

## Winterrowd v. American General Annuity Insurance Company

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**Winterrowd v. American General Annuity Insurance Company, 2009 DJDAR 2241 (2009).**

### **Plaintiff's May Recover Fees Generated By Non-Admitted Attorney Who Assists California Attorney in California-Based Litigation**

In a divided opinion, the Ninth Circuit recently held that a lawyer who was not admitted to practice law in California was still eligible to recover fees generated in the case, under limited circumstances. A member of the Oregon Bar, assisted a California lawyer in a breach of a contract action against an insurance company. The insurance company ultimately agreed to settle the matter, and the plaintiff sought to recover its attorneys' fee including the fee incurred by its Oregon Counsel. The District Court concluded that the Oregon counsel could not recover attorneys' fees for work performed while the case was pending before the California District Court. The plaintiffs appealed to the Ninth Circuit and the court reversed in part and remanded for further proceedings.

The Ninth Circuit stated that an attorney may not recover counsel fees for engaging in the "unauthorized law practice" in California. The Ninth Circuit noted however that the Oregon lawyer was retained by a member of the California State Bar to provide assistance in prosecuting the action. The attorney performed services entirely in Oregon under an arrangement that was analogous to a "partnership." The Court stated that counsel did not appear before the District Court but played only a supporting role. For these reasons the Ninth Circuit held that the lawyer was entitled to recover reasonable fees for the work. The case was thus remanded to determine the amount due to the plaintiff, for the work performed by the Oregon lawyer.

In a sharply worded dissent, Justice Pamela Rymer disagreed with the majority's conclusion. She disagreed that fees were properly awarded to the non-admitted counsel as in her view, the work constituted the practice of law. In her view, without being admitted to practice, the applicant's petition for fees was properly rejected.

The ruling by the Ninth Circuit may provide some guidance when, and under what circumstances, an out of state lawyer may recover attorneys' fees for work conducted in California litigation. We note however, that as pointed out by the dissent, this issue may be further scrutinized by other courts and the outcome is far from certain.