

Boyd & Kimball LLP

Founded in 2003, upon the close of Hansen, Boyd, Culhane & Watson, the law firm of Boyd & Kimball, LLP continues the Hansen, Boyd tradition of service to clients, the Bar and the community. Founding partners, David E. Boyd and Betsy S. Kimball, each have more than 25 years of practice experience. Boyd & Kimball fuses this experience with a seasoned staff to provide its clients with quality legal services, designed to achieve each client's goal in a cost-efficient manner.





Services

Boyd & Kimball attorneys provide legal services in the following practice areas:

Business Litigation

The firm provides a full range of litigation support in business litigation matters, including breach of contract, unfair competition and business torts.

Attorneys at Law

The firm represents attorneys in all matters pertaining to the practice of law, including the defense of professional liability claims, claim repair, consultation regarding law firm formation, dissolutions and insurance matters, law firm audits, ethics matters, license disciplinary proceedings, and expert witness consultation. In appropriate cases, the firm provides consultation or expert services in legal actions by former clients against attorneys.

Writs and Appeals

The firm accepts referrals from parties and other law firms (for substitution, association or consultation) in both civil and select criminal matters, and handles appeals that arise from within the firm.

Real Estate and Insurance Professionals

The firm has a broad range of experience in litigation involving real estate and insurance brokers and agents in contract disputes and in the prosecution and/or defense of liability claims.

Engineers and Design Professionals

The firm represents architects and engineers in the defense of professional liability claims and also accepts selected plaintiff cases.

Products Liability/Aviation Accidents

The firm is experienced in the prosecution and defense of product liability claims, including vehicles, farm machinery and damages claims arising from aircraft accidents.

Arbitration and Mediation Services

The firm provides arbitration and mediation services.



Recent Cases

The firm has prevailed on multiple summary judgment motions, including a motion defeating multi-million claims arising from the development of nearly 1,000 acres of land in West Sacramento.

River Rock, LLC v. [Clients], Yolo County Superior Court Case No. CV 03-300

The firm has also obtained summary judgments for law firms in several legal malpractice/breach of fiduciary duty lawsuits including the following:

Hutchison v. [Law Firm], Sacramento County Superior Court Case No. 04AS02643

Slovensky v. [Law Firm], Sacramento County Superior Court Case No. 02AS06907, affirmed on appeal, 142 Cal.App.4th 1518 (2006).

Klug v. [Law Firm], Sacramento County Superior Court Case No. 03AS01305

After six weeks of trial in arbitration, Mr. Boyd successfully defended a claim against his clients for \$10 million in a case involving wastewater treatment at a tomato and peach processing facility and secured an award of over \$1 million for his clients. A panel of three appellate arbitrators affirmed the award in 2005.

Harter Tomato Products Company v. [Client]

Ms. Kimball obtained a reversal on behalf of a plaintiff, against whom summary judgment had been entered at the trial court level in an action against a commercial real estate agent involving the sale of a shopping center. Upon remand, in 2005, the Superior Court entered summary judgment for the client in an amount exceeding \$1 million.

Roberts v. Lomanto, 112 Cal.App.4th 1553 (2003)

Ms. Kimball obtained a defense award in a legal malpractice case that was tried in a binding American Arbitration Association proceeding.

Robinson v. [Law Firm], AAA 74194 01776 02 GAP

The firm obtained an order granting the client's special motion to strike under the anti-SLAPP (Strategic Lawsuit against Public Participation) statute in an action alleging malicious prosecution of the underlying case.

Ellers v. [Sacramento Law Firm], Sacramento County Superior Court Case No. 03AS02277



Ms. Kimball recently preserved on appeal the client's summary judgment in an insurance coverage case. The clients were sued by their insurer for a declaratory judgment. The insurer alleged that damages caused by mold were excluded under the clients' Business Owners Liability policy.

California Capitol Insurance Company v. [Clients], California Court of Appeal, Third District Case No. C041613

Following a five-week jury trial, Mr. Boyd obtained a defense verdict on behalf of a water resort and marina in a personal injury action, including claims for defective design of a house boat and outboard motor.

Lawhorn v. Water Resorts, Inc., et al., San Joaquin County Superior Court Case No. 283111

In multiple state and federal actions arising out of the crash of a general aviation aircraft in Reno Nevada, the firm obtained dismissals of each action on behalf of the repair facility responsible for the overhaul of the aircraft's engine driven fuel pipe.

Stutes v. Textron Lycoming, et al., United States District Court, Eastern District of California Case No. CIV S-01-1074 FCD

Armstrong v. Textron Lycoming, et al., United States District Court, District of Nevada Case No. CV-N-02-0309 HDM

Evans, et al. v. Textron Lycoming, et al., San Francisco County Superior Court Case No. 321848

In a legal malpractice action filed in Tennessee against California attorneys, Mr. Boyd successfully obtained dismissal of the action and the imposition of Rule 11 sanctions for the full amount of attorneys' fees incurred in defending the Tennessee action on the ground that the federal court was without subject an matter jurisdiction.

Canterbury Women's Health Care, Inc., et al. v. [California Attorneys], United States District Court, Eastern District of Tennessee (Greenville) Case No. 2:02-CV-29



Article 1

THE PROFESSION'S CORE ETHICAL VALUES: IS CALIFORNIA REALLY SO DIFFERENT?

by David Boyd

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In previous articles I have commented that the California Rules of Professional Responsibility are materially different than the ABA Model Rules followed in virtually every other jurisdiction. Certain core professional values central to the ABA Model Rules are not even addressed in the California Rules, but instead are found in statutes or case law. It is, therefore, not surprising that California's patchwork of statutes, case law and ethical rules are confusing and sometimes contradictory. The purpose of this article is to examine some of the core values of the legal profession and point out some significant examples of differences between the ABA Model Rules and the California Rules of Professional Conduct.

Although various commentators define the core values of the legal profession in different ways, for purposes of this article I have divided them into four broad categories, as follows: (1) obligation to the system of justice; (2) duty to maintain client confidences; (3) duty of undivided loyalty; and (4) competency.

Obligation To The System Of Justice

The California Rules of Professional Conduct do not contain a direct statement of an attorney's obligation to promote the administration of justice. The California courts, however, have emphasized that, as an officer of the court, an attorney has a paramount obligation to the orderly administration of justice, and this duty is not deemed to be inconsistent with zealous representation. (See, e.g., *People v. Chong* (1999) 76 Cal.App.4th 232, 243; *Chula v. Superior Court* (1952) 109 Cal. App.2d 24, 39.) "An attorney has an obligation not only to protect his client's interest, but also to respect the legitimate interest to fellow members of the bar, the judiciary and the administration of justice." (*Kirsch v. Duryea* (1978) 21 Cal.3d 303, 309.) Subdivision (b) of Business and Professions Code section 6068 simply provides that an attorney shall maintain the respect due to the courts and judicial officers.

In contrast, the ABA Model Rules provide specific guidance to the practitioner. In the section entitled "Preamble: A Lawyer's Responsibilities," the 2002 version of the Model Rules emphasizes an attorney's responsibility to promote the rule of law and the American system of justice. For example, the preamble to the Model Rules states that a lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. There is an admonition that lawyers should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. There is also a statement that lawyers should devote professional time and resources to ensure equal access to our system of justice for those who, because of economic or social barriers, cannot afford or secure adequate legal counsel. Lawyers should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service. Lawyers have an obligation to zealously protect and pursue a client's legitimate interest, within the bounds of law, while maintaining a professional, courteous and civil attitude towards all persons involved in the legal system.

In fact, the guiding principles under the ABA Model Rules and California law are the same; the differences are found in emphasis and completeness. Although Rule 3-200 of the California Rules of Professional Conduct contains an express prohibition against asserting a position in litigation without probable cause and/or for the purpose of harassing or injuring any person, the California Rules do not affirmatively state the attorney's obligation to the administration of justice or provide guidance as to how to meet that obligation. Unlike the Model Rules, the California Rules do not contain a preamble or aspirational statement for the purpose of emphasizing an attorney's paramount obligation to the system of justice. A comprehensive professional standard requires a strong and clear statement of an attorney's "paramount obligation to the due and orderly administration of justice." There is no logical reason why the California Rules should continue to be deficient in that regard.

Confidentiality

The California Rules of Professional Conduct are also without a rule to protect client confidences. Business and Professions Code section 6068, subdivision (e), contains the unconditional mandate that an attorney must "maintain inviolate the confidence, at every peril to himself or herself to preserve the secrets, of his or her client." Section 950 et seq. of the California Evidence Code codifies the attorney-client privilege, but contains an exception in section 956.5, permitting the attorney's compelled testimony when he or she believes the client will commit a criminal act that will cause death or great bodily harm. Since 1987, the California Supreme Court has rejected three separate proposals by the State Bar for a new Rule 3-100 to the California Rules of Professional Conduct that would provide a "death or seriously bodily injury" exception to the duty of confidentiality. The unfortunate result is that California has no rule of professional responsibility to protect this core value. In this manner, both the State Bar and the Supreme Court have conceded regulation of attorney conduct on this issue to the legislature under Business and Professions Code section 6068, subdivision (e).

Rule 1.6 of the ABA Model Rules of Professional Conduct has been adopted in some variant in virtually every other state of the Union. Although there are slight differences in the Rule from state to state, they all either require or permit an attorney to reveal confidential client information in an effort to save a life. In this manner, the ABA Model Rules are integrated and comprehensive; whereas the California Rules of Professional Conduct are silent and provide no guidance in the face of ambiguous and contradictory statutory language.

Duty Of Undivided Loyalty

At the heart of the attorney-client relationship is the duty of loyalty and counsel's obligation to exercise independent judgment. Both the California Rules of Professional Conduct and the ABA Model Rules have fashioned rules of conduct intended to foster this core value by mandating the recognition and avoidance of conflicts of interest. Because conflicts of interest are a common occurrence in the legal profession, the emphasis of the rules is first upon identification of potential and actual conflicts of interest. Upon recognition of a conflict, counsel is required to either withdraw from further representation or to obtain the informed consent of the client after consultation. Although the California and ABA Rules clearly have the same goal, in many ways the rules are substantially different.

Both the 2001 and 2002 versions of the ABA Model Rules contain comprehensive instructions on recognition and avoidance of conflicts of interests in Rules 1.7, 1.8, 1.9, 1.10, 1.11 and 1.12. Although space here does not permit a thorough comparison of the California and ABA Model Rules, suffice to say that the ABA Model Rules are far more comprehensive and detailed in the treatment of the subject matter than are the California Rules. For example, the ABA Model Rules

contain specific provisions relating to: imputation of an individual attorney's conflict of interest to his or her law firm; acceptance of gifts from clients; aggregate settlements among jointly represented clients; attorneys moving between firms; government employees; and attorneys acting in the capacity of judge, arbitrator or mediator.

In the past, the California Rules of Professional Conduct have provided a greater degree of client protection than the ABA Model Rules because the California Rules have mandated that the client give his or her informed written consent to representation where there is a potential or actual conflict of interest. The 2002 version of the ABA Model Rules have essentially adopted the California view and now contain a provision for written consent after consultation.

Competency

Competency is a core value of the legal profession; however, that term is defined differently in the California Rules than in the ABA Model Rules, and, as a consequence, the impact of the rules is materially different. Under ABA Model Rule 1.1, a lawyer is required to provide competent representation in the sense that he or she must possess the requisite legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Under the California Rules, the concept of competence is expanded to include both diligence and the mental, emotional and physical ability reasonably necessary for the performance of legal services. Rule 3-110 of the California Rules of Professional Conduct does not impose discipline unless the member intentionally, recklessly and/or repeatedly fails to perform legal services competently.

The difference between the California Rules and ABA Model Rules becomes apparent in the context of claims for legal malpractice. Whereas the ABA Model Rules simply require that the practitioner be properly qualified by reason of legal knowledge, skill and preparation for the representation, the California Rule introduces the concept of diligence in the course of the representation. Consequently, plaintiffs' attorneys in legal malpractice actions in California sometimes claim that the defendant attorney fell below the minimum ethical standard established by the California Rules of Professional Conduct by virtue of simple negligence (i.e., lack of diligence) in the representation.

Although Rule 1-100 of the California Rules of Professional Conduct clearly provides that the Rules do not create or augment a civil cause of action, California courts have held that the rules of professional conduct help define the duty which an attorney owes to his or her client. An unwanted consequence of the expanded definition of competence under the California Rules is to improperly introduce the concept of a single act of negligence into attorney ethical standards.

The California Rules of Professional Conduct are clearly inadequate to meet the needs of the largest and most dynamic bar association in the country. California's standards for professional conduct have not developed as an uniform and comprehensive set of rules, but are a patchwork of regulations, statutes and case law, driven in part by the paramount role of the legislature in establishing core ethical standards. The Rules are completely silent as to the core values of protecting client confidences and an attorney's obligation to the system of justice. With respect to the duty of loyalty, avoidance of conflicts and independence, the California Rules are less than comprehensive. For these reasons, California Rules fail in comparison to the ABA Model Rules. It is time that these deficiencies be recognized and acted upon by The Commission for the Revision of The Rules of Professional Conduct.



Article 2

FORM OVER SUBSTANCE? FOSTERING THE EVOLUTION OF A NATIONAL STANDARD FOR ATTORNEY CONDUCT

by David Boyd

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In July of 2001, the Board of Governors of the California State Bar assigned the task of a five-year study to evaluate the existing California Rules of Professional Conduct to the Commission for the Revision of the Rules of Professional Conduct. The Commission is required to study the rules in their entirety, taking into consideration the Final Report and Recommendations of the American Bar Association's Ethics 2000 Commission and the American Law Institute's Restatement of the Law 3d, The Law Governing Lawyers, as well as other authorities relevant to the development of professional responsibility standards. The Commission is specifically charged to develop proposed amendments to the California rules that: *"Eliminate and avoid unnecessary differences between California and other states, fostering the evolution of a national standard with respect to professional responsibility issues."*

California stands alone as the only jurisdiction in the United States that has declined to adopt ethical rules in the format of the American Bar Association (ABA) Model Rules of Professional Conduct or the predecessor the ABA Model Code of Professional Responsibility. At last count, at least 44 states and the District of Columbia have adopted the ABA Model Rules, and the remaining states have adopted a version of the ABA Model Code. Although there are significant differences in the professional responsibility rules from state to state, every jurisdiction, except California, has established a comprehensive set of rules organized in the format of the ABA Model Rules or Model Code.*

In contrast, the California rules are supplemental, not comprehensive. Rather than a single source of reference for ethical questions, California lawyers must cope with a confusing and often contradictory matrix of statutes, case law and rules of conduct. Professional conduct rules for California lawyers may be found in the Business and Professions Code (e.g., The State Bar Act), the Code of Civil Procedure, Evidence Code, Family Code, Labor Code, and Probate Code. The California Rules of Professional Conduct generally do not restate these statutes, but supplement the statutory framework. In those areas where there is no statute or rule, notably imputation of knowledge of client confidences for conflicts of interest, California case law has filled the gap. The result is a patchwork of ethical regulations, which are understandably difficult for the average California lawyer to understand fully. Missing from the California rules is an officially sanctioned effort to explain the marked differences between the ABA Model Rules and the California Rules of Professional Conduct.

For example, many lawyers would be surprised to learn that there is no rule of professional conduct in California to protect the confidentiality of client communications.** In this state, an attorney's ethical duty to preserve client confidentiality is embodied in two statutes, which are directly contradictory in material part. Thus, Evidence Code section 956.5 provides an exception to the attorney-client privilege that would permit the attorney's compelled testimony when he or she believes the client will commit a criminal act that will cause death or great bodily harm; whereas, Business and Professions Code section 6068(e) admits of no exception and mandates that the lawyers must "maintain inviolate the confidence, and at every peril to himself or herself to preserve

the secrets, of his or her client.” Recent case law has done nothing to mitigate the ambiguity in the conflicting statutory language. (See, e.g., *People v. Dang* (2001) 93 Cal.App.4th 1293.) No one could reasonably argue that continuing confusion on an ethics issue of this significance serves the members of the bar or the public at large.

The client confidence issue is also a good example of how the California State Bar has become marginalized, its effectiveness and influence eroded because its ethical rules are perceived to be confusing and out-of-step with the rest of the country. As of February of 2001, the Attorneys’ Liability Assurance Society reported that the ethical rules in 38 states and the District of Columbia provided that an attorney “may” reveal confidential client information in an effort to save a life; 11 states mandated that a lawyer “must” disclose confidential client information under such circumstances; and one state (New Mexico) provides that the lawyer “should” disclose such information. Only California’s statutory scheme mandates that lawyers “must not” disclose a client confidence, unless compelled to testify, even if he or she believes that the client will commit a criminal act resulting in imminent death or great bodily harm.

Recognizing that important differences exist between California’s ethical rules and the ABA Model Rules, the Board of Governors has directed the Rules Revision Commission to eliminate unnecessary differences with the ABA Model Rules in order to foster the evolution of a national standard. To that end, a number of commentators have suggested that California should adopt the Model Rules format, with appropriate modifications to reflect these important differences in California’s rules.

This is more than simply a matter of form over substance because it is the necessary first step to foster “the evolution of a national standard.” In this way, the important differences between California and other jurisdictions could be highlighted and explained. Not only will this assist the California lawyer in understanding his or her ethical responsibilities, it will require the Commission to justify the need for differences between California and other jurisdictions. Adopting the ABA Model Rules format will provide the opportunity to eliminate unnecessary differences where the rules can be harmonized and to clarify the differences where the rules cannot be harmonized. It is difficult to imagine a more effective catalyst to provoke the reasoned debate necessary to cause the legislative changes that will permit California to move toward a national standard with respect to professional responsibility issues.

More closely aligning the California rules with the ABA Model Rules is a necessary and achievable goal. California is an indomitable force in the politics and economy of the nation, and California’s professional responsibility standards should have comparable influence. California lawyers have strong ties to the practice of law across the country, where the Model Rules establish the ethical standards for attorneys. Likewise, many attorneys from other jurisdictions appear in California pro hac vice and are subject to the California rules. Adoption of the Model Rules format will promote clarity and understanding of the ethical rules and markedly improve the administration of justice.

David E. Boyd, Esq., is a partner in the firm Boyd & Kimball, LLP. His litigation practice emphasizes liability defense of attorneys, accountants, insurance and real estate professionals. Mr. Boyd is admitted to practice in California, Colorado and Iowa, and he has appeared before state and federal courts throughout the United States. He frequently serves as a judicial arbitrator and a pro tem judge for the Sacramento County and Placer County courts. Mr. Boyd is active in local bar activities, including service on the Sacramento Bar Council, chairman of the Professional Responsibility Committee of the Sacramento Bar Association, member of the Committee on Professional



Responsibility and Conduct of the State Bar of California (COPRAC) and the California State Bar Conference of Delegates. Mr. Boyd is currently serving as the Sacramento County liaison to the Commission for the Revision of the Rules of Professional Conduct for the California State Bar.

*The ABA Model Rules are divided into eight "chapters," as follows: (1) Client-Lawyer Relationships; (2) Counselor; (3) Advocate; (4) Transactions with Persons Other Than Clients; (5) Law Firms and Associations; (6) Public Service; (7) Information About Legal Services; and (8) Maintaining the Integrity of the Profession.

**Since 1987, the California Supreme Court has rejected three separate proposals by the State Bar for a new Rule 3-100 to the California Rules of Professional Conduct that would provide a "death or seriously bodily injury" exception to the duty of confidentiality. Presumably, the Supreme Court has concluded that this matter is within the exclusive province of the legislature under Bus. & Prof. Code § 6068(e)

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Article 3

CIVILITY AND PROFESSIONALISM: "ORDER IN THE COURT"

by David Boyd

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The reality of a modern litigation practice is a long way from what I imagined as an aspiring law student 25 years ago. Like many of my generation, I held an idealized view of courtroom lawyers as the epitome of civility and integrity, humbled by the weight of great responsibility, yet fearless in their advocacy. The practice of law was not just a job. It was a noble profession shared with brothers and sisters in the law bound by a commitment to our system of justice and a mutual respect for each other.

Real life turned out to be a bit more complicated. Like a mirror, some lawyers reflect the rancor of their warring clients, at the expense of civility and decorum. Rather than allowing themselves to be perceived as weak, these attorneys disrupt legitimate discovery, resort to unnecessary law and motion and promote anger and distrust between counsel. If success in court means "hardball" litigation tactics, some lawyers overlook the ethical questions raised by such conduct. California courts have noted with dismay the ever growing number of cases in which civility between counsel is lacking. *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1438; *Tilo v. Superior Court* (1997) 55 Cal.App.4th 1379, 1386, fn. 3.) In the media, we are routinely subjected to real and fictionalized examples of unprofessional behavior by attorneys, notable for its lack of civility and disrespect for opposing counsel and the court. It should come as no surprise that public confidence in lawyers and the system of justice has suffered.

A November 2002 Gallup Poll asked a cross-section of the public to rate the ethical standards of 21 different professions. Attorneys continue to be at the bottom of the list, with 35 percent of the respondents rating the honesty and ethics of lawyers to be low or very low. Only telemarketers and car salesmen fared worse.

The legal profession is by its very nature adversarial and confrontational. Attorneys are advocates primarily concerned with the protection of their client's legal rights against opposing interests. A lawyer's first obligation is to zealously protect and pursue the client's legitimate interests within the bounds of the law. However, the lawyer is also charged with maintaining a professional, courteous and civil attitude toward others in the legal system. "An attorney has an obligation not only to protect his client's interest, but also to respect the legitimate interest of fellow members of the bar, the judiciary and the administration of justice." (*Kirsch v. Duryea* (1978) 21 Cal.3d 303, 309.) In this respect, civility and professionalism are not deemed to be inconsistent with zealous representation, but rather enhance the speedy resolution of dispute within our system of justice. Although a client may pressure his attorney to exacerbate combat with opposing counsel, avoiding confrontation may better serve the client's legitimate legal interests. In a recent opinion of the Third District Court of Appeal, this ethical principle was stated as follows:

"[I]t is vital to the integrity of our adversary legal process that attorneys strive to maintain the highest standards of ethics, civility, and professionalism in the practice of law. In order to instill public confidence in the legal profession and our judicial system, an attorney must be an example of lawfulness, not lawlessness. Accordingly, an attorney, 'however zealous in his client's behalf, has,

as an officer of the court, a paramount obligation to the due and orderly administration of justice. . . .” (*People v. Chong* (1999) 76 Cal.App.4th 232, 243, citing *Chula v. Superior Court* (1952) 109 Cal.App.2d 24, 39.)

The California courts have emphasized that civility and professionalism are ethical issues of paramount importance in promoting public confidence in the administration of justice. It is, therefore, disappointing that the California Rules of Professional Conduct fail to even address the subject, perhaps out of concern that such rulemaking might create a “gray letter” standard for attorney discipline. Moreover, the statutory admonition that California attorneys abstain from “offensive personality,” was amended out of subdivision (f) of Section 6068 of the Business and Professions Code because that term was held by a federal court to be unconstitutionally vague. (*United States v. Wunsch* (9th Cir. 1996) 84 F.3d 1110.) Unfortunately, this situation provides little guidance to the conscientious California practitioner and is no doubt taken as license by the by the less scrupulous.

In contrast to the “hands off” approach under the California Rules, the House of Delegates of the American Bar Association adopted “A Lawyer’s Creed Of Professionalism” in 1988. These voluntary standards enumerate specific ways in which the attorney is encouraged to comply with his or her responsibility for civility and professionalism. A number of local bar associations in California, including the Sacramento County Bar Association, have followed this example and adopted local voluntary standards.

In 1994, under the leadership of then-President **Kenneth Malovos**, the Sacramento County Bar Association adopted its Standards of Professional Conduct (“Standards”), which are structured to provide specific guidance with respect to the professional relationships between opposing counsel and with the court. These Standards have been incorporated into Local Rule 9.22 of the Sacramento County Superior Court. Although violation of these Standards is not a ground for discipline before the State Bar, the Standards may be considered, within the discretion of the court, for the purpose of evaluating the appropriateness of sanctions under Sections 128, 128.5, 128.7, 177 and 177.5 of the Code of Civil Procedure.

The Standards represent a salutary example of local bar leadership in an area that has not received adequate treatment at the State Bar level. Every lawyer practicing in the Sacramento County Superior Court should become familiar with the Standards, which may be found on the court’s web site. (The Standards will be published in full in the next edition of *Sacramento Lawyer*.)

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David E. Boyd

David E. Boyd is a partner in the firm of Boyd & Kimball, LLP.

Mr. Boyd's practice emphasizes liability defense of attorneys, accountants, insurance and real estate professionals, business litigation, litigation involving engineering, architects and construction disputes, products liability involving aircraft, maritime law, motor vehicles and machinery. Mr. Boyd is admitted to practice in California, Colorado and Iowa (inactive), and he has appeared before state and federal courts throughout the United States. He frequently serves as a judicial arbitrator and a pro tem settlement conference judge for the Sacramento County Superior Court. Mr. Boyd has taught Advanced Torts at the University of the Pacific, McGeorge School of Law. Mr. Boyd has authored numerous articles for various legal journals, particularly in the areas of trial practice and ethics. He has been active in state and local bar activities, including the Sacramento Bar Council, the Professional Responsibility Committee of the Sacramento County Bar Association, the Committee on Professional Responsibility and Conduct of the State Bar of California (COPRAC), Sacramento County Liaison to the State Bar Commission for the Revision of the Rules of Professional Conduct, the Conference of Delegates of California Bar Associations, the American Bar Association and numerous trial lawyer organizations. Mr. Boyd is AV rated by Martindale-Hubbell.

BAR ASSOCIATIONS

State Bar of California, 1976
Colorado Bar Association, 1985
Iowa State Bar Association, 1983

United States Supreme Court
United States Court of Appeals, Sixth Circuit
United States Court of Appeals, Eighth Circuit
United States Court of Appeals, Ninth Circuit
United States Court of Appeals, Tenth Circuit

PROFESSIONAL ORGANIZATIONS AND ACTIVITIES

State Bar of California, 1976-Present;

State Bar of California, Standing Committee On Professional Responsibility And Conduct, 1999-2002;

State Bar of California, Special Master, 1995-1996;

State Bar of California, Committee on Rules of Court, 1982-1983;

Sacramento County Liaison to State Bar Commission for the Revision of the Rules of Professional Conduct, 2002-Present;

Bar Council, Sacramento County Bar Association, 1978-1983; 1996-2001;

Conference of Delegates of California Bar Associations, Sacramento County Bar Association, 1978-1983, 1988-2004;

Sacramento County Bar Association, 1978-1983; 1988-Present;

Chairman, Sacramento County Bar Association Professional Responsibility Committee, 1999-2005;

Colorado Bar Association, 1985-Present;

Iowa Bar Association, 1983-Present;

American Bar Association, 1978-Present.

ARBITRATION AND MEDIATION

American Arbitration Association, Panel of Arbitrators, 1982-1996;

American Arbitration Association, Mediation Training, 1984

Sacramento Superior Court, Judicial Arbitrator, 1988-Present;

Sacramento Superior Court, Settlement Conference Judge Pro Tem, 1988-Present;

Placer County Superior Court, Settlement Conference Judge Pro Tem, 1988-2001.

El Dorado County Superior Court, Settlement Conference Judge Pro Tem, 1988-2001, 2006-Present.

PUBLICATIONS, PRESENTATIONS AND TEACHING EXPERIENCE

The Profession's Core Ethical Values: Is California Really So Different?

Sacramento Lawyer, March/April 2003;

www.sacbar.org/members/saclawyer/mar_apr2003/index.html

Civility and Professionalism: "Order In the Court!"

Sacramento Lawyer, January/February 2003;

www.sacbar.org/members/saclawyer/jan_feb2003/index.html

Form Over Substance? Fostering the Evolution of a National Standard for Attorney Conduct,

Sacramento Lawyer, November/December 2002;

www.sacbar.org/members/saclawyer/nov_dec2002/index.html

Bad Law on Bad Faith in Colorado,

CTLA (Colo.) Trial Talk, Vol. 35, No. 11, 1987;

Non-compliance with Federal Airworthiness Certification Standards,

CTLA (Cal.) Forum, Vol. XVI, No. 3, 1986;

Airworthiness Directives in Aviation Litigation,
ATLA Trial Magazine, Vol. 22, No. 8, 1986;

Evidence Code Section 771: Conflict With Privileged Communications,
6 Pacific Law Journal, 612-630, 1975;

Co-Author, *Review of Selected 1974 California Legislation, Civil Procedure*,
6 Pacific Law Journal, 195-238, 1975;

Presenter/Panelist, *California Legal Ethics: Confidentiality in the Spotlight*,
Lorman Education Services, 2005;

Presenter/Panelist, *Recent Significant Developments Affecting the Law of Lawyers*,
Committee On Professional Responsibility and Conduct, State Bar of California Annual Meeting,
2000, 2001, 2002;

Moderator/Panelist, *The Evolving Legal Profession: The Role of Lawyers in the 21st Century*,
Committee on Professional Responsibility and Conduct, State Bar of California Sixth Annual
Statewide Ethics Symposium, 2002;

Panelist and Speaker, *At the Cross Roads: Legal Ethics and Legal Malpractice*,
California Legal Ethics Seminar, Lorman Education Services, 2001-2002;

Panelist and Speaker, *Recognizing and Avoiding Conflicts of Interest*,
Continuing Education of the Bar, 2001;

Moderator/Speaker, *Current Ethical Issues: How to Avoid State Bar Discipline and Malpractice*,
McGeorge School of Law, 2001;

Moderator and Panelist, *Taking and Defending Effective Depositions in California*,
Lorman Education Services, 1999;

Moderator and Panelist, *Practical Legal Ethics: Issues and Answers*,
Lorman Education Services, 1997, 2000;

Instructor, *Motions Workshop/Evidence Workshop*,
University of San Francisco School of Law Intensive Advocacy Program, 1990-2001;

Adjunct Professor, *Advanced Torts*,
McGeorge School of Law, 1990-1991.

SELECTED PUBLISHED DECISIONS

Sosinsky v. Grant, 6 Cal.App.4th 1548 (1992)

Scarzella v. DeMers, 17 Cal.App.4th 1762 (1993)

Four Corners Helicopters, Inc. v. Turbomeca, S.A., 677 F.Supp. 1096 (D. Colo. 1988)



EDUCATION

University of Oklahoma

B.A. in Mathematics, 1968

University of the Pacific, McGeorge School of Law

J.D. with honors, 1976 Associate Editor of the Pacific Law Review

Traynor Honor Society

MILITARY SERVICE

United States Navy (Naval Aviator) Active Duty, 1968-1973

During the Viet Nam War, Mr. Boyd flew electronic warfare missions from the USS Kitty Hawk (CV63). Mr. Boyd attended Safety Officer's School at the Navy's Postgraduate School in Monterey and also served as Landing Signal Officer for CVW-13.

Naval Reserve, 1973-1992

Mr. Boyd continued to fly carrier based aircraft in the Naval Reserve, with VAQ 208 attached to CVWR20, during which time he served as Squadron Maintenance Officer, Operations Officer, Administrative Officer, Executive Officer and eventually Commanding Officer of the squadron in 1988-89. Thereafter, Mr. Boyd assumed command of Naval Reserve, USS Ranger (CV-61), before his retirement in 1992.



Betsy S. Kimball

Betsy S. Kimball is a partner in the firm.

Ms. Kimball is a certified specialist in appellate law (State Bar of California, Board of Legal Specialization). Ms. Kimball maintains a practice emphasizing appellate matters, legal malpractice litigation, counseling in legal ethics and liability loss prevention, business and civil rights litigation. Ms. Kimball also handles select personal injury cases.

PROFESSIONAL ORGANIZATIONS AND ACTIVITIES

Bar Admissions

California, 1975

State Bar of California Committee on Appellate Courts, Member, 2003-2006

Alabama (Inactive), 1976

United States Supreme Court

Fifth Circuit Court of Appeals

Ninth Circuit Court of Appeals

Mediator, Third District Court of Appeal, 2007-Present

Judicial Arbitrator, Sacramento County Superior Court, 1983-Present

Judge Pro Tempore, Sacramento County Superior Court (Small Claims Division), 1994-2004

California Appellate Defense Counsel, Member, 2004 - Present

Central California Appellate Program, Panel Member, 2002-Present

California Society for Healthcare Attorneys, 1981-Present

EDUCATION

University of California, Berkeley

B.A. with honors (highest honors in major), 1972

University of San Francisco

J.D., 1975

Member of the Law Review, 1973-1975



SELECTED PUBLISHED APPELLATE DECISIONS

Slovensky v. Friedman, 142 Cal.App.4th 1518 (2006)

K.R.L. Partnership v. Superior Court, 120 Cal.App.4th 490 (2004)

Roberts v. Lomanto, 112 Cal.App.4th 1553 (2003)

Brown v. Kennard, 94 Cal.App.4th 40 (2001)

Channel Lumber Co. v. Porter Simon, 78 Cal.App.4th 1221 (2000)

Adams v. Paul, 11 Cal.4th 583 (1995)

Hellman v. Anderson, 233 Cal.App.3d 840 (1991)

Bartschi v. Chico Community Memorial Hospital, 137 Cal.App.3d 502 (1982)

Jefferson County Pharmaceutical Assn., Inc. v. Abbott Laboratories, 656 F.2d 92 (5th Cir. 1981)

People v. Bowen, 125 Cal.App.4th 101 (2004)

People v. Adams, 124 Cal.App.4th 1486 (2004)

PUBLICATIONS, PRESENTATIONS AND TEACHING ASSIGNMENTS

Ms. Kimball has taught Professional Responsibility at the University of the Pacific, McGeorge School of Law, and Business Law at California State University, Sacramento.

Panelist, Legal Ethics in California,
Lorman Educational Services (August 2008)

Proposition 209, Another Look,
PARSAC Press, Vol. X, Issue 1 (Winter 2003)

Panelist, Legal Ethics Symposium,
Protection & Advocacy, Inc. (March 2000)

Speaker, *The Legal Secretary's Role in the Prevention of Legal Malpractice*
Capitol Cities Legal Secretaries Association (March 1998)

"Scope of Employment" – The California Supreme Court Eliminates Some Confusion,
PARSAC Press, Vol. III, Issue 2 (April 1996)

ADR and Malpractice,
The Docket, September 1989, reprinted in Lawyers' Mutual Insurance Bulletin, Vol. 4, No. 7



The Peril of Office Sharing,
The Docket, March 1989, reprinted in Los Angeles Daily Journal

Practice and Malpractice: Terminating the Attorney-Client Relationship
The Docket, July 1988

Hospital Corporate Negligence Comes to California, Questions in the Wake of Elam v. College Park Hospital,
14 Pacific L.J. 803 (1983) (co-author)

Public Housing Litigation Manual,
Legal Services Corporation of Alabama (1979)

Private Housing Litigation Manual,
Legal Services Corporation of Alabama (1978)

Contributory Negligence as a Defense to Medical Malpractice,
8 U.S.F.L. Rev. 386 (1973)

COMMUNITY

Sacramento Child Advocates, Inc.
Member, Board of Directors, 2002-Present
Chair, 2008
Vice-Chair, 2004-2007
"Who Stands for the Children," www.sacbar.org/members/saclawyer/nov_dec2004/index.html

LANGUAGES

French (Conversant)

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