

Attorney-Client Privilege and Work Product Privilege Clarified by California Court of Appeal

Posted on July 12, 2011 by Kent Keller

Recently, the [California Court of Appeal for the Second Appellate District Division Three](#) issued its opinion in [Fireman's Fund Insurance Company v. Superior Court \(Front Gate Plaza, LLC\)](#). The opinion resolved two issues, one involving the attorney-client privilege and the other the work product privilege.

The first issue resolved was whether the attorney-client privilege applies to only communications directly between an attorney and the client and not to communications between lawyers in the same firm.

Surprisingly, the trial court held that the privilege only applied to communications directly between an attorney and his client. According to the trial court, the privilege provided no protection for communications between attorneys and staff in a firm.

The notion that discussions between lawyers in the same firm regarding a case are not protected would, I believe, surprise most California lawyers. What we know is that the holding surprised [Justice H. Walter Croskey](#), since he authored the *Fireman's Fund* opinion which reversed the trial court ruling, holding:

"Surely, third persons to whom the information (in this case, an attorney's legal opinions) may be conveyed without destroying confidentiality include other attorneys in the law firm representing the client."

If the first holding of *Fireman's Fund* was predictable, the second holding cannot be so labeled.

The second issue was whether the absolute work product privilege of the [California Code of Civil Procedure Section 2018.030\(a\)](#) protects work product that is not contained in writing.

The trial court found that unwritten work product was not protected by section 2018.030(a).

In reaching this conclusion, the trial court seemed to be on solid ground as section 2018.030(a) states that:

“a writing that reflects an attorney’s impressions, conclusions, opinions or legal research of theories is not discoverable under any circumstances.” (Emphasis added.)

Despite that language, Division Three held that the absolute work product privilege does protect work product that has not been reduced to writing.

Fireman’s Fund is an important decision explaining and seemingly expanding the protection given California lawyers by the attorney-client and work product privileges. Adding to the significance of the opinion is that its author, again Justice Croskey, is one of the most respected members of the Court of Appeal.