

The Professional Liability Law Blog

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



[Court Denies Contractual Attorney's Fees to Firm Representing Itself](#)

Thursday, December 23rd, 2010

An attorney entered into a retainer agreement with his client providing that the prevailing party in a dispute between them would be entitled to recover attorney's fees and costs. The attorney filed a collection action against the client, who defaulted. The attorney did not hire outside counsel, but rather prosecuted the case himself and through an attorney at his firm. At the prove-up hearing, the attorney testified that he had "retained" the employed attorney to represent him, but the record did not contain a written retainer agreement. The trial court denied his request for fees "incurred" in the collection action, and the Court of Appeal affirmed in an unpublished decision dated December 17, 2010. ([Nicholson v. Avina](#), Second Appellate District, Division One).

The attorney sought fees pursuant to California Civil Code Section 1717 (a) which provides that the prevailing party in an action on a contract that provides for attorney's fees may recover fees in an action to enforce the contract. The California Supreme Court long ago held that an attorney who litigates in pro per, and who therefore is not liable to another for attorney's fees, may not recover fees under Section 1717. *Trope v. Katz* (1995) 11 Cal. 4th 274, 292. However, corporations that bring suit through staff attorneys may recover fees. The difference in the two situations is that staff counsel at a corporation are not representing themselves, but have a true attorney-client relationship. Attorneys at a law firm who represent the firm are in effect representing themselves. See also *Witte v. Kaufman* (2006) 141 Cal.App.4th 1201, 1208. The exception to the latter scenario is when attorneys at a firm represent members of the firm in matters that are personal to the attorneys. See, *Gilbert v. Master Washer & Stamping Co.* (2001) 87 Cal.App.4th 212; *Gorman v. Tassajara Development Corp.* (2009) 178 Cal. App.4th 44, 96.

The Court of Appeal noted that, other than the testimony of the attorney, there was no evidence of a true attorney-client relationship with the employed attorney. Further, the claim related to the firm's business and was not a personal matter. Therefore, the employed attorney was representing the firm. Whether the principals or employed lawyers represented the firm, the reasoning of *Trope* barred the recovery of fees pursuant to a contractual attorney's fee provision.