

JAMES M. FISCHER
Professor of Law

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PROFESSIONAL EXPERIENCE

Professor of Law
Southwestern Law School
1976 to present

Of Counsel
Gilbert, Kelly, Crowley & Jennett
1984 to 1992

Attorney
Beardsley, Hufstedler & Kemble [subsequently merged into Morrison & Foerster]
1974-1976

Law Clerk to the Honorable Clarke E. Stephens
California Court of Appeal, Second Appellate District
1973-74

APPOINTMENTS

Advisor, American Law Institute, Restatement of the Law Third Torts: Remedies.

Member, State Bar of California Committee on Professional Responsibility and Conduct, 2005-2008.

Chair, Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association, 1995-96. Member 1992-1999, 2023 to present.

Vice Chair, Committee on Property Insurance Law, Section of Tort and Insurance Practice, American Bar Association, 1992-1997.

Member, Executive Committee, Solo and Small Firm Section, State Bar of California, 1997-1998.

Member, Committee on Professional Liability Insurance, State Bar of California, 1991-1997.

Arbitrator, Los Angeles County Superior Court, Court Annexed Arbitration Program, 1982-1996

Member, Hearing Board, South Coast Air Quality Management District, 1983-86

Special Assistant to the United States Attorney for the Central District of California, 1980-81

Judge Pro Tem, Municipal Court, Los Angeles County Judicial District, State of California - Small Claims Court, 1981-83

President, Board of Trustees, North Los Angeles County Regional Center, 2004-05; Member 1991-1996, 2001-2005

Member, Committee on Administration of Justice, State Bar of California, 1984-1987

PUBLICATIONS

BOOKS:

Keeton, Widiss & Fischer, Insurance Law (2d ed. 2016)

Understanding Remedies (Lexis/Nexis) (4th ed. 2021).

Federal Trial Procedure Handbook (John Wiley & Sons, Inc.) (1984).

RECENT ARTICLES ON PROFESSIONAL RESPONSIBILITY:

When Can A Lawyer Lawfully Use Threats When Negotiating?, 15 St. Mary's Journal on Legal Malpractice & Ethics 101 (2025).

The Lawyer's Affirmative Duty to Disclose to the Court (47 The Journal of the Legal Profession 1 (Fall 2022).

Litigation Financing: A Real or Phantom Menace to Lawyer Professional Responsibility, 27 Georgetown Journal of Legal Ethics 191 (2014).

The Crime-Fraud Exception to Privilege, The Brief 30 (Vol. 41, No. 2, Winter 2012)

Large Law Firm Lateral Hire Conflicts Checking: Professional Duty Meets Actual Practice, 36 Journal of the Legal Profession 167 (2011)

Ethically Handling the Receipt of Possibly Privileged Information, 1 St. Mary's J. Leg. Mal. & Ethics 202 (2011) (Symposium Issue)

The Professional Obligations of Counsel Retained for the Policyholder But Not Subject to Insurer Control, 43 Tort Trial & Ins. Prac. L. J. 173 (Winter 2008)
External Control Over The American Bar, 19 Georgetown J. Legal Ethics (2006)

Non-Client Standing To Move To Disqualify Counsel For Conflicts of Interest, The Professional Lawyer, Vol. 8 (May 1997)

Representing Partnerships: Who Is/Are the Client(s)?, 26 Pacific L.J. 961 (1995)

Should Advice of Counsel Constitute a Defense for Insurer Bad Faith?, 72 Tex. L. Rev. 1447 (1994) (Symposium Issue)

Why Can't Lawyers Split Fees? Why Ask Why, Ask When!, 6 Georgetown J. Legal Ethics 1 (1992)

OTHER PUBLISHED ARTICLES:

Is Poker Legal or Illegal in California? 12 UNLV GAMING L.J. 27 (2021).

Is Online Sport Betting Illegal in California? 18 HASTINGS BUS L.J. 61 (2021).

Exhaustion of Underlying Insurance in the Context of Continuous Trigger Coverage. 25 U. Conn. Ins. L.J. 263 (2018).

Accidental or Willful?: The California Insurance Law Conundrum, 54 Santa Clara Law Review 69 (2014).

Does An Insured Have a Duty to Mitigate Damages When the Insurer Breaches?, 20 Connecticut Journal of Insurance Law 89 (2013-2014).

What Hath eBay v. MercExchange Wrought? 14 Lewis & Clark L. Rev. 555 (2010) (Symposium Issue)

The Puzzle of the Actual Injury Requirement for Damages, 42 Loy. (L.A.) L. Rev. 197 (2008) (Symposium Issue)

Insurer-Policyholder Conflicts of Interest and Retained Defense Counsel's Professional Duties, 14 Conn. Ins. L.J. 21 (2008)

The "Right" to Injunctive Relief For Patent Infringement, 24 Santa Clara Computer & High Technology Law J. 1 (2007)

"Preliminarily" Enjoining Elections: A Tale of Two Ninth Circuit Panels, 41 San Diego L. Rev. 1647 (2004) (Symposium Issue)

Insurer or Policyholder Control of the Defense and the Duty to Fund Settlements, 2 Nev. L.J. 1 (2002)

Discretion and Politics: Ruminations on the Recent Presidential Election, 69 U. Cinn. L. Rev. 807 (April 2001)

Plebiscites, The Guaranty Clause, and The Role of the Judiciary, 41 Santa Clara L. Rev. 973 (2001)

Teaching Remedies Versus Learning Remedies, 39 Brandeis L.J. 575 (2001) (Symposium Issue)

The Doctrine of Reasonable Expectations Is Indispensable, If We Only Knew What For, 5 Conn. Ins. L. J. 151 (1999) (Symposium Issue)

The Attorney-Client Privilege Meets The Common Interest Arrangement: Protecting Confidence While Exchanging Information For Mutual Gain, 16 The Review of Litigation 631 (1997) (Symposium Issue)

Insurance Coverage For Mass Exposure Tort Claims: The Debate Over the Appropriate Trigger Rule, 45 Drake L. Rev. 625 (1997)

The Presence of Insurance and the Legal Allocation of Risk, 2 Conn. Ins. L.J. 1 (1996)

Why Are Insurance Contracts Subject to Special Rules of Interpretation?: Text v. Context, 24 Ariz. St. Univ. L. Rev. 995 (1992)

Broadening The Insurer's Duty to Defend: How "Gray v. Zurich Insurance Co." Transformed Liability Insurance Into Litigation Insurance, 25 U. Cal. (Davis) L. Rev. 141 (1991)

Enforcement of Settlements: A Survey, 27 Tort & Ins. L. J. 82 (1991).

The Exclusion From Insurance Coverage of Losses Caused By the Intentional Acts of the Insured: A Policy in Search of a Justification, 30 Santa Clara Law Review 95 (1990)

The Limits of Statutes of Limitation, 16 Sw. Univ. L. Rev. 1 (1986)

Network "Early Calls" of Elections: An Analysis of the Legality of Proposals to Keep the Voting Process from Becoming An Academic Exercise, 14 Sw. Univ. L. Rev. 428 (1984)

Ballot Propositions: The Challenge of Direct Democracy to State Constitutional Jurisprudence, 11 Hast. Const. L.Q. 43 (1983)

Acid Rain: The Availability of Private Damages for Acid Rain Damage, 9 Ecol. L.Q. 601 (1981)

The Concept of Mandatory Jurisdiction, 41 Ohio State L.J. 858 (1981)

The New Synthetic Fuels Program: Boomlet or Bust? 16 Tulsa L.J. 357 (1981)

Allocating Decisionmaking in the Field of Energy Resource Development: Some Questions and Suggestions, 22 Ariz. L. Rev. 1001 (1980)

Shaffer v. Heitner: Some Thoughts On Its Impact on the Doctrine of Preclusion by Judgment and Choice of Law, 30 Case Western Reserve L. Rev. 74 (1979)

Contribution in 10b-5 Actions, 33 Business Lawyer 1821 (1978)

State Interest, Minimum Contacts, and In Personam Jurisdiction Under Code of Civil Procedure Section 410.10, 12 U.S.F.L. Rev. 387 (1978)

HIV & Insurance Coverage Overview, published by the Los Angeles County Bar Association Barristers AIDS Legal Services Project

RECENT PRESENTATIONS

- St. Mary's Law School
24th Symposium on Legal Malpractice + Ethics – January 31, 2025
(Use of Negotiation Threats by Lawyers)
- ABA Tort Insurance & Practice Section
Mid-year Meeting – February 2019
(Insurance Coverage) (Moderator)
- ABA Tort Insurance & Practice Section
Mid-year meeting- February 2013
(Litigation Financing)
- ABA Tort Insurance & Practice Section
Mid-year meeting- February 2012
(Ethical Duties of Retained Defense Counsel)
- HP Construction Defect Coverage Conference – March 2011
(Professional Duties of Retained Defense Counsel)
- ABA Tort Insurance & Practice Section
Mid-year meeting – February 2011
(Attorney Client Privilege in Coverage Litigation)

Revised 4/2/2025

- Los Angeles County Bar Association – October 2010
(Substance Abuse & Legal Practice)