

# Lawyers' Professional Liability Update - December 2010 Edition

Lawyers' Lawyer Newsletter | 2 min read

Dec 28, 2010

## Statutory Liability

### Georgia Supreme Court Holds That Fair Business Act of 1975 Does Not Apply to Lawyers

*State ex rel. Doyle v. Frederick J. Hanna & Associates, P.C.*, 287 Ga. 289, 695 S.E.2d 612 (Ga. 2010)

The Administrator of the Georgia Governor's Office of Consumer Affairs sent an investigative demand to a debt collection law firm regarding alleged abusive practices. The operative statute, the Fair Business Practices Act of 1975 (FBPA), enabled an objection to such a demand on the basis of a "legal right or privilege."

## Conflicts - Disqualification

### New Jersey Supreme Court Elaborates on Meaning of "Substantially Related Matters" Under Former-Client Conflicts Rule

*City of Atlantic City v. Trupos*, 201 N.J. 447, 992 A.2d 762 (2010)

A law firm represented the city of Atlantic City in certain real estate tax appeals in 2006 and 2007. The firm discontinued that representation and later represented a number of taxpayers in an appeal of 2009 real estate tax assessments. The city moved to disqualify the law firm under the former-client conflicts rule, asserting that the firm's former representation and current representation were substantially related. The New Jersey Supreme Court held that the matters were not substantially related.

## Duty

### New York Relaxes Privity Rule for Personal Representative's Legal Malpractice Claims

*Estate of Schneider v. Finmann*, 15 N.Y.3d 306, 933 N.E.2d 718 (2010)

In summary, in New York, estate planning attorneys may be sued for legal malpractice by personal

representatives, but not by other third parties such as beneficiaries.

## **Miscellaneous**

### **Avoiding a Set-Up by Intervention**

*Ternes v. Galichia*, 43 Kan. App. 2d 857, 234 P.3d 820 (Kan. App. 2010)

In an underlying lawsuit brought by plaintiff for medical malpractice, plaintiff's law firm inadvertently named only a surgeon's professional corporation. Plaintiff dismissed the action, and with other counsel, refiled the case. The surgeon moved to dismiss the action against him individually based on the statute of limitations, and plaintiff sued the law firm. Because plaintiff did not oppose the surgeon's motion to dismiss in the underlying case, the law firm sought to intervene. The trial court allowed intervention, but granted the motion to dismiss.

## **Privilege**

### **No Attorney-Client Privilege for Corporation That Failed to Confirm In-House Attorney's Licensure Status**

*Gucci America, Inc. v. Guess?, Inc.*, No. 09 Civ. 4373 (S.D.N.Y. June 29, 2010)

In summary, a magistrate judge in the U.S. District Court for the Southern District of New York held that communications between a corporate client and its in-house attorney were not privileged because the lawyer was not actively licensed. The court held that the client had no reasonable basis for believing that the attorney was actively licensed because it had failed to investigate the attorney's credentials.

## **Privilege**

### **D.C. Circuit Clarifies Scope of Work Product Protection**

*U.S. v. Deloitte LLP and Dow Chemical Co.*, 610 F.3d 129 (D.C. Cir. June 29, 2010)

In summary, the U.S. Court of Appeals for the District of Columbia Circuit upheld a company's assertion of work product protection for three documents in the files of an outside independent tax auditor. The decision clarifies that the D.C. Circuit follows the majority of federal circuits adopting the "because of" test for work product, particularly regarding financial audits.

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Appellate

