

# ASSOCIATION FOR CALIFORNIA TORT REFORM

## CANDIDATE QUESTIONNAIRE

The Association for California Tort Reform (ACTR) is a broad coalition of business, professional, public entity and trade groups concerned about the effect of excessive and frivolous liability litigation on California consumers, jobs, and overall economy.

Based in Sacramento, ACTR works in the Legislature, in the courts, and through research and public education. Through its political action committee, Californians for Civil Justice Reform, it has participated in Senate and Assembly elections over the years.

**As a candidate for public office, your views on the civil justice system are very important to us. Our decision on whether to support a candidate will be based in a large part on response to this questionnaire.**

In some cases, we supplement information in these questionnaires with candidate interviews which we request after reviewing completed questionnaires.

**We therefore thank you for responding to this questionnaire as soon as possible, but in no event more than 21 days from receipt. Please fax your response to (916) 443-4306.**

If any issues or questions require clarification, please do not hesitate to contact John Sullivan, Mark Krausse or Barbara Wheeler at (916) 443-4900.

### CANDIDATE BACKGROUND

1. Name: GERALD KRAAS (see <http://sacto...>)
2. Senate/Assembly District: 6
3. Party affiliation: Libertarian
4. Have you ever been a candidate for elective office in the past? If so, please provide the year(s), your opponent(s) and the outcome of the election(s).  
No
5. Occupation/Professional Background/Volunteer and Public Service Experience  
COMPUTER PROGRAMMER / COMMUNITY COLLEGE INSTRUCTOR
6. Are you an attorney?  Yes  No
  - a. Have you ever practiced law?  Yes  No

b. Name of law firm(s) for which you've worked and location(s):

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c. Area(s) of practice/expertise: \_\_\_\_\_

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d. Percentage of clients that were: Plaintiffs \_\_\_% Defendants \_\_\_%

### PERSPECTIVES ON CURRENT CIVIL JUSTICE ISSUES

7. **Arbitration:** Arbitration and mediation are being widely used as a faster, less-costly alternative to the courts. Some are opposing binding arbitration, arguing that consumers and employees should be able to appeal an arbitrator's decision to a court -- even if they agreed earlier that arbitration should be final and binding. Others argue that arbitration's two important benefits -- lower cost and a rapid final decision -- will be undermined if appeals from an arbitrator's binding decision can be easily taken to a court. Do you believe legislation should:

a. Continue current law, which makes an arbitrator's decision binding unless fraud or corruption is shown?  Yes \_\_\_ No. Comment:

b. Change the law to make it easier to appeal an arbitrator's binding decision? \_\_\_ Yes  No. Comment:

General Comments:

8. **Employment Law:** Most employees in California are "at-will" employees who work with no written employment contract guaranteeing a job into the future. If an employee in this category believes he or she has been fired wrongfully, the employee in many cases may still sue the employer for future lost wages on the theory that there was an "implied-in-fact" employment contract. The law permits a jury to award damages equal to an estimate of what the employee would have earned for the remainder of his working life -- even in the absence of any proof

that the employee has made reasonable efforts to secure new employment. Opponents of the current law believe its opportunity for big dollar court wins is encouraging unjustified lawsuits and eliminating the incentive for people to find new employment. Supporters of the current law believe juries should be free to award whatever they want. Most proposals for change involve limiting the future wage (sometimes called "front pay") damages that a wrongfully terminated employee may receive in these kinds of cases. Do you favor:

- a. Limiting "front pay" damages to \_\_\_1 year \_\_\_3 years  5 years from the date the alleged wrongful termination occurred, or believe  these damages should remain unlimited? Or do you favor a different number of years as a fixed limit, such as \_\_\_ years?

Comment:

- b. Creating a rebuttable presumption that future employment would not have exceeded five years, thus limiting the employee to 5 years worth of "front pay," unless he or she proves the employment would have exceeded that period?  Yes \_\_\_ No. Comment:

- c. Requiring that a wrongfully terminated employee's damages be reduced if it is shown that he or she turned down or, with reasonable diligence, could have secured a roughly equivalent new position (e.g., where the pay level was within 20%, the position was of a similar rank and the workplace was within 20 miles of the employee's home)?  Yes \_\_\_ No. Comment:

General Comments:

9. **Punitive Damages:** California law permits a jury to award punitive damages when it is convinced that a defendant acted with "oppression, fraud or malice" in committing a tort. Punitive damages are asked for in a large percentage of liability cases and the punitive damage awards can often be as much as 100 times the amount of actual damages (lost wages, medical bills, property damage, etc.). Opponents of unlimited punitive damages argue that they encourage speculative lawsuits and that they are unfairly used as a threat to drive up the value of lawsuit settlements. Supporters of unlimited punitive damages believe juries should be

free to award damages of any amount in order to punish heavily and to “send a message.” Some states have recently passed laws to limit punitive damages to a multiple (e.g. three times) of actual damages. Such proposals are before Congress. The U.S. Supreme Court in 1996 in the BMW case struck down a punitive damage award as excessive. Do you favor changing California law to:

- a. Set a definite limit on punitive damages of three times the actual damages or a multiple limit at another level, such as 3 times the actual damages?  Yes  
 No. Comment:
  
- b. Set a limit such as three times actual damages, but allow a judge to let a jury award above that level stand if special circumstances justify it.  Yes  No.  
Comment:
  
- c. Impose some other kind of limit?  Yes  No. If yes, please summarize:
  
- d. Allow the judge, rather than the jury, to set the dollar amount of punitive damages once the jury has decided that oppression, fraud or malice was present?  Yes  No. Comment:

General Comments:

11. **Auto Liability Insurance:** Attempts to improve the auto accident liability system have repeatedly stalled in the Legislature in recent years. Many California drivers fail to buy required liability insurance, in part because of the cost. A law passed last year requires that the Department of Motor Vehicles receive proof of insurance before renewing a car’s registration. Voters in November 1996 overwhelmingly passed Proposition 213, which prohibits uninsured drivers from receiving “pain and suffering” damages for injuries arising from an auto accident (They may recover for medical costs, future care, wage loss, etc.). The Rand Institute for Civil Justice finds that fraudulent and excessive injury claims under California’s current system are adding \$2.5 billion to \$3.5 billion a year to insurance costs.

Proponents of the system’s legal reform argue that changes should be made to reduce the legal overhead encountered by both accident claimants and insurers, thereby reducing the

cost of auto insurance to consumers. Opponents of legal reforms say the current system is necessary to protect injured persons. Do you favor:

- a. The Proposition 213 system that permits only people complying with liability insurance requirements to recover pain and suffering damages, in addition to actual economic damages, if they are injured in an auto accident caused by someone else's negligence?  Yes \_\_\_ No. Comment:
- b. A "no-fault" system that requires motorists to buy insurance that provides medical cost and wage protection benefits for the driver and his or her family, regardless of who caused the accident resulting in the injuries?  Yes \_\_\_ No. Comment:
- c. A "fault" system that holds down costs by providing a fixed, lower amount of "pain and suffering" damages in less-than-serious bodily injury accidents (as defined by legislation), but allows the existing liability and damage system to operate without limits where there are serious injuries?  Yes \_\_\_ No. Comment:

General Comments:

12. **Medical Malpractice Liability:** In 1975, the Legislature enacted the Medical Injury Compensation Reform Act (MICRA) in response to a medical malpractice insurance crisis. One of MICRA's key provisions limits compensation for subjective, non-economic damages (such as pain and suffering and emotional distress) to \$250,000. Supporters of MICRA and the damage cap argue that the \$250,000 is vital to holding down the cost of malpractice awards (and insurance costs) and that it does not affect the ability of an injured person to get full recovery for the current and future actual costs of a medical injury (the average malpractice award has more than kept pace with inflation since 1975). Opponents of MICRA and the cap argue that it should be eliminated -- at least in certain circumstances -- or increased to match the increase in the cost inflation index since 1975. Supporters argue that inflation indexing arguments are off the mark because pain and suffering/emotional distress damages relate to an intangible amount that is not an economic loss. Opponents of MICRA and its cap have proposed eliminating the cap in cases of child injury and wrongful death,

arguing that these are special circumstances justifying unlimited non-economic damages. Proponents of MICRA argue that the multi-million dollar pain and suffering awards that would result in some cases could result in cost increases that will reduce or eliminate services to under-served communities and render OB-GYN, pediatric, and geriatric care virtually unavailable in some parts of the state. Do you favor:

- a. Leaving current law in place which sets MICRA's non-economic damages cap at \$250,000?  Yes \_\_\_ No. Comment:
  
- b. Increasing MICRA's cap, but to an amount less than \$700,000? \_\_\_ Yes  No. Amount: \$ \_\_\_\_\_. Comment:
  
- c. Increasing MICRA's cap to \$700,000? \_\_\_ Yes  No. Comment:
  
- d. Increasing MICRA's cap, but requiring that all of the increased damages be received by the injured person and protected from the plaintiff attorney's contingency fee charges? \_\_\_ Yes  No. Comment:

13. **Unfair Competition Act Lawsuits:** California law allows district attorneys and private lawyers to bring lawsuits against companies that market their products in such a way as to mislead the consumer and gain unfair advantages over competitors. Examples include false claims about product size, weight or capabilities. This statute -- the Unfair Competition Act (UCA) -- has been abused by some private lawyers who have brought suit, for example, because software disks are considerably smaller than the boxes they are sold in. In these cases and others like them the law has not required that the lawyers prove that anyone has actually been harmed or misled. Lawyers don't even have to find a real plaintiff. And they can bring follow-up lawsuits in apparently legitimate cases even though a district attorney, has already stopped the unfair practice and obtained restitution for people who were harmed. Do you favor:

- a. Changing the law so that a private attorney bringing a UCA lawsuit must represent a real person who has purchased the product or service involved and show evidence of harm or deception?  Yes \_\_\_ No. Comment:

14. **Joint and Several Liability:** Under the legal doctrine of "joint and several" liability, a civil defendant may be required to pay to all of an injured party's

losses -- no matter what that defendant's share of blame for causing the harm. Thus, a defendant who is held to be 1% at fault could be forced to pay 100% of the damages. In 1986, ACTR sponsored Proposition 51, approved by California voters to replace joint and several liability with "comparative fault" for the non-economic damage (such as "pain and suffering") part of personal injury and property damage cases. This results in defendants in those cases paying for non-economic damages only in proportion to their individual share of fault. Do you favor:

- a. Extending the "comparative fault" rule to *economic* damages where the injury is a financial loss rather than bodily injury or physical property damage?  Yes \_\_\_ No. Comment:

15. **Construction Lawsuits:** Litigation involving condominiums and other attached housing has caused builder insurance cost and availability problems heavily contributing to the decline of construction and availability of this kind of housing around the state. Lawsuits, while they have resulted in repairs being made, have also resulted in lowering the value of some condominium units, and the cloud of litigation has made some harder to sell. The Legislature, builders, insurers, lawyers, and homeowner groups have been working on the problem, but no comprehensive solution has resulted. Do you favor:

- a. Permitting binding arbitration clauses in planned unit development agreements so that builders and homeowner associations are required to arbitrate disputes over defects rather than take them to court?  Yes \_\_\_ No. Comment:
- b. Changing the standard of making a builder "strictly liable" for any flaw in the building to a requirement that the flaw must be caused by a builder's negligence before liability can be found?  Yes \_\_\_ No. Comment:

General Comments:

16. **Product Liability:** In states around the country, the law of product liability has been undergoing legislative and judicial change in recent years. Congress has actively been working on legislation. Much of the focus has been on "strict liability," the concept that holds those involved with making and selling a product liable to anyone injured regardless of whether they were negligent in designing, manufacturing, or explaining the

product. Supporters of change argue that strict liability has gone too far, unreasonably permitting litigation that is driving good products off the market, hurting U.S. companies trying to compete with foreign firms, creating defendant “victims” of people and small companies who had no real responsibility for a product defect, and in some cases unreasonably absolving product users of responsibility for their own actions. Supporters of current product liability laws say they are necessary to ensure product safety and that the overriding goal in product law should not be identifying fault but getting money for injured persons. Do you favor:

- a. Changing California law to ensure that manufacturers are not discouraged from making changes to improve product safety because evidence of later product design changes can be used in court by plaintiffs as evidence of a pre-existing defect in the product?

Yes \_\_\_ No. Comment:

- b. Changing California law to protect product sellers and distributors from liability for a product’s defect unless they knew of the defect and failed to take action or in some way altered the product or its instructions while in their possession:  Yes \_\_\_ No. Comment:

- c. Changing California law to make it clear that a manufacturer is not liable in a lawsuit brought by a person who was legally impaired by alcohol or drugs at the time the product was being used and the injury occurred? \_\_\_ Yes \_\_\_ No.

Comment:

*yes - If the alcohol impairment caused misuse of the product.*

General Comments:



17. **Third Party “Bad Faith” Insurance Lawsuits:** In 1989 the state Supreme Court handed down a decision (*Moradi-Shalal v. Fireman’s Fund*) ending a 10-year “experiment” permitting “bad faith” lawsuits against insurers by people not insured by the company being sued. These so-called “third party” suits were permitted by an earlier decision (*Royal Globe Insurance Co. v. Superior Court*) . In *Moradi-Shalal* the court cited the undesirable social and economic effects of third party bad faith liability. Trial lawyers are now promoting a bill to legislatively re-establish third party bad faith litigation. They argue it is necessary to make sure insurers offer fair settlements and act promptly. Opponents of the bill argue that California was widely criticized for its bad faith policy during the 1980s and that clear evidence developed of unwarranted or inflated settlements coerced by the threat of a bad faith lawsuit. They argue that third party bad faith litigation puts plaintiffs’ lawyers into every dispute between an injured person and the insurance company representing the person responsible for the injury, resulting in higher insurance costs and increased court caseload. Opponents of current bad faith legislation also argue that proponents of the bill have not established that a problem exists and that Department of Insurance enforcement actions are the proper way to attack insurers who engage in unfair claims settlement practices. Do you favor:

a. Enacting legislation to return to the third party liability system that existed under *Royal Globe*? \_\_\_ Yes  No. Comment:

### BACKGROUND INFORMATION

17. Are you seeking or have you received financial support from individual plaintiffs’ lawyers? *No*

18. Are you a member of the California Applicant Attorneys Association (CAAA), the Consumer Attorneys of California (CAOC) or have you been a member of the CAAA or the CAOC or it’s predecessor, the California Trial Lawyers (CTLA)? If yes, please explain which group(s). *No*

19. Are you seeking or do you have the endorsement of the CAOC or a local trial attorney association? *No*

20. Are you seeking or do you have the endorsement of California Applicant Attorneys Association (CAAA)? *No*

21. Are you seeking or have you received financial support from CAOC or its members?

*No*

22. Are you seeking or have you received financial support from CAAA or its members?  
*No*
23. Are you a member of the California Defense Counsel association or regional defense counsel associations, or are you seeking its endorsement, or are you seeking or have you received financial support from any of these associations?  
*No*
24. Have any of your opponents received financial support or endorsement from the CAOC? If yes, which opponent(s)?
25. Have any of your opponents received financial support or endorsement from the CAAA? If yes, which opponent(s)?
26. Have any of your opponents received financial support or endorsement from the California Defense Counsel association or regional defense counsel associations? If yes, which opponent(s)?