



Association of Defense  
Counsel of Northern  
California and Nevada

January 31, 2018



ASSOCIATION OF  
SOUTHERN CALIFORNIA  
DEFENSE COUNSEL

**AMICUS LETTER IN SUPPORT OF REVIEW**

(California Rules of Court, rule 8.500(g)(1))

Via Federal Express  
Honorable Tani Gorre Cantil-Sakauye, Chief Justice  
Honorable Ming W. Chin, Associate Justice  
Honorable Carol A. Corrigan, Associate Justice  
Honorable Goodwin H. Liu, Associate Justice  
Honorable Mariano-Florentino Cuéllar, Associate Justice  
Honorable Leondra R. Kruger, Associate Justice  
Supreme Court of California  
350 McAllister Street  
San Francisco, California 94102-4797

Re: Tighe v. Chino Valley School District, No. S246463

Dear Honorable Justices:

We write, on behalf of the Association of Southern California Defense Counsel (“ASCDC”) and the Association of Defense Counsel of Northern California and Nevada (“ADC-NCN”), to urge this Court to grant review and issue a transfer order directing the Court of Appeal to address the merits. Rule 2-100 of the California *Rules of Professional Conduct* prohibits an attorney from surreptitiously using an agent to obtain admissions from a represented party. Existing case law clearly explains that communicating with a current “control group” employee regarding an issue of liability is prohibited. But it provides no guidance regarding other types of “admissions,” which are separately addressed in the rule.

The petition raises the important question whether rule 2-100 prohibits an attorney from secretly obtaining admissions relevant to elements of the plaintiff’s case other than liability, such as damages. All corporate and institutional defendants are affected, but the context in which this petition arises is particularly compelling. In litigation against a school district, it is common for the minor plaintiff to remain under the auspices of the school district and to continue receiving specialized education services even while the litigation proceeds over several years. And specially trained employees are tasked with

monitoring and addressing the student’s development, which means their statements “may constitute an admission on the part of the organization.” Rule 2-100(B)(2). This is an issue that affects all tax-funded school districts in California and its constitutionally-mandated education programs.

### **Interest of the Requesting Organizations**

ADC-NCN is an association of approximately 900 attorneys primarily engaged in the defense of civil actions. ADC-NCN members have a strong interest in the development of substantive and procedural law in California. The Association's Nevada members are also interested in the development of California law because Nevada courts often follow the law and rules adopted in California.

ASCDC is an association of over 1,000 leading attorneys who specialize in defending civil actions in Southern and Central California. It is active in assisting courts on issues of interest to its members, and provides its members with professional fellowship, specialized continuing legal education, representation in legislative matters, and a forum for the exchange of information and ideas.

Both organizations have extensive experience with civil matters in general and extensive experience in defending school districts against a wide array of claims, including those asserted on behalf of minor plaintiffs.

### **Why Review Should be Granted and Transfer Ordered**

Rule 2-100 prohibits an attorney from communicating with a represented party (even through an agent) without the consent of the other lawyer. Subdivision (B)(2) of the rule defines "party" to include "an employee of an association, corporation, or partnership" if either one of two circumstances exist: (1) "if the subject of the communication is any act or omission of such person in connection with the matter *which may be binding* upon or imputed to the organization *for purposes of civil or criminal liability,*" or (2) the "*statement may constitute an admission on the part of the organization.*"

Existing case law has addressed only the first circumstance (i.e., the communications addressed matters that may be binding or imputed for purposes of civil liability), which is a common scenario in litigation against organizations. However where the plaintiff is a minor and the litigation is brought against a school district that remains tasked with the obligation of monitoring and assisting the child's educational development *even as the litigation continues*, the second circumstance in rule 2-100 is implicated (i.e., any statement by these specialized employees about the student's development "may constitute an admission on the part of the organization.")

No California appellate court has yet addressed rule 2-100 where the subject matter of the communication was something other than the defendant's civil liability. In light of the dearth of legal precedent, this case should be transferred to the Court of Appeal with directions to address the merits of the petition. Whether rule 2-100 prohibits secret communications with a represented party that result in "admissions" other than those establishing "liability" is an important question worthy of an answer by the Court of Appeal upon transfer.

Respectfully submitted,

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## PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in Los Angeles, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On January 31, 2018, I served the following documents in the manner described below:

### AMICUS LETTER IN SUPPORT OF REVIEW

- X (BY U.S. MAIL) I am personally and readily familiar with the business practice of Polsinelli LLP for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Los Angeles, California.

On the following part(ies) in this action:

Party	Attorney
Chino Valley Unified School District <i>Petitioner</i>	Susan Knock Beck Thompson & Colegate, LLP 3610 Fourteenth Street Riverside, CA 92502
Superior Court of San Bernardino County <i>Respondent</i>  Hon. Michael A. Sachs, Dept. S28 247 West Third Street San Bernardino, CA 92415	
James Tighe <i>Real Party in Interest</i>	Nicholas C. Rowley Carpenter, Zuckerman & Rowley, LLP 8827 West Olympic Boulevard Beverly Hills, CA 90211  Joseph Hawkins Low, IV Law Offices of Joseph H. Low IV 100 Oceangate, 12th Floor Long Beach, CA 90802

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 31, 2018, at Los Angeles, California.

*Michelle Moya*

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Michelle Moya