

Bond Case Briefs

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City of San Diego v. Superior Court of San Diego County

Court of Appeal, Fourth District, Division 1, California - December 19, 2018 - Cal.Rptr.3d - 2018 WL 6629322 - 2018 IER Cases 469, 877

In police officer's action against city for harassment and retaliation, the Superior Court granted officer's motion to disqualify city attorney's office. City filed petition for writ of mandate.

The Court of Appeal held that:

- City's questioning of officer during internal affairs investigation invaded officer's attorney-client privilege;
- Such questioning also violated Rule of Professional Conduct; but
- There was no reasonable likelihood that violations would give city any unfair advantage, and thus disqualification of city attorney was not appropriate.

City's questioning of police officer during internal affairs investigation, over officer's objection, about content of officer's phone conversation with her attorney invaded procedural protection of officer's attorney-client privilege, where city did not bring matter to court's attention but rather determined unilaterally that privilege did not apply, even though there was more than sufficient time for raising matter with court.

Even if group text message sent by attorney to third parties, discussing a sexual assault investigation by city, immediately preceded telephone call to attorney by client, who was a police officer, this did not per se remove attorney-client privilege from discussion in telephone call, where client initiated call to discuss something other than the sexual assault case.

City attorney's direct questioning of police officer during interview, as part of internal affairs investigation of leak to media, violated Rule of Professional Conduct precluding direct communication with a party known to be represented by an attorney, where officer had pending harassment and retaliation suit against city, officer was represented by attorney in that suit, and city attorney made several inquiries during interview regarding scope of officer's claims in her suit.

There was no reasonable likelihood that violation of police officer's attorney-client privilege and of Rule of Professional Conduct precluding direct communication with represented party, stemming from city's questioning of officer during internal affairs investigation into leak of information to media, would give city any unfair advantage in officer's harassment and retaliation action against city, and thus disqualification of city attorney's office was not appropriate, where information disclosed by officer as result of violation was not unfavorable to officer.