

James J. Banks

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Mr. Banks has practiced law for 37 years, representing private and public sector clients in a variety of litigation matters, and as general counsel. As an outgrowth of his litigation experience, Mr. Banks also serves as counsel to a number of private law firms in professional liability, ethics, risk management and State Bar matters.

Legal Experience

Mr. Banks counsels a diverse group of private and public sector clients, including institutions, special districts, school districts, commercial businesses, accounting and law firms. Mr. Banks has appeared in numerous state and federal trial and appellate courts throughout the U.S. He has had an AV Martindale-Hubbell rating since 2001 and has been recognized as a Northern California “Super Lawyer” in 2006 and 2010-2021. Mr. Banks is listed in the peer-reviewed publication “Best Lawyers in America” and has been named in the Sacramento Business Journal’s “Best of the Bar,” which recognizes leading local attorneys after nomination and vetting by their peers, from 2015-2021. In 2017, “Best Lawyers in America” selected Mr. Banks as Sacramento’s litigation/real estate lawyer of the year. In 2020, Mr. Banks was recognized as a Life Fellow of the American Bar Foundation, a global honorary society of attorneys, judges, law faculty and legal scholars. Membership in the Fellows is limited to one percent of lawyers licensed to practice in each jurisdiction. Mr. Banks is a member of the Federation of Defense and Corporate Counsel, whose membership is by invitation only following an extensive peer-reviewed selection process. Mr. Banks has been certified by the California State Bar as a specialist in Legal Malpractice Law. He has represented attorneys in excess of 200 State Bar investigations and proceedings. Mr. Banks serves as an arbitrator for the Sacramento County Bar Association Mandatory Fee Arbitration Program, and has presided over numerous fee arbitrations.

Mr. Banks advises his clients in a number of legal matters, including:

- Business and commercial litigation
- Civil writs and appeals
- State Bar Investigations/Prosecutions
- Insurance coverage matters
- Malpractice claims
- Professional ethics
- Risk management
- School and special district issues

A skilled trial lawyer, Mr. Banks has handled cases across a broad spectrum of subject areas, including:

- Antitrust matters
- Catastrophic injury
- Contract disputes
- Corporate disputes

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- Education law
- Employment issues
- Insurance disputes
- Intellectual property
- Probate
- Professional liability

Practice Examples

- As lead trial counsel represented a former Acting County Counsel in a disciplinary proceeding before the California State Bar Court alleging numerous counts of misconduct arising from County Counsel's representation of a County agency. After an 11 day trial, the client was exonerated of all charges and awarded litigation costs in a lengthy Statement of Decision authored by the Trial Court.
- As lead trial counsel represented a physician's assistant in a wage and hour dispute with a Northern California dermatology practice. Litigation results include judgment following a binding arbitration in excess of \$1 million for the client and an award of approximately \$1.5 million in statutory attorneys' fees.
- As lead trial counsel represented the seller of a large ranch in litigation filed by the purchasers over alleged environmental and other issues. Litigation resulted in a favorable settlement during trial.
- As lead trial counsel, successfully represented a law firm through trial in the District Court, Douglas County, Nebraska, in a litigation initiated by a former partner over the value of his partnership interest.
- As lead trial counsel, successfully represented a construction company in a wage and hour class action and individual employment discrimination claims, both of which settled for a nuisance amount on the first day of trial.
- As lead trial counsel, successfully represented an issuer of municipal securities in litigation against its bond counsel arising from issues in connection with a \$130 million bond refinancing.
- As lead trial counsel, successfully represented an East Coast and European investment group in litigation concerning working interests the group had purchased in natural gas wells, which resulted in a \$1.4 million judgment in the group's favor.
- As lead trial counsel, successfully represented an attorney in federal and state court litigations in California and in Hawaii, through the commencement of trial in the Court of the Third Circuit, State of Hawaii (Hilo). Litigation results included obtaining a judgment of \$2.8 million for the client in California Superior Court

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litigation and successfully resolving the Hawaii litigation, which arose out of an alleged breach of a settlement agreement by client's co-counsel.

- As lead trial counsel, won a jury verdict in favor of a real estate investor against the County of El Dorado permitting the investor's right to rescind a tax-sale contract and recover funds due to the County's failure to disclose delinquent assessments under the Improvement Bond Act of 1915, which the County previously had stripped from its tax roll.
- As lead trial counsel, successfully represented the sellers of a large tract of real property to a national home builder in litigation in which the purchaser was seeking damages in excess of \$60 million, resulting in a favorable settlement on the first day of trial.
- As lead trial counsel, successfully defended a law firm at trial in a Virginia Court, resulting in a judgment in the firm's favor in a breach of contract action.
- As lead trial counsel, successfully represented a property owner in a fair value hearing following a judicial foreclosure in which a lender was seeking a \$12 million deficiency; the litigation resolved on the eve of trial with the lender accepting \$1.6 million in satisfaction of its deficiency claim.
- As co-trial counsel, won a multi-million dollar jury verdict on behalf of a motorcyclist critically injured in an accident caused, in part, by visual obstruction negligently created through a packing company's vineyard harvest.
- As lead counsel, successfully defended claims against a law firm in the United States District Court for the Southern District of New York alleging violations of the Lanham Act.
- As lead counsel, successfully defended a California attorney accused in a North Carolina state court of participating in a multi-million dollar embezzlement scheme.
- As lead counsel, successfully represented a law firm through a Department of Justice criminal inquiry initiated by its exercise of search warrants seizing that firm's files.
- As lead counsel, won a reversal on appeal of a multi-million dollar malicious prosecution jury verdict against a local attorney.
- As lead counsel, successfully represented a large Central Valley school district in a multi-million dollar claim involving 70 separate workers compensation claims that had been improperly adjusted and administered by that district's third party administrator.

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- As lead counsel, successfully represented the Boy Scouts of America in a claim by its former attorneys to some \$1.1 million in unearned attorneys' fees.
- Represented attorneys and their law firms in nearly 150 professional liability and malicious prosecution claims. Mr. Banks has also defended numerous accountants, insurance and real estate professionals in negligence claims.
- Represented attorneys in excess of 200 State Bar inquiries.

A catalog of Mr. Banks' jury trials, bench trials, arbitrations and administrative hearings is on page 7, *supra*.

The following is a selected list of published decisions in which Mr. Banks was counsel:

- *Antelope Valley – East Kern Water Agency v. Los Angeles County Waterworks District No. 40 (In re Antelope Valley Groundwater Cases)* (2018) 30 Cal.App.5th 602.
- *Fredericks Peebles & Morgan LLP v. Fred Assam* (2018) 300 Neb. 670.
- *Ribeiro v. County of El Dorado* (2011) 195 Cal.App.4th 354.
- *Modesto City Schools v. Education Audits Appeal Panel* (2004) 123 Cal.App.4th 1365.
- *Rohn v. United States* (2002) 2002 U.S. Dist. LEXIS 19122
- *Modesto City Schools v. Riso Kagaku Corp., et al.* (E.D. Cal. 2001) 157 F.Supp.2d 1128.
- *Krough v. Reynolds Packing, Inc.* (2001) 91 Cal.App.4th 1243.
- *Keeling v. Kronick, Moskovitz, Tiedemann & Girard* (2000) 2000 U.S. Dist. LEXIS 23372
- *Municipal Court v. Superior Court* (1992) 15 Cal.App.4th 1101.
- *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548.
- *Vinod C. Bhan, C.R.N.A. v. NME Hospitals, Inc.* (9th Cir. 1990) 929 F.2d 1404.
- *Olney v. Sacramento County Bar Association* (1989) 212 Cal.App.3d 807.

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- *Bank of America National Trust & Savings Association v. Superior Court of Stanislaus County* (1988) 200 Cal.App.3d 1000.

Professional Activities and Affiliations

Mr. Banks frequently lectures on risk management, ethics, malpractice and litigation issues. His speaking engagements include:

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| Presenter | October 2019, Schwartz-Levi Inn of Court. Topic: Proposed rules permitting lay ownership of legal firms. |
| Lecturer | March 2019, Schwartz-Levi Inn of Court. Topic: Delivered lecture on the revised California Rules of Professional Conduct. |
| Lecturer | July 2014, Shanti Bhavan School, Baliganapalli, India. Topics: Delivered lectures in Contract Law, appellate advocacy and Human Rights. |
| Speaker | August 2011, Sacramento Law Firm Seminar. Topic: Conflicts of Interest, with emphasis on rules 3-300 and 3-310 of the California Rules of Professional Conduct. |
| Panelist | 2007 United States District Court for the Eastern District Bench/Bar Conference – “Erosion of the Attorney-Client Privilege,” “Attorney-Client Privilege, Crime Fraud Exception.” |
| Panelist | 2006 United States District Court for the Eastern District Bench/Bar Conference – “Ethical and Legal Obligations of Leakers, Whistleblowers and Their Attorneys in a Post-9/11 World.” |
| Speaker | March 2005, Sacramento Law Firm Seminar. Topic: Conflicts of Interest. |
| Speaker | March 2002, University of California, Davis, King Hall School of Law. Topic: Attorney Ethics. |
| Speaker | November 2001, University of the Pacific, McGeorge School of Law. Topic: Ethical Issues Impacting Class Action Practice and Complex Litigation. |
| Speaker | April 2001, University of California, Davis, King Hall School of Law. Topic: Attorney Ethics. |
| Speaker | February 2000, Seminar, Santa Fe, New Mexico. Topic: Law Firm Risk Management Issues. |

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- Speaker April 1999, University of California, Davis, King Hall School of Law. Topic: Attorney Ethics.
- Speaker October 1997, Sacramento Law Firm Seminar. Topic: Selected Risk Management Issues for Lawyers.
- Speaker July 1997, Sacramento Law Firm Seminar. Topic: Evidentiary Privileges and Their Use in Civil Discovery.
- Speaker November 1996, Sacramento Association of Health Underwriters. Topic: Selected Risk Management Issues for Insurance Agents and Brokers.
- Speaker August 1996, Sacramento Law Firm Seminar. Topic: Selected Risk Management Issues for Lawyers.
- Speaker July 1996, Sacramento Association of Professional Administrators. Topic: Selected Risk Management Issues for Public Accounting Firms.
- Speaker March 1996, Sacramento Association of Legal Secretaries. Topic: Avoiding Malpractice.
- Speaker February 1994, Reliance Insurance Group Seminar for Attorney-Insureds, San Francisco, California. Topic: How to Avoid Being Sued for Malicious Prosecution and What to Do If You Are.
- Panelist 1993, 1994, 1995, “Taking Effective Depositions,” Lorman Education Services.

His professional and community affiliations include:

- California State Bar Association
- American Bar Association
- Federal Bar Association
- Association of Professional Responsibility Lawyers
- Federation of Defense & Corporate Counsel
- Board of Trustees, St. Michael’s Episcopal Day School (1998-2003)
- Trustee, Sacramento Children’s Home (1996-2000)
- Secretary and Counsel, Trinity Cathedral Episcopal Church (1991-1996)

Academic Background

A.B. University of California, Berkeley, 1982

J.D. University of California, Davis, 1985
– *Member, U.C. Davis Law Review*

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Jury Trials

1. *Central Janitors' Supply Co., Inc. v. Ellman, et al.* – September 2018.
Professional negligence. Settled during trial.
Opposing Counsel: Paul Fife.
Stanislaus County Superior Court, Hon. Stacy Speiller.
2. *Twenty-Nine Palms Band of Mission Indians, et al. v. Edwards, et al.* – July 2012.
Legal malpractice defense. Settled during jury selection.
Opposing Counsel: Scott Spolin, Gordon Bosserman.
Orange County Superior Court, Hon. Ronald Bauer.
3. *Janeen-Ann Ahulani Olds, et al. v. John Doe, Jane Doe and Eric Grant* – Nov. 2011.
Suit for breach of contract for violation of a confidentiality provision following settlement of a controversial action in Hawaii to integrate the Kamehameha schools, then pending before U.S. Supreme Court. Settlement reached during jury selection.
Opposing Counsel: Paul Alston.
Circuit Court of the Third Circuit, State of Hawaii (Hilo), Hon. Greg Nakamura.
4. *Ribeiro v. County of El Dorado* – June 2010.
Suit to annul a tax defaulted real property sale. Verdict for plaintiff.
Represented plaintiff.
Opposing Counsel: Steven A. Mason.
El Dorado County Superior Court, Hon. Nelson Brooks.
5. *R. Ellis Harper v. Penelope Williams* – December 2005.
Legal malpractice defense. Non-suit granted on first day of trial following opening statements. Represented defendant.
Opposing Counsel: Sandra Stanley.
Nevada County Superior Court, Hon. Albert Dover.
6. *Krogh v. Reynolds Packing Company* – May 1998.
Catastrophic injury case. Two-week jury trial.
\$2.5 million verdict for plaintiff. Pre-trial settlement \$2 million. Represented plaintiff.
Opposing Counsel: Ken Seitzinger.
San Joaquin County Superior Court, Hon. Peter Sayers.

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7. *Cartulicci v. ARCO Seed Company* – April 1987.
Crop loss case. 10-day jury trial.
Plaintiff's verdict. Represented *ARCO Seed Company*.
Opposing Counsel: Joseph A. Uremovic.
Merced County Superior Court, Hon. Michael Heidig.
8. Computer Software trial – May 1986.
7-day jury trial.
Defense verdict. Represented defendant.
Stanislaus County Superior Court, Hon. Charles Stone.

Bench Trials

1. *Ribeiro-Sunglow, LLC v. Craig C. Wichert, et al.* – March 2019.
Breach of a commercial lease.
Opposing Counsel: Benjamin Koegel/ Ryan Meyer.
El Dorado County Superior Court, Hon. Warren C. Stracener.
2. *Granite Bay Development, L.P. v. FLA Roseville, L.P.* – November 2017.
Breach of contract action in a \$7 million land sale.
Opposing Counsel: Mike Brown/Tamara Boeck.
Placer County Superior Court (reference), Hon. Read Ambler.
3. *Quail Commerce Center v. Kerr* – April 2017.
Breach of a commercial lease.
Opposing Counsel: Tim Charshaf.
El Dorado County Superior Court, Hon. Warren C. Stracener.
4. *Fredericks, Peebles & Morgan, LLP v. Assam* – June 2016.
Action to determine value of departing partner's interest in law firm.
Opposing Counsel: David A. Domina.
District Court of Nebraska, County of Douglas, Hon. Shelly R. Stratman.
5. *Monte Cristo Investments, LLC v. Hydroslotter Corporation, et al.* – December 2010.
Contempt action.
Opposing Counsel: Jerry Fong.
Colusa County Superior Court, Hon. S. William Abel.
6. *Grantline Investors, LLC v. Pulte Homes* – March 2009.
Complex breach of contract action involving a \$47 million real property sale.
Opposing Counsel: Eileen Diepenbrock and Gene Cheever.
Sacramento County Superior Court (reference), Hon. James Warren.

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7. *Nunez v. Warzecha* – January 2008.
Action for waste of property by lessee.
Opposing Counsel: Bill Baker.
Sacramento County Superior Court, Hon. Jaime Román.
8. *Eric Grant v. John Goemans* – September 2008.
Contempt trial.
Opposing Counsel: John Gardner Hayes.
Sacramento County Superior Court, Hon. Jaime Román.
9. *Grant Joint Union High School District, et al. v. Sacramento County Office of Education, et al.* – June 2008.
Action to affirm decisions made by outgoing Grant Joint Union High School District trustees following its unification into the Twin Rivers Unified School District.
Opposing Counsel: Timothy M. Cary, Matthew I. Kaplan, Robert Cutbirth.
Sacramento County Superior Court, Hon. Lloyd G. Connelly.
10. *Mary Ellen Breen, et al. v. Transhumance Holding Company, Inc., et al.* – March 2007.
Action to set aside top hat pension plan imposed by prior management.
Opposing Counsel: Greg Johnson, Chris Rodriguez.
Arbitrator: Hon. Reed Ambler.
11. *Zincola v. Payne* – December 2004.
Breach of contract action.
Opposing Counsel: Daniel R. Martinez.
Sacramento County Superior Court, Hon. Talmud Jones.
12. *Dante v. Deutch* – July 2004.
Breach of contract action.
Opposing Counsel: Daniel Hawes.
Circuit Court of Fauquier County, Virginia, Hon. Jeffrey W. Parker.
13. *Grant Joint Union High School District, et al. v. California State Board of Education, et al.* – April 2004.
Petition for Writ of Mandate to challenge ballot initiative.
Opposing Counsel: Timothy M. Cary
Sacramento County Superior Court, Hon. Raymond M. Cadei.

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14. *John Raymond, et al. v. Ernest R. Hawkins, et al.* (Grant Joint Union High School District) – December 2001.
Writ of Mandate proceeding to contest ballot language opposing a GO Bond ballot measure.
Opposing Counsel: Kathleen O’Conner.
Sacramento County Superior Court, Hon. Ronald B. Robie.

Arbitrations

1. *Doughty v. Levitan, et al.* and related cross action – February 2021
Action to determine division of assets and liabilities following law firm dissolution.
Opposing Counsel: Rachel Doughty, Rob Buccieri and Charles Perry
Arbitrator: Richard Collier
2. *In Re the Attorney Fee Dispute between Kershaw Cook & Talley and Dreyer Babich Buccola Wood Campora, LLP arising from the Matter Styled, Palla v. L M Sports, Inc., et al.*, – June 2020.
Action to determine entitlement to attorneys’ fees.
Opposing Counsel: Roger Dreyer, Robert Buccola
Arbitrator: Hon. David A. Abbott
3. *On, et al. v. Vannucci, et al.* – November 2018.
Complex employment case, involving state and federal actions.
Opposing Counsel: Serena Warner, John Knowlton, Scott Galbreath.
Arbitrator: Catherine C. Harris.
4. *Cole, et al. v. Messner, et al.* – November 2016.
Complex real estate partnership dissolution action and resulting damage claims.
Opposing Counsel: Roger Dreyer, Michael O’Neil.
Arbitrator: Hon. Richard Gilbert.
5. *Soto v. Norogachi Construction, Inc.* – April 2016.
Wage and hour class action.
Opposing Counsel: Ronald Makarem and Michael Kim.
Arbitrator: Hon. Lawrence H. Kay.
6. *Scottel Voice & Data, Inc. dba Blackbox v. ITC Service Group, Inc.* – August 2014.
Dispute over change orders in complex fiber optic cable project.
Opposing Counsel: Douglas N. Akay
Arbitrator: Hon. Robert O’Connor.

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7. *Alan Barns/Padrick dispute* – November 2008.
Action to determine entitlement to attorneys' fees.
Opposing Counsel: Michael Baytosh.
Arbitrator: Stephen A. Block.
8. *Kershaw Cutter, et al. v. York, et al.* – June 2008.
Action to determine entitlement to \$2.5 million in attorneys' fees following resolution of wage and hour class action suit.
Opposing Counsel: Frank Radoslavich.
Arbitrator: Stephen A. Block.

Administrative Hearings

1. *In the Matter of Blair Angus/Natalie Duke* (consolidated) – August 2021.
State Bar Court discipline proceeding.
Opposing Counsel: Susan Kagan, Whitney Geitz
Judge: Hon. Phong Wang.
2. *In the Matter of Rita Lingwood* – June 2018.
State Bar Court discipline proceeding.
Opposing Counsel: Carla Cheung.
Judge: Hon. Lucy Armendariz.
3. *In the Matter of the Statement of Issues Against: Martinez Unified School District* – October 2005.
Action contesting attendance audit findings.
Judge: Hon. Jaime Román.
4. *Del Paso v. Department of Finance* – May 2005.
Action contesting attendance audit findings.
Judge: Hon. Jaime Román.
5. *Modesto City Schools v. Department of Finance* – 2000.
Administrative proceeding contesting approximately \$2 million in findings following attendance audit.
Opposing Counsel: Julie Weng-Gutierrez.
Judge: Hon. Jaime Román.