ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE

1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: (510) 879-1300
Telephone: (510) 879-0751
E-Mail: Hunter.Landerholm@doj.ca.gov

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By U.S. Mail & Email

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RE: Compliance with Code of Civil Procedure section 1179.11

Dear Sir or Madam:

We write to remind you of your and your clients' obligations to comply with the law, including with Code of Civil Procedure section 1179.11, in the filing and prosecution of unlawful detainer cases.

As you are aware, under Code of Civil Procedure section 1179.11, in unlawful detainer cases for tenancies existing prior to October 1, 2021, summons may not issue where nonpayment of rent is asserted unless landlords certify under penalty of perjury that either:

> (1) government rental assistance has been denied; or
>
> (2) the landlord applied for rental assistance; 20 days have passed since the later of the landlords' submission of the rental assistance application or the service of the three-day notice; the landlord has not received notice from the government that the tenant has submitted a completed application for assistance; and "the landlord ***has received no communication from the tenant that the tenant has applied for government rental assistance*** . . ." (Code Civ. Proc., § 1179.11(a) (emphasis added).)

While this requirement expires on March 31, 2022, it may be extended by pending legislation.

It has come to our attention that some attorneys representing landlords in unlawful detainer cases may be filing declarations—or allowing their clients to file declarations—that falsely indicate that the landlord has received no notice that the tenant applied for rental assistance, even when there is clear evidence to the contrary. Likewise, it appears that some attorneys are continuing to prosecute existing eviction actions after learning that the declaration supporting issuance of summons was false.

Filing false averments in court violates multiple state laws, as does maintaining such a case after learning that the declaration used to initiate it is false. Willful averment of a known falsehood is the crime of perjury, and willful procurement of such acts is subornation of perjury. (Penal Code, §§ 118, 127.) "An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false." (Penal Code, § 125.) A lawyer's deceit or collusion, including consent to deceit or collusion, with intent to deceive the court or any party is also a misdemeanor offense pursuant to Business and Professions Code section 6128. Maintaining an eviction case in the face of evidence showing the initial averment regarding rental assistance to be false may be indicative of intent for purposes of the above statutes and rules. These and related acts may also violate numerous other California statutes, such as those governing fair debt collection practices and harassment of tenants.

As lawyers, we all owe professional duties to the tribunal, including the requirement that we not "knowingly make a false statement of fact or law" and that we not "fail to correct a false statement of material fact or law [you] previously made to the tribunal." (State Bar Rules of Professional Conduct, Rule 3.3.) We also owe our clients the similar duty not to "counsel a client to engage, or assist a client in conduct that [you know] is criminal, fraudulent, or a violation of any law, rule, or ruling of at tribunal." (*Id*., Rule 1.2.1.)

We strongly encourage you to review the unlawful detainer cases you have on file or that you plan to file to ensure that they comply with the law. In considering any law enforcement action, we may, as a matter of prosecutorial discretion, take into consideration mitigating action such as voluntary discontinuance of the practices outlined herein, as well as voluntary dismissal of currently filed cases premised on false or unsupported declarations.

Thank you for your time and attention to this important matter.

Sincerely,

HUNTER LANDERHOLM
Deputy Attorney General

For ROB BONTA
Attorney General