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Evidence

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Evidence

Evidence; attorney-client privilege

Business and Professions Code §§ 6086.11, 6147, 6148 (repealed); §§ 6086.14, 6147, 6148 (new); §§ 6079.1, 6086.11, 6147, 6148 (amended); Code of Civil Procedure § 447 (repealed); § 447 (new); Evidence Code § 956.5 (new).
SB 645 (Presley); 1993 STAT. Ch. 982

Existing law grants a privilege to a client,¹ with specified exceptions, to refuse to disclose or prevent a lawyer² from disclosing confidential communications³ between the two.⁴ Chapter 982 creates an exception to the lawyer-client privilege when it is the reasonable belief of the lawyer

1. See CAL. EVID. CODE § 951 (West 1966) (defining client).

2. See *id.* § 950 (West 1966) (defining lawyer).

3. See *id.* § 952 (West Supp. 1993) (defining confidential communications as information shared by a client during the lawyer-client relationship that the client believes will not be disclosed to a third person unless the client is present at the time the information is transmitted or the transmission is necessary to enable the lawyer to perform the job for which the lawyer was hired by the client). See generally 2 BERNARD S. JEFFERSON, CALIFORNIA EVIDENCE BENCHBOOK § 40.1 (2d ed. 1982) (exploring the meaning of confidential communication).

4. CAL. EVID. CODE § 954 (West Supp. 1993); see *id.* § 956 (West 1966) (providing an exception to the privilege for services sought for the purpose of committing a crime); *id.* § 957 (West 1966) (refusing to recognize the privilege when the relevant issue involves a client who is deceased); *id.* § 958 (West 1966) (ignoring the privilege when the relevant issue involves a breach arising out of the lawyer-client relationship); *id.* § 959 (West 1966) (stating that the privilege does not exist for communications which address the competency of the client when the lawyer is an attesting witness to a document); *id.* § 961 (West 1966) (refusing to allow a privilege when the relevant communication involves a document executed by a deceased client that affects an interest in property) *id.* § 962 (West 1966) (providing that no privilege exists in a civil action between joint clients); see also *Holm v. Superior Court*, 42 Cal. 2d 500, 506-07, 267 P.2d 1025, 1028 (1954) (stating that the purpose of the attorney-client privilege is to encourage complete disclosure of all pertinent information by the client); *Wortham & Van Liew v. Superior Court*, 188 Cal. App. 3d 927, 933, 233 Cal. Rptr. 725, 729 (1987) (holding that the joint-client exception under California Evidence Code § 962 applies to communications made by one partner in a partnership to the attorney for the partnership); *Glacier Gen. Assurance Co. v. Superior Court*, 95 Cal. App. 3d 836, 840-43, 157 Cal. Rptr. 435, 436-38 (1979) (holding that California Evidence Code § 962 is not limited to communications between or in the presence of joint-clients, but extends to all communications made by the clients in the presence of other parties); *Glade v. Superior Court*, 76 Cal. App. 3d 738, 745-46, 143 Cal. Rptr 119, 124 (1978) (holding that the exception to the attorney-client privilege provided by California Evidence Code § 956 only applies if the client seeks legal aid for an illegal purpose, and does not cover an attorney who abuses confidential information unbeknownst to the client); *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, 263 Cal. App. 2d 41, 53-54, 69 Cal. Rptr. 480, 489 (1968) (describing the objective of the attorney-client privilege as a means by which to heighten the social value placed upon legal representation by instilling confidence in the client that the information the client conveys to an attorney will not be disclosed); cf. ARIZ. REV. STAT. ANN. § 12-2234 (1982); FLA. STAT. ANN. § 90.502(2) (West 1979); NEV. REV. STAT. § 49.095 (1991); WASH. REV. CODE ANN. § 5.60.060(2) (West Supp. 1993) (providing that communications between an attorney and a client are privileged). But cf. FLA. STAT. ANN. ch. 90-502(4)(a)-(e) (Harrison 1992); NEV. REV. STAT. § 49.115 (1991) (listing exceptions to the attorney-client privilege). See generally 2 JEFFERSON, *supra* note 3, § 40.3 (outlining the exceptions to the attorney-client privilege).

that disclosure is required to prevent the client from engaging in criminal activity likely to cause death or significant bodily harm to another person.⁵

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5. CAL. EVID. CODE § 956.5 (enacted by Chapter 982); *see also* *People v. Cox*, 53 Cal. 3d 618, 654-55, 809 P.2d 351, 369, 280 Cal. Rptr. 692, 710 (1991) (discussing when the ABA Model Rules of Professional Conduct allow or require disclosure of information obtained from a client when the client is engaged or contemplating criminal activity); *cf.* MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.6(b)(1) (1992) (permitting disclosure when the lawyer believes it is necessary to prevent the client from committing a crime that will result in imminent death or substantial bodily harm); THOMAS D. MORGAN & RONALD D. ROTUNDA, 1993 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY 126-137 (1993) (listing each state's policy on privileged communications). Before passage of this bill, California was the only remaining state that did not either grant its lawyers the discretion, or impose an affirmative duty on them, to disclose information pertaining to future criminal acts likely to be committed by their clients which were likely to result in death or bodily harm. *Id.* *But see* *People v. Clark*, 50 Cal. 3d 583, 620, 789 P.2d 127, 152, 268 Cal. Rptr. 399, 424 (1990) (stating that there is no express exception to the lawyer-client privilege requiring a lawyer to disclose a client's threats of future criminal conduct). *See generally* Harry I. Subin, *The Lawyer as Superego: Disclosure of Client Confidences to Prevent Harm*, 70 IOWA L. REV. 1091, 1144-59 (1985) (discussing the impact that the ABA Model Rules of Professional Conduct 1.6, 3.3, and 4.1 are having on the role of client confidentiality).