2011 Sacramento Legal Seminar and Webinar

Thursday, November 10, 2011
Hosted by Low, Ball and Lynch

Coito

California Supreme Court pending case regarding work product doctrine. Panel discussion by guest speaker Peter Meshot, Deputy Attorney General for the State of California; Low, Ball & Lynch partner Joseph Fenech; and Low, Ball & Lynch Associate James Regan

The Recent Coito *Case: Is There Trouble Ahead for Attorney-Client and Attorney-Work Product Protections?*

Issue:

California now has a split in authority regarding the protection of a list of witnesses and interviews of those witnesses. The Third District ruling in *Nacht* (1996) held that the information is protected as attorney work product. The Fifth District ruling in *Coito* (2010) held that the information is not protected as attorney work product. The *Coito* case has been briefed for the California Supreme Court but no oral arguments have been scheduled and there is no indication of when the Court will issue a ruling.

I. At issue in these cases is whether California Judicial Form Interrogatory 12.3 is at odds with the California Legislative intent of California Code of Civil Procedure § 2018.020.

A. Form Interrogatory 12.3

Have YOU OR ANYONE ACTING ON YOUR BEHALF obtained a written or recorded statement from any individual concerning the INCIDENT? If so, for each statement state:
(a) the name, ADDRESS, and telephone number of the individual from whom the statement was obtained;
(b) the name, ADDRESS, and telephone number of the individual who obtained the statement;
(c) the date the statement was obtained; and
(d) the name, ADDRESS, and telephone number of each PERSON who has the original statement or a copy.

B. Civ. Proc. Code § 2018.020

It is the policy of the state to do both of the following:
(a) Preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases.
(b) Prevent attorneys from taking undue advantage of their adversary's industry and efforts.

II. Current Status of *Nacht* and *Coito*

As of May 2011, *Nacht* is still controlling in California. The California Supreme Court granted review of *Coito* on June 9, 2010. While *Coito* has been fully briefed by both sides, the Court has not set a date for oral argument, or given any indication of when it may rule on the case. As of this writing, three Amicus briefs have been filed with the Court. The Consumer Attorneys of America filed a brief

in favor of the Appellate Court ruling, and the Southern California Defense Counsel and California State Association of Counties & League of California Cities have filed briefs in opposition of the Appellate Court ruling.

III. Effect on Claims Adjusters

Claims adjusters regularly investigate claims against their insureds and contact witnesses for interviews and statements. At times, those statements are recorded. The statements, although conducted for investigation and in anticipation of litigation, may be turned over to opposing counsel at sometime during the litigation process.

IV. Work Product

CCP § 2018.030. Certain writings not discoverable; When other work product may be subject to discovery

Absolute

2018.030(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.

Qualified

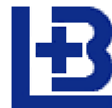
2018.030(b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

V. History of Law

A. *Nacht v. Superior Court* (1996) 47 Cal. App. 4th 214

Plaintiff filed a civil complaint against Nacht & Lewis Architects, regarding her former employment with Nacht. Nacht provided the names of people with information regarding her employment, but refused to answer interrogatories regarding the individuals it interviewed and from whom statements were taken.

The Court held, "Compelled production of a list of potential witnesses interviewed by opposing counsel would necessarily reflect counsel's evaluation of the case by revealing which witnesses or persons who claimed knowledge of the incident (already identified by defendants' response to interrogatory No. 12.1) counsel deemed important enough to interview."



In addition, the Court found, “A list of the potential witnesses interviewed by defendants' counsel which interviews counsel recorded in notes or otherwise would constitute qualified work product because it would tend to reveal counsel's evaluation of the case by identifying the persons who claimed knowledge of the incident from whom counsel deemed it important to obtain statements. Moreover, any such notes or recorded statements taken by defendants' counsel would be protected by the absolute work product privilege because they would reveal counsel's "impressions, conclusions, opinions, or legal research or theories" within the meaning of *Code of Civil Procedure section 2018, subdivision (c)*.”

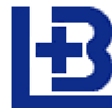
However, the Court did carve out some exceptions to the protections offered by their ruling. Namely, “a list of potential witnesses who turned over to counsel their independently prepared statements would have no tendency to reveal counsel's evaluation of the case. Such a list would therefore not constitute qualified work product. Moreover, unlike interview notes prepared by counsel, statements written or recorded independently by witnesses neither reflect an attorney's evaluation of the case nor constitute derivative material, and therefore are neither absolute nor qualified work product.”

B. *Coito v. Superior Court* (2010) 182 Cal. App. 4th 758

In March 2007, a group of teenagers were at a river in Modesto, CA when one of them drowned. The deceased teenager’s parents filed suit against various defendants, including the State of California. The Attorney General of California interviewed and took recorded statements from the teenagers. During one of the teenagers’ depositions, the Attorney General used information from the statements against the teenagers. Following the depositions, plaintiffs served Form Interrogatory 12.3 on the State of California. The State declined to disclose information about the statements and cited *Nacht*.

The Appellate Court declined to follow *Nacht*. The Court held that written and recorded witness statements, including not only those produced by the witness and turned over to counsel but also those taken by counsel, are not attorney work product. Because such statements are not work product, neither is a list of witnesses from whom statements have been obtained (the list requested by form interrogatory No. 12.3).

Justice Kane wrote a dissent (although he concurred with the majority) and concluded, “I dissent from the majority's refusal to apply the qualified work product privilege to attorney-recorded witness statements, and from the majority's blanket overruling of the objection to form interrogatory No. 12.3 without acknowledging that, with a proper showing, a valid objection on work product



grounds could be made." He reasons that an *in camera* review of the statements could warrant a finding of qualified work product protection.

1. California's Petition for Review of *Coito*

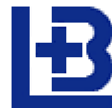
Issue Presented:
Does California's work product statute, enacted to prevent attorneys from taking undue advantage of their adversary's industry and efforts, apply to witness statements recorded verbatim by an attorney or an attorney's representative?

Three Reasons for Review:
1) The Fifth Appellate District's decision squarely conflicts with the Third Appellate District's decision in *Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47 Cal.App.4th 214* - a decision relied upon by practitioners for the last 14 years. The Court should resolve the conflict on this recurring issue.
2) The Fifth Appellate District's decision represents a significant contraction of the scope of California's attorney work product statute, and undermines long-standing public policy. The legislative objective is to prevent attorneys from taking undue advantage of their adversary's industry and efforts.
3) The Fifth Appellate District's decision will create a costly, unintended consequence: increased court involvement in the litigation of California's attorney work product privilege. The new rule is vague and unworkable, so nearly every interview would require *in camera* review, versus the bright line of *Nacht*.

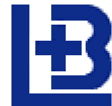
2. Coito's Answer to California's Petition for Review

Position:
They support review so that evidence is no longer hidden from our courts but do not agree with the State's views. The Coito's state that *Coito* does not contradict *Nacht* on Judicial Council Form Interrogatory No. 12.2. All litigants' attorneys can interview whomever they want without having to disclose the fact the interviews took place; the attorneys just cannot create evidence (in the form of signed or recorded statements) and then hide the evidence.

Eleven Reasons for Review:
1) Discovery of these evidentiary witness statements is a daily issue for litigants and the Superior Courts. Form Interrogatory No. 12.3 is regularly propounded between parties, resulting in much law and motion practice.
2) Until this Court affirms the majority opinion from the Fifth Appellate District in this case, those very same litigants and their counsel will continue to cite *Nacht* in order to justify concealing or delaying production of evidentiary material.



3) *Coito* desires a "bright line rule" that witness statements are not work product, because that is the correct interpretation of the law as held by the Fifth Appellate District.
4) All three appellate justices, both the majority and concurrer/dissenter, were in agreement that witness statements are *not* "absolutely" protected from disclosure. *Nacht* is the "lone wolf" statement of the law.
5) California's Petition cites two additional, federal court citations that do not support an "absolute" work product rule for witness statements: *Hickman v. Taylor, 329 U.S. 495 (1947),* and *Martin v. Office of Special Counsel, Merit Systems Protection Board, 819 F.2d 1181* (District of Columbia Court of Appeals, 1987) (*"Martin"*). *Hickman* concerns older discovery rules now supplanted by FRCP 26(b)(3). *Martin* concerns the Freedom of Information Act and there is a split in the federal circuits regarding the Act.
6) If the *Coito* dissent is followed: If *in camera* inspections by law and motion judges are an option, then the result will be "coin flip" discovery rules - some judges will order it, and others will not. There will be no predictability for attorneys as to whether their witness statements will be ordered produced.
7) It is clear that absent affirmance by this Court of both the majority and concurring/dissenting opinions in *Coito* on the topic of Form Interrogatory No. 12.3, at least the Petitioner and *Amici* (but doubtless other litigants and their attorneys) will continue with their past practice of objecting and providing *no* substantive information in their interrogatory answers, still citing *Nacht* as their supporting authority.
8) This Court needs to reaffirm the principle in *Beesley v. Superior Court (1962) 58 Cal.2d 205,* that when the signing or recorded witness asks, a copy of the recording needs to be produced to the witness, or anyone else he/she directs.
9) These witnesses are *strangers,* and the attorney's investigators revealed them to the *strangers* (the witnesses). There is no reasonable expectation of confidentiality in those communications because there is no confidential relationship between a litigant's attorneys and *strangers.*
10) There is no "conflict" between the holdings in *Rico* and *Coito. Rico* affirmed disqualification of a plaintiff's attorney who inadvertently obtained defense counsel's personal, "annotated" notes from an experts' meeting, but then proceeded to use the notes in the experts' depositions despite the plaintiff's attorney recognizing the work product nature of the document within a few minutes of reading it. Unlike *Coito,* the "compiled and annotated" notes would not have been evidence under any circumstances.
11) Depublication would allow litigation attorneys to cite *Nacht* as controlling law, in order to induce Superior Court judges to rule that 12.3 does not have to be answered, and signed and recorded witness statements are *absolutely* protected from disclosure.



3. California's Opening Brief

California believes that the Court was wrong to rule that the work product doctrine did not apply to the interviews, despite the fact that the attorney selected the witnesses, sent an investigator to interview them, and instructed the investigator to ask specific questions.

Relying on *Hickman*, California asserts that recorded verbatim interviews provide accurate information to counsel, assist counsel in providing sound advice to clients, and have historically been protected as the work product of the attorney.

California's attorney work product protection, consistent with *Hickman,* was designed to prevent opposing counsel, by a routine discovery request, from gaining a free ride upon an opponent's thought process, thoroughness, and industry. Written witness statements obtained by or prepared by an adverse party's counsel in the course of preparation for possible litigation, according to *Hickman,* are not discoverable without a showing of necessity.

California believes that the statements are protected. The work product doctrine is broad in scope, based upon the legislature's intent to encourage thorough preparation and investigation of all aspects of a case, as such there is an absolute and a qualified work product privilege. *Nacht* offers a straightforward, bright line approach to the application of California's work product privilege that is predictable and reduces burdens on the courts, whereas *Coito* invites confusion, increased discovery litigation and inconsistent results.

Denying work product protection to witness statements recorded by counsel is not necessary to promote fairness or prevent surprise for two reasons. First, trial courts already have the discretion to require the production of witness statements when counsel intends to use them. Second, routine discovery allows counsel to obtain the identity of all percipient witnesses far in advance of trial. If any counsel wanted to obtain recorded statements in order to investigate the strengths and weaknesses of their case and prepare for trial, they were free to do so.

4. Coito's Answering Brief

The holdings by the *Coito* majority, that parties must answer Form Interrogatory No. 12.3 completely, and that signed or recorded verbatim statements are not work product at all and must be produced in discovery, were correct for the reasons given in the opinion, but also for a further reason presented that the Court of Appeal did not reach.

First, the majority opinion correctly applied the traditional "derivative versus non-derivative material" test, and held that such statements are non-derivative, and therefore are not work product.

Second, the majority opinion also applied an "evidentiary character" test, and held that such statements are potential *evidence,* and therefore cannot be withheld from discovery. This important distinction allows this Court to hold that *all* independent witness statements that are potential evidence, i.e., they were written or signed (adopted) by the witnesses, or they are the recorded words of the witnesses, they are *all* discoverable.

Third, an additional, separately dispositive reason that such statements are not work product at all is the fact that there is no reasonable expectation, by either the attorney or the witness, that the witness' words or the attorney's questions once asked, are "confidential". No expectation exists because the lawyer and witness are strangers, between whom there is no pre-existing confidential relationship. The importance of this additional reason is that it allows this Court to establish a "bright line" rule for all statements that are the words of the witness, including signed or recorded verbatim statements. Because there is *never* a confidential relationship between lawyers and independent witnesses, as a matter of law there can never be a reasonable expectation of confidentiality. Absent confidentiality, *no* signed or recorded verbatim witness statements can ever be withheld from discovery. They *never* qualify as "attorney work product".

Another good reason for rejecting this "absolute attorney work product" excuse for not producing confidential, evidentiary witness statements in discovery is *the rights and interests of the witnesses* themselves. Disclosure will prevent the manipulation of their testimony.

5. California's Reply Brief

California believes that statements recorded in this case are entitled to at least a qualified work product protection. However, they should be absolutely privileged because they reflect counsel's impressions, conclusions, opinions, legal research or theories. The Coito's brief ignores the legislative intent of preserving privacy. In addition, no showing was made why Coito's counsel could not use its own resources to interview the known witnesses, and there's no indication the witnesses are no longer available.

Nacht has been the law for 15 years and until now, had not been criticized by the courts. If these statements are discoverable, witnesses may be reticent to provide valuable information relevant to the protection of the public.

6. Amicus Briefs

i. Consumer Attorneys of America

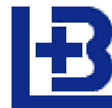
Who They Are:
The Consumer Attorneys of California, founded in 1962, is a voluntary membership organization representing approximately 5,000 associated attorneys practicing throughout California. Membership consists primarily of attorneys representing individuals who have been subjected to personal injuries, adverse employment actions, and other harmful business and governmental practices. The Consumer Attorneys has taken a leading role in advancing and protecting the rights of injured Californians in both the courts and the Legislature.

Position:

They urge the court to adopt a bright line ruling: actual statements written by, recorded by, or adopted by a witness are never work product, while memoranda or notes containing the attorney's, or attorney's agent's, thoughts, impressions, strategy or analysis as to what the witness has stated are protected from disclosure by the work product doctrine.

Witness statements that have actually been prepared by, stated verbatim by, adopted by, and/or signed by the witness do not reflect the attorney's evaluation of the case or interpretation of the law or facts involved. Instead, such statements simply reflect the witness's recollection of the circumstances at issue and illustrate evidence that may or may not be relevant to a party's case.

The *Coito* ruling supports prior case law supporting disclosure of written and recorded statements. In *Rodriguez v. McDonnell Douglas Corp. (1978) 87 Cal.App.3d 626,* the Court of Appeals ascertained whether notes taken by an agent for an attorney for defendant were discoverable. The Court specifically indicated that had the agent's comments and the witness's statement not been so entwined, the witness's statement would be discoverable "since recorded or written statements of a prospective witness are considered material of a nonderivative or noninterpretative nature." Likewise, in *Fellows v. Superior Court (1980) 108 Cal. App. 3d 55,* the court provided an in-depth description of the attorney work product analysis and examined the *California Benchbook* (1972) which stated, "Major categories of nonderivative evidentiary material excluded from the concept of attorney's work product include...(3) information about prospective or potential witnesses, such as their names, phone numbers, addresses, and occupations; and (4) written or recorded witness statements of prospective witnesses."



ii. Southern California Defense Counsel

Who They Are:

The Association of Southern California Defense Counsel (ASCDC) is a voluntary membership association of approximately 1,200 attorney members, among whom are some of the leading trial lawyers of California's civil defense bar. ASCDC's members primarily represent parties involved in legal disputes from the business community, individual defendants, professionals, government agencies, religious and civic institutions. The association is dedicated to promoting the administration of justice, providing education to the public about the legal system, and enhancing the standards of civil litigation practice in this state.

Position:

The majority's decision is premised upon the erroneous assumption that most, if not all, witness statements are obtained with little or no attorney involvement. In reality, every witness statement is the product of an attorney's industry and efforts. An attorney rarely asks a witness merely to provide a statement about the events in question and leaves it at that. In most situations, the attorney must consider how to approach the witness to obtain a statement; what questions to ask during the interview; and whether and how best to document the witness's testimony for possible use later in the case.

Depending on the circumstances, the attorney might formulate questions intended to elicit testimony the attorney deems to be favorable to his or her client's case, as well as testimony that will assist the attorney's efforts to have the testimony admitted into evidence at trial. An attorney could learn a great deal about his opposing counsel's impressions, opinions and analyses if the attorney were able to discover the questions his or her opponent asked during witness interviews.

Seek the following rulings:

1) The Court should affirm that, if a written or recorded witness statement does in fact reveal the "impressions, conclusions, opinions, or legal research or theories" of an attorney, then the statement-or, at least, that portion that contains absolute work product-is not discoverable under any circumstances.

2) The Court should hold that, where a written or recorded witness statement does not qualify for absolute work product protection, it should receive qualified work product protection and should be discoverable only if the requesting party establishes an overriding need for production.

3) The Court should clarify the extent to which litigants are required to respond to form interrogatory No. 12.3, which requests the identity of and information concerning potential witnesses from whom written or recorded statements have been obtained. In many cases, a response to form interrogatory No. 12.3 will not

disclose anything significant about an attorney's evaluation of a case. Under those circumstances, there would be no basis for a work product objection. But if a party can present foundational facts to support application of the qualified work product privilege, then no response to form interrogatory No. 12.3 should be required unless the requesting party can show an overriding need.

. 4) The Court should reject Plaintiff's additional argument, not considered by the appellate court below, that an "expectation of confidentiality [is] necessarily an aspect of the work product doctrine." There is no legal basis for requiring an attorney to prove that his or her work product is "confidential," and creating such a requirement would dramatically and improperly narrow the scope of work product protection available under California law.

iii. CA State Assoc. of Counties & League of California Cities

Who They Are:

CSAC is a non-profit corporation whose membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The League is an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians.

Position:

Each year, public entities in California receive tens of thousands of claims for money or damages. To investigate and settle those claims, attorneys for public entities routinely conduct and record interviews of potential witnesses. Public entities need those recorded witness interviews to prepare their defenses to the claims and to decide whether, when, and how to settle the claims. If, however, those recorded witness interviews are subject to unrestricted discovery, then public entities will likely conduct and record fewer interviews out of fear that those interviews will be used against them during litigation.

Allowing unfettered disclosure of witness interviews discourages attorneys from investigating "not only the favorable but the unfavorable aspects of their cases." Recorded witness interviews will likely reveal which witnesses and which legal or factual issues the attorney believes are helpful or harmful to his case. Allowing their disclosure to an adversary will therefore discourage thorough investigations by attorneys. If recorded witness interviews are not privileged, then attorneys who wait for their diligent adversaries to identify and interview important witnesses can discover the information painstakingly gathered from those interviews with minimal effort.

Stripping recorded witness interviews of work product protection would affect public entities on an even more fundamental level by hindering their ability to investigate claims filed against them. Public entities have tens of thousands of claims for money or damages filed against them every year. For example, the City and County of San Francisco alone has received an average of 3,700 claims for money or damages per year over the last decade. To investigate those claims, attorneys for public entities or their representatives routinely conduct and record interviews with potential witnesses. In so doing, they rely on the protections afforded by the work product privilege to insure that these recorded interviews are not disclosed to their adversaries. Absent those protections, public entities will conduct and record fewer interviews out of fear that their adversaries may use those interviews against them. As a result, the ability of public entities to defend against claims or to resolve claims expeditiously will be impaired.

VI. Federal Law

A. Disclosure of attorney work product in Federal Court is governed by Federal Rule of Civil Procedure 26.

FRCP 26: Duty to Disclose; General Provisions Governing Discovery

26 (a) Required Disclosures.

(1) *Initial Disclosure.*

(A) In General. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information--along with the subjects of that information--that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

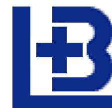
26 (b) (3) *Trial Preparation: Materials.*

(A) Documents and Tangible Things. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) Protection Against Disclosure. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions,



conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.
(C) Previous Statement. Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:
(i) a written statement that the person has signed or otherwise adopted or approved; or
(ii) a contemporaneous stenographic, mechanical, electrical, or other recording--or a transcription of it--that recites substantially verbatim the person's oral statement.

B. *Coito* in Federal Court

Parties are already trying to apply *Coito* to cases in Federal Court. In *Mitchell Engineering v. City and County of San Francisco* (2010), the Northern District of California declined to consider Mitchell's request for notes and witness interviews. Mitchell tried to apply the *Coito* ruling, but the Court denied the request because work product is not an evidentiary privilege but a limitation on discovery, and the scope of the doctrine is determined by federal law.

VII. Discovery Process –Form Interrogatories

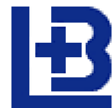
Historically, parties have been able to object to Form Interrogatory 12.3 under the protection of *Nacht*. Under one possible scenario proposed by the *Coito* dissent, if a party objects to producing witness statements, all statements could be subject to *in camera* review to determine if the statement is qualified work product.

VIII. Tips Regarding Witness Statements

Assume lists of witnesses are discoverable and will be given to opposing counsel;
Verbatim statements or transcripts of conversations with witnesses or statements prepared by witnesses are discoverable;
Notes by counsel are not protected unless they contain attorney impressions or evaluation;
Potential for a witness to have his own counsel to protect attorney-client privilege.

IX. Potential Pitfalls with *Coito* Ruling

Counsel may simply take notes during an interview, which could be inaccurate;
Judges skittish about rulings regarding *Nacht* and *Coito* until the Court rules;



Parties without access to statements cannot prepare for their use and are subject to surprise during proceedings;
Economic solutions – a party who wants access must pay part of the cost to obtain a statement;
Counsel may not be willing to fully investigate a case for fear of information.

X. Question and Answer Session/Roundtable Discussion

Topics for Discussion

A. Who Does this Apply To?

1. Risk Managers, Insurance Adjusters, In-House Counsel, and Panel Counsel

B. Assume the Following:

1. All percipient witnesses, including their contact information, is discoverable.
2. Any obtained written or recorded statements are always discoverable.

C. Assume that the Claim of Qualified Work Product Privilege for a Witness's Statement Taken by Counsel for His Representatives will be Successful

1. Arguments that the choice of which witness to interview or the questions asked by counsel during an interview will reflect counsel's impressions, conclusions, and theories about a case will not be successful.

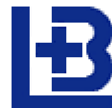
D. Notes of Counsel - A Protected, Qualified Work Product Privilege?

1. Qualified work product privilege.
2. Derivative nature (reflects attorney's evaluation or interpretation of the law or facts of the case).

E. Notes or Witness's Statements are Derivative if "Information Regarding Events Provable at Trial or the Identity of Physical Evidence Cannot be Brought Within the Work Product Privilege Simply by Transmitting it to the Attorney"

F. Activities in Relation to Witness Statements or Interviews May Still Qualify for Some Protection

G. Does the Legislature Step In and Create Some Form of Qualified Work Product Protection For an Attorney's Investigation?



JOSEPH M. FENECH

JOSEPH M. FENECH was born in New York City. He attended the University of California at Berkeley (BA 1983) where he received the distinction of being an Alumni Scholar. Mr. Fenech attended law school at Santa Clara University (JD 1990).

Mr. Fenech began practicing law with Low, Ball & Lynch in 1990 and has been with the firm for over 20 years. He has extensive litigation and trial experience throughout Northern and Central California. Mr. Fenech's practice consists of the defense of claims involving construction defect, premise liability, auto, fire, toxic pollution, construction site accident, product liability, bodily injury, wrongful death, professional negligence, and landlord/tenant liability issues. Mr. Fenech also presents on continuing education topics to industry organizations and a wide variety of clients.

Mr. Fenech is also admitted to practice before the U.S. District Court, Northern District of California, the U.S. District Court, Eastern District of California, and the California Supreme Court. He is also a member of the San Francisco Bar Association; the Association of Defense Counsel of Northern California and Nevada, and the Defense Research Institute. Mr. Fenech has also served as Of Counsel to the President of the California Association of Independent Insurance Adjusters and served as a U.S. Senate intern for Senator S.I. Hayakawa.

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PROFESSIONAL BIOGRAPHY OF PETER A. MESHOT

Mr. Meshot is a Deputy Attorney General in the Sacramento office of the Tort & Condemnation Section of the California Office of the Attorney General. His practice is primarily the public entity defense of various state agencies and employees in civil lawsuits for personal injury and wrongful death. Mr. Meshot can be reached at 916.322.2500; Peter.Meshot@doj.ca.gov.

Prior to joining the Attorney General's Office, Mr. Meshot was in private practice for over twenty years. His private practice included insurance and public entity civil litigation defense, trial and appellate work. Mr. Meshot has ample trial, arbitration and mediation experience. He has served as arbitrator, mediator and settlement judge pro tem for various Northern California Superior Courts. He was a partner in the law firms of Colman, Marcus & Meshot and McDowell, Meshot & Shaw.

Mr. Meshot is a 1984 graduate of Golden Gate University School of Law, and started practicing law as a judicial attorney at the California Third District Court of Appeal. He is past president of the Northern California Fraud Investigators Association, and has served as a faculty member at anti-fraud academies for the National Insurance Crime Bureau and the International Association of Special Investigation Units. Mr. Meshot has also regularly provided continuing education accredited by the California State Bar and Department of Insurance on various subjects for clients and other professional associations.

JAMES REGAN

JAMES REGAN, a native San Franciscan, is an associate in the San Francisco office. His practice focuses on litigation of business disputes, environmental issues, catastrophic personal injury and wrongful death cases. Mr. Regan is admitted to practice in California, as well as before the U.S. District Court for the Eastern, Northern and Central Districts of California.

Mr. Regan has second-chaired trials in Sacramento and Los Angeles Counties, and throughout the Bay Area. In addition, he has been involved in mediations throughout the United States. He has also been a featured speaker at Low, Ball & Lynch seminars.

Mr. Regan attended St. Ignatius College Preparatory before graduating from the University of San Francisco, with a B.S. in Business Administration. He attended Western State University College of Law, where he was Vice President of the Student Bar Association and graduated with a certificate in Business Law. While in law school, Mr. Regan externed for then-Assistant Presiding Judge David L. Ballati of the San Francisco Superior Court. After graduation, he worked as the Research Attorney to the Presiding Judge of the San Francisco Superior Court under Hon. David L. Ballati and Hon. James J. McBride.

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