

**INADVERTENT PRODUCTION
PRIVILEGED DOCUMENTS
ETHICAL DUTIES AND LEGAL RULES**

<i>Rico v. Mitsubishi Motors</i> (2007), 42 Cal.4th 807	C.C.P. §2031.285 ESI Rule
Ethical duty applies to lawyer	Statutory duty applies to parties etc.
Privileged, work product, confidential “or any other similar doctrine that would preclude discovery based on the confidential nature of the document.”	If ESI is “subject to a claim privilege” or work product
Recipient duty to notify Duty applies upon receipt of materials that “obviously appears” privileged reasonably apparent inadvertently produced	Claimant “may notify any party” recipient Notice of claim & basis for claim
Refrain from exam except to determine privilege	If notified, recipient sequesters information and retrieve from other persons Use or disclosure prohibited until issue resolved
	Recipient returns info or present to court
Parties resolve or resort to court for decision	Recipient makes motion w/in 30 days of claim receipt / deposit into court

Rico v. Mitsubishi Motors (2007), 42 Cal.4th 807 (Filed 12/13/07) Recipient's ethical duty upon receipt of inadvertently produced documents that are privileged, confidential or protected from discovery. Attorney disqualification upheld.

“When a lawyer who receives materials that obviously appear to be subject to an attorney-client privilege or otherwise clearly appear to be confidential and privileged and where it is reasonably apparent that the materials were provided or made available through inadvertence, the lawyer receiving such materials should refrain from examining the materials any more than is essential to ascertain if the materials are privileged, and shall immediately notify the sender that he or she possesses material that appears to be privileged. The parties may then proceed to resolve the situation by agreement or may resort to the court for guidance with the benefit of protective orders and other judicial intervention as may be justified.”