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November 10, 2023

VIA TRUEFILING

Administrative Presiding Justice Jim Humes
Associate Justice Kathleen M. Banke
Judge Wendy Getty
California Court of Appeal
First Appellate District, Division One
350 McAllister Street
San Francisco, CA 94102-4796

Re: ***Escamilla v. Vanucci***
Court Case No. A166176
Request for Publication, Opinion filed October 23, 2023

Dear Presiding Justice Humes, Associate Justice Banke, and
Judge Getty:

Pursuant to California Rules of Court, rule 8.1120(a), the Association of Southern California Defense Counsel (ASCDC) requests that this court publish its opinion in *Escamilla v. Vanucci* (Oct. 23, 2023, A166176) (*Escamilla*). The opinion warrants publication because it adds to a growing number of cases that clarify a disagreement over the statute of limitations for malicious prosecution claims against attorneys.

ASCDC is the nation's largest and preeminent regional organization of lawyers. Its members are devoted to defending civil actions, including malicious prosecution cases, in Southern and Central California. ASCDC has approximately 1,100 attorney members, among whom are some of the leading trial and appellate lawyers of California's civil defense bar. ASCDC's members routinely defend clients, including attorneys and law firms, whose professional practices depend on knowing when they may be sued for claims of malicious prosecution. ASCDC submitted amicus briefs on some of the leading cases on this issue

including *Parrish v. Latham & Watkins* (2017) 3 Cal.5th 767 (*Parrish*), *Lee v. Hanley* (2015) 61 Cal.4th 1225 (*Lee*), and *Roger Cleveland Golf Co., Inc. v. Krane & Smith, APC* (2014) 225 Cal.App.4th 660 (*Roger Cleveland*). This request for publication was made at the recommendation of ASCDC’s Lawyer Defense Committee, which is comprised of attorneys specializing in defending lawyers in a variety of contexts, including malicious prosecution cases. Publication of the *Escamilla* opinion would help provide needed guidance on this issue.

ASCDC seeks the publication of appellate decisions when it believes publication meets the criteria set forth in the Rules of Court and will promote the development and proper application of California law. ASCDC requests publication of the court’s decision in this case to serve those ends. Publication of the court’s opinion in this case is warranted under California Rules of Court, rule 8.1105(c)(5), because it “[a]ddresses or creates an apparent conflict in the law.”

Escamilla holds that Code of Civil Procedure section 340.6, subdivision (a)¹—which covers any claim “against an attorney for a wrongful act or omission . . . arising in the performance of professional services”—establishes a one-year statute of limitations for claims of malicious prosecution against attorneys. (Typed opn. 2.) While this conclusion is in accord with several prior published opinions (see, e.g., *Garcia v. Rosenberg* (2019) 42 Cal.App.5th 1050, 1059 (*Garcia*);² *Connelly v. Bornstein* (2019) 33 Cal.App.5th 783, 788 (*Connelly*); *Yee v. Cheung* (2013) 220 Cal.App.4th 184, 190 (*Yee*); *Vafi v. McCloskey* (2011) 193 Cal.App.4th 874, 877 (*Vafi*)), not all courts agree (see *Roger Cleveland*, *supra*, 225 Cal.App.4th at p. 668 [“we conclude the applicable statute of limitations for malicious prosecution is section 335.1”], disapproved on another ground in *Lee*, *supra*, 61 Cal.4th at p. 1239; cf. *Silas v. Arden* (2012) 213 Cal.App.4th 75, 89 [holding section 340.6 does not apply retroactively]).

Roger Cleveland held that section 340.6, subdivision (a) does not apply to malicious prosecution claims against attorneys because the statute was intended to be a time bar used against clients pursuing legal malpractice claims and not one applicable to nonclients. (*Roger Cleveland*, *supra*, 225 Cal.App.4th at p. 682.)

¹ All further statutory references are to the Code of Civil Procedure.

² If this court publishes *Escamilla*, the decision will be the first published opinion analyzing and agreeing with *Garcia* since *Garcia* was published four years ago. This further supports publication under California Rules of Court, rule 8.1105(c)(3), which encourages publication when a decision “explains . . . an existing rule of law.”

Instead, that court said the general personal injury two-year statute of limitations codified in section 335.1 applied to malicious prosecution claims against attorneys. (*Id.* at p. 668.)

While the Supreme Court in *Lee* subsequently disapproved of *Roger Cleveland* to the extent that the case described section 340.6, subdivision (a) “‘as a professional negligence statute’” and not one premised on professional obligations (*Lee, supra*, 61 Cal.4th at p. 1239), it did not “analyz[e] *Roger Cleveland*’s ultimate conclusion that section 340.6[, subdivision (a)] is inapplicable to claims filed against a former litigation adversary’s attorney.” (*Parrish, supra*, 3 Cal.5th at p. 775; cf. *Lee, supra*, 61 Cal.4th 1225.)

The Supreme Court still has not yet directly addressed the split of authority regarding the statute of limitations for malicious prosecution claims against attorneys. It has come close, though. In 2015, the Court clarified that the one-year statute of limitations established in section 340.6, subdivision (a) “applies to claims whose merits necessarily depend on proof that an attorney violated a professional obligation in the course of providing *professional services*.” (*Lee, supra*, 61 Cal.4th at pp. 1236–1237, emphasis added.) *Escamilla*, like *Garcia* and *Connelly* before it, interpreted this guidance from *Lee* to conclude that section 340.6, subdivision (a) applied to malicious prosecution claims because such allegations against attorneys involve professional obligations covered by the Rules of Professional Conduct. (See typed opn. 10–11.)

Parrish presented an opportunity for the Court to address the split of authority presented by *Roger Cleveland* and other cases like *Yee* and *Vafi*. The case involved a malicious prosecution claim stricken under section 340.6, subdivision (a)’s one-year statute of limitations, later reversed when the Court of Appeal held the two-year personal injury statute was applicable. (*Parrish, supra*, 3 Cal.5th at p. 774.) While the petition for review in *Parrish* was pending, the Court released its opinion in *Lee*. (*Id.* at p. 775.) The Court then granted review in *Parrish*, agreeing to consider the statute of limitations issue. (*Ibid.*; Respondents’ Answer Brief On the Merits, *Parrish v. Latham & Watkins* (Mar. 14, 2016, S228277) 2016 WL 1061462, at p. *19.) It ultimately concluded that an alternate basis—the interim adverse judgment rule—existed to affirm the Court of Appeals’s judgment saying the malicious prosecution claim was barred, the *Parrish* Court did “not reach the [statute of] limitations issue.” (*Parrish*, at p. 775.)

Until the Supreme Court puts this issue to bed once and for all, *Roger Cleveland* will be on the books and the split of authority will remain over the proper statute of limitations for malicious prosecution claims against attorneys. Because

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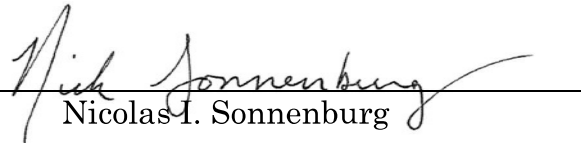
Escamilla adds to a growing body of authority that holds the one-year period under section 340.6, subdivision (a) applies, it satisfies California Rules of Court, rule 8.1105(c)(5).

Accordingly, this court should publish the *Escamilla* opinion.

Respectfully submitted,

**ASSOCIATION OF SOUTHERN CALIFORNIA
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By: _____


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cc: See attached Proof of Service

PROOF OF SERVICE

**Escamilla v. Vanucci
Case No. A166176**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On November 10, 2023, I served true copies of the following document(s) described as **REQUEST FOR PUBLICATION** on the interested parties in this action as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 10 2023, at Burbank, California.


Stephen J. Gergely

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Escamilla v. Vanucci
Case No. A166176

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In Pro Per	Plaintiff and Appellant Daniel Escamilla <i>Via TrueFiling</i>