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NOEL M. FERRIS
ATTORNEY AT LAW
1000 G STREET, SUITE 1001
SACRAMENTO, CA 95814
(916) 443-4443
STATE BAR NO. 98864

Attorney for Plaintiff

FILED
ENDORSED

99 JUL 13 PH 3:41
LEGAL PROCESS #11
TR# 102574 CLK B. MUSHEER
7/14/99 07:54:58 C54 193.00

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

KATHLEEN DØE,
Plaintiff,

v.

MARK E. ELLIS, MURPHY, PEARSON,
BRADLEY & FEENEY, and DOES ONE
through TEN, inclusive,
Defendants.

No. 99AS03856

COMPLAINT FOR LEGAL
MALPRACTICE

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FIRST CAUSE OF ACTION

Violation of Fiduciary Duty

1. The true names and capacities, whether individual, corporate, associate or otherwise of defendants DOES ONE through TEN, inclusive, are unknown to plaintiff, who sues said defendants by such fictitious names. Plaintiff will amend this complaint to show their true names and capacities when the same have been ascertained. Plaintiff is informed and believes and thereon

Complaint for Damages

ID 00426

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NOËL M. WERRIS
ATTORNEY AT LAW
1000 O STREET, SUITE 100
SACRAMENTO, CA 95814
(916) 441-0443

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alleges that each of the defendants named as a DOE is responsible under law in some manner, negligently, in warranty, strictly or otherwise, for the events and happenings herein referred to and proximately thereby caused injuries and damages to plaintiff as herein alleged.

2. Plaintiff is informed and believes and thereon alleges, that at all times mentioned each defendant was the agent and employee of each of the remaining defendants, and in doing the things hereinafter alleged, and at all times mentioned, was acting within the course and scope of such agency and employment.

3. That defendants, DOES ONE through TEN at all times herein mentioned were attorneys, assistants, secretaries or other legal practitioners doing business in the State of California.

4. At all times relevant hereto, the defendant MARK E. ELLIS was an attorney at law licensed to practice in the State of California, a member of the California State Bar, and a partner in the firm of defendant MURPHY, PEARSON, BRADLEY & FEENEY, a professional corporation with offices in Sacramento County, California.

5. The plaintiff KATHLEEN "DOE" is so named in order to prevent further humiliation, embarrassment, shame, or other emotional or psychological injury or damage to her occasioned by reporting the unprofessional, improper, and unlawful conduct of the defended herein. Her true name is known to the defendants.

6. Beginning in August 1997 and continuing until June 1998, KATHLEEN DOE was a client of the defendants for representation in

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AVICOR - AP LAW
1000 G ST. P. SUITE 100
SACRAMENTO, CA 95834
(916) 443-6442

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a personal injury action for both physical and emotional damages against her former employer.

7. During the course of litigation, defendants became privy to plaintiff's psychological records and learned that many of her emotional problems arose out of periods of abuse by her father in her early childhood as well as in her marriage and then by her employer. As a result, plaintiff, a single mother of four, suffered extreme depression, lowered self esteem and anxiety.

8. By reason of her psychiatric and emotional condition and the legal proceedings arising out of her employment and related consolidated actions, plaintiff was extremely vulnerable and dependent upon, and sought the services, help, counsel and guidance of the defendants Mark E. Ellis and Murphy, Pearson Bradley & Feeney.

9. During the course of KATHLEEN DOE's representation by the defendants, the plaintiff disclosed personal, confidential and private information to the defendants and described her past experiences of abuse both in childhood, in her marriage and in her employment. She made available all of her mental health records and would not have made any disclosures to the defendants but for the attorney-client relationship established between the parties,

10. The defendant MARK E. ELLIS, at all times relevant hereto, had a fiduciary responsibility to his client KATHLEEN DOE, which duty required that all information obtained by him during the course of and by reason of the attorney-client relationship be used solely for the benefit of the client, and not for his own benefit

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NOEL M. ELLIS
ATTORNEY AT LAW
1000 G STREET, SUITE 100
SACRAMENTO, CA 95814
(916) 445-4331

1 or to his own ends or contrary to the interest of his client or in
2 conflict with her interest. Contrary to said fiduciary duty,
3 however, and in breach thereof, the defendant MARK E. ELLIS used
4 and abused his superior position as an attorney and counselor, with
5 a person he knew to be psychologically and emotionally fragile, and
6 the confidential information he obtained through the attorney-
7 client relationship, for his own personal, sexual and emotional
8 gratification all in violation of his fiduciary duty to his client.

9 11. The conduct of the defendant was a violation of his
10 fiduciary duty in that he had full knowledge of the plaintiff's
11 psychiatric condition, history and treatment, the special role of
12 an attorney in a personal injury action, the significant imbalance
13 of power between said attorney under all of these facts and the
14 plaintiff. With full knowledge of these facts, defendant MARK E.
15 ELLIS specifically set out on a course of conduct intentionally
16 designed to abuse the attorney-client relationship, to use
17 confidential information for his own ends, to create a conflict
18 between his personal sexual satisfaction and the interest of the
19 client in litigation and to recklessly act without regard to the
20 harm that he would inflict upon the plaintiff and in a sexually
21 exploitative and predatory manner using coercion, intimidation, and
22 undue influence to enter into a sexual relationship with the client
23 in violation of his fiduciary responsibilities and duties to her.

24 12. The sexual relationship and other sexual conduct of the
25 Defendant MARK E. ELLIS toward the plaintiff arose exclusively out
26 of the attorney-client relationship, was based on confidential

27 **Complaint for Damages**

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NOEL M. FERRIS
ATTORNEY AT LAW
1000 G STREET, SUITE 100
SACRAMENTO, CA 95814
(916) 443-4444

1 information obtained therein, and was exploitative of such
2 relationship and was the product of undue influence by said
3 attorney.

4 13. As a proximate result of the breach of fiduciary duty by
5 the defendant MARK E. ELLIS, the plaintiff was caused to endure a
6 period of representation compromised by self interest of the
7 defendant during which she was overcharged \$30,265.00.

8 14. As a further proximate result of the breach of fiduciary
9 duty by the defendant herein, the plaintiff has suffered severe
10 emotional distress, psychological and emotional injury, pain and
11 suffering, bodily and personal injury and continues and will
12 continue in the future to suffer similar injury and damage by
13 reason of the improper conduct and breach in deviation of the
14 attorney-client relationship and the fiduciary duty related thereto
15 by the defendant in his breach and abuse of said confidence, duty
16 and fiduciary responsibility.

17 15. The conduct of the defendant herein was intentional,
18 malicious, oppressive, reprehensible and despicable, and warrants
19 the imposition of exemplary and punitive damages. Said conduct is
20 especially egregious in light of defendants' own experience
21 defending attorneys in legal malpractice cases and his specific
22 knowledge of the professional and ethical duties of an attorney to
23 a client.

24 WHEREFORE, plaintiff prays as hereinafter set forth.

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NOEL FERRIS
ATTORNEY AT LAW
1000 G STREET, SUITE 100
SACRAMENTO, CA 95814
(916) 441-4442

SECOND CAUSE OF ACTION

Legal Malpractice

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3 16. Plaintiff incorporates herein by reference as though
4 fully set forth all allegations of paragraphs 1 through 12 above.

5 17. There existed between plaintiff and defendant a
6 professional relationship wherein plaintiff was a client and
7 defendant was an attorney retained to represent her in all matters
8 related to a civil action. Defendant owed a fiduciary duty to
9 plaintiff and a duty to exercise such skill and prudence commonly
10 possessed and exercised by members of the legal profession.

11 18. During the times herein mentioned, defendants and each of
12 them, negligently represented plaintiff and failed to exercise the
13 care and skill ordinarily and reasonably required of attorneys.
14 Defendants negotiated a fee agreement which resulted in an
15 overcharging of reasonable attorneys fees in the sum of \$30,265.00
16 and failed to provide plaintiff with an accounting of said costs
17 and fees.

18 19. As a proximate result of the breach of his professional
19 duty and failure to practice within the standard of care of the
20 community, plaintiff has suffered financial expenses, severe
21 emotional distress, psychological and emotional injury, pain and
22 suffering and continues and will in the future, suffer similar
23 injury and damage by reason of the improper conduct and breach in
24 derivation of the attorney client relationship and the fiduciary
25 duty owed by the defendant to the plaintiff.

26 WHEREFORE, plaintiff prays as follows:

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NOEL M. FERRIS
ATTORNEY AT LAW
1800 G STREET, SUITE 1100
SACRAMENTO, CA 95814
(916) 443-4444

1. General damages in excess of the jurisdictional minimum of this court;
2. Medical and related expenses according to proof;
3. Loss of income according to proof;
4. Reimbursement to plaintiff of \$30,265.00, plus interest, of the overcharged attorney fees;
5. All costs of suit;
6. Punitive damages;
7. Prejudgment interest on general and special damages; and
8. Such other and further relief as the court deems just and proper.

DATED: July 13th, 1999

LAW OFFICE OF NOEL M. FERRIS

By Noel M. Ferris
Noel M. Ferris

Complaint for Damages

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