

**RESOLUTION 09-05-2016**

**DIGEST**

Client Engagement Letter: Deadline to Provide Copy to Client

Amends Business and Professions Code section 6148 to allow for the provision of the duplicate copy of the engagement contract to the client within 30 days of its execution.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 6148 to read as follows:

§6148

1           (a) In any case not coming within Section 6147 in which it is reasonably foreseeable that  
2 total expense to a client, including attorney fees, will exceed one thousand dollars (\$1,000), the  
3 contract for services in the case shall be in writing. At the time the contract is entered into or  
4 within thirty (30) days of date the attorney obtains possession of the signed contract, the attorney  
5 shall provide a duplicate copy of the contract signed by both the attorney and the client, or the  
6 client's guardian or representative, to the client or to the client's guardian or representative. The  
7 written contract shall contain all of the following:

8           (1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or  
9 flat fees, and other standard rates, fees, and charges applicable to the case.

10           (2) The general nature of the legal services to be provided to the client.

11           (3) The respective responsibilities of the attorney and the client as to the performance of  
12 the contract.

13           (b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills  
14 for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method  
15 of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill  
16 shall clearly identify the costs and expenses incurred and the amount of the costs and expenses.  
17 Upon request by the client, the attorney shall provide a bill to the client no later than 10 days  
18 following the request unless the attorney has provided a bill to the client within 31 days prior to  
19 the request, in which case the attorney may provide a bill to the client no later than 31 days  
20 following the date the most recent bill was provided. The client is entitled to make similar  
21 requests at intervals of no less than 30 days following the initial request. In providing responses  
22 to client requests for billing information, the attorney may use billing data that is currently  
23 effective on the date of the request, or, if any fees or costs to that date cannot be accurately  
24 determined, they shall be described and estimated.

25           (c) Failure to comply with any provision of this section renders the agreement voidable at  
26 the option of the client, and the attorney shall, upon the agreement being voided, be entitled to  
27 collect a reasonable fee.

28           (d) This section shall not apply to any of the following:

29           (1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or  
30 interests of the client or where a writing is otherwise impractical.

31           (2) An arrangement as to the fee implied by the fact that the attorney's services are of the  
32 same general kind as previously rendered to and paid for by the client.

- 33 (3) If the client knowingly states in writing, after full disclosure of this section, that a  
34 writing concerning fees is not required.  
35 (4) If the client is a corporation.  
36 (e) This section applies prospectively only to fee agreements following its operative date.  
37 (f) This section shall become operative on January 1, 2000.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Sacramento County Bar Association

### **STATEMENT OF REASONS**

The Problem: With respect to fee engagement letter contracts, Business and Professions Code section 6148 (“Section 6148) provides in relevant part that [a]t the time the contract is entered into, the attorney shall provide a duplicate copy of the contract signed by both the attorney and the client, or the client's guardian or representative, to the client or to the client's guardian or representative.” [Emphasis added] Section 6148 works when, for example, the attorney and client sign an engagement letter at the attorney’s office and the client receives copies at that time. In many cases, however, the client is given or sent an engagement letter to review outside the attorney’s office. It is not clear how (or whether) Section 6148 works when the attorney or client sign at different locations and send the engagement letter by mail or e-mail, because they are not both present “[a]t the time the contract is entered into.”

The Solution: Section 6148 should be amended to provide that the attorney shall provide a duplicate copy of the executed engagement letter at the time of its execution or within thirty (30) days of the date the attorney obtains possession of the signed engagement letter. This will allow either the attorney or client to sign and mail or e-mail an engagement letter for the other to sign, while still requiring that the client receive a duplicate copy of the signed engagement letter in a timely manner.

### **IMPACT STATEMENT**

This resolution does not affect any other law, statute or rule.

### **CURRENT OR PRIOR RELATED LEGISLATION**

Not known.

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**RESOLUTIONS COMMITTEE RECOMMENDATION**  
**APPROVE IN PRINCIPLE**

History:

No similar resolutions found.

Reasons:

This resolution amends Business and Professions Code section 6148 to allow for the provision of the duplicate copy of the engagement contract to the client within 30 days of its execution. This resolution should be approved in principle because it is not practical to strictly require that the client receive his copy of the contract “at the time the contract is entered into.”

Section 6148 was originally enacted in 1986, prior to the days of e-mail and other electronic communication, when most attorney-client engagement contracts were probably signed in a meeting at the attorneys’ office. Those days are long gone. Many such contracts are now executed by parties at different locations, exchanged electronically, and not simultaneously. For many lawyers the practice is to send two originally-signed copies of the contract to the client, asking the client to sign both copies, retain one fully-executed original for her files, and return the other to the attorney. If the client correctly follows those instructions there will be compliance with section 6148. Frequently, however, the client reviews a draft not yet signed by the attorney, but nevertheless returns it and a copy, both signed. The attorney cannot strictly speaking comply with section 6148 when counter-signing without hauling the client to his office to be present “at the time the contract is entered into.” At other times the client might interlineate a new term before signing and returning. In such cases the revised contract would not be “entered into” until the attorney signs it, and again strict compliance with 6148 requires that the client be present. This amendment would allow attorneys to provide the client with a duplicate in a timely manner, which is probably what already occurs in most cases. It thereby conforms the statute to modern reality. Nevertheless, allowing 30 days for return of the fully-executed original is arguably excessive, especially where the representation could have already concluded within 30 days.