

1996

Attorneys. Fees. Right to Negotiate. Frivolous Lawsuits.

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_props

Recommended Citation

Attorneys. Fees. Right to Negotiate. Frivolous Lawsuits. California Proposition 207 (1996).
http://repository.uchastings.edu/ca_ballot_props/1142

This Proposition is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Propositions by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.



**Attorneys. Fees. Right to Negotiate.
Frivolous Lawsuits. Initiative Statute.**

Official Title and Summary Prepared by the Attorney General

**ATTORNEYS. FEES. RIGHT TO NEGOTIATE.
FRIVOLOUS LAWSUITS. INITIATIVE STATUTE.**

- Except as allowed by laws in effect on January 1, 1995, prohibits restrictions on the right to negotiate amount of attorneys' fees, whether fixed, hourly or contingent.
- Prohibits attorney from charging or collecting excessive or unconscionable fees.
- Authorizes court to impose sanctions upon attorney who files a lawsuit or pleading which is totally and completely without merit or filed solely to harass opposing party. Prohibits sanctioned attorney from collecting fees for case.
- Requires State Bar to recommend appropriate discipline for attorneys with repeated sanctions.

**Summary of Legislative Analyst's
Estimate of Net State and Local Government Fiscal Impact:**

- Adoption of this measure would have an unknown, but probably not significant, net fiscal impact on state and local governments.
-

Analysis by the Legislative Analyst

BACKGROUND

Attorneys' Fees. In general, existing law requires that attorneys enter into written fee agreements with their clients. These agreements must specify, among other things, the fee to be paid to the attorney and the manner in which the fee will be determined.

In general, attorney fees are billed to clients on either an hourly basis or a "contingent fee" basis. In contingent fee agreements, the attorney is paid a percentage of the settlement or judgment only if the case is won or settled in favor of the attorney's client. Generally, these hourly and contingent fees are negotiated between the client and the attorney. Current law limits contingent fee rates in certain cases, such as medical malpractice cases.

"Excessive" Attorney Fees. The State Bar regulates attorneys in California, including developing and enforcing rules of professional conduct. The State Bar and the California Supreme Court have the power to discipline attorneys, including suspending an attorney from practice for a violation of the rules of professional conduct. One of these rules prohibits attorneys from collecting "excessive" fees, as defined in State Bar rules.

"Frivolous" Legal Actions. Existing law allows courts to determine whether an attorney has filed a lawsuit or legal action that is "frivolous." Frivolous actions are defined as either (1) totally and completely without merit or (2) filed for the sole purpose of harassing an opposing party. If the court determines that an action is frivolous, it may impose sanctions upon the attorney, including monetary penalties. If a court imposes a penalty of \$1,000 or more, it must notify the State Bar. A court is not required to notify the State Bar if the sanction is less than \$1,000.

PROPOSAL

Attorneys' Fees. Under the measure, attorney fees for any legal matter would be subject to the laws in effect on January 1, 1995. Any changes to these state laws by the Legislature would also require a vote of the electorate, unless the changes further the purposes of the measure, in which case they could be enacted by a two-thirds vote of each house.

Excessive Attorney Fees. The measure enacts into law existing State Bar rules prohibiting attorneys from collecting excessive fees, and provides that clients can sue attorneys to recover fees that have been found to be excessive by the court. The measure enacts into law criteria for determining whether a fee is excessive. The criteria are similar to those currently used by the State Bar.

Attorney Discipline for Frivolous Legal Actions. The measure requires that a court impose sanctions against an attorney if the court determines that the attorney has filed a frivolous legal action. Attorneys may appeal the proposed sanctions. Once the appeals are final, the court is required to notify the State Bar if sanctions have been imposed on an attorney, regardless of the amount of the sanction. The sanctioned attorney is required to reimburse the court for all expenses incurred in reporting sanctions to the State Bar. If the State Bar receives three notifications of court sanctions against the same attorney within a five-year period, the State Bar is required to recommend appropriate disciplinary action to the Supreme Court, including but not limited to, suspension or disbarment.

The measure also requires that the sanctioned attorney must notify the client that sanctions had been imposed due to the attorney's conduct in the case. Additionally, the measure prohibits attorneys from collecting fees for services performed in connection with a lawsuit in which the court had imposed sanctions.

FISCAL EFFECT

The net fiscal impact of this measure on state and local government is unknown, but is probably not significant. The fiscal impact would depend largely on how attorneys and courts respond to the discipline and sanction procedures for frivolous legal actions established by the measure. Thus, to the extent that the measure deters some frivolous legal actions, court-related costs could be reduced. On the other hand, the measure could increase the number of court hearings and appeals related to determination of excessive fees and attorney sanctions. To the extent that this results, court-related costs could increase.

For text of Proposition 207 see page 88

Attorneys. Fees. Right to Negotiate. Frivolous Lawsuits. Initiative Statute.

Argument in Favor of Proposition 207

KEEP YOUR CONTINGENCY FEE PROTECTION.

Nobody wants to be forced to hire a lawyer. But a contingent fee lawyer can give you a fighting chance against corporations and insurance company lawyers.

Lobbyists for multi-million dollar corporations and insurance companies give money to politicians. They want to change the law so that consumers can't hire a contingency fee attorney.

Yes on Proposition 207 keeps consumers' contingency fee protections in place until the voters—not the politicians—change them.

PROPOSITION 207 PUNISHES BAD LAWYERS.

Proposition 207 was written by responsible consumer attorneys who protect people from stock swindlers, insurance companies and manufacturers of dangerous products. It punishes the bad lawyers without taking away consumers' contingency fee protections.

Yes on Proposition 207 is your chance to punish the lawyers who file frivolous lawsuits.

NO FEES FOR FRIVOLOUS LAWSUITS.

Frivolous lawsuits are no joke. They hurt consumers and retired people who have good cases.

Yes on Proposition 207 takes *all* the fees away from a lawyer when a judge rules that their lawsuit or defense is frivolous.

THREE STRIKES AND THEY'RE OUT.

Just like some criminals who never learn, there are irresponsible lawyers who should be put out of business.

Yes on Proposition 207 punishes irresponsible lawyers who file three frivolous lawsuits—they can lose their license.

GOOD FOR THE GOOSE.

GOOD FOR THE GANDER.

There are irresponsible lawyers on both sides. Often insurance company lawyers file frivolous motions to delay legitimate cases.

Yes on Proposition 207 punishes irresponsible lawyers no matter which side they are on.

STOP FRIVOLOUS LAWSUITS.

KEEP YOUR CONTINGENCY FEE PROTECTION.

VOTE YES ON PROPOSITION 207.

MARY E. ALEXANDER

President, Consumer Attorneys of California

Rebuttal to Argument in Favor of Proposition 207

We must have the ability to hire an attorney when we need one. We can do that now. *We don't need 207.*

The trial lawyers promoting 207 are just trying to protect their outrageous fees. They don't want anyone to jeopardize their sweetheart deals like their bogus lawsuit "on behalf" of cereal consumers:

CONSUMERS GOT COUPONS FOR MORE BOXES OF CEREAL WHILE THEIR LAWYERS GOT \$1.75 MILLION IN FEES. (*Washington Post*, 4/8/96)

The ambulance-chasing trial lawyers behind 207 spend millions of dollars on television and billboard advertising to promote frivolous lawsuits!

207 will mean more frivolous lawsuits, costing consumers millions of dollars a year in higher costs for such things as insurance and health care.

Now the lawyers want us to believe that they're going to "punish" themselves and take away their fees for frivolous lawsuits!

Next, they use the "three strikes" slogan to make us think they are "tough on themselves." But the trial lawyers wrote this "loophole" so it won't work!

If they really wanted to curb frivolous lawsuits, they would do it in the Legislature. Official records document they gave almost \$7 million to California politicians between 1990 and 1994. These millions went to protect their big fees.

Even after pumping out millions in contributions, the trial lawyers now want the ultimate fee protection for themselves: Proposition 207. *207 doesn't protect us from greedy lawyers and lawsuit abuse—it just protects THEIR fees.*

207 IS A SMOKE SCREEN. VOTE NO ON 207.

SARAH F. CHEAURE

Executive Director, Citizens Against Lawsuit Abuse (CALA)

MARTYN B. HOPPER

State Director, National Federation of Independent Business/California

JOHN SULLIVAN

President, Association for California Tort Reform

Argument Against Proposition 207

VOTE NO ON PROPOSITION 207: A TRIAL LAWYER TRICK.

Trial lawyers want you to think 207 limits lawyer fees and stops frivolous lawsuits. This is a SMOKE SCREEN.

PROPOSITION 207 SHOULD BE CALLED THE LAWYERS' FEE-PROTECTION INITIATIVE!

The real purpose of 207 is to *prohibit limits on attorney fees*. A few greedy lawyers want to make sure they can always take whatever amount they can get away with from a settlement or judgment.

Hidden in the actual language of Proposition 207 is their real purpose. THE CALIFORNIA ATTORNEY GENERAL'S OFFICIAL TITLE AND SUMMARY (see second sentence) contains this language:

“. . . amount of attorneys' fees . . . shall not be restricted.”

THE SAN JOSE MERCURY NEWS ALSO ANALYZED THE MEASURE AND DESCRIBED IT AS:

“A statutory measure sponsored by trial attorneys that would prohibit the state from regulating attorney fees.”

— *San Jose Mercury News, June 29, 1996*

Not only does the bogus language of 207 prevent reasonable limits on what attorneys can take, it could actually make it more difficult to prevent frivolous lawsuits and could even discourage judges from cracking down on frivolous lawsuits.

Trial lawyers gave millions of dollars to their special interest committee to pay for signatures to put Proposition 207 on the ballot. They are contributing more money for a campaign supporting it.

Do you believe trial lawyers are doing this to limit their own fees and prohibit themselves from filing frivolous lawsuits? Of course not.

The lawyers promoting 207 specialize in ambulance-chasing lawsuits. They tried to confuse the public last year by changing their name from “trial lawyers” to “consumer attorneys.”

They make one phone call or write one letter and still take a huge fee. *The lawyers end up making thousands of dollars an hour and the victims end up with a fraction of their settlement—meager compensation for their injuries.* Now they want to make sure their fees can never be regulated.

We must be able to hire attorneys when we need them. But fees must be fair. Unless we defeat 207, the Legislature will be forever prohibited from protecting people from unfair, one-sided fee agreements written by lawyers. Trial lawyers will be free to write their own ticket from then on.

And, if 207 is enacted, it would require another costly ballot proposition to ever place fair limits on what lawyers can take.

The real intent of the lawyers who wrote 207 is simple: *They want to lock in their ability to take whatever they can get from a client.* The rest of 207 is nothing more than a disguise to hide their real purpose. These other sections offer no truly new protections and could end up costing taxpayers more because they are so complex.

VOTE NO ON PROPOSITION 207: THE “TRIAL LAWYERS' FEE PROTECTION INITIATIVE.”

JOHN SULLIVAN

President, Association for California Tort Reform

MARTYN B. HOPPER

State Director, National Federation of Independent Business/California

BILL MORROW

Assemblyman, 73rd District

Chairman, Assembly Judiciary Committee

Rebuttal to Argument Against Proposition 207

The corporate lobbyists and special interests who oppose Proposition 207 are being unfair to California Attorney General Dan Lungren when they selectively quote his OFFICIAL TITLE AND SUMMARY.

They are trying to make it look like he used his official position to say Proposition 207 does nothing about frivolous lawsuits.

That's wrong.

They left out the part of the Attorney General's OFFICIAL TITLE AND SUMMARY that talks about punishing lawyers who file Frivolous Lawsuits:

Proposition 207:

“Authorizes court to impose sanctions upon attorney who files a lawsuit or pleading which is completely without merit or filed solely to harass the opposing party.”

Attorney General Lungren's OFFICIAL TITLE AND SUMMARY goes on to say:

Proposition 207:

“Prohibits sanctioned attorney from collecting fees for (Frivolous) case. Requires State Bar to recommend appropriate discipline for attorneys who have repeated sanctions.”

Since all of these things are in Attorney General Lungren's OFFICIAL TITLE AND SUMMARY, why are our opponents using such deceptive arguments?

The answer is also in Attorney General Lungren's OFFICIAL TITLE AND SUMMARY:

Proposition 207:

“Provides the right to negotiate amount of attorney's fees, whether fixed, hourly or contingent, shall not be restricted. Prohibits attorney from charging/collecting excessive or unconscionable fees.”

Proposition 207 was written by responsible consumer attorneys who protect people from stock swindlers, insurance companies and manufacturers of dangerous products.

Proposition 207 keeps consumers' contingency fee protections until the voters—not the politicians—change them.

Stop Frivolous Lawsuits. Vote “Yes” on Proposition 207.

MARY E. ALEXANDER

President, Consumer Attorneys of California

article. Any sums withdrawn shall be deposited in the fund. All money made available under this section to the board shall be returned by the board to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from the sale of bonds for the purpose of carrying out this article.

998.207. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purposes of carrying out this article. The amount of the request shall not exceed the amount of unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of carrying out this article. The board shall execute whatever documents are required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this article.

998.208. Upon request of the board, supported by a statement of its plans and projects approved by the Governor, the committee shall determine whether to issue any bonds authorized under this article in order to carry out the board's plans and projects, and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out these plans and projects progressively, and it is not necessary that all the bonds be issued or sold at any one time.

998.209. So long as any bonds authorized under this article are outstanding, the Director of Veterans Affairs shall, at the close of each fiscal year, require a survey of the financial condition of the Division of Farm and Home Purchases, together with a projection of the division's operations, to be made by an independent public accountant of recognized standing. The results of each survey and projection shall be reported in writing by the public accountant to the Director of Veterans Affairs, the California Veterans Board, and the committee.

The Division of Farm and Home Purchases shall reimburse the public accountant for these services out of any money which the division may have available on deposit with the Treasurer.

998.210. The committee may authorize the Treasurer to sell all or any part of the bonds authorized by this article at the time or times established by the Treasurer.

Whenever the committee deems it necessary for an effective sale of the bonds, the committee may authorize the Treasurer to sell any issue of bonds at less than their par value,

notwithstanding Section 16754 of the Government Code. However, the discount on the bonds shall not exceed 3 percent of the par value thereof.

998.211. Out of the first money realized from the sale of bonds as provided herein, there shall be redeposited in the General Obligation Bond Expense Revolving Fund, established by Section 16724.5 of the Government Code, the amount of all expenditures made for 1 purposes specified in that section, and this money may be used for the same purpose a, repaid in the same manner whenever additional bond sales are made.

998.212. Any bonds issued and sold pursuant to this article may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 2 of Title 2 of the Government Code. The approval of the voters for the issuance of bonds under this article includes approval for the issuance of bonds issued to refund bonds originally issued or any previously issued refunding bonds.

998.213. Notwithstanding any provision of the bond act, if the Treasurer sells bonds under this article for which bond counsel has issued an opinion to the effect that the interest on the bonds is excludable from gross income for purposes of federal income tax, subject to any conditions which may be designated, the Treasurer may establish separate accounts for the investment of bond proceeds and for the earnings on those proceeds, and may use those proceeds or earnings to pay any rebate, penalty, or other payment required by federal law or take any other action with respect to the investment and use of bond proceeds required or permitted under federal law necessary to maintain the tax-exempt status of the bonds or to obtain any other advantage under federal law on behalf of the funds of this state.

998.214. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this article are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by Article XIII B.

998.215. Notwithstanding any other provision of law, any bonds issued and sold under the Veterans Bond Act of 1974, the Veterans Bond Act of 1976, the Veterans Bond Act of 1978, the Veterans Bond Act of 1980 or the Veterans Bond Act of 1986 may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, without regard to the first sentence of Section 16786 of the Government Code.

Proposition 207: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure amends and adds sections to various codes; therefore, existing provisions proposed to be deleted are printed in **strikeout type** and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

FRIVOLOUS LAWSUIT LIMITATION ACT

SECTION 1. TITLE

This initiative shall be known and may be cited as the "Frivolous Lawsuit Limitation Act."

SECTION 2. FINDINGS AND DECLARATIONS

The People of the State of California find and declare:

(a) Frivolous lawsuits and frivolous defenses clog our courts, cost taxpayers money, and delay the legal process.

(b) Lawyers who file frivolous lawsuits or frivolous defenses violate their ethical obligations as officers of the court and should be punished.

(c) Lawyers who file frivolous lawsuits or defenses should not be paid.

(d) Injured people who have legitimate legal claims have the same right to contract freely with the attorney of their choice as do corporations and wealthy individuals.

(e) People with legitimate claims need to be protected against some attorneys who are able to manipulate the system so that they collect enormous fees for almost no work.

(f) The most effective way to preserve the rights of consumers, corporations, and small businesses to contract freely while at the same time protecting them from unscrupulous attorneys is to allow clients to ask the courts to decide whether an attorney's fee is excessive.

THEREFORE, THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 3. SANCTIONS AND DISCIPLINE FOR FRIVOLOUS LAWSUITS AND FRIVOLOUS DEFENSES

Section 6089.5 is added to the Business and Professions Code, to read:

6089.5. (a) *If, after using the notice and procedures contained in Section 128.7 of the Code of Civil Procedure, a court determines that an attorney or law firm has filed a frivolous lawsuit or a frivolous answer or other responsive pleading to a lawsuit, the court shall impose appropriate sanctions upon the attorney or law firm.*

(b) (1) *For purposes of this section, a frivolous lawsuit or frivolous answer or other responsive pleading to a lawsuit is one that is either (A) totally and completely without merit, or (B) filed for the sole purpose of harassing an opposing party.*

(2) *For purposes of this section, an appropriate sanction is one that is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated.*

(c) *No attorney against whom sanctions have been imposed pursuant to subdivision (a) shall collect or retain any fee for services performed in connection with a lawsuit in which the court has imposed sanctions under this section and a final judgment has been entered and all appeals have been exhausted, unless the attorney can demonstrate that he or she has been misled by the misrepresentation or mistake of the client with regard to one or more facts material to the case.*

(d) *After a final judgment has been entered and all appeals have been exhausted, a court that has imposed sanctions upon an attorney or law firm pursuant to subdivision (a) shall notify the State Bar. The notification shall include the sanctions order, any written findings related thereto, including the name or names of the attorneys involved, and those portions of the record relevant to the order. The attorney or law firm against whom sanctions have been*

imposed shall reimburse the court for all expenses incurred in reporting to the State Bar pursuant to this section.

(e) *Upon notification from the court that sanctions have been imposed and the matter has been referred to the State Bar, the attorney and his or her law firm shall immediately notify the client or clients in writing that sanctions have been imposed for the attorney's conduct of the case.*

(f) *If the State Bar determines that it has received three notifications of sanctions against the same attorney pursuant to subdivision (a) within the past five years, after considering all relevant circumstances, the State Bar shall recommend appropriate discipline, including, but not limited to, suspension or disbarment, to the Supreme Court.*

(g) *Reprovals and other disciplinary measures taken by the State Bar pursuant to this section shall be a matter of public record.*

Code of Civil Procedure Section 128.7 is amended as follows:

128.7. (a) Every pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise provided by law, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

(1) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 30 days after service of the motion, or such other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(2) On its own motion, the court may enter an order describing the specific conduct that

appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b), unless, within 30 days of service of the order to show cause, the challenged paper, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected.

(d) A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(1) Monetary sanctions may not be awarded against a represented party for a violation of paragraph (2) of subdivision (b).

(2) Monetary sanctions may not be awarded on the court's motion unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(e) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.

(f) In addition to any award pursuant to this section for conduct described in subdivision (b), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(g) This section shall not apply to disclosures and discovery requests, responses, objections, and motions.

(h) A motion for sanctions brought by a party or a party's attorney primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions. It is the intent of the Legislature that courts a court shall vigorously use its sanctions authority to deter such improper conduct or comparable conduct by others similarly situated.

(i) This section shall apply to a complaint or petition filed on or after January 1, 1995, and any other pleading, written notice of motion, or other similar paper filed in such a matter.

(j) ~~This section shall remain in effect only until January 1, 1999; and as of that date is repealed; unless a later enacted statute, that is enacted before January 1, 1999; deletes or extends that date.~~ If a court imposes sanctions on an attorney or law firm pursuant to this section, it shall notify the State Bar if the sanctions were imposed for filing a frivolous lawsuit or a frivolous answer or other responsive pleading to a lawsuit pursuant to Section 6089.5 of the Business and Professions Code. The notification shall include the sanctions order, any written findings related thereto, and those portions of the record relevant to the order. The attorney or law firm against whom sanctions have been imposed shall reimburse the court for all expenses incurred in reporting to the State Bar pursuant to this subdivision.

SECTION 4. CLIENTS' RIGHT TO HIRE AND FIRE ATTORNEY

Section 6146.5 is added to the Business and Professions Code, to read:

6146.5. (a) Except as otherwise provided by law in effect on January 1, 1995 or by the provisions of the act adding this section, the right of a client or a client's representative to choose and contract with the attorney of his or her choice shall not be restricted, nor shall the right of a client or the client's representative to negotiate the amount of an attorney's fee, whether fixed, hourly, or contingent, be restricted or the validity of those contracts be impaired.

(b) A client shall have the right to discharge his or her attorney at any time during the course of the representation.

(c) Notwithstanding the terms of any contract entered into pursuant to Section 6146, 6147, or 6148, attorneys who are discharged before a case is finally concluded shall be entitled to compensation only as set forth below:

(1) Attorneys who have entered into contingency fee contracts pursuant to Section 6146 or 6147 shall be entitled to compensation only in the event the client recovers an award or settlement in the matter for which the attorney had been retained. In the event of such an award or settlement, the attorney shall be entitled to any unreimbursed expenses advanced or incurred by the attorney during the course of the representation and to the reasonable value of the attorney's services rendered to the time of discharge.

(2) Attorneys who have entered into hourly rate contracts for services pursuant to Section

6148 shall be entitled to payment at the agreed-upon rate for reasonable services rendered and expenses advanced or incurred during the course of the representation to the time of discharge. Attorneys who have contracted for a flat fee or any other method of compensation not subject to Section 6146 or 6147 shall be entitled to any unreimbursed expenses advanced or incurred and the reasonable value of their services to the time of discharge.

(d) Nothing in this section shall limit or otherwise affect any law in effect on January 1, 1995, with regard to attorney's fees, or impair the inherent authority of the courts to regulate the practice of law or to prohibit illegal or unconscionable fees, or the authority of a court in a particular case to find that a fee is excessive pursuant to Section 6146.1.

SECTION 5. RELIEF FROM EXCESSIVE ATTORNEYS' FEES

Section 6146.1 is added to the Business and Professions Code, to read:

6146.1. (a) No attorney shall enter into an agreement for, charge, or collect an excessive fee.

(b) In addition to any other remedies at law, a client may bring an action against an attorney to seek declaratory relief that a fee agreement or a portion of the fee required by that agreement is excessive, or to recover that portion of a fee collected or withheld that is excessive.

(c) In addition to any other remedies at law, in an action brought by an attorney against a client for breach of a fee agreement, the client may file a cross-complaint or assert an affirmative defense alleging that the fee agreement or a portion of the fee required by that agreement is excessive.

(d) For purposes of the act adding this section, an excessive fee is defined as one that is unconscionable. In determining whether a fee or a fee agreement is unconscionable, the court shall consider the following factors, in light of all the facts and circumstances:

(1) The amount of the fee in proportion to the value of the services performed.

(2) The relative sophistication of the attorney and the client.

(3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.

(4) The fact or likelihood that the acceptance of the particular employment would or did preclude other employment by the attorney.

(5) The amount involved and the results obtained.

(6) The time limitations imposed by the client or by circumstances.

(7) The nature and length of the professional relationship with the client.

(8) The experience, reputation, and ability of the attorney performing the services, including his or her capacity because of that reputation or ability to secure a better result for the client.

(9) Whether the fee is fixed, hourly, or contingent, including whether the fee reflects the risk that the representation could result in little or no recovery.

(10) The time and labor required.

(11) The informed consent of the client to the fee agreement.

(12) Whether the attorney has advanced costs in furtherance of the representation, and the amount thereof.

(13) Any other fact or circumstance relevant to the conscionability of the fee.

(e) Nothing in this section shall affect the right of the attorney to be reimbursed for actual costs advanced or incurred.

SECTION 6. RELATIONSHIP TO OTHER INITIATIVES

The people recognize that more than one measure dealing with the general matters set forth in this measure may be on the ballot at the same time. It is the intent of the voters in passing this measure that it be considered, for purposes of subdivision (b) of Section 10 of Article II of the California Constitution, to be in conflict with the "Lawyer Contingency Fee Limitation Act" and any other similar measure attempting to limit the right of a client and an attorney to contract with each other for legal services and to enforce those contracts.

SECTION 7. SEVERABILITY

If any provision of this act or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 8. AMENDMENT

The provisions of this act may be amended by a statute that becomes effective upon approval by the electorate or by a statute to further the act's purposes passed by a two-thirds vote of each house of the Legislature and signed by the Governor.

Proposition 208: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure amends, repeals, and adds sections to various codes; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

CALIFORNIA POLITICAL REFORM ACT OF 1996

SECTION 1. Article 1 (commencing with Section 85100) of Chapter 5 of Title 9 of the Government Code is repealed.

SEC. 2. Article 1 (commencing with Section 85100) is added to Chapter 5 of Title 9 of the Government Code, to read:

Article 1. Findings and Purposes

85100. This chapter shall be known as the California Political Reform Act of 1996.

85101. The people find and declare each of the following:

(a) Monetary contributions to political campaigns are a legitimate form of participation in the American political process, but the financial strength of individuals or organizations should not permit them to exercise a controlling influence on the election of candidates.

(b) The rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups with a specific financial

stake in matters before state and local government.

85102. The people enact this law to accomplish the following separate but related purposes:

(a) To ensure that individuals and interest groups in our society have a fair and equitable opportunity to participate in the elective and governmental processes.

(b) To minimize the potentially corrupting influence and appearance of corruption caused by excessive contributions and expenditures in campaigns by providing for reasonable contribution and spending limits for candidates.

(c) To reduce the influence of large contributors with a specific financial stake in matters before government by severing the link between lobbying and campaign fundraising.

(d) To lessen the potentially corrupting pressures on candidates and officeholders for fundraising by establishing sensible time periods for soliciting and accepting campaign contributions.

(e) To limit overall expenditures in campaigns, thereby allowing candidates and officeholders to spend a lesser proportion of their time on fundraising and a greater proportion of their time communicating issues of importance to voters and constituents.

(f) To provide impartial and noncoercive incentives that encourage candidates to voluntarily limit campaign expenditures.

(g) To meet the citizens' right to know the sources of campaign contributions, expenditures, and political advertising.