

Expanded Background Summary
Rico et al. v. Mitsubishi Motors Corp. et al. (S123808)

Defendants were sued by plaintiffs after a sport utility vehicle rolled over on a southern California freeway. The issue here, however, involves whether plaintiffs properly made use of the opposing lawyer's notes, after plaintiffs' lawyers discovered those notes.

Both sides hired experts to help determine the cause of the accident. Defendants held a strategy meeting with their experts and attorneys to discuss the case. During the meeting, defendants' counsel, Yukevich, instructed a Mitsubishi employee to take notes of the meeting on Yukevich's computer. At the end of the meeting, Yukevich printed a copy of the notes and later edited them, and also wrote on them by hand. He planned to use the notes in his case preparation and never intended anyone else to see them.

Plaintiffs' attorney, Johnson, came into possession of these notes. The two sides dispute how that happened. Although Johnson knew that the notes related to the defendants' case, Johnson did not tell defendants he had them. Instead he made a copy, reviewed the notes, and decided that they would be a valuable tool to discredit defendants' experts. He also gave copies to co-counsel and his experts, each of whom studied the notes.

Approximately one week after he received the notes, Johnson used them to question a defense expert at a deposition (a pre-trial hearing at which one side can question the other side's witnesses). When defendants learned Johnson had their notes, defendants asked the trial court to have Johnson, his co-counsel and plaintiffs' experts disqualified (removed) from the case. The trial court held a hearing on the motion to disqualify.

Defendants claimed that Johnson must have gained access to Yukevich's file when Yukevich left it in a conference room and went to the restroom. They said Johnson improperly took the notes from the file during Yukevich's absence. Plaintiffs strongly disagreed. They provided testimony supporting their claim that a court reporter gave the notes to Johnson after the deposition.

The trial court, after considering all of the evidence, concluded that defendants failed to meet their burden of showing that Johnson stole the notes. The court determined that Johnson inadvertently obtained possession of the notes.

The next question that the trial court decided was what action, if any, Johnson was required to take upon his inadvertent receipt of the notes. Johnson argued that because he did nothing wrong to get the notes, he was duty-bound to

use them to his clients' advantage. Defendants claimed once it was clear that Johnson was not entitled to the notes, he was supposed to stop reading them and return them to Yukevich.

The trial court agreed with the defendants and granted their motion to disqualify Johnson and plaintiffs' other attorneys. The Court of Appeal affirmed that decision.

The Supreme Court granted review to determine what action must be taken by an attorney who inadvertently receives privileged documents and whether disqualification of counsel and experts is an appropriate remedy under the circumstances of this case.