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**OK For Non-California Financial Institution  
To Tape Telephone Calls With California Residents**

**May representatives of financial institutions whose offices are outside California tape record telephone calls with California residents even if both parties do not consent, as required by California Law?** Yes, so long as the recording is legal in the state where the call is placed. *Kearney v. Salomon Smith Barney, Inc.*, 04 C.D.O.S. 2842 (April 1, 2004).

In this case, the plaintiff California residents placed numerous telephone calls to their brokers in Atlanta, Georgia and later learned that their calls were tape recorded without their knowledge. California law prohibits the recording of telephone calls unless both parties consent. Georgia law only requires consent by one party. So, did these recordings constitute an actionable "unfair business practice" in California courts?

No. Finding that the two states' laws conflicted, the court concluded that Georgia had the greater interest in having its law applied: "Any other result would bless a legalistic 'gotcha': the office of a financial services organization in a state which, like the majority of states, has a statute which permits it to record routine telephone calls to and from its clients without their specific consent is left at risk that a client in one of the minority of states that require *both parties'* consent will sue it in the client's home state and attempt to apply that state's law."

Indeed. (The court did not reach the issues of whether applying California law would also be preempted by federal law or violate the "dormant Commerce clause.")

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