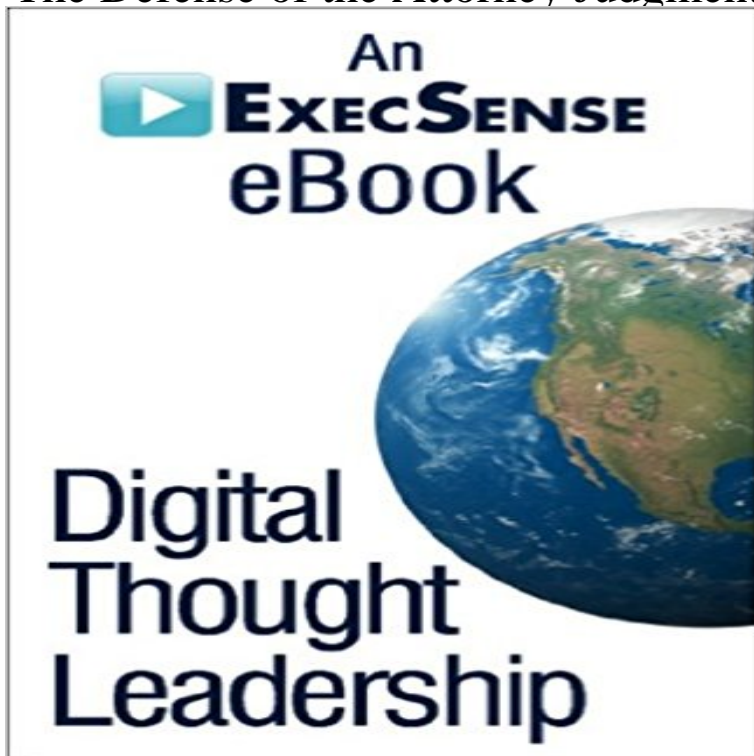


## The Defense of the Attorney Judgment-Tactical Immunity Doctrine



About the eBookThe attorney judgment and tactical immunity doctrines shield an attorney from liability for an alleged mistake where the attorney has honestly exercised his or her professional judgment in determining what recommendation or what procedural or tactical steps to undertake on behalf of the client. *Kirsch v. Duryea* (1978) 21 Cal.3d 303, 308-311; *Davis v. Damrell* (1981) 119 Cal.App.3d 883, 887-889. Contrary to the belief of some attorneys, the attorney judgment doctrines are not narrowly circumscribed. Rather, they present a broad array of rules that operate to protect attorneys when they are exercising their judgment in various ways. See generally 2 *Mallen & Smith, Legal Malpractice* 19.1-19.4 (West 2009 ed.) The failure to instruct a jury on the doctrines in a legal malpractice case may constitute reversible error. *Blanks v. Shaw* (2009) 171 Cal.App.4th 336, 378-379. The general rule with respect to the liability of an attorney for failure to properly perform his or her duties to a client is: the attorney, by accepting employment to give advice or to render other legal services, impliedly agrees to use such skill, prudence, and diligence as lawyers of ordinary skill and capacity, commonly possess and exercise in the performance of the tasks which they undertake. In short, under such circumstances, the attorneys conduct meets the standard of care. *Kirsch, supra*, 21 Cal.3d at 308 citing several cases. In addressing breach of duty, the crucial inquiry is whether [the attorneys] advice was so legally deficient when it was given that he [or she] may be found to have failed to use such skill prudence and diligence as lawyers of ordinary skill and capacity commonly possess and exercise in the performance of the tasks which they undertake. *Blanks v. Shaw, supra*, 171 Cal.App.4th at 357 (internal citations omitted).About the Author: Mark Ellis, Managing Partner, Ellis Law Group, LLP

Mark E. Ellis, graduated from the College of William & Mary in 1982, and received his law degree cum laude from California Western School of Law in 1985. He is a trial lawyer whose practice embraces civil litigation in both state and federal courts. He has tried over 60 cases to verdict, judgment or binding award. Mr. Ellis has defended hundreds of lawyers sued for malpractice, malicious prosecution, ethics violations, and other professional wrongdoing. He has represented lawyers and/or law firms in more than 45 trials, winning virtually every case that reached final verdict or judgment. Mr. Ellis regularly writes and speaks on issues related to lawyers, law firms, and ethics. Mr. Ellis is certified as a Legal Malpractice Specialist by the State Bar of California. Every year since 2004, and again in 2012, Mr. Ellis has been chosen by other attorneys as one of the top 5 percent of lawyers practicing in Northern California, and he has been named a Northern California Super Lawyer. Mr. Ellis is also listed under the specialty of Legal Malpractice Law in the 2012 and 2013 edition of Best Lawyers in America. This is the third consecutive year he has been so honored. His law firm was recently named in the U.S. News and World Report as one of the best small law firms in California in the area of professional malpractice. Mr. Ellis is the founder and managing partner of Ellis Law Group LLP in Sacramento, California.

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