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TRAINING BULLETIN

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Invocation by Attorney

Scenario

A defense attorney contacts you at the station where his client is being held. He demands to be allowed access to the suspect even though the suspect has not yet been given his Miranda warnings or asked for counsel. Nonetheless, the attorney tells you he represents the suspect and that the suspect would remain silent and the officers should not be speaking to the suspect. The attorney then departs. Officers then provided the Miranda warnings to the suspect and he voluntarily confessed. Legal?

Miranda rights are personal

Miranda rights cannot be invoked by third parties. Miranda rights are personal and can only be invoked by the suspect. In this case, defendant's lawyer attempted to make blanket invocation on client's behalf even as to crimes the lawyer was not appointed for. P v. Beltran 75 CA4th 425

Defendant's pub defender files document invoking Miranda on client's behalf for any future investigations. HELD: document is meaningless. You cannot invoke Miranda UNTIL you are in custody facing immediate questioning.75 CA4th 416 People v. Avila

Attorneys cannot place a blanket invocation about other crimes

The proposition that counsel in one case can file a blanket invocation preventing the police from questioning their client about any other case, even where the client voluntarily waives his rights to remain silent and to have his attorney present during questioning, has been foreclosed by the United States Supreme Court in Moran v. Burbine (1986) 475 U.S. 412, 106 S.Ct. 1135, 89 L.Ed.2d 410 and McNeil v. Wisconsin (1991) 501 U.S. 171, 183, 111 S.Ct. 2204, 115 L.Ed.2d 158.

In Moran the court held that the respondent validly waived his Miranda rights even though he was unaware counsel obtained on his behalf sought to speak

with him but had been turned away by the police. (*Moran v. Burbine*, supra, 475 U.S. at p. 421, 106 S.Ct. 1135.)

"Events occurring outside of the presence of the suspect and entirely unknown to him surely can have no bearing on the capacity to comprehend and knowingly relinquish a constitutional right." (*Id.*, at p. 422, 106 S.Ct. 1135.) In a footnote, the U.S. Supreme Court rejected "a novel 'agency' theory of the Fifth Amendment under which any perceived deception of a lawyer is automatically treated as deception of his or her client. This argument entirely disregards the elemental and established proposition that the privilege against compulsory self-incrimination is, by hypothesis, a personal one that can only be invoked by the individual whose testimony is being compelled." (*Id.* at p. 433, fn. 4, 106 S.Ct. 1135, emphasis added.)

In *McNeil v. Wisconsin*, supra, 501 U.S. at p. 183, 111 S.Ct. 271*2712204, the United States Supreme Court held that the petitioner's invocation of his Sixth Amendment right to counsel at the initial hearing to set bail did not operate to also invoke his Fifth Amendment right to counsel. (*Id.* at pp. 173, 178, 111 S.Ct. 2204.) The court declined to adopt such a rule as a matter of public policy because the result would be that "most persons in pretrial custody for serious offenses would be unapproachable by police officers suspecting them of involvement in other crimes, even though they have never expressed any unwillingness to be questioned. Since the ready ability to obtain un-coerced confessions is not an evil but an unmitigated good, society would be the loser. Admissions of guilt resulting from valid *Miranda* waivers `are more than merely "desirable"; they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law.'" (*Id.* at p. 181, 111 S.Ct. 2204, emphasis in original, quoting *Moran v. Burbine*, supra, 475 U.S. at p. 426, 106 S.Ct. 1135.)

If the attorney tries to invoke on behalf of her client, disregard, get a valid waiver and interrogate.

*Note** *California Penal Code section 825(b) makes it a misdemeanor if a police officer does not allow a suspect to meet with his attorney after the attorney has been contacted by the suspect or his family and is present at the station.*