE
See How to Use This Index, supra, p. i
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PUBLIC OFFICE
[See Administrative agency. Court. Judge. Political activity.]

City attorney
acts as both advocate of city’s position and advisor to neutral decision maker
-practice by
LA(I) 1975-4
former associate or partner refers clients to former firm
CAL 1967-10 partner
-practice by
LA(I) 1975-4 partner represents
-practice by
LA 242 (1957), LA(I) 1975-4 partnership with
-practice by
--associate of
LA(I) 1975-4

City council member
associate, practice by
CAL 1977-46
communication with
Rule 2-100, Rules of Professional Conduct CAL 1977-43 partner
-practice by
CAL 1977-46, LA(I) 1975-4 represents
-criminal defendants
CAL 1977-46
-in ordinance violations
LA 273 (1962), SD 1969-1
-in traffic cases
SD 1969-1

Electioneering
for judge
-lawyer may question incumbent judge’s qualifications
LA 304 (1968)

Judge
election campaign for
-lawyer may question incumbent judge’s qualifications
LA 304 (1968)
 systematically and routinely sold his office and his public trust
In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157

Lawyer
as a candidate for
-misleading public re experience
LA 297 (1966)
-use of campaign materials to advertise profession
LA 297 (1966)

Prosecuting attorney
communication with criminal defendant
-who may be witness for matter unrelated to that for which accused
CAL 1979-49
criticizes sentence
SD 1974-8
employer of, practice by
LA 377 (1978)
former
- represent person indicted by grand jury
  -- when served as, during pendency of same action
  LA 117 (1937)
legal advice
- to victim of crime
  -- regarding civil remedies
  CAL 1976-40
partner of
- practice by
  LA 377 (1978)
- represents
  -- in criminal matter
  Business and Professions Code section 6131
LA 377 (1978)
state official role versus county administrative functionary for purposes of absolute or qualified immunity
Ceballos v. Garcetti (9th Cir. 2004) 361 F.3d 1168
welfare proceedings
- potential conflict between interests of state and child
  -- disclosure to court
  CAL 1977-45
Public officials
entitled to qualified immunity for acts that do not violate clearly established constitutional rights of which a reasonable person would have known
Ceballos v. Garcetti (9th Cir. 2004) 361 F.3d 1168
may not be entitled to qualified immunity for retaliatory measures taken against subordinate attorney in asserting his First Amendment right to free speech
Eng v. Cooley (9th Cir. 2009) 552 F.3d 1062
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]
Permissible where attorney only represents a mortgage company to obtain relief from an automatic stay in bankruptcy court
LA 455
Presumption of undue influence respecting agreements between attorney and client
Estate of Witt (1926) 198 Cal. 407, 419-426 [245 P. 197]
“Probate sale” construed
Eschwig v. State Bar (1969) 1 Cal.3d 8, 15 [81 Cal.Rptr. 352, 459 P.2d 904]
See also:
Ames v. State Bar (1973) 8 Cal.3d 910, 915-921 [106 Cal.Rptr. 489, 506 P.2d 625] (applicability, scope and breadth of rule 5-103 vis-à-vis rule 5-102)
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
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attorney becomes affiliate of
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REBATE [See Commission. Fees.]

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REAL ESTATE TRANSACTION [See Conflict of interest. Estate. Purchasing property at probate, foreclosure or judicial sale.]

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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)
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California Rule of Court 1.150
Disclosure of wiretap after its authorization expires violated 18 U.S.C. 2232(c)

REFERRAL FEE [See Division of Fees. Referral of legal business.]

REFERRAL OF BUSINESS
To physician
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Business and Professions Code section 6152(c)
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Between partners when one is lawyer-physician
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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
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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
---referral of member
LA 298 (1966)
-for compensation from client
LA 135 (1941)
-of employees
--where lawyer hired to advise, counsel, and represent employee of industrial organization
LA 137 (1941)
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LA 446 (1987)
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LA 401 (1982)
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LA(I) 1949-1 real estate agent/broker
-in expectation of compensation
LA 18 (1922)
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LA 140 (1942)
-associated with lawyer
LA 140 (1942)
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LA 73 (1934)
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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
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In the Matter of Rudman (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 756

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In the Matter of Sheppard (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91

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denied for failure to make restitution
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petitioner must pass professional responsibility examination and demonstrate rehabilitation, present moral qualifications, and present learning and ability in the general law
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Allen v. State Bar (1962) 58 Cal.2d 912
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With disciplinary charges pending
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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

RESTRICTIVE COVENANT BETWEEN LAWYERS

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

RULE AGAINST PERPETUITIES

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RULES OF PRACTICE BEFORE THE STATE BAR COURT

Rule 1-500, Rules of Professional Conduct (operative as of May 27, 1989)

RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA

Partners not contrary per se to public policy

SUM of money should they decide to compete with their former clients, then 80% of the subsequent fees shall be paid to the firm may be enforceable

Confidential settlement agreements

Rule 1-500, Rules of Professional Conduct (operative as of May 26, 1989)

Rule 2-109, Rules of Professional Conduct (operative until May 26, 1989)

Collaborative family law practice

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263

Rule 270(c) [disclosure of private reproval]


Rules 271 and 290

examination in connection with Section 6078 of Business and Professions Code and rule 9.19, California Rules of Court

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

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

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220

In the Matter of Ozowski (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 67

Rule 262 [dismissal]

In the Matter of Silvertown (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 292

Rule 270(c) [disclosure of private reproval]


Rules 271 and 290

examined in connection with Section 6078 of Business and Professions Code and rule 9.19, California Rules of Court

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

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 actual suspension

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220

Rule 300 Interlocutory Review

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269

In the Matter of Sheppard (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91

probation modification rulings

In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302

Rule 301(a)(2) [trial transcript required for review]

In the Matter of Wu (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263

Rule 301(d) [filing of post-trial motion]

In the Matter of Ozowski (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 67

Rule 305 [independent de novo review]

In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302

Rule 305(a) Great Weight to Credibility Determinations by Hearing Judge

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

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112

Rule 561 [standard of proof in probation revocation, preponderance of evidence]

In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302

Rule 634 Standard 1.4(c)(ii) Proceeding, Petitioner's Burden of Proof, Preponderance of the Evidence

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 299
RULES OF PROFESSIONAL CONDUCT

Rule 639 Standard 1.4(c)(ii) Proceeding, Review Under Rule 300, Abuse of Discretion or Error of Law
In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289
Rule 655 Reinstatement
In the Matter of Sheppard (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91
Rule 662
In the Matter of MacKenzie (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56

RULES OF PROFESSIONAL CONDUCT  [The full text of the rules are reprinted in part I A above. The annotated Rules of Professional Conduct are found 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, p. 319]

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

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 Dis. of United States v. Ross (9th Cir. 1984) 735 F.2d 1168, 1170
adopted as standard of professional conduct
-Federal District Court, Eastern District
In re Tavis (9th Cir. BAP 2006) 347 B.R. 679
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]
King v. State Bar (1990) 52 Cal.3d 307 [276 Cal.Rptr. 176]
Kelson v. State Bar (1976) 17 Cal.3d 1, 4 fn. 1
Tomlinson v. State Bar (1975) 13 Cal.3d 567, 569 fn. 1 [119 Cal.Rptr. 335, 531 P.2d 1119]
In the Matter of Whitehad (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354
In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343

civil case
Western Continental Operating Co. v. Natural Gas Corp. (1989) 212 Cal.App.3d 752 [261 Cal.Rptr. 100]

Government attorneys
applicability to
In re Lee G. (1991) 1 Cal.App.4th 17, 34 [1 Cal.Rptr.2d 375]
CAL 2002-158

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 (1966) 64 Cal.2d 787, 793 [51 Cal.Rptr. 825]
govern discipline of attorneys and do not create disqualification standards for courts but may be used for guidance

CURRENT RULES OF PROFESSIONAL CONDUCT (operative November 1, 2018)
Rule 1.0 Purpose and Function of the Rules of Professional Conduct
101 Ops. Cal. Atty Gen. 1 (04/03/18; No. 14-301)
Rule 1.1 Competence
-attorney must ensure competence when advising client regarding litigation funding
CAL 2020-204
Rule 1.2 Scope of Representation and Allocation of Authority
CAL 2020-207
Rule 1.2.1 Advising or Assisting the Violation of Law
CAL 2020-202, LA 531 (2019)
Rule 1.5 Fees for Legal Services
refund of fee advanced
SD 2019-3
Rule 1.6 Confidential Information of a Client
CAL 2021-207, CAL 2021-205, CAL 2019-200
Rule 1.7 Conflict of Interest: Current Clients
CAL 2021-205, LA 533 (2020)
101 Ops. Cal. Atty Gen. 1 (04/03/18; No. 14-301)
Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client
LA 532 (2019)
Rule 1.8.6 Compensation from One Other than Client litigation funding
CAL 2020-204
Rule 1.9 Duties To Former Clients
CAL 2021-205
Rule 1.10 Imputation of Conflicts of Interest: General Rule
CAL 2021-205
Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons
refund of fee advanced
SD 2019-3
Rule 1.16 Declining or Terminating Representation
CAL 2019-200
Rule 1.18 Duties To Prospective Client
CAL 2021-205
Rule 3.3 Candor Toward the Tribunal
Levine v. Berschneider (2020) 56 Cal.App.5th 916 [270 Cal.Rptr.3d 768]
CAL 2019-200
Rule 3.7 Lawyer as Witness
Doe v. Yim (2020) 55 Cal.App.5th 573 [269 Cal.Rptr.3d 613]
FORMER RULES OF PROFESSIONAL CONDUCT (operative May 27, 1989–October 31, 2018)

Rule 4.2 Communication with a Represented Person
Doe v. Superior Court of San Diego County (2019) 36 Cal.App.5th 199 [248 Cal.Rptr.3d 314]

Rule 4.3 Communication with an Unrepresented Person
LA 531 (2019)

Rule 4.4 Duties Concerning Inadvertently Transmitted Writing
LA 531 (2019)

Rule 5.4 Financial and Similar Arrangements with Nonlawyers
SD 2019-2

Rule 5.5 Unauthorized Practice of Law: Multijurisdictional Practice of Law
SF 2021-1
remote practice of law
SF 2021-1
“systematic or continuous presence in California” defined
SF 2021-1

Rule 7.1 Communications Concerning a Lawyer's Services
CAL 2019-199

Rule 7.2 Advertising
CAL 2019-199
paragraph (b)
SD 2019-2

Rule 7.3 Solicitation of Clients
SD 2018-2

Rule 8.4 Misconduct
LA 531 (2019)

Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation
CAL 2021-207

FORMER RULES OF PROFESSIONAL CONDUCT (operative May 27, 1989–October 31, 2018)

Rule 1-100 Rules of Professional Conduct, In General.

Bankruptcy of Mortgage & Realty Trust (1996) 196 B.R. 740
City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]
Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]

Rule 1-101 Disciplinary Authority of the State Bar.


Rule 1-102 Rules of Professional Conduct serve as an expression of the purpose of the rules

Rule 1-103 Assisting, Soliciting, or Inducing Violations.


Rule 1-104 Misconduct

Rule 1-105 Systematic or Continuous Presence in California

Rule 1-106 Unauthorized Practice of Law


Rule 1-300 Unauthorized Practice of Law.


Rule 1-310 Employment of Disbarred, Suspended, Resigned, or Voluntary Inactive Member.

City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839 [43 Cal.Rptr.3d 771]
FORMER RULES OF PROFESSIONAL CONDUCT (operative May 27, 1989—October 31, 2018)

Rule 1-320 Financial Arrangements With Non-Lawyers.
In re Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920
In the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
In the Matter of Bragg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615
SD 1989-2

Rule 1-400 Advertising and Solicitation.
In re Morse (1995) 11 Cal.4th 184 [44 Cal.Rptr.2d 620]
Rubin v. Green (1993) 4 Cal.4th 1187
In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
In the Matter of Kroff (Review Dept. 1998) 5 Cal. State Bar Ct. Rptr. 838
SD 2018-2, SD 2018-1, SD 1996-1, SD 1992-3, OC 93-001
Standard 1
In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861
Standard 4
SD 2000-1
Standard 5
In re McKesson HBOC, Inc. Securities Litigation (N.D. Cal. 2001) 128 F.Supp.2d 1239
Standard 7
LA 530 (2018)
Standard 8
LA 516 (2006)
Standard 9
use of former employer’s client lists for solicitation purposes
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]

Rule 1-500 Agreements Restricting a Member’s Practice.
In re J.T. Thope, Inc. Thorpe Insulation Co., Debtors
In the Matter of Respondent X (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592
CAL 2012-185, CAL 2009-176
OC 2011-01, SF 2012-1

Rule 1-600 Legal Services Programs.
Frye v. Tenderfoin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [43 Cal.Rptr.3d 221
CAL 1997-148, CAL 1992-126
LA 500 (1999)

Rule 1-650 Limited Legal Services Programs
CAL 2011-182

Rule 1-700 Member as Candidate for Judicial Office
In the Matter of Parish (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370
statement accusing judicial opponent of involvement in bribery and corporate fraud was a factual misrepresentation made with reckless disregard for the truth
In the Matter of Parish (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370

Rule 1-710 Member as Temporary Judge, Referee, or Court-Appointed Arbitrator
LA 514 (2005)

Rule 2-100 Communication With a Represented Party.
United States v. Talao (9th Cir. 2000) 222 F.3d 1133
Graham v. U.S. (9th Cir. 1996) 96 F.3d 446
Karnazes v. Ares (2016) 244 Cal.App.4th 344 [198 Cal.Rptr.3d 155]
Conservatorship of Becerra (2009) 175 Cal.App.4th 1474 [96 Cal.Rptr.3d 910]
La Jolla Cove Motel and Hotel Apartments Inc. v. Superior Court (2004) 121 Cal.App.4th 773 [17 Cal.Rptr.3d 467]
In the Matter of Dale (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798
In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70
"In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664
SD 2011-2, SD 2005-1
public officer, board committee or body exception
-not applicable where questions posed by attorney for opposing party to public employees were designed to obtain evidence for use in litigation

Rule 2-200 Financial Arrangements Among Lawyers.
Hance v. Super Store Industries (2020) 44 Cal.App.5th 676 [257 Cal.Rptr.3d 761]
Mark v. Spencer (2008) 166 Cal.App.4th 219 [82 Cal.Rptr.3d 563]
2022 (updated entries through 12/31/2021) 444 See How to Use This Index, supra, p. i
Rule 3-100  Confidential Information of a Client

Rule 3-110  Failing to Act Competently

Rule 2-300  Sale or Purchase of a Law Practice of a Member, Living, or Deceased.

Rule 4-100  Discriminatory Conduct in a Law Practice (operative March 1, 1994)

Rule 3-100  Confidential Information of a Client

Rule 3-110  Failing to Act Competently

Rule 2-300  Sale or Purchase of a Law Practice of a Member, Living, or Deceased.

Rule 4-100  Discriminatory Conduct in a Law Practice (operative March 1, 1994)
FORMER RULES OF PROFESSIONAL CONDUCT (operative May 27, 1989–October 31, 2018)

Rule 3-200 Prohibited Objectives of Employment.
Rule 3-210 Advising the Violation of Law.
Rule 3-300 Avoiding Adverse Interests.

In re Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138

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

In the Matter of Allen (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 387

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

In the Matter of Gillis (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 382

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

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


business transactions with a client

In the Matter of LingoWood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660

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

Rule 3-310 Avoiding the Representation of Adverse Interests.


In the Matter of Findley (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

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

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

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

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

*SanCT Clara County Counsel 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 800]

Fair v. Bakhthari 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 Priamosis (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

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

In light of the above, the Court rules that...
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. 289
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. 179
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. 631
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 Sullivan, II (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608
In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547
In the Matter of Dale K. Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459
SD 2004-1, SD 2001-1, SD 1997-1, SD 1990-2
OC 2011-01, SF 2011-1
client coerced into accepting settlement under threat of attorney's withdrawal
Nehad v. Mukasey (9th Cir. 2008) 535 F.3d 962
disclosure of confidences at motion for withdrawal
CAL 2015-192
duty to release to client mental health care records is not altered by written warning from mental health care provider that disclosure may be detrimental to client
LA 509 (2002)
failure to return unearned fees
In the Matter of Roger M. Lindmark (Review Dept. 2004)
4 Cal. State Bar Ct. Rptr. 668
failure to provide status reports to law firm on client matters when attorney-employees abruptly resigned from law firm
Reeves v. Hanlon (2003) 34 Cal.4th 1140 [17 Cal.Rptr.3d 289]
Rule 4-100 Preserving Identity of Funds and Property of a Client.
Securities and Exchange Commission v. Interlink Data Network of Los Angeles (9th Cir. 1996) 77 F.3d 1201
In re Montgomery Drilling Co. (E.D. Cal. 1990) 121 B.R. 32
In the Matter of Rubin (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 797
In re Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296
In the Matter of Song (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273
In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239
In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93
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In re Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944
In re Ohet (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920
In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896
In re Temner (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
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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. 126
In the Matter of Aulakh (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 708
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
In the Matter of Silver (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
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In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138
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OC 99-002
overdraft protection
CAL 2005-169
unilateral disbursement of funds without consent of corporate client
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Rule 4-200 Fees for Legal Services
In re Silverton (2005) 36 Cal.App.4th 1128 [78 Cal.Rptr.2d 494]
In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93
In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896
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In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788
In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725
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 [113 Cal.Rptr.2d 294]
loan modification services
-collecting pre-performance fees in violation of the law
In the Matter of Gordon (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610
In the Matter of Swazi Elkanci 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 1996-147
SF 1998-1
Rule 4-300 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review.
LA 455
Rule 4-400 Gifts From Client.
CAL 2011-180
LA 462
Rule 5-100 Threatening Criminal, Administrative, or Disciplinary Charges.
Flatley v. Mauro (2006) 39 Cal.4th 299 [46 Cal.Rptr.3d 606]
In re Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160
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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 exercise reasonable care to prevent persons under the prosecutor’s supervision from making an
extrajudicial statement the prosecutor would be prohibited from making under rule 5-120
Rule 5-110(E)
prosecutor must make reasonable efforts to assure the accused has been advised of the right to, and the procedure
for, obtaining counsel, and has been given reasonable opportunity to obtain counsel probate matters
Rule 5-110(B)
prosecutor must not seek to obtain from an unrepresented accused a waiver of pretrial rights, unless the tribunal has
approved the accused’s appearance in pro per
Rule 5-110(C)
prosecutor must seek to remedy a conviction when the prosecutor “knows of clear and convincing evidence” establishing that a wrongful conviction occurred
Rule 5-110(G)
Rule 5-120 Trial Publicity (operative October 1, 1995). statements found not in violation of rule
Rule 5-200 Trial Conduct.
Murdock v. Castro (9th Cir. 2010) 609 F.3d 983
In re Aguilar and Kent (2004) 34 Cal.App.4th 386 [18 Cal.Rptr.3d 874]
Hanson v. Superior Court of Siskiyou County (2001) 91 Cal.App.4th 75 [109 Cal.Rptr.2d 782]
In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9
In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211
CAL 2008-175
OC 95-001, OC 94-003
SD 2017-1, SD 2012-1, SD 2011-1, SD 1990-2
attorney commits a direct contempt when he impugns the integrity of the court by statements made in open court either orally or in writing
In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]
Rule 5-210 Member as Witness.
Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1996) 195 B.R. 740
People v. Dunkle (2005) 36 Cal.4th 861 [32 Cal.Rptr.3d 23]
Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]
Smith, Smith & Kring v. Superior Court (1997) 60 Cal.Rptr.3d 547 [70 Cal.Rptr.2d 507]
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CAL 1975-33
LA 342 (1973)
SD 1977-2, SD 1974-6, SD 1972-17
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Rule 1-101  Maintaining Integrity and Competence of the Legal Profession. [See Admission to the bar.]
Business activity. Solicitation.]
Business and Professions Code section 6105
SF 1980-1, SF 1979-1
subdivision (B) & (C)
CAL 1983-75

Rule 2-102  Legal Service Programs. [See Group legal services. Legal services.]
CAL 1987-91, CAL 1982-65
SD 1983-6

Rule 2-105  Advising Inquirers Through the Media on Specific Legal Problems. [See Advising inquirers through media. Broadcasting.]
CAL 1976-40, CAL 1975-32
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\-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. Wengler (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 re Mahoney (2021) 65 Cal.App.5th 376 [ 280 Cal.Rptr.3d 2]
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
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Hamilton v. Neptune Orient Lines (9th Cir. 1987) 811 F.2d 498, 500
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In re Deville (9th Cir. BAP 2002) 280 B.R. 483
Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]
In re Marriage of Emndt and Terhorst (2021) 59 Cal.App.5th 898 [273 Cal.Rptr.3d 765]

for attorney should not accept so much employment, that the attorney is unable to appear due to other case commitments
attorney’s fees may not be awarded as a sanction under
Code of Civil Procedure § 128.7 to a prevailing attorney
acting in pro se
Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]

family law
sanctions under CCP § 128.5 require notice of grounds and opportunity to respond
In re Marriage of Quinlan (1989) 209 Cal.App.3d 1417 [257 Cal.Rptr. 850]

For discovery abuses
Hyde & Drath v. Baker (9th Cir. 1994) 24 F.3d 1162
Cornerstone Realty Advisors, LLC v. Summit Heat Vive (2020) 56 Cal.App.5th 771 [270 Cal.Rptr.3d 653]
In re Koehler (2010) 181 Cal.App.4th 1153 [104 Cal.Rptr.3d 877]
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]

order imposing sanctions on attorney pursuant to Federal Rule of Civil Procedure 37(a)(4) is not final decision and thus not immediately appealable
when attorney fails to attend court-ordered depositions regarding disciplinary charges, sanctions permitting his testimony are not proper
In the Matter of Torres (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19

for failure to admit facts contained in request for admissions

for delay
Stanley v. Woodford (9th Cir. 2006) 449 F.3d 1060
Pacific Harbor Capital, Inc. v. Carnival Air Lines, Inc. (9th Cir. 2000) 210 F.3d 1112
Sanders v. Union Pacific Railroad Company (1998) 154 F.3d 1037

In re Koehler (2010) 181 Cal.App.4th 1153 [104 Cal.Rptr.3d 877]
SANCTIONS

For frivolous appeal
In re Ringgold (2006) 142 Cal.App.4th 1001 [48 Cal.Rptr.3d 507]

For failure to meet and confer with adversary

For failure to disclose corporate client’s suspended status

For failure to settle case

For failure to participate meaningfully in judicial arbitration

For frivolous complaint
Scott v. Younger (9th Cir. 1984) 739 F.2d 1464, 1467
DeWitt v. Western Pacific Railroad Company (9th Cir. 1983) 719 F.2d 1448
Bucur v. Ahmad (2016) 244 Cal.App.4th 175 [198 Cal.Rptr.3d 127]
In re Kinney (2011) 201 Cal.App.4th 951 [135 Cal.Rptr.3d 471]

In re Marriage of Adams (1997) 52 Cal.App.4th 911 [60 Cal.Rptr.2d 811]

In the Matter of Scott (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446

bad faith, vexatious, wanton, or oppressive reasons
Int’l Union of P.I.W v. Western Indus. Main. (9th Cir. 1983) 707 F.2d 425, 428
disbarred attorney
-merits substantial sanctions

family law
-order to pay former wife’s attorney’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 warranted based on frivolous appeal
Bucur v. Ahmad (2016) 244 Cal.App.4th 175 [198 Cal.Rptr.3d 127]

In frivolous habeas corpus petitions, sanctions should be imposed sparingly, except in most egregious cases, as so not to discourage use of the writ
In re White (2004) 121 Cal.App.4th 1453 [18 Cal.Rptr.3d 444]
notication of State Bar
sanctions imposed on client for filing a frivolous appeal does not constitute malpractice as a matter of law

For frivolous claims
sanctions award against successor attorney for frivolous claims filed by predecessor attorney not supported

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
McCluskey v. Henry (2020) 56 Cal.App.5th 1197 [270 Cal.Rptr.3d 803]
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 the Marriage of Bursag (1999) 72 Cal.App.4th 74 [84 Cal.Rptr.2d 739]
action not frivolous under CCP § 128.7 where it was not prosecuted for an improper purpose
Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150 [80 Cal.Rptr.3d 812]
fees awarded to plaintiff in anti-SLAPP motion where plaintiff showed a probability of prevailing on the merits motion was found to be frivolous and without merit
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


Judicial

Business and Professions Code section 6068(o)(3) duty to report monetary sanctions over $1,000 except for discovery sanctions

Sarraf v. Standard Insurance Co. (9th Cir. 1996) 102 F.3d 991

Hill v. MacMillan/McGraw Hill Company (9th Cir. 1996) 102 F.3d 422


In the Matter of Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170 CAL 1997-151

Law firm has standing to appeal monetary sanction on firm attorney


Limitations on


[272 Cal.Rptr. 126]


[203 Cal.Rptr. 106]


[203 Cal.Rptr. 103]

court had no authority to award costs of future depositions as monetary sanction for coaching plaintiff during deposition where those costs had not yet been incurred


juvenile proceeding


trial court’s award of attorney’s fees against plaintiff’s counsel for violation of an in limine order was neither within the court’s inherent powers nor was authorized by statute

Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150 [80 Cal.Rptr.3d 812]

May not be imposed without hearing


Meritless suit results in Federal Rule of Civil Procedure, Rule 11, sanctions on attorney

Truesdell v. Southern California Permanente Medical Group (9th Cir. 2002) 293 F.3d 1146

King v. Idaho Funeral Service Association (9th Cir. 1988) 862 F.2d 744
SANCTIONS

Meritorious cause of action
improper basis for imposing sanctions
Aitchison, Topeka and Santa Fe R.R. Co. v. Stockton Port
District (1983) 140 Cal.App.3d 111 [189 Cal.Rptr. 208]

Misrepresentation of evidence in argument
In re Disciplinary Action Curl (9th Cir. 1986) 803 F.2d 1004
Misuse of discovery under CCP section 2023 need not be willful

Monetary
Code of Civil Procedure section 128
Code of Civil Procedure section 128.7
-attorney’s fees may not be awarded as a sanction under
Code of Civil Procedure § 128.7 to a prevailing attorney acting in pro se
Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]
-does not authorize sanctions in the form of an award of
attorney fees to self represented attorneys
Musaelian v. Adams (2009) 45 Cal.4th 512 [87 Cal.Rptr.3d 475]

In re Blue Pine Group, Inc. (9th Cir. BAP 2011) 457 B.R. 64
dismissal inappropriate for failure to pay

for alleged violation of local court rules conduct must clearly interfere with administration of justice
Wehrli v. Pagliotti (9th Cir. 1991) 947 F.2d 1424

inappplicable to appellate courts

in re Brooks-Hamilton (9th Cir. 2009) 400 B.R. 238

“safe harbor” provisions preclude the imposition of sanctions
who added fictitious defendants on the eve of trial

Non-compliance with local rules
Non-party attorney may lack standing to seek sanctions for harassment against a party attorney
Pennwalt Corp. v. Durand-Wauld, Inc. (9th Cir. 1983) 708 F.2d 492, 495

Not properly imposed on client for alleged failure of counsel to adhere to court rule

On attorney and client
appropiate method for dealing with unjustified litigation


Probate court
award of monetary sanctions and attorney’s fees improper for violation of Rule of Professional Conduct
Conservatorship of Becerra (2009) 175 Cal.App.4th 1474 [96 Cal.Rptr.3d 910]

Procedure for seeking sanctions

Prosecutor
failure to provide discovery to the public defender

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]

Purpose for sanctions award

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

Safe Harbor period to withdraw sanctions

Scheduling depositions and serving subpoenas when opposing counsel is known to be out of the country
Tenderloin Housing Clinic, Inc. v. Sparks (1992) 8 Cal.App.4th 299

State Bar discipline imposed for repeated sanctions
Canatella v. Van De Kamp (9th Cir. 2007) 486 F.3d 1128

Terminating sanctions
dismissal with prejudice deemed appropriate sanction for attorney’s repeated violation of court’s order
Osborne v. Todd Farm Service (2016) 247 Cal.App.4th 43 [202 Cal.Rptr.3d 84]
sanctions properly terminated when attorney threatens opposing attorney with physical harm and is openly contemptuous of trial court

Trial court award of attorney fees

Two requirements: just and related to particular claim as to discovery
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
Kaass Law v. Wells Fargo Bank (9th Cir. 2015) 799 F.3d 1290

Under Code of Civil Procedure section 128.5

In re Marriage of Reese and Guy (1999) 73 Cal.App.4th 1214 [87 Cal.Rptr.2d 339]

In re Marriage of Adams (1997) 52 Cal.App.4th 911 [60 Cal.Rptr.2d 811]

bad faith intentional concealment of evidence
bad faith required for sanctions
Foxgate Homeowners' Association, Inc. v. Bramalea
California, Inc. (2001) 26 Cal.4th 1 [108 Cal.Rptr.2d 642]

Under Code of Civil Procedure section 177.5
-det

Under Code of Civil Procedure section 128.7, the purpose is to
remedy frivolous actions and give the offending party the opportunity
to file a frivolous lawsuit


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 necessity 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 when 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
Muaelian 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

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 2023(b)(1)
discovery sanctions not available to attorney who litigates in propria persona

Under Code of Civil Procedure section 2033
Estate of Manuel (2010) 187 Cal.App.4th 400 [113 Cal.Rptr.3d 448]


Under Penal Code § 1054.5

Vexatious litigant
attorney appearing for client is not a litigant
Weissman v. Quail Lodge Inc. (9th Cir. 1999) 179 F.3d 1194
lawyer declared vexatious litigant based on 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 LA W OFFICE
Penal Code sections 1524, 1525

United States v. Mittleman (1993) 999 F.2d 440

Gordon, III v. Superior Court (1998) 3 Cal.4th 1258 [94 Cal.Rptr.2d 183]

SEARCH WARRANT FOR LAW OFFICE
LA 28 (1965), LA 221 (1954)
SD 1974-16, SD 1974-21

SETTLEMENT
Acceptance of settlement offers

Agreement providing that trial court will determine prevailing party and award of attorney fees is valid and enforceable

See How to Use This Index, supra, p. i 463 2022 (updated entries through 12/31/2021)
SETTLEMENT

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

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 170 (1949)

represented by absent 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]


Confidential settlement agreement


LA 512 (2003)

Confidentiality provisions in the settlement agreement can extend to the attorney signing off the agreement for form and content on behalf of the client

Monster Energy Company v. Schechter (2019) 7 Cal.5th 781 [249 Cal.Rptr.3d 295]

renders CCP § 998 offer invalid


Condition settlement on plaintiff's attorney waiving fees

Venegas v. Mitchell (1990) 110 S.Ct. 1679


Pony v. County of Los Angeles (9th Cir. 2006) 433 F.3d 1138

Bernhardt v. Los Angeles County (9th Cir. 2003) 339 F.3d 920

CAL 2009-176


Conflict between joint clients

SD 2013-1

Conflicting instructions from insurance company and assured

LA 344 (1974)

Corporation’s settlement proceeds are claimed by individual members of the board of directors

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576

Defense misrepresented principal benefits of settlement


Deposition 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

no duty found

LA 380 (1979)
Insurer's attorney has duty to include insured's independent exonerate client in public eye, attorney no duty to not affected.

Offer

No client consent obtained

Negotiations not to prosecute

Marital settlement agreements

attorney approval not required for parties in dissolution matter to enter into a written marital settlement agreement

In re Marriage of Hasso (1991) 229 Cal.App.3d 1174

scrivener services by a single attorney for both husband and wife in dissolution of marriage requires informed written consent for potential conflict


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


Bodisco v. State Bar (1962) 58 Cal.2d 495, 497 [24 Cal.Rptr. 835]

CAL 1994-136

Offer


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

SETTLEMENT

plaintiff entitled to award of attorney's fees as prevailing party where sum of jury damage award and defendant's post-settlement offer exceed defendant's pre-trial settlement offer


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 566]

which include fee-waiver provisions under fee shifting statutes

CAL 2009-176

Oral acceptance of settlement offers subsequent rejection


Represent in settlement when fee owed by client comes out of settlement

LA 350 (1975), SD 1975-4

Requires client's consent


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


Revocation of settlement offer


Scrivener 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) 1972-19

Malpractice claim

breach of contract action available if settlement agreement cannot be enforced under CCP § 684.6


settlement with client of fee dispute and release from liability for potential malpractice including a Civil Code § 1542 waiver

CAL 2009-178

Marital settlement agreements

attorney approval not required for parties in dissolution matter to enter into a written marital settlement agreement

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CAL 1994-136

Offer


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

See How to Use This Index, supra, p. i 465
SEXUAL RELATIONS WITH CLIENT

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]
Alvareno Community Hospital v. Superior Court (1985)
173 Cal.App.3d 476, 480-481 [219 Cal.Rptr. 52]
CAL 1994-136
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, and the prevailing party is entitled to costs and fees, if authorized by statute or contract
writ withdrawal of oral acceptance
Workers’ Compensation cases
claimant’s attorney 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]
Written offer of, communication to client
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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.
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CAL 1987-92, OC 2003-02

SMALL CLAIMS COURT

Attorney’s appearance in
LA 105 (1936)

SOLICITATION OF BUSINESS

Business and Professions Code sections 6150-6154, 6157
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CAL 1988-105
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Acceptance of employment resulting from unsolicited advice
Ambulance chasing
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SD 2000-1
investigation service in personal injury matters
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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 1968-4
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]
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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
SD 2018-2
-engaged in dual occupation
--real estate business
CAL 1981-61
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-to advise, counsel and represent employees of
LA 137 (1941)
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contract to acquire tax title to property
-involving referral to lawyer for compensation
LA 133 (1941)
group representation
LA 257 (1959)
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LA 466 (1987)
real estate business
LA 140 (1942)
-associated with attorney
LA 140 (1942)
recommends particular lawyer
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referral, systematic
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By legal research service
operated by attorneys
-constitutes practice of law
LA 301 (1967)

By letter
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SD 1992-3, SD 1983-5, OC 93-001
of creditors
-advising of claims of which unaware
--offering to represent on percentage basis
LA 122 (1939)
statute that places conditions on use of public access of names and addresses of individuals arrested by police is not facially invalid
targeted to specific potential clients
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to members of trade association
-announce resignation of public office and opening of private practice
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-announce specialized legal services
LA 127 (1940)
to other lawyers
-describing qualifications
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-offering to represent in other jurisdictions
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-requesting referral
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using contact information obtained from DMV records violated the Drivers Privacy Protection Act (DPPA)

By non-lawyer
who will receive part of recovery
CAL 1983-75

By non-lawyer
who will receive part of recovery
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  who potentially wants to employ him or her
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  Kelson v. State Bar (1976) 17 Cal.3d 1 [130 Cal.Rptr. 29]
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  Ashe v. State Bar (1969) 71 Cal.2d 123 [77 Cal.Rptr. 233]
  Linnick v. State Bar (1964) 62 Cal.2d 17, 20 [41 Cal.Rptr. 1]
  Best v. State Bar (1962) 57 Cal.2d 633, 635, 637 [21
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  not facially invalid
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  Humphrey (1986) 377 N.W.2d 643
  Fxing of unsolicited advertisements prohibited
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Internet advertising

a website is neither delivered in person nor by telephone and is not prohibited solicitation

- CAL 2001-155
- chat room
- CAL 2004-166

- court order directing website to remove challenged third party reviews from its website when not named as a defendant violated Communications Decency Act immunity to operator (47 U.S.C. Section 230)
- Hassell v. Bird (2018) 5 Cal.5th 522 [234 Cal.Rptr.3d 867]

- 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]
- Tonini 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) 86 Cal.2d 816, 829 [117 P.2d 866]
- Ewell v. State Bar (1934) 2 Cal.2d 209, 215 [40 P.2d 264]
- Fish v. State Bar (1931) 214 Cal. 215 [4 P.2d 937]
- In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838
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- CAL 1995-144
- business card delivered to accident victim at scene of accident
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- 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

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- in return for referrals
- SD 1974-21 1/2, SD 1974-20
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- In re Morse (1995) 11 Cal.4th 184 [44 Cal.Rptr.2d 620]
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Mailing postcards to potential clients
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- religious organization members, referred to attorney employed by
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LA 474 (1993)
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Brotherhood of Railroad Trainmen v. VA (1964) 377 U.S. 1 [845 S.Ct. 1113, 12 L.Ed.2d 69]
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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In re Morse (1995) 11 Cal.4th 184 [44 Cal.Rptr.2d 620]


Carlson v. Court of Appeal (1999) 7 Cal.4th 191 [104 Cal.Rptr.2d 843, 967 P.2d 49]

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

Oversight of attorney disciplinary system

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]

Trial court cannot condition its willingness to rule on claims of privilege upon a party’s agreement to pay for the services of a special master

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

SPECIALIZATION

[See Legal specialization. Practice of law.]

STATE BAR ACT

Business and Professions Code sections 6000-6228. [The full text of the State Bar Act is reprinted above in part I.A. of this Compendium.]

Cross Reference Table
origins of the State Bar Act. [See part I.A. to this Compendium, at Cross Reference Table.]

Historical role of the State Bar
Hirsh v. Justice of the Supreme Court of the State of California (9th Cir. 1995) 67 F.3d 708

STATE BAR OF CALIFORNIA

[See Admission to the bar. Ethics committees.]

Business and Professions Code sections 6000-6228
California Constitution, Article 6, section 6
Civil Code section 43.95
Civil Code section 365
Civil Code section 1141.18 (c)
Corporations Code section 10830 (d)
Education Code section 94360
Education Code section 94361
Government Code section 10307
Government Code section 12011.5

Penal Code section 1524
Penal Code section 13825
Revenue and Taxation Code section 2374(d)

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Advice of a State Bar employee cannot give attorney permission to violate the Rules of Professional Conduct or the Business and Professions Code.

Sheffield v. State Bar (1943) 22 Cal.2d 627 [140 P.2d 376]

As an adjunct of the California Supreme Court
Hirsh v. Justices of the Supreme Court of the Supreme Court of the State of California (1995) 67 F.3d 708

In re Rose (2000) 22 Cal.4th 430 [83 Cal.Rptr.2d 298]
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Disciplinary authority
Canadella v. California (9th Cir. 2002) 304 F.3d 843
In re Rose (2000) 22 Cal.4th 430 [83 Cal.Rptr.2d 298]
Conservatorship of Becerra (2009) 175 Cal.App.4th 1474 [96 Cal.Rptr.3d 910]

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

power to discipline attorneys is held exclusively by the Supreme Court and 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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Business and Professions Code section 6143
use of bar dues for political activities
Keller v. State Bar (1990) 110 S.Ct. 2228
Morrow, et al. v. State Bar (9th Cir. 1999) 188 F.3d 1174
Brosterhouse v. State Bar (1995) 12 Cal.4th 315 [48 Cal.Rptr.2d 87]

-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
CRS Recovery, Inc. v. Laxton (9th Cir. 2010) 600 F.3d 1138

See How to Use This Index, supra, p. i
STATUTE OF LIMITATIONS

Enforceability of State Bar rules concerning delegates participating in the State Bar Conference of Delegates


Enforceability of State Bar rules concerning restricting candidates to Board of Governors


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

Schearer v. Kelly (9th Cir. 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

Russell v. Hug (9th Cir. 2002) 275 F.3d 812

Law corporation

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-not required to register as a law corporation

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

Legislature cannot impair the judicial functions of the Supreme Court of California


Brydonjack v. State Bar (1929) 208 Cal. 439

State Bar of California v. Superior Court (1929) 208 Cal. 323

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

Warden v. State Bar (1999) 21 Cal.4th 628


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


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Brosterhous v. State Bar (1995) 12 Cal.4th 315 [48 Cal.Rptr.2d 87]


State Bar Court


In re Rose (2000) 22 Cal.4th 430 [83 Cal.Rptr.2d 298]

State Bar prosecutors have absolute immunity from monetary liability for performance of prosecutorial functions


Statutory privileges and immunities protect State Bar and staff from action brought by a disbarred attorney


Supreme Court on recommendation of State Bar alone may issue disciplinary proceedings against an attorney


Unified Bar

Morrow, et al. v. State Bar (9th Cir. 1999) 188 F.3d 1174


STATUTE OF LIMITATIONS [See Professional Liability.]

Actions against attorneys, under CCP 340.6

Faxon 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]

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Criminal offense of conspiracy to defraud by false pretenses or false promises is subject to three-year statute of limitations

People v. Milestein (2012) 211 Cal.App.4th 1158 [150 Cal.Rptr.3d 290]

Habeas petition

attorney abandonment may constitute extraordinary circumstances that may require relief

Foley v. Biter (9th Cir. 2015) 793 F.3d 998

death row inmate entitled to assistance from conflict-free counsel in federal habeas petition to argue equitable tolling


prisoner may be entitled to equitable tolling where there were extraordinary circumstances; attorney who resigns, running “writ mill” may be extraordinary

Porter v. Ollison (9th Cir. 2010) 620 F.3d 952

tolling of habeas petition deadline when prisoner did not have access to file

Lott v. Mueller (9th Cir. 2002) 304 F.3d 918

STIPULATION [See Authority of attorney, stipulation.]

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Grand jury subpoena of court-appointed defense counsel to testify against client would likely destroy the attorney-client relationship

U.S. v. Bergerson (9th Cir. (Or.) 2005) 425 F.3d 1221

Of attorney information regarding client [See Search warrant.]

Prosecutor is not automatically entitled to subpoena a lawyer to testify against his client before a grand jury merely because the information sought is not privileged

U.S. v. Bergerson (9th Cir. (Or.) 2005) 425 F.3d 1221

Protection from discovery

subpoena duces tecum served on non-party DA for the production of documents, prepared by another entity, not enforceable as the documents were not generated by DA personnel nor was the DA qualified to attest to their authenticity


SUBSTITUTION OF COUNSEL [See Withdrawal.]

Code of Civil Procedure sections 284, 285

Rule 2-111, Rules of Professional Conduct (operative until May 26, 1989)

Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)

Abuse of discretion in denying criminal defendant’s request for substitution

U.S. v. Torres-Rodriguez (9th Cir. 1991) 930 F.2d 1375

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Hock v. Superior Court of San Diego County (1990) 221 Cal.App.3d 670 [270 Cal.Rptr. 579]
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*Bradley v. Henry (9th Cir. 2005) 428 F.3d 811
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People v. Turner (1992) 7 Cal.App.4th 913
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  Shapiro v. State Bar (1990) 51 Cal.3d 251 [794 P.2d 572]
  In the Matter of Amponsah (Review Dept. 2019) 5 Cal.
  State Bar Ct. Rptr. 646
  In the Matter of Eldridge (Review Dept. 2017) 5 Cal.
  State Bar Ct. Rptr. 413
Standard 1.4(c)(ii) proceeding for relief from actual suspension
  alcohol and drug addiction brought under control
  In the Matter of Terrones (Review Dept. 2001) 4 Cal.
  State Bar Ct. Rptr. 289
  not a reinstatement proceeding
  In the Matter of Terrones (Review Dept. 2001) 4 Cal.
  State Bar Ct. Rptr. 289
  petitioner’s burden of proof, preponderance of the evidence
  In the Matter of Terrones (Review Dept. 2001) 4 Cal.
  State Bar Ct. Rptr. 289
  standard of review
    -abuse of discretion or error of law
      In the Matter of Terrones (Review Dept. 2001) 4 Cal.
      State Bar Ct. Rptr. 289
    -substantial evidence supported hearing judge’s findings
      In the Matter of Terrones (Review Dept. 2001) 4 Cal.
      State Bar Ct. Rptr. 289
  summary nature of proceeding
  In the Matter of Terrones (Review Dept. 2001) 4 Cal.
  State Bar Ct. Rptr. 289
Suspended attorney
  authority to represent party in litigation
  Aldrich 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. 563
  must be licensed at time services performed to recover fees
  Herdy v. San Fernando Valley Chamber of Commerce
  referrals from
  LA(I) 1937-1
  share office with
  LA(I) 1937-1
TAX
  Attorney’s fees paid in tort-based action were excluded from
  client’s gross income
  Banaitis v. Commissioner of Internal Revenue (9th Cir. 2003)
  340 F.3d 1074
  Contingency fee portion of settlement recovery constitutes
taxable income
  See How to Use This Index, supra, p. i 475
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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
  Banaitis v. Commissioner of Internal Revenue (9th Cir. 2003)
  340 F.3d 1074
Failure of attorney to pay
  In re Fahey (1973) 43 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

Law practice.]

TERMIMENT 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 (1990) 50 Cal.3d 116
  Conflict of Interest
  Cal.Rptr. 252]
  Death or incapacity of attorney
  appeal from judgment not extended by death of the attorney
  Voinich v. Poe (1921) 52 Cal.App. 597 [199 P. 74]
  Code of Civil Procedure section 286 requires notice to a
  party that his attorney has died
  California Water Service v. Sidebotham & Son (1964) 224
  Cal.App.2d 715 [37 Cal.Rptr. 1]
  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
  508 [172 P. 622]
  written notice required by adverse party to appoint another
  attorney
  Code of Civil Procedure section 286
  Larkin v. Superior Court (1916) 176 Cal. 719 [154 P. 841]
  Death or incapacity of client
  LA 300
  death of client-defendant terminates attorney’s authority to
  represent him in a suit
  Swartfager v. Wells (1942) 53 Cal.App.2d 522 [128 P.2d
  128]
  insanity or incapacity of client terminates authority of attorney
  Sullivan v. Dunne (1926) 198 Cal. 183 [244 P. 343]
  relation of attorney-client not terminated by death of client in
  a special contract of employment
  Estate of Malloy (1929) 99 Cal.App. 96 [278 P. 488]
  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)
TERMINATION OF ATTORNEY-CLIENT RELATIONSHIP

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. 365, 494 P.2d 9]
CAL.2D 1994-134
LA 489 (1977), 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
  Eechin v. Superior Court (1939) 13 Cal.2d 368 [90 P.2d 63]

-may change attorneys at any stage of action even if contingent fee exists
  Estate of Cazaurang (1934) 1 Cal.2d 712 [36 P.2d 1069]
-may discharge attorney at any time unless attorney has vested interest

plaintiff was without authority to substitute an attorney adverse to interests of associates
  Scott v. Donahue (1928) 93 Cal.App. 256 [269 P. 774]

-retained attorney in criminal case
  People v. Lara (2001) 86 Cal.App.4th 139 [103 Cal.Rptr.2d 201]

-right of a litigant to change attorneys at any stage of a proceeding
  Estate of Hardenberg (1936) 6 Cal.2d 371 [57 P.2d 914]

-right to change attorney at any state in action absence any relation of attorney to subject matter

-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 Dahz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 295

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 998

Not necessary to terminate prior agreement where there was only a framework for future representation, contract was not self effectuating, it required reciprocal actions by attorney and client

Objective standard governs end of relationship

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

Flatley 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]


Lindenaum 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

Anti-SLAPP

letter threatening reporting party to Attorney General, District Attorney, IRS, coupled with a demand for money is extortion as a matter of law and not protected under litigation privilege


plaintiff’s letter to defendant is extortion as a matter of law, therefore it is not protected under the anti-SLAPP statute


Client of attorney assisting client in the filing of an improper State Bar complaint


bad check for fees

LA 5 (1918)
-counsel’s use of “succubistic” describing a female judicial officer and accusing judge of failure to follow the law in court filings are reportable
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
Lebbo v. State Bar (1991) 53 Cal.3d 37
In re Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160
unwarranted charges of bias against superior court judges
Business and Professions Code sections 6068(b), (c), (d), (g)
attacked those involved with State Bar and State Bar Court by commencing a federal civil rights action against the justices of the Supreme Court, State Bar Court judges and attorneys of the State Bar
In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141
Business and Professions Code section 6068(d)
affirmative false representation actionable even though no harm results
attorney never directly asked by court, not guilty of intentionally misleading court by not expressly revealing facts
breach of an attorney’s duty to be truthful in statements made to a court
In re Aguilar and Kent (2004) 34 Cal.4th 386 [18 Cal.Rptr.3d 874]
citing case known not to be controlling, failure to cite known controlling case
Shaef er v. State Bar (1945) 26 Cal.2d 739, 747 [160 P.2d 825]
client’s absence from court, attorney may not answer court’s inquiry if harmful to client
SD 2011-1
concealing known material letter from court
concealment of known material information
in the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166
in the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211
OC 95-001
counsel married to bailiff/court reporter
CAL 1987-93
disrespectful reference to prosecutor
Hanson v. Superior Court of Siskiyou County (2001) 91 Cal.App.4th 75 [109 Cal.Rptr.2d 782]
disrespectful remarks concerning judge
Hogan v. State Bar (1951) 36 Cal.2d 807, 810 [228 P.2d 554]
duty to disclose possible violation of court order by third party, no duty found
LA 394 (1982)
failure to disclose material facts
In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166
*Matter of Hamrey (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266
In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211
OC 95-001
falsely maligning appellate court judges
falsely maligning prosecutor and legal profession
Hanson v. Superior Court of Siskiyou County (2001) 91 Cal.App.4th 75 [109 Cal.Rptr.2d 782]
knowingly allowing client to testify falsely
People v. Pike (1962) 58 Cal.2d 70, 97 [22 Cal.Rptr. 664, 372 P.2d 656]
law firm representing corporation has duty to disclose to the court and to opposing counsel corporate client’s suspended status
*leading 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 (1989) 1 Cal.3d 8, 17 [81 Cal.Rptr. 352, 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

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See How to Use This Index, supra, p. i
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, inaccurately, 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
Lebbo 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 presumed 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
vioation 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
Lebbo 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 Fliherty (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

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TRIAL CONDUCT

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
Sorochini v. City of Novia (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. Magene (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]
- prejudgment statement made during
United States v. Rodrigues (9th Cir. 1998) 159 F.3d 439
Jackson v. Park (2021) 66 Cal.App.5th 1196 [281 Cal.Rptr.3d 634]
People v. Cowan (2017) 8 Cal.App.5th 1152 [214 Cal.Rptr.3d 576]
prosecutorial misconduct to repeatedly use “cockroaches” to describe defendants and other gang members, suggested guilt by association
- 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
Matter of Tyler (1884) 64 Cal. 434 [1 P. 884]
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 re Mahoney (2021) 65 Cal.App.5th 376 [280 Cal.Rptr.3d 2]
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]
- indirect contempt
- presiding judge may defer contempt adjudication to another judge
Hanssen 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 A. 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 party submits an inadequate privilege log that fails to provide sufficient information to rule on merits of objections
- 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]
- test validity of court order
Roberts v. Superior Court (1973) 9 Cal.3d 330, 335-336 [107 Cal.Rptr. 309, 508 P.2d 309]
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 conduct
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
   Delaying 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 [89 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 client 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. 1983) 716 F.2d 1285, 1291
   failure to discuss most pertinent legal 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
     failure 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]

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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
   Ex parte tampering with selection of potential jurors
Extensions
   answer
     -attorney cannot assume extension of time to answer without communication from opposing counsel
   Failure to file jury instructions with Joint Issues Conference Statement
     Cooks v. Superior Court (1990) 224 Cal.App.3d 723
   Failure to monitor progress of client’s case results in denial of motion for a preferential trial date
False statements of fact or law
   Fink v. Gomez (9th Cir. 2001) 239 F.3d 989
   attorney disciplined for false averments of fact by clients
     Barton v. State Bar (1931) 213 Cal. 186, 188 [2 P.2d 149]
   attorney gives false testimony while under oath in court
     Green v. State Bar (1931) 213 Cal. 403, 405
   citing case known not to be controlling
     Shaffer v. State Bar (1945) 26 Cal.2d 739, 747 [160 P.2d 825]
   concealment of request for continuance not distinguishable from false statement of fact
     Grove v. State Bar (1965) 63 Cal.2d 312, 315 [46 Cal.Rptr. 513, 405 P.2d 553]
   court responsible for ascertaining attorney’s role in preparation and presentation of sham evidence
   deputy district attorney hints that defendant has prior criminal record, where such remarks have no basis in fact
     People v. Bolton (1979) 23 Cal.3d 208, 213 [152 Cal.Rptr. 141, 589 P.2d 396]
   false accounting
     CAL 1988-96
TRIAL CONDUCT

false declarations made to court
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 the Matter of Myrdal (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363
false representations made to the State Bar
Lebbos v. State Bar (1991) 53 Cal.3d 37
In the Matter of Dahln (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269
false statement of fact made to jury
City of Los Angeles v. Decker (1977) 18 Cal.3d 860, 871 [135 Cal.Rptr. 647, 558 P.2d 545]
false statement to opposing counsel
In the Matter of Dahln (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269
CAL 2015-194
in pleading
-verified by client
LA 33 (1927)
knowingly presenting false evidence
Hayes v. Brown (9th Cir. 2005) 399 F.3d 972
presentation of known false fact presumes intent to deceive
Pickering v. State Bar (1944) 24 Cal.2d 141, 144 [148 P. 2d 1]
presentation of known false fact which tends to mislead sufficiently
presenting altered document to court
Utz v. State Bar (1942) 21 Cal.2d 100, 104 [130 P.2d 377]
False testimony
attorney induces
-no civil liability
by client
SD 1983-8
-attorney knowingly allows
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-dismissal of defamation action against law firm justified
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-may not apply to plaintiff's unfair competition claim against attorney if plaintiff not a party to earlier litigation
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  -- by attorney
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  People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
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- no civil liability for attorney for inducing false testimony by client
- narrative form of testimony is best choice when attorney fears client will commit perjury
  People v. Guzman (1998) 45 Cal.3d 915 [248 Cal.Rptr. 467]
  People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
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OC 2003-01
- by attorney
  People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
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Prejudicial conduct of counsel
- reversal of verdict on appeal
Prejudicial standards during closing argument [See Closing argument] Privileged acts of attorney
- attorney's acts found not privileged under Civil Code section 47(2)
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Pro hac vice attorney
Rule 9.40, California Rules of Court
  Paciulan v. George (9th Cir. 2000) 229 F.3d 1226
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  United States v. Ries (9th Cir. 1996) 100 F.3d 1469
  United States v. Summet (9th Cir. 1988) 862 F.2d 784
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- assignment to act as advisory counsel proper even though attorney is officially relieved of the representation
- refusal to obey court order to proceed with care excused when counsel is unprepared
Punctuality for court appearances
  Clark v. Los Angeles Superior Court (1992) 6 Cal.App.4th 58 [7 Cal.Rptr.2d 772]
  In re Allis (9th Cir. 1976) 531 F.2d 1391
Removal of defense counsel warranted when counsel's repeated delays are the result of a medical condition
Repeated threatening telephone calls
  In re Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160
Repeated questioning after objection sustained
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Respect for judiciary
- published letter written about opinion of a judge
Reversal of judgment in judicial proceeding
- altering evidence in criminal trial
  based upon counsel's
    - incompetent representation
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      Business and Professions Code section 6086.7
    -- report to State Bar
    Business and Professions Code section 6086.7
      Rule 7-105, Rules of Professional Conduct
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      Rule 5-200. Rules of Professional Conduct
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    concealment of material facts just as misleading as explicit false statements
    * Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266
  In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211
non-denying known material fact in argument to jury
  City of Los Angeles v. Decker (1977) 18 Cal.3d 860, 871 [135 Cal.Rptr. 647]
false pleading
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  Ainsworth v. State Bar (1988) 46 Cal.3d 1218
  presenting fabricated documents, making false representation in response to State Bar investigation
prosecutorial misconduct to hint that defendant has prior criminal record where such remarks have no basis in fact
  People v. Bolton (1979) 23 Cal.3d 208, 213 [152 Cal.Rptr. 141, 589 P.2d 396]
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LA 408 (1982)
Sanctions

- attorney wrongfully held in contempt for refusing to turn over documents to third party
  - In re Koehler (2010) 181 Cal.App.4th 1153 [104 Cal.Rptr.3d 877]

- bankruptcy court imposed discovery sanctions against attorney/debtor for transferring property with intent to hinder, delay or defraud creditor
  - In re Hansen (9th Cir. BAP 2007) 368 B.R. 868

- bankruptcy court’s inherent power allows it to sanction “bad faith” or “willful misconduct” by attorneys
  - In re Leithinen (9th Cir. 2009) 564 F.3d 1052
  - In re Blue Pine Group, Inc. (9th Cir. BAP 2011) 457 B.R. 64

- concealment of suspended corporate client’s status

- delay
  - In re Silberkraus (9th Cir. 2003) 336 F.3d 864
  - In re Marriage of Anka & Yaeger (2019) 31 Cal.App.5th 1115 [242 Cal.Rptr.3d 884]

- failure to comply with court order
  - Kelly v. Wendler (9th Cir. 2016) 822 F.3d 1085
  - Osborne v. Todd Farm Services (2016) 247 Cal.App.4th 43 [202 Cal.Rptr.3d 84]

- law firm must pay sanctions for continuing to pursue unlawful detainer action despite automatic stay imposed by bankruptcy court
  - In re H Granados Communications, Inc. (9th Cir. BAP 2013) 503 B.R. 726

- failure to file an opposition to summary judgment does not make the failure willful and thus court’s grant of terminating sanctions was abuse of discretion

- Federal Rule 11 sanctions levied only on lawyers, not law firms
  - Truesdell v. Southern California Permanente Medical Group (9th Cir. 2002) 293 F.3d 1146

- frivolous appeal
  - Bach v. County of Butte (1985) 172 Cal.App.3d 848 [218 Cal.Rptr. 613]

- granting of additional sanctions against plaintiffs and their trial attorney warranted based on frivolous appeal
  - Bucur v. Ahmad (2016) 244 Cal.App.4th 175 [198 Cal.Rptr.3d 127]

- frivolous pleadings

- in favor of dismissed party for bad faith tactics of plaintiff’s attorney

- limitations
  - court had no authority to award costs of future depositions as monetary sanction for coaching plaintiff during deposition where those costs had not yet been incurred
    - juvenile proceeding

- multiplying proceedings unreasonably and vexatiously under 28 U.S.C. section 1927
  - Lahiri v. Universal Music and Video (9th Cir. 2010) 606 F.3d 1216
  - Stanley v. Woodford (9th Cir. 2006) 449 F.3d 1060
  - Gomez v. Vernon (9th Cir. (Idaho) 2001) 255 F.3d 1118 [50 Fed. R. Serv.3d (Callaghan) 436]
  - In re DeVille (9th Cir. BAP 2002) 280 B.R. 483

- pro hac vice attorney
  - -censure for failure to follow local court rules
    - United States v. Summet (9th Cir. 1988) 862 F.2d 784

- reckless misstatements of law and fact, combined with an improper purpose
  - Lahiri v. Universal Music and Video (9th Cir. 2010) 606 F.3d 1216

- Fink v. Gomez (2009) 239 F.3d 989
  - second petition for removal frivolous when its basis has been previously rejected
  - Peabody v. Maud Van Cortland Hill Schroll Trust (9th Cir. 1989) 892 F.2d 172

- tardiness
  - United States v. Stoneberger (9th Cir. 1986) 805 F.2d 1391

- terminating sanctions was proper when attorney threatens opposing attorney with physical harm and is openly contemptuous of trial court

- violation of local court rule
  - attorneys not subject to sanctions under local rules for failing to meet and confer with opposing counsel before moving for new trial
  - cannot be imposed for mere negligent violation
  - Zambrano v. City of Tustin (9th Cir. 1988) 885 F.2d 1473
  - cannot be imposed unless sanctioning court first gives attorney opportunity to be heard

- Signing declarations under penalty of perjury on behalf of clients and witnesses may be improper and a conflict of interest
  - In re Marriage of Reese and Guy (1999) 73 Cal.App.4th 1214 [87 Cal.Rptr.2d 339]

- Solicitation of perjured testimony
  - In re Allen (1959) 52 Cal.2d 762, 768 [344 P.2d 609]

- Special appearances
  - specially appearing attorney owes a duty of care to the litigant

- Statement
  - use of one that may have been improperly obtained
  - LA 376 (1978)

- Subornation of perjury
  - attorney instructs client to commit perjury
  - Paonessa v. State Bar (1954) 43 Cal.2d 222, 226
  - attorney may not knowingly allow witness to testify falsely, whether he or she is criminal defendant or otherwise
  - Jackson v. Brown (9th Cir. 2008) 513 F.3d 1057
  - People v. Pike (1962) 58 Cal.2d 70, 97 [22 Cal.Rptr. 664]
TRIAL PUBLICITY

criminal defendant insists on testifying perjuriously, appropriate and necessary for defense counsel to present request to withdraw


knowingly countenance the commission of perjury

In re Jones (1971) 5 Cal.3d 390, 400 [96 Cal.Rptr. 448]
lack of sufficient evidence to prove attorney advised client to commit perjury

In re Peterson (1929) 208 Cal. 42, 52 [280 P. 124]

no duty to offer on client’s behalf testimony which is untrue (in criminal proceeding)

In re Branch (1969) 70 Cal.2d 200, 212 [74 Cal.Rptr. 233]

penalty

In re Jones (1929) 208 Cal. 240, 242-243 [280 P. 964]

presentation of false claim to insurance company by attorney


procure and countenance the commission of perjury

In re Allen (1959) 52 Cal.2d 762, 767 [344 P.2d 609]

public defender questions veracity of criminal defendant’s witnesses

In re Atchley (1957) 48 Cal.2d 408, 418 [310 P.2d 15]

requires proof of corrupt agreement between attorney and witness

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

rule prohibiting ex parte communications does not bar discussions initiated by employee of defendant corporation with government attorney for the purpose of disclosing that corporate officers are attempting to suborn perjury and obstruct justice

United States v. Talao (9th Cir. 2000) 222 F.3d 1133

Suppression of evidence

Penal Code section 135

Tape recorder, use during trial

People v. Ashley (1990) 220 Cal.App.3d 919 [269 Cal.Rptr. 769]

Two attorneys may question a deponent when deponent has agreed


Verification, false

In the Matter of Downey (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151

Vexatious litigant

attorney appearing for client is not litigant

Weissman v. Quail Lodge Inc. (9th Cir. 1999) 179 F.3d 194

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

In re Kinney (2011) 201 Cal.App.4th 951 [135 Cal.Rptr.3d 471]

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

Violation of lawful court order

money sanctions

- not applicable to advocacy of counsel

Code of Civil Procedure section 177.5

Voir dire

defendant in a criminal case may not engage in purposeful race discrimination in the exercise of peremptory challenges


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 Watson/Wheeler motion denied

People v. Guitierrez (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) 1994-7

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


TRIAL PUBLICITY

Rule 5-120, Rules of Professional Conduct (operative October 1, 1995).

Statements found not in violation of rule

Ramirez v. Trans Union, LLC (N.D. Cal. 2013) 2013 WL 1164921, 2013 U.S. Dist. LEXIS 39120

TRUST ACCOUNT

See 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 Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660

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

attorney violated fiduciary duties under Probate Code

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660
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]

UNAUTHORIZED PRACTICE OF LAW

Rule 1-300, Rules of Professional Conduct (operative until May 26, 1989)

Business and Professions Code section 6105
McGregor v. State Bar (1944) 24 Cal.2d 283, 287

UNAUTHORIZED PRACTICE OF LAW

Rule 3-101, Rules of Professional Conduct (operative until May 26, 1989)

Business and Professions Code section 6125


Breach of trust 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. 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


Employed 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

Ziegler v. Nickel (1998) 64 Cal.App.4th 545 [75 Cal.Rptr.2d 312]

Receiver entitled to attorney-client privilege


Standing to sue corporate attorneys of “sham” corporation for malpractice

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

Successor trustee “stands in the shoes” of predecessor trustee and thus may assert legal malpractice claims against predecessor’s attorney


Trustee as client of attorney

Probate Code section 16247

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

Business and Professions Code section 6126

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]


Biakjana v. Irving (1958) 49 Cal.2d 647, 651 [320 P.2d 16]


Woodruff 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

Vanderhoof v. Prudential Sav. & Loan Ass’n (1975) 46 Cal.App.3d 507, 512 [120 Cal.Rptr. 207]

In re Steven C. (1970) 9 Cal.App.3d 255, 265


In the Matter of Hoffman (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698

In the Matter of Tishgart (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

SF 2021-1

Business and Professions Code section 6126

Z. A. v. San Bruno Park School District (9th Cir. 1999) 165 F.3d 1273

In re Johnson (1992) 1 Cal.4th 689 [4 Cal.Rptr.2d 170]

People v. Perez (1979) 24 Cal.3d 133, 142 [155 Cal.Rptr. 176, 594 P.2d 1]

Farnham v. State Bar (1976) 7 Cal.3d 605, 612 [131 Cal.Rptr. 661, 552 P.2d 445]

Gerhard v. Stephens (1968) 68 Cal.2d 864, 917-918 [69 Cal.Rptr. 612, 442 P.2d 692]

Crawford v. State Bar (1960) 54 Cal.2d 659, 666 [7 Cal.Rptr. 746, 355 P.2d 497]

People v. Starski (2017) 7 Cal.App.5th 215 [212 Cal.Rptr.3d 622]


In the Matter of Hoffman (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698

In the Matter of Tishgart (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

SD 2013-12, SD 1983-7

Advertising as entitled to practice law

contempt of court

Business and Professions Code section 6127

two or under suspension

Business and Professions Code section 6126
UNAUTHORIZED PRACTICE OF LAW

Aiding and abetting


**Daybreak Group, Inc. v. Three Creeks Ranch, LLC** (9th Cir. 2009) 556 F.3d 815

misdemeanor

Business and Professions Code section 6126 non-lawyers

Business and Professions Code section 6127(b)

**Making contracts**


**People v. Vigil** (2008) 169 Cal.App.4th 8 [86 Cal.Rptr.3d 536]

- advising non-lawyer who performs services in forming corporations for charge
  - LA 69 (1933)

- association with firm rendering advice concerning construction
  - CAL 1969-18

- 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)

- 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 (1985)

- disbarred lawyer to practice

  **Crawford v. State Bar** (1960) 54 Cal.2d 659, 667 [7 Cal.Rptr. 746, 355 P.2d 490]


- regained right to practice

  **Bagg v. Wickizer** (1935) 9 Cal.App.2d 753

- disbarred for practicing law in other states

  **Smallberg v. State Bar** (1931) 212 Cal. 113, 119

- allowed independent contractor for


- allowed as entitled to practice in those jurisdictions

  **In the Matter of Lenard** (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 708

- certification of non-resident, out-of-state attorney

  **Bagg v. Wickizer** (1935) 9 Cal.App.2d 753

- certificiation of non-resident, out-of-state attorney

  **Rule 1-311**

- representing party while suspended from practice of law

  **In the Matter of Hoffman** (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698

Arbitration

**Linsco/Private Ledger v. Investors Arbitration Services** (1996) 50 Cal.App.4th 1633 [58 Cal.Rptr.2d 613]


**Attorneys**

**Barg v. Wickizer** (1935) 9 Cal.App.2d 753

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. 708

controlled by consultants

**Criminal**

**People v. Vigil** (2008) 169 Cal.App.4th 8 [86 Cal.Rptr.3d 536]

out-of-state

**Linsco/Private Ledger v. Investors Arbitration Services** (1996) 50 Cal.App.4th 1633 [58 Cal.Rptr.2d 613]

**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**

outsourced legal services

**LA 518** (2006)

**SD 2007-1**

partnership with doctor providing legal services

**LA 335** (1973)

resigned attorney allowed to practice


Rule 1-311, allowed resigned attorney to sign up clients, split fees, negotiate, engage in insurance fraud

**In re Oheb** (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920

uncharged violation of rule 1-300(A) considered in aggravation and involved moral turpitude

**In the Matter of Bragg** (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615

Assuming and acting as attorney without authority

**In the Matter of Hoffman** (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698

contempt of court

**Business and Professions Code section 6127(a)**

**Howard v. Superior Court** (1975) 52 Cal.App.3d 722 [125 Cal.Rptr. 255]


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)

out-of-state lawyer

- disbarred while

  **In re McKeel** (1927) 82 Cal.App. 426, 429 [255 P. 834]

out-of-state

- arbitration representatives

  Code of Civil Procedure section 1282.4

  representing party while suspended from practice of law

  **In the Matter of Hoffman** (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698

out-of-state

- arbitration representatives

  Code of Civil Procedure section 1282.4

- California Rules of Court do not require out-of-state law firms to apply to appear pro hac vice in California courts when firm employs attorneys who are licensed to practice law in California to represent clients


- hired as “consultant” who merely assists California lawyer may recover attorney fees

  **Winterrowd v. American General Annuity Insurance Co.** (9th Cir. 2009) 556 F.3d 815
- lawyer renting office to
  -- where public might be led to believe person admitted in California
  LA 99 (1936)

resigned attorney may not represent parties in state administrative hearings

[98 Cal.Rptr.3d 759]

- 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 Naney (1990) 51 Cal.3d 186


Silva-Vidor v. State Bar (1989) 49 Cal.3d 1071


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

Chasten v. State Bar (1985) 40 Cal.3d 586, 591 [220 Cal.Rptr. 842]

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 1075]

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]


In the Matter of Hoffman (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698

In re the Matter of Thompson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

In the Matter of Mason (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639

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

In the Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343

In the Matter of Trousl (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229

Bankruptcy

11 U.S.C. § 110(c) enacted to remedy widespread fraud and the unauthorized practice of law in the bankruptcy petition preparers industry

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

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


attorney must be admitted to practice in the jurisdiction where the services were rendered

In re Peterson (1994) 163 B.R. 665

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

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


Complaints about

Contact: Unauthorized Practice of Law
Office of Complaint Intake
State Bar of California
845 Figueroa Street, Suite 100, Los Angeles, California 90017-5450

Phone: (800) 843-9053

Questions regarding research assistance on activities of law clerks, paralegals, and inactive members.

Contact: Unauthorized Practice of Law
Office of Professional Competence
180 Howard Street, San Francisco, CA 94105

Phone: (415) 538-2150

(800) 238-4427 (within CA)

Contempt of court

Business and Professions Code section 6127
advertising or holding oneself as entitled to practice

Business and Professions Code section 6127
assuming and acting as attorney without authority

Business and Professions Code section 6127(a)

Contract preparation

by non-lawyer

for compensation

-- involving legal knowledge of skill

LA 80 (1935)

Corporations


People v. Merchants Protective Corp. (1922) 189 Cal. 531, 535


People v. California Protective Corp. (1926) 76 Cal.App. 354, 360

76 Cal. Ops. Gen. 208 (9/27/93; opn. no. 93-303)

appearing in small claims court

Code of Civil Procedure section 116.540


collections

LA 522 (2009)

Corporations Code Section 13406(b) does not govern all nonprofit corporations providing legal services

Frys 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

UNAUTHORIZED PRACTICE OF LAW

Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]
Farnham v. State Bar (1976) 17 Cal.3d 605 [131 Cal.Rptr. 661]
Baron v. City of Los Angeles (1970) 2 Cal.3d 535, 542 [86
Cal.Rptr. 673]
People v. Starksi (2017) 7 Cal.App.5th 215 [212 Cal.Rptr.3d 622]
Cal.Rptr.3d 570]
[38 Cal.Rptr.3d 759]
Cal.Rptr.2d 193]
Cal.Rptr.2d 922]
In the Matter of Hoffman (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698
OC 94-002, SF 2021-1
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"
[26 Cal.Rptr.3d 194]
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]
SD 1983-12
Eviction services
People v. Landlord Professional Services, Inc. (1989) 215
Cal.App.3d 1599 [264 Cal.Rptr. 548]
Expert witnesses provided by consulting service
CAL 1984-79
Federal court
Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815
Russell v. Hug (9th Cir. 2002) 275 F.3d 812
Spanos v. Skouros (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
In re Mendez (9th Cir. BAP 1999) 231 B.R. 86
-suspension from federal practice is not dictated by state rules
In re Poole (9th Cir. BAP 2000) 222 F.3d 618

disbarment from state does not result in automatic disbarment from Federal Court
In the Matter of Ruffalo (1968) 390 U.S. 544 [88 S.Ct. 1222]
Federal District Courts (Central, Eastern, Northern re State Bar Membership)
Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815
Russell v. Hug (9th Cir. 2002) 275 F.3d 812
Z. A. v. San Bruno Park School District (9th Cir. 1999) 165 F.3d 1273
Giannini v. Real (9th Cir. 1990) 911 F.2d 354
Federal district judge’s request for attorney fees in action to amend a local rule
Tashiva 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]
Hardy v. San Fernando Valley Chamber of Commerce (1950) 99 Cal.App.2d 572, 576 [222 F.2d 314]
In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896
- out-of-state attorney who merely assists California lawyer may recover attorney fees
Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815
-pro hac vice
Winterrowd v. American General Annuity Insurance Co. (9th Cir. 2009) 556 F.3d 815
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 proceeding may not be entitled to same fees as licensed attorney
Cal.Rptr.2d 659]
-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
U.S. v. Kinsey (9th Cir. 2012) 668 F.3d 691

Guardian ad litem

Holding oneself out as entitled to practice law
Business and Professions Code section 6127
California attorney held himself out as entitled to practice law in other states
In the Matter of Lenard (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250

contempt of court
Business and Professions Code section 6127(b)
In re Johnson (1992) 1 Cal.4th 689 [4 Cal.Rptr.2d 170]
disclaimer explaining that the advertiser is not licensed to practice normally 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]
honorific "ESQ" appended to a signature creates an impression that the person signing is presently able and entitled to practice law
People v. Starski (2017) 7 Cal.App.5th 215 [212 Cal.Rptr.3d 622]
In the Matter of Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83
CAL 1999-154

lawyer
-disbarred or under suspension
Business and Professions Code sections 6125, 6126, and 6127
Crawford v. State Bar (1960) 1 Cal.4th 689 [7 Cal.Rptr. 748]
resigned with charges pending mid-trial
In re Johnson (1992) 1 Cal.4th 689 [4 Cal.Rptr.2d 170]
letterhead of New York law firm listing a California lawyer as "admitted in California only"
misdemeanor where person not active member of the State Bar of California
Business and Professions Code section 6126 (a)
non-lawyers
Business and Professions Code section 6127(b)
In re Naney (1990) 51 Cal.3d 186 [793 P.2d 54]
In re Cadwell (1975) 15 Cal.3d 762 [125 Cal.Rptr. 889, 543 P.2d 257]
-use of terms “Legal Aid,” “Legal Aid Services,” “Legal Services”
non-member administrative proceeding advisor
Z. A. v. San Bruno Park School District (9th Cir. 1999) 165 F.3d 1273
suspension order disqualifies an attorney not only from practicing law but also from holding himself or herself out as entitled to practice

In the Matter of Hoffman (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698
In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966
In the Matter of Tady (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121
In the Matter of Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83
while living out-of-state, indicating only that respondent was licensed in California, no indication such as "only" in California or "not licensed" in other state
In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 696

Immigration matters
law corporations allowed a resigned member to provide legal services in INS matters to clients in violation of rules of professional conduct and the State Bar act
use of Notarios or Notarios publicos
In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

Inactive member
In the Matter of Tady (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121

Individuals with Disabilities Education Act (IDEA) allows parents to prosecute claims under the act on their own behalf without representation by counsel

Ineffective assistance of counsel
People v. Johnson (1990) 224 Cal.App.3d 52

in-house counsel representing insureds
CAL 1987-91

Internet advertising
CAL 2001-155
Investigation service
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
People v. Starski (2017) 7 Cal.App.5th 215 [212 Cal.Rptr.3d 622]
Ziegler v. Nickel (1998) 64 Cal.App.4th 545 [75 Cal.Rptr.2d 312]
J.W. , a minor, etc. v. Superior Court (1993) 17 Cal.App.4th 958 [22 Cal.Rptr.2d 527]
-assignment of debt for breach of contract did not create attorney-client relationship between assignor and assignee
may not represent unincorporated association in court
referred agreement with layperson unenforceable for non-compliance with Business and Professions Code § 6155
UNAUTHORIZED PRACTICE OF LAW

represents before administrative agency
Z. A. v. San Bruno Park School District (9th Cir. 1999)  
165 F.3d 1273  
Caressa Camille Inc. v. Alcohol Beverage Control  
Cal.Rptr.2d 758]  
LA 195 (1952)  
resigned attorney may not represent parties in state  
administrative hearings  
[38 Cal.Rptr.3d 759]  
self-representation  
-attorneys representing themselves is not an unauthorized  
practice of law  
Cal.Rptr.3d 844]  
-attorneys seeking judicial clarification on how to interpret  
trust document where the matter is between trustees and  
trust beneficiaries in the context of probate proceeding is  
not an unauthorized practice of law  
Cal.Rptr.3d 844]  
treble damages warranted for injury caused by unlicensed  
practice of law  
Cal.Rptr.2d 829]  
Cal.Rptr. 250]  
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  
Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th  
23 [40 Cal.Rptr.3d 221]  
Lending name of attorney  
to be used by non-lawyer  
in collection cases  
LA 61 (1930)  
Lending to non-attorney  
Business and Professions Code section 6105  
McGregor v. State Bar (1944) 24 Cal.2d 283, 286-287 [148  
P.2d 865]  
Letterhead  
in-house counsel for insurance company representing  
insureds  
CAL 1987-91  
use of attorney’s by non-lawyer  
CAL 1969-18  
Licensed attorneys practicing in another jurisdiction where they  
are not licensed including in a federal court which required  
membership in the state where resident resided and practicing  
in that state  
In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar  
Ct. Rptr. 896  
Licensed attorneys who are not active members of the State  
of California  
certification of non-resident, out-of-state attorney arbitration  
representatives  
Code of Civil Procedure section 1282.4  
effect on underlying matter  
Birbrower, Montalbano, Condon & Frank v. Superior  
Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]  
Cal.Rptr.3d 75]  
Cal.Rptr.2d 418]  
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]  
Cal.Rptr.3d 528]  
on-state attorneys  
(9th Cir. 2009) 556 F.3d 815  
Russell v. Hug (9th Cir. 2002) 275 F.3d 812  
Z. A. v. San Bruno Park School District (9th Cir. 1999)  
165 F.3d 1273  
Giannini v. Real (9th Cir. 1990) 911 F.2d 354  
Birbrower, Montalbano, Condon & Frank v. Superior  
Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]  
In re McCue (1930) 211 Cal. 57, 67 [293 P. 47]  
Cal.Rptr.2d 922]  
Cowan v. Calabrese (1964) 230 Cal.App.2d 870, 872 [41  
Cal.Rptr. 441]  
out-of-state attorneys  
(9th Cir. 2009) 556 F.3d 815  
Russell v. Hug (9th Cir. 2002) 275 F.3d 812  
Z. A. v. San Bruno Park School District (9th Cir. 1999)  
165 F.3d 1273  
Giannini v. Real (9th Cir. 1990) 911 F.2d 354  
Birbrower, Montalbano, Condon & Frank v. Superior  
Court (1998) 17 Cal.4th 119 [70 Cal.Rptr.2d 858]  
in re McCue (1930) 211 Cal. 57, 67 [293 P. 47]  
Cal.Rptr.2d 922]  
Cowan v. Calabrese (1964) 230 Cal.App.2d 870, 872 [41  
Cal.Rptr. 441]  
subject to liability for malpractice  
Kraut v. Perrin, Garland & Doyle (1990) 219  
Cal.App.3d 1019 [268 Cal.Rptr. 637]  
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 (Fia. 1992) 613 So.2d 426  
CAL 1997-146  
unauthorized practice of law not found where non-attorney  
represents himself as sole trustee, sole settlor and  
beneficiary in litigation involving trust property  
Cal.Rptr.3d 408]  
Medical-legal consulting service  
Ojeda v. Sharp Cabriillo Hospital (1992) 8 Cal.App.4th 1  
Name of attorney  
use of, by non-lawyer  
LA 16 (1922)  
Non-lawyers  
In re Peterson (1994) 163 B.R. 665  
bankruptcy petition preparers  
In re Reynoso (9th Cir. 2007) 477 F.3d 1117  
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  
In re Crawford (9th Cir. 1999) 194 F.3d 954 [3 Cal.  
certified law student  
People v. Perez (1979) 24 Cal.3d 133, 142 [155 Cal.Rptr.  
176, 594 P.2d 1]  
certified public accountant  
Zelkin v. Caruso Discount Corp. (1960) 186 Cal.App.2d  
802, 805-806 [9 Cal.Rptr. 220]  
Agran v. Shapiro (1954) 127 Cal.App.2d 870, 815  
[273 P.2d 619]  
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Cal.Rptr.3d 570]  

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In the Matter of Bragg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615
non-member administrative proceeding advisor
Z. A. v. San Bruno Park School District (9th Cir. 1999) 165 F.3d 1273
notary public
Biakana v. Irving (1958) 49 Cal.2d 647 [320 P.2d 16]
76 Ops. Cal. Atty. Gen. 193 (9/30/93; No. 93-303)
outsourced legal services
LA 518 (2006)
paralegals
Jacob v. State Bar (1977) 19 Cal.3d 359, 364, fn.3
LA 522 (2009), OC 94-002
-appearance before Workers' Compensation Appeals Board
CAL 1988-103
-generel guidelines
SD 1983-7, SD 1976-9
parents may prosecute claims under the Individuals with Disabilities Education Act without representation by counsel
penalties and other effects
In re Carpenter (1931) 213 Cal. 122 [1 P.2d 983]
probaton officer
providing small claims, para-court services in partnership with attorney
SD 1983-4
real estate brokers
-resigned attorney
-attorney allowed resigned attorney to sign up clients, split fees, negotiate, engage in insurance fraud
In re Oheh (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920
-resigned attorney may not represent parties in state administrative hearings
scriber
-petition preparer's interpretation of such terms as "market value" and "secured claim or exemption" went beyond his role of scriber
Taub v. Weber (9th Cir. 2004) 366 F.3d 966
trustee represents interests of beneficiaries
Ziegler v. Nickel (1998) 64 Cal.App.4th 545 [75 Cal.Rptr.2d 312]
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-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
In re McCue (1930) 211 Cal. 57, 67 [293 P. 47]
Cowen v. Calabrese (1964) 230 Cal.App.2d 870, 872 [41 Cal.Rptr. 441]
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as ghostwriter
OC 2014-1
bankruptcy attorney admitted in one state but not admitted in the jurisdiction where he rendered the legal services ordered to disgorge fees to the estate
In re Peterson (1994) 163 B.R. 665
California may exercise personal jurisdiction over out-of-state law firm that employs California member performing legal services governed by California law
certification of non-resident, out-of-state attorney representatives
Code of Civil Procedure section 1282.4
foreign attorney’s declaration of fault entitled client to relief under CCP § 473
out-of-state law firms not required to apply to appear pro hac vice in California courts when firm employs attorneys who are licensed to practice law in California to represent clients
remote practice of law
SF 2021-1
subject to liability for malpractice
see also:
40 So.Cal. L.Rev. 569
11 ALR 907
19 Stanf.L.Rev. 856
Outsourced legal services
LA 518 (2006)
SD 2007-1
Participate in activity that assists unauthorized practice of law
LA 286 (1965)
as partner in agency conducting small claims court actions
SD 1983-4
renting law office
- to out-of-state lawyer
-- where public led to believe person admitted in California
LA 99 (1936)
Partnership with non-lawyer
Power of attorney
Alexander v. Robertson (9th Cir. 1990) 882 F.2d 421
Porter v. State Bar (1990) 52 Cal.3d 518
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Practice in jurisdiction, outside of California, where attorney is not licensed
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Practice of law, defined
In re Reynoso (9th Cir. 2007) 477 F.3d 1117
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Morgan v. State Bar (1990) 51 Cal.3d 598
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People v. Starks (2017) 7 Cal.App.5th 215 [212 Cal.Rptr.3d 622]
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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)
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Rule 9.40, California Rules of Court
Piaculan v. George (9th Cir. 2000) 229 F.3d 1226
Bankruptcy of Mortgage & Realty Trust (C.D. Cal. 1996) 195 B.R. 740
Arizona requirement for pro hac vice admission could not be waived orally by a hearing officer
Shapiro v. Paradise Valley Unified School District No. 69 (9th Cir. 2004) 374 F.3d 857
attorney’s pattern of inability to practice law in an unethical and orderly manner, including pending disciplinary proceedings and lack of candor supports court’s rejection of pro hac vice application in criminal case
Bundy v. U.S. District Court of Nevada (9th Cir. 2016) 840 F.3d 1034
counsel for plaintiffs “practice law in California” without pro hac vice admission therefore fee section of settlement deemed illegal
defendant not entitled to pro hac vice representation by attorney who failed to follow court rules
United States v. Ries (9th Cir. 1996) 100 F.3d 1469
duties of associate counsel
People v. Cooks (1983) 141 Cal.App.3d 224 [190 Cal.Rptr. 211]
out-of-state law firms not required to apply to appear pro hac vice in California courts when firm employs attorneys who are licensed to practice law in California to represent clients
Qualification for non-lawyer immigration consultant
People v. Salcido (2019) 42 Cal.App.5th 529 [255 Cal.Rptr.3d 628]
Questions about research assistance on activities of law clerks, paralegals, and inactive members.
Contact: Unauthorized Practice of Law
Office of Professional Competence
180 Howard Street, San Francisco, CA 94105
(415) 538-2150
(800) 238-4427 (within CA)
Remote practice of law
SF 2021-1
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
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CAL 1988-103
-disbarred or suspended attorney may be excluded from participation in Workers’ Compensation proceedings
Title 8 CA Administration Code section 10779
-non-attorney’s law firm representative of injured employee at workers’ compensation proceeding may not be entitled to same fees as licensed attorney
State Bar Act of 1927
Section 47.49
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unlawful practice before the United State Patent and Trademark Office
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UNPOPULAR CAUSE
Treble damages in civil action caused by unlicensed persons
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Unfair business practices and unlawful advertising
Business and Professions Code section 17200
Unfair Competition Law
district attorney may hire private counsel to pursue civil penalties under California’s Unfair Competition Law (UCL)
American Bankers Management Company, Inc. v. Heryford (9th Cir. 2018) 885 F.3d 629
law firm may sue online legal services provider for unfair competition based on unauthorized practice of law
Unincorporated association
lay person may not represent in court
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CAL 2012-184
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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
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SD 1983-1, SD 1976-8, SF 1970-1
Enforce usurious claim
LA 44 (1927)
VIOLATION OF THE LAW [See Advising violation of the law.]
WILL [See Estate. Trustee.]
Attorney as beneficiary
undue influence
LA 462 (1990)
Attorney as beneficiary of trust
Attorney who drafted will was later employed as attorney for executor
Counsel for organization drafts for those leaving money to it
LA 428 (1984), LA(I) 1966-17
Failure to advise client regarding requirements governing presumptively disqualified donees may lead to liability to intended beneficiary
Given to executor after incompetency of client
LA 229 (1955)
Person who must sign will is a client regardless of who has sought out and employed the attorney
SD 1990-3
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 revision considered protected activity for anti-SLAPP motion purposes
attorney may register certain identifying information about a client’s will or estate documents if the attorney can determine, based on knowledge of client, that disclosure will not be detrimental to the client and will advance the client’s interests.

**CAL 2007-173**

**WIRETAPPING** [See Recording.]

**WITHDRAWAL FROM EMPLOYMENT** [See Conflict of interest. Files. Public office. Substitution of counsel.]

See Conflict of interest.

**WITHDRAWAL FROM EMPLOYMENT**

WIRETAPING

See Recording.

Withdrawing from Employment

WIRETAPING

See Recording.

Code of Civil Procedure section 284 et seq.

Rule 3.1362, California Rules of Court


Rules 3-700 and 4-100, Rules of Professional Conduct (operative as of May 27, 1989)

Acts of attorney required to demonstrate the existence of a continuing attorney-client relationship


Appeal

Indigent defendant constitutionally entitled to counsel’s best argument for appeal before court rules on withdrawal

United States v. Griffy (9th Cir. 1990) 895 F.2d 561

Assisting the transition from one attorney to another is not providing assistance on the same subject matter of the representation and thus does not constitute a continuing attorney/client relationship


Associate leaving law firm

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


Attorney appointed by court to represent a minor

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

Attorney as advisor for an in propria persona litigant

LA 502 (1999)

Attorney as witness

Kirsch v. Duryea (1978) 21 Cal.3d 303, 310 [146 Cal.Rptr. 218, 578 P.2d 935]

Comden v. Superior Court (1978) 20 Cal.3d 906 [145 Cal.Rptr. 9, 576 P.2d 971]

Smith, Smith & Kring v. Superior Court (1997) 60 Cal.App.4th 573 [70 Cal.Rptr.2d 507]


Harris v. Superior Court (1979) 97 Cal.App.3d 488, 492 [158 Cal.Rptr. 807]

Graphic Process Co. v. Superior Court (1979) 95 Cal.App.3d 43, 50 [156 Cal.Rptr. 841]


People v. Superior Court (Hollenbeck) (1978) 84 Cal.App.3d 491, 500 [148 Cal.Rptr. 704]

People v. Guerrero (1975) 47 Cal.App.3d 441, 446 [120 Cal.Rptr. 732]


Kalmus v. Kalmus (1951) 103 Cal.App.2d 405, 423 [230 P.2d 57]

LA 399 (1982)

Attorney for guardian ad litem


SD 2017-2

Attorney who might be called as witness not required to withdraw with written consent of client

Smith, Smith & Kring v. Superior Court (1997) 60 Cal.App.4th 573 [70 Cal.Rptr.2d 507]


Attorney-client relationship not established

LA(I) 1968-7

Before suing client for fees


Breakdown 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

Compacts

-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 2003-81
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 fees
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 claim lacks merit
CAL 2019-198
Client's refusal to cooperate with attorney's withdrawal does not excuse attorney from making motion to be removed as counsel of record
In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871
Code of Civil Procedure section 284
People v. Bouchard (1957) 49 Cal.2d 438, 440 [317 P.2d 971]
Roswall v. Municipal Court (1979) 89 Cal.App.3d 467, 472 [152 Cal.Rptr. 337]
Mandell v. Superior Court (1977) 67 Cal.App.3d 1, 4 [136 Cal.Rptr. 354]
People v. Prince (1968) 268 Cal.App.2d 398, 406 [74 Cal.Rptr. 197]
People v. Kerfoot (1960) 184 Cal.App.2d 622, 635 [7 Cal.Rptr. 674]
Compensation dispute
People v. Prince (1968) 268 Cal.App.2d 398, 406 [74 Cal.Rptr. 197]
People v. Collins (1966) 242 Cal.App.2d 626, 636 [51 Cal.Rptr. 604]
Helps v. Kluge (1951) 104 Cal.App.2d 461 [231 P.2d 505]
Linn v. Superior Court (1926) 79 Cal.App. 721 [250 P. 880]
LA 251 (1958), LA 212 (1953), SD 1983-6
Competence of attorney
Conflict of interest
Hodcarriers, etc. Local Union v. Miller (1966) 243 Cal.App.2d 391 [52 Cal.Rptr. 251]
SD 1972-1
appearance of impropriety due to counsel's relationship with judge may be cured by withdrawal
In re Georgetown Park Apartments (9th Cir. 1992) 143 B.R. 557
becoming apparent
LA 333 (1973), LA 219 (1954)
may be required where attorney represents corporation and officer in separate matters and then learns of officer's sexual harassment of employees of corporation
CAL 2003-163

WITNESS FROM EMPLOYMENT
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 changed 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 [250 P. 880]
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

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WITHDRAWAL FROM EMPLOYMENT

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 Jessie 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

Dissolution of law firm
CAL 2014-190
notice to clients
Reeves v. Hanlon (2004) 33 Cal.4th 1140 [17 Cal.Rptr.3d 289]
CAL 2020-201, 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
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Kapelus v. State Bar (1987) 44 Cal.3d 175
Frazer v. State Bar (1987) 43 Cal.3d 564 [238 Cal.Rptr. 54]
Franklin v. State Bar (1986) 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 Dahlz (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

Duty to avoid reasonable prejudice
CAL 2019-198
Duty to client and administration of justice require effectuation of consensual withdrawal or motion under Code of Civil Procedure section 284
In re Hickey (1990) 50 Cal.3d 571 [788 P.2d 684]

Duty to impart information to third parties at former client’s request
LA 360 (1976), LA 330 (1972)

Duty to represent client until court approves withdrawal
In re Jackson (1985) 170 Cal.App.3d 773 [216 Cal.Rptr. 539]
Wolff v. State Bar (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1
CAL 1994-134

Effect on contingency fee contract
Estate of Falco (1986) 188 Cal.App.3d 1004 [233 Cal.Rptr. 807]

Failure to communicate with clients regarding intention to withdraw

Failure to execute a substitution of attorney
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

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

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King v. State Bar (1990) 52 Cal.3d 307
Cal Pak Delivery v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 Cal.Rptr.2d 207]
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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
WITHDRAWAL FROM EMPLOYMENT

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)

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In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576
attorney must withdraw if attorney obtains from insured that could provide basis for insurance carrier to deny coverage
LA 528 (2017)
client letter containing perceived insults of law firm is not a basis for mandatory withdrawal
client's case lacks merit
CAL 2019-198

Minimal requirements
In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269

Motion for
Rule 3.1362, California Rules of Court
attorney failed to seek permission to withdraw, as required by district court's rule
Mackey v. Hoffman (9th Cir. 2012) 682 F.3d 1247
attorney may declare a conflict of interest without disclosing facts

Attorney should honor client's instructions not to disclose confidential information
LA 504 (2000)

based on public defender's excessive caseload and limited resources

��e r to file a brief in compliance with applicable procedures
U.S. v. Skurdal (9th Cir. MT 2003) 341 F.3d 921
may be denied if attorney fails to provide even general information regarding nature of ethical dilemma

Neglect [See Neglect.]
protect client's position in litigation
LA 125 (1940)

Neighborhood Legal Assistance Foundation
SF 1973-5

Notice of withdrawal not communicated to client is prejudicial
In the Matter of Aquiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32

Partial when case against one defendant weak
LA 223 (1954)

Perjury
Rule 2-111(B)(1) and (C)(1)(a), Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)
by client
People v. Bolton (2008) 166 Cal.App.4th 343 [82 Cal.Rptr.3d 671]
WITHDRAWAL FROM EMPLOYMENT

CAL 1983-74, LA 305 (1968), OC 2003-01

Permissive withdrawal by attorney

Rule 2-111(C), Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)
Vann v. Shilheh (1975) 54 Cal.App.3d 192 [126 Cal.Rptr. 401]
attorney’s claim of permissive basis rejected
client’s conduct leads attorney to believe client needs a conservator
OC 95-002

Prejudice to client

Mackey v. Hoffman (9th Cir. 2012) 682 F.3d 1247
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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]
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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

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]

Read v. State Bar (1991) 53 Cal.3d 394, Modified at 53 Cal.Rptr.2d 293

Skilled counsel prejudices criminal defendant

Substitution of attorney clause in retainer agreement
LA 371 (1977)

Suit for fees

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

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

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

Unpaid fee
Rule 2-111(C)(1)(f), Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)

no denial of effective assistance of counsel when defendant becomes indigent and retained counsel withdraws because court denies request to appoint the retained counsel

suit for fees
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

Failure to communicate
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

Recusal of district attorney staff, conflict of interest

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WITNESS

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652

Witness
Rule 2-111(A)(4) and (5), Rules of Professional Conduct (operative until May 26, 1989)
Rule 3-700, Rules of Professional Conduct (operative as of May 27, 1989)
in case LA 367 (1977), LA 323 (1971)

WITNESS

[See Lay employee. Testimony.]
Rule 2-111(A)(4) and (5), Rules of Professional Conduct (operative until May 26, 1989)
Rule 5-210, Rules of Professional Conduct (operative as of May 27, 1989)
Rule 7-107, Rules of Professional Conduct (operative until May 26, 1989)
Rule 5-310, Rules of Professional Conduct (operative as of May 27, 1989)

Attorney as
Smith, Smith & Kring v. Superior Court (1997) 60 Cal.App.4th 573 [70 Cal.Rptr.2d 507]
Comden v. Superior Court (1978) 20 Cal.3d 906 [145 Cal.Rptr. 9, 576 P.2d 971]
SD 1983-9
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]
LA 367 (1977)
-on behalf of party other than client
Rule 2-111(A)(6), Rules of Professional Conduct (operative until May 26, 1989)
Rule 5-210, Rules of Professional Conduct (operative as of May 27, 1989)
LA 323 (1971)
prosecutor
U.S. v. Prantil (1985) 756 F.2d 759
purpose of ethical prohibition against attorney acting as both advocate and witness
Kennedy v. Eldridge (2011) 201 Cal.App.4th 1197 [135 Cal.Rptr.3d 545]
where representing client in same proceeding
-called by party other than client
Graphic Process v. Superior Court (1979) 95 Cal.App.3d 43 [156 Cal.Rptr. 841]
Communication with
SD 1983-9
Contact with
Rule 7-107, Rules of Professional Conduct (operative until May 26, 1989)
Rule 5-310, Rules of Professional Conduct (operative as of May 27, 1989)
communication with opposing party's expert who had been withdrawn as a witness but remained a consultant warranting 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)
WORK PRODUCT

[133 Cal.Rptr. 864, 555 P.2d 1104]
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
Ojeda v. Sharp Cabrillo Hospital (1992) 8 Cal.App.4th 1
CAL 1984-79

Intimidation of
Earp v. Ornoski (9th Cir. 2005) 431 F.3d 1158
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 testify as a 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 1989-52
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]


Rumac v. Bottomley (1983) 143 Cal.App.3d 810, 812 In. 3 [192 Cal.Rptr. 104]

Common interest doctrine
etermination 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]


no waiver of the privilege under a join 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)
Colo 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]


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See How to Use This Index, supra, p. i
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]
deploy district attorney cannot assert attorney-client privilege as to documents prepared in official capacity when the attorney is subject of criminal investigation

does not extend to disclosure of identity of a non-testifying expert

Curtis v. Superior Court (2021) 62 Cal.App.5th 453 [276 Cal.Rptr.3d 676]
frad 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

hardship test for non-opinion work product discovery


Holmgen v. State Farm Mutual Automobile Insurance Company (9th Cir. 1992) 976 F.2d 57

In re Grand Jury Subpoena Issued to Mark Torf of Torf Environmental Management (9th Cir. (Idaho) 2004) 357 F.3d 900

identity of non-expert witnesses intended to be called at trial is entitled to a qualified work product privilege and cannot be compelled unless there is a showing that the party seeking the discovery will be unfairly prejudiced (CCP § 2018.030)

must yield to a compelling public purpose


not found

relationship to Proposition 115, "Crime Victims Justice Reform Act"

Izazaga v. Superior Court (1991) 54 Cal.3d 356
restrictions on discovery of an attorney’s impressions, conclusions, opinions or legal research, (CCP § 2018.030)

Carehouse Convalescent Hospital v. Superior Court (2006) 143 Cal.App.4th 1558 [50 Cal.Rptr.3d 129]
standing to assert attorney-client privilege and work product doctrine

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]
wavier

Pound v. DeMera DeMera Cameron (2005) 135 Cal.App.4th 70 [36 Cal.Rptr.3d 822]

-common interest doctrine

Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758]

- 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 188]
  - employer did not waive attorney-client or attorney work product protections by providing sex discrimination
    claimant substantial discovery of employer's non-attorney in-house investigation report
  - no waiver of work product protection where disclosing memoranda authored by corporate in-house counsel to
    outside law firm did not qualify as disclosure to adversary or conduit to adversary
    United States v. Sanmina Corporation (9th Cir. 2020) 968 F.3d 1107
  - not found simply because objecting party submits an inadequate privilege log that fails to provide sufficient
    information to rule on merits of objections
  - sharing memoranda with outside law firm did not waive work product protection; waiver was limited to underlying
    facts and data in the memo
    United States v. Sanmina Corporation (9th Cir. 2020) 968 F.3d 1107

Witness interviews, conducted by investigators employed by counsel, are protected by work product privilege
  Coito v. Superior Court (2012) 54 Cal.4th 480 [142 Cal.Rptr.3d 607]
  Work product doctrine reaches documents prepared because of litigation even if they were prepared in connection with a
  business transaction or also served a business purpose
  Work product privilege and the client's right to his or her file pose an apparent conflict that has not been definitively resolved by the courts
  Work product rule distinguished from attorney-client privilege
  Admiral Insurance v. U.S. Dist. Court for Dist. of Arizona (9th Cir. 1989) 881 F.2d 1486

WORKERS' COMPENSATION

- See Administrative agency.

Advertising
  Labor Code sections 5430-5434

Attorney-client privilege and work product doctrine

Contingent fee contracts
  to represent plaintiff
  - exempt from written contract provisions
  Business and Professions Code section 6147(c)
  Disregard of order by a workers' compensation judge violates Business & Professions Code section 6103
  In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126

Evidence Code section 915 is applicable in Workers' Compensation proceedings


Fees
  award of fees to employee justified on the grounds that employer's petition for writ of review indisputably lacked merit
  burden is on attorney fee applicant to produce satisfactory evidence of relevant market rate (in workers' compensation case)
  Van Skike v. Director, Office of Workers' Compensation Programs (2009) 557 F.3d 1041
  claimant's attorneys is not entitled to fees from settlement proceeds under Labor Code §§ 3856 and 3860 if claimant received no benefit from the settlement
  Draper v. Aceto (2001) 26 Cal.4th 1086 [113 Cal.Rptr.2d 61]

- 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
  Seachris v. Brady-Hamilton Stevedore Company (9th Cir. 2021) 994 F.3d 1046
  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]