



ASSOCIATION OF
SOUTHERN CALIFORNIA
DEFENSE COUNSEL

2520 VENTURE OAKS WAY, SUITE 150 • SACRAMENTO, CA 95833
(800) 564-6791 • (916) 239-4082 • (916) 924-7323 - FAX
ascdc@camgmt.com • www.ascdc.org

Request for Publication [Rules of Court rule 8.1120(a)]

June 17, 2015

Via Federal Express

OFFICERS

PRESIDENT
Michael Schonbuch

PRESIDENT-ELECT
Glenn T. Barger

VICE PRESIDENT
Clark R. Hudson

SECRETARY-TREASURER
Christopher E. Faenza

PAST PRESIDENT
Robert A. Olson

EXECUTIVE DIRECTOR
Jennifer Blevins, CMP

Honorable Laurence D. Rubin, Acting Presiding Justice
Honorable Madeleine Flier, Associate Justice
Honorable Elizabeth A. Grimes, Associate Justice
California Court of Appeal
Second Appellate District, Division 8
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Re: *Cynthia Beck v. Blum Collins, LLP*, Case No. B250653

Request for Publication

Honorable Acting Presiding Justice Rubin and Associate Justices Flier and Grimes,

BOARD OF DIRECTORS

KERN COUNTY
Thomas P. Feher

LOS ANGELES COUNTY
Jean Daly
Jullianne DeMarco
Anthony Kohrs
Stephen C. Pasarow
Lisa Perrochet
Lawrence R. Ramsey
Ninos P. Saroukhanioff
Eric Schwettmann
Patrick Stockalper

ORANGE COUNTY
Edward R. Leonard
Lisa J. McMains

RIVERSIDE COUNTY
Gary T. Montgomery

SAN BERNARDINO COUNTY
Jeffrey A. Walker

SAN DIEGO COUNTY
Peter S. Doody
Patrick J. Kearns

SANTA BARBARA COUNTY
Michael A. Colton

VENTURA COUNTY
Diana P. Lytel

Pursuant to rule 8.1120(a) of the California Rules of Court, amicus curiae Association of Southern California Defense Counsel (“ASCDC”) respectfully requests that the Court designate its recent opinion in *Cynthia Beck v. Blum Collins, LLP*, Case No. B250653, filed May 29, 2015 (“the Opinion”) for publication.

IDENTITY AND INTEREST OF ASCDC

As the nation’s largest regional organization of lawyers who regularly defend civil actions, ASCDC is a voluntary membership association consisting of approximately 1,100 attorneys in Southern and Central California, including some of the leading trial and appellate lawyers of California’s civil defense bar. ASCDC’s members routinely represent and defend professionals, including lawyers, and businesses, civic and religious institutions that provide the goods, services, jobs and investments vital to the country’s economic health and prosperity. ASCDC is dedicated to promoting the administration of justice, providing education to the public about the legal system, and enhancing the standards of civil litigation and trial practice in this State. ASCDC is actively involved in assisting courts on issues of interest to its members, and has appeared as *amicus curiae* in numerous cases before both the California Supreme Court (e.g., *Howell v. Hamilton Meats & Provisions* (2011) 52 Cal.4th 541; *Village Northridge Homeowners Assn. v. State Farm Fire & Casualty Co.* (2010) 50 Cal.4th 913; *Reid v. Google, Inc.* (2010) 50 Cal.4th 512) and the Courts of Appeal (e.g., *Burlage v. Superior Court* (2009) 178 Cal.App.4th 524).

ASCDC's members focus their legal practices in the defense of civil litigation matters of all varieties. Many of our members regularly counsel, and are retained or appointed to defend, lawyers and law firms against claims of legal malpractice, breach of fiduciary duty, fraud, and associated claims, and cross-complaints and affirmative defenses of set off and offset based on such claims, as well as advising lawyer clients, and litigating issues regarding, applicable statutes of limitations, defenses based upon such statutes, and formation, validity, effect, and breadth of tolling agreements, such as the tolling agreement at the heart of this Court's Opinion in *Beck v. Blum Collins, LLP*. Our members' engagement in the practice of law also carries the risk of exposure, warranted or not, to claims of legal malpractice. As such, the ASCDC has a significant interest in developments affecting this area of the law.

WHY THE OPINION SHOULD BE PUBLISHED

The key and determinative issue in *Beck v. Blum Collins, LLP* was "whether a statute of limitations tolling agreement signed by [the malpractice claimant's] lawyer also bound the law firm partnership [which that lawyer signatory] formed after he began to represent [claimant]." (Opinion, page 2.) There is a dearth of published decisional law in California dealing with this precise issue in the context of statute of limitations tolling agreements between legal malpractice claimants and the lawyers and law firms against whom claims are sought to be preserved.

The detailed 14-page Opinion meets at least the following criteria for publication set forth in California Rules of Court, rule 8.1105:

"... (2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions;

...

(3) ... [E]xplains ... with reasons given, an existing rule of law ... [and]

...

(6) Involves a legal issue of continuing public interest."

The discussion below shows how each of these criteria are met.

(2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions

The Opinion, at pages 8-13, applies “ordinary rules of contract interpretation “ set forth in statutory law (Opinion, p. 8) to a factual nexus and context significantly different from those stated in the applicable decisional law cited and thoroughly discussed in the Opinion, in correctly concluding that the tolling agreement at issue did not extend to a party (the Blum Collins law partnership) not identified in the contract, where the lawyer who signed the tolling agreement did so only in his individual capacity, and not in a representative capacity. As stated above, we are not aware of any published decisional law in California dealing with this precise issue in the context of statute of limitations tolling agreements between legal malpractice claimants and the lawyers, law partnerships, and other law firms against whom claims are sought to be preserved.

(3) ... [E]xplains ... with reasons given, an existing rule of law

In addition to the points noted above, the Opinion, at pages 11-13, also discusses and explains, with cogent reasons given, why the rules of agency law enunciated in *Dow v. Jones* (D.Md. 2004) 311 F.Supp.2d 461 (*Dow*) and the Restatement (Second) of Agency—and other cases cited by appellant Beck in support of her contention the law partnership was bound by the tolling agreement under the rule of apparent authority – did not apply, given the undisputed facts of the case at bar. The Opinion explains that “[t]he result in *Dow* is consistent with the rules of agency law.” Those rules, set forth in Rest.2d Agency, Sections 159 (disclosed principal liable on contract made by an agent acting with apparent authority) and 146 (liability of principal “depends upon the agreement between the agent and the other party as to the parties to the transaction”), “were satisfied [in *Dow*] because a law firm partner discussed representing the client and because the retainer agreement was on the firm’s letterhead.” (Opinion, page 13.) In the case at bar, however, “the form of the tolling agreement excludes the partnership by omission, and there is no evidence that Collins did or said anything concerning the copies of the agreement in connection with its drafting and execution.” (Opinion, page 13.) For those reasons, *Dow* was correctly determined to be inapposite.

(6) Involves a legal issue of continuing public interest

Statute of limitations tolling agreements involving claims against lawyers are a comparatively modern development. In appropriate circumstances, these agreements can be of great utility, are used with increasing frequency, and can and do serve to promote the fair and

California Court of Appeal, 2nd Appellate District, Division Eight
Re: Beck v. Blum Collins, LLP, No. B250653
Publication Letter Request of Amicus Curiae ASCDC [Rules of Court rule 8.1120(a)]
June 17, 2015

efficient administration of civil justice and conservation of resources of the courts and potential litigants. The Opinion thus involves a legal issue of continuing public interest: application of ordinary rules of contract formation and interpretation to legal malpractice statute of limitations tolling agreements, so that legal malpractice claimants and potential legal malpractice defendants, and trial courts, can know, understand and be guided in the proper formation, validity, breadth, and interpretation of such agreements.

We respectfully request this Court certify this significant and well-reasoned Opinion for publication.

Respectfully submitted,

THE COLTON LAW FIRM

By: 

Michael A. Colton*, Bar No. 83231

*Certified Specialist in Legal Malpractice Law, Certified by
The State Bar of California Board of Legal Specialization

Attorneys for Amicus Curiae
ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL

PLEASE NOTE ADDRESS OF LEGAL COUNSEL:

Michael A. Colton, Attorney and Counselor at Law
THE COLTON LAW FIRM
825 Jennings Avenue
Santa Barbara, CA 93103
(805) 455-4546 coltonlaw@gmail.com

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

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 Santa Barbara, State of California. My business address is 825 Jennings Avenue, Santa Barbara, California 93103.

On June 17, 2015, I served true copies of the following document(s) described as **LETTER OF AMICUS CURIAE ASCDC REQUESTING PUBLICATION OF *Cynthia Beck v. Blum Collins, LLP*, Case No. B250653** on the interested parties in this action as follows:

CYNTHIA BECK: Plaintiff and Appellant	William Gwire Ujvala Singh Gwire Law Offices 1250 45th St Ste 310 Emeryville, CA 94608 Myron Moskovitz 90 Crocker Avenue Piedmont, CA 94611
BLUM COLLINS, LLP : Defendant and Respondent	Steven Aaron Blum Craig M. Collins Gary Chia Heng Ho Blum Collins, LLP 707 Wilshire Blvd. Suite 4880 Los Angeles, CA 90017 Douglas L. Thorpe A Professional Corporation 1508 Old Oak Rd Los Angeles, CA 90049-2504

BY MAIL: I enclosed the document(s) in sealed envelopes addressed to the persons at the addresses listed above and placed the envelopes for collection and mailing with the United States Postal Service at Santa Barbara, California, in sealed envelopes with postage fully prepaid. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 17, 2015, at Santa Barbara, California.

MICHAEL A. COLTON