

Are you taking your oath seriously?

By Niall McCarthy



We all swore to it. Section 6067 of the California Business and Professions Code requires every attorney to take an oath before admission to practice law in California. That oath requires an attorney to “support the Constitution of the United States and the Constitution of the State of California.” The California Bar Admission Certificate that hangs in your office states that you have “taken and subscribed the oath required by law.” Are you taking that oath seriously?

The Seventh Amendment of the United States Constitution guarantees a civil jury trial by stating:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

The California Constitution protects the same fundamental right to a civil jury trial at Article I, Section 16, which states:

Trial by jury is an inviolate right and shall be secured to all, but in a civil

cause three-fourths of the jury may render a verdict.

Thus, all California attorneys have taken an oath to protect and defend the civil jury system. For plaintiffs’ attorneys this oath is particularly acute. While large corporations have the power to privately negotiate remedies if they are wronged, or pass their losses onto consumers, our clients depend on the court system to enforce their rights.

Each day in Sacramento there are efforts by big oil, insurance and other corporations to chip away at the civil jury system and the constitutional rights of California consumers. It seems an endless fight, and it harkens back to that oath: To uphold the Constitution, to support the Seventh Amendment right to trial. The proving ground is in the statehouse against corporate foes willing and ready to shred the Seventh Amendment.

So answer this honestly: What steps have you taken to live up to the oath you took?

Our chances of defeating those who would undercut civil justice depend on the lawmakers who are sent to Sacramento. The most fundamental part of a

democracy is an election. Though it’s maddeningly routine in these cynical times to lapse into apathy, we all have a say in the process – and elections do have consequences. In California, a whole cadre of candidates campaign against all we stand for. They want to limit damage awards, promote arbitration and prohibit jury trials completely. They wrap themselves in the constitution while proposing changes that would undercut our most fundamental constitutional rights.

Thankfully, other candidates have a profound understanding of the importance of the civil jury system as an avenue to justice. If you are taking your oath seriously, you have an obligation to support those candidates who work hard to preserve the civil justice system. In this election cycle, candidates such as Betsy Butler, Bill Monning, Fran Pavley and Loni Hancock are under fire for standing up for the rights of your clients. The list of legislators who “get it” directly impacts whether you can do your job. Plaintiff lawyers need to devote their time, talent and treasure to be stewards of the civil justice system.

As with all elections, the 2012 legislative races bring both great opportunity and great peril. CAOC will be asking you to contribute your fair share financially, as many of your brothers and sisters at the plaintiffs’ bar have done in the past and are doing today.

When the ask comes, remember your oath. ■

Niall P. McCarthy is president of Consumer Attorneys of California and a principal at Cotchett, Pitre & McCarthy, LLP. He has practiced extensively in the area of financial fraud.
www.cpmlegal.com

A promotional banner for the 51st Annual Convention of the Consumer Attorneys of California. The banner features a night view of the Golden Gate Bridge in San Francisco. Text on the banner includes: "SAVE THE DATE!" in a red vertical box on the left; "51st ANNUAL CONVENTION" in large blue and red letters; "PALACE HOTEL SAN FRANCISCO" in red and white; "NOVEMBER 8 - 11" in white on a dark blue background; and "2012" in white on a dark blue background on the right. A small logo for "CONSUMER ATTORNEYS CALIFORNIA" is in the bottom left corner.