

Framework Retainer Agreement Does Not Perpetually Bind Law Firm for Purposes of Current Client Conflicts

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Banning Ranch Conservancy v. Superior Court, 2011 WL 989822 (Cal.App. 4 Dist. March 22, 2011)

Brief Summary

A law firm (Firm) entered into an ongoing “framework” retainer agreement, which provided a mechanism for the City of Newport Beach (City) to request the firm’s services when desired. The Firm initially handled two short, discrete matters and did no further work for the City. Five years later, the Firm represented a party adverse to the City, and the City moved to disqualify the Firm asserting that the framework agreement established a perpetual “current client” relationship. The California Court of Appeal refused to disqualify the Firm, holding that a retainer agreement that unambiguously calls for representation on a matter-by-matter basis, subject to confirmation by the law firm, did not perpetually establish the City as a current client of the Firm.

Complete Summary

The City of Newport Beach initially retained the Firm in 2005. The engagement letter provided that the Firm would provide legal services to the City on an “as-requested” basis without a new agreement, subject to the Firm’s confirmation of its “ability to take on the matter.” The legal services performed for the City constituted an airport noise analysis and protection of Ficus trees. The Firm billed a total of 1.2 hours, with a final bill in July 2005. The Firm performed no further work for the City. Five years later, a non-profit retained the Firm to assist in moving against the City’s proposed plans to build a four-lane highway on a 400-acre coastal property.

The City moved to disqualify the Firm, on the basis that the City was both a current and former client. The trial court granted the motion to disqualify, and the California Court of Appeal issued a peremptory writ of mandamus reversing the disqualification.

The City relied upon the framework retainer agreement in contending that it was the Firm's current client. The City accentuated the "on-going" nature of the agreement, asserting that it had never been formally terminated nor did it provide for any manner of expiration.

The California Court of Appeal distinguished the framework retainer agreement here from a "classic" retainer agreement. In the latter, according to the court, the payment of fees secures the lawyer's future time and availability in exchange for the lawyer's general obligation (absent consent) to decline future legal work from other clients in order to perform the services for the retaining client during the term of the representation. In the retainer agreement at issue here, however, the Firm always was free to decline any new work through the confirmation of representation provision in the agreement, which qualified any obligation to accept work for the City. Additionally, the City did not give the Firm "an engagement retainer fee" as consideration for binding it.

Having determined that the 2005 engagement letter itself did not create a current-client relationship in 2010, the court turned to the parties' conduct. The court came to the same conclusion, based on the facts that the Firm and the City had not worked with or communicated with each other for years and the City had hired at least 10 other law firms in the interim.

The Court also rejected the City's assertion that if it were a former client rather than a current client, disqualification nonetheless would be required because the present matter was substantially related to the previous representation. The court held that the past matters, which involved airport noise and the protection of Ficus trees, did not bear a substantial relationship to the current action objecting to the highway development.

Significance of Opinion

Law firms commonly have ongoing relationships with clients, and the line between current client and former client is not always completely clear. In this instance, in which the current and past matters plainly are unrelated and several years have passed since the initial and very limited representation, the client properly should have a high burden to establish a reasonable expectation that it is a current client such that it can be entitled to deprive an adverse party of its right to retain counsel of its choice. This case nonetheless underscores the importance of clarifying the scope of representation expressly in engagement letters and retainer agreements, since that can be the critical factor in determining whether a client remains a current client even after a particular matter has concluded.

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