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Ethical Breaches Can Bar Access to Fee Arbitration
Maintaining Conflicts-of-Interest Compliance from the Outset

A recent California Court of Appeal decision reminds us that ethical violations during client intake can have severe consequences—including loss of the right to pursue fee arbitration. In *Doe v. McGrath Kavinoky LLP* (2026) 121 Cal. App. 5th 488 ("*McGrath*"), the court held that a law firm's failure to obtain informed written consent before representing multiple plaintiffs against the same defendant rendered the entire engagement agreement—including its arbitration provision—unenforceable.

The firm represented 312 victims of sexual abuse in separate coordinated cases that ultimately resulted in an aggregate settlement. The court found that when the firm signed the first clients, the likelihood of conflicts arising was already high: clients would inevitably compete for shares of any settlement pool, and the firm's ability to advocate for each client's maximum recovery would be materially limited by its obligations to other clients. The court held, relying on *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc.* (2018) 6 Cal.5th 59, that by failing to disclose these reasonably foreseeable conflicts and obtain informed written consent at the outset, the firm violated Rule 1.7(b) of the California Rules of Professional Conduct. *Sheppard* involved the representation of two clients in separate matters whose interests *actually* conflicted under former Rule 3-310(C) (now Rule 1.7(a)). The *McGrath* court extended this rationale to *potential* conflicts of interest under Rule 1.7(b), reasoning that "[t]hough in *Sheppard* the Supreme Court did not consider whether a potential (as opposed to an actual) conflict invalidated an engagement agreement, the rationale of the Supreme Court's decision in *Sheppard*—that a violation of the Rules of Professional Conduct renders an engagement agreement, including its arbitration clause, unenforceable—applies equally to violations of rules 1.7(a) and 1.7(b)." *Doe v. McGrath Kavinoky LLP* (2026) 121 Cal. App. 5th 488, 504.

When representing multiple clients with related claims, even in separate cases, disclose at intake any significant risk that your representation may be materially limited by responsibilities to other clients. This includes the foreseeable possibility of aggregate settlements, differences in case strength or damages, and competition for limited resources. Document informed written consent before engagement. Remember: under *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc.* (2018) 6 Cal.5th 59, contracts formed in violation of ethical rules are unenforceable as against public policy—and that unenforceability extends to arbitration clauses.

Different jurisdictions have different requirements relating to arbitration provisions in engagement agreements, so be sure to check your jurisdiction's authority or consult with risk management counsel.

For the full decision, see Doe v. McGrath Kavinoky LLP (2026) B343201 (Cal. Ct. App., June 29, 2026).

If you have questions about this or any other risk management issues, get in touch with our senior risk management counsel at Attorneys Risk Management, and click on the "Request a Risk Management Consultation" button.

Please Note: Unless there is a current countersigned engagement letter on file with Barron & Newburger, P.C., BNPC is not your lawyer.