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May 11, 2020

Acting Presiding Justice Eugene M. Premo
Associate Justice Allison M. Danner
Associate Justice Franklin D. Elia
Sixth District Court of Appeal
333 West Santa Clara Street, Suite 1060
San Jose, California 95113

Re: ***Nguyen v. Ford***
Court of Appeal Case No. H046809
Request for Publication; Opinion filed April 24, 2020

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Dear Acting Presiding Justice Premo and Associate Justices
Danner and Elia:

Pursuant to California Rules of Court, rule 8.1120(a), the Association of Southern California Defense Counsel (ASCDC) requests that the court certify its opinion in *Nguyen v. Ford* (Apr. 24, 2020, H046809) for publication.

Interest of ASCDC

ASCDC is the nation's largest and preeminent regional organization of lawyers. Its members are devoted to defending civil actions in Southern and Central California. ASCDC has approximately 1,100 attorney members, among whom are some of the leading trial and appellate lawyers of California's civil defense bar. Many of ASCDC's members defend lawyers in professional negligence cases. This publication request is made at the suggestion of ASCDC's Lawyer Defense Committee, which is comprised of members who specialize in the defense of these actions. Thus, ASCDC has an interest in having this court's opinion published.

ASCDC is actively involved in assisting courts on issues of interest to its members, the judiciary, the bar as a whole, and the public. It is dedicated to promoting the administration of justice, educating the public about the legal system, and enhancing the standards of civil litigation practice. ASCDC also assists courts by appearing as *amicus curiae*.

ASCDC has requested and obtained publication of other recent opinions involving the continuous representation tolling provision of Code of Civil Procedure section 340.6, subdivision (a)(2) (section 340.6(a)(2)), two of which are cited in this court's opinion. (See *Flake v. Neumiller & Beardslee* (2017) 9 Cal.App.5th 223, cited in typed opn. 9-11, 13-14; *Shaoxing City Maolong Wuzhong Down Products, Ltd. v. Keehn & Associates, APC* (2015) 238 Cal.App.4th 1031, cited in typed opn. 11-12.) ASCDC also submitted an amicus brief on the merits in *Beal Bank, SSB v. Arter & Hadden, LLP* (2007) 42 Cal.4th 503, another case cited in this court's opinion. (Typed opn. 11.)

The Nguyen opinion merits publication

A Court of Appeal opinion “should be certified for publication” if it satisfies any of the criteria enumerated in California Rules of Court, rule 8.1105(c). This court's opinion in *Nguyen* satisfies several of the criteria.

The opinion contributes to the developing jurisprudence on the continuous representation tolling provision, which states that the statute of limitations on legal malpractice actions “shall be tolled during the time that . . . [¶] . . . [¶] [t]he attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred.” (§ 340.6(a)(2).)

As the court's opinion notes, neither the statute itself nor its legislative history sheds light on the question of when an attorney's representation in a “specific subject matter” terminates and thus ends the tolling period. (Typed opn. 9, citation omitted); see *Gonzalez v. Kalu* (2006) 140 Cal.App.4th 21, 30 [noting the absence of “a statutory standard to determine when an attorney's representation of a client regarding a specific subject matter ends”].) Consequently, courts, counsel, and their clients depend for guidance on the published cases that explain and apply this tolling provision in a variety of different factual situations: “[T]he test is objective and focuses on the client's reasonable expectations in light of the particular facts of the attorney-client relationship. . . . [T]olling under the continuous representation

exception ends when ‘ “ ‘a client has no *reasonable* expectation that the attorney will provide further legal services.’ ” ’ ” (Typed opn. 11.)

Publication of this court’s opinion would provide guidance because the opinion “explains . . . an existing rule of law” (Cal. Rules of Court, rule 8.1105(c)(3))—the continuous representation tolling provision of section 340.6(a)(2)—and applies that “existing rule of law to a set of facts significantly different from those stated in published opinions” (*id.*, rule 8.1105(c)(2)), two criteria warranting publication.

Specifically, in *Nguyen*, an attorney represented a client in both the trial court and the appellate court in the same case, but under two different engagement agreements. (Typed opn. 2.) And only the appellate court issued an order allowing the attorney to withdraw “in the above referenced matter.” (Typed opn. 3-4, citation omitted.) The trial court’s local rules allowed withdrawal only on order of the trial court. (Typed opn. 4-5.) Given the absence of a trial court order allowing the attorney to withdraw, the client was able to argue she reasonably believed counsel continued to represent her in the trial court even after counsel was allowed to withdraw as appellate counsel.

The opinion, however, explains why, under *all* the circumstances, the client could have no reasonable belief the attorney continued to represent her in the trial court:

Once Ford had filed the notices in the district court case describing herself as Nguyen’s former attorney and stating she was placing a lien for “legal services rendered” on any judgment in Nguyen’s favor, any objectively reasonable client would have understood that Ford was no longer representing Nguyen in the district court case. . . . Under these facts, Nguyen’s belief that Ford continues to represent her in the district court case is unreasonable as a matter of law.

(Typed opn. 13, citation omitted.)

To our knowledge, no other published opinion analyzes the continuous representation tolling provision under facts like these, where an attorney represented a client in two courts under two separate engagement agreements in a single case and only one court issued an order allowing withdrawal.

This court’s opinion makes an important contribution to the law when it explains why the absence of a trial court order allowing withdrawal, a requirement

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under the local rules, was not dispositive: “[N]othing in the text of section 340.6(a)(2) indicates the statute incorporates local court rules when delineating the contours of the continuous representation period.” (Typed opn. 14.) The opinion thus “[a]dvances a new interpretation, clarification, . . . or construction of a provision of a . . . statute,” which is another criterion for publication. (Cal. Rules of Court, rule 8.1105(c)(4).)

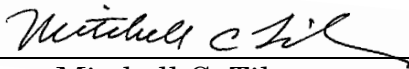
Importantly, though the continuous representation question may often be one of fact, this court’s opinion provides an example of circumstances in which the question may be resolved as a matter of law on demurrer. (Typed opn. 11-12.) The bench and bar would benefit from another published example of such case.

In sum, the court’s opinion explains an existing rule of law, applies that rule to facts significantly different from those stated in published opinions, and interprets, clarifies and construes a statute. For all these reasons, publication is warranted. (Cal. Rules of Court, rule 8.1105(c)(2)-(4).)

Finally, if the court grants this publication request, ASCDC respectfully suggests the court correct what appears to be a typo in the first full sentence on page 7 of the typed opinion: “Ford states that the local rules for the Northern District of California provide that counsel may not withdraw from an action until relieved ‘by order of Court,’ (italics omitted) and ‘ “ ‘Court’ ” ’ under the rules is defined as the United States District Court for the Northern District of California.” (Typed opn. 7.) ASCDC suspects the first word in the sentence should have been “Nguyen” and not “Ford.”

Respectfully submitted,

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By: 

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cc: See attached Proof of Service

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PROOF OF SERVICE

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.


On May 11, 2020, I served true copies of the following document(s) described as **REQUEST FOR PUBLICATION** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 11, 2020, at Calabasas, California.



Caryn Shields

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Associate Justice Franklin D. Elia
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