

[Technical Construction of 'Actual Controversy' Requirement Under CCP § 1060 is Overturned in Dispute Over Fees](#)

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In [Leonard Carder, LLP v. Patten, Faith & Sandford](#) 2010 DJDAR 15776 (2010) the [Second Appellate District](#) interpreted the “actual controversy” requirement contained in [CCP § 1060](#) in a fee dispute context.

Two law firms [Leonard Carder LLP](#) (“Carder”) and [Patten, Faith & Sandford](#) (“Patten”) were appointed to represent a class in a class action lawsuit. The litigation effort was successful and the class was awarded approximately \$14.4 million in compensation. Carder moved for an award of attorney fees, presenting a lodestar calculation stating that Carder worked 11,414 hours and Patten worked 673 hours. Under the lodestar presented by Carder, fees were due in the sum of \$10,879,272 for Carder and \$373,040 for Patten.

At the hearing on the motion, the trial court signed a stipulation by the parties concerning the fees owed. The court authorized payment of attorney fees totaling \$12,475,000 to be paid to Carder **“as trustees for distribution to all counsel.”**

Thereafter, Carder filed a declaratory relief action against Patten, alleging that Patten had received \$373,040, but was also claiming the right to 40 percent of the award based on an alleged agreement between the firms. Patten failed to respond to the action in a timely manner and Carder applied for a default judgment. The court denied relief to Carder, ruling that **“no controversy”** existed under CCP § 1060.

The court of appeal reversed the lower court’s decision.

The court stated that CCP § 1060 states that a person desiring a declaration of rights may file an action in cases of actual controversy.

“Actual controversy” refers to a probable future controversy relating to the parties’ rights and duties. The court concluded that the record on appeal contained evidence that Carder had written a letter to Patten agreeing to give 40 percent of fees to Patten but then later Carder repudiated the agreement. The court concluded that based on this record, there was an ongoing controversy over the distribution of attorney fees.

The court of appeal therefore reversed the trial court’s decision and remanded the case for further proceedings.