

David Keith Hicks

DAVID KEITH HICKS, SBN 053750

Admitted in the U.S. Supreme Court, U.S. District Courts for Maine & California (the Northern, Central & Eastern Districts), and the State Courts of New York [ret.] and California

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Education: *Juris Doctor*, University of California, Davis. B.A., Political Science, International Relations, SJSU (Humanities Honors; Journalism and Political Science Honor Societies). Certificate in Mediation (theory and practice) 2016. U.S. Army Intelligence School (USAR Military Intelligence Branch, 1966-1972) Training in Civil Affairs, JAG, Security, Intelligence Analysis and POW interrogation. Honorable Discharge 1972.

Admitted To Practice Law in California (1972) and New York (1986, ret.); The United States Supreme Court; the United States District Courts for Maine, and the Northern, Central and Eastern Districts of California; also conducted cases in the Chancery Courts of Delaware and of Tennessee (*phv*). In good standing at all times in all courts in which I have practiced.

Law Practice Emphasis: Dispute mediation and resolution. Arbitration. Expert witness services. Civil, business, and trial practice. Municipal law (govt. ethics); real estate, defamation and trade libel, business, business tort and commercial litigation; foreign and domestic contract negotiation; product development, protection, registration & licensing; compliance with governmental regulation and related hearings; employment taxation; food, flavor and fragrance industries; state and local taxation. Litigation experience in contract, insurance, complex business torts (fiduciary duties; fraud; R.I.C.O.; bad faith; unfair competition, trade secrets, trade libel, civil rights in the commercial context) and other civil litigation arising in the business context.

Professional Standing: Highest rating (a.v.) in Martindale Hubbell Bar Register of Preeminent Lawyers. Conferee, Conference to Establish Standards for Mandatory Continuing Legal Education, sponsored by California State Bar and University of California Regents, CEB, Los Angeles, 1990. Elected by peers to California "SuperLawyers" 2005, 2007-2009.

Judicial Experience as Temporary Judge or binding arbitrator:

- Mandatory judicial training requirements current 1980 through 2012.
- Judge pro tem: Served as bench officer in Contra Costa County (jury trials); Solano County; San Francisco County; Alameda County and Siskiyou County.
- For Superior Court in Alameda County: Receiver appointed by court to operate four-city insurance brokerage; Special Master, mediator, business litigation arbitrator, and Early Disposition Program commissioner. Proposed and helped implement a Trial on Time program. Court's Speaker's Bureau.
- United States District Court for the Northern District of California, business litigation (e.g., sole binding federal court arbitrator in *Japan Airlines v. Korean Airlines v. Fugazi Travel*).
- Quasi-judicial hearings: Commissioner for City of Oakland (3 years) and for Alameda County (2 years); Fee Arbitrator, Alameda County Bar Association.
- Binding arbitrator, Kaiser Medical Malpractice cases (2012-present), and other cases since 1982.

Honors: (partial list)

- 2009, Dinner Honoree, San Francisco: Awards from City of Millbrae, from the Hellenic Law Society, and the Modern Greek Studies Foundation for 26 years of Humanitarian Services consistent with the highest ideals of the Bar and the Greek Community in the Bay Area.
- 2007 and 2008: Superior Court, Contra Costa County, for "significant and valuable contribution to this court and to the public."
- 2007: Named as the East Bay's top business attorney by the East Bay Business Times "Top Ten" lawyers in the East Bay (6/22/2007).

- Honorary member Hellenic Law Society; Nominee, the Athenian Award of the Hellenic Law Society
- Honorary Member, Phi Alpha Delta Legal Fraternity.
- Two time awardee, State Bar of California Wiley Manuel Award;
- State Bar Board of Governor's Commendation for Outstanding Contributions in Legal Services;
- Editor's Choice Award for Outstanding Achievement in Poetry.
- Paul Harris Fellow, Rotary International, for International Humanitarian Service.
- Oakland Rotary Arts Award (as playwright).

Expert Witness: Qualified and testified as an expert witness on legislative intent, attorneys' fees, legal malpractice, ethics (plaintiff & defense) in State and Federal courts. Consultant to United States Attorney's San Francisco office re civil rights cases (paid); and to Nevada Attorney General re: child labor laws (pro bono).

Bar Associations Memberships: American; New York; California (Litigation and Business Law Sections, Invited Conferee, State Bar Conference on MCLE); American Trial Lawyers Association; Consumer Attorneys of California (Board Member); California Trial Lawyers Association (Board of Governors, Legislation Committee 9 years); Alameda Contra Costa Trial Law Lawyers Association since 1982, Pres. 1993, Life Member); Delegate, Conference of Delegates of California Bar Associations, 2006. San Francisco, Contra Costa, Alameda, Siskiyou and Solano County Bars; Million Dollar Advocates Forum; Trial Lawyers for Public Justice; California State Bar; American Bar Association.

Courtroom advocacy: Deputy Attorney General, California, and Deputy District Attorney, Alameda County 1972-1978; Civil litigator in private practice since 1978. City Attorney, City of Dunsmuir.

Illustrative cases (alphabetical) a few featured in New York Times, Boston Globe, San Jose Mercury-News and Oakland Tribune:

- ❑ **Almeida v. Peat Marwick Mitchell & Co.** and consolidated class actions (represented Bank of the West in Chancery Court in Delaware and in Alameda County). Counsel for Bank of the West to represent 139 of its employees in the most complex consolidated class action case then pending before the Superior Court in Alameda County (45 lawyers). Confidential settlement facilitated.
- ❑ **Arth v. Raine.** Action v. City Council members for violations of Political Reform Act and Brown Act. Governmental ethics. All four defendants departed city council, City undertook desired water rate study and rate changes. Mayor found guilty of violating FPPC regulations, councilwoman found to not be eligible to serve on Council. Later, hired as City Attorney for City of Dunsmuir. 2012
- ❑ **Bash Ali v. Ron Scalf, World Boxing Federation, Inc. & Bash Ali v. Richard Feld, World Boxing Foundation** \$7.2 Million damages judgment; Permanent Injunction against unfair business practices; restoration of Cruiserweight Championship. (Chancery Court, Tennessee).
- ❑ **Camacho v. Sixty Minutes, Mike Wallace, Leslie Stahl et al.** "Amicably settled" confidential settlement of defamation case on behalf of Director, Regional Service Center, United States Customs, San Diego. Mike Wallace breached settlement agreement to personally read apology ultimately read by Leslie Stahl. (This settlement breach settled separately for additional \$200,000, not confidential or within the "amicably settled" provision).
- ❑ **Crowe v. State of California** (qua state) & Consolidated & Related Cases (more than 100) Superior Court, Alameda County: Over 15 years in duration. Won consent judgment against the California Department of Industrial Relations Division of Labor Standards Enforcement on nine different constitutional grounds for discriminatory enforcement practices and a permanent injunction. Awarded private attorney general fees (hourly basis) of \$1.2 million dollars per federal law by the Superior Court for resolving issues of public importance and "clearly demonstrated public service motivation," during first half of case.

- ❑ **Drazek v. Host Marriott Corp** Hired by Johnnie Cochran's firm to represent it in the United States District Court in Los Angeles. On our application we persuaded the reluctant Court to reverse itself and award additional attorney fees of \$356,073.00 to our client the Cochran Firm.
- ❑ **Drew, M.D., v. Siskiyou Medical Group et alia.** Slander *per se* of physician with other business torts including interference with economic advantage. "Amicably settled" in 2016 (after 5 years of litigation). Defense insisted settlement amount remain confidential. Court order imposing speech and conduct limitations, and training for Medical Group's associates and former employees. Defendants and their employees took special training post judgment. Result: general improvement of quality of communications among health care providers county wide.
- ❑ **Fletcher v. Sohrabi Enterprises.** Settled within 60 days of filing on terms advantageous to client.
- ❑ **Franet v. Alameda County et al.** USDC Northern District Case C023787. Hired by law firm to file major fee motion following civil rights action. Awarded motion fees and paid \$42,000 for the successful motion.
- ❑ **Greene et al, trustees, v. Donnell Williams.** Elder financial abuse in 7 figure purchase from elderly person. Settled for \$445,000 in 2016.
- ❑ **Hidden Valley Ranch v. AVRI Companies Inc.; AVRI Companies Inc. v. Flaroma.** Negotiated reversal of two insurers' refusal to defend or indemnify insured defendant-cross-complainant in complex trade secret case and facilitated settlement of case through mediation.
- ❑ **In the matter of Mullin.** Awarded attorneys' fees in the amount of \$432,000.00.
- ❑ **Lipscomb v. City of San Diego,** Superior Court San Diego: Won a permanent injunction against the City of San Diego precluding enforcement of its own ordinances as violative of First Amendment Commercial Free Speech. Attorney's fees \$10,000 were awarded for performing services as a "Private Attorney General" for a single court appearance to win an injunction against City.
- ❑ **Lombard v. Continental Credit Insurance.** New York City. Negotiated a very high six figure cash settlement on bad faith violation of territorial limitations on credit insurance with Continental Insurance Company on behalf of their New England general agent at initial pre-litigation demand conference, including an enforceable permanent injunction.
- ❑ **Lucky v. Livermore Valley Joint Unified School District.** Rooted out 21 illegally hired coaches. Results included terminations, seven criminal convictions for victimizing high school girls, 2 registered sex offenders, monetary settlements paid by District and individual coaches to students and parents. No fees sought, as case was done *pro bono publico*.
- ❑ **Miles v. Sierra Club:** Jury trial, libel *per se* and falsity found.
- ❑ **Montie S. Day, Esq. v. Robert W. Mills, Esq.** Hired one month before trial and successfully prosecuted a 14 week bench trial, \$1.21 million dollar decision by Court including granting of motion to amend complaint to add cause of action for conversion. Affirmed in full, opinion 5/3/01, 1 DCA.
- ❑ **Piersen v. Lang.** Defended two defendants and settled with net cash gain for clients on cross-complaint v. Lang and recovered all costs and fees from insurer that had denied coverage.
- ❑ **Scentique, Ltd. v. Rosedust and R.F.M. Industries.** Prosecuted trademark and copyright infringement. Won permanent injunction recovering product line worth millions in annual sales.
- ❑ **Schwartz v. NetCap Holdings et alia.** IPO fraud and corporate director fiduciary duty. Successful defense of directors in multi-million dollar investment fund disappearance. Via cross-complaint, won \$2.9 million judgment against corporate president while defending *de facto* director.
- ❑ **Sierra Lakes Reserve v. Flynn & Stewart.** Prosecuted law firm for breach of fiduciary duty, over-billing and "soap opera" misconduct detrimental to client's interests. Negotiated reduction of over-billed legal fees from \$200,000 to \$45,000 payment on a no confidentiality basis.
- ❑ **Terrill v. UNUM,** Civil RICO action in the U.S. District Court for Maine:. Post-summary judgment successful negotiation of \$3.4 million net cash to client settlement to overturn exercise of a 30 day no-cause termination clause against plaintiff general agents. \$234,000 fee award.
- ❑ **Woodfin v. City of Emeryville.** Whether City permitting, licensing and taxation scheme can be conducted pursuant to City regulations without violating the Constitution. Settled.

□ **Other:** confidential parties mediation over 11 months; settled case without filing suit for seven figures.

Legislation: Conceiving, drafting and obtaining enactment of changes in State law (a) to allow manufacture, sale and export of liquor filled chocolates; and (b) to allow, subject to safety provisions, commercial sales by minors (See Title 8, Calif. Administrative Code section 11706). Staff, Assembly Ways & Means; Intern, Joint Committee on Higher Education. Consultant CAOC on legislation 1990-2005.

Community leadership and service activities: Superior Court of California Speaker Outreach Program, Bench Bar Speakers Bureau; Emeryville Chamber of Commerce (Em Pac—won 72% of vote re Pixar Expansion in Emeryville, 2004), Oakland Chamber of Commerce committees: Small Business Advocacy; Planning & Construction; Paul Harris Fellow, Director for Oakland Rotary (Chaired Committees on: Programs; Youth Services; By-Laws; Ethics; President's Special; member World Community Service Committee). Multiple Honoree for Rotary Foundation. Founder of Role Model Task Force; Principal for a Day; Career Week speaker multiple years (Marcus Foster Institute for the Oakland Public Schools Founder.); Director, and *pro bono publico* Legal Counsel since 1982, Modern Greek Studies Foundation, San Francisco. Blue Star Mothers of California (with children on active duty overseas). Founding Director, Diversity in Law Foundation. Member American Institute of Architects, San Francisco Chapter (Urban Design Committee, Presidio Project). Member, Media Alliance. Member, Board of Directors, Goodwill Industries of the Greater East Bay, Inc. (Committees: Management Information Services; Vice-Chairman, Human Services); Director, Lincoln Child Center; City of Oakland Long-Range Planning Conference participant. Institute of Urban Affairs (San Jose). City of Oakland Police Review Board; Alameda County Commission on Personal & Social Responsibility & Self-Esteem; Vice-President, Government Affairs, Chabot Canyon Homeowner's Association.

Publications: (exemplars), *Compensation of Federal Judges*, Editorial, Oakland Tribune, republished, The Advocate; Publisher, Editor-in-Chief, The Verdict, continuing contributing writer; *The Trial of Socrates*, The Verdict; Editor & Publisher, *Enforcing Civil Rights in the State Court System* (Author, chapter on attorney fees); *The Marshall Papers*, the Recorder, Author, *Voyage to Ithaca*, in The Forum for the California Trial Lawyers Association; Technical Reviser: McGoey, Chris, *CPP, SECURITY, Adequate or Not, The Complete Guide to Premises Liability Litigation*. Aegis Books, 1989; Publisher of monthly On the Up & Up; Publisher, Special Verdict monthly. "Default and Default Judgments, *The Verdict* (01/03). Child Labor Guide for Employers. *Prosecutors in the Juvenile Court*, 5 Pepperdine Law Rev. 740 No. 3 (1978); "Independent Contractor/Employee Taxation" for Oakland Chamber of Commerce Advocate;

Teaching, Lectures, Seminars: University of California, Berkeley, Invited Guest Lecturer, Institute of Governmental Studies, and Regents appointment as Instructor. Teaching Ass't., Univ. of Calif., Davis: Scientific Bias & Social Myth; Guest lecturer, Law School; Adjunct Professor of Law, J.F.K.U. (6 years); Lecturer, Calif. Highway Patrol Academy, Chabot College. Tax Free Exchanges, C.A.R., Commercial Free Speech under the First Amendment; Address to the California Society of Enrolled Agents: Independent Contractor or Employee--Guess Wrong and You're Out of Business; Numerous seminars for lawyers through Consumer Attorneys of California, Alameda Contra Costa Trial Lawyers Association, and California Trial Lawyers Association (partial list: Excluding Expert Witnesses; Effective Fee Applications; Evidentiary Problems; Business Related Civil Rights Litigation in State Courts; Attorney Fees). Numerous other lectures.

Music & Arts: Member, East Bay Blues Society's official band: Caravan of All Stars (American Music Awards, Vallejo Blues Festival, Hayward/Russell City Blues Festival &c., played on double bill with Big Brother & The Holding Co.). Patron, S.F. Opera. Tango aficionado; danced in Paris, Rome & Buenos Aires. Solo Couple Tango Stage Performances 2002 and 2005, Member, Cable Car Chorus (singing lead, 2nd place, 2002 Calif. competition). Published poems; Cape Cod attendee, SEAK Conference on Legal Fiction for

Lawyers (2003). Oakland Heritage Festival Committee. Underwriter, “Tango Argentino”, Herbst Theatre, San Francisco.

Disciplines: Musô Jiki-Den Eishin Ryû Iaido as taught within the All Japan Iaido Federation, and seminar participant under Japan’s Esaka Seigen Sensei, August 2009, San Francisco. Argentine Tango instructor. Danced in Paris, Rome, Buenos Aires, and on two stages in California.