

This Interest May Be Common, But It's Still Privileged Re: California Evidence Rules

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Section 954 of the California Evidence Code establishes a privilege “to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer”. A “confidential communication between client and lawyer” is defined in Section 952 of the Evidence Code. Under that statute, the presence of third persons does not result always in the loss of the attorney-client privilege. Third persons may be present if they are there “to further the interests of the client in the consultation” or when “disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted”.

In an opinion issued yesterday, the California Court of Appeal ruled that litigation meetings held by a homeowner’s association counsel with individual homeowners did not result in a waiver of the attorney-client privilege. ***Seahaus La Jolla Owners Ass’n v. Superior Court***, Cal. Ct. Appeal Case No. D064567 (March 12, 2014).

In reaching this conclusion, the Court applied the so-called “common interest doctrine” which allows parties who possess common legal interests to share privileged information without losing the protection of the attorney-client privilege. Although the case involved the rather unique circumstance of a homeowners association and construction defect litigation brought separately by the association and some of the homeowners, the court’s analysis of the doctrine should prove useful in other settings.

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