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Ardon v. City of Los Angeles

Court of Appeal, Second District, Division 6, California - December 10, 2014 - Cal.Rptr.3d - 2014 WL 6968719

City resident filed putative class action lawsuit against city, alleging that city's telephone users tax was an illegal tax and seeking a refund of the tax. The Superior Court granted city's motion to strike resident's class action allegations, and resident appealed. The Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal, and reversed and remanded. City moved to compel resident to return privileged documents city turned over to his counsel pursuant to a Public Records Act (PRA) request and to disqualify his counsel. The Superior Court denied the motion. City appealed.

The Court of Appeal held that:

- City's inadvertent production of documents under PRA waived any privilege that might have once existed as to them, and
- Attorney's use of PRA to obtain documents for litigation did not violate Rules of Professional Ethics.

City's inadvertent production of three documents covered by the attorney-client privilege as part of its response to city resident's Public Records Act request waived any attorney-client or work product privilege that might have once existed as to those documents, even though the resident was engaged in litigation against the city, and even if the documents were produced by "low level" employees not explicitly authorized to waive the privilege.

Attorney's use of Public Records Act to request documents relating to the adoption of a citywide tax ordinance which was the subject of the lawsuit in which the attorney represented a resident suing the city did not violate the Rules of Professional Ethics, even though attorney made the records request by contacting a city official while the city was represented by counsel, since the records request was within attorney's statutory and constitutional rights to petition her government regarding a matter of public importance.