

POPA V. SIMPSON

(2026) No. DJDAR 5141

Court of Appeal, Fourth District, California

Counsel has no ethical obligation to refrain from using inadvertently produced discovery if it is not clearly privileged, and disqualification is unwarranted if the produced discovery does not give counsel an unfair advantage in litigation.

FACTS / PROCEDURE

Plaintiff filed a civil action against her former romantic partner alleging sexual battery and various tort claims arising from an abusive relationship. During discovery, Plaintiff produced more than 1,400 pages of bates-stamped documents in response to Defendant's requests, including a three-page document containing Dropbox links and passwords to folders containing documents relevant to the litigation. The three-page document was not addressed to anyone, lacked a letterhead or a signature, and contained no visible indication that it was confidential or privileged.

Defense counsel accessed the Dropbox folders, which contained text messages, photographs, financial records, medical records, and a handwritten letter from Plaintiff to Defendant. The Dropbox documents were contained in a folder name "marc lazo files" which is the name of Plaintiff's attorney. Plaintiff claims that this document was a confidential letter to her attorney, but there is no substantive indication in the document that it is confidential. Several of these documents appeared to contradict Plaintiff's allegations, including text evidence suggesting that Plaintiff injuries attributed to Defendant may have been caused by another individual and that Plaintiff's suicide attempt was related to the end of a different romantic relationship.

Plaintiff's counsel did not discover the inadvertent production until defense counsel referenced certain Dropbox documents during settlement discussions. Plaintiff subsequently moved to disqualify defense counsel, arguing that counsel violated its ethical obligations by reviewing inadvertently produced privileged materials. Although the trial court initially issued a tentative ruling denying the motion, it ultimately granted disqualification after concluding that defense counsel should have recognized the privileged nature of the materials once it encountered a Dropbox folder bearing Plaintiff's attorney's name. The court further ordered defense counsel to destroy the Dropbox documents, refrain from discussing them with successor counsel, and sealed both the letter/memorandum and the Dropbox materials. Defendant appealed.

DISCUSSION / HOLDING

The Court of Appeal reversed, holding that the trial court abused its discretion in disqualifying defense counsel. The Court concluded that the inadvertently produced letter was not clearly privileged and therefore did not trigger the ethical obligations set forth in *State Compensation Insurance Fund v.*

WPS, Inc. The document was not addressed to counsel, lacked any confidentiality designation, and reasonably could have been interpreted as a document intentionally produced during discovery rather than a privileged attorney-client communication. Defense counsel had no duty to cease reviewing the materials or immediately notify opposing counsel.

The Court further held that, even if defense counsel's ethical obligations had been triggered, disqualification was unwarranted because defense counsel obtained no unfair litigation advantage. The Dropbox documents relied upon by defense counsel were neither privileged nor protected work product but rather constituted relevant and discoverable evidence bearing directly on Plaintiff's claims. Although the produced text messages practically destroyed Plaintiff's attempt to attribute her injuries to Defendant, the Court reasoned that it would be unfair to deny defense counsel the ability to present the messages as impeachment evidence.

The Court emphasized that attorney disqualification is a prophylactic remedy intended to eliminate an unfair advantage, not to punish attorney misconduct. Because the documents were nonprivileged, relevant, and promoted the truth-seeking function of discovery, the trial court abused its discretion by disqualifying counsel and prohibiting use of the Dropbox materials.