

## APPELLATE UPDATE JUNE 2025

### Attorney ethics

While people sometimes laugh about the notion of combining “attorneys” with “ethics,” but most good attorneys work hard to meet or exceed professional ethical standards. If you fall into the hands of one who doesn’t, run away as fast as you can.

Attorneys are subject to extensive and comprehensive rules established by the State Bar, which are enforced both by the courts and by the State Bar.

The State Bar Rules prohibit attorneys from taking a position adverse to their clients and to their former clients. In this case, the question presented was whether an attorney was barred from taking a position adverse to a *prospective* client whose case he did not take. The legal issue was whether the attorney obtained confidential information from the prospective client which was material to the prospective client’s matter. If he did, the attorney was barred from representing a party adverse to the prospective client on the same matter.

The State Bar Rules, Rule 1.18(b) prohibits an attorney from using or revealing the prospective client’s confidential “material” information. The court here held that the word “material” means that the information must be materially “harmful” to the prospective client. The court held that the prospective client having shared his theory of his case, along with documents and other evidence supporting that theory, and his mental impressions of the case. The information shared went far beyond a preliminary inquiry into the facts of the case. The information shared was both “material” and harmful.” The court held that the attorney was properly disqualified from representing the party adverse to the prospective client.

***Winter v. Menlo*** (2025) 110 Cal.App.5<sup>th</sup> 299

### Civil Procedure

Remote depositions and even remote court appearances were popularized during the COVID-19 shutdown. Many attorneys continue to take depositions remotely, because it is often more convenient for everyone involved, particularly where counsel is located in a community far from the witness.

This case involved creative abuse of a remote deposition. In this case, the witness’ attorney refused to turn on his camera, so the deposing attorney couldn’t see the witness’ face during testimony. In a deposition, as in a courtroom, the body language and facial expressions of the witness can be as important as the witness’ verbal testimony.

The court held that the refusal to turn on the witness’ camera was a clear discovery abuse and upheld the trial court’s sanctions award.

***Agnone v. Agnone***

May 30, 2025

Second District, case no. B321252A

## **Family Law**

In this case, the former Wife sought a Domestic Violence Temporary Restraining Order (DVTRO). The trial court denied Wife's request. The Court of Appeal held that in the absence of a finding that Wife's allegations were not credible, the trial court's finding that the domestic violence occurred "in the context of" a dispute over dissolution and child custody was not sufficient to deny the application. Further, the Domestic Violence Protection Act required the trial court to state proper reasons for denial. The trial court's decision was reversed and the case remanded.

*Marriage of A.M. and R.Y.* (2025) 110 Cal.App.5th 1115