

DAVID KEITH HICKS

DAVID HICKS APLC, A CALIF. PROF. LAW CORP.
LICENSED IN CALIFORNIA & NEW YORK
BUSINESS & TRIAL LAWYERS

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Education: Juris Doctor, University of California at Davis, 1972. B.A., Political Science, International Relations, SJSU, 1969, Humanities Honors, Journalism and Political Science Honor Societies. U.S. Army Intelligence School, Ft. Holabird, MD, 1966-1967 (Hon. Disch. 1972)

Admitted To Practice in California (1972) and New York; The United States Supreme Court; the United States District Courts for Maine, and the Northern, Central and Eastern Districts of California (1972); Chancery Courts of Delaware and of Tennessee (p.h.v.).

Law Practice Emphasis: Civil business and trial practice. Real estate, Defamation, business, business tort and commercial litigation; contract negotiation, foreign and domestic; product development, protection, registration & licensing; compliance with governmental regulation and related hearings; employment taxation; food, flavor and fragrance industries. Litigation experience in contract, insurance, complex business torts (fiduciary duties; fraud; R.I.C.O.; bad faith; unfair competition, trade secrets, trade libel, civil rights in the commercial context) and other civil litigation arising in the business context. Dispute mediation and resolution. Expert witness services.

Community Service: Judicial Experience as Temporary Judge:

- Updated training done summer 2005 as Temporary Judge, San Francisco Superior Court
- Updated Training as Juvenile Court Referee, Alameda County Superior Court summer 2005.
- Contra Costa County (two jury trials);
- Solano County;
- San Francisco County;
- Alameda County (also business litigation arbitrator, referee, Early Disposition Program commissioner (1979-), Special Master/Receivers list). Proposed and helped implement a Trial on Time program for the Alameda County Superior Court.
- United States District Court for the Northern District of California business litigation single binding arbitrator.
- Special Master, California State Bar.
- Quasi-judicial hearings: Commissioner, City of Oakland and Alameda County. Early Disposition Program Commissioner. Fee Arbitration Committee, Alameda County Bar Association.

Professional Standing, Associations: Highest rating in Martindale Hubbell Bar Register of Preeminent Lawyers. (1990) ["a.v.," (Legal Ability: preeminent; General Recommendation: Embraces faithful adherence to ethical standards; professional reliability and diligence)].

Bar Associations Memberships: American; New York; California (Litigation and Business Law Sections; Conferee, Conference to Establish Standards for Mandatory Continuing Legal Education, sponsored by California State Bar and U. C. Regents, CEB, Los Angeles, 1990; Delegate, Conference of Delegates of California Bar Associations, 2006, California State Bar Convention.); American Trial Lawyers Association; Consumer Attorneys of California (Member Board of Governors); California Trial Lawyers Association (Board of Governors, Legislation Committee); Alameda Contra Costa Trial Law Lawyers Association since 1982, Pres. 1993, Lifetime Board Member); San Francisco, Contra Costa, Alameda, Solano County Bars; Million Dollar Advocates Forum; Trial Lawyers for Public Justice; American Bar Association.

Honors: Elected to California SUPERLAWYERS, 2005, 2006, 2007 (San Francisco Magazine's "top 5%") and featured in The East Bay Business Times as "one of ten best attorneys in the East Bay" (June 22, 2007). Martindale Hubbel's Listing of Pre-eminent Attorneys (1986-present, A.V.—highest rating). Honorary member (by special board action for community service) Hellenic Law Society; Honorary Member, Phi Alpha Delta Legal Fraternity (by special board action for community service). State Bar of California Wiley Manuel Award; State Bar Board of Governor's Commendation for Outstanding Contributions in Legal Services; Editor's Choice Award for Outstanding Achievement in Poetry. Paul Harris Fellow, Rotary International, for International Humanitarian Service. Oakland Rotary Arts Award 2002 (As author of a one hour play about the legal system played by actual prominent lawyers and judges from San Francisco and Oakland)

Expert Witness: Qualified and testified as an expert witness on legislative intent, attorneys' fees and legal malpractice (plaintiff & defense). Consultant to United States Attorney's office re: fee application defense; assistance to Nevada Attorney General re: child labor law.

Courtroom advocacy: Deputy Attorney General, California, and Deputy District Attorney, Alameda County 1972-1978; Civil litigator in private practice since 1978. Successfully tried more than 450 superior court trials, won more than 60 appeals and prevailed in over 120 administrative hearings before governmental bodies in regulation, taxation, licensing and labor matters (stopped counting in 1988).

Illustrative cases (alphabetical):

- ❑ **Almeida v. Peat Marwick Mitchell & Co.** and consolidated class actions (represented Bank of the West in Chancery Court in Delaware and in Alameda County). Counsel for Bank of the West to represent 139 of its employees in the most complex consolidated class action case then pending before the Superior Court in Alameda County (45 lawyers). Confidential settlement facilitated.
- ❑ **Bash Ali v. Ron Scalf, World Boxing Federation, Inc.** \$2.2 Million damages judgment; Permanent Injunction against unfair business practices; restoration of Cruiserweight Championship.
- ❑ **Bash Ali v. Richard Feld, World Boxing Foundation** of Great Britain (Chancery Court, Tennessee) \$7.2 million award.
- ❑ **Camacho v. Sixty Minutes, Mike Wallace, Leslie Stahl** et al. "Amicably settled" confidential settlement of defamation case on behalf of Director, Regional Service Center, United States Customs, San Diego. Mike Wallace breached settlement agreement to personally read apology ultimately read by Leslie Stahl. (This settlement breach settled separately for additional \$200,000, not confidential or within the "amicably settled" provision).
- ❑ **Crowe v. State of California** (qua state) & Consolidated & Related Cases (more than 100) Superior Court, Alameda County: Over 15 years in duration. Won consent judgment against the California Department of Industrial Relations Division of Labor Standards Enforcement on nine different constitutional grounds for discriminatory enforcement practices and a permanent injunction. Awarded private attorney general fees of \$1.2 million dollars per federal law by the Superior Court for resolving issues of public importance and "clearly demonstrated public service motivation," during first half of case.
- ❑ **Drazek v. Host Marriott Corp** (attorney **Johnnie Cochran**, Real Party In Interest). Hired by Johnnie Cochran's firm to reverse senior federal court judge's ruling prohibiting attorney's fee for services to minor due to large fee won for another party. On our application Court reversed itself and awarded additional attorney fees of \$356,073.00.
- ❑ **Fletcher v. Sohrabi Enterprises.** Defense-settle case within 60 days of filing on advantageous terms.
- ❑ **Hidden Valley Ranch v. AVRI Companies Inc.;** AVRI Companies Inc. v. Flaroma. Negotiated reversal of two insurers' refusal to defend or indemnify insured defendant-cross-complainant in complex trade secret case and facilitated settlement of case through mediation.

- **In the matter of Mullin.** Recovered client's attorneys' fees in the amount of \$432,000.00.
- **Lipscomb v. City of San Diego,** Superior Court San Diego: Won a permanent injunction against the City of San Diego precluding enforcement of its own ordinances as violative of First Amendment Commercial Free Speech. Attorney's fees were awarded for performing services as a "Private Attorney General."
- **Piersen v. Lang.** Defended two defendants and settled with net cash gain for clients on cross-complaint v. Lang and recovered all costs and fees from insurer that had denied coverage.
- **Lombard v. Continental Credit Insurance.** New York City. Negotiated a six figure cash settlement on bad faith violation of territorial limitations on credit insurance with Continental Insurance Company on behalf of their New England general agent at initial pre-litigation demand conference, including an enforceable permanent injunction.
- **Miles v. Sierra Club:** Jury trial, libel per se and falsity found by jury.
- **Montie S. Day, Esq. v. Robert W. Mills, Esq.** Hired one month before trial and successfully prosecuted a 14 week bench trial, \$1.21 million dollar decision by Court including granting of motion to amend complaint to add cause of action for conversion. Affirmed in full, opinion 5/3/01, 1 DCA.
- **Scentique, Ltd. v. Rosedust and R.F.M. Industries.** Prosecuted trademark and copyright infringement. Won permanent injunction recovering product line worth millions in annual sales.
- **Schwartz v. NetCap Holdings et alia.** IPO fraud and corporate director fiduciary duty. Successful defense of directors in multi-million dollar investment fund disappearance. Via cross-complaint, won \$2.9 million judgment against corporate president while defending *de facto* director.
- **Sierra Lakes Reserve v. Flynn & Stewart.** Prosecuted law firm for breach of fiduciary duty, over-billing and "soap opera" misconduct detrimental to client's interests. Negotiated reduction of over-billed legal fees from \$200,000 to \$45,000 payment on a no confidentiality basis.
- **Terrill v. UNUM,** U.S. District Court for the District of Maine: Successfully negotiating a \$3.4 million net cash to client settlement to overturn exercise of a 30 day no-cause termination clause against plaintiff general agents. \$234,000 fee award.

Legislation: Conceiving, drafting and obtaining enactment of changes in State law (a) to allow manufacture, sale and export of liquor filled chocolates; and (b) to allow, subject to safety provisions, commercial sales by minors (See Title 8, Calif. Administrative Code section 11706). Staff, Assembly Ways & Means; Intern, Joint Committee on Higher Education.

Community leadership and activities: Superior Court of California Speaker Outreach Program, Bench Bar Speakers Bureau; Emeryville Chamber of Commerce (Em Pac—won 72% of vote re Pixar Expansion in Emeryville, 2004), Oakland Chamber of Commerce committees: Small Business Advocacy; Planning & Construction; Paul Harris Fellow, Director for Oakland Rotary (Chaired Committees on: Youth Services; By-Laws; Ethics; President's Special; member World Community Service Committee). Multiple Honoree for Rotary Foundation; Marcus Foster Institute for the Oakland Public Schools (founder, Role Model Task Force; Principal for a Day; Career Week); Director, and *pro bono publico* Legal Counsel since 1982, Modern Greek Studies Foundation, San Francisco. Blue Star Mothers of California (with children on active duty overseas). Member American Institute of Architects, San Francisco Chapter (Urban Design Committee, Presidio Project). Member, Media Alliance. Member, Board of Directors, Goodwill Industries of the Greater East Bay, Inc. (Committees: Management Information Services; Vice-Chairman, Human Services); Director, Lincoln Child Center; City of Oakland Long-Range Planning Conference participant. Institute of Urban Affairs (San Jose). City of Oakland Police Review Board; Alameda County Commission on Personal & Social Responsibility & Self-Esteem; Vice-President, Government Affairs, Chabot Canyon Homeowner's Association. Oakland Heritage Festival Committee. Bay Area Blues Society. Caravan of All Stars Blues Band. Underwriter, Tango Argentino, Herbst Theatre, San Francisco. CableCar Chorus (Barbershop, 2nd place, regional competition, 2002)

Publications: (exemplars), *Compensation of Federal Judges*, Editorial, Oakland Tribune, republished, The Advocate; Publisher, Editor-in-Chief, The Verdict, continuing contributing writer; *The Trial of Socrates*, The Verdict; Editor & Publisher, *Enforcing Civil Rights in the State Court System* (Author, chapter on attorney fees); *The Marshall Papers*, the Recorder, Author, *Voyage to Ithaca*, in The Forum for the California Trial Lawyers Association; Technical Reviser: McGoey, Chris, *CPP, SECURITY, Adequate or Not, The Complete Guide to Premises Liability Litigation*. Aegis Books, 1989; Publisher of monthly On the Up & Up; Publisher, Special Verdict monthly.. "Default and Default Judgments, *The Verdict* (01/03). Child Labor Guide for Employers. *Prosecutors in the Juvenile Court*, 5 Pepperdine Law Rev. 740 No. 3 (1978); "*Independent Contractor/Employee Taxation*" for Oakland Chamber of Commerce Advocate;

Teaching, Lectures, Seminars: University of California, Berkeley, Invited Guest Lecturer, Institute of Governmental Studies, and Regents appointment as Instructor (current). Teaching Ass't., Univ. of Calif., Davis: Scientific Bias & Social Myth; Guest lecturer, Law School; Adjunct Professor of Law, J.F.K.U.(6 years); Lecturer, Calif. Highway Patrol Academy, Chabot College. Tax Free Exchanges, C.A.R., Commercial Free Speech under the First Amendment; Address to the California Society of Enrolled Agents: Independent Contractor or Employee--Guess Wrong and You're Out of Business; Numerous seminars for lawyers through Consumer Attorneys of California, Alameda Contra Costa Trial Lawyers Association, and California Trial Lawyers Association (partial list: Expert Witnesses; Effective Fee Applications; Evidentiary Problems; Recovering Fees in Business Related Civil Rights Litigation in State Courts; Attorneys Fees). [partial list]

Music & Arts: Rotary Arts Award (author of performed stage play). Member, East Bay Blues Society's official band: Caravan of All Stars (American Music Awards, Vallejo Blues Festival, Hayward/Russell City Blues Festival &c., also played with Alvon Johnson and His Allstars, James Brown Jr., Teddy "Blues Master" Watson &c., and on double bill with Big Brother & The Holding Co.). Patron, S.F. Opera. Tango aficionado; danced in Paris, Rome & Buenos Aires. Solo Couple Tango Stage Performances 2002 and 2005 (*Nonino* and *Por Una Cabeza*), Member, Cable Car Chorus (singing lead, 2nd place, 2002 Calif. competition). Published poems; Cape Cod attendee, SEAK Conference on Legal Fiction for Lawyers (2003).