Pro Se Attorney Litigants are Not Eligible for an Award of Attorney Fees

June 14, 2011 by David J. McMahon

In *Carpenter & Zuckerman v. Cohen*, 2011 DJDAR 6665 (2011), the Second District California Court of Appeal decided an interesting attorney fee case. The fee dispute arose out of litigation between two law firms.

After being sued, one firm, Personal Injury Solutions Inc. (Personal Injury), filed a cross-complaint against another law firm named Carpenter & Zuckerman LLC (Carpenter). The cross-complaint alleged causes of action for interference with economic advantage and defamation. The trial court granted Carpenter's special motion to strike and awarded the firm its reasonable attorney fees. Personal Injury appealed from the order and the trial court's award of attorney fees as costs.

The appeal filed by Personal Injury was ruled to be untimely, and the award of fees, but not the amount, was affirmed, and the matter was remanded for further proceedings at the trial court level.

Carpenter submitted a memorandum of costs in the trial court, listing a single cost item in the sum of $33,168.75 for the reasonable attorney fees incurred in the litigation. Personal Injury moved to tax costs, contending that Carpenter was not entitled to attorney fees under California law, because the firm represented itself on appeal.

Carpenter opposed the motion. The firm argued that they had retained an associate of the firm, attorney Candice Klein, to represent them. The court observed that although she was not a partner at the firm, she was an associate. The trial court concluded that since Klein was an associate who was closely affiliated with the firm, Carpenter was not entitled to recover attorney fees.

The Court of Appeal affirmed the trial court's decision.

The appellate court stated that because *pro se* attorney litigants do not incur an obligation to pay attorney fees when representing themselves, such attorney litigants are not entitled to recover attorney fees under Civil Code Section 1717.