

# Supreme Court Limits Disclosure of Attorney Invoices

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Late last week, in a four-to-three opinion, the California Supreme Court found that limited portions of attorney invoices provided to public entity clients may be disclosable as public records under the California Public Records Act (CPRA). (*Los Angeles County Board of Supervisors v. Superior Court* (Dec. 29, 2016, S226645) \_\_ Cal.5th \_\_ [2016 WL 7473802].) The Court held that the entirety of invoices for “pending and active legal matters” are absolutely exempt from disclosure. At the same time, the Court concluded that portions of invoices for concluded matters—for example, the cumulative amount spent on litigation completed long ago—may be disclosable.

## Background

The ACLU submitted a CPRA request to the County of Los Angeles, seeking attorney invoices from certain concluded and pending lawsuits. Citing the attorney-client privilege, the County disclosed redacted invoices for concluded suits, but withheld invoices for pending suits. In response, the ACLU sued to compel unredacted disclosure of all of the invoices. The trial court ordered the County to produce all invoices, including for pending matters, with only limited information redacted. The Court of Appeal vacated the trial court’s order, holding that all invoices were confidential communications between attorney and client and, thus, were attorney-client privileged communications and exempt from disclosure under the CPRA.

## Decision

The California Supreme Court disagreed with this bright-line rule. The Court explained that an attorney-client privileged communication must be made for the purpose of legal consultation. Applying this rule, the Court reasoned that invoices generally are not issued for the purpose of legal consultation, but are only ancillary to the attorney-client relationship. Accordingly, attorney invoices could not categorically be considered privileged documents exempt from disclosure under the CPRA.

At the same time, the Court recognized that the content of an attorney invoice can fall within the scope of the attorney-client privilege by providing insight into litigation strategy or legal consultation. Specific to the case before it, the Court drew a line between pending and concluded litigation matters. For pending litigation matters, it held that everything in an invoice



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is privileged because even the fee totals can provide insight into an attorney's activities and strategy. For concluded litigation matters, fee totals may not be privileged if they no longer reveal confidential details of the representation.

Ultimately, the Court adopted a rule that exempts from disclosure invoices which either communicate information for the purpose of legal consultation or where disclosure would risk exposing information that was communicated for such a purpose, including any invoice that reflects work in active and ongoing litigation.

The Court remanded the case for further proceedings. It did not decide whether any particular invoice content was non-privileged, nor whether non-privileged content might be exempt from disclosure for another reason, such as the attorney work product doctrine or the public interest exemption to the CPRA.

## **Impact**

The Supreme Court rejected the bright-line rule previously adopted by the Court of Appeal which would have exempted all attorney invoices from disclosure under the CPRA. Going forward, school districts and community college districts may object to any CPRA request for attorney invoices in active legal matters. In responding to a request for invoices in concluded matters, however, entities will have to consider redactions of those invoices based on the rules set forth in the Court's opinion.

Danniss Woliver Kelley has experience handling a wide variety of CPRA requests and can assist your district in formulating appropriate responses to any type of CPRA request and in disputes over disclosures, redactions, or exemptions. If you have questions about responding to CPRA requests, please contact a DWK attorney.

## **PRACTICE AREAS**

- Board Ethics, Transparency and Accountability
- Litigation