Energy Policy Advocates v. Regents of the University of California, 22STCP03214

Decision on petition for writ of mandate: denied

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Superior Court of California
County of Los Angeles
DEC 20 2023
David W. Slayton, Executive Officer/Clerk of Court

Petitioner Energy Policy Advocates ("EPA") seeks a writ of traditional mandate directing Respondent Regents of the University of California ("Regents") to provide public records responsive to its requests under the California Public Records Act ("CPRA").

The court has read and considered the moving papers, opposition, and reply, and heard oral argument on December 14, 2023, and renders the following decision.

A. Statement of the Case

1. Petition

Petitioner EPA filed the verified Petition on August 30, 2022, alleging a cause of action for traditional mandamus. The Petition alleges in pertinent part as follows.

a. April 2021 Request

On April 30, 2021, EPA submitted a CPRA request to Regents which in Request No. 2 sought any common interest, representation, fee, consulting, non-disclosure, and/or confidentiality agreement between the University of California, Los Angeles ("UCLA") and Sher Edling, LLP ("Law Firm").

On May 24, 2021, Regents responded that any documents responsive to April 2021 request No. 2 were exempt from production under then-Government Code[1] section 6254(k)'s incorporation of the attorney-client privilege and attorney work product privilege. It also asserted that under then-section 6255(a), the public interest favoring nondisclosure clearly outweighed the public interest in disclosure because it would hinder UCLA's ability to work with law firms and their clients.

b. August 2021 Request

On August 2, 2021, EPA submitted a CPRA request for (1) any common interest, representation, fee, consulting, non-disclosure, and/or confidentiality agreement that included Law Firm and UCLA Law School ("UCLA Law") or the Emmett Center on Climate Change ("Emmett") from 2016 to 2021; (2) any termination of such an agreement; and (3) any work UCLA Law had done on climate nuisance litigation during that period.

On August 26, 2021, UCLA responded in pertinent part that documents responsive to August 2021 Request Nos. 2-3 were exempt from production under the attorney-client privilege and attorney work product privilege. The public interest favoring non-disclosure also clearly outweighed the public interest in disclosure because it would hinder UCLA's ability to work with law firms and their clients. For request No. 4, the August 2021 response asserted that the request was overbroad and unduly burdensome. Any work done on behalf of clients would also be privileged. UCLA was conducting a review for non-privileged materials reflecting work by Professors Sean Hecht ("Hecht") or Cara Horowitz ("Horowitz") on nuisance litigation.

The August 2021 response included production of 27 pages of documents. Regents redacted contact information for Jennifer Hijazi, Dana Drugmand, Maxine Joselow, and Hecht and

[1] All further statutory references are to the Government Code unless stated otherwise.

the basis that disclosure of this information would constitute an unwarranted invasion of personal privacy. The August 2021 response promised to produce any additional responsive records on a rolling basis.

On January 28, 2022, Regents produced a June 30, 2020 presentation by Horowitz to the California Lawyers Association. A photograph of one or more UCLA students was redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA") and exempt under then-section 6254(k).

On August 5, 2022, Regents produced 202 pages. This included 22 pages of emails and email threads and 179 pages from copies of three articles attached to one of those emails. Regents redacted contact information for Matthew Sanders, Hecht, and Miyo McGinn ("McGinn"), as well as the sender of an email to James Birkelund. Regents also redacted a draft of an article by McGinn and edits thereto by Hecht.

The August 5 response asserted that some records were exempt from production under the attorney-client privilege and attorney work product protection. Some did not constitute records of the public's business because they reflect legal work for clients other than UCLA. These records also contained FERPA-protected material. Regents relied on then-sections 6254(a) and 6255(a), contending that the public interest in non-disclosure of withheld records outweighed public interest in disclosure. Production would chill UCLA's ability to engage in clinical legal education and reduce important educational opportunities for students attending public institutions of higher education. The disclosure of drafts further would impair the pre-decisional deliberative process.

c. **February 2022 Request**

On February 2, 2022, EPA submitted a CPRA request to Regents for any electronic correspondence from October 31, 2020 through January 31, 2021 to, from, or copied to UCLA Professor Ann Carlson ("Carlson") and Phil Barnett ("Barnett"), a Washington activist and consultant.

On April 29, 2022, Regents produced 98 pages of responsive documents, with Barnett's phone number and email address redacted. The produced emails referenced a "Draft 115 Analysis Policy Deck 2012020.pdf" which was not produced. The response asserted that Regents had segregated material that was exempt as an unwarranted invasion of personal privacy. It also asserted then-section 6254(a) exempts preliminary drafts, notes, and memos not retained in the ordinary course of business.

d. **Prayer for Relief**

EPA contends that the redactions of student information under FERPA and of contact information of identified individuals are part of a custom and practice that will harm the public interest in transparency and increase Regents' costs in processing CPRA requests. EPA requests injunctive or declaratory relief requiring Regents to produce copies without those redactions and refrain from redacting such information in response to future requests. It also requests a writ of mandate compelling production compliant with the CPRA, and attorney's fees and costs.

2. **Course of Proceedings**

On September 20, 2022, Regents acknowledged receipt of the Petition and Summons.
On October 20, 2022, Regents filed an Answer.

B. **Standard of Review**

A party may seek to set aside an agency decision by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085. A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station...." CCP §1085.

A traditional writ of mandate under CCP section 1085 is the method of compelling the performance of a legal, ministerial duty. Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance. Id. at 584 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

C. Governing Law

1. The CPRA

The CPRA was enacted in 1968 to safeguard the accountability of government to the public. San Gabriel Tribune v. Superior Court, (1983) 143 Cal.App.4th 762, 771-72. Government Code[2] section 7921.000[3] declares that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The CPRA's purpose is to increase freedom of information by giving the public access to information in possession of public agencies. CBS. Inc. v. Block, (1986) 42 Cal. 3d 646, 651. The CPRA was intended to safeguard the accountability of government to the public, and it makes public access to governmental records a fundamental right of citizenship. Wilson v. Superior Court, (1996) 51 Cal.App.4th 1136, 1141. This requires maximum disclosure of the conduct of government operations. California State University Fresno Assn., Inc. v. Superior Court, ("California State University") (2001) 90 Cal.App.4th 810, 823. In 2004, the voters endorsed the CPRA by approving Prop 59, which amended the state Constitution to declare that "the writings of public agencies...shall be open to public scrutiny." Cal. Const. Art. I, §3(b).

The CPRA makes clear that "every person" has a right to inspect any public record. §7922.525(a). The inspection may be for any purpose; the requester's motivation is irrelevant. §7921.300. The term "public record" is broadly defined to include any writing containing information relating to the conduct of the people's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics. §7920.530(a). The definition of "state agency" excludes agencies described in Articles IV and VI of the state constitution, which describe the legislative and judicial branches, except the State Bar of California. §7920.540.

A CPRA request must reasonably describe an identifiable public record or records. §7922.530(a). Upon receiving a request for a copy of public records, an agency must determine within ten days whether the request seeks public records in the possession of the agency that are subject to disclosure, but that deadline may be extended up to 14 days for unusual circumstances. §§ 7922.535(a), (b). Nothing in the CPRA "shall be construed to permit an agency to delay or obstruct the inspection or copying of public records." §7922.500.

Even significant expense to the agency will not excuse an agency from conducting a

[2] All further statutory references are to the Government Code unless stated otherwise.

[3] In 2023, the California Legislature re-codified the CPRA.

thorough search for responsive records unless it constitutes an undue burden. *See, e.g.,* CBS Broadcasting Inc. v. Superior Ct., (2001) 91 Cal. App. 4th 892, 909 ($43,000 cost to agency to compile responsive public records was not valid reason to deny CPRA request). "Reasonable efforts do not require that agencies undertake extraordinarily extensive or intrusive searches, however. In general, the scope of an agency's search for public records 'need only be reasonably calculated to locate responsive documents.'" City of San Jose v. Superior Court, ("San Jose"), (2017) 2 Cal.5th 608, 627 (citation omitted).

The "CPRA does not prescribe specific methods of searching for those documents and agencies may develop their own internal policies for conducting searches. Some general principles have emerged, however. Once an agency receives a CPRA request, it must "'communicate the scope of the information requested to the custodians of its records,' although it need not use the precise language of the request..." Ibid. (citation omitted). If the agency determines that the requested records are subject to disclosure, it must state in the determination "the estimated date and time when the records will be made available." §7922.535(a). There is no deadline expressed in number of days for producing the records. Rather, the agency "shall make the records promptly available." §7922.530(a).

If the agency determines that the requested records are not subject to disclosure, the agency must promptly notify the person making the request and provide the reasons for its determination. §7922.535(a). The agency must justify withholding a responsive record by demonstrating it is exempt or that on the facts of the case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. §7922.000. The determination that the request is denied, in whole or part, must be in writing. §7922.540(a).

a. Exemptions

The right to inspect is subject to certain exemptions, which are narrowly construed. California State University, *supra,* 90 Cal.App.4th at 831. The burden of demonstrating that exemptions apply lies with the governmental entity. §7922.000.

Public records are exempt from disclosure where "exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege" §7927.705.

Under the catch-all provisions of 7922.00-.540 (formerly §6255), public records are exempt from disclosure if "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure." Pursuant to the catch-all provisions, the agency must demonstrate a clear overbalance on the side of confidentiality. California State University, Fresno Assn., Inc. v. Superior Court, (2001) 90 Cal.App.4th 810, 831.

b. Enforcement

A CPRA claim to compel compliance with a public records request may proceed through either mandamus or declaratory relief. §7923.000. Because the petitioner may proceed through either mandamus or declaratory relief, the trial court independently decides whether disclosure is required. *See* City of San Jose v. Superior Court, (1999) 74 Cal.App.4th 1008, 1018 (appellate court independently reviews trial court CPRA decision). No administrative record is required, and the parties must submit admissible evidence.

If the court finds that the public official's decision to refuse disclosure is not justified, the court shall order the public official to make the record public. §7923.110(a). If the requestor prevails in such litigation, the court shall award court costs and reasonable attorney's fees, to be

paid by the public agency at issue. §7923.115(a). If the case was clearly frivolous, the court shall award court costs and reasonable attorney's fees to the public agency. §7923.115(b).

2. Fee Agreements

An attorney has a duty to maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client. Business and Professions Code ("B&P Code") §6068(e).

In any case not coming within B&P Code section 6147 governing contingency fee contracts, in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed $1,000, the contract for services in the case shall be in writing. B&P Code §6148(a). At the time the contract is entered into, the attorney shall provide the client with a copy of the contract signed by both the attorney and the client. Id. The contract shall contain: (1) any basis for calculating compensation, (2) the general nature of the legal services to be provided to the client, and (3) the respective responsibilities of the attorney and the client as to the performance of the contract.

A written fee contract shall be a confidential communication within the meaning of B&P Code section 6068(e) and Evid. Code section 952. B&P Code §6149. In addition to the attorney-client privilege and an attorney's duty of confidentiality to his or her client (B&P Code §6068(e)), "a written fee contract between an attorney and a client is protected." Dietz v. Meisenheimer & Herron, (2009) 177 Cal.App.4th 771, 786.

3. Attorney-Client Privilege

The attorney-client privilege is a legislative creation codified in the Evidence Code. McKesson HBOC, Inc. v. Superior Court, (2004) 115 Cal.App.4th 1229, 1236. Its purpose is to promote full and open discussion between clients and their attorneys. Ibid. The attorney-client privilege covers all forms of communication, including transactional advice and advice in contemplation of threatened litigation. Titmas v. Superior Court, (2001) 87 Cal.App.4th 738, 744.

A "confidential communication between client and lawyer" is "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." Evid. Code §952. The attorney-client privilege is the client's privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer. Evid. Code §954.

The party claiming the attorney-client privilege has the burden of establishing the preliminary facts necessary to support its exercise -- *i.e.*, a communication made in the course of an attorney-client relationship. Costco Wholesale Corp. v. Superior Court, (2009) 47 Cal.4th 725, 733. These preliminary facts are (a) information transmitted between and client and lawyer, (b) in the course of a relationship, (c) in confidence, and it includes a legal opinion formed and the advice given by the lawyer in the course of that relationship. Evid. Code §952. Not every communication between an attorney and client is privileged, however. Los Angeles County Board of Supervisors v. Superior Court, (2016) 2 Cal.5th 296, 282. If the preliminary facts show a communication made in the course of an attorney-client relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish the

communication was not confidential or that the privilege does not for other reasons apply. Ibid. (citing Evid. Code §917(a)).

D. Statement of Facts[4]

1. EPA's Evidence[5]

a. Background

EPA's principal focus is the use of public institutions in pursuit of an activist climate change agenda. Horner Decl., ¶13. The is an issue of great public interest. Horner Decl., ¶13. Private third-parties and officeholders often contribute to these institutions and use them to assist in activist efforts. Horner Decl., ¶13. Public and private universities, activists, the plaintiff's tort bar, major financial contributors, and state attorneys general all partake in a national campaign of legal action against what Horowitz has called "climate denialists." Horner Decl., ¶13. Some have described law school clinics as a secret weapon in this effort. Horner Decl., ¶13.

b. The CPRA Requests

On August 2, 2021, EPA submitted a CPRA request to UCLA. Pet. Ex. 3. Request No. 2 sought any common interest, representation, fee, consulting, nondisclosure, and/or confidentiality agreement between UCLA Law and either Law Firm or Emmett, either dated or in effect from 2016 to 2021. Pet. Ex. 3.

On August 26, 2021, UCLA responded, asserting that the documents responsive to Request No. 2 were exempt based on two privileges integrated into the CPRA based on then-section 6254(k): (a) the attorney-client privilege under Evid. Code section 950 and B&P Code section 6149, and (b) the attorney work product privilege under CCP section 2018.010 *et. seq.* Pet. Ex. 4.

UCLA's response also asserted that, per then-section 6255(a), the public interest favoring non-disclosure of the requested records outweighs the public interest in disclosure. Pet. Ex. 4. The release of the records would chill UCLA's ability to work with law firms and their clients. Pet. Ex. 4. This in turn would reduce important educational opportunities for students attending public institutions of higher education. Pet. Ex. 4.

c. Interrogatory Responses

EPA asked Regents in Special Interrogatories if UCLA's environmental law clinic, the Frank G. Law Clinic Environmental Law Clinic ("Law Clinic"), is a separate entity from Regents. Hunter Decl., ¶2, Ex. 1. Subject to objections, Regents answered "No." Hunter Decl., ¶2, Ex. 1, p. 13. UCLA Law uses Law Clinic to train students interested in environmental lawyering. Hunter Decl., ¶2.

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[4] EPA's opening brief cites to its verified Petition. Pet. Op. Br. at 1. Because EPA is a corporation, it cannot rely on its verified Petition as an affidavit or declaration establishing the facts therein alleged. CCP §446(a). The court will still describe relevant cited provisions of the Petition for completeness.

As the court discussed with the parties at trial, Regents cite a declaration of Jean-Paul Cart, Esq. Opp. at 2-3. No such declaration is on file.

[5] Regents' written objections to the Declaration of Christipher Horner ("Horner") are sustained with the exception of Paragraph 13.

d. PMK Deposition

On September 12, 2023, EPA deposed Horowitz as Law Clinic' Director and Regents' Person Most Knowledgeable ("PMK"). Hunter Decl., ¶3, Ex. 2 (Horowitz Depo., pp. 1, 10). EPA asked Horowitz whether Law Clinic's and Law Firm's agreements ("Agreements") describe specific clients who are not Law Firm clients but whose work would be used to train UCLA Law students. Horowitz Depo., p. 11. Regents' counsel objected and instructed Horowitz not to answer beyond any agreements not already disclosed to EPA. Horowitz Depo., p. 11.

Horowitz confirmed Regents' Interrogatory responses that Law Clinic and Regents have never billed or received money from Law Firm. Horowitz Depo., p. 33. The Agreements do allow Law Clinic to recover fees under certain circumstances. Horowitz Depo., p. 33. Regents' counsel asserted that Horowitz would not disclose the specific conditions in the Agreements that trigger that right to fees. Horowitz Depo., p. 40.

Law Clinic has had similar arrangements with other clients, not necessarily law firms, from whom it collected over $1,000. Horowitz Depo., p. 40. It has had up to ten such clients in its 25-year history. Horowitz Depo., p. 42. Horowitz could not remember the names of the clients or whether they were law firms. Horowitz Depo., pp. 40-41. More than ten years ago, Horowitz was involved when Law Clinic worked on behalf of some members of the Hopi Indian Tribe to oppose a fossil fuel-related facility on Hopi land and collected fees. Horowitz Depo., pp. 43-44. The client was someone affiliated with the Hopi Tribe. Horowitz Depo., p. 43.

Horowitz initially testified that Law Clinic had collected fees in a matter involving Newhall Ranch in the last five or ten years. Horowitz Depo., pp. 41-42. EPA subsequently asked if Horowitz could remember any such matter in the last ten years because she "mentioned the ranch matter was ten years old." Horowitz Depo., pp. 44. Horowitz could not recall any matter in the last ten years without refreshing her recollection. Horowitz Depo., pp. 44.[6]

The hourly rates that Law Clinic charges vary depending on the engagement, but average $500 per hour for Horowitz and between $100-$150 per hour for students. Horowitz Depo., pp. 44.

Horowitz was shown an email she wrote to various groups on March 14, 2018. Horowitz Depo., p. 52. The top paragraph said it was a busy time for those who cared about climate change, and Law Clinic was working as hard as ever to keep things moving "in the right direction." Hunter Decl., ¶3, Ex. 2. When asked what that meant, Horowitz explained that it referred to efforts to ensure environmental laws are enforced and reduce environmental harm to the community. Horowitz Depo., p. 52.

The email's third bullet point described Law Clinic' work on cases that cities, including Imperial Beach and Richmond, had filed against fossil fuel companies. Hunter Decl., ¶3, Ex. 2. Those two cities were Law Firm's clients. Horowitz Depo., p. 53; Hunter Decl., ¶4. Law Firm was Law Clinic's client. Horowitz Depo., p. 53.[7]

2. Regents' Evidence

a. Law School Clinics

Clinics in schools like UCLA Law and the University of California, Berkeley School of

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[6] Based on this answer, EPA concludes that Law Clinic has not collected fees under the Agreements in the last ten years. Hunter Decl., ¶4.

[7] Based on Horowitz's answers, EPA concludes that Law Clinic never billed Law Firm for this work. Hunter Decl., ¶4.

Law ("Berkeley Law") provide law students one way of completing the law school's experiential education graduation requirement. Riley Decl., ¶4. Berkeley Law has 14 clinics, and UCLA Law has 19 clinics. Riley Decl., ¶5; Rabin Decl., ¶7. These programs provide opportunities in a wide range of topics and legal subject areas. Riley Decl., ¶5; Rabin Decl., ¶7.

UCLA Law's clinics are subject to the school's administrative and budgetary oversight but otherwise operate independently. Rabin Decl., ¶8. The clinics choose their own clients, terms of engagement, and projects. Rabin Decl., ¶8.

The defining feature of clinical education is the opportunity to serve live clients and provide actual legal services under the supervision of licensed and practicing attorneys. Rabin Decl., ¶9. Law school clinics allow law students to act as attorneys outside of the classroom. Rabin Decl., ¶9. Clinics take cases with actual clients and establish attorney-client relationships with those clients. Riley Decl., ¶6. Supervised by licensed attorneys, clinic students provide legal advice, conduct policy analysis and advocacy, draft briefs, help establish new businesses, appear as counsel of record in litigation, and perform other client-centered responsibilities. Riley Decl., ¶6.

Internships and externships also provide law students with real world practical experience. However, law clinics are unique because they have a pedagogical component in addition to the provision of legal services. Rabin Decl., ¶10. Every law clinic has a seminar component in which clinical instructors lead discussions on topics related to casework or project work. Rabin Decl., ¶10. This component aims to be systematic, deliberate, and provide a level of training that supervising attorneys in a practice outside the law school context do not have the time or training to offer. Rabin Decl., ¶10.

Clinics teach students how to practice in compliance with the ethical rules of the profession. Riley Decl., ¶7. Clinics practice the same rules of professional responsibilities as attorneys and teach students how to apply them. Riley Decl., ¶7; Rabin Decl., ¶11. This includes the rules governing the attorney-client relationship and confidentiality. Riley Decl., ¶7; Rabin Decl., ¶11. Confidentiality is one of the first topics most clinicians cover with students. Rabin Decl., ¶11. Law students often partake in the initiation of the attorney-client relationship at the start of the semester. Rabin Decl., ¶11. This includes signing retainer agreements. Rabin Decl., ¶11. UCLA Law clinics take great precautions to ensure the confidentiality of client-related work. Rabin Decl., ¶8.

Most attorney-client representation agreements and co-counsel agreements promise the clients that attorney-client privilege protects any work product and correspondence. Riley Decl., ¶12. Clients will not retain legal clinics unless their relationship enjoys the same privilege protections that clients have with other lawyers. Riley Decl., ¶10; Rabin Decl., ¶14. The clinics could not ethically offer legal services if they must require clients to waive the confidentiality protections due to them. Rabin Decl., ¶16; Horowitz Decl., ¶17. Law school clinics could not operate, and students could not learn and practice representing clients in a supervised environment. Riley Decl., ¶10.

b. <u>The Law Clinic</u>

Law Clinic is one of UCLA Law's "live-client" legal services clinics. Horowitz Decl., ¶¶ 1, 5. Law Clinic focuses on environmental law and matters related to climate change, plastic pollution, water pollution, lead soil contamination, air pollution, and endangered species conservation. Horowitz Decl., ¶5.

Law Clinic' staff typically consists of the director, supervising attorney, and legal fellows

who are licensed attorneys. Horowitz Decl., ¶6. They work with students who join Law Clinic by enrolling in a six-unit course. Horowitz Decl., ¶6. As with the other live-client clinics, Law Clinic's students can work on actual legal matters under the supervision of practicing attorneys. Horowitz Decl., ¶5. The students provide legal services to clients through an attorney-client relationship while under supervision by licensed attorneys. Horowitz Decl., ¶7. This allows the students to build skills in professional responsibility, legal research and writing, client communication, advocacy strategy, teamwork, and relevant substantive areas of the law. Horowitz Decl., ¶7.

As with private law firms, Law Clinic' legal services are not limited to direct representation in pending litigation where the client is a party. Horowitz Decl., ¶9. Law Clinic has drafted and filed amicus briefs, researched and developed policy advocacy strategies, and provided legal advice outside of litigation. Horowitz Decl., ¶9.

Law Clinic aims to teach students to be ethical and responsible attorneys. Horowitz Decl., ¶8. It therefore creates attorney-client relationships and respects the boundaries and duties that arise from those relationships. Horowitz Decl., ¶8. Law Clinic enters into formal written agreements with new clients. Horowitz Decl., ¶10. These agreements define the terms and scope of the engagement and memorialize the establishment or expansion of the relationship. Horowitz Decl., ¶10. They also discuss responsibility for attorneys' fees and costs, including, in some situations, Law Clinic will be entitled to receive compensation for the provided legal services. Horowitz Decl., ¶10.

Law Clinic uses a compartmentalized document-storage system so that only Law Clinic staff and current Law Clinic students can access its files. Horowitz Decl., ¶6.

c. <u>Law Firm's Attorney-Client Relationship with Law Clinic</u>

Law Firm is a former client of Law Clinic. Horowitz Decl., ¶11. Law Firm's practice focuses on plaintiff representation in high-impact, high-value environmental cases. Sher Decl., ¶3. It has filed claims based on land, air, and water pollution and contamination. Sher Decl., ¶3. Law Firm has sued fossil fuel companies and others for failure to warn or engaging in campaigns of deception as to the link between their products and climate change. Sher Decl., ¶3.

From 2018 through 2019, Law Firm retained Law Clinic to represent it in pending and anticipated legal proceedings. Sher Decl., ¶4; Horowitz Decl., ¶11. Law Firm and Law Clinic memorialized this retention in an initial written agreement and subsequent extension (the Agreements). Sher Decl., ¶4. On February 4, 2018, Law Clinic Co-Director Hecht signed the initial engagement and fee Agreement. Horowitz Decl., ¶11. On August 16, 2018, Horowitz signed an Agreement extending the scope of the engagement. Horowitz Decl., ¶11.

Both Agreements define the scope of the attorney-client relationship and the terms under which Law Clinic would provide legal services. Horowitz Decl., ¶12. One provision in the Agreements concerns the conditions in which Law Clinic would receive compensation for the provision of legal services. Horowitz Decl., ¶12. In part because of the compensation term, Law Clinic tracked the time it spent on Law Firm matters. Horowitz Decl., ¶12. If the conditions were met, it is highly likely that Law Clinic's recovery would exceed $1,000. Horowitz Decl., ¶12. Law Clinic has received significant fees in the past under similar agreements with other clients. Horowitz Decl., ¶12.

The Agreements provide that Law Firm would request advice and analysis on specific legal topics. Horowitz Decl., ¶13. Law Clinic's attorneys and students would then perform the necessary work and provide the requested legal analysis and advice. Horowitz Decl., ¶13.

Sometimes the request for legal analysis related to a pending litigation matter, but that was not always the case. Horowitz Decl., ¶13. Law Clinic has provided legal analysis to Law Firm that was not known to relate to a pending litigation matter. Horowitz Decl., ¶13. Law Clinic has always treated Law Firm as the client and has maintained confidentiality and privilege in all aspects of its representation of Law Firm. Horowitz Decl., ¶14.

Although Law Firm has its own lawyers, it is not the first Law Clinic client that has in-house lawyers. Horowitz Decl., ¶16. Major environmental advocacy groups like Earthjustice and the Natural Resources Defense Council have also retained Law Clinic. Horowitz Decl., ¶16. Like Law Firm, these groups and Law Clinic entered into attorney-client relationships and Law Clinic provided confidential and privileged legal advice and services to them. Horowitz Decl., ¶16.

During the representation, Law Firm relied on the belief that communications with Law Clinic fell under either the attorney-client privilege or attorney work product doctrine to the same extent as in any other attorney-client relationship. Sher Decl., ¶5. Law Firm attorneys and staff respected the privileged nature of all materials and communications exchanged with Law Clinic. Sher Decl., ¶6.

Law Firm will not waive the attorney-client privilege as to its retention agreements with Law Clinic. Sher Decl., ¶6. If the court were to somehow narrow the attorney-client privilege of Law Clinic and its clients, Law Firm could no longer retain Law Clinic or similar clinics. Sher Decl., ¶5.

E. Analysis

Petitioner EPA seeks mandamus to compel Regents to disclose the two Agreements between Law Firm and Law Clinic.

Regents defend on the basis that (a) the Agreements are privileged fee agreements exempt from disclosure under section 7927.705 (formerly §6254(k), (b) they are not public records, and (c) their disclosure would be contrary to the public interest under the catch-all balancing test of section 7922.00-7922.540 (formerly §6255). Regents have the burden of proof to show the agreements are exempt. §7922.000.

1. The Agreements Are Exempt Under Section 7927.705

Public records exempt from disclosure include records for which disclosure "is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege" §7927.705. As with all CPRA exemptions, the exemption for privileged records is narrowly construed. California State University, *supra,* 90 Cal.App.4th at 831.

To meet its burden, Regents must show the existence of an attorney-client relationship between Law Firm and Law Clinic – that is a relationship created for purpose of privileged attorney-client communication. A "client" is a person who employs or retains an attorney to appear for him in court, advise, assist, and defend him in legal proceedings, and to act for him in any legal business. Black's Law Dictionary, (4th ed. (1968) p. 321.

If Law Clinic and Law Firm have an attorney-client relationship, then communications between them in the course of their relationship are privileged. A party claiming the attorney-client privilege has the burden of establishing the preliminary facts necessary to support its exercise -- *i.e.*, a communication made in the course of an attorney-client relationship. Costco Wholesale Corp. v. Superior Court, (2009) 47 Cal.4th 725, 733. These preliminary facts are (a) information transmitted between and client and lawyer, (b) in the course of a relationship, (c) in

confidence, and it includes a legal opinion formed and the advice given by the lawyer in the course of that relationship. Evid. Code §952.[8]

B&P Code section 6149 provides that a written fee contract shall be a confidential communication within the meaning of B&P Code section 6068(e)[9] and Evid. Code section 952. Thus, B&P Code section 6149 cloaks a written fee contract between attorney and client with the same confidentiality protection as the attorney-client privilege. Dietz v. Meisenheimer & Herron, *supra,* 177 Cal.App.4th at 786.

EPA contends that B&P Code section 6149 was enacted before California Constitution art. 1, section 3(b), which provides, in relevant part, for the people's right to access to information concerning the writings of public agencies and for the narrow construction of any statute that limits this right of access. EPA argues that a fair and reasonable construction of B&P Code 6149 precludes the Agreements as "written fee contracts" but even if it could be broadly construed to embrace the Agreements, art. 1, section 3(b) mandates that such a broad construction must be eschewed. Pet. Op. Br. at 4-5.

No broad construction of B&P Code section 6149 is required because its plain language provides that a fee contract between an attorney and client is privileged. It is true that, pursuant to the common law, the attorney-client privilege and work product doctrine do not protect retainer agreements. *See* Jensen v. BMW of N. Am., (S.D. Cal. Jul. 23, 2019) 2019 U.S. Dist. LEXIS 122676, *5; Gusman v. Comcaste Corp., (S.D. Cal. 2014) 298 F.R.D.592,600 ("[T]he attorney-client privilege generally does not preclude disclosure of fee agreements"). It also is true that the plain language of B&P Code section 6149 does not protect every retainer agreement between a lawyer and client; there must be a fee involved. But when there is, B&P Code section 6149 protects the written fee contract as a privileged confidential communication that is not subject to disclosure.

EPA argues that B&P Code section 6148 establishes that the Agreements are not fee contracts under B&P Code section 6149. B&P section 6148 applies solely to cases "in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars ($1,000)" (underlining added). Pet. Op. Br. at 3.

As Regents respond (Opp. at 9-10), fee agreements under B&P Code section 6148 are but one type of retainer agreement. B&P Code Chapter 4 (Attorneys), Article 8.5 (Fee Agreements) (§§ 6146-6149.5) discusses different types of attorney-client fee arrangements, including contingent fee agreements. B&P Code section 61149's phrase "written fee contract" is not found in B&P Code section 6148. The requirements of B&P Code section 6148 for a specific type of fee agreement do not govern the requirements of B&P Code section 6149 for fee contracts.

EPA further argues that the Agreements are not fee contracts within the meaning of B&P Code section 6149. The Agreements set forth the basic terms under which Law Firm would assist the legal training of UCLA Law students who were interested in environmental lawyering. In return, Law Firm would receive the assistance of Law Clinic staff and UCLA Law students in Law Firm's pursuit of anti-fossil fuel lawsuits at no cost to itself, with the exception that the agreements

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[8] The client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer. Evid. Code §954.

[9] An attorney has a duty to maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client. B&P Code §6068(e). When a lawyer receives demand for privileged communications with a client, the lawyer is obligated to assert the privilege absent contrary direction from the client. *See* Evid. Code §955.

apparently provide that Regents might someday receive a share of any attorneys' fees awarded to Law Firm or its clients. Pet. Op. Br. at 3.

EPA concludes that the Agreements are not written fee contracts under B&P Code section 6149 because they are not fee contracts; the client (Law Firm) has no liability to its attorney (Law Clinic) for any expenses or fees. Pet. Op. Br. at 3.

Nor is it correct to characterize Law Clinic as the attorney and Law Firm as the client in their relationship. Pet. Op. Br. at 3. From UCLA Law's perspective, the Agreements memorialize an employment agreement under which Law Clinic, as employer, is hiring Law Firm, as employee, to assist in Law Clinic's clinical training of UCLA Law's students in environmental lawyering. Law Firm's consideration is not a salary, but rather the no-cost assistance of Law Clinic's staff and UCLA Law's students in the pursuit of anti-fossil fuel lawsuits on behalf of Law Firm's clients. This is concededly different from Regents' typical employment agreements with its attorney instructors/professors, but this distinction does not transmute Law Clinic into an attorney, Law Firm into a client, or the Agreements into written fee contracts. Pet. Op. Br. at 3.

From Law Firm's perspective, the Agreements set forth the terms under which Law Firm, as lead counsel of record, obtained co-counsel to assist it in providing legal services to its clients. Again, the Agreements cannot accurately be characterized as written fee contracts because Law Firm is not a client paying a fee to its attorney (Law Clinic), but rather is an attorney obtaining co-counsel at no cost to Law Firm and its clients. Pet. Op. Br. at 4.

In reply, EPA shifts from its general contention that the Agreements are employment contracts to a contention that Regents' evidence supports a conclusion that Law Firm's attorneys were clinical instructors of Law Clinic students. EPA relies on Regents' evidence that "law school clinics allow students to function as attorneys outside the classroom, assisting real clients under the supervision of clinical instructors, who are licensed and practicing attorneys." Rabin Decl., ¶9 (emphasis added). EPA also relies on a March 14, 2018 email in which then Emmett Institute Director Horowitz wrote to board members: "Students in the clinic are working, among other things, on cases filed against fossil fuel companies by the City of Imperial Beach, City of Richmond, and some other California cities and counties seeking abatement of climate change harms. These cases give students an unparalleled chance to develop cutting-edge strategies to address climate change." Hunter Decl., ¶3, Ex. 2 (emphasis added). From this evidence, EPA concludes that the City of Imperial Beach, City of Richmond and some other California cities and counties were Law Clinic's actual clients and Law Firm was the clinical instructor under whose supervision Law Clinic's students assisted the actual clients. Reply at 5.

EPA adds that Regents repeatedly conflate (1) a law clinic's representation of, and entry into a written retention agreement with, an individual actual client (such as an indigent criminal defendant or immigration asylum claimant) and (2) a law clinic's agreement with a law firm employed as one of its clinical instructors to supervise UCLA Law's students in assisting Law Firm's real clients. Written agreements with the former qualify as written fee contracts subject to an exemption from production pursuant to B&P Code section 6149 but the latter do not. Reply at 5.

EPA's argument that Law Clinic and Law Firm did not have an attorney-client relationship is factually unsupported. The practice of law is too broad a phrase to be encompassed in a single all-inclusive definition, but it is generally understood as the performance of services in a court of justice in any matter pending therein, and in a larger sense includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, which may or may not be pending in court. Schroeder v. Wheller, (1932) 126 Cal.App.367, 375.

The evidence shows that the Agreements were retainer agreements between Law Clinic and Law Firm pursuant to which Law Clinic practiced law by providing legal services. From 2018 through 2019, Law Firm retained Law Clinic to represent it in pending and anticipated legal proceedings. Sher Decl., ¶4; Horowitz Decl., ¶11. The Agreements define the scope of the attorney-client relationship and the terms under which Law Clinic would provide legal services. Horowitz Decl., ¶12. Specifically, Law Firm would request advice and analysis on specific legal topics and Law Clinic's attorneys and students would then perform the necessary work and provide the requested legal analysis and advice. Horowitz Decl., ¶13. Sometimes the legal analysis related to a pending litigation matter, but that was not always the case. Horowitz Decl., ¶13. Law Clinic has provided legal analysis to Law Firm not known to relate to a pending litigation matter. Horowitz Decl., ¶13. Law Clinic has always treated Law Firm as the client and has maintained confidentiality and privilege in all aspects of its representation of Law Firm. Horowitz Decl., ¶14.

The evidence shows that the Agreements were retainer agreements for Law Clinic to practice law by rendering legal advice to Law Firm, sometimes when Law Firm had an existing client and sometimes when it did not. EPA's argument that various cities were Law Firm's real clients, and that Law Firm was the clinical instructor under whose supervision Law Clinic students assisted those real clients, is unsupported. There is no evidence that Law Clinic or its students appeared as co-counsel in any litigation or provided advice directly to any city. Rather, Law Clinic was retained to provide advice to Law Firm. The Agreements were retainer agreements for legal services by Law Clinic and not employment agreements or contracts for Law Firm to act as the clinical instructor of UCLA Law's students.

This advice was given at Law Firm's request on specific legal topics. Horowitz Decl., ¶13. Law Clinic's attorneys and students would then perform the necessary work and provide the requested legal analysis and advice. Horowitz Decl., ¶13. These services took the form of research and developing policy advocacy strategies and providing legal advice outside of litigation. Horowitz Decl., ¶9. While Law Firm retained Law Clinic to represent it in pending and anticipated legal proceedings (Sher Decl., ¶4; Horowitz Decl., ¶11), and Law Clinic's legal services in other matters have included direct representation of a client in pending litigation (Horowitz Decl., ¶9), there is no evidence that Law Clinic represented any city or other party in litigation.[10]

In addition to status as retainer agreements, the Agreements qualify as fee contracts under B&P Code section 6149. Both had a provision concerning the condition in which Law Clinic would receive compensation for the provision of legal services. Horowitz Decl., ¶12. In part because of the compensation term, Law Clinic tracked the time it spent on Law Firm matters. Horowitz Decl., ¶12. If those conditions were met, it was highly likely that Law Clinic's recovery would exceed $1,000. Horowitz Decl., ¶12. Law Clinic has received significant fees in the past under similar agreements with other clients. Horowitz Decl., ¶12.

The Agreements between Law Firm and Law Clinic are fee contracts pursuant to B&P section 6149 and therefore are privileged. As Regents argue, (1) the Agreements memorialize Law Firm's retention of Law Clinic to provide it with legal services (Horowitz Decl., ¶11; Sher Decl., ¶4); (2) the Agreements contain terms regarding Law Firm's payment of fees to Law Clinic

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[10] The Agreements are not fee sharing agreements between lawyers. Lawyers not in the same law firm shall not divide a fee for legal services unless (1) the lawyers agree to do so in writing and (2) the client has consented in writing after full written disclosure of certain issues and the total fee is not increased. Rules of Professional Responsibility Rule 1.5.1. The Agreements are not fee sharing agreements because the cities were not Law Clinic's client.

as compensation for its legal services (Horowitz Decl., ¶12); (3) Law Clinic has obtained significant attorneys' fees recoveries in the past from similar client representations (Horowitz Decl., ¶12); and (4) Law Firm has not waived the attorney-client privilege with respect to the Agreements (Sher Decl., ¶6). Opp. at 9.

EPA also argues that, as it is "in the dark" about the specific text of the agreements, it cannot refute that the agreements may include some material legitimately covered by the attorney-client privilege or the attorney work product. If so, the redaction of any such material would be permissible. Los Angeles County Bd. of Supervisors v. Superior Court, (2016) 2 Cal.5th 282, 292 (the CPRA's exemption for privileged portions of government records does not justify withholding entire documents but instead requires that all reasonably segregable portions of the documents be produced). Thus, general information about the structuring of the relationship between the Law Clinic and Law Firm may not be deleted. EPA contends that the only permissible redactions would be (1) any confidential communications between Law Firm and its anti-fossil fuel clients and (2) Law Firm's disclosure of confidential legal theories or strategy. Pet. Op. Br. at 5.

EPA's argument that Regents are obligated to release redacted versions of the agreements is legally unsupported. B&P Code section 6149 provides a categorical privilege covering an attorney-client fee contract in its entirety with no redaction obligations. *See* Los Angeles County Bd. of Supervisors v. Super. Ct., ("Los Angeles County") (2016) 2 Cal. 5th 282, 299 (B&P Code section 6149 provides broader privilege protections for fee agreements than for invoices);[11] Don v. Unum Life Ins. Co. of Am., (C.D. Cal. Nov. 4, 2014) 2014 U.S. Dist. LEXIS 195527, *6 (written fee agreements are "blanketly protected" under Evid. Code §§ 952, 954 and B&P Code §§ 6068(e) and 6149); Jensen v. BMW of N. Am., *supra,* 2019 U.S. Dist. LEXIS 122676 at *5-6 ("under California state law, a 'written fee contract shall be deemed to be a confidential communication' that is not subject to discovery" because it is privileged); Mier v. CVS Pharm., Inc., (C.D. Cal. Apr. 30, 2021) 2021 U.S. Dist. LEXIS 150468 (retainer agreement between attorney and client were privileged under B&P Code section 6149). Opp. at 11.

The Agreements are privileged in their entirety and are exempt from disclosure pursuant to section 7927.705.

2. The Agreements Are Not Public Records

Regents argue that the agreements do not reflect the public's business and are not public records as defined in the CPRA. The CPRA defines a "public record" as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." §7920.530(a). The phrase "conduct of the public's business" in this definition is not without consequence. "The mere

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[11] In Los Angeles County, the California Supreme Court addressed a CPRA request for both attorney invoices and an attorney-client fee agreement. The court stated that invoices for legal services are not generally communicated for the purpose of legal consultation; they are communicated for the purpose of billing the client. 2 Cal.5th 282, 295. Nonetheless, invoices may contain information within the scope of privilege. Id. at 297. Where a legal matter is pending, everything in the invoice is encompassed within the privilege. Id. Where the legal matter has ended, the fee totals may not always reveal attorney-client communications for purpose of legal representation. Id. As attorney invoices may contain both privileged and non-privileged materials and that redaction offered "a ready solution for records blending exempt and nonexempt information []." Id. at 292, 297. The court contrasted attorney invoices from attorney-client fee agreements for which the legislature chose to provide a blanket privilege. *See* id. at 299.

possession by a public agency of a document does not make the document a public record." Coronado Police Officers Assn. v. Carroll, ("Coronado Police Officers") (2003) 106 Cal. App. 1001, 1006 (*citing* City Council v. Super. Ct., (1962) 204 Cal. App. 2d 68, 73). Whether a document is a "public record" often requires a highly contextual inquiry. City of San Jose, *supra,* 2 Cal. 5th at 618. "[T]o qualify as a public record under CPRA, at a minimum, a writing must relate in some substantive way to the conduct of the public's business. This standard, though broad, is not so elastic as to include every piece of information the public may find interesting." Factors in this inquiry may include the content of a document, the purpose for it, the audience for whom it was intended, and the nature and scope of the duties of the employee who created it. Id. Opp. at 5-6.

Regents argue (Opp. at 6) that Coronado Police Officers—favorably referenced by the California Supreme Court in City of San Jose—is instructive. There, a CPRA request was aimed at a database maintained by the San Diego Public Defender's Office to catalog "information regarding peace officer performance and other recurring issues" that could be used as impeachment evidence in future cases. 106 Cal. App. 4th at 1005. The database contained information from client files, as well as public records, newspaper articles, or anything else that might be of future value when representing a criminal defendant. Id. The Public Defender's Office argued that the database did not contain "public records" because it was created in support of its representation of criminal defendants, which was a private function despite being funded by the public. Id. at 1006. The appellate court agreed, finding that, when a public defender is acting as an attorney to a private client, he or she is not acting in as an agent of the state and instead is serving a private function. Id. at 1007-08. The court relied on: (1) Polk County v. Dodson, ("Polk County") (1981) 454 U.S. 312, for the legal principle that a state-funded attorney representing a private client "maintains the same level of professional independence as a private attorney, and the state is constitutionally obligated to respect this independence;" and (2) In re Hough, (1944) 24 Cal. 2d 522, for the legal principal that a public defender is not a state actor when representing private clients. Id.

Regents contend that Coronado Police Officers' holding that a publicly employed attorney is not conducting the public's business while representing a private client is applicable. Like a public defender's office, Law Clinic provides direct legal services to its clients, including private entity clients such as Law Firm. Horowitz Decl., ¶¶ 5, 6, 9. Coronado Police Officers also provided guidance where the line must be drawn, finding the database to be outside the CPRA because its creation "represent[ed] a logical application of the traditional functions of defense counsel." 106 Cal. App. 4th at 1008. Here, the Agreements are inextricably tied to Law Clinic's provision of legal services to its client, Law Firm, and thus do not reflect "the conduct of the public's business" and are not public records. Opp. at 7.

Regents further rely on Sussex Commons Associates, LLC v. Rutgers, ("Sussex Commons") (2012) 210 N.J. 531, where the New Jersey Supreme Court denied a public records request directed at a public law school legal clinic because the law clinic's records (concerning funding and disbursements, bills, time records, communications with specific persons before a decision to represent them, and documents sent to or from specific parties) were not covered by the state's Open Public Records Act ("OPRA"). The court reasoned:

> "Clinical legal programs, though, do not perform any government functions. They conduct no official government business and do not assist in any aspect of State or local government. Instead, they teach law students how to practice law and represent clients. In addition, not even the University, let alone any government agency, controls the manner in which clinical professors and their students practice

law. As a result, we do not see how it would further the purposes of OPRA to allow public access to documents related to clinic cases. Unlike a request for documents about the funding of a clinic or its professors' salaries, which are discoverable under OPRA, case-related records would not shed light on the operation of government or expose misconduct or wasteful government spending." 210 N.J. at 546-47.

Regents argue that the same is true of Law Clinic's provision of legal services to its clients, including Law Firm. Opp. at 7-8.

Law Clinic disagrees. Section 7920.530(a) defines "public records" as "any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency…." As stated in San Gabriel Tribune v. Superior Court, (1983) 143 Cal. App. 3d 762, 774:

> "This definition [of public records, as now defined by § 7920.530(a)] is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed. Only purely personal information unrelated to 'the conduct of the public's business' could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities." Reply at 3.

EPA contends that City of San Jose's reference to Coronado Police Officers undercuts Regents' argument:

> "Coronado Police Officers…demonstrates the intricacy of determining whether a writing is related to public business. There, police officers sought access to a database of impeachment material compiled by public defenders….However, their representation of individual clients, though paid for by a public entity, was considered under case law to be essentially a private function….The court was careful to note that not all documents related to the database were private, however. Documents reflecting policy decisions about whether and how to maintain the database might well relate to public business, rather than the representation of individual clients….Content of that kind would constitute public records." City of San Jose, *supra,* 106 Cal. App. 4th at 619 (emphasis added; citations omitted). Reply at 3-4.

EPA adds that Polk County, *supra,* 454 U.S. at 321-22, cited in Coronado Police Officers, concerned public defenders whose professional independence is constitutionally required. "A public defender is not amenable to administrative direction in the same sense as other employees of the State….State decisions may determine the quality of his law library or the size of his caseload. But a defense lawyer is not, and by the nature of his function cannot be, the servant of an administrative superior….." Id. Equally important, it is the constitutional obligation of the State to respect the professional independence of the public defenders whom it engages. Id. EPA concludes that the Agreements established the terms under which Law Firm acted as clinical instructors/faculty in connection with the Law Clinic's provision of clinical training to UCLA Law students and are related to the conduct of the public's business. Reply at 4.

Sussex Commons is distinguishable because it concerned a public records statute in another state and Regents make no effort to compare New Jersey's OPRA to the CPRA. The court also accepts that Polk County is distinguishable for the reasons stated by EPA. Nonetheless, pursuant to City of San Jose, Law Clinic's representation of individual clients, though paid for by UCLA Law, is essentially a private function. *See* 106 Cal. App. 4th at 619. While documents reflecting policy decisions rather than the representation of individual clients would constitute public records (*see* id.), documents concerning Law Clinic's retention by particular clients are not public records.

As EPA's request shows, there are obvious reasons why members of the public may be interested in who Law Clinic's clients are and what their arrangement is with those clients. A member of the public also may be concerned about Law Clinic's expenditure of time and effort for such clients and whether that representation is within the scope of Law Clinic's purpose. Yet, whether a particular representation is within the scope of Law Clinic's purpose – *e.g.*, representing a murder defendant instead of a client seeking environmental legal advice – is an issue for Law Clinic and ultimately UCLA Law. Ultimately, Law Clinic's arrangement with particular clients is a private function and not an issue of the people's business.[12]

F. Conclusion

The Petition is denied.

Dated: December 20, 2023

JAMES C. CHALFANT, Superior Court Judge

[12] Given that the Agreements are fee contracts protected by B&P section 6149 and not public records, the court need not address whether their disclosure would be contrary to the public interest under the catch-all balancing test of section 7922.00-7922.540 (formerly §6255). *See* Pet. Op. Br. at 6; Opp. at 12-15; Reply at 6.