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### **Dimalanta Clark Opens Arizona Office**

Dimalanta Clark announces the opening of its fourth office, located in Phoenix, Arizona. The Phoenix office is home to Joseph D'Aguanno, a senior attorney who adds significant trial experience to our growing firm. As managing attorney for our Arizona office, Mr. D'Aguanno will handle civil litigation and intellectual property matters (*See* page 2 for a detailed summary of his professional experience). We welcome Joseph to our team!



*Joseph D'Aguanno, Esq.  
Phoenix*



*Arizona Office*



## **Dimalanta Clark Welcomes Joseph D'Aguanno, Esq.**

Joseph D'Aguanno is the Chair of our firm's Intellectual Property Group. He currently partners with clients to develop, protect, and commercialize business assets, including intellectual property such as patents, trademarks, copyrights, and trade secrets. His areas of practice also include general liability, commercial litigation, construction matters, regulatory and administrative matters, contract negotiations and development, and alternative dispute resolution.

Joseph began his legal career at a small boutique firm in Phoenix, Arizona focused on medical malpractice defense litigation, licensure and regulatory matters, and product liability. He then spent several years with a publicly-traded utility company handling litigation, contract development, state and federal regulation, compliance, strategic project development, and renewable energy. He has extensive trial and litigation experience, and is licensed to practice law in Arizona and with the United States Patent and Trademark Office (USPTO).

You can email Joseph at [JDA@DimalantaClark.com](mailto:JDA@DimalantaClark.com)



## **Dimalanta Clark Welcomes Janice Lee Fitzsimmons, Esq.**

Janice Lee Fitzsimmons is the Vice Chair of the firm's Public Entity Litigation Group. Her practice emphasizes public entity defense, contracts, general civil, tort, and business litigation, and education law. She has an extensive legal background representing clients in both the public and private sectors. Prior to joining the firm, Ms. Fitzsimmons was a Deputy County Counsel with the Santa Clara County Counsel's Office.

As a deputy county counsel, Ms. Fitzsimmons represented the county in matters including public entity/tort defense, contracts, civil rights, employment discrimination, the protection of abused and neglected children, and personnel board hearings. She also represented the Santa Clara Valley Water District in matters involving contracts, water resources, land use, construction, and general advisory work.

In addition to her public entity representation, Ms. Fitzsimmons has represented private clients, including school administrators and corporations, in the areas of education law, business litigation and tort defense.

You can email Janice at [JLF@DimalantaClark.com](mailto:JLF@DimalantaClark.com)



*Janice L. Fitzsimmons, Esq.  
Oakland*

# The California Public Records Act

## State and Local Agencies Required to Make Public Records Available to the Public Absent an Exemption

*By Janice Lee Fitzsimmons, Esq.*

In 1968, the California State Legislature passed the California Public Records Act (“CPRA”) which mandates disclosure of public records held by state and local public entities in California unless the requested documents fall under an exemption. The CPRA is codified in California Government Code sections 6250 through 6276.48. In passing the CPRA, the state legislature recognized that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (Gov. Code section 6250.) The CPRA makes clear that “every person” has a right to inspect any public record [Gov. Code section 6253(a)], for any purpose [Gov. Code section 6257.5], subject to certain exemptions.

The term “public records” is broadly defined in the CPRA to include “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.” (Gov. Code section 6252(e).) This comprehensive definition covers “every conceivable kind of record that is involved in the governmental process . . . .” (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774.)

Records that are exempt from disclosure include (Gov. Code sections 6254 (a)-(z) and sections 6275-6276.48):

- **Attorney-Client discussions**
- Appointment calendars and applications, phone records, and other public records which impair the **deliberative process** by revealing the thought process of government decision makers may be withheld if “the public interest served by not making the record[s] public clearly outweighs the public interest served by disclosure of record[s].”
- **Preliminary drafts, notes and memos** if “not retained...in the ordinary course of business” and the public interest in withholding clearly outweighs the public interest in disclosure.
- **Home Addresses** in DMV, voter registration, public housing, employee records, etc.
- **Records containing agency litigation** until claim is resolved or settled.

## The California Public Records Act *(continued from page 4)*

- **Personnel, medical, and similar files** only if disclosure would reveal intimate and private details.
- **Police incident reports, rap sheets, and arrest records**
- **Financial data/ tax, welfare, and family adoption birth records.**

If a public entity fails to disclose public records, the CPRA allows a party requesting access to the records to file a lawsuit. (Gov. Code sections 6250 *et seq.*) The CPRA provides "[a]ny **person** may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record . . ." (Gov. Code section 6258; emphasis added.) The term "person" is defined as "any natural person, corporation, partnership, limited liability company, firm, or association." (Gov. Code section 6252(c).)

Once the petitioner demonstrates that the documents are public records, the burden is on the public entity and official withholding the documents to justify their refusal to disclose. (Braun v. City of Taft, 154 Cal.App.3d 332, 345 (1984) [ordering disclosure of public employee's personnel record information]; San Gabriel Tribune v. Superior Court (1983) 143 Cal.App.3d 762, [ordering disclosure of private company's financial data submitted to public agency notwithstanding its "confidential" status]; Leshar Communications, Inc. v. Contra Costa County (1993) 21 Media L. Rptr. 1879, 1881 [ordering disclosure of Contra Costa County's secret settlement files].) The CPRA provides that "the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so" whenever it appears the records are being improperly withheld from the public. (Gov. Code section 6259(a).)

The plaintiff instituting a lawsuit to obtain release of public records is entitled to recover his court costs and reasonable attorney fees if the plaintiff prevails in his lawsuit. (Government Code section 6259(d).) An award is mandatory. (Belth v. Garamendi (1991) 232 Cal.App.3d 896, 902-03 [once suit is filed fees must be awarded even if agency immediately provides documents]; Leshar Communications, (1993) 21 Media L. Rptr. 1879 [ordering county to pay the Contra Costa Times \$65,000 in fees and costs where court ordered release of settlement documents, underlying discovery, and investigative reports regarding cases settled by the county]).

In summary, public entities need to be responsive to requests for public records, and if they choose to deny a request, they need to ensure the denial is justified to avoid paying potential court costs and attorney fees should a lawsuit be initiated by the requesting party.



## Presenters



*Lisa A. Lenoci, Esq.*



*Andrej L. Stoelting, Esq.*



## Presentation to the Sacramento Claims Association

### CALIFORNIA CONSTRUCTION DEFECT LITIGATION

Thursday, November 11, 2010

10:00 a.m.-12:00 p.m.

Course No. 248847

1 hour CE credit

Lions Gate Conference Center

At McClellan Park

3410 Westover Street

Sacramento, CA 95652

Senior Attorneys Lisa Lenoci and Andy Stoelting will present fundamental procedural and liability issues involving California construction defect litigation to the Sacramento Claims Association. Topics include the procedural mechanisms governing California's pre-litigation and Special Master processes, as well as contractual indemnity and defense obligations affecting the contracting and insurance industries. The presentation is approved by the California Department of Insurance for 1 hour of continuing education credit.



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