

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

[X] Amended on 02/17/2026

DATE: 02/17/2026

TIME: 5:00 PM

DEPT: C-69

JUDICIAL OFFICER: EVAN P. KIRVIN

CLERK: Diana Tanner

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **25CU018484C** CASE INIT.DATE: 04/10/2025

CASE TITLE: **Vu vs County of San Diego**

CASE CATEGORY: Civil CASE TYPE: (U)Other Employment

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**HEARING TYPE:** Ex Parte

MOVING PARTY:

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**APPEARANCES**

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The Court having taken this matter under submission on 02/13/26, now rules as follows:

*Disclosure*

Judge Evan P. Kirvin discloses the following information:

Judge Kirvin is married to Bryn Kirvin. As of January 7, 2025, Ms. Kirvin has been employed by the City of San Diego as the Executive Director of the Ethics Commission.

Prior to her employment with the City of San Diego, Ms. Kirvin served as a Deputy District Attorney with the County of San Diego for approximately 27 years. From 2016 to 2017, Ms. Kirvin served as the Vice President of the San Diego County Deputy District Attorneys Association (SDCDDAA). From 2017 to 2018, Ms. Kirvin served as the President of the SDCDDAA. During her time with the SDCDDAA, Ms. Kirvin had a professional relationship with Helen Robbins-Meyer, then-Chief Administrative Officer for the County of San Diego.

During Ms. Kirvin's application process for the position of Executive Director of the City of San Diego Ethics Commission, Ms. Kirvin listed Ms. Robbins-Meyer as a reference.

### *Ruling on Defendants' Motion*

After hearing oral argument from the parties, the Court rules as follows:

Defendants County of San Diego ("County") and Nora Vargas (collectively "Defendants")' Motion for Protective Order is DENIED in part and GRANTED in part.

### *Preliminary Matters*

Defendants' Objections to the Declaration of Michael Vu ("Plaintiff") are OVERRULED.

Defendants' Objections Nos. 8 and 9 to the Declaration of Helen Robbins-Meyer are SUSTAINED as conclusory and prejudicial. Defendants' Objections to the remainder of the Robbins-Meyer Declaration are OVERRULED.

### *Discussion*

Defendants move for a protective order to bar the use and disclosure of an e-mail written by the County's then-Chief Administrative Officer ("CAO") Helen Robbins-Meyer and then-County Counsel Claudia Silva on the grounds that the e-mail constitutes an attorney-client privileged communication. Defendants also seek to bar Plaintiff from deposing Silva.

Plaintiff argues that the e-mail was not privileged because Robbins-Meyer sent the e-mail to Silva not to seek legal consultation but to document inappropriate interference with the selection process for choosing the new CAO as Silva was "handling the recruitment process." [ROA 34, pg. 2.] Alternatively, Plaintiff argues that any privilege was waived due to subsequent disclosures to Plaintiff himself, news organizations, and the public at large during public meetings of the San Diego County Board of Supervisors.

The party asserting attorney-client privilege bears the initial burden of establishing that the communication was made during an attorney-client relationship. (*Costco Wholesale Corp. v. Superior Court*, (2009) 47 Cal.4th 725,733). Where an attorney plays more than one role, as Silva did here, the Court must examine whether the dominant purpose of the communication was purely a business / administrative one or a legal one. (*Travelers Ins. Companies v. Superior Court*, (1983) 143 Cal.App.3d 436, 452).

Here, there is no dispute that Silva was acting as County Counsel at the time the communications were made, or that, as CAO, Robbins-Meyer had the authority to engage in attorney-client communications with her on behalf of the County. However, the parties dispute whether the dominant purpose of the e-mail was legal counsel or merely documentation.

Robbins-Meyer, the author of the e-mail herself, provides a declaration stating that she did not seek legal advice or consultation from Silva, but was merely “documenting inappropriate interference.” [ROA 34, pg. 2.] Nevertheless, she goes on to state that she sent the e-mail not only because Silva was in charge of the recruitment process but also “because she was County Counsel and the past Director of the Office of Ethics and Compliance. In each of these roles, she understood her responsibilities to inform all Supervisors of activities related to the recruitment as well as her overarching responsibility for County legal and ethical matters.” [Ibid.] This indicates that while Robbins-Meyer did not seek legal advice for herself, she wrote the e-mail seeking to have Silva counsel the County on its legal and ethical obligations. Therefore, the primary purpose of the e-mail is legal in nature and privilege attaches.

However, Plaintiff argues that the County waived any attorney client privilege, citing three instances which he argues constitute waiver; (1) disclosure to Plaintiff by Robbins-Meyer, (2) publication by newspapers, and (3) public disclosure at Board of Supervisors’ meetings.

The attorney-client privilege “is waived with respect to a communication protected by the privilege if any holder of the privilege...has disclosed a significant part of the communication or has consented to the disclosure made by anyone.” (Evidence Code § 912(a)). Once the opposing party makes prima facie showing of waiver, the burden is on the party claiming the privilege to prove the privilege was not lost. (*People v. Resendez*, (1993) 12 Cal.App.4th 98, 108).

In the organizational context, the privilege belongs to the entity, not to individual employees; accordingly, “the power to waive the corporate attorney-client privilege rests with the corporation’s management.” (*Venture Law Group v. Superior Court*, (2004) 118 Cal.App.4th 96, 105). Consent to disclosure may also be manifested by “failure to claim the privilege in any proceeding in which the holder has legal standing and the opportunity to claim the privilege.” (Evid. Code § 912(a)).

As to disclosure to Plaintiff by Robbins-Meyer, Defendants argue that Robbins-Meyer could not unilaterally waive privilege because she had not authority to do so on behalf of the County, citing to *Venture Law Group v. Superior Court* (2004) 118 Cal.App.4th 96. However, in *Venture*, the court held that *former* officers and managers of a corporation no longer had the authority to waive privilege on behalf of the corporation. At the time that Robbins-Meyer provided the e-mail to Plaintiff, she was still the CAO, which Defendants acknowledge in their moving papers as “the highest-ranking employee at the County.” [ROA 23, pg. 8.] If Robbins-Meyer had the authority to engage in attorney-client communications on the County’s behalf, she necessarily had the authority to waive privilege as to those communications as well.

It is well-recognized that the officers and directors of a corporate and public entities have the authority to waive privilege on behalf of those entities. (E.g., *Commodity Futures Trading Com'n v. Weintraub* (1985) 471 U.S. 343, 357; *Johnson v. Department of Transportation* (2025) 109 Cal.App.5th 917, 939, as modified on denial of reh'g (Apr. 1, 2025), order vacated (Apr. 4, 2025), as modified on denial of reh'g (Apr. 4, 2025), review denied (June 25, 2025); *Melendrez v. Superior Court* (2013) 215 Cal.App.4th 1343, 1353-1354.)

Defendants’ citation to Government Code section 25005 is unavailing as the CAO, and other representatives of the County, after being duly appointed, must necessarily have the authority to carry out their duties without a Board vote on each action they take. Moreover, Defendants’ argument is a double-edged sword: If section 25005 renders Robbins-Meyer’s disclosure of the e-mail to Plaintiff invalid because it was not approved by the Board, the e-mail itself, drafted and sent without Board approval, could not have been an attorney-client communication on behalf of the County.

While Defendants argue that they took prompt legal action to halt the publication of the e-mail by newspapers, they demonstrated insufficient attempts to halt the public disclosure of the contents of the e-mail at meetings of the Board of Supervisors.

Waiver may occur where the holder “has consented to the disclosure made by anyone,” including through “failure to claim the privilege in any proceeding in which the holder has legal standing and the opportunity to claim the privilege.” (Evid. Code § 912(a)). Once such a showing is made, the burden is on the party claiming the privilege to prove the privilege was not lost. (*Resendez, supra*, 12 Cal.App.4th at 108.)

In their papers, Defendants argue that they could not have stopped the public disclosure of the e-mail at Board meetings because public comments are not pre-screened and the public has the right under both the U.S. Constitution and the Brown Act to make comments to the Board. At oral argument, Defendants provide argue that County Counsel gave remarks at a subsequent meeting rebuking the disclosures and reminding attendees that the contents of the e-mail are privileged.

Whether silence in public settings constitutes consent turns on whether the County had a meaningful opportunity and obligation to assert the privilege under the circumstances. (*Costco Wholesale Corp. v. Superior Court*, (2009) 47 Cal.4th 725, 733.) While it may be argued that the County did not have a meaningful opportunity to stop a public speaker from reading out the e-mail in the moment as Board members may not be able to react quickly enough, Plaintiff notes that audio and video recordings of the meetings, including the reading of the e-mail, are hosted on the County's own website. Despite County Counsel's later remarks, the County had a meaningful opportunity to redact the recordings to remove any privileged materials yet elected to maintain unredacted publicly available recordings of the meetings.

As such, the Court finds that the County has waived attorney-client privilege and DENIES its motion for a protective order to bar the disclosure and use of the disputed e-mail in this litigation.

Plaintiff argues that the issue of the deposition of Claudia Silva is moot. Plaintiff has not noticed a deposition for Ms. Silva and states that the proposed deposition was simply a way to have the Court address the issue of whether the e-mail was privileged. However, in the interest of addressing an issue capable of repetition but evading review, the Court will address Defendants' motion to bar Silva's deposition.

The deposition of an attorney or former attorney to a party in a pending action will not be permitted unless "(1) no other means exists to obtain the information than to depose opposing counsel; (2) the information sought is relevant and non-privileged; and (3) the information is crucial to the preparation of the case." (*Estate of Ruchti*, (1993) 12 Cal.App.4th 1593, 1600). Of course, any impressions or reactions Silva had to the e-mail would be privileged and not discoverable, even if the letter itself is not.

Further, no good cause exists for the deposition of an attorney regarding what a particular witness told that attorney when the witness herself is available for deposition. (*Trade Center Properties, Inc. v. Superior Court*, (1960) 185 Cal.App.2d 409,411). Here, Defendants and Plaintiff focus solely on the facts to be gleaned from the contested e-mail, which may be obtained from its author Robbins-Meyer, rather than the County's former counsel.

As Plaintiff has not demonstrated that Silva has any unique, non-privileged knowledge essential to this case, Defendant's motion is GRANTED as to Silva's proposed deposition.

*Conclusion*

Defendants' Motion for a Protective Order is DENIED in part with respect to the disputed e-mail and its contents.

Defendants' Motion is GRANTED in part with respect to the deposition of Claudia Silva.

*Evan P. Kirvin*

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Judge Evan P. Kirvin