



Alerts

Under Dual Representation Doctrine, Privilege Does Not Apply to Communications Related to Matters on Which Attorney Represents Both Clients

March 23, 2015

Lawyers for the Profession® Alert

Anten v Superior Court, 233 Cal. App. 4th 1254 (2015)

Brief Summary

The California Court of Appeal, Second Appellate District, held that communications made by one joint client to its attorney in a common interest representation are not protected by the attorney-client relationship in a legal malpractice action filed by another joint client against that lawyer.

Complete Summary

Two joint clients retained a law firm to represent them in a matter of common interest. One of the joint clients eventually sued the law firm for malpractice; the other joint client did not. In the course of discovery, plaintiff requested communications made between the firm and the other joint client in the underlying representation. The law firm objected, stating that the communications were protected by the attorney-client privilege, and the other joint client had not waived the privilege. The trial court denied plaintiff's request for the documents.

The appellate court reversed, noting that communications between joint clients in common interest and their attorneys are not confidential. These communications are privileged against strangers, but not among the joint clients and the attorneys. Here, the attorneys were trying to invoke the attorney-client privilege to protect communications from being given to plaintiff. However, because the communications were not confidential to plaintiff, the privilege could not be invoked to bar plaintiff from discovering them. The court also noted that applying the privilege to these communications would create a risk of collusion by attorneys and nonsuing joint clients.

Significance of Opinion

Attorneys who represent joint clients should be careful in agreeing to take on a common interest representation. If one of their clients later sues them for malpractice, the attorney-client privilege may not protect communications made with the nonsuing client regarding the common representation.

Attorneys

Terrence P. McAvoy

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