Attorney-Client Privilege Issue

Friends - JDX is California. Consider these facts:

Client is wealthy. He has a personal Assistant (who basically ran the household staff), and has designated Assistant to serve as the primary interface between Client and Attorney. Client would regularly ask Assistant to obtain advice from attorney. Legal advice and opinions were regularly conveyed by Attorney to Assistant, to be given to Client for review.

Assistant gets fired, and likely has all of the Attorney email correspondence. Does Assistant's involvement as the intermediary between Attorney and Client destroy the attorney-client privilege?

Thoughts and opinions appreciated.

Yes, I believe it does destroy the privilege. Communication needs to be confidential to be privileged.

Matthew B. Kaplan, Virginia

Was the assistant necessary? If so, the privilege holds in California.

Jonathan Stein, California

Is there a Power of Attorney naming the assistant as the POA?

If no, then yes ACP is broken by the client giving the information to the assistant.

Erin M. Schmidt, Ohio

Not a CA lawyer, but, to Erin's point, Assistant was clearly acting as Client's agent irrespective of whether he or she was appointed as such under a POA.

Andrew C. McDannold, Florida

How is this different from a lawyer's secretary whose presence does not negate attorney - client privilege?

Joseph Hughes

Needs to be researched, but I would presume that the ACP is intact. This is not a "friend," but an employee and that may be the difference here.

I would certainly hope that the Client and PA have a confidentiality agreement in place. It would not be as strong as ACP, but offer some protection and demonstration of intent.

Phil A. Taylor, Massachusetts

California Evidence Code section 952 provides:

As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

"discloses the information to no third persons *other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment

of the purpose for which the lawyer is consulted" seems to speak to the circumstance of the personal assistant.

"[W]e construe section 952 to mean that attorney-client communications in the presence of, or disclosed to, clerks, secretaries, interpreters, physicians, spouses, parents, business associates, or joint clients, when made to further the interest of the client or when reasonably necessary for transmission or accomplishment of the purpose of the consultation, remain privileged. (San Francisco v. Superior Court (1951) 37 Cal. 2d 227, 234-237 [231 P.2d 26, 25 A.L.R.2d 1418]; Cooke v. Superior Court (1978) 83 Cal. App. 3d 582 [147 Cal. Rptr. 915];De Los Santos v. Superior Court (1980) 27 Cal. 3d 677 [166 Cal. Rptr. 172, 613 P.2d 233].)"

Insurance Co. of North America v. Superior Court (GAF Corp.) (1980) 108 Cal. App. 3d 758, 771.

L. Maxwell Taylor, Vermont

This sounds like a unique situation. I suggest you get an ethics opinion from your ethics committee.

Ed Burcham, Kentucky

I'm not sure it is all that unique. From what I can gather CA takes

a fairly expansive view of what is " involvement of third persons to whom disclosure is reasonably necessary to further the purpose of the legal consultation preserves confidentiality of communication.'

See 66 Cal.Rptr.3d 833 (2007)

155 Cal.App.4th 1485

ZURICH AMERICAN INSURANCE CO., Petitioner, v.

The SUPERIOR COURT of Los Angeles County, Respondent; Watts Industries, Inc., Real Party in Interest.

and cases cited therein

And

46 Cal.App.4th 653 (2016)200 Cal.Rptr.3d 937

DP PHAM LLC, Cross-complainant, Cross-defendant, and Respondent, v. C. TUCKER CHEADLE, as Administrator, etc., Cross-defendant, Cross-complainant, and Appellant.

Particularly discussion of Galla, who was personal assistant of Cheadle

And bunches of other cases I'm not going to read in California.

Ronald Jones, Florida

I was thinking of it a bit differently in that without a POA (or a confidentiality agreement) there is nothing preventing the assistant from talking which is what I assumed the OP was talking about.

Erin M. Schmidt

A lawyers' secretary would be considered necessary as part of the attorney's staff and thus falls under the umbrella of "attorney". So, the secretary, even when leaving the attorney's employment still has the duty of the attorney and cannot talk.

But on the other side, the privilege is held by the client. The client can always talk, and there is nothing in the ACP that prevents someone, on the client's side, whom wouldn't break ACP by being present, from talking

Erin M. Schmidt

. . . .

The communication may retain its confidential character even though third persons are present:.

(2) *Evidence Code.* The Evidence Code states a much broader rule, embracing two kinds of third persons whose presence does not destroy the confidentiality of the communication:

(a) Those "to whom disclosure is reasonably necessary for the transmission of the information or for the accomplishment of the purpose for which the lawyer is consulted." (Ev.C. 952
<https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000207&cite=CAEVS952&originatingDoc=If8b83be16a9011dbbac4ed214c54085a&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)>,

supra, § 122

<https://1.next.westlaw.com/Link/Document/FullText?findType=Y&pubNum=155587&cite=WITEVIDCHIXs122&originatingDoc=If8b83be16a9011dbbac4ed214c54085a&refType=NA&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)>.)

This would cover not only a secretary or clerk, but also an expert consultant present to assist the lawyer in advising the client. (Law Rev.

Com. Comment.)

(b) Those "who are present to further the interest of the client in the consultation." (Ev.C. 952

<https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000207&cite=CAEVS952&originatingDoc=If8b83be16a9011dbbac4ed214c54085a&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)>.)

This would cover a spouse, parent, business associate, joint client, etc., or "another person and his attorney who may meet with the client and his attorney in regard to a matter of joint concern." (Law Rev. Com. Comment.) (See 33 Pepperdine L. Rev. 677
<https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=0312526786&pubNum=0001222&originatingDoc=If8b83be16a9011dbbac4ed214c54085a&refType=LR&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)>

[recommending

amendment of rules of law student practice and attorney-client privilege to allow presence of law students, under supervision of licensed attorney, during confidential client communications]; 36 U.C.L.A. L. Rev. 151
<https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=0102874269&pubNum=0003041&originatingDoc=If8b83be16a9011dbbac4ed214c54085a&refType=LR&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)>

[applying

attorney-client and work product privileges to allied party exchange of information]; 64 A.L.R.6th 655
<https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2025212548&pubNum=0007185&originatingDoc=If8b83be16a9011dbbac4ed214c54085a&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)>

[communications made in presence of or solely to or by other attorneys, coparties, and their staff]; 66 A.L.R.6th 83
<https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2025804459&pubNum=0007185&originatingDoc=If8b83be16a9011dbbac4ed214c54085a&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)>

[communications made in presence of or solely to or by nonattorney consultants, professionals, and similar contractors]; 67 A.L.R.6th 341
<https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2025940508&pubNum=0007185&originatingDoc=If8b83be16a9011dbbac4ed214c54085a&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)>

[communications

made in presence of or solely to or by family members or companion, confidant, or friend of attorneys or client or attesting witnesses for client's will]; on effect of disclosure to court-appointed psychotherapist, see infra, § 236 et seq.

<https://1.next.westlaw.com/Link/Document/FullText?findType=Y&pubNum=155587&cite=WITEVIDCHIXs236&originatingDoc=If8b83be16a9011dbbac4ed214c54085a&refType=NA&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)>

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In Insurance Co. of North America v. Superior Court (1980) 108 C.A.3d 758,

166 C.R. 880

<https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980117829&pubNum=0000227&originatingDoc=If8b83be16a9011dbbac4ed214c54085a&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)>,

communications were made at a meeting of representatives of a parent company and its wholly owned operating subsidiary. The issue was whether an officer or employee of a holding or affiliated company could receive confidential legal advice from counsel employed by a wholly owned subsidiary or affiliate. *Held,* the communications were privileged.

(a) "[W]e construe section 952

<https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000207&cite=CAEVS952&originatingDoc=If8b83be16a9011dbbac4ed214c54085a&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)>

to

mean that attorney-client communications in the presence of, or disclosed to, clerks, secretaries, interpreters, physicians, spouses, parents, business associates, or joint clients, when made to further the interest of the client or when reasonably necessary for transmission or accomplishment of the purpose of the consultation, remain privileged." (108 C.A.3d 771.)

(b) "As part of this general rule, we conclude that an officer or employee of a holding or affiliated company can receive legal advice from counsel employed by a wholly owned subsidiary or affiliate without destroying the confidentiality of the communication." (108 C.A.3d 771.) (See Fireman's Fund Ins. Co. v. Superior Court (2011) 196 C.A.4th 1263, 1272, 127 C.R.3d

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<https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2025560966&pubNum=0007047&originatingDoc=If8b83be16a9011dbbac4ed214c54085a&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)>

[under Ev.C. 952

<https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000207&cite=CAEVS952&originatingDoc=If8b83be16a9011dbbac4ed214c54085a&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)>,

privilege is not limited to communications directly between client and his or her attorney, but also applies to communications among various attorneys representing same client; thus, privilege precluded client's attorney from disclosing communications attorney had with her partner about client's

case].)

Roger Rosen, California