by David B. Parker and Elliott Benjamin

KEEPERS OF THE SECRETS

The duty of attorneys to preserve the secrets of their clients is limited only by a very few exceptions

The phrase "attorney-client privilege" contains the most powerful words that lawyers may hear in the course of their professional lives. However, while the privilege provides lawyers with protections available to few other professionals, it also imposes strict and exacting obligations. California law uses commanding and forceful words throughout Business and Professions Code Section 6068(e)(1), declaring that every attorney has a duty "to maintain inviolate the confidence, and at every peril to himself or herself, to preserve the secrets, of his or her client."

Does Section 6068 (e)(1) require lawyers to guard client secrets under every and all circumstances? The answer is generally yes, with specific exceptions. Business and Professions Code 6068(e)(2) contains a statutory exception to the attorney-client privilege that is often misunderstood. This exception provides for permissive, but not mandatory, disclosure to law enforcement regarding future criminal acts creating risk of death or serious bodily injury to another. Evidence Code Section 956.5, which addresses the evidentiary attorney-client privilege, sets forth a similar express exception for situations in which a lawyer believes that the disclosure of confidential communication is necessary to prevent a criminal act that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual.

Unlike many jurisdictions, California does not permit attorneys to reveal past wrongdoing by a client—even if those acts are criminal. Nor can the attorney disclose information relating to future criminal actions that do not involve the risk of death or serious bod-

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ily injury. Even if the attorney is compelled to withdraw from the representation of a client, California law does not permit a "noisy withdrawal." Rule 3-600(B) of the California Rules of Professional Conduct provides:

> If a member acting on behalf of an organization knows that an actual or apparent agent of the organization acts or intends or refuses to act in a manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, the member shall not violate his or her duty of protecting all confidential information as provided in B&P 6068, subdivision (e).

Moreover, the attorney's response is limited to his or her right (and appropriate duty) to resign in accordance with Rule 3-700 of the Rules of Professional Conduct.

The Evidence Code recognizes various statutory exceptions to the attorney-client privilege. These include Evidence Code Section 956, which provides that the attorney-client privilege does not apply "if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud." Nevertheless, no court has held this provision to be an exception to the ethical prohibition in Business and Professions Code Section 6068(e)(1). Apparently the Section 956 exception is one that third parties may assert.

The Sarbanes-Oxley Act of 2002[1] may present a federal exception. The act governs the disclosure obligation of public reporting companies and mandates that attorneys and others disclose violations of the federal securities laws. However, it is unclear at present whether this federal statute preempts California ethics rules.[2]

Rule 3-100(A) of the Rules of Professional Conduct contains further guidance regarding the attorney-client privilege: "A member shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule." Paragraph 1 of the Official Discussion to Rule 3-100(A) states, "Paragraph (A) thus recognizes a fundamental principle in the client-lawyer relationship, that, in the absence of the client's informed consent, a member must not reveal information relating to the representation. [Citations omitted.]"

Paragraph 2 of the Official Discussion delineates what attorney-client confidentiality encompasses:

> [M]atters communicated in confidence by the client, and therefore protected by the attorney-client privilege, matters protected by the work product doctrine, and matters protected under ethical standards of confidentiality, all as established in law, rule and policy. [Citations omitted.] The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a member may be called as a witness or be otherwise compelled to produce evidence concerning a client. A member's ethical duty of confidentiality is not so limited in its scope of protection for the client-lawyer relationship of trust and prevents a member from revealing the client's confidential information even when not confronted with such compulsion. Thus, a member may not reveal such information except with the consent of the client or as authorized or required by the State Bar Act, these rules, or other law….

Moreover, Rule 3-100(B) mirrors Business and Professions Code 6068 (e)(2)'s narrow exception for future criminal acts. Thus, according to Paragraph 5 of the Official Discussion, disclosure under Rule 3-100(B) is permissive, not mandatory, and an attorney who elects to make the disclosure in compliance with the rule is not subject to disciplinary action.[3]

Self-Defense

The attorney-client privilege yields to an attorney's right of self-defense when accused by a client of a breach of duty. Under Evidence Code Section 958, "There is no privilege under this article as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship."

Technically, Section 958 is not framed as a waiver but rather provides that no privilege exists in those circumstances. Also, the scope of the exception contained in Section 958 is not expressly limited to a claim of breach in a legal proceeding nor does it require that both the lawyer and the client be parties to a proceeding in which the issue of breach arises. This suggests that the exception to the privilege could extend to accusations made outside a judicial proceeding. To date, however, the exception has been upheld only in proceedings, though not necessarily proceedings between lawyers and clients. Section 958 also addresses alleged breaches, whether by lawyers or clients. In that sense it is broader than merely self-defense.

Curiously, this self-defense exception to the attorney-client privilege is found only in the Evidence Code and is not recognized in the broader ethical mandate of Business and Professions Code Section 6068(e). Thus a tension exists between the self-defense exception in Evidence Code Section 958[4] and Section 6068(e)'s more arduous duty to preserve client secrets.

Case law and ethics opinions have sought to reconcile this tension. As a result, authority exists for attorneys to make limited disclosures consistent with the scope of Section 958, including those that are 1) in support of a claim for unpaid legal fees against a client[5] and 2) in defense of client-initiated State Bar disciplinary complaints.[6]

In *Carlson, Collins, Gordon & Bold v. Banducci*,[7] the appellate court addressed the issue in an action to recover unpaid attorney's fees for legal services rendered and to recover payments allegedly made under duress and undue influence. The court held that:

> It is an established principle involving the relationship of attorney and client that an attorney is released from those obligations of secrecy which the law places upon him whenever the disclosure of the communication, otherwise privileged, becomes necessary to the protection of the attorney's own rights. [Citations omitted.] Accordingly, when, in litigation between an attorney and his client, an attorney's integrity, good faith, authority, or performance of his duties is questioned, the attorney is permitted to meet this issue with testimony as to communications between himself and his client.[8]

Similarly, in *Glade v. Superior Court*, the court of appeal held that Section 958 may be invoked when either the attorney or client charges the other with a breach of duty arising from their professional relationship.[9]

Further, courts have extended the self-defense exception to client allegations against an attorney in judicial proceedings in which the attorney is not a party. For example, in *People v. Morris*,[10] the defendant was convicted of perjury and sentenced to a prison term. In an effort to vacate the plea, the defendant offered a declaration under penalty of perjury that his plea of guilty resulted from assurance by his defense attorney that the sentencing judge, with the prosecutor's concurrence, had agreed to no more than a six-month county jail term for the defendant and the dismissal of all charges against the defendant's wife. The attorney, asked to give a declaration by the prosecution, insisted that he had made no such assurance.

The court of appeal affirmed the conviction, rejecting the defendant's contention that it was reversible error to admit the testimony of his former attorney in violation of the attorney-client privilege. Regarding that issue, the court concluded, "The privilege securing the secrecy of a confidential communication between a lawyer and his client is not absolute. Evidence Code section 958 sets forth a specific exception in the situa-

tion where, as here, the communication relates to an issue of alleged breach by the lawyer of a duty arising out of the lawyer-client relationship." The court reasoned, "If, in litigation between an attorney and his client or between the client and a third person, or in any other proceeding, the attorney's integrity, good faith, authority or performance of his duties are questioned, the attorney should be permitted to meet this issue with testimony as to communications between himself and his client."[11] Thus, the court found that because the attorney's "good faith, honesty and professional conduct were under attack, he was authorized to testify to the contrary, and [the] appellant's initial privilege was lost pursuant to Evidence Code section 958."[12]

Later case law reinforces *Morris* in criminal matters. For example, the court in *In re Scott* held, "[B]y claiming trial counsel provided ineffective assistance, petitioner waived the attorney-client privilege to the extent relevant to the claim."[13]

Generally, the self-defense exception under Evidence Code Section 958 has been construed narrowly based on the legitimate need of an attorney to defend a claim or a client's disciplinary complaint. *Dixon v. State Bar*[14] illustrates the limits to the exception. In *Dixon*, a client filed suit seeking to enjoin an attorney from harassing her. The attorney, in response, filed a declaration containing gratuitous information about the client. This declaration "was found by the bar court to have been made for the purpose of harassing and embarrassing" the former client.

The invocation of the Section 958 exception usually arises in malpractice actions in which attorneys are defending themselves. Whether the self-defense exception extends to other actions involving the client in which the client is barred from asserting the privilege against third parties is uncertain. The Los Angeles County Bar Association's Professional Responsibility and Ethics Committee (PREC), in its Formal Opinion No. 519, relied on case law limiting attorney disclosures to those based on need. The committee concluded that an attorney cannot disclose confidential information during litigation that does not involve claims or allegations against the attorney.

Whether the Section 958 waiver of the privilege commences with the mere filing of a client's claim or requires the actual disclosure of confidential information in a pleading or similar circumstance is likewise unsettled. This issue is particularly tricky when a client files a malpractice claim to preserve the statute of limitations but does not serve it or attempt to prosecute the action (or serves it and immediately seeks a stay pending resolution of the underlying action). In any event, clients who file complaints against their counsel should be advised to not make actual disclosures of confidential information in their pleadings. Doing so could be a waiver under Evidence Code Section 912(a).

Waiver Limits

Courts have frequently limited the scope of Section 958. For example, in *In re Rindlisbacher*,[15] a former client sought a discharge of liability for the attorney's unpaid fees. By doing so, according to the court, the former client did not waive the attorney-client privilege, and thus the attorney could not use prior confidential communications relating to client wrongdoing to support the attorney's objection to discharge.

The limits of the waiver are also apparent in suits involving multiple clients pursuing claims jointly against their attorney. In this situation, other clients (and former clients) not involved in the action do not lose their confidentiality rights. The *Glade*[16] court held that the scope of the Section 958 waiver was limited to communications and information disclosed between a specific client and the attorney and did not act "to waive the attorney-client privilege held by other clients of the same attorney. None of the statutory exceptions to the attorney-client privilege are designed to permit such a result."[17]

Similarly, the court in *Schlumberger Limited v. Superior Court*[18] held that when a former client sues an attorney for malpractice, the Section 958 self-defense exception does not extend to the former client's communications with successor counsel in the course of mitigation efforts to protect the client from the consequences of the alleged malpractice. The same is true in the context of disciplinary proceedings.[19]

Clients can assert their reliance on advice of counsel either as an affirmative defense or as evidence against a claim of malice. By doing so, however, the client puts at issue the attorney's advice and the client's communications with the attorney relating to that advice, because the court must determine that the client provided candid disclosures, received counsel's advice, and acted in a manner consistent with that advice.

The waiver of the attorney-client privilege under the self-defense exception is limited to the scope of advice that is the subject of the defense. It implicates Evidence Code Section 912, which provides, "Except as otherwise provided in this section, the right of any person to claim a privilege…is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone."

Formal Opinion No. 519 underscores the element of consent and examines whether the exception has any validity:

> Under current California law, an attorney cannot, without a former or present client's consent, disclose the client's privileged communications with the attorney or the client's confidential information, for the purpose of defending allegations brought against the attorney by a third party. No matter how critical the client's information is to the lawyer's defense, there is no statutory "self-defense" exception to the attorney-client privilege or the lawyer's duty to maintain the confidentiality of client information under Business and Professions Code § 6068(e).
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> Additionally, while no California appellate court has specifically confronted the exception issue, there is dictum in various cases strongly suggesting that it does not exist. [Citations omitted.] It is also the case in California that the courts lack the authority to create exceptions to the attorney-client privilege and other privileges in the California Evidence Code.

PREC's opinion notes that several federal district and appellate courts have acknowledged a self-defense exception and cites these decisions. Nevertheless, the California Court of Appeal in *McDermott Will & Emory v. Superior Court*[20] expressly rejected the application of these federal authorities:

> [L]ong-standing California case authority has rejected this application of the federal doctrine, noting it contravenes the strict principles set forth in the Evidence Code of California which precludes any judicially-created exceptions to the attorney-client privilege.

The *McDermott* court held that a shareholder's derivative action could not proceed against the lawyer because there was no waiver by the corporate client, and the self-defense exception did not apply.

Qualcomm Inc. v. Broadcom Corporation, a patent infringement case, illustrates the difference in the federal and state approaches to a self-defense exception to the attorney-client privilege.[21] The litigation involved a battle between two corporate giants and the consequence of silence in the face of a duty to disclose patents. The case focused on the circumstances in which outside corporate counsel can reveal confidential communications with their client in aid of their defense to a motion and an order to show cause re sanctions. The outside lawyers filed a motion seeking an order determining that the federal common law self-defense exception applied to a sanctions motion. In a case with many complex procedural

maneuvers, the magistrate denied outside counsel's motion and imposed sanctions on Qualcomm as well as outside counsel for not complying with the attorney-client privilege. Upon de novo review at the behest of the outside attorneys, the district court reversed and remanded for further proceedings in which the attorneys would be free to disclose confidential communications relevant to the issues provoked by Qualcomm's filing.

Qualcomm's initial response to the motion for sanctions did not include declarations and did not attack the conduct of its outside counsel or raise reliance on advice of counsel. However, after the magistrate rejected the self-defense exception, Qualcomm changed course and, without waiving the attorney-client privilege, submitted employee declarations as a means to exonerate the corporation and criticize outside counsel's services and advice. The district court ruled that this submission "changed the factual basis" for the magistrate's rejection of the self-defense motion.

Similarly, the State Bar Standing Committee on Professional Responsibility and Conduct (COPRAC) has opined in favor of the self-defense exception when a client seeks to shift blame to the attorney and upon counsel's mandatory withdrawal. This exception would only be valid to the extent necessary to defend a request for sanctions.[22] As stated in *McDermott*, if an attorney cannot defend an action without the ability to disclose confidential information, third-party actions may be subject to dismissal.[23] The court explained that:

> [B]ecause a derivative action does not result in the corporation's waiver of the privilege, such a lawsuit against the corporation's outside counsel has the dangerous potential for robbing the attorney defendant of the only means he or she may have to mount any meaningful defense. It effectively places the defendant attorney in the untenable position of having to preserve the attorney client privilege (the client having done nothing to waive the privilege) while trying to show that his representation of the client was not negligent.

In *Solin v. O'Melveny & Myers*,[24] an attorney sued another law firm from which he sought advice in connection with his representation of his clients. Those clients were not a party to the malpractice litigation and refused to waive the attorney-client privilege. Since the defendant law firm could not defend without disclosing its confidential information (which had been transmitted to the defendant firm by the consulting attorney), the court dismissed the lawsuit.

Lawyers Seeking Advice

While there is no express exception recognized in Business and Professions Code Section 6068(e) or in Rule 3-100 of the Rules of Professional Conduct, lawyers may reveal confidential client information to outside counsel in order to obtain advice. They may do so pursuant to case law—including *Fox Searchlight Pictures, Inc. v. Paladino*[25]—and ethics opinions.[26] Similarly, the court in *Travelers Insurance Companies v. Superior Court*[27] allowed the disclosure of an insurance policy mandated communication by an insured with the insurer, with the intention that the information was to be provided to carrier-appointed defense counsel.

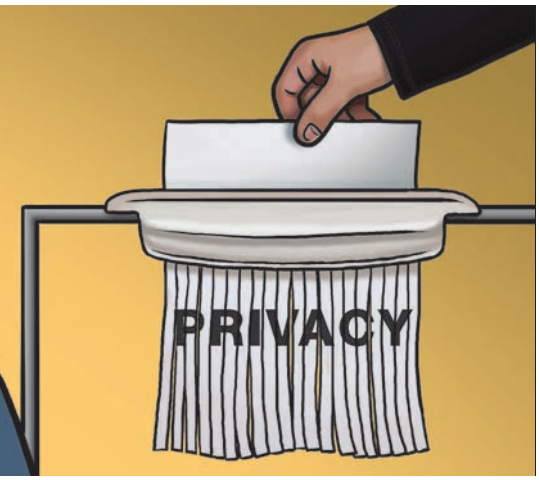
Lawyers can seek confidential advice from other members of the firm just as they can with outside counsel. But there is a difference between protecting these communications in actions against third parties and in matters involving clients. For example, in *United States v. Rowe*,[28] the court found a law firm entitled to assert privilege regarding internal confidential communications involving an investigation into the conduct of a member of the firm in the context of a grand jury proceeding. *Rowe* was distinguished in *Thelen Reid & Priest v. Marland*,[29] a case in which the plaintiff law firm sought to protect internal communications between members of the firm and the firm's general counsel that occurred during the time the former client—the defendant in the case—was represented by the firm.

Clearly law firms cannot represent themselves in client controversies, such as potential malpractice claims, and protect the confidentiality of these communications against the client while at the same time still representing the client. The *Thelen* decision follows a series of similar federal trial court decisions, including *In re Sunrise Securities Litigation*,[30] *Versuslaw Inc. v. Stoel Rives*,[31] and *Koen Book Distributors, Inc. v. Powell Trachtman, Loggan, Carrle, Bowman & Lombardo, PC.*[32] The *Thelen* court overruled the firm's objections based on the attorney-client privilege and work product doctrine. The court acknowledged that lawyers in firms should be able to seek confidential advice within their firms, but by doing so they may yield the attorney-client privilege: "[O]nce the law firm learns that a client may have a claim against the firm or that the firm needs client consent in order to commence or continue another client representation, then the firm should disclose to the client the firm's conclusions with respect to those ethical issues." The adverse former client was jointly represented with another client. The court found that the firm represented the two clients for the "same purpose" and that the interests of the firm and the two clients were "intertwined" in "lifting the lid" on joint communications.

Similarly, *In re Sonic Blue Incorporated*[33] involved a chapter 11 corporate debtor that subpoenaed internal communications among members of Pillsbury Winthrop Shaw Pittman LLP, its former counsel. The law firm asserted its attorney-client privilege. Following *Thelen*'s focus on conflicting interests between a client and the client's law firm, the court rejected the claims of attorney-client privilege and work product protection. The court held that once the law firm became aware of the malprac-

tice accusations and its failure to adequately disclose conflicts of interest, it had no right to claim privilege for any communications with in-house counsel.

In its Formal Opinion 08-453, the ABA addressed whether lawyers within firms may seek in-house ethics advice and disclose client confidences to a fellow member of the firm, such as a firm's general counsel or ethics counsel. The ABA concluded that this was permissible. Whether an attorney must make



a disclosure before or after the consultation turns on the firm's ethical duties to the client pursuant to ABA Model Rule 1.4. The ABA found that the mere fact of an ethics consultation does not create a conflict with a client. When a firm designates a general counsel or ethics counsel, it must make clear to members of the firm that the designated counsel represents the law firm, not firm members in their individual capacity, unless arrangements are made to make the firm member a joint client.

In a wrongful discharge action, the court in *General Dynamics v. Superior Court*[34] used strong language to hold that the attorney-client privilege must be maintained:

> [T]he in-house attorney who publicly exposes the client's secrets will usually find no sanctuary in the courts. Except in those rare instances when disclosure is explicitly permitted or mandated by an ethics code provision or statute, it is never the business of the lawyer to disclose publicly the secrets of the client. In any event, where the elements of a wrongful discharge in violation of fundamental public policy claim cannot, for reasons peculiar to the particular case, be fully established without breaching the attorney-client privilege, the suit must be dismissed in the interest of preserving the privilege.[35]

The *General Dynamics* court suggests that trial courts may permit disclosure under court-imposed limitations, such as sealing or protective orders.[36] Moreover, the court discussed reconciling the tension between disclosure and the privilege. It focused on the applicability of statutory exceptions, including those in Evidence Code Section 956.[37] Still, the court did not directly address whether Evidence Code Section 958 would apply in a wrongful termination action by former in-house counsel.

The plaintiff in *Fox Searchlight Pictures, Inc. v. Paladino*[38] preemptively sued its former in-house counsel after learning of her plan to sue Fox for wrongful termination of employment. Fox claimed its former in-house counsel disclosed confidential and privileged information to her personal attorneys handling her wrongful termination case. The former in-house counsel filed a motion pursuant to Code of Civil Procedure Section 425.16, the anti-SLAPP statute. Fox, in turn, filed motions to disqualify the attorneys representing its former counsel on the ground they possessed confidential and privileged information belonging to Fox and material to the issues between the parties.

The trial court denied all the motions. The court of appeal affirmed the trial court's order denying the motions to disqualify but reversed the order denying the in-house counsel's anti-SLAPP motion.

The court noted that "in-house counsel, like all attorneys, are bound by the ethical rule against disclosure of client confidences." Further, it observed that "'an attorney who unsuccessfully pursues a retaliatory discharge suit, and in doing so discloses privileged client confidences, may be subject to State Bar disciplinary proceedings.'"[39] However, the case was not one for wrongful termination, and the *Fox Searchlight* court was only asked to address the right of a lawyer to disclose client confidences to obtain advice from another lawyer.

Importantly, according to the court, disclosure within the context of this type of consultation was permissible:

> If an attorney, in protecting her own rights, is entitled to introduce otherwise privileged communications at trial, a fortiori, she is entitled to reveal those communications to her lawyers in advance of trial.…[I]f this were not the case, an attorney could successfully defend the ethics of her behavior in court only to be disciplined for unethical behavior by the State Bar.… For the preceding reasons, we conclude a lawyer does not violate Business and Professions Code section 6068, subdivision (e) when she discloses client confidences to her own attorney for purpose of determining whether those communications are admissible evidence under an exception to the attorney-client privilege.[40]

In *Van Asdale v. International Game Technology*,[41] former in-house attorneys brought a claim of retaliatory discharge in violation of the Sarbanes-Oxley Act. The appellate court found that the trial court erred in granting the defendant summary judgment because the district court has the capacity to use equitable measures to minimize disclosure of harmful information.

In reaching its decision, the *Van Asdale* court rejected the Illinois Supreme Court's decision in *Balla v. Gambro, Inc.*[42] The court in *Balla* prohibited Illinois in-house lawyers from bringing retaliatory discharge cases involving disclosure of confidential information. The *Van Asdale* court noted that the decision had not been extended beyond Illinois lawyers and that federal courts had declined to apply it to federal claims.

A case presently pending in the Los Angeles Superior Court has the potential to bring more illumination regarding the parameters of protection for client secrets. In *Biller v. Toyota Motor Corporation*,[43] the plaintiff, Biller, a former in-house attorney for Toyota, was forced to resign in 2007. Biller reached a confidential settlement agreement with Toyota that reportedly involved a $3.7 million severance payment. The plaintiff later set up a company through which he allegedly disclosed confidential information, triggering a lawsuit by Toyota. The plaintiff agreed to a restraining order, which concluded the case. Notwithstanding both the settlement agreement and stipulated restraining order, the plaintiff filed suit against his former employer accusing the automaker of destroying data regarding 300 accidents and withholding e-mails and other computer-stored information from attorneys for the accident victims. He also claimed wrongful termination, intentional infliction of emotional distress, and violations of RICO.

Toyota sought unsuccessfully to seal the complaint based on the fact that it contained confidential information. The company filed a second motion, challenged the complaint, and, in the alternative, sought to compel arbitration pursuant to the settlement agreement. Biller justified his disclosures based on the crime-fraud exception.

The judge in the earlier litigation between Biller and Toyota has referred Biller to the State Bar for a disciplinary investigation, ordered the reopened case into arbitration, and issued a preliminary injunction against further disclosures by Biller. The results of the disciplinary investigation and the arbitration will provide further insight into the area of client confidentiality and may bring new meaning to the phrase "at every peril."

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[1] Pub. L. No. 107-204, 116 Stat. 745 (2002).

[2] *See* Van Asdale v. International Game Tech., 577 F.

3d 989 (9th Cir. 2009) and discussion in text, *infra*.

[3] *See* CAL. RULES OF PROF'L CONDUCT R. 3-100(B), 3-100(C), 3-100(D). Rule 3-100(C) and Rule 3-100(D) set forth the conditions and limitations to disclosures made under Rule 3-100(B). Paragraph 6 of the Official Discussion provides detailed and helpful guidance.

[4] R. Sall & C. Buckner, *The Self-Defense Exception to the Ethical Duty of Confidentiality*, ORANGE COUNTY LAWYER, July 2006.

[5] *See, e.g.*, Glade v. Superior Court, 76 Cal. App. 3d 738, 746-47 (1978); Carlson, Collins, Gordon & Bold v. Banducci, 257 Cal. App. 2d 212, 227-28 (1967).

[6] Brockway v. State Bar of Cal., 53 Cal. 3d 51, 63-64 (1991).

[7] Carlson, 257 Cal. App. 2d 212.

[8] *Id.* at 228-29 n.14.

[9] Glade, 76 Cal. App. 3d 738.

[10] People v. Morris, 20 Cal. App. 3d 659 (1971).

[11] *Id.* at 663 (citing WITKIN, CALIFORNIA EVIDENCE §824 (2d ed. 1966)).

[12] *Id.* at 664.

[13] In re Scott, 29 Cal. 4th 783, 814 (2003).

[14] Dixon v. State Bar, 32 Cal. 3d 728 (1982).

[15] In re Rindlisbacher, 225 B.R. 180, 183 (9th Cir. B.A.P. 1998).

[16] Glade v. Superior Court, 76 Cal. App. 3d 738 (1978).

[17] *Id.* at 747.

[18] Schlumberger Ltd. v. Superior Court, 115 Cal. App. 3d 386, 392 (1981).

[19] Brockway v. State Bar of Cal., 53 Cal. 3d 51, 63-64 (1991).

[20] McDermott Will & Emory v. Superior Court, 83 Cal. App. 4th 378, 385 (2000).

[21] Qualcomm Inc. v. Broadcom Corp., 548 F. 3d 1004 (Fed. Cir. 2008).

[22] State Bar Standing Committee on Professional Responsibility and Conduct (COPRAC), Op. No. 1997-151.

[23] McDermott, 83 Cal. App. 4th at 385.

[24] Solin v. O'Melveny & Myers, 89 Cal. App. 4th 451 (2001).

[25] Fox Searchlight Pictures, Inc. v. Paladino, 89 Cal. App. 4th 294, 313-14 (2001).

[26] *See, e.g.*, Los Angeles County Bar Association, Professional Responsibility and Ethics Committee (PREC), Formal Op. No. 519 (Feb. 2007).

[27] Travelers Ins. Cos. v. Superior Court, 143 Cal. App. 3d 436 (1983).

[28] United States v. Rowe, 96 F. 3d 1294 (9th Cir. 1996).

[29] Thelen Reid & Priest v. Marland, 319 Fed. Appx. 676, 2009 WL 725077 (9th Cir. 2009).

[30] In re Sunrise Secs. Litig., 108 B.R. 471, 475 (E.D. Pa. 1989).

[31] Versuslaw Inc. v. Stoel Rives, 127 Wash. App. 309, 334 (2005).

[32] Koen Book Distribs., Inc. v. Powell Trachtman, Loggan, Carrle, Bowman & Lombardo, PC, 22 F.R.D. 283, 283-86 (E.D. Pa. 2002).

[33] In re Sonic Blue Inc., 2008 WL 2875407 (Bankr. N.D. Cal. 2008).

[34] General Dynamics Corp. v. Superior Court, 7 Cal. 4th 1164, 1190-91 (1994).

[35] *Id.* at 1190.

[36] *Id.* at 1191.

[37] *Id.* at 1190-91.

[38] Fox Searchlight Pictures, Inc. v. Paladino, 89 Cal. App. 4th 294, 313-14 (2001).

[39] *Id.* at 309-10 (citing General Dynamics Corp., 7 Cal. 4th at 1191).

[40] *Id.* at 313-14.

[41] Van Asdale v. International Game Tech., 577 F. 3d 989 (9th Cir. 2009).

[42] Balla v. Gambro, Inc., 584 N.E. 2d 104 (Ill. 1991).

[43] Biller v. Toyota Motor Corp., 2010 WL 300349 (C.D. Cal. Jan. 4, 2010).