

No. S226645

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

---

COUNTY OF LOS ANGELES BOARD OF SUPERVISORS *et al.*,

Petitioners,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

ACLU OF SOUTHERN CALIFORNIA *et al.*,

Real Parties in Interest.

---

Review after Order Denying CPRA Request  
Second Appellate District, Division Three, Case No. B257230  
Los Angeles County Superior Court, Case No. BS145753  
(Hon. Luis A. Lavin)

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**REAL PARTIES IN INTEREST'S REQUEST FOR JUDICIAL  
NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES;  
DECLARATION OF COLIN D. WELLS WITH EXHIBITS A-B;  
[PROPOSED] ORDER**

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ACLU OF SOUTHERN CALIFORNIA and ERIC PREVEN

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*Attorneys for Real Parties in Interest*  
ACLU OF SOUTHERN CALIFORNIA and ERIC PREVEN

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE  
OF THE STATE OF CALIFORNIA, AND TO THE ASSOCIATE  
JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to Evidence Code Sections 452 and 459, Real Parties in  
Interest ACLU of Southern California and Eric Preven (“ACLU”) hereby  
move the Court to take judicial notice of the following:

1. The legislative history for California AB 333 from the  
1965 Regular Session, a true and correct copy of which is attached to  
the Declaration of Colin D. Wells (“Wells Decl.”) as Exhibit A; and,
2. The legislative history for California SB 247 from the  
1967 Regular Session, a true and correct copy of which is attached to  
the Wells Declaration as Exhibit B.

The legislative history to be noticed was not presented to the trial  
court for judicial notice.

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This Motion for Judicial Notice is based upon this Motion, the Memorandum of Points and Authorities, the attached Declaration of Colin D. Wells with Exhibits A-B, all documents on record and filed in these proceedings, and on such argument as may be presented to the Court during the oral argument in this matter.

Respectfully Submitted this 8th day of September, 2015

ACLU FOUNDATION OF  
SOUTHERN CALIFORNIA  
Peter J. Eliasberg

DAVIS WRIGHT TREMAINE LLP  
Jennifer L. Brockett  
Rochelle L. Wilcox  
Colin D. Wells

By: \_\_\_\_\_



Colin D. Wells

Attorneys for Real Parties in  
Interest ACLU OF SOUTHERN  
CALIFORNIA and ERIC PREVEN

## MEMORANDUM OF POINTS AND AUTHORITIES

ACLU respectfully requests that this Court judicially notice the legislative histories of AB 333 from the 1965 Regular Session (Wells Decl., Exh. A), and SB 247 from the 1967 Regular Session (Wells Decl., Exh. B). As set forth in ACLU's Opening Brief, the legislative history for both of these bills is relevant to establishing the legislative intent behind California Evidence Code § 952 – the statute at issue in this proceeding – which defines “confidential communication between client and lawyer” for purposes of the attorney-client privilege in this State.

Importantly, the legislative history makes clear that in adopting Evidence Code § 952 in 1965, and subsequently amending the language of the Code Section in 1967, the Legislature intended the scope of attorney-client privilege to be limited to those confidential communications between attorney and client that are made “in the course of a professional lawyer-client relationship” (MJN Ex. A at MJN001283) or the lawyer's unexpressed legal opinion (MJN Ex. B at MJN001495). Thus, this legislative history strongly supports ACLU's argument that Section 952 should be interpreted narrowly as its plain language suggests, rather than as broadly as Petitioners urge.

Evidence Code Section 459 allows reviewing courts to take judicial notice “of any matter specified in Section 452.” Cal. Evid. Code § 459(a). Section 452, in turn, allows a court to take judicial notice of “[o]fficial acts

of the legislative ... department ... of any state of the United States” and of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Cal. Evid. Code §§ 452(c), (g). Under this Section, this Court and other California courts regularly take judicial notice of the legislative history of this state’s bills. *E.g.*, *Martin v. Szeto* (2004) 32 Cal.4th 445, 449-450 & 452 n.9; *Hahn v. State Board of Equalization* (1999) 73 Cal.App.4th 985, 992 & n.7; *Suarez v. City of Corona* (2014) 229 Cal.App.4th 325, 331-32; *San Bernardino Cnty. v. Superior Court* (2015) \_\_ Cal.App.4th \_\_, 190 Cal.Rptr.3d 876, n.6.

As addressed above, the documents submitted with this Motion establish important facts for this Court’s consideration. Therefore, for the foregoing reasons, Defendants/Respondents respectfully request that the Court take judicial notice of the following:

1. The legislative history for California AB 333 from the 1965 Regular Session, a true and correct copy of which is attached to the Wells Declaration as Exhibit A; and,
2. The legislative history for California SB 247 from the 1967 Regular Session, a true and correct copy of which is attached to the Wells Declaration as Exhibit B.

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///

Respectfully Submitted this 8th day of September, 2015.

ACLU FOUNDATION OF  
SOUTHERN CALIFORNIA  
Peter J. Eliasberg

DAVIS WRIGHT TREMAINE LLP  
Jennifer L. Brockett  
Rochelle L. Wilcox  
Colin D. Wells

By: \_\_\_\_\_



Colin D. Wells

Attorneys for Real Parties in  
Interest ACLU OF SOUTHERN  
CALIFORNIA and ERIC PREVEN

**[PROPOSED] ORDER**

This Court, having read and considered Real Parties in Interests ACLU of Southern California and Eric Preven's Motion For Judicial Notice, and good cause appearing therefore,

IT IS ORDERED that the Real Parties in Interest's Motion is GRANTED, and that the Court hereby takes judicial notice of the following documents:

1. The legislative history for California AB 333 from the 1965 Regular Session, a true and correct copy of which is attached to the Declaration of Colin D. Wells as Exhibit A; and
2. The legislative history for California SB 247 from the 1967 Regular Session, a true and correct copy of which is attached to the Declaration of Colin D. Wells as Exhibit B.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Tani Cantil-Sakauye  
Chief Justice of the State of California



## DECLARATION OF COLIN D. WELLS

I, Colin D. Wells, declare:

1. I am an attorney admitted to practice before all the courts in the State of California and before this Court. I am an attorney in the law firm of Davis Wright Tremaine LLP, and one of the attorneys responsible for representing Real Parties in Interest ACLU of Southern California and Eric Preven (“ACLU”) in this action. The matters stated herein are true of my own personal knowledge.

2. Attached as Exhibit A is a true and correct copy of the legislative history of California AB 333 from the 1965 Regular Session. I received this legislative history from the Legislative Intent Service (“LIS”) on August 10, 2015. The materials provided to me included: Exhibit A – versions of AB 333 from its introduction to its final passage into law; and Exhibit B – related California Law Revision Commission background materials. LIS also included, as Exhibit C, legislative history materials related to SB 110 of 1965. The ACLU believes that this legislative history is irrelevant to the issues before the Court. Therefore, it is not included, although the ACLU will make it available on request. The LIS also provided a Declaration from Heather Thomas attesting to the authenticity of the legislative history materials provided, which is included as part of Exhibit A.

2. Attached as Exhibit B is a true and correct copy of the legislative history of California SB 247 from the 1967 Regular Session. I received this legislative history from the Legislative Intent Service on August 31, 2015. The materials provided to me included: Exhibit A – versions of SB 247 from its introduction to its final passage into law; and Exhibit B – related California Law Revision Commission background materials. The LIS also provided a Declaration from Heather Thomas attesting to the authenticity of the legislative history materials provided, which is included as part of Exhibit B.

I declare under penalty of perjury under the laws of the State of California that this Declaration was executed on September 4, 2015, at San Francisco, California, and that the foregoing is true and correct.



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Colin D. Wells

**PROOF OF SERVICE**

I am employed in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, 505 Montgomery Street, Suite 800, San Francisco, California 94111-6533.

On September 8, 2015, I served the foregoing document(s) described as:

**REAL PARTIES IN INTEREST'S REQUEST FOR JUDICIAL NOTICE;  
MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF COLIN  
D. WELLS WITH EXHIBITS A-B; [PROPOSED] ORDER**

on the interested parties in this action as stated below:

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Los Angeles, CA 90012

1 Clerk of the Court  
2 Court of Appeal of the State of  
3 California  
4 Second Appellate District  
5 Ronald Reagan State Building  
6 300 S. Spring Street  
7 2nd Floor, North Tower  
8 Los Angeles, CA 90013

9 Frederick R. Bennett III, Esq.  
10 Court Counsel  
11 Los Angeles Superior Court  
12 111 North Hill Street, Room 546  
13 Los Angeles, CA 90012

14  (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed  
15 envelope addressed as set forth above. I placed each such envelope for collection and  
16 mailing following ordinary business practices. I am readily familiar with this Firm's  
17 practice for collection and processing of correspondence for mailing. Under that practice,  
18 the correspondence would be deposited with the United States Postal Service on that same  
19 day, with postage thereon fully prepaid at San Francisco, California, in the ordinary course  
20 of business. I am aware that on motion of the party served, service is presumed invalid if  
21 postal cancellation date or postage meter date is more than one day after date of deposit for  
22 mailing in affidavit.

23 Executed on September 8, 2015 at San Francisco, California.

24  State I declare under penalty of perjury, under the laws of the State of  
25 California, that the foregoing is true and correct.

26  
27  
28  
\_\_\_\_\_  
29 Marcus Hidalgo  
30 Print Name

\_\_\_\_\_  
Signature