

PARTY CANNOT PROTECT A “TESTIFYING” EXPERT WITNESS FROM DISCOVERY BY RE-DESIGNATING HIM A “CONSULTING” WITNESS AFTER HIS OPINIONS HAVE BEEN DISCLOSED

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Para v. Anderson

Ct. Appeals, Division One, November 1, 2012

Authored by the [JSH Appellate Team](#)

Plaintiff sued Dr.'s Para and Khoury for negligence and wrongful death. Plaintiff disclosed Dr. Pantilat as a testifying expert, and he opined in a preliminary affidavit that Dr. Khoury was negligent. Dr. Khoury later settled out. Dr. Para then named Dr. Khoury a non-party at fault and notified plaintiff of his intention to use Plaintiff's previous disclosure of Dr. Pantilat's opinions against Dr. Khoury. Plaintiff sought to avoid this by re-designating Dr. Pantilat as a consulting expert only, and moved for a protective order. The court granted Plaintiff's motion.

The court of appeals reversed. A party retaining an expert has the choice whether to allow the expert's information and opinions to be subjected to discovery. Re-designation is effective to institute those discovery protections only before expert opinion evidence is disclosed. An expert witness whose opinions have been disclosed cannot be shielded from discovery by subsequently redesignating him a non-testifying expert.