

Client's Right to Fire Counsel

Policyholder Impliedly Consents to Unconflicted Dependent Counsel

A standard liability policy grants to the insurer the right to defend the policyholder which permits an insurer to select and direct dependent counsel, absent any conflict of interest.¹ “Ordinarily, there is no conflict of interest involved in such a situation because the insertion in the policy of a provision requiring the insured to permit the insurance company’s lawyer to defend claims insured against amounts to a consent in advance by the insured to the employment of an attorney by the insurance company to defend such claims.”² However, the policyholder’s implied consent to representation by dependent counsel may be overcome by expressly withholding consent, if dependent counsel has a disqualifying conflict of interest.

The Client May Always Fire Counsel

The client always has the right to discharge an attorney. “[A] client should have both the power and the right at any time to discharge his attorney with or without cause.”³ “[T]he client has the absolute right to change his attorney at any stage in the action. The interest of the client in the successful prosecution or defense of the action is superior to that of the attorney, and he has the right to employ such attorney as will in his opinion best subserve his interest. The relation between them is such that the client is justified in seeking to dissolve that relation whenever he ceases to have absolute confidence in either the integrity or the judgment or the capacity of the attorney.”⁴

A client may apply to the court to change attorneys. “The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows: . . . 2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other.”⁵ The client may also withhold authority for the lawyer to appear in court. “Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension.”⁶

Duty of Cooperation

However, if the policyholder withholds consent and authority for dependent counsel, both dependent counsel and the insurer are likely to accuse the insured of violating the cooperation clause of a policy. However, the insurer must prove substantial prejudice caused by a violation of the cooperation clause. For the past half-century, California courts have enforced the cooperation clause only where the policyholder has failed to appear for deposition or trial.⁷ While there are no reported opinions in California enforcing the violation of the cooperation clause, the issue is likely to turn on whether dependent counsel has a disqualifying conflict of interest.⁸ “An insurer’s reservation of rights may create a disqualifying conflict of interest requiring the insurer to pay the cost of Cumis counsel to represent the insured in the underlying action.”⁹

¹ See, *Control of the Defense* at DutytoDefend.com.

² *Lysick v. Walcom* (1968) 258 Cal.App.2d 136, 146.

³ *Fracasse v. Brent* (1972) 6 Cal.3d 784, 790.

⁴ *Id.* at 800-801.

⁵ Code Civ. Proc., § 284.

⁶ Bus & Prof § 6104.

⁷ See, *Compendium of Cooperation Cases* at DutytoDefend.com.

⁸ See, *Line Dividing Cooperation from Collusion* at DutytoDefend.com.

⁹ *Dynamic Concepts, Inc. v. Truck Ins. Exchange* (1998) 61 Cal.App.4th 999, 1006 (citation omitted.)

Procedural Options

A policyholder whose insurer has reserved rights to later deny coverage and hires dependent counsel who fails to resolve potential disqualifying conflicts of interest¹⁰, may challenge unwanted representation in many ways.¹¹ These include asking nicely, withholding consent, resisting a motion to withdraw, filing a motion to disqualify, filing a motion to stay a declaratory relief action and moving for summary judgment in a declaratory relief action. However, a policyholder can minimize the risk of violating the cooperation clause by obtaining a court order determining whether a disqualifying conflict of interest exists.

¹⁰ See, *Disqualifying Conflicts of Interest* at DutytoDefend.com.

¹¹ See, *Top Ten Procedural Options to Resolve Conflicts of Interest* at DutytoDefend.com.