

PROFESSIONAL LIABILITY UPDATE

Jennifer A. Becker

David P. Borovsky

Shoshana Y. Chazan

Chip B. Cox

Edward F. Donohue, III

Kathleen M. Ewins

Kathleen A. Foley

Bruce N. Furukawa

Howard M. Garfield

Jason A. Geller

J. Michael Higginbotham

John B. Hook

William L. Jacobson

Farand C. Kan

Anna Kapetanakos

Joseph P. McMonigle

Douglas J. Melton

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Jessica B. Rudin

Richard J. Sciaroni

Steven Sharafian

Jennifer W. Suzuki

Jeanette Traverso

Karen L. Uno

Seth E. Watkins

Gerald G. Weisbach

Irene K. Yesowitch

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LEGAL MALPRACTICE

California Law

By Anna Kapetanakos

The First District holds that a violation of the Rules of Professional Conduct cannot form the basis for an intentional infliction of emotional distress claim.

Ross v. Creel Printing & Publishing Company, Inc, et al. (2002) 100 Cal.App.4th 736

Daniel C. Ross (“Ross”) filed a complaint against defendants Creel Printing & Publishing Company, Inc. (“Creel”), Gary R. Kasufkin, and various Does for intentional infliction of emotional distress. Ross alleged that attorney defendants sent a letter informing him that certain checks sent to Creel by Ross were returned unpaid, and threatened to inform the Nevada County District Attorney. Ross alleged that the attorney’s conduct was extreme and outrageous because of the attorneys’ ethical obligation not to threaten criminal prosecution to obtain an advantage in a civil proceeding.

The attorney’s demurrer to the complaint was sustained without leave to amend. The Court of Appeal affirmed because Ross’ complaint failed to allege outrageous conduct as a matter of law.

The Court disagreed with *Kinnamon v. Staitman & Snyder* (1977) 66 Cal.App.3d 893 that held a violation of a former version of the Rule of Professional Conduct prohibiting attorneys from making threats of criminal prosecution to obtain a civil advantage was outrageous conduct. A violation of a Rule of Professional Conduct does not render an attorney liable for damages. Rule 1-100 expressly precludes new civil causes of action based on their violation. Accordingly, there is no independent cause of action for the breach of a disciplinary rule.

Comment: Ross is welcome protection for attorneys from third party claims.

601 Montgomery Street, Suite 900
San Francisco, California 94111
Telephone (415) 397-2222
Facsimile (415) 397-6392
www.longlevit.com

3130 Wilshire Boulevard, 2nd Floor
Santa Monica, California 90403-2300
Telephone (310) 829-0977
Facsimile (310) 829-0991
www.longlevit.com