

PROFESSIONAL LIABILITY UPDATE

ATTORNEY FEES

By John B. Sullivan

***Soni v. Wellmike Enterprise Co. Ltd.*, (2014) 224 Cal.App.4th 1477**

The Second District holds a law firm represented by its own employees cannot recover fees as a prevailing party.

Soni prevailed in a suit for unpaid fees against Wellmike Enterprise Co. Ltd. The fee agreement had a prevailing party fee provision, and included fees of the Soni Law Firm and its personnel, “to the extent authorized by law.” Soni contended he was a sole practitioner who hired outside counsel and independent contractors to represent his interests

Wellmike countered that Soni’s attorney fee provision qualified recovery of Soni’s personnel “to the extent authorized by law.” The general rule precludes fee recovery for self-represented attorneys. Soni was trying to circumvent the general rule by arguing his firm was not a separate entity. The trial court denied Soni fees.

The Court of Appeal extensively surveyed case law governing the recovery of fees by attorneys, and affirmed. Although The Soni Law Firm is identified as the fictitious business name for Soni, there was ample evidence he operated his business as a law firm, and the attorneys who represented it were law firm employees.

The case was governed by the general rule that law firms cannot recover attorney fees for self-representation. When attorneys represent their own law firm, they represent their own interests,

and are analogous to a sole practitioner representing himself. The fact Soni’s employees did not have a financial interest in the firm did not change the result. As employees of the firm, they acted on behalf of the firm to protect its interests, not those of the firm’s clients. Soni was seeking lost opportunity costs, which is one rationale for denying attorney’s fees for self-representation.

The Court distinguished cases holding a corporate litigant, represented by in-house counsel, may recover attorney fees. The payment of a salary to in-house attorneys is analogous to hiring a private firm on a retainer. Further, attorney litigants who actually incur fees to separate counsel may recover those attorney fees.

Comment: Law firms that use their own attorneys to pursue fees should know of the general rule precluding recovery of fees for self-representation, and carefully draft prevailing party provisions in their retainer agreements.

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