

PROFESSIONAL LIABILITY UPDATE

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In Re Koven (2006) 134 Cal.App.4th 262

The Second District holds that an apology will not purge a contempt citation when an attorney's overzealous attacks impugn the integrity of the Appellate Court.

Debra Koven represented Paul Bashkin in a legal malpractice action brought against DeWitt F. Blasé and Heily & Blasé. Koven filed three appeals and two petitions for rehearing.

Koven requested all the appellate court justices recuse themselves alleging that a reasonable person aware of the facts would doubt their ability to be impartial. She asserted that one justice had represented the defendants while in private practice and that the justice therefore owed a continuing duty of loyalty. Koven alleged that the other justices were not impartial because they were on the Ventura County Superior Court bench when the defendant was actively trying cases there. She stated that the justices had concealed their own conflicts with defendants resulting from their prior relationships.

Koven maintained that the justices were not impartial because they had ruled against Bashkin in previous matters. According to Koven these rulings equated to a predetermination to rule

against Plaintiff and were a deprivation of equal protection.

Koven asserted that the court reviewed the issues to ensure that the ends justified the means. She stated that the Court had engaged in breaches of loyalty and that the Court could not grant the motions to disqualify lest its own conduct be called into question. She claimed that the court staged the removal of one justice from oral argument and that this removal proved that the charges against the three justices were not frivolous; that the prior rulings were tainted; and that two justices remained on the panel with personal biases in favor of defendants. She stated that the "fix was in."

The Court issued orders in each appeal requiring Koven to show cause re: contempt for impugning the integrity of the court. In response to the Orders to Show Cause Koven apologized for her statements.

The Court noted that contempt proceedings for impugning a court's

integrity are criminal in nature. An act of contempt is punishable by fines and imprisonment. An attorney commits a direct contempt by impugning the integrity of the court by statements made in open court or in a document filed with the court.

Koven's statements were contemptuous on their face. She alleged that because of the court's personal relationship with defendants and bias the justices "fixed" the appeals, that is used unlawful means. In the context of a lawsuit, the term implies the judge was influenced by money. The justices' membership on the Ventura County Superior Court when the defendant was practicing law there did not lead to the conclusion that they had personal ties with defendant and there was no evidence of any relationship between the justices and the defendant. The statement that the justices were conspiring with the defendants had no factual support and was made over three years after the attorney defendant had died. Koven did not bring the charge of bias until almost a year after losing one of the appeals. The Court concluded Koven was "judge shopping" in an attempt to draw a more favorable division.

Koven's assertion that one justice had represented defendants while in private practice was not supported. Other than the case title, Koven provided no information about the prior matter. She did not provide a case number, state when or where the action had been filed, nor did she describe the issues in that action. There was no evidence that the justice would not be impartial. Even if the justice had represented the defendant in a prior matter, recusal is not required unless the prior matter relates to the same contested issues of fact and law or

if the representation occurs within the previous two years. The justice in question had been on the bench for over ten years and was not on the panel hearing the appeals.

Although Koven apologized, the court would not purge the contempt. The court considered that Koven had been in practice for 15 years. Her charges were outrageous, unsupported, and were part of a plan to forum shop. The tone of the pleadings was spiteful and malicious. They were not blurted out in the heat of the moment but were in writing and after consideration of the issues. Koven's response to the order included that she had no physical or psychological issues that gave rise to her conduct. Koven had also impugned the integrity of the trial judge and integrity of opposing counsel and of counsel's expert witnesses.

The court noted that Koven's approach to litigation focused upon impugning the integrity of everyone in the legal system obstructing the achievement of her goals. This represented a pattern that aggravated the contempts. Koven was ordered to pay fines; the clerk of the court was directed to forward the State Bar a copy of the contempt judgment.

Comment: While the area between advocacy and contempt can sometimes be gray, Ms. Koven's actions were well beyond the gray area. Koven will now face the serious consequence of State Bar discipline for her transgressions.

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