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**For "up-to-date" information, check my blog, [Ear To The Ground](#)**

Thomas H. Clarke, Jr., joined RMKB in 1991 and is Chair of the firm's Environmental Practice Group. He is AV rated by Martindale-Hubbell and has been listed for several years in *Northern California Super Lawyers*® magazine.

Mr. Clarke has over 35 years of experience with virtually all aspects of environmental counseling and litigation. He has represented, among others, major industrial and service companies, commercial and residential property owners, operators, and developers, trucking companies, and financial institutions. Mr. Clarke's environmental practice encompasses both state and federal litigation and regulatory actions involving CERCLA, RCRA, CEQA, Porter-Cologne Act, Proposition 65, underground storage tanks, toxic torts, hazardous wastes and substances, environmental nuisance and trespass, environmental assessments and taxes, landfill permitting and closures, and transactional matters pertaining to real property sales and development. Mr. Clarke also represents companies in unfair business practice, false advertising, and Consumer Legal Remedy Act litigation.

Mr. Clarke has been published extensively in various trade and legal journals, including U.S. Business Litigation, For the Defense, Mortgage Banking, The REIT Report, Facility Management Journal, Silicon Valley/San Jose Business Journal, California Real Estate Journal, The National Law Journal, and the Daily Journal. He has been quoted in a number of daily and business publications, such as The Wall Street Journal Online, East Bay Business Times, Silicon Valley/San Jose Business Journal, San Francisco Examiner, San Francisco Daily Journal, among others, and has lectured on environmental and toxic tort matters, constitutional law, data privacy, and business risk, including at the Royal Institute of International Affairs.

Prior to joining RMKB, Mr. Clarke served as Principal Consultant (Chief of Staff) to the Assembly Committee on Criminal Justice from 1973 through 1976, and from 1977 through 1980, he worked for President Carter in the Executive Office of the President, Council on Environmental Quality (CEQ).

Mr. Clarke obtained his B.A. degree from the University of California at Berkeley in 1967, J.D. from Boalt Hall School of Law in 1970, and M.S. degree in Environmental Science from George

Washington University in 1979.

## Practice Areas

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- Business And Commercial Litigation
- Class Action/Complex Litigation
- Environmental
- Toxic Tort
- Proposition 65
- Product Liability
- Real Estate
- Unfair Business Practices

## Education

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- University of California, Berkeley, 1967 B.A.
- University of California, Berkeley Boalt School of Law, 1970 J.D.
- George Washington University, 1979 M.S. in Environmental Science

## Court Admissions

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- California
- District of Columbia
- Supreme Court of the United States
- US Court of Appeals for the Ninth Circuit

## Memberships & Associations

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- State Bar of California
- Washington, D.C. Bar Association

## Representative Experience

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**Practice Area:** Business And Commercial Litigation, Environmental, Unfair Competition/Business Practices

**Key Issues:** Clean Air Act

**Venue:** USDC: Northern District of California

**Client Type:** Defendant Circuit Board Manufacturer

We represented a local air pollution control district in litigation against the U.S. Army for creating severe air pollution in the Monterey Bay area during the course of alleged remedial activities to remove unexploded ordnance at Ford Ord.

**Result:**

The matter was ultimately settled with the Army agreeing to stringent burn-control procedures.

**Practice Area:** Business And Commercial Litigation, Environmental

**Key Issues:** Proposition 65, Silicates

**Client Type:** Defendant

The allegations involved silicates; we represented the chief scientist and a corporate officer of a biotech start-up accused of abandoning hazardous wastes at its former research facility.

**Result:**

Following several demurrers to the criminal complaint, the prosecution dismissed all counts against our client.

**Practice Area:** Business And Commercial Litigation, Proposition 65, Toxic Tort

**Key Issues:** Proposition 65

**Client Type:** Defendant Trade Group

In this Proposition 65 case, the allegations involved silicates. We represented a trade group of 15 companies.

**Result:**

In conjunction with the Attorney General, we obtained a favorable ruling from the Court of Appeals, which rejected an attempt by a private party bounty hunter to intervene. We settled the matter; a de minimis payment was made to plaintiff.

**Practice Area:** Environmental, Real Estate

**Key Issues:** CERCLA; RCRA

**Venue:** USDC: Northern District of California & Contra Costa County Superior Court

**Client Type:** Plaintiff Land Fill Operator

In this complex federal CERCLA and RCRA action, which was accompanied by a parallel state court action, we represented a solid and hazardous waste landfill against thirty generators and transporters of solid and hazardous wastes. The landfill was prevented by the actions of various local governmental entities and waste haulers from raising moneys through its rates to satisfy the Federal and state requirements for posting "financial assurances" related to its closure and post-closure costs. The action was filed after the EPA and state regulators threatened to file an administrative enforcement action against the landfill if it did not provide the required financial assurances. The case was politically charged and received a substantial amount of attention in the press.

**Result:**

The case settled, and a \$30 million premium was paid for a complex combination of insurance policies, which were literally negotiated from scratch, that provided the requisite state and federal assurances, and which also funded all closure and past-closure activities for the next 35 years.

**Practice Area:** Business And Commercial Litigation

**Key Issues:** False Advertising; §17500

**Venue:** San Mateo County Superior Court

**Client Type:** Defendant Auto Auction Company

In this 17200/17500 action involving automobile auctions, a court trial found in favor of our client.

**Result:**

Neither injunctive relief nor restitution was granted.

**Practice Area:** Proposition 65, Toxic Tort

**Key Issues:** Proposition 65, Nail Polish

**Venue:** San Francisco County Superior Court

**Client Type:** Defendant Cosmetics Manufacturer

The allegations involved solvents used in nail polish.

**Result:**

Following laboratory tests on the exposure to retail customers and employees of nail saloons, we negotiated the elimination of the warning requirement from the client's products covered by a prior settlement negotiated by another law firm.

**Practice Area:** Environmental

**Key Issues:** CERCLA

**Venue:** USDC: Central District of California

**Client Type:** Defendant Chemical Manufacturer

In this private CERCLA action, we represented the generator of allegedly hazardous substances deposited at a licensed liquid waste disposal facility now owned by plaintiff; plaintiff sought to obtain moneys from generators to fund the closure of the facility. We were key in organizing a joint defense committee to oppose this questionable action. Plaintiff, which had signed a consent decree with state regulators several years previously to close the site, sought approximately \$10 million in "response costs".

**Result:**

We ultimately entered into a very favorable de minimis settlement.

**Practice Area:** Business And Commercial Litigation, Unfair Competition/Business Practices

**Key Issues:** False Advertising; §17500

**Venue:** San Francisco County Superior Court

**Client Type:** Defendants Health Food Manufacturer

In this 17200/17500 action, we represented two manufacturers of ginseng products accused of mislabeling in violation of Federal Law in a case with over 150 defendants.

**Result:**

We negotiated a de minimis settlement with no admission of wrongdoing. Over half of the defendants are still in litigation 2 years later.

**Practice Area:** Environmental, Real Estate

**Key Issues:** CERCLA; RCRA

**Venue:** USDC: Central District of California

**Client Type:** Defendant Dry Cleaning Company

In this action, we represented the past owners of a dry cleaning business at a shopping center purchased by a "vulture investor".

**Result:**

Following an extensive mediation, we negotiated a very favorable settlement that imposed the vast majority of the clean-up on the investor, who had bought the property at a significant discount from market value.

**Practice Area:** Catastrophic/Personal Injury, Environmental, Real Estate, Toxic Tort

**Key Issues:** Personal Injury; Toxic Tort

**Venue:** Los Angeles County Superior Court

**Client Type:** Defendant Municipality

In this personal injury and property damage matter that is composed of six coordinated cases involving 1,138 plaintiffs, we represent one of two defendants accused of being the cause of the alleged harm. The matter involves, among other accusations, contamination of drinking water resources in the Pomona region of Southern California.

**Result:**

The matter currently is in litigation. Following extensive motions, the Superior Court dismissed 26 of the plaintiff's 28 courses of action against our client. Recently, the court ruled in favor of our client and dismissed the entire case. Plaintiff's have appealed.

**Practice Area:** Business And Commercial Litigation, Proposition 65, Toxic Tort

**Key Issues:** Proposition 65

**Venue:** San Francisco County Superior Court

**Client Type:** Defendant Tool Manufacturer

In this Proposition 65 case, the allegations involved PVC handles which supposedly contained lead.

**Result:**

We were able to demonstrate that the products which plaintiff had tested were forgeries of our clients products, and further that the handles of our client's products were lead-free. The case was dismissed.

**Practice Area:** Business And Commercial Litigation

**Key Issues:** Unfair Business Practice; §17200

**Venue:** San Francisco County Superior Court

**Client Type:** Defendant Importer

In these 17200 actions, our client was accused of selling two products in violation of state standards, an unfair business practice.

**Result:**

We demonstrated that neither was in violation, and thus, the cases were dismissed.

**Practice Area:** Business And Commercial Litigation, Proposition 65, Toxic Tort

**Key Issues:** Proposition 65

**Venue:** San Francisco County Superior Court

**Client Type:** Defendant Manufacturer

The allegation involved solvents used in glue.

**Result:**

We were able to demonstrate that the exposure level to consumers from our client's products was below the Prop. 65 threshold. The matter was dismissed.

**Practice Area:** Environmental

**Key Issues:** False Advertising; 17500

**Venue:** Los Angeles County Superior Court

**Client Type:** Defendant Pest Control Company

In these actions in Northern and Southern California we represented nine businesses accused of fraudulent

advertising related to environmentally sensitive pest control services.

**Result:**

A de minimis settlement was negotiated.

**Practice Area:** Asbestos, Proposition 65, Toxic Tort

**Key Issues:** Proposition 65; Asbestos

**Venue:** Los Angeles County Superior Court

**Client Type:** Defendant Pest Control Company

We represented a pest control company against a Proposition 65 lawsuit by a local citizen's group which alleged the release of hazardous asbestos fibers inside a school building.

**Result:**

We were able to demonstrate that plaintiff's analysis of the asbestos release did not document a violation of any applicable state or federal standards or guidelines. Additionally, we were able to demonstrate that the property owner was at fault for the release due to its failure to post warning signs mandated by state and federal law so that such release could be avoided by service providers, such as our client. The case was dismissed.

**Practice Area:** Environmental

**Key Issues:** Water Pollution

**Venue:** Regional Water Quality Control Board Administrative Action

**Client Type:** Defendant Industrial Company

We represented a major industrial company in a Regional Water Quality Board administrative enforcement action pertaining to the multi-million dollar clean-up of an abandoned sulfur mine located near San Francisco Bay. The mine was located on property previously owned by a corporate subsidiary of our client.

**Result:**

Following contested administrative hearings, we succeeded in having the designation of "discharger" (responsible party) reversed on an appeal to the State Water Resources Control Board.

**Practice Area:** Business And Commercial Litigation, International

**Key Issues:** First Amendment

**Venue:** United States Supreme Court

**Client Type:** Media Companies

On behalf of two European media companies we filed an amicus brief with the United States Supreme Court in which we argued that the interpretation of Section 17500 B.&P.C. by the California Supreme Court seriously interfered with the European Union's requirements that companies report on social, environmental, and ethical issues in their annual reports. The brief may be found at this link: [Kasky v. Nike](#)

**Practice Area:** Business And Commercial Litigation

**Key Issues:** Unfair Business Practice; §17200

**Venue:** Contra Costa County Superior Court

**Client Type:** Defendant Consumer Goods Manufacturer

We successfully defended a consumer goods manufacturer in a case related to claims of unfair business practices in the sale of personal care products.

**Result:**

The matter was dismissed.

**Practice Area:** Catastrophic/Personal Injury, Real Estate, Toxic Tort

**Key Issues:** Personal Injury

**Venue:** Los Angeles County Superior Court

**Client Type:** Defendants Manufacturer

In this personal injury and property damage matter that is composed of six consolidated cases involving several thousand plaintiffs, we represent one of several dozen defendants accused of contributing to contamination of drinking water aquifers in the San Gabriel Valley of Southern California.

**Result:**

The matter is currently in litigation, and will go to trial in 2005.

**Practice Area:** Advertising Injury, Environmental, Real Estate

**Key Issues:** CERCLA

**Venue:** USDC: Northern District of California

**Client Type:** Owner

In this environmental matter, we represented the owner, who was fraudulently induced to acquire real estate for development, in litigation against both the seller and those persons who caused the contamination. We also represented the owner in an administrative enforcement action brought by the Regional Water Quality Control Board.

**Result:**

In the latter administrative action, our client was deemed secondarily liable, thus imposing the clean-up obligation on the other parties. Following our filing of a motion for summary judgment in the litigation against the other parties, one of the two defendants conceded liability. The District Court then subsequently ruled in favor of our client regarding the liability of the second defendant, and further granted rescission of the sales transaction based upon fraud. The case was ultimately settled with a very substantial payment made to our client.

**Practice Area:** Business And Commercial Litigation, Class Action/Complex Litigation, Healthcare

**Key Issues:** Unfair Business Practices

**Venue:** San Francisco County Superior Court

**Client Type:** Plaintiffs Group of Chinese-Americans

We represented a group of five Chinese-Americans who were purchasers of a pill which contained calcium combined with a oxidized form of Vitamin C. The clients were class representatives in an Unfair Business Practices and Consumer Legal Remedies class action against a company that advertised extensively in the Chinese-American community regarding the product. The radio, television, and print media advertisements asserted that the product would provide several dozen benefits, including protecting the intelligence, increasing the I.Q., and "perfecting the structure of the cerebral tissue" of children; healing a herniated disk and curing edema and osteoporosis; providing more energy; healing cartilage, tendons, and muscles; elimination of virtually every ache and pain known to humankind; and, not interfering with any prescription drug. All the claims were false.

**Result:**

The case settled following the first day of trial. Pursuant to the settlement, all consumers were entitled to seek reimbursement of their outlays for the purchase of the product.

**Practice Area:** Environmental

**Key Issues:** CERCLA

**Venue:** USDC: Eastern District of California

**Client Type:** Connecticut court receiver

In this CERCLA and injunctive relief action, we represented the Connecticut court receiver that was charged with administering the assets of a decedent's trusts; the decedent was the owner of a business enterprise that allegedly discharged solvents having a major impact on drinking water supplies in Chico, California. The State sought \$20 + million in "response costs" related to the two sites allegedly contaminated.

**Result:**

By summary judgment motion, the receiver was held not responsible for one of the two sites at issue. A settlement was reached on the second site pursuant to which the receivership was not required to pay any moneys.

**Practice Area:** Business And Commercial Litigation, Intellectual Property

**Key Issues:** Unfair Business Practices; Unfair Competition

**Venue:** California Court of Appeal, First District

**Client Type:** Food & Catering Enterprise

In this Unfair Business Practice Act matter, we represented a food and catering enterprise in an action involving allegations of trade name infringement, unfair competition, and Lanham Act violations.

**Result:**

We obtained a defense jury verdict.

**Practice Area:** Business And Commercial Litigation, Proposition 65, Toxic Tort

**Key Issues:** Proposition 65; Silicates

**Venue:** San Francisco County Superior Court

**Client Type:** Defendant Cement Products Manufacturer

The allegation involved silicates; we represented a manufacturer of cement products. Laboratory tests demonstrated that the exposure level was below the Prop. 65 threshold.

**Result:**

We recently settled the matter; no payments or penalties were paid.

## Publications

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- Author, *Under Cover, Best's Review*, 2/2012
- Author, *Defending Prop. 65, Law 360*, 9/9/2011
- Author, *Environmental & Toxic Tort Update - Issue 6*, 8/17/2011
- Author, *Stormwater Liability Increases for Public Entities, San Francisco Daily Journal*, 4/28/2011
- Author, *Public Entities That Own Stormwater Systems Have to Treat Stormwater Before it is Discharged, Public CEO*, 4/20/2011
- Author, *Environmental & Toxic Tort Update - Issue 5*, 3/15/2011

- Author, Environmental & Toxic Tort Update - Issue 4, 04/09/10
- Author, Beware of Fake Remedies Sold as "Dietary Supplements", *Drug Topics: Viewpoint*, Sep. 09
- Author, Environmental & Toxic Tort Update - Issue 3, 08/25/09
- Author, Environmental & Toxic Tort Update - Issue 1, 3/15/09
- Author, Environmental & Toxic Tort Update - Issue 2, 06/12/08
- Author, At Writs End, *Daily Journal*, 04/07/08
- Author, Case Alert: Exceedances of an MCL Do Not a Toxic Tort Make, 09/14/07
- Author, Murky Waters, *San Francisco Daily Journal*, 9/12/07
- Author, Civilian Workplace Protection for Members of the Uniformed Services, *Employee Relations Law Journal*, (Aspen Publishers, April 17, 2006)
- Author, An Exaggerated And Ill-Conceived Sense Of Risk: The Ephemeral Nature Of California's Proposition 65, *Washington Legal Foundation*, 01/25/06
- Author, Mobilized Reservists And Guard Can Receive Supplemental Payments From Their Employers If There Is No "Ethical Conflict", *HospitalityLawyer.com*, May 5, 2005
- Author, You know it is a tax scam when ..., *Silicom Valley/San Jose Business Journal*, April 15, 2005
- Author, Make Sure You Honor Rights Of Employees In Armed Services, *HospitalityLawyer.com*, *Ropers.com*, *RMKB Newsletter*, April 5, 2005
- Author, Business Law Report - Issue 2, November 2, 2004
- Author, Beware of Clever Metaphors, *ACCA Docket*, April 1, 2004
- Author, Common Misconceptions About Discrimination Against Military Reservists And Members Of The National Guard, March 22, 2004
- Author, Business Law Report, 2003
- Author, Beware Clever Metaphors! Eliminate Humor. California Cases Tells Advertisers to STOP!, *Law Fuel.com*, August 13, 2003
- Author, Illinois V. Telemarketing Associates-A Radical Increase In First Amendment Protection For Commercial Speech, *SF Daily Journal*, June 9, 2003
- Author, Will free speech be cowed?, *The National Law Journal*, April 28, 2003
- Author, Mold: The New Hot Spore , *Claims Magazine*, April 27, 2003
- Author, Case Limits Section 17200 Remedy To Injunctive Relief, *Daily Journal*, April 14, 2003
- Author, Kasky v. Nike, March 1, 2003
- Author, Court Ruling Ushers in Brave New World, *Silicon Valley Business Ink*, May 31, 2002
- Author, The Environmental Self-Audit Quagmire, *Environmental Health & Safety Products*, May 20, 2002
- Author, Proposition 65: An Overview, *RMKB News Letter*, February 20, 2001
- Author, Litigation Targets, *SF Daily Journal*, February 16, 2001
- Author, Green Federalism, *The Adviser*, November 5, 1999
- Author, The California Toxics Rule, *RMKB Report*, November 4, 1999

## News

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- LexisNexis® Litigation Resource Center Podcast: Thomas Clarke on Substances on the Toxic Tort Horizon ,*LexisNexis® Communities*, 5/13/2011
- Framers Wanted Commerce Under Federal Control, *San Francisco Daily Journal - Letters to the Editor*, 07/07/09
- The New York Times, Science Section, 12/18/07
- Major Victory for Water Companies in water Contamination Case, *Penn Well -- Water Word Online*,

10/04/07

- Pomona City Yard Polluted - Test underway to determine severity, *Inland Valley Daily Bulletin*, August 7, 2003
- "Supreme Court to take up Nike and free speech; S.F. activist sued, saying firm lied about working conditions," , *San Francisco Chronicle*, January 11, 2003