

DEERING'S CALIFORNIA CODES ANNOTATED
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THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 7 AND CH. 765 OF THE 2008
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6/3/08

EVIDENCE CODE
Division 8. Privileges
Chapter 4. Particular Privileges
Article 3. Lawyer-Client Privilege

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Cal Evid Code § 957 (2008)

§ 957. Parties claiming through deceased client

There is no privilege under this article as to a communication relevant to an issue between parties all of whom claim through a deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.

HISTORY:

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

NOTES:

Historical Derivation:

(a) Former CCP § 1881, as enacted 1872, amended Stats 1893, Stats 1907, Stats 1911 p 113, Stats 1917, Stats 1927, Stats 1933, Stats 1935, Stats 1939, Stats 1957 ch 1961 § 1, Stats 1961 ch 629 § 1, ch 923 § 1, Stats 1965 ch 922 § 1, ch 923 § 1.

(b) Practice Act 395 (Stats 1851 ch 5 § 395, as amended Stats 1863 ch 528 § 1).

(c) Practice Act §§ 396, 397 (Stats 1851 ch 5 §§ 396, 397).

(d) Practice Act § 398 (Stats 1851 ch 5 § 398, as amended Stats 1861 ch 313 § 1).

(e) Practice Act § 399 (Stats 1851 ch 5 § 399).

Law Revision Commission Comments:

1965

The lawyer-client privilege does not apply to a communication relevant to an issue between parties all of whom claim through a deceased client. Under existing law, all must claim through the client by testate or intestate succession in order for this exception to be applicable; a claim by inter vivos transaction apparently is not within the exception. *Paley v. Superior Court*, 137 Cal. App.2d 450, 457-460, 290 P.2d 617, 621-623 (1955). Section 957 extends this exception to include inter vivos transactions.

The traditional exception for litigation between claimants by testate or intestate succession is based on the theory that claimants in privity with the estate claim through the client, not adversely, and the deceased client presumably would want his communications disclosed in litigation between such claimants so that his desires in regard to the disposition of his estate might be correctly ascertained and carried out. This rationale is equally applicable where one or more of the parties is claiming by inter vivos transaction as, for example, in an action between a party who claims under a deed (executed by a client in full possession of his faculties) and a party who claims under a will executed while the client's mental stability was dubious. See the discussion in Tentative Recommendation and a Study Relating to the Uniform Rules of Evidence (Article V. Privileges), 6 Cal. Law Revision Comm'n, Rep., Rec. & Studies 201, 392-396 (1964).

Cross References:

"Client": *Ev C* § 951.

Marital communications privilege: *Ev C* § 984.

Physician-patient privilege: *Ev C* § 1000.

Psychotherapist-patient privilege: *Ev C* § 1019.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 191 "Discovery: Privileges And Other Discovery Limitations".

2 Witkin Cal. Evidence (4th ed) Witnesses §§ 160, 210.

Cal. Legal Forms, (Matthew Bender) §§ 60.201[1][b], 96.15, 96.16[3].

Cotchett, California Courtroom Evidence, § 18.27 (Matthew Bender).

Jefferson's California Evidence Benchbook, 3rd Edition (CEB, 2003) §§ 40.53, 40.62.

Hierarchy Notes:

Div. 8, Ch. 4, Art. 3 Note

NOTES OF DECISIONS

1. Application
2. Purpose

1. Application

In charitable organizations' action to determine the validity of a trust, the trial court erred in requiring the trust administrator to disclose communications between her and her attorney. The administrator was the sister of the deceased trustor, and the attorney had acted as attorney for the administrator and her husband with respect to estate planning and other family legal matters. Upon the administrator's instigation, the attorney represented the trustor and the administrator as trustee of the trust. The attorney eventually represented the trustor only when potential conflicts of interest arose. Although the attorney-client-privilege did not apply to a communication between the attorney and the administrator's sons, the privilege applied to the attorney's communications with the administrator. The exception to the privilege for joint clients (*Ev C § 962*) did not apply, since the administrator was the trustor's successor as holder of the privilege, and since the charity that sought the documents was never a client of the attorney, and thus there was no litigation between joint clients. Further, the exception to the privilege for parties claiming through a deceased client (*Ev C § 957*) did not apply, since the exception only applies to communications between the decedent and the decedent's attorney; nothing in the legislative history or case law suggests the exception applies to communications between a claimant and that claimant's attorney. *Fletcher v. Superior Court* (1996, Cal App 1st Dist) 44 Cal App 4th 773, 52 Cal Rptr 2d 65, 1996 Cal App LEXIS 341.

2. Purpose

Although *Ev C § 957* (exception to attorney-client privilege for parties claiming through deceased client), does not specify to what attorney-client relationship it refers, it refers only to the relationship between the attorney and the deceased client. This limitation is implicit in the statute's reference to a "client" who is "deceased," and this interpretation is supported by the legislative history of the statute. The statute was enacted to address certain aspects of the problem of the extent of survival after death of a testator's privilege against disclosure by his or her attorney of confidential communications made by the testator in connection with the preparation and execution of a will. Commentary to the statute declared that the traditional exception for litigation between claimants by testate or intestate succession is based on the theory that claimants in privity with the estate claim through the client, not adversely, and the deceased client presumably would want his or her communications disclosed in litigation between such claimants so that his or her desires in regard to the disposition of the estate might be correctly ascertained and carried out. Furthermore, foreign state cases dealing with similar statutes have also concluded that the

exception applies only to the communications between the decedent and the decedent's attorney. *Fletcher v. Superior Court* (1996, Cal App 1st Dist) 44 Cal App 4th 773, 52 Cal Rptr 2d 65, 1996 Cal App LEXIS 341.