

TENTATIVE RULINGS—APRIL 27, 2007

To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

Judge Don F. Howard:

Amador Water Agency v. Perano: 06CV4189

Defendant's Motion to Quash Deposition Notice/Subpoena and Request for Protective Order

Defendant's Motion is denied.

C.C.P. §2018.020 provides:

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.

§2018.030 provides:

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

Thus, when a matter is subject to qualified work product protection, it is discoverable only if it meets the elements of §2018.030 (b) or if there is a waiver of said protection.

The purpose of the work product doctrine is to protect information against opposing parties, rather than against all others outside a particular confidential relationship, in order to encourage effective trial preparation. Thus, work product protection 'is not waived except by a disclosure wholly inconsistent with the purpose of the privilege, which is to safeguard the attorney's work product and trial preparation. ... Moreover, disclosure operates as a waiver only when otherwise protected information is divulged to a third party " 'who has no interest in maintaining the confidentiality ... of a significant part of the work product. (Laguna Beach County Water Dist. v. Superior Court (2004) 124 Cal. App. 4th 1453, 1459 [internal citations omitted]; see also Williamson v. Superior Court (1978) 21 Cal.3d 829 (noting that work product privilege is deemed waived when an expert's observations and conclusions are disclosed to a third party).)

In this instance, the defendant divulged Tim Wilson's opinions and conclusions by submitting his declaration to the court. Therefore, the defendant waived the privilege. Accordingly, the motion is denied. Plaintiff may proceed with the deposition in question. However, the subject matter of the deposition is limited to those matters discussed in the declaration in support of the application for TRO/Preliminary Injunction.

Defendant's procedural contentions are now moot, as the deposition in question has been re-noticed.

Plaintiff also requests fees in connection with the instant motion. The Court awards attorneys' fees in the amount of \$1,400.00. If there is a hearing on the motion and the plaintiff prevails, the plaintiff may request additional fees for preparation time and the time to attend the hearing.

Plaintiff is to prepare an order in compliance with Rule 3.1312.

If oral argument is requested in this matter, the hearing will be held on May 18, 2007 at 11:00 a.m.

Judge Susan C. Harlan:

Flanders v. Prudential California, et al.: 03CV2770

Defendants Glory Hole Properties, Inc. dba Prudential California Realty and Shaun Steward's Motion for Order for Sanctions, Attorneys' Fees, and Terminating Sanctions

Defendants' Motion is denied based upon a failure to give proper notice of the hearing to the plaintiffs. Defendants did not serve the plaintiffs at their current addresses of record.

In addition, upon further examination, the Court notes that neither the plaintiffs nor their former counsel were served with the original motion to compel. Therefore, the order of March 2, 2007, which granted the motion to compel discovery and awarded sanctions, is hereby vacated.

Defendants are to prepare an order in compliance with Rule 3.1312.