

**RESOLUTION 07-01-2022**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to add Evidence Code section 963, to read as follows:

1    § 963  
2            There is no privilege under this article as to a communication relevant to an issue of  
3    sexual harassment or assault, by the lawyer or by the client, occurring within the confines of the  
4    lawyer-client relationship.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Queen’s Bench Bar Association of the San Francisco Bay Area

**STATEMENT OF REASONS**

The Problem: Business and Professions Code section 6068 provides that lawyers must preserve the secrets of their clients at “every peril” to themselves. Evidence Code section 954 describes lawyer-client privilege, which the California Supreme Court has interpreted to cover almost any means of communication by the client to their lawyer. *City & Cty. of San Francisco v. Superior Court In & For City & Cty. of San Francisco* (1951) 37 Cal. 2d 227 at 235-36 (“[A]lmost any act, done by the client in the sight of the attorney and during the consultation, may conceivably be done by the client as the subject of a communication”). Evidence Code sections 956-62 provide eight exceptions to the privilege. None of the enumerated statutory exceptions relate to instances of sexual harassment or assault that occur during attorney-client privileged interactions. Further, the California Supreme Court has held that courts may not find implied exceptions to lawyer-client privilege. *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal. 4th 725. Therefore, while Civil Code section 51.9 and the relevant Penal Code sections allow a lawyer to pursue claims against a client who sexually harassed or assaulted the lawyer during their lawyer-client relationship, lawyer-client privilege prevents disclosure of evidence necessary for such claims to be successful.

The Solution: The proposed Evidence Code section 963 creates an exception to lawyer-client privilege in cases where the client sexually harasses or assaults the lawyer. The proposed language generally aligns with the language of the breach of duty exception enumerated in Evidence Code section 958. As with other statutory exceptions to lawyer-client privilege, proposed Evidence Code section 963 should be construed narrowly. *In re Rindlisbacher* (1998) 225 B.R. 180. This resolution provides an avenue for lawyers who are sexually harassed or assaulted during a lawyer-client relationship to disclose all relevant evidence to support their legal allegations against their perpetrator.

**IMPACT STATEMENT**

This resolution does not affect any other law, statute, or rule.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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