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November 17, 2021

**Letter supporting publication
Cal. Rules of Court, rule 8.1120(a)**

Presiding Justice Vance W. Raye
Associate Justice Ronald B. Robie
Associate Justice Andrea Lynn Hoch
Third Appellate District
914 Capitol Mall, 4th Floor
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Re: *Scofield v. Hanson Bridgett LLP*
Court of Appeal No. C081115
Request for Publication; Opinion filed November 8, 2021

Dear Presiding Justice Raye and Associate Justices:

Pursuant to California Rules of Court, rule 8.1120(a), the Association of Southern California Defense Counsel (ASDC) requests that this court publish its opinion in *Scofield v. Hanson Bridgett LLP (Scofield)*. As explained below, the opinion warrants publication because it provides helpful guidance about when the statute of limitations in Code of Civil Procedure section 340.6, subdivision (a), applies, including when a party should *not* be allowed to rely on *Lee v. Hanley* (2015) 61 Cal.4th 1225 (*Lee*) to invoke a different statute of limitations.

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ASCDC's interest. ASCDC is the nation's largest and preeminent regional organization of lawyers primarily devoted to defending civil actions in Southern and Central California. ASCDC has approximately 1,100 lawyer members, among whom are many of the leading trial and appellate lawyers of California's civil defense bar. ASCDC is actively involved in assisting courts on issues of interest to its members, the judiciary, the bar as a whole, and the public. It is dedicated to promoting the administration of justice, educating the public about the legal system, and enhancing the standards of civil litigation practice. ASCDC is also actively engaged in assisting courts by appearing as amicus curiae.

Many of ASCDC's members routinely defend attorneys and law firms in civil lawsuits arising from their rendition of legal services. Code of Civil Procedure section 340.6, subdivision (a), provides the statute of limitations for all causes of action, except actual fraud, against an attorney for a wrongful act or omission arising in the performance of professional services. In 2015, the California Supreme Court held in *Lee* that because a client's conversion cause of action for the undisputed amount of the retainer against his counsel does not concern counsel's rendition of professional services and does not require an examination whether counsel violated a professional obligation, section 340.6 does not apply. ASCDC's members have an interest in ensuring that *Lee* is properly applied and not improperly expanded, and that the rules governing legal malpractice lawsuits are clear.

Why the opinion should be published. Since *Lee*, plaintiffs have attempted to avoid the bar of the statute of limitations in section 340.6, by "cleaving" to *Lee*, as this Court pointed out on page 13 of its *Scofield* opinion. *Scofield* thoroughly explains in detail why the plaintiff erred in relying on *Lee* to argue that section 340.6 does not apply to her financial elder abuse and related claims. This Court found that plaintiff's claims arose from and are based on the defendant law firm's provision of legal services, which plaintiff alleges violated defendant's professional responsibility and conduct.

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On this point even alone, *Scofield* deserves to be published. It applies an existing rule of law (section 340.6) to a different set of facts (financial elder abuse and related claims) from those in published opinions; explains section 340.6 and *Lee*; provides meaningful guidance to litigants, their counsel and the lower courts on a legal issue of continuing public interest; and significantly contributes to California jurisprudence. (Cal. Rules of Court, rule 8.1105(c)(2), (3), (4), (6), (7).)

Additionally, there is a paucity of published decisions on section 340.6's actual fraud exception. This plaintiff, as many plaintiffs do, attempted to cast her claims (e.g., intentional breach of fiduciary duty) as actual fraud to avoid the statute of limitations in section 340.6. *Scofield* rejected that ploy. If the opinion is published, this Court's analysis and discussion of the actual fraud exception and a breach of fiduciary claim will provide meaningful instruction and guidance for future litigants and courts. This also warrants publication.

For all of these reasons, ASCDC respectfully requests that this Court publish its well-reasoned *Scofield* opinion.

Respectfully submitted,

/s/ Edward L. Xanders

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cc: See Attached Proof of Service

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036, my email address is maguirre@gmsr.com.

On November 17, 2021, I served the foregoing document described as: **LETTER SUPPORTING PUBLICATON** on the parties in this action by serving:

SEE ATTACHED SERVICE LIST

By Mail: I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

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Executed on November 17, 2021, at Los Angeles, California.

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

/s/ Monique N. Aguirre

Monique N. Aguirre

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California Court of Appeal
Third Appellate District
[Electronic Service under Rules
8.44(b)(1); 8.78(g)(2)
and 8.1125(a)(5)]

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