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## Meet Nancy Gray



In a diverse legal career that has spanned over three decades, attorney Nancy Gray has represented hundreds of clients in a variety of civil matters, including labor and employment (management/employee); sexual harassment, discrimination, wrongful termination; commercial, contract and business issues.

## Employers Face Uphill, Potentially Impossible Battle to Recover Costs After Successfully Defending Against Employment Discrimination Lawsuits

Every year, thousands of California employers are sued by employees who allege unlawful discrimination. Of these cases, many are dismissed or settled well before trial because the employee-plaintiffs cannot establish a *prima facie* case. On the other hand, some discrimination lawsuits do proceed to trial and the employers prevail because employees fail to prove their claims. Regardless of the scenario, employers are saddled with substantial bills for attorneys' fees and litigation costs of defense. Despite an employer's victory in court, however, it is extremely difficult--or nigh impossible--to recover attorneys' fees and costs.

The same cannot be said for successful employees who are often awarded their attorneys' fees and costs if they prove their claims against the employers.

### ATTORNEY'S FEES

California employers who successfully defend employment discrimination

Among other highlights, Ms. Gray served as Assistant District Attorney in New York, spent seven years with a national law firm working on complex pharmaceutical and medical device cases, and successfully litigated and coordinated cases around the country. She has a unique expertise in matters pertaining to the adulteration of extra virgin olive oil.

Ms. Gray has also lectured and written on a variety of topics, including expert testimony, drug and medical device regulation, sexual harassment, employment practices and child performer issues.

In 1997, she started her own firm, based in Los Angeles.

Having been raised in New York City, Nancy enjoys dramatic, musical and comedy theater as well as pro sports. She is a PADI-certified scuba diver. Among her favorite reading material is Bon Appetit and anything pertaining to criminal behavior and behavioral profiling.

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## About Gray & Associates P.C.



claims cannot recover attorney's fees unless they can establish that the claims were frivolous, unreasonable or groundless, pursuant to Government Code [Section 12965\(b\)](#). Section 12965(b) has been construed as setting a very high bar for employers because courts do not want to deter employee-plaintiffs from pursuing colorable discrimination suits due to fear of taxed attorneys' fees.

### LITIGATION COSTS

The issue of whether successful employers can recover costs other than attorneys' fees has historically been determined according to [Section 1032\(b\)](#), California Code of Civil Procedure, which awards the prevailing party litigation costs as a matter of right unless otherwise prohibited by statute. In most cases, employers could be awarded payment for court costs, expert witness fees, etc.

However, this changed last year when the California Supreme Court decided [Williams v. Chino Valley Independent Fire District](#). In Williams, the Court held that Section 12965(b) was that type of explicit statutory exception to Section 1032(b) awarding the prevailing party litigation costs. Following the Williams decision, employers now have to demonstrate that employee claims were objectively groundless.

### "OBJECTIVELY GROUNDLESS"

Recently, we were able to see the Williams holding at play in the case of [Brady v. Walt Disney Pictures](#) (Cal. Sup. Ct. June 29, 2016). There, disgruntled employee Kevin Brady ("Brady") sued his employer, Walt Disney Pictures ("Disney"), for age discrimination. Essentially, Brady's only evidence of discrimination was the fact that when he was fired due to company reorganization, an employee 20 years his junior filled what Brady believed was a comparable position. Granting Disney's motion for summary judgment, the trial judge pointed out that Brady had merely a "weak suspicion" of

Attorney Nancy Gray of Gray & Associates, P.C. has more than 30 years of experience providing personalized attention and creative solutions to her clients' legal issues.

Whether you need a strong litigator, a labor and employment advocate, or a savvy business law attorney, you can rely on Gray & Associates to provide you with excellent legal representation. Click [here](#) to read more.

## Practice Areas

- Civil litigation and trials
- Commercial law
- Contracts
- Sexual harassment
- Employment law
- Employment contracts
- Intellectual property litigation
- Trademark litigation
- Unfair competition
- False Advertising
- Business law
- Entertainment law

## Accreditations



discriminatory animus based on no objective evidence.

Nevertheless, the judge denied Disney's Motion to recover litigation costs despite finding that Brady failed to produce evidence of discrimination. Citing the Williams holding, the court found Brady's "weak suspicion" enough to surpass the objectively groundless or frivolous standard imposed by Section 12965(b) and Williams.

Even where an employee has virtually no evidence of discrimination, the Brady decision demonstrates just how difficult it can be for employers to meet the objectively groundless standard. The case begs the question of when, if ever, an employee's discrimination suit is so meritless that an employer can recover its costs. It will take an extraordinary set of facts for an employer to prevail.

If you have been or fear you may be sued, you should contact a knowledgeable employment law attorney--like Nancy Gray. Nancy Gray has decades of experience representing employers in discrimination lawsuits and all other employment law matters, and she is here to help you.

## Directions



