

# The Professional Liability Law Blog

BRINGING PROFESSIONAL LIABILITY INFORMATION TO CALIFORNIA ATTORNEYS,  
INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



## [Court Denies Attorney's Fees to Law Firm Represented by "Of Counsel" Attorneys at the Firm](#)

Friday, January 7th, 2011

The issue of recoverability of attorney's fees under California Civil Code section 1717 has generated several recent opinions. On December 23, we reported on the unpublished decision in *Nicholson v. Avina*. In that case, the trial court denied an award of attorney's fees to a lawyer who claimed he had been represented in litigation by another attorney at his firm. Since the matter at issue related to the firm's business and there was no evidence of a true attorney-client relationship, the California Court of Appeal affirmed the denial of fees.

In a case with a similar outcome, *Juknavorian v. Sands & Associates* (Second Appellate District, Div. Seven), a law firm sought to recover fees pursuant to a contractual fee provision. The firm had been sued by its client for malpractice in the handling of a marital dissolution action. When the attorneys prevailed in the malpractice action, they sought fees pursuant to their retainer agreement.

The trial court awarded fees, concluding that since the attorneys who represented the firm were "of counsel," they were akin to in-house counsel at a corporation. Since a corporation can recover fees when represented by house counsel (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084), so, the trial court reasoned, could the law firm recover fees for attorneys who were "of counsel."

In an [unpublished decision](#) dated December 29, 2010, the Court of Appeal reversed. In a declaration in support of the fee petition, one of the attorneys stated that she was "an attorney with Sands & Associates". Further, the court noted that the firm's letterhead did not spell out what it meant to be "of counsel" and whether such persons are or are not actually part of the firm. This "loose language" was insufficient to establish an independent attorney-client relationship such that recovery of fees was appropriate. Rather, it appeared the firm was trying to recover for the lost opportunity costs of its attorneys, which it cannot do.