

PROFESSIONAL LIABILITY UPDATE

ATTORNEY FEES

By John B. Sullivan

***Sands & Associates v. Juknavorian* (2012) 209 Cal.App.4th 1269**

The Second Division denies prevailing party attorneys' fees for services rendered by "of counsel" attorneys. A law firm and its "of counsel" constitute a single, de facto firm, and thus no fees are "incurred" for services.

Sands & Associates represented Martin Juknavorian in a marital dispute. The retainer agreement provided for binding arbitration and prevailing party attorneys' fees. When a dispute arose, Sands was represented by Leonard Sands and Heleni Suydam, who were "of counsel" to Sands & Associates. After confirming an arbitration award in Sand's favor, the firm successfully moved for an award of attorneys' fees.

On appeal Junkavorian argued that "of counsel" attorneys should be deemed part of a single, *de facto* firm. Thus, Sands & Associates did not "incur" fees for its own services and was ineligible for an award under the prevailing party clause.

The Court of Appeal agreed. When a law firm is represented by one of its partners, members, or associates, it cannot recover attorney fees under a prevailing party provision because it does not "incur" fees. A relationship between a law firm and "of counsel" is "close, personal, continuous, and regular." The close relationship and the representation to the public that attorneys are "of counsel," mandates that the firm and the "of counsel" attorneys be

considered a single *de facto* firm for conflict purposes. For the same reason, a firm cannot recover attorney fees for the services of its "of counsel" attorneys because it is self-represented and does not actually incur fees.

Comment: A law firm representing itself or through "of counsel" in an action involving exposure for prevailing party attorneys' fees faces additional risk. While the firm may be liable for attorneys' fees, the firm will not receive the benefit of the clause absent a carefully worded provision that includes the value of its self-representation.

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