SUPREME COURT CASE NO. S220775

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

NANCY F. LEE,
Plaintiff and Appellant,

v.

WILLIAM B. HANLEY,
Defendant and Respondent.

After a Decision of the Court of Appeal
Fourth Appellate District, Division Three
Court of Appeal Case No. G048501

On Appeal from the Superior Court of Orange County
Honorable Robert J. Moss, Judge
Case No. 30-2011-00532352

APPELLANT'S MOTION FOR JUDICIAL NOTICE

Walter J. Wilson, Esq. (SBN 68040)
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Long Beach, CA 90802
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Email: walterw1@aol.com
Attorney for Plaintiff and Appellant Nancy F. Lee

Pursuant to rules 8.54 and 8.252(a) of the California Rules of Court, appellant moves under Evidence Code sections 451, 452 (a), (b) and (c), 453 and 459, for an order that the reviewing court grant Judicial Notice of the following documents, copies of which are attached and numbered in accordance herewith, and were submitted (originals lodged) in the Fourth Appellate District, Division Three:

Exhibit 1. Relating to the California Legislature's passage of Assembly Bill 298 ("AB298") (Code of Civil Procedure §340.6), documents integral to the introduction, amendment and enactment of said Assembly Bill, obtained from the State Archives (certified copies were lodged with court):

a. (At enclosed pages 1-10) records of the Senate Committee on Judiciary, AB 298, 1977;

b. (At enclosed pages 11-13) records of the Senate Republican Caucus, AB 298, 1977;

c. (At enclosed pages 14-17) records of the Senate Democratic Caucus, AB 298, 1977;

d. (At enclosed pages 18-33) records of the Governor's Chaptered Bill File, Chapter 863, 1977;

e. (At enclosed pages 34-45) records of the Assembly Republican Caucus, AB 298, 1977;

Exhibit 2. Relating to the California Legislature's passage of Assembly Bill 298 (Code of Civil Procedure §340.6), at page 46 hereof, the Timeline for passage of said bill.

Exhibit 3. The various versions of Assembly Bill 298:

- At pages 48-49 hereof, As Introduced 1-25-77;
- At pages 50-52 hereof, As Amended 5-9-77;
- At pages 53-55 hereof, As Amended 5-17-77;
- At pages 56-58 hereof, As Amended 8-17-77;
- At pages 59-62 hereof, As Passed 9-7-11; and
- At pages 63-65 hereof, As Chaptered 9-6-77.

Exhibit 4. Relating to appellant Lee's claim to the State Bar of California ("SB"), against attorney Hanley ("Lee's Claim"), that attorney acted inappropriately (at pages 66-80 hereof):

- At pages 66-67, SB's 12-15-11 rejection of Lee's Claim, and closure of her "file," sent to Wilson;
- At pages 68-71, Wilson's 3-21-12 Request for Reconsideration, asking that SB's rejection/closure be reviewed, and specifying the "disconnect between what Ms. Lee complained of, and the analysis and conclusions in the [SB's response]";
- At page 72, SB's 11-6-12 confirmation it was re-opening Lee's Claim;

- At pages 73-74, SB's 11-20-12 statement of re-closure of Lee's Claim;
- At pages 75-80, Wilson's 11-30-12 request for re-opening, specifying SB's disregard of its mission statement, and its wrongfully misleading statements as to jurisdiction.
- At page 81, SB's notification of reinstatement of Lee's Claim.

MEMORANDUM OF POINTS AND AUTHORITIES

For her exhibits 1, 2 and 3 (the legislative history), appellant cites *Doe v. City of Los Angeles* (2007) 42 Cal. 4th 531, 544, 67 Cal. Rptr. 3d 330, 339, fn. 4; *In re SB* (2004) 32 Cal 4th 1287, 1296, 13 Cal. Rptr. 3d 786, 792, fn. 3; *Intel Corp. v. Hamidi* (2003) 30 Cal. 4th 1342, 1350, 1 Cal. Rptr. 3d 32, 39, fn. 3.

For her exhibit 4 (official acts of the State Bar), appellant cites *Stevens v. Superior Court* (1999) 75 Cal. App. 4th 594, 607-608, 89 Cal. Rptr. 2d 370, 379-380; *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal. 4th 1057, 1063-1064, 31 Cal. Rptr. 2d 258, 875 Pac. 2d 73.

RELEVANCE. The legislative materials (items/Exhibits 1, 2, and 3), are relevant because: (a) this is a case of first impression (a "stand alone" breach of fiduciary duty, which is not merely another means of challenging an attorney's professional services), and if the court finds an

ambiguity[1] in the plain language of the statute, the Legislature's intent will be necessary to the court's ruling; and (b) the courts, via dicta (specifically in *Stoll v. Superior Court* (1992) 9 Cal. App. 4th 1362), are attempting to "judicially legislate" an unconstitutional expansion of the extinguishment of actions under Code of Civil Procedure section 340.6 ("340.6"); the specified materials assist in establishing the Legislature's intended scope for 340.6 (to regulate the 1977 version of "legal malpractice," as then defined by the courts (in *Neel v Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal. 3d 176, 180, and *Budd v. Nixen* (1971) 6 Cal. 3d 195, 200)).

The SB materials (item/Exhibit 4) are official acts, evidencing that the SB is unable to evenhandedly process a "my attorney stole my money" complaint (moral turpitude), that the SB favored and showed favoritism to the attorney, and that the SB abused its (considerable) power by misleading appellant, and apparently attempting to chill appellant's claim.

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[1] In her Answer Brief on the Merits, appellant sets forth clear definitions and (believed to be) reasoned application of the targeting phrase at issue, to be contrasted with the trial court's Legal Rorschach test, and the Fourth District's recitation of the phrase, but failure to apply it. Under appellant's definitions for the targeting phrase, and in particular the definition of "professional services," the targeting phrase could never apply on the facts alleged in the SAC because an attorney was not "acting as an attorney," or performing a task for which a license is required, but the Fourth District appears to define the terms of the phrase differently than appellant – an ambiguity – and implies the trial court can simply "apply the phrase" as written, without definitions.

Appellant asserts that the Fourth District's failure to define terms created an "ambiguity."

Appellant does not offer the writings for their truth or falsity, but solely as evidence of the SB's inability to carry out its mission statement, and the "ruthless contempt" with which it asserted its will against the (non attorney) complainant. Rather than legitimately process a claim, the SB ran interference for an attorney – attempting to chill appellant's pursuit of her claim. Such an "official act" evidences appellant's assertion there is a crisis in the judiciary, the bar, and the SB brought on by the *Stoll* court's "judicial legislation."

NO PRESENTATION TO TRIAL COURT. None of these documents were presented to the trial court but they were presented to the Fourth District; the Fourth District ordered judicial notice as to Exhibits 1, 2, and 3, but denied such notice as to Exhibit 4.

AUTHORITY FOR JUDICIAL NOTICE. Items 1, 2 and 3 are legislative materials authorized by the courts under the cases set forth above. Item 4 is official acts by a legislative, executive, judicial department of this State.

TIMING AS TO REQUESTED MATERIALS. None of the materials the subject of appellant's judicial notice motion relate to proceedings occurring after the court's April 12, 2012 Judgment.

COPIES. Copies of all itemized writings were served on all

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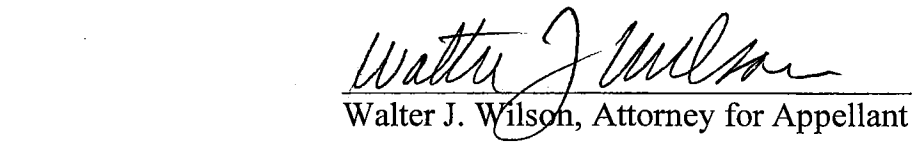
parties in this Fourth District proceeding, and are again served herewith.



Walter J. Wilson, Attorney for Appellant

DECLARATION OF WALTER J. WILSON

I, Walter J. Wilson, declare that:

1. I have first-hand, personal knowledge of the facts which follow, and if called to testify I could and would competently testify thereto under oath.

Request for Judicial Notice.

2. Attached as pages 1 to 45 are true copies of the legislative materials identified in item 1 in Appellant's Motion for Judicial Notice (the "Motion"), records from the State Archives. Certified Copies of such documents were lodged in the Fourth District. I personally dealt with the State Archives and obtained these documents, and this is everything I received.

3. Attached as pages 46 to 65 are legislative materials I personally obtained from Los Angeles County Law Library, as identified in items 2 and 3 in the Motion.

4. Insofar as there is an ambiguity in the plain language of CCP Section 340.6, the Legislature's intent is necessary and assistive in determining the specific actions which the Legislature intended to extinguish and to toll; Appellant contends those actions entail claims of "Neel defined 'legal malpractice,'" as then defined by the courts, which amounted to claims of professional negligence, claims the gravamen of which was breach of an attorney's special duty of due care, as established in *Neel v. Magana, Olney,*

Levy, Cathcart & Gelfand (1971) 6 Cal. 3d 176, 180, and *Budd v. Nixen* (1971) 6 Cal. 3d 195, 200.

Indicative of the "Crisis."

5. Attached as Exhibit 4, at pages 66 to 80, are true and correct copies of official acts of the State Bar of California ("SB"), writings I received from, and sent to, the SB, specifically: the SB's rejection of Lee's Claim, it's re-opening of Lee's Claim, its re-closing of Lee's Claim, and its re-opening of Lee's Claim. Although the Wilson writings are not official acts, they are submitted because they provide context, meaning and substance to the SB's acts.

6. I received each of the State Bar writings in Exhibit 4 within a day or so of the date therein reflected.

7. Notice of the SB transmittals is requested as official acts of an appropriate department, and relate to appellant's assertion of a crisis in the judiciary, the bar and the State Bar.

8. The originals of all the letters listed in Exhibit 4 (SB's and Wilson's) were lodged in the Fourth District.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this _____ day

//

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of December, 2014.

Walter J. Wilson, Declarant

State of California
Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 9 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

SEP 10 2013

Debra Bowen

DEBRA BOWEN
Secretary of State

REPLY TO:
SACRAMENTO OFFICE
STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
(916) 445-8077

DISTRICT OFFICE
[illegible] AVENUE
SAN FRANCISCO, CALIFORNIA 94102
(415) [illegible]

Assembly
California Legislature

CHAIRMAN
REVENUE AND TAXATION COMMITTEE

COMMITTEES
HOUSING AND [illegible] DEVELOPMENT
INTERGOVERNMENTAL RELATIONS

Contact:
Stephanie Rones
(916) 445-8077

WILLIE L. BROWN, JR.
MEMBER OF THE ASSEMBLY, 17TH DISTRICT
SAN FRANCISCO

March 25, 1977

FACT SHEET

LEGAL MALPRACTICE: STATUTE OF LIMITATIONS--AB 298
(as introduced)

What the Bill Does

Creates a separate statute of limitations for legal malpractice which provides that the commencement of action shall be years after the date of the negligent act, or one year after the plaintiff discovers, or through the use of reasonable diligence should have discover the damage, or which ever occurs first, unless the action involves a written instrument.

Background

The Code of Civil Procedure does not expressly provide a statute of limitation for legal malpractice. Since legal malpractice results usually in damage to intangible property interest, Section 339(1) of the Code of Civil Procedure is most often used as it prescribes a two-year limitation period for breeches of oral contracts and for torts affecting intangible property. A cause of action in torts, however does not accrue until the client both sustains damage and discovers, or should discover, his cause of action. In addition, a client may elect in the alternative to bring an action for breech of a written contract, which falls under the four year statute of limitation. These statutes are tolled during the minority of the plaintiff.

Pros

--May make malpractice insurance easier to obtain,
--provides same treatment for attorneys with reference to statute of limitations as now afforded to physicians, and
--saves attorneys additional insurance cost thereby stabilizing fees.

Support

State Bar of California

Opposition

California Trial Lawyer's Association

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ASSEMBLY COMMITTEE ON JUDICIARY
JOHN J. MILLER, CHAIRMAN

Prepared by
D. Ferguson

BILL DIGEST

BILL: AB 298
(As amended 5/9/77)

HEARING DATE: 5/12/77

AUTHOR: Brown

SUBJECT: Legal Malpractice: Statute of Limitation

BILL DESCRIPTION:

The Code of Civil Procedure does not expressly provide a statute of limitation for legal malpractice. Since legal malpractice results usually in damage to intangible property interest, Section 339(1) of the Code of Civil Procedure is most often used as it prescribes a two-year limitation period for breaches of oral contracts and for torts affecting intangible property. A cause of action in torts, however does not accrue until the client both sustains damage and discovers, or should discover, his cause of action. In addition, a client may elect in the alternative to bring an action for breach of a written contract, which falls under the four year statute of limitation. These statutes are tolled during the minority of the plaintiff.

Assembly Bill 298 provides a specific statute of limitations with a four year limit from the date of the negligent act or one year from discovery, whichever occurs first. It is tolled for the following:

1. The plaintiff has not sustained significant injury.

2. A continuous attorney-client relationship exists regarding the specific subject matter in which the alleged wrongful act or omission occurred.

(Continued)

3

3. The attorney willfully fails to disclose the facts constituting the wrongful act or omission. This provision only applies to the four-year limitation.

4. Circumstances beyond the plaintiff's control, such as incarceration or confinement to a mental facility, exist.

BACKGROUND:

Prior to 1971, the two-year period which governed legal malpractice actions commenced to run upon the occurrence of the last negligent act of the attorney. Ignorance of the cause of action did not toll the running of the statute. In two landmark 1971 decisions, the California Supreme Court substantially modified this rule to provide that in an action for legal malpractice, the cause of action does not accrue until the plaintiff knows or should know the material facts in issue for a legal malpractice action and the plaintiff sustains actual damage. The court justified its position by citing specifically the fiduciary nature of the attorney and client relationship and the speciality of the practice. The Court wrote:

> When an attorney raises the statute of limitations to occlude a client's action before that client has had a reasonable opportunity to bring suit, the resulting ban of the action not only starkly works an injustice upon the client but partially impugns the very integrity of the legal profession.

SOURCE:

Constituent, Attorney-at-law

SUPPORT:

Association of California Defense Counsel

(Continued)

OPPOSITION:

California Trial Lawyers Association.

COMMENT:

Members of the Assembly Judiciary Committee have been provided the detailed analysis of recommended legal malpractice statutes of limitations recently published in the State Bar Journal. The following factors should be considered in discussing a possible legislative recommendation.

a. Absolute limit. The statute of limitations for legal malpractice is virtually open-ended as the statute does not commence to run until discovery. The Supreme Court has briefly discussed the desirability of imposing some outer-limit for bringing a legal malpractice action. In reviewing the then four-year absolute limit for medical malpractice, the Court noted that "a similiar, but possibly longer, absolute limit may be desirable in actions for legal malpractice." Assembly Bill 298 prescribes a four-year outer-limit.

b. Continuous attorney-client relationship. The court has held that a continuous attorney-client relationship imposes a continuous obligation upon the attorney to remedy a remediable error and the failure to correct such error extends the period of limitation. Assembly Bill 298 provides that where a continuous attorney-client relationship exists the statute of limitations commences to run only upon the termination of the relationship.

c. Prisoners. Under prior law, the right of a prisoner to engage in civil litigation while incarcerated was severely limited, including the ability to sue his defense attorney for legal malpractice. Recent amendments to the Penal Code have substantially expanded the civil rights of prisoners and the Department of Corrections indicated that prisoners currently

(Continued)

are not prohibited from bringing legal malpractice lawsuits.

Assembly Bill 298 tolls the statute if "circumstances beyond the plaintiff's control, such as incarceration or confinement to a mental facility, exist." It is recommended that this provision be further limited to only those circumstances which substantially impair the ability of a party to commence an action for legal malpractice.

d. Commencement of the Statute of Limitations. Unlike medical malpractice where the negligent act and the injury suffered are most often contemporaneous, a cause of action for legal malpractice does not necessarily attach at the time of the negligent act. The court has recognized that only when the negligent act results in an actual injury will an action for legal malpractice exist. Assembly Bill 298 provides that the statute of limitations is tolled until the plaintiff sustains significant injury.

ASSEMBLY THIRD READING

AB 298 (Brown) As Amended: 17 May 1977

ASSEMBLY ACTIONS:

COMMITTEE JUD. VOTE 8-0 COMMITTEE VOTE

Ayes: Ayes:

Nays: Nays:

DIGEST

Currently, the statute of limitations in legal malpractice actions brought in tort is two years from the date that the plaintiff discovers or should have discovered the harm. The statute of limitations is four years from the date the plaintiff discovers a breach, if the suit is on a written contract between the attorney and client.

This bill provides that in a legal malpractice action the statute of limitations will be one year after the plaintiff discovers or should have discovered the harm, or four years after the date of the act, whichever occurs first. The statute would be tolled during the time for which any of the following exists:

1) The plaintiff has not sustained actual injury.

2) The attorney continues to represent the plaintiff regarding the matter in which malpractice occurred.

3) The attorney willfully conceals the malpractice, except that this exception only tolls the four-year limitation.

4) The plaintiff is under a legal or physical disability.

The bill also provides that in an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section commences to run upon the occurrence of the act or event.

In addition, the bill requires any decrease in cost to an insurer in insuring against professional negligence, as a result of the enactment of this act, to be passed on to individuals insured against professional negligence.

FISCAL EFFECT

None

-continued-

COMMENTS

Currently, the statute of limitations in legal malpractice actions is open-ended, since the victim does not have to sue until the malpractice is discovered. This bill places a three-year limit on such cases of action.

The bill is supported by the Association of California Defense Counsels and opposed by the California Trial Lawyers Association.

ASSEMBLY OFFICE OF RESEARCH

35/am

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SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

AB 295

1. Source

(a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill? Please list the requestor's telephone number or, if unavailable, his address.

Constituent...private attorney in San Francisco

(b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

Support: The State Bar of California

Opposition: Ca. Trial Lawyers Ass.

(c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

AB 2068 - 1976 Never heard in committee

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy?

The bill is intended to provide some treatment for attorneys with reference to the statute of limitations now afforded physicians.

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2046 AS SOON AS POSSIBLE. THE COMMITTEE STAFF CANNOT SET THE BILL FOR A HEARING UNTIL THIS FORM HAS BEEN RETURNED.

SIC Jud
AB298, 1977

I.C

State of California
Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

SEP 10 2013

Debra Bowen

DEBRA BOWEN
Secretary of State

POSITIONS As of 5/17: May not be valid — DATE TYPED: 8-17-77

SUPPORT: State Bar
Assn. of Calif. Defense Counsels

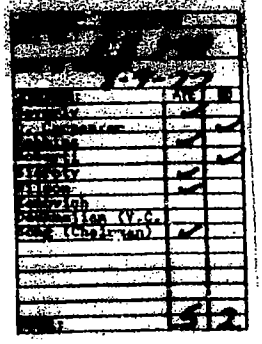
OPPOSED: Calif. Trial Lawyers Assn.

BILL NUMBER: AB 298

AUTHOR: Brown et al.

AMENDED COPY: 8-17-77

Committee Votes:



Senate Floor Vote:

Assembly Floor Vote: 65-5, P. 3742 (5-23-77)

DIGEST

This bill provides that in a legal malpractice action the statute of limitations will be one year after the plaintiff discovers or should have discovered the harm, or four years after the date of the act, whichever occurs first. The statute would be tolled during the time for which any of the following exists:

1) The plaintiff has not sustained actual injury.

2) The attorney continues to represent the plaintiff regarding the matter in which malpractice occurred.

3) The attorney willfully counceals the malpractice, except that this exception only tolls the four-year limitation.

4) The plaintiff is under a legal or physical disability.

The bill also provides that in an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section commences to run upon the occurrence of the act or event.

FISCAL EFFECT: Appropriation, no. Fiscal Committee, no. Local, no.

COMMENTS

Currently, the statute of limitations in legal malpractice actions is openended, since the statute does not begin to run until the negligent act is discovered. This bill places a four-year limit on most causes of action.

Assembly Coauthors: Chel, Imbrecht, McVittie & Maddy.
Assembly Noes: Robinson, Suitt, Thurman, Vicencis & Wornum

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SRC AB298, 1977

State of California
Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

SEP 10 2013

Debra Bowen

DEBRA BOWEN
Secretary of State

14

SENATE DEMOCRATIC CAUCUS

SENATOR OMER L. RAINS, *Chairman*

Bill No. AB 298 (As Amended: 8-17-77)

Author: Brown (D)

Subject: Limitations of Actions

Policy Committee: Judiciary

Ayes (5) Beverly, Robbins, Sieroty, Wilson, Song

Noes (2) Dennis Carpenter, Roberti

Assembly Floor vote: 65 AYES; 5 NOES.

Summary of Legislation:

Existing law provides that the statute of limitations in legal malpractice actions brought in tort is two years from the date that the plaintiff discovers or should have discovered the harm. The statute of limitations is four years from the date the plaintiff discovers a breach, if the suit is on a written contract between the attorney and client.

This bill provides that an action against an attorney for a wrongful act or omission, other than fraud, shall be commenced within one year after the plaintiff discovers or should have discovered the wrongful act or omission, or four years from the date of the wrongful act or omission. These periods would be tolled during the time that the plaintiff has not sustained actual injury, during the time that the attorney still represents the plaintiff in the same matter, or when the plaintiff is under a legal or physical disability. The four-year period would be tolled if the attorney conceals the facts constituting the wrongful act.

The bill also provides that these periods of limitations commence to run, in an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, upon the occurrence of such act or event.

Fiscal Effect:

None

Proponents:

State Bar
Association of California Defense Counsels

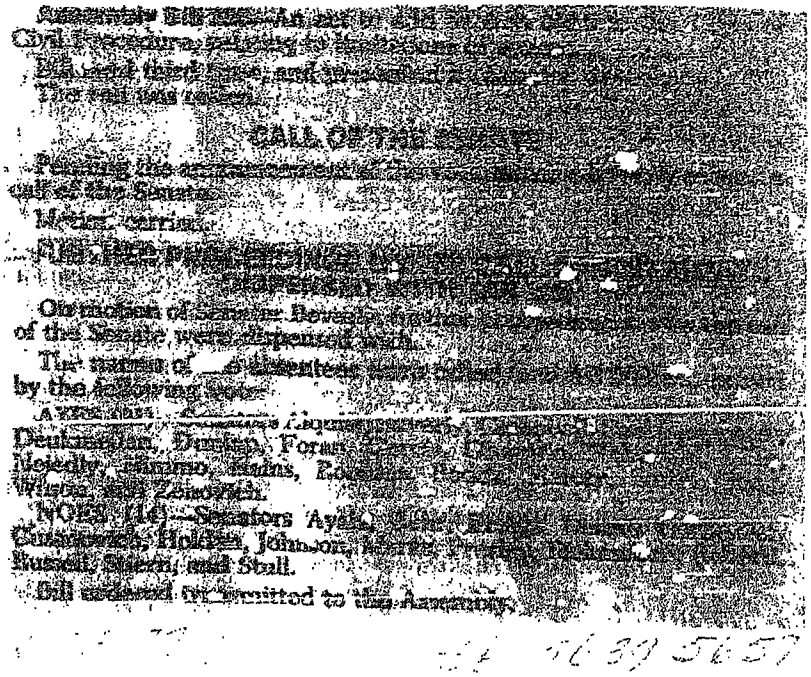
Opponents:

Arguments in Support:

This bill reduces the cost of legal malpractice insurance, and limits the open-endedness of current law.

Arguments in Opposition:

BR:ted 8-18-77



Assembly Bill [illegible]. An act to [illegible] Civil Procedure, relating to [illegible].

Bill read third time, and [illegible].

The roll was called.

CALL OF THE SENATE

Pending the announcement of [illegible] call of the Senate.

Motion carried.

Roll [illegible]

[illegible]

On motion of Senator Beverly, [illegible] of the Senate were dispensed with.

The names of [illegible] by the following vote:

Ayes [illegible]

Deukmejian, Dunlap, Foran, [illegible] Nejedly, Johnson, Rains, Zenovich, Wilson, and Zenovich.

NOES (14).—Senators Ayala, [illegible] Carpenter, Cusanovich, Holmdahl, Johnson, [illegible] Russell, Sieroty, and Stull.

Bill ordered [illegible] to the Assembly.

[illegible]

SDC
AB 208 1977

State of California
Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 14 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

SEP 10 2013

Debra Bowen

DEBRA BOWEN
Secretary of State

18

ASSEMBLY BILL NO. 298

1977 REGULAR SESSION

CHAPTER 863

AUTHOR Z'berg

DATE RECEIVED 9-6 1977

LAST DAY TO ACT 9-18 1977

LC		FIN.		LCC			
A&S		OPR		CSAC			
B&T		LEGAL		D/ED.			
H&W		CER					
E. Q.		PUC					
RES.							

ACTION OF GOVERNOR 9-16 1977

LEGAL MALPRACTICE

OWEN K. KUNS
RAY H. WHITAKER
CHIEF DEPUTIES

STANLEY M. LOURIMORE
EDWARD F. NOWAK
EDWARD K. PURCELL

KENT L. DECHAMBEAU
HARVEY J. FOSTER
ERNEST H. KUNZI
SHERWIN C. MACKENZIE, JR.
ANN M. MACKEY
TRACY O. POWELL, II
RUSSELL L. SPARLING
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO 95814
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8011 STATE BUILDING
107 SOUTH BROADWAY
LOS ANGELES 90012
(213) 620-2550

Legislative Counsel of California

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CHARLES C. ASHILL
JAMES L. ASHFORD
JERRY L. BASSETT
JOHN CORZINE
BEN E. DALE
CLINTON J. DEWITT
C. DAVID DICKERSON
FRANCES S. DORBIN
ROBERT CULLEN DUFFY
CARL ELDER
LAWRENCE H. FEIN
JOHN FOSSETTE
CLAY FULLER
ALVIN D. GRESS
ROBERT D. GRONKE
JAMES W. HEINZER
THOMAS R. HEUER
EILEEN K. JENKINS
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
DANIEL LOUIS
JAMES A. MARSALA
DAVID R. MEEKER
PETER F. MELNICOE
ROBERT G. MILLER
JOHN A. MOGER
DWIGHT L. MOORE
VERNE L. OLIVER
EUGENE L. PAINE
MARGUERITE ROTH
MARY SHAW
WILLIAM K. STARK
JOHN T. STUDEBAKER
BRIAN L. WALKUP
DANIEL A. WEITZMAN
THOMAS D. WHELAN
JIMMIE WING
CHRISTOPHER ZIRKLE
DEPUTIES

Sacramento, California
September 8, 1977

Honorable Edmund G. Brown Jr.
Governor of California
Sacramento, CA

Assembly Bill No. 298

Dear Governor Brown:

Pursuant to your request we have reviewed the above-numbered bill authored by Assemblyman Brown and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By Ann Mackey
(Mrs.) Ann Mackey
Principal Deputy

AM:AB

Two copies to Honorable Willie L. Brown, Jr.
pursuant to Joint Rule 34.

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ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE September 15, 1977
BILL NO. AB 298	AUTHOR Brown

Vote—Senate ____Unanimous

Ayes— 21
Noes— 14 (Ayala, Behr, Briggs, Carpenter D, Cusanovich, Holden, Johnson, Marks Presley, Richardson, Roberti, Russell, Stiern, Stull)

Vote—Assembly ____Unanimous

Ayes— 65
Noes— 5 (Robinson, Suitt, Thurman, Vicencia, Wornum)

AB 298 - Brown

Existing law provides for a two-year statute of limitations for any action based upon a contract, obligation, or liability not founded upon an instrument in writing, and a four-year statute of limitations for any action based upon an instrument in writing. The law also provides that the statute of limitations does not begin to run, nor does a cause of action based upon an attorney's professional negligence accrue, until the plaintiff or potential plaintiff knows, or should know, all material facts essential to show the elements of a cause of action.

This bill would provide that an action against an attorney for a wrongful act or omission, other than fraud, shall be commenced within one year after the plaintiff discovers or should have discovered the wrongful act or omission, or four years from the date of the wrongful act or omission. These periods would be tolled during the time that the plaintiff has not sustained actual injury, during the time that the attorney still represents the plaintiff in the same matter, or when the plaintiff is under a legal or physical disability. The four-year period would be tolled if the attorney conceals the facts constituting the wrongful act or omission.

SPONSOR

Author

OPPOSITION

Several letters

SUPPORT

Legal Affairs
The State Bar approves the basic concept of the bill.

Recommendation APPROVE	Legislative Secretary

Con AB 298

LS-2/9

MARTIN G. ROSENBLATT, M.D.
A PROFESSIONAL CORPORATION
2080 CENTURY PARK EAST, SUITE 907
LOS ANGELES, CALIFORNIA 90067
TELEPHONE (213) 556-3730
NEPHROLOGY AND INTERNAL MEDICINE

August 29, 1977

Governor Brown
State Capitol Building
Sacremento, California
95814

Dear Governor Brown,

The enclosed letter to the Los Angeles Times should be self explanatory. AB 298 is a bad law because of its narrow self interest features. I urge you most strongly to veto this bill.

Sincerely,

Martin G. Rosenblatt

Martin G. Rosenblatt, M.D.

MGR;ssl

22

MARTIN G. ROSENBLATT, M.D.
A PROFESSIONAL CORPORATION
2080 CENTURY PARK EAST, SUITE 907
LOS ANGELES, CALIFORNIA 90067
TELEPHONE (213) 556-3730
NEPHROLOGY AND INTERNAL MEDICINE

August 29, 1977

The Editor
Los Angeles Times
Times-Mirror Square
Los Angeles, California 90053

Dear Sir:

The Times reported that this week the California Legislature (largely composed of lawyers) passed a bill (AB 298) reducing the statute of limitations on legal malpractice suits from two years to one. The bill has not yet been signed by the governor.

For several years professional malpractice and other areas of personal injury law have been of great concern to the public, as well as to the business and professional people affected. Most of these groups have favored some type of tort reform but many progressive moves have been blocked by the attorneys, the only group which stands to benefit by a proliferation of legal actions. For example, two years ago, during the debates which led to the beginning of medical malpractice law reform (AB 1xx) considerable effort was expended attempting to reduce the statute of limitations. There was fierce resistance from the trial lawyers and the limit was set at three years. This was accompanied by many pious arguments about protecting the citizen's right of access to the courts.

Today, with the rise in legal malpractice suits and premiums, the shoe is on the other foot, and the hypocrisy of the legal profession is exposed. With this proposed special interest legislation, lawyers are announcing to the people of California that, while they wish to retain the freedom to sue everyone else, they want immunity from the legal process for themselves.

The Times should take a strong editorial position urging Governor Brown to veto this bill until such time as the legislature provides similar protection for all similarly situated business and professional people.

Sincerely,

Martin G. Rosenblatt, M.D.

cc: Governor Brown

MGR;ssl

23

MATTHEW BENDER

PRESIDENT'S CLUB

Carl Polakoff
1155 Hacienda Place
Los Angeles, California 90069
(213) 656-0344

9-1-77

Dear Governor Brown

I oppose AB 298 (or)
which would reduce the statute of limitations on legal malpractice.

The present two year limitation is reasonable. What is there so special or unique about the attorney who is charged with malpractice that the aggrieved client should be compelled to take prompt action within a one year period.

Very truly yours,
Carl Polakoff
(Member of the New York Bar)

MATTHEW BENDER

PRESIDENT'S CLUB

Carl Polakoff
1155 Hacienda Place
Los Angeles, California 90069
(213) 656-0344

9-1-77

Dear Governor Brown

Employers always have the right in private industry to terminate any employee who does not perform adequately.

A foreign concept such as a pension plan should not be permitted to force a mandatory retirement at age 65 (the tail wagging the dog).

I urge you signing the bill banning forced retirement as indicated above. Had you seen the shocking deterioration of people forced to retire, as I have, you would not hesitate.

Keep up the great job you are doing.

Sincerely,

Carl Polakoff

JS

September 2, 197-

Edmund G. Brown Jr.
Governor of California
State Capitol Building
Sacramento, California. 95814

My Dear Governor:

It is little wonder to me that Assembly Bill 298 (Brown) has passed both the House and Senate since they are made up predominantly of attorneys and law school graduates, Assemblyman Brown is a graduate of Hastings Law School. Therefor I appeal to you. In a situation that has all the ear markings of a conflict of interest, consider the public good. How can such a bill benefit the consumers of legal services? It would be far to easy to delay the average layman beyond a one year statute.

On behalf of all consumers I urge you to use your elected power to veto this bill.

Sincerely yours

Steven L. Brown

Steven L. Brown
1309 Ulfinian Way
Martinez, California. 94553

26

ENROLLED BILL REPORT

AGENCY

GOVERNOR'S OFFICE

DEPARTMENT, BOARD OR COMMISSION

LEGAL AFFAIRS

BILL NUMBER
AB 298

AUTHOR
Brown

Under existing law the statute of limitations for a legal malpractice action depends on the nature of the specific action: one year for most tort actions (CCP § 340), three years for actions based on fraud (see 337) and four years if the action is based on a contract (§337).

This bill would provide a specific statute of limtations for legal malpractice actions which basically parallels the limits imposed on medical malpractice suits by AB 1 of the Second Special Session of 1975 (Keene).

The statute of limitations on legal malpractice actions would now be one year from the time of discovery or four years from the date of the act itself. However, the four-year period may be tolled for a variety of specific reasons relevant to legal malpractice actions.

The statute of limitations for medical malpractice actions is one year from the time of discovery or three years from the date of the act itself. Again, the three-year period may be tolled for specific reasons relevant to medical malpractice actions (§340.5).

This bill is opposed by a number of individual physicians who do not understand it and believe that attorneys are receiving better treatment than doctors.

27

RECOMMENDATION:

SIGN

Analyst	DATE	Legal Affairs Secretary	DATE
Allen Sumner	9/15/77	J. Anthony Kline	

THE STATE BAR OF CALIFORNIA

Office of the President
EDWARD RUBIN
1800 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067
TELEPHONE (213) 553-5000

September 13, 1977

Honorable Edmund G. Brown, Jr., Governor
State of California
State Capitol
Sacramento, California 95814

Dear Governor Brown:

I have been requested to advise you that the State Bar Board of Governors approves the basic concept of A.B. 298. The Board, however, recognizes certain problems in the legal malpractice field created by this legislation particularly in connection with probate and contract matters. The Board of Governors is of the belief, for example, that section 1(a)(1) of the statute containing the phrase "actual injury" is unnecessarily confusing and could well result in a great deal of litigation in order to clarify its meaning. With this, as well as certain other provisions which may need interpretation, in mind, the Board of Governors tempers its approval of the concept of the statute by suggesting that there be further legislation in the 1978 session to resolve any ambiguities.

Respectfully yours,

Edward Rubin

Edward Rubin
President

28

REPLY TO:
☐ SACRAMENTO OFFICE
STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
(916) 445-8077

☐ DISTRICT OFFICE
540 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
(415) 557-0784

Assembly
California Legislature

CHAIRMAN
REVENUE AND TAXATION COMMITTEE

COMMITTEES
HOUSING AND COMMUNITY DEVELOPMENT
INTERGOVERNMENTAL RELATIONS

WILLIE L. BROWN, JR.
MEMBER OF THE ASSEMBLY, 17TH DISTRICT
SAN FRANCISCO

August 31, 1977

Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol
Sacramento, California
95814

Dear Governor Brown:

I am writing to request your signature on AB 298. This bill creates a new statute of limitations for legal malpractice actions in an effort to close off the present open-ended time frame allowed for such actions.

AB 298 provides a limitation period of one year from the date of plaintiff's discovery of the negligent act or four years from the date such neglicent act was committed, whichever comes first.

Additionally, the bill provides that the statute is tolled where:

(a) the plaintiff has not sustained actual injury;

(b) there is a continuous attorney/client relationship regarding the specific matter in which the alleged wrongful act or omission occurred;

(c) the attorney has willfully failed to disclose facts constituting the wrongful act or omission, or

(d) the plaintiff is under a legal or physical disablity preventing initiation of such action.

29

This measure would bring legal malpractice statutory limits more in line with current limitations on medical malpractice actions, and would, moreover, codify relevent case law in the area of legal malpractice, and provide easier access of attorneys to malpractice insurance.

The bill was introduced at the suggestion of a constituent in my district. It currently reflects the concerns of all groups who have expressed an interest in this issue, including representatives of the consumer and the attorny communities, and there appears to be no opposition at this time. I respectfully ask for your signature on AB 298.

Sincerely,

WILLIE L. BROWN, JR.

WLB:lsd

30

AB 298

PCA

John S. Hall
220 Richardson Dr.
Mill Valley, Calif. 94941

MAY 25 1977

Governor Edmund G. Brown Jr.
State Capitol
Sacramento CA 95814

AB 298
oppose

Dear Gov. Brown:

See attachment. Is AB 298, which just passed the Assembly, what it seems to be; self-serving to the legal profession? If so, and if it reaches your desk, I hope you will veto it.

I can see merit in a comprehensive bill which would equitably set statutes of limitation on all types of malpractice. Such a bill might also speak to the matter of contingent fee schedules, limitation of awards for pain and suffering, among other things.

As matters now stand the courts are overcrowded with suits and insurers make doubtful out-of-court settlements as the cheapest way out. In the end, the public pays.

Sincerely yours
John S. Hall (retired forester)

31

Attachment

Is this bill in the PUBLIC INTEREST?
OR does it mainly serve the best interests of lawyers?
WHY OH WHY!

Sacramento bureau
UPI Tue [illegible]

Malpractice bill

[illegible] bill that would trim by half the statute of limitations in legal malpractice cases.

The measure (AB687), by Assemblyman Willie Brown, D-San Francisco, an attorney, was sent to the [illegible]

It would give clients who discover alleged errors by their lawyer would have one year rather than the current two years to file a malpractice lawsuit.

It also would require that any [illegible] reduced insurance costs from the bill be passed on to the lawyer.

If the lawyers are entitled to a one year statute of limitations, why not the doctors, hospitals and related medical persons? This would reduce medical malpractice insurance and lower medical expense for all of us. There are too damn many lawyers & lawyer-legislators!

BEST POSSIBLE COPY

State of California
Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 10 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

SEP 10 2013

Debra Bowen

DEBRA BOWEN
Secretary of State

34

OSP 09 113643

SENATE COMMITTEE ON JUDICIARY

1977-78 REGULAR SESSION

AB 298 (Brown)
As amended May 17
Code of Civil Procedure

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9
8

LIMITATIONS OF ACTIONS

HISTORY

Source: Constituent

Prior Legislation: AB 2068(1976) - held in Assembly Committee on Judiciary

Support: State Bar, Assn. of California Defense Counsel

Opposition: CTLA

PURPOSE

Existing law does not specify a statute of limitations for actions involving legal malpractice.

This bill would provide a limitation period of one year from the date of plaintiff's discovery of the negligent act or four years from the date such negligent act was committed, whichever occurs first. The statute would be tolled during specified periods of time, and would not commence to run, if the action is based upon an instrument in writing the effective date of which depends upon a future act or event, until the occurrence of such act or event.

In addition, AB 298 would require any resulting decrease in costs to an insurer to be passed on to persons insured against professional negligence.

The purpose of the bill is to reduce the costs of legal malpractice insurance.

(More)

COMMENT

1. Present statutes of limitations

The applicable statute of limitations for an action involving professional negligence by attorneys depends on the basis for such action.

For breaches of oral contracts and for torts affecting intangible property, the limitation period is two years [C.C.P. Sec. 339(1)].

For breaches of written contracts, the limitation is four years (C.C.P. Sec. 337)

For fraud, the limitation is three years. (C.C.P. Sec. 338)

Because legal malpractice actions generally involve damage to intangible property, the 2-year statute of limitations is most often used by the courts.

2. Tolling the statute of limitations

In Neel v. Magana, et. al. (1971), 6 C. 3d 176, and its companion case of Budd v. Nixen (1971), 6 C. 3d 195, the California Supreme Court adopted the "discovery rule" (in malpractice actions) that a tort action does not accrue until the plaintiff sustains significant damage and discovers his cause of action.

The statutes of limitations listed above (see Comment 1) are also tolled by C.C.P. Sections 351 (where the cause of action accrues against an out-of-state defendant) and 352 (where the plaintiff is a minor, is insane, or imprisoned).

AB 298 would codify this existing case law on the specific circumstances under which the basic

(More)

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one-year and the outer 4-year limitation periods are tolled. This would be in addition to adopting the current tolling statute based on plaintiff's physical or legal inability to commence legal action (Sec. 340.6(a)(4) of the bill).

WOULD THE PROVISIONS OF CURRENT C.C.P. SEC. 351 (WHERE DEFENDANT WAS OUT OF STATE WHEN CAUSE OF ACTION ACCRUED) APPLY TO TOLL THE STATUTE ALSO?

Continuous representation rule

As it exists in other jurisdictions, the proviso that a cause of action shall be tolled for the time during which the attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred serves two purposes: (1) to avoid the disruption of an attorney-client relationship by a lawsuit while enabling the attorney to correct or minimize an apparent error, and (2) to prevent an attorney to defeat a legal malpractice cause of action by continuing to represent the client until the statutory period has expired.

AB 298 incorporates this rule into the legal malpractice statute of limitations.

4. Concealment of facts constituting negligence

Where an attorney knows facts which constitute a plaintiff's cause of action for professional negligence, AB 298 would toll the 4-year outer limitation during such attorney's willful concealment of such facts.

Proponents feel that this rule cannot be unfair to an attorney who has knowledge of his or her malpractice but does not disclose it to the

(More)

client. Fraud or active concealment would not be required for the statute to be tolled.

5. Statute of limitations for medical malpractice

Under C.C.P. Sec. 340.5, actions based on medical malpractice must be commenced within 3 years of the date of injury, or one year after plaintiff discovers or should have discovered the injury, whichever occurs first. The statute is tolled by fraud, intentional concealment, and other special circumstances. This statute of limitations for medical malpractice was enacted in 1975.

Proponents argue that the time for legislation providing an outer limit for legal malpractice actions has come, and that the special circumstances requiring the tolling of such statute serve both attorney and client interests.

6. Insurance costs

This bill would require insurers to pass on to insured attorneys any decrease in costs to insurers which results from the passage of this bill.

HOW IS THIS PROVISION TO BE ENFORCED?

DIGEST

See Legislative Counsel's Digest.

****

FILE COPY AB 298

ASSEMBLY THIRD READING

AB 298 (Brown) As Amended: 17 May 1977

ASSEMBLY ACTIONS:

COMMITTEE JUD. VOTE 8-0 COMMITTEE VOTE

Ayes: Ayes:

Nays: Nays:

DIGEST

Currently, the statute of limitations in legal malpractice actions brought in tort is two years from the date that the plaintiff discovers or should have discovered the harm. The statute of limitations is four years from the date the plaintiff discovers a breach, if the suit is on a written contract between the attorney and client.

This bill provides that in a legal malpractice action the statute of limitations will be one year after the plaintiff discovers or should have discovered the harm, or four years after the date of the act, whichever occurs first. The statute would be tolled during the time for which any of the following exists:

1) The plaintiff has not sustained actual injury.

2) The attorney continues to represent the plaintiff regarding the matter in which malpractice occurred.

3) The attorney willfully conceals the malpractice, except that this exception only tolls the four-year limitation.

4) The plaintiff is under a legal or physical disability.

The bill also provides that in an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section commences to run upon the occurrence of the act or event.

In addition, the bill requires any decrease in cost to an insurer in insuring against professional negligence, as a result of the enactment of this act, to be passed on to individuals insured against professional negligence.

FISCAL EFFECT

None

-continued-

COMMENTS

Currently, the statute of limitations in legal malpractice actions is open-ended, since the statute does not begin to run until the negligent act is discovered. This bill places a four-year limit on most causes of action.

The bill if supported by the Association of California Defense Counsels and opposed by the California Trial Lawyers Association.

UNFINISHED BUSINESS

CONCURRENCE IN SENATE AMENDMENTS

AB 298 (Brown) As Amended: 17 August 1977

ASSEMBLY VOTE 65-5 (23 May 1977) SENATE VOTE 21-14 (23 August 1977)

Original Committee Reference: JUD.

DIGEST

Currently, the statute of limitations in legal malpractice actions brought in tort is two years from the date that the plaintiff discovers or should have discovered the harm. If the suit is on a written contract between an attorney and client, the statute of limitations is four years from the date the plaintiff discovers a breach.

As it was passed by the Assembly, this bill provided that in a legal malpractice action the statute of limitations would be one year after the plaintiff discovers or should have discovered the harm, or four years after the date of the act, whichever occurs first. The statute would be tolled during the time for which any of the following exists:

1) The plaintiff has not sustained actual injury.

2) The attorney continues to represent the plaintiff regarding the matter in which malpractice occurred.

3) The attorney willfully conceals the malpractice, except that this exception only tolls the four-year limitation.

4) The plaintiff is under a legal or physical disability.

As it was passed by the Assembly, the bill also provided that, in an action based on an instrument in writing, the effective date of which depends on some act or event of the future, the period of limitations provided for by this section begins to run on the occurrence of the act or event.

In addition, the bill required any decrease in cost to an insurer in insuring against professional negligence, as a result of the enactment of this act, to be passed on to individuals insured against professional negligence.

The Senate amendments delete the provision requiring that the decrease in costs to an insurer be passed on to the persons insured against professional negligence.

FISCAL EFFECT

None

-continued-

COMMENTS

Currently, the statute of limitations in legal malpractice actions is open-ended, since the statute does not begin to run until the negligent act is discovered. This bill places a four-year limit on most causes of action.

The bill is supported by the Association of California Defense Counsels and opposed by the California Trial Lawyers Association.

POSITIONS

SUPPORT: State Bar
Assn. of Calif. Defense Counsels

OPPOSED: Calif. Trial Lawyers Assn.

FILE COPY

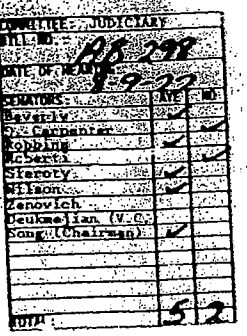
DATE TYPED: 8-17-77

BILL NUMBER: AB 298

AUTHOR: Brown et al.

AMENDED COPY: 5-17-77

Committee Votes:



Senate Floor Vote:

NOTE: THIS BILL WAS AMENDED 8-17-77. THOSE AMENDMENTS WERE NOT AVAILABLE AT THE TIME THIS ANALYSIS WAS PREPARED.

Assembly Floor Vote: 65-5, P. 3742 (5-23-77)

DIGEST

This bill provides that in a legal malpractice action the statute of limitations will be one year after the plaintiff discovers or should have discovered the harm, or four years after the date of the act, whichever occurs first. The statute would be tolled during the time for which any of the following exists:

1) The plaintiff has not sustained actual injury.

2) The attorney continues to represent the plaintiff regarding the matter in which malpractice occurred.

3) The attorney willfully counceals the malpractice, except that this exception only tolls the four-year limitation.

4) The plaintiff is under a legal or physical disability.

The bill also provides that in an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section commences to run upon the occurrence of the act or event.

In addition, the bill requires any decrease in cost to an insurer in insuring against professional negligence, as a result of the enactment of this act, to be passed on to individuals insured against professional negligence.

FISCAL EFFECT: Appropriation, no. Fiscal Committee, no. Local, no.

COMMENTS

Currently, the statute of limitations in legal malpractice actions is openended, since the statute does not begin to run until the negligent act is discovered. This bill places a four-year limit on most causes of action.

Assembly Coauthors: Chel, Imbrecht, McVittie & Maddy.
Assembly Noes: Robinson, Suitt, Thurman, Vicencio & Wornum

POSITIONS As of 5/17- May not be valid- DATE TYPED: 8-17-77

SUPPORT: State Bar
Assn. of Calif. Defense Counsels

OPPOSED: Calif. Trial Lawyers Assn.

BILL NUMBER: AB 298

AUTHOR: Brown et al.

FILE COPY

AMENDED COPY: 8-17-77

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.: AB 298		
DATE OF HEARING: 8-9-77		
SENATORS:	AYE	NO
Beverly	✓	
D. Carpenter		✓
Dobbins	✓	
Roberti		✓
Sieroty	✓	
Wilson	✓	
Zenovich		
Deukmejian (V.C.)		
Song (Chairman)	✓	
TOTAL:	5	2

Assembly Floor Vote: 65-5, P. 3742 (5-23-77)

DIGEST

This bill provides that in a legal malpractice action the statute of limitations will be one year after the plaintiff discovers or should have discovered the harm, or four years after the date of the act, whichever occurs first. The statute would be tolled during the time for which any of the following exists:

1) The plaintiff has not sustained actual injury.

2) The attorney continues to represent the plaintiff regarding the matter in which malpractice occurred.

3) The attorney willfully counceals the malpractice, except that this exception only tolls the four-year limitation.

4) The plaintiff is under a legal or physical disability.

The bill also provides that in an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section commences to run upon the occurrence of the act or event.

FISCAL EFFECT: Appropriation, no. Fiscal Committee, no. Local, no.

COMMENTS

Currently, the statute of limitations in legal malpractice actions is openended, since the statute does not begin to run until the negligent act is discovered. This bill places a four-years limit on most causes of action.

Assembly Coauthors: Chel, Imbrecht, McVittie & Maddy.
Assembly Noes: Robinson, Suitt, Thurman, Vicencia & Vorrum

ARC AB 298, 1977

of the Code of Civil Procedure, relating to the trial

. on JUD. To print.
ıy be heard in committee February 25.
: Do pass. (Ayes 7. Noes 1.) (March 3.)
e. To third reading.
passed, and to Senate. (Ayes 68. Noes 2. Page 838.)
first time.
. on JUD.
chairman, with author's amendments: Amend, and
ittee. Read second time, amended, and re-referred

e: Amend, and do pass as amended. To Consent

ıe, amended, and to Consent Calendar.
, passed, and to Assembly. (Ayes 38. Noes 0. Page

ncurrence in Senate amendments pending.
ents concurred in. To enrollment. (Ayes 60. Noes 0.

the Governor at 3 p.m.
e Governor.
ecretary of State—Chapter 57, Statutes of 1977.

1808, 1811, and 1813 of, to add Sections 1808.3, 1810;
and to repeal Section 1810 of, the Vehicle Code,
making an appropriation therefor.

m. on TRANS. To print.
May be heard in committee February 27.
Hearing postponed by committee.
Set, first hearing. Held under submission.

se: Filed with the Chief Clerk pursuant to Joint Rule
ant to Art. IV, Sec. 10(a) of the Constitution.

A.B. No. 297—Boatwright.

An act to repeal and add Section 14999.10 of the Government Code, relating to the Commission for Economic Development, and declaring the urgency thereof, to take effect immediately.

1977

Jan. 25—Read first time.
Jan. 26—Referred to Com. on L., E., & C.A. To print.
Jan. 31—From printer. May be heard in committee March 2.
Mar. 9—In committee: Hearing postponed by committee.
Mar. 23—From committee: Do pass, and re-refer to Com. on W. & M. Re-referred to Com. on W. & M. (Ayes 11. Noes 0.) (March 23.)
Mar. 30—From committee: Do pass. (Ayes 16. Noes 0.) (March 30.)
Mar. 31—Read second time. To third reading.
April 11—Read third time. Urgency clause adopted. Passed and to Senate. (Ayes 65. Noes 0. Page 1366.)
April 11—In Senate. Read first time.
April 14—Referred to Com. on G.O.
April 20—From committee: Do pass, and re-refer to Com. on FIN. Re-referred to Com. on FIN. (Ayes 11. Noes 0.)
April 26—In committee: Hearing postponed by committee.
May 3—From committee: Amend, and do pass as amended. (Ayes 10. Noes 0.)
May 4—Read second time, amended, and to third reading.
May 27—Ordered to Special Consent Calendar.
June 1—Read third time. Urgency clause adopted. Passed and to Assembly. (Ayes 36. Noes 0. Page 2795.)
June 2—In Assembly. Concurrence in Senate amendments pending.
June 3—Senate amendments concurred in. To enrollment. (Ayes 72. Noes 0. Page 4320.)
June 17—Enrolled and to the Governor at 10 a.m.
June 29—Approved by the Governor.
June 29—Chaptered by Secretary of State—Chapter 168, Statutes of 1977.

A.B. No. 298—Brown, Chel, Imbrecht, McVittie, and Maddy.

An act to add Section 340.6 to the Code of Civil Procedure, relating to limitations of actions.

1977

Jan. 25—Read first time.
Jan. 26—Referred to Com. on JUD. To print.
Jan. 31—From printer. May be heard in committee March 2.
Mar. 24—In committee: Set, first hearing. Hearing canceled at the request of author.
May 5—In committee: Hearing postponed by committee.
May 9—From committee chairman, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended.
May 12—Re-referred to Com. on JUD.
May 16—From committee: Amend, and do pass as amended. (Ayes 8. Noes 0.) (May 12.)
May 17—Read second time and amended. Ordered returned to second reading.
May 18—Read second time. To third reading.
May 23—Read third time, passed, and to Senate. (Ayes 65. Noes 5. Page 3742.)
May 23—In Senate. Read first time.
June 2—Referred to Com. on JUD.
Aug. 16—From committee: Amend, and do pass as amended. (Ayes 5. Noes 2.)
Aug. 17—Read second time, amended, and to third reading.
Aug. 23—Read third time, passed, and to Assembly. (Ayes 21. Noes 14. Page 5657.)
Aug. 24—In Assembly. Concurrence in Senate amendments pending.
Sept. 1—Senate amendments concurred in. To enrollment. (Ayes 60. Noes 2. Page 8298.)
Sept. 6—Enrolled and to the Governor at 11:30 a.m.
Sept. 16—Approved by the Governor.
Sept. 17—Chaptered by Secretary of State—Chapter 863, Statutes of 1977.

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A.B. No. 299—Lehman.

An act to amend Section 39011 of the Health and Safety Code, relating to agricultural burning.

1977

Jan. 25—Read first time.
Jan. 26—Referred to Com. on TRANS. To print.
Jan. 27—From printer. May be heard in committee February 26.
Mar. 23—Withdrawn from committee. Re-referred to Com. on RES., L.U., & E.
April 13—From committee: Amend, and do pass as amended, and re-refer to Com. on W. & M. (Ayes 12. Noes 0.) (March 13.)
April 14—Read second time and amended.
April 18—Re-referred to Com. on W. & M.
April 25—Withdrawn from committee. Ordered to second reading.
April 26—Read second time. To third reading.
April 28—Read third time, passed, and to Senate. (Ayes 72. Noes 0. Page 2168.)
April 28—In Senate. Read first time.
May 3—Referred to Com. on AGR. & WAT. RES.
June 8—From committee: Do pass. (Ayes 7. Noes 0.)
June 9—Read second time. To third reading.
June 13—Ordered to Special Consent Calendar.
June 15—Read third time, passed, and to Assembly. (Ayes 40. Noes 0. Page 3492.)
June 16—In Assembly. To enrollment.
June 21—Enrolled and to the Governor at 4 p.m.
June 28—Approved by the Governor.
June 29—Chaptered by Secretary of State—Chapter 132, Statutes of 1977.

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ASSEMBLY BILL No. 298

Introduced by Assemblyman Brown

January 25, 1977

An act to add Section 340.6 to the Code of Civil Procedure, relating to limitations of actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 298, as introduced, Brown. Limitations of actions.

Existing law provides for a 2-year statute of limitations for any action based upon a contract, obligation, or liability not founded upon an instrument in writing, and a 4-year statute of limitations for any action based upon an instrument in writing. The law also provides that the statute of limitations does not begin to run, nor does a cause of action based upon an attorney's professional negligence accrue, until the plaintiff or potential plaintiff knows, or should know, all material facts essential to show the elements of a cause of action.

This bill would provide that, in any action for damages against an attorney based upon the attorney's alleged professional negligence, the time for the commencement of action shall be 3 years after the date of the negligent act or 1 year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the damage, whichever first occurs; and that in no event shall the time for commencement of legal action exceed 3 years unless tolled upon proof of fraud, or intentional concealment.

The bill also would provide that these periods of limitations commence to run, in an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, upon the occurrence of such act or event.

The bill also would require any decrease in cost to an in-

surer in insuring against professional negligence, as a result of the enactment of this act, to be passed on to individuals insured against professional negligence.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 340.6 is added to the Code of Civil Procedure, to read:

340.6. (a) In any action for damages against an attorney based upon the attorney's alleged professional negligence, the time for the commencement of action shall be three years after the date of the negligent act or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the damage, whichever first occurs. In no event shall the time for commencement of legal action exceed three years unless tolled for any of the following: (1) upon proof of fraud; or (2) intentional concealment.

(b) In an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section shall commence to run upon the occurrence of such act or event.

(c) Any decrease in cost to an insurer resulting from the effect of the enactment of this section in insuring against professional negligence shall be passed on to individuals insured against professional negligence.

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AMENDED IN ASSEMBLY MAY 9, 1977

CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION

ASSEMBLY BILL No. 298

Introduced by Assemblyman Brown

January 25, 1977

An act to add Section 340.6 to the Code of Civil Procedure, relating to limitations of actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 298, as amended, Brown. Limitations of actions.

Existing law provides for a 2-year statute of limitations for any action based upon a contract, obligation, or liability not founded upon an instrument in writing, and a 4-year statute of limitations for any action based upon an instrument in writing. The law also provides that the statute of limitations does not begin to run, nor does a cause of action based upon an attorney's professional negligence accrue, until the plaintiff or potential plaintiff knows, or should know, all material facts essential to show the elements of a cause of action.

This bill would provide that an action against an attorney for a wrongful act or omission, other than fraud, shall be commenced within one year after the plaintiff discovers or should have discovered the wrongful act or omission, or four years from the date of the wrongful act or omission. These periods would be tolled during the time that the plaintiff has not sustained significant injury, during the time that the attorney still represents the plaintiff in the same matter, and when circumstances beyond the plaintiff's control, such as incarceration or confinement in a mental facility, exist. The four year period would be tolled if the attorney fails to disclose the facts constituting the wrongful act.

~~This bill would provide that, in any action for damages~~

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~~against an attorney based upon the attorney's alleged profes/ sional negligence, the time for the commencement of action shall be 3 years after the date of the negligent act or 1 year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the damage, whichever first occurs; and that in no event shall the time for commence/ ment of legal action exceed 3 years unless tolled upon proof of fraud, or intentional concealment.~~

The bill also would provide that these periods of limitations commence to run, in an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, upon the occurrence of such act or event.

The bill also would require any decrease in cost to an insurer in insuring against professional negligence, as a result of the enactment of this act, to be passed on to individuals insured against professional negligence.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 340.6 is added to the Code of Civil Procedure, to read:

~~340.6. (a) In any action for damages against an attorney based upon the attorney's alleged professional negligence, the time for the commencement of action shall be three years after the date of the negligent act or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the damage, whichever first occurs. In no event shall the time for commencement of legal action exceed three years unless tolled for any of the following: (1) upon proof of fraud; or (2) intentional concealment.~~

340.6. (a) An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four

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years from the date of the wrongful act or omission, whichever occurs first. In no event shall the time for commencement of legal action exceed four years unless tolled during the time that any of the following exist:

(1) The plaintiff has not sustained significant injury;

(2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred;

(3) The attorney willfully fails to disclose the facts constituting the wrongful act or omission when such facts are known to the attorney, except that this subdivision shall toll only the four year limitation; and

(4) When circumstances beyond the plaintiff's control, such as incarceration or confinement to a mental facility, exist.

(b) In an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section shall commence to run upon the occurrence of such act or event.

(c) Any decrease in cost to an insurer resulting from the effect of the enactment of this section in insuring against professional negligence shall be passed on to individuals insured against professional negligence.

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AMENDED IN ASSEMBLY MAY 17, 1977

AMENDED IN ASSEMBLY MAY 9, 1977

CALIFORNIA LEGISLATURE—1977–78 REGULAR SESSION

ASSEMBLY BILL No. 298

Introduced by ~~Assemblyman Brown~~ *Assemblymen Brown, Chel, Imbrecht, McVittie, and Maa...*

January 25, 1977

An act to add Section 340.6 to the Code of Civil Procedure, relating to limitations of actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 298, as amended, Brown. Limitations of actions.

Existing law provides for a 2-year statute of limitations for any action based upon a contract, obligation, or liability not founded upon an instrument in writing, and a 4-year statute of limitations for any action based upon an instrument in writing. The law also provides that the statute of limitations does not begin to run, nor does a cause of action based upon an attorney's professional negligence accrue, until the plaintiff or potential plaintiff knows, or should know, all material facts essential to show the elements of a cause of action.

This bill would provide that an action against an attorney for a wrongful act or omission, other than fraud, shall be commenced within one year after the plaintiff discovers or should have discovered the wrongful act or omission, or four years from the date of the wrongful act or omission. These periods would be tolled during the time that the plaintiff has not sustained ~~significant~~ *actual* injury, during the time that the attorney still represents the plaintiff in the same matter, ~~and when circumstances beyond the plaintiff's control, such as incarceration or confinement in a mental facility, exist.~~ *or when the plaintiff is under a legal or physical disability.* The

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four-year period would be tolled if the attorney ~~fails to disclose~~ *conceals* the facts constituting the wrongful act.

The bill also would provide that these periods of limitations commence to run, in an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, upon the occurrence of such act or event.

The bill also would require any decrease in cost to an insurer in insuring against professional negligence, as a result of the enactment of this act, to be passed on to individuals insured against professional negligence.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 340.6 is added to the Code of Civil Procedure, to read:

340.6. (a) An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. In no event shall the time for commencement of legal action exceed four years ~~unless~~ *except that the period shall be* tolled during the time that any of the following exist:

(1) The plaintiff has not sustained ~~significant~~ *actual* injury;

(2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred;

(3) The attorney willfully ~~fails to disclose~~ *conceals* the facts constituting the wrongful act or omission when such facts are known to the attorney, except that this subdivision shall toll only the four-year limitation; and

~~(4) When circumstances beyond the plaintiff's control, such as incarceration or confinement to a mental facility,~~

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~~exist.~~

(4) The plaintiff is under a legal or physical disability which restricts the plaintiff's ability to commence legal action.

(b) In an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section shall commence to run upon the occurrence of such act or event.

(c) Any decrease in cost to an insurer resulting from the effect of the enactment of this section in insuring against professional negligence shall be passed on to individuals insured against professional negligence.

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AMENDED IN SENATE AUGUST 17, 1977

AMENDED IN ASSEMBLY MAY 17, 1977

AMENDED IN ASSEMBLY MAY 9, 1977

CALIFORNIA LEGISLATURE—1977–78 REGULAR SESSION

ASSEMBLY BILL No. 298

Introduced by Assemblymen Brown, Chel, Imbrecht, McVittie, and Maddy

January 25, 1977

An act to add Section 340.6 to the Code of Civil Procedure, relating to limitations of actions.

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This bill would provide that an action against an attorney for a wrongful act or omission, other than fraud, shall be commenced within one year after the plaintiff discovers or should have discovered the wrongful act or omission, or four years from the date of the wrongful act or omission. These periods would be tolled during the time that the plaintiff has not sustained actual injury, during the time that the attorney still represents the plaintiff in the same matter,or when the plaintiff is under a legal or physical disability. The four-year period

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would be tolled if the attorney conceals the facts constituting the wrongful ~~act.~~ *act or omission.*

The bill also would provide that these periods of limitations commence to run, in an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, upon the occurrence of such act or event.

~~The bill also would require any decrease in cost to an insurer in insuring against professional negligence, as a result of the enactment of this act, to be passed on to individuals insured against professional negligence.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 340.6 is added to the Code of Civil Procedure, to read:

340.6. (a) An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. In no event shall the time for commencement of legal action exceed four years except that the period shall be tolled during the time that any of the following exist:

(1) The plaintiff has not sustained actual injury;

(2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred;

(3) The attorney willfully conceals the facts constituting the wrongful act or omission when such facts are known to the attorney, except that this subdivision shall toll only the four-year limitation; and

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(b) In an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section shall commence to run upon the occurrence of such act or event.

~~(c) Any decrease in cost to an insurer resulting from the effect of the enactment of this section in insuring against professional negligence shall be passed on to individuals insured against professional negligence.~~

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Assembly Bill No. 298

Passed the Assembly September 1, 1977

Chief Clerk of the Assembly

Passed the Senate August 23, 1977

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 1977, at _____ o'clock ___ M.

Private Secretary of the Governor

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CHAPTER_____

An act to add Section 340.6 to the Code of Civil Procedure, relating to limitations of actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 298, Brown. Limitations of actions.

Existing law provides for a 2-year statute of limitations for any action based upon a contract, obligation, or liability not founded upon an instrument in writing, and a 4-year statute of limitations for any action based upon an instrument in writing. The law also provides that the statute of limitations does not begin to run, nor does a cause of action based upon an attorney's professional negligence accrue, until the plaintiff or potential plaintiff knows, or should know, all material facts essential to show the elements of a cause of action.

This bill would provide that an action against an attorney for a wrongful act or omission, other than fraud, shall be commenced within one year after the plaintiff discovers or should have discovered the wrongful act or omission, or four years from the date of the wrongful act or omission. These periods would be tolled during the time that the plaintiff has not sustained actual injury, during the time that the attorney still represents the plaintiff in the same matter,or when the plaintiff is under a legal or physical disability. The four-year period would be tolled if the attorney conceals the facts constituting the wrongful act or omission.

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The people of the State of California do enact as follows:

SECTION 1. Section 340.6 is added to the Code of Civil Procedure, to read:

340.6. (a) An action against an attorney for a wrongful

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act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. In no event shall the time for commencement of legal action exceed four years except that the period shall be tolled during the time that any of the following exist:

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(4) The plaintiff is under a legal or physical disability which restricts the plaintiff's ability to commence legal action.

(b) In an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section shall commence to run upon the occurrence of such act or event.

Approved_____, 1977

_____

Governor

CHAPTER 863

An act to add Section 340.6 to the Code of Civil Procedure, relating to limitations of actions.

[Approved by Governor September 16, 1977. Filed with Secretary of State September 17, 1977.]

LEGISLATIVE COUNSEL'S DIGEST

AB 298, Brown. Limitations of actions.

Existing law provides for a 2-year statute of limitations for any action based upon a contract, obligation, or liability not founded upon an instrument in writing, and a 4-year statute of limitations for any action based upon an instrument in writing. The law also provides that the statute of limitations does not begin to run, nor does a cause of action based upon an attorney's professional negligence accrue, until the plaintiff or potential plaintiff knows, or should know, all material facts essential to show the elements of a cause of action.

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(1) The plaintiff has not sustained actual injury;

(2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred;

(3) The attorney willfully conceals the facts constituting the wrongful act or omission when such facts are known to the attorney, except that this subdivision shall toll only the four-year limitation; and

(4) The plaintiff is under a legal or physical disability which restricts the plaintiff's ability to commence legal action.

(b) In an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section shall commence to run upon the occurrence of such act or event.

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THE STATE BAR OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL
INTAKE
Dane Dauphine, Assistant Chief Trial Counsel

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

TELEPHONE: (213) 765-1000
FAX: (213) 765-1168
http://www.calbar.ca.gov

December 15, 2011

Nancy Lee
3761 Olive Avenue
Long Beach, CA 90807

RE: Inquiry Number: 11-27660
Respondent: William Hanley

Dear Ms. Lee:

An attorney for the State Bar's Office of the Chief Trial Counsel has reviewed your complaint against William Hanley to determine whether there are sufficient grounds for proceeding to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct.

You have alleged that you retained William Hanley in November 2008 on an hourly basis and paid him $131,000.00 to represent you in a civil matter. The case settled in January 2010 and as per your last billing statement of February 2010, you had a credit of $46,321.85. You claimed that Mr. Hanley failed to return the unearned fee and became upset with you when you asked about the refund. You alleged that Mr. Hanley paid an expert witness an advanced fee of $10,000.00; however, after the case was settled, the expert witness returned $9,725.00 to Mr. Hanley. You claimed that Mr. Hanley failed to inform you of the refund and failed to refund the witness fees to you. You also claimed that you gave Mr. Hanley an additional $95,000.00 to deposit into a trust account, but he has failed to provide any information about this account and he has failed to refund those funds.

In response to these allegations, Mr. Hanley represents that the unused expert fees in the amount of $9,725.00 were refunded to you. Mr. Hanley enclosed a copy of the check in the amount of $9,725.00 from his trust account that was cashed by you. Mr. Hanley contends there are no unearned fees. All fees paid were earned. Mr. Hanley enclosed a copy of the attorney-client fee agreement, signed by Mr. Hanley on November 24, 2008 and signed by you on November 25, 2008. Mr. Hanley claimed that there was no additional money in the amount of $95,000.00 that was to be deposited into his trust account and since this never happened, there was nothing to refund. Mr. Hanley stated that the case he handled for you was resolved by settlement in January 2010 and you paid $330,000.00 to settle the case. Mr. Hanley enclosed a copy of such settlement agreement, dated January 15, 2010, signed by you.

Based on our evaluation of the information provided, Mr. Hanley's response and his documentation, we are closing your file. In order to obtain attorney discipline, the State Bar must present clear and convincing evidence of willful misconduct. We do not have clear and convincing evidence that Mr. Hanley's conduct rises to the level of willful misconduct which would warrant discipline by the State Bar.

For these reasons, the State Bar is closing this matter.

If you have any questions or disagree with the decision to close your complaint or have new information or other allegations not included in your initial complaint, you have two options. For immediate assistance, the first option is to speak directly with a Complaint Specialist. You may leave a voice message with the State Bar's Complaint Specialist at 213-765-1695. Be sure to clearly identify the lawyer complained of, the case number assigned, and your telephone number including the area code in your voice message. The Complaint Specialist will return your call within 2 business days.

The second option is to request the State Bar's Audit & Review Unit to review your complaint. An attorney may re-open your complaint if he or she determines that you presented new, significant evidence about your complaint or that the State Bar closed your complaint without any basis. You must submit your request for review with the new evidence or a showing that closing your complaint was made without any basis. To request review, you must submit your request in writing, together with any new evidence, post-marked within **90 days of the date of this letter,** to:

State Bar of California,
Audit & Review Unit,
1149 South Hill Street
Los Angeles, CA 90015-2299.

Please note that telephonic requests for review will not be accepted.

The State Bar cannot give you legal advice. If you wish to consult an attorney about any other remedies available to you, the Los Angeles County Bar Association can provide the names of attorneys who may be able to assist you. The county bar association's contact information is: Lawyer Referral Service of the Long Beach Bar Association, 11 Golden Shore, Suite 230, Long Beach, CA 90802 (562) 432-5913.

If you dispute the attorney's fees or costs that William Hanley has charged you, you may seek an arbitration or mediation of the dispute under the State Bar's Mandatory Fee Arbitration Program. For more information about this program and how to request arbitration, go to the State Bar's Web site at www.calbar.ca.gov or call 415-538-2020.

Thank you for bringing your concerns to the attention of the State Bar.

Very truly yours,

Peter Eng
Deputy Trial Counsel

WALTER J. WILSON
ATTORNEY AT LAW
333 WEST BROADWAY
SUITE 200
LONG BEACH, CALIFORNIA 90802
TELEPHONE (562) 432-3388
FAX (562) 432-2969

VIA FEDEX

March 21, 2012

State Bar of California
Audit & Review Unit
1149 South Hill Street
Los Angeles, CA 90015-2299

RE: Inquiry Number: 11-27660
Attorney William B. Hanley

Ladies and Gentlemen:

This office represents Nancy F. Lee with regard to her complaint against William B. Hanley, as identified by the above inquiry number. Ms. Lee does not agree with the State Bar's 12-15-11 response (the "RESPONSE") and the closing of the case, and she requests that the matter be reviewed.

Following receipt of the RESPONSE, (and based in part on RESPONSE'S total disconnect with her complaints) on December 22, 2011, Ms. Lee filed her lawsuit, Lee v Hanley, Orange County Superior Court Case Number 30-2011 00532352). Enclosed is a copy of said filing. On behalf of Ms. Lee, on March 16, 2012, I also called for the Complaint Specialist to inquire how this case closure came about, but I received no return call.

As to the RESPONSE, given its statement of the facts, its "logic" and conclusions, Ms. Lee questions whether the State Bar read/understood her complaints, and whether it actually reviewed the enclosed exhibits. (I do not mean to belittle the State Bar or its evaluation, and I realize that sometimes a document needs just one more edit to set forth what the writer intended to say; I am also aware that it could be that it was Ms. Lee's complaint and exhibits which didn't set forth the wrongs clearly enough.) For whatever reason, however, there was a disconnect between what Ms. Lee complained of, and the analysis and conclusions in the RESPONSE. There was such a disconnect that

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both Ms. Lee, and I, were stunned (I use that word upon thought and reflection) and angry, with Ms. Lee feeling that as a member of the public the State Bar wasn't even attempting to understand her loss or her complaints.

Specifically, Ms. Lee claimed that as of February 1, 2010 she had a $46,321 "credit balance" (her "war chest" assuring Mr. Hanley he'd be paid if the matter went to trial) (see Mr. Hanley's billing statement and letter, Exs. 2-1 to 2-3), that the case was settled before the February 1 billing statement (Dismissal entered on 1-28-10, Ex. 3-3), that Mr. Hanley did no more work and did not bill her for any services after the February 1 billing statement (Mr. Hanley has not produced any such billings), and that she never received any of the $46,321 she deposited for trial (Mr. Hanley gave you no proof of any such payment).

In its RESPONSE, the State Bar stated:

1. "Mr. Hanley contends there are no unearned fees. All fees paid were earned." The State Bar appears to be saying that since Mr. Hanley says all fees were earned, then all fees were earned. The State Bar doesn't address the $46,321 "credit balance," which would appear to be unearned fees held by Mr. Hanley in anticipation of trial.

In its second paragraph of the RESPONSE, the State Bar acknowledges Ms. Lee's allegation that she paid Mr. Hanley $131,000 for fees and costs during the litigation, but ignores her contention that Mr. Hanley's billing statements reflect that she paid in a total of $177,403 (Ex. 6-1 to 2), a difference of ($177,403 - 131,000 =) $46,403 (approximating her claim of $46,321). As to the $131,000 paid, Ms. Lee is not complaining about that; She's complaining of Mr. Hanley keeping her $46,321.

2. "Mr. Hanley enclosed a copy of the attorney-client fee agreement (the "AGREEMENT"), signed by Mr. Hanley on November 24, 2008 and by you on November 25, 2008." It's unclear why this is mentioned or what point the State Bar is trying to make. Also, Ms. Lee enclosed the AGREEMENT in her complaint (Ex. 1-1 to 1-4, reflecting both signatures and both dates), but somehow Mr. Hanley having provided it is somehow important.

What's noteworthy about the AGREEMENT is that it says, "Attorney's fees will be charged on an hourly basis for all time actually expended." Meaning you won't be charged a fee except for services rendered. No services were rendered after February 1, 2010 and Ms. Lee hasn't been paid her credit balance.

3. "Mr. Hanley claimed that there was no additional money in the amount of $95,000 that was to be deposited into his trust account and since this never happened, there is nothing to refund." It's entirely unclear what point is being made here. My best guess is that Mr. Hanley claims that (irrespective of whether funds were to be deposited in trust) Ms. Lee never paid in an extra $95,000. A brief review of Ex. 6-1 and 6-2, the summary of Mr. Hanley's billings showing all Ms. Lee's payments, including on 10-29-09 and 12-4-09 the ($30,000 + 65,000 =) $95,000. On Mr. Hanley's billings those payments are

documented on Ex. 2-14 ($30,000) and 2-6 ($65,000). Several of Mr. Hanley's bills were thereafter offset against this sum resulting in the credit balance of $46,321 which has never been paid. Why is this not a State Bar matter?

Additionally, a brief review of Exhibit 6-1 will show all the payments Ms. Lee made, including those which were specifically to pay attorney fees/costs, those which represented extra monies ($15,000, $30,000 and $65,000) and expert's costs ($10,000 on 7-3-09).

From the "extra" $95,000 (plus the additional $15,000 that was the "initial" deposit), Mr. Hanley deducted his fees/costs for the months of November, December, January and February, leaving the credit balance of $46,321.25.

4. "Mr. Hanley stated that the case he handled for you was resolved by settlement in January 2010 and you paid $330,000 to settle the case. Mr. Hanley enclosed a copy of such settlement agreement, dated January 15, 2010, signed by you." Although this is true, this is information Ms. Lee provided to the State Bar in her complaint (Complaint, Attachment 1, pg. 3, para. f "...then later to pay the settlement sum ($330,000)"; Ex. 3-5 to 3-15, Hanley's letters, the settlement agreement and a copy of Ms. Lee's check for $330,000.) It's unclear why the State Bar is telling us what we told and provided to you, but it somehow appears to have been important to you because Mr. Hanley provided it. (What it really appears to be saying is that the State Bar didn't look at Ms. Lee's Complaint, but "lapped up" Mr. Hanley's response - and gave import to nonsensical matter. Specifically, I know of nothing in that settlement that gives Mr. Hanley the right to take Ms. Lee's unearned fees; I know of nothing in Ms. Lee's having paid $330,000 to defendants, to buy back sole ownership of her business, which she'd sold under stress. Was there some legitimate point the State Bar was making which I just didn't understand?)

5. "Mr. Hanley represents that the unused expert fees in the amount of $9,725.00 were refunded to you. Mr. Hanley enclosed a copy of the check in the amount of $9,725.00 from his trust account that was cashed by you." Again, Ms. Lee told you that she had ultimately been paid the $9,725. Her claim was that Mr. Hanley got the $9,725 return-of-costs from the expert in mid February 2010, but didn't tell Ms. Lee about that until December 2010. Also, Mr. Hanley didn't mention or return the monies until Ms. Lee and I wrote him on December 6, 2010 (Ex. 4-29 and 30), in response to which Mr. Hanley's attorney provided us with the payment and documentation as to how long it had been held (Ex. 4-13 to 17).

We enclosed the writings because it was a violation for Mr. Hanley not to have sent the monies to Ms. Lee when he received them, but also because it went to his unsupported claim that Ms. Lee paid him a "bonus" of the $46,321, which is mentioned in her complaint. Ms. Lee is clear that she never agreed to a bonus, and she has asked for and never seen documentation of a bonus - no confirming letter, no thank you, nothing. Additionally, two months after the final billing, Ms. Lee called and requested a final statement, but none was given

and Mr. Hanley did not at that time say she had given him a bonus. Apparently the "bonus" was so inspecific that Mr. Hanley felt free to take whatever he could lay hands on (because he kept the $9,725 until we demanded return of all unearned monies.)

Although Mr. Hanley's attorney has told us about the bonus, and we noted it in the complaint, the State Bar didn't address it.

My understanding is that the public policy of this State is that an attorney — a fiduciary — act fairly and charge reasonable fees. Mr. Hanley's taking of $46,321 — after already being paid $131,000 (for the services rendered through February 1, 2010) is unfair and we ask that the case not be closed.

Very truly yours,

Walter J. Wilson
WJW:am

THE STATE BAR
OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL
AUDIT & REVIEW

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

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Direct Dial: (415) 238-2558

November 6, 2012

PERSONAL AND CONFIDENTIAL

Mr. Walter J. Wilson
333 West Broadway, Suite 200
Long Beach, CA 90802

Inquiry No.: 11-27660
Respondent: Mr. William B. Hanley

Dear Mr. Wilson:

This letter confirms our recent telephone conversation.

The Audit and Review Unit of the State Bar's Office of the Chief Trial Counsel has completed its review of your request to re-open your complaint against Mr. Hanley. Based on our examination of the evidence, we have decided to re-open your complaint for further investigation.

Thank you for taking the time and effort to submit your complaint and your request for review. The State Bar will inform you of further developments.

Very truly yours,

Mark Hartman

Mark Hartman
Deputy Trial Counsel

MH/mh

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THE STATE BAR OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL
ENFORCEMENT
Jayne Kim, Chief Trial Counsel

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November 20, 2012

PERSONAL AND CONFIDENTIAL

Nancy Lee
c/o Walter J. Wilson, Esq.
333 W. Broadway, Ste. 200
Long Beach, CA 90802

RE: Case No.: 12-O-17451
Respondent: William Hanley

Dear Ms. Lee:

The State Bar has made a decision to close this investigation, without prejudice, against William Hanley.

After carefully reviewing the information you provided, as well as information from other sources including the case summary for case number 30-2011-00532352, *Nancy F. Lee vs. William B. Hanley*, from the Orange County Superior Court, this office has concluded that the court in which the civil case is located has jurisdiction to determine if Mr. Hanley is not acting appropriately. If there is a finding of fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity, we will take the matter up again at that time. Please notify our Office of Intake when the civil matter has reached a conclusion.

Furthermore, your request to the State Bar's Audit & Review Unit to review your complaint was submitted and received past the 90 days from the date of the original closing letter dated December 15, 2011.

If you have any questions or disagree with the decision to close your complaint, you may leave a voice mail message for me at (213) 765-1027. In your message, be sure to clearly identify the lawyer complained against, the case number assigned to your complaint, and your name and return telephone number, including area code. I will return your call as soon as possible.

If you dispute the amount of attorney's fee, you may contact your local or county bar association for information regarding fee arbitration. Your local or county bar association can be reached at:

Orange County Bar Association
P.O. Box 6130
Newport Beach, CA 92658
Voice: 949-440-6700 ext. 128

You may wish to consult with legal counsel for advice regarding any other available remedies. You may contact your local or county bar association to obtain the names of attorneys to assist you in this matter.

Very truly yours,

Thomas T. Tran
Investigator

/ttt

WALTER J. WILSON
ATTORNEY AT LAW
333 WEST BROADWAY
SUITE 200
LONG BEACH, CALIFORNIA 90802
TELEPHONE (562) 432-3388
FAX (562) 432-2969

Via Facsimile (Letter Only) and First Class Mail

November 30, 2012

Ms. Jayne Kim, Chief Trial Counsel
Office of the Chief Trial Counsel—Enforcement
The State Bar of California
1149 South Hill Street
Los Angeles, CA 90015-2299

Mr. Thomas T. Tran, Investigator
Office of the Chief Trial Counsel—Enforcement
The State Bar of California
1149 South Hill Street
Los Angeles, CA 90015-2299

Mr. Alan B. Gordon, Assistant Chief Trial Counsel
Office of the Chief Trial Counsel—Enforcement
The State Bar of California
1149 South Hill Street
Los Angeles, CA 90015-2299

Mr. Tim Byer, Deputy Trial Counsel
Office of the Chief Trial Counsel—Enforcement
The State Bar of California
1149 South Hill Street
Los Angeles, CA 90015-2299

Re: William B. Hanley

Your Case Number	: 12-O-17451
Prior Case Number	: 11-27660
Respondent	: William Hanley
Complainant	: Nancy F. Lee

Dear Ms. Kim and Messrs. Tran, Gordon, and Byer :

Ms. Lee (and I) strongly object to The State Bar of California's (the "State Bar") closure of the investigation against Mr. Hanley — such would be an absolute travesty, allowing a predator to continue preying on the unsuspecting public (while wearing an attorney's "shining armor"). The State Bar's case-closure is an egregious wrong! But worse — in counsel's estimation — is that the State Bar is disregarding a legitimate, documented, credible complaint by a member of the public, and prejudging the case in Mr. Hanley's favor (and allowing him to keep Ms. Lee's $46,321) unless and until she proves (that is, until she funds a vigorously defended civil action, and prosecutes to Judgment, and receives a Judgment) that Mr. Hanley is a thief. The State Bar is committing an egregious wrong by favoring an attorney over the public, without any legitimate justification, in clear contradiction to its mission statement!

As an introductory matter, I can't tell you when or why a "believed to be good man" turns bad, causing him to surrender to temptation and to steal from his client. But I can tell you I believe in my heart, and in my logical, believed-to-be-clear-thinking head, **that Mr. Hanley is such a thief**!

As a further introductory matter, I note there is something drastically wrong in the State Bar's handling of this matter that needs to be called to the attention of all persons with any supervisory authority over the State Bar, presumably including a liaison to the Supreme Court; I am unfamiliar with such matters and ask (each of) you to forward this letter to all proper persons, presumably everyone's superior, up to the Court. (For the State Bar to act as a "shill" for attorneys is contrary to its mission statement and in violation of the public policy of this State; This matter (except for Audit and Review's involvement) is a travesty!)

As a final introductory matter, I ask each of you to consider whether you have seen any instances of what might have been tampering or other inappropriate influence in this case; I state up front that I have no facts of any such wrongdoing. However, in my opinion the repeated wrongdoing (12-15-11 letter and 11-20-12 letter) and its nature (see below and my 3-21-12 letter, attached) and timing (reopened 11-6-12, case-closure 11-20-12) is so compelling, so unjustifiable and so unexplainable, that such a possibility has to be raised.

The Wrongdoing.

1. By Mr. Hanley's final billing statement (which he prepared), dated February 1, 2010, after settlement of the underlying action and payment of all fees and costs, Mr. Hanley admitted he owed Ms. Lee $46,321. She never received any of these monies. Attorney Hanley stole $46,321 from Ms. Lee. To my knowledge, this is a continuing violation (and could be reported — or re-reported — at any time, generating a new inquiry and a new investigation/prosecution). Attached as pages 2-1 to 2-3 are Mr. Hanley's cover letter and final billing.

2. Unbeknownst to Ms. Lee, on February 16, 2010, after settlement of her underlying action, an expert returned $9,725 to Mr. Hanley for Ms. Lee. Mr Hanley did not then inform Ms. Lee of the return, nor did he pay these monies to Ms. Lee. Mr. Hanley kept those monies until Ms. Lee retained me and we demanded her monies (which he returned in December 2010). Attached as pages 4-13 to 4-17 is Gerald Shelley's 12-21-10 letter to me with enclosures documenting the expert's return of funds and the delayed payment; Ms. Lee never knew of this return until this letter and payment.

No Realistic Remedy in State Court.

Although Lee v. Hanley, Orange County Superior Court Case Number 30-2011 00532352, is active, the Judge therein (Judge Moss) has two times ruled that all Ms. Lee's claims are barred by the one-year statute of limitations CCP §340.6 (even though Ms. Lee made only "stand alone" breach of fiduciary duties claims for failure to return her funds, and made no challenge to the underlying services rendered, or charges therefor, which services got her the settlement she wanted). On November 9, 2012, Judge Moss sustained Mr. Hanley's Demurrer to the Second Amended Complaint, but granted Ms. Lee leave to amend on Ms. Lee's belief she could plead an "actual fraud" cause of action (CCP §340.6) — but all her other causes of action will be barred, leaving her a fraud-or-nothing claim. In effect, she is "limbs-bound, lying on the train tracks, awaiting the train," but the State Bar concludes that's the remedy for her complaint.

The State Bar's case-closure — assigning to Ms. Lee the responsibility of prosecuting a fraud-or-nothing case, when she timely notified the State Bar of Mr. Hanley's wrongdoing, when there were clear ongoing violations of his ethical duties, when State Bar-Intake wrongfully rejected the complaint (which complaint should have resolved the matter and caused the return to Ms. Lee of her funds), and when the only reason she filed a separate action was because the State Bar wrongfully rejected her complaint leaving her no other recourse — is a travesty!

Original Request For Assistance, Re-Opening and Closure.

You'll (Mr. Tran) recall from your file review that in August 2011, Ms. Lee filed with the State Bar her (detailed) August 26, 2011 Complaint (the "COMPLAINT") against Mr. Hanley, with supporting documentation. At that time, Ms. Lee had not filed any action, instead believing the State Bar would protect her, as Mr. Hanley had clearly stolen $46,321 from her. The documentation was clear, and it was inconceivable to her (and to me) that the State Bar would not pursue Mr. Hanley. The State Bar's 12-15-11 refusal to proceed was wrongful in the first instance, but such was compounded by the language of the 12-15-11 rejection letter, which was written in "near-gibberish," fawning over Mr. Hanley's alleged replies, and making nonsensical points to justify the rejection. A copy of the State Bar's 12-15-12 letter is attached as A-1 to A-2.

With no State Bar remedy, Ms. Lee filed Lee v. Hanley. She should not have been forced to file that action or to carry its costs.

In my March 21, 2012 letter to the State Bar Audit and Review unit, I attempted a reply to each of the State Bar's "12-15-11 rejection letter" conclusions (as best I could understand them). Apparently, that was successful in that attorney Mark Hartman (Audit and Review) saw "ample grounds" for further investigation, etc., of Mr. Hanley. It is noteworthy that my letter pointed out the State Bar's unjustified prejudice favoring attorney Hanley, and the fact it appeared the State Bar hadn't even read Ms. Lee's COMPLAINT, and certainly wasn't looking at the evidence! A copy of my 3-21-12 letter is attached as B-1 to B-4.

My point regarding the COMPLAINT and letter rejection is that Ms. Lee filed with the State bar - without any other action pending, and relying solely on the State Bar - a legitimate, documented, credible complaint against Mr. Hanley, which should have proceeded to investigation/enforcement, without her having to file a lawsuit. It's noteworthy that despite the gibberish-like initial rejection - which completely ignored Ms. Lee's complaints, and treated her like a non entity not worthy of the State's protection - a member of Audit and Review found "ample grounds" (as said to me) for further action and so he reopened the complaint. (A copy of Mark Hartman's 11-6-12 letter to me is attached as Ex. C).

To now be told that because Ms. Lee has (the shell of) a lawsuit pending (she's still in the pleading stages, and the Judge has twice ruled that all "fiduciary breaches" and "money had and received" claims are barred by CCP §340.6, and he has stayed three concurrent motions to compel discovery pending a fraud-only-pleading, and so Ms. Lee has seen nothing in discovery) that she should pay for and obtain her remedy (if she can) through that civil lawsuit, says that the State Bar has pre judged the case and disbelieves her, and has no concern that Mr. Hanley is in fact a predator likely to prey upon others. It's noteworthy the case was not closed for lack of evidence, or lack of witnesses. To the contrary, no one was ever contacted; Rather, it appears the State Bar has wrongly and without justification decided to ignore Ms. Lee's complaints — that she is somehow not a credible member of the public or for some other reason needn't be considered, or that Mr. Hanley is for some reason to be given a "pass" despite his clear wrongdoing.

Despite clear facts leading to the "predator" conclusion, the State Bar turned a blind eye to Mr. Hanley's wrongdoing and in effect transferred all responsibility to Ms. Lee, informing her that

> "... this office has concluded that the court in which the civil case is located **has jurisdiction to determine if Mr. Hanley is not acting appropriately.**" (Emphasis added.)

Mr. Tran's case-closure letter, 11-20-12, is attached as D.

It's noteworthy that the quoted language wrongly implies that only the civil court has jurisdiction; That language **is more than misleading.** The inquiry at issue is precisely what the State Bar does and is charged with doing, yet Mr. Tran's letter does not mention the State Bar's jurisdiction and to the contrary implies the State Bar **must wait** until the civil court has acted and so **she must shoulder the responsibility of proving Mr. Hanley's moral turpitude** - the State Bar is both shirking its duties, and wrongfully misleading Ms. Lee.

While it was "affirming" that Audit and Review reopened the case, it was a travesty that Intake rejected it (12-15-11) and that now Mr. Tran (or whomever made the decision and instructed closure) closed it (11-20-12). As an aside, when I relayed Mr. Hartman's comments, and his decision to reopen the case, to Ms. Lee, she said I should stop telling her this as "you're going to make me cry"; She was so gratified that she was being listened to and treated fairly, and that the unjustified theft of her money was finally to be investigated.

But now, again, it's not!

Conclusion — Inappropriate Activity

This is not to say that every case has to be pursued; It is to say, however, that the facts herein lead to the conclusion Mr. Hanley egregiously violated his fiduciary duties, that several of the violations are continuing, and that Mr. Hanley should have been and should be investigated/prosecuted.

It is also to say that the "alleged" violations are major — moral turpitude/theft, warranting disbarment; It is also to say the facts lead to the further conclusion that the theft was knowing and intentional — Mr. Hanley also kept without mentioning the $9,725 in returned-expert-fees and never gave a final statement. (This was not a costs return he simply forgot, not when he'd already taken $46,321.)

Finally, it's especially noteworthy (for the tampering/inappropriate influence inquiry) that the State Bar's second "grounds" for case-closure was Ms. Lee's alleged "after-90-days" request for an Audit and Review. I know of nothing in any of the State Bar rules which jurisdictionally cuts off consideration of such a request at the 90 day period. Additionally, if such were to be raised, one would expect it to come from Audit and Review, but no such mention was there made, and, to the contrary, Audit and Review re opened the case. If any of you are aware of any such jurisdictional imperative (that an Intake rejection is not subject to review if the review request is received 90 days after the rejection letter), please provide me with a citation or copy of same. (Any such rule seems contrary to the State Bar's mission.) For argument purposes, however, assuming a fixed-90-day-cut-off, Mr. Hanley's alleged wrongdoing clearly amounted to several "continuing violations" — in which case a new

complaint by Ms. Lee would re open the matter and we would again be confronted with this same inquiry. If this is true, Mr. Tran (and his superiors) knew it, and yet the 90-day "rule" was raised as a grounds for case-closure. Why?

Although I hope it is not true (hoping instead that Mr. Tran is inexperienced or that he misunderstood his instructions, etc.), it appears: that the State Bar attempted to discourage or "chill" Ms. Lee's request for assistance, rather than help her; that it acted without any consideration for the public; and that it **acted affirmatively** to shield or protect Mr. Hanley. As I say, this is a wrongful, bogus case-closure.

It's hard for me to accept such a callous, calculated decision to specifically refrain from "doing-one's-duty." It was a decision which disregarded the safety of the public and Ms. Lee and her legitimate rights, while at the same time unjustifiably protecting the wrongdoer.

My understanding has always been that the State Bar polices me and my licensed brethren; It is my belief the State Bar should be acting in this matter. Ms. Lee and I again ask the State Bar to step in, to fairly review Ms. Lee's complaints, and to pursue and prosecute her complaints as legitimately warranted.

Very truly yours,

Walter J. Wilson
WJW:am

cc: Mark Hartman, Esq.
State Bar — Audit and Review (S.F.)

James Nelson, Investigator
State Bar — Enforcement (L.A.)

Nancy F. Lee (via email)

8C

THE STATE BAR OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL
ENFORCEMENT
Jayne Kim, Chief Trial Counsel

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December 12, 2012

Walter J. Wilson, Esq.
333 W. Broadway, Ste. 200
Long Beach, CA 90802

Re: Respondent: William Bernard Hanley
Case No.: 12-O-17451

Dear Mr. Wilson:

As you and I discussed very briefly on the telephone this afternoon, upon a careful review we have determined that the closure of this investigation on November 20, 2012, was done in error. That error has now been corrected and the matter has been returned to an open status. Investigator James Nelson will be working closely with Deputy Trial Counsel Timothy Byer on the matter, under my very close supervision. You will likely hear from Investigator Nelson and/or DTC Byer as the investigation proceeds.

The State Bar owes you and your client Ms. Lee an apology, not only for our error in having closed the matter prematurely after it had been reopened by the Audit and Review Unit, but also for the thoughtless remark in our letter of November 20, 2012, concerning the tardiness of your client's request for a re-evaluation of the matter by the Audit and Review Unit. As you have quite correctly pointed out, there is no jurisdictional 90-day submission rule for such a request, and the Audit and Review Unit in fact accepted and acted upon the request when it was received. The submission of the request beyond the 90-day deadline stated in the original closing letter from the Intake Unit should not have been considered after the investigation had been reopened, and it should not have been remarked upon.

Thank you very much for bringing your concerns to our attention. While I make no prediction as to the ultimate outcome, I can assure you that this matter will be thoroughly investigated.

Very truly yours,

Alan B. Gordon
Assistant Chief Trial Counsel

ABG/abg

PROOF OF SERVICE

1. I am employed in the County of Los Angeles, State of California. At the time of service I was over 18 years of age and **not a party to this action**.

2. My business address is: 333 West Broadway, Suite 200, Long Beach, CA 90802

3. On December 2, 2014, I served the following document(s): **APPELLANT'S MOTION FOR JUDICIAL NOTICE**

4. I served the documents on the **person or persons** below, as follows:

DIMITRI P. GROSS, ESQ.
LAW OFFICE OF DIMITRI P. GROSS
19200 VON KARMAN AVENUE, SUITE 900
IRVINE, CA 92612

CLERK FOR THE SUPERIOR COURT
SUPERIOR COURT OF CALIFORNIA
700 CIVIC CENTER DRIVE WEST, DEPT. C23
SANTA ANA, CA 92701

CLERK FOR THE COURT OF APPEAL
4TH DISTRICT COURT OF APPEAL, DIVISION 3
601 W. SANTA ANA BOULEVARD
SANTA ANA, CA 92701

OFFICE OF THE ATTORNEY GENERAL
300 S. SPRING STREET, SUITE 1700
LOS ANGELES, CA 90013

5. The documents were served by the following means:

a. **(XX) By United States Mail.** I enclosed the documents in a sealed envelope or package to the persons at the addresses in item 4 and **placed** the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid and mailed at **LONG BEACH, CA.**

Executed this 1 day of December 2014, at Long Beach, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Adela Mercado