



## LAW UPDATE SCHOOL BUSINESS

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### CONFIDENTIALITY OF ATTORNEY FEE AGREEMENTS AND ATTORNEY INVOICES

There is a significant amount of interest in attorney fee billings these days, often to see how much a district is spending on lawyers, on issues, or whether the district has lawyers. This update will discuss the confidentiality of attorney fee agreements and attorney invoices in the context of a California Public Records Act (CPRA) request.

Government Code section 6254(k) exempts:

“Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.”

The issue of fee agreements is fairly straightforward but the issue of attorney billings is more complex. This update discusses both, but consultation with legal counsel is recommended if a CPRA request for attorney billing information is received.

#### **I. Attorney Fee Agreements**

Rule: “A written fee contract shall be deemed to be a confidential communication within the meaning of subdivision (e) of Section 6068 and of Section 952 of the Evidence Code.” (Business and Professions Code 6149)

Business and Professions Code section 6068:

“It is the duty of an attorney . . . (e)(1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client...”

Evidence Code section 952:

“As used in this article, ‘confidential communication between client and lawyer’ means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the

transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.”

Thus, a fee agreement is deemed to be a confidential and privileged communication and as such is exempt from disclosure under the CPRA.

## **II. Attorney Billings**

This discussion comes from the comprehensive Appellate Court decision in *Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal. 5<sup>th</sup> 282. The case involved a demand by the ACLU to LA County for attorney billings related to various lawsuits. The County defended with an assertion of the attorney-client privilege, but offered redacted billings from closed cases and rejected the request for billings as to pending litigation. The ACLU filed a writ seeking compelled production of the records. The trial court ruled in favor of the ACLU, ordering the County to give the ACLU everything, with redaction of the attorney’s mental impressions, advice, or theories.

The Appellate Court reversed and held that the entire billing from an attorney to a client was privileged under the attorney-client communication privilege, regardless of whether the case was closed. The Supreme Court reversed, indicating a mixed bag of privileged material that ebbs and flows over time, saying:

“What we hold is that the attorney-client privilege does not categorically shield everything in a billing invoice from PRA disclosure. But invoices for work in pending and active legal matters are so closely related to attorney-client communications that they implicate the heartland of the privilege. The privilege therefore protects the confidentiality of invoices for work in pending and active legal matters.”

While the case is quite complex and the different holdings quite varied, we recommend the following at this time:

1. If attorney billings are requested via CPRA, consult legal counsel.
2. Older, closed matters have less protection than newer, current, or pending matters.
3. Descriptions of attorney activities in the invoices should almost always be redacted.

Should you have questions concerning this topic, please feel free to contact us.

~ William A. Hornback

*School Business Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*