

PROFESSIONAL LIABILITY UPDATE

ATTORNEY-CLIENT PRIVILEGE

By Jennifer A. Becker

St. Croix v. Superior Court (Grossman) (2014) 228 Cal.App.4th 434

The First District holds the attorney-client privilege is not curtailed by statutes and ordinances requiring disclosure of information from public agencies.

Allan Grossman submitted a request under the California Public Records Act (CPRA) and San Francisco's Sunshine Ordinance for documents related to the San Francisco Ethics Commission's development of regulations. The Commission withheld and redacted its written communications with the San Francisco City Attorney, its counsel.

Grossman filed a petition for a writ of mandate, which the trial court granted. The court reasoned the documents were required by San Francisco's Sunshine Ordinance, and would not consider the Commission's argument that the city charter superseded the Ordinance believing the issue was not properly before the court.

The attorney-client privilege, codified at Evidence Code § 954, confers a privilege on the client to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer. Its fundamental purpose is to safeguard the confidential relationship between clients and their attorneys to promote full and open discussion of individual legal matters. Concerns about the suppression of relevant evidence are outweighed by the importance of preserving confidentiality in the attorney-client

relationship.

Courts may not add to or imply exceptions to statutory privileges, except as required by state or federal constitutional law. The CPRA exempts public records protected by the attorney-client privilege from disclosure. Although California's open meeting act (the Brown Act) nullifies the attorney-client privilege for open meetings, it does not abrogate the privilege applicable to written communications under the CPRA.

Further, the City's charter creates an attorney-client relationship between the City Attorney and the Commission, and incorporates the state law attorney-client privilege for written communications between the city attorney and its clients. Protection of attorney-client communications is fundamental to the attorney-client relationship in both the public and private sector.

Grossman argued the court should construe the City's charter narrowly to avoid limitation on the public's right of access, and to avoid a conflict with the Sunshine Ordinance. However, the charter unambiguously creates an attorney-client relationship under either a broad

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or narrow construction of its provisions.

Attorney-client privilege is well established and central to the relationship. Moreover, when a city enacts an ordinance or takes other action, it cannot contravene its own charter.

Comment: This is another example of the California policy of strong and consistent protection of the attorney-client privilege.