

[California Supreme Court Ruling Reaffirms Sacredness of Attorney-Client Communications in Refusing to Allow Disclosure of Opinion Letter](#)

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In *Costco Wholesale Corporation v. Superior Court*, Costco had retained a law firm to provide it with legal advice regarding whether certain Costco warehouse managers in California were exempt from California's wage and overtime laws. As part of the analysis, Costco's attorney interviewed two warehouse managers. Afterward, the attorney generated an opinion letter.

Several years later, plaintiffs filed an action claiming that Costco had misclassified some of its managers as exempt employees, and thus did not pay them overtime to which they were otherwise entitled. In the course of discovery, plaintiffs sought to obtain a copy of the attorney's opinion letter. Costco resisted producing the letter on the basis that it was a privileged attorney-client communication. The plaintiffs disagreed, contending that the letter was not privileged because it contained non-privileged factual information regarding the managers' job duties that had been obtained during the course of the attorney's interview of the managers.

The trial court ordered a discovery referee to review the opinion letter *in camera* to determine whether the attorney-client privilege and/or attorney work product doctrine should prevent its disclosure.

The discovery referee ultimately ordered the production of a heavily redacted version of the opinion letter. The referee indicated that the un-redacted portions of the letter contained factual information about the employees' job responsibilities which were not protected under the attorney-client privilege or attorney work product doctrine.

Costco petitioned the Court of Appeal for a writ of mandate which was denied. Costco then petitioned the California Supreme Court which granted relief. In so doing, the Court observed that Costco had presented the attorney with a question requiring legal analysis and requested that the attorney investigate the facts necessary to generate a legal opinion in response to the question. As such, the Court held that where there is a confidential communication between attorney and client, the entire communication, including the recitation or summary of factual material therein, is privileged from disclosure.

The Court also overturned the trial court's order on the separate ground that, under [Evidence Code section 915](#), the trial court had improperly disclosed to the discovery referee, over Costco's objection, a copy of the opinion letter for the purpose of determining whether the privilege should apply. The Court held that section 915 does not permit a court to conduct an *in camera* review of a document alleged to be protected by the attorney-client privilege in order to rule on whether the document is or is not privileged.

While the referee was free to rely on other information in determining whether the privilege should bar disclosure of the opinion letter, she could not review the opinion letter itself that Costco was seeking to shield from disclosure. Only the holder of the privilege, Costco, could have requested an *in camera* review of the opinion letter so as not to violate section 915 to the

extent it desired such a review to assist it in persuading the court that the letter was protected by the attorney-client privilege.