

## **PLAINTIFF'S COUNSEL NOT ALLOWED TO ATTEND CLIENT'S MENTAL EXAMINATION?**

In Toyota Motor Sales, USA, Inc. ("Toyota"), the Appellate Court held that a plaintiff must show a need to have counsel present for a mental examination. Absent such a showing, counsel is not entitled to be present when his client undergoes a mental examination.

Plaintiff Braun brought a complaint against Toyota alleging gender discrimination, sexual harassment, defamation, constructive discharge, and intentional and negligent infliction of emotional distress. In addition, Braun placed his mental health at issue via his responses to Toyota's interrogatories.

Toyota subsequently requested and obtained an order that Braun undergo 7 hours of written psychological testing and a 4-hour personal, one-on-one psychological examination. However, the trial court allowed Braun's counsel to listen to the examination contemporaneously in another room. Toyota appealed this ruling.

The Appellate Court stated that there was a presumption that the defense's experts would conduct themselves in an appropriate manner. However, the presence and/or advice of plaintiff's counsel during breaks could influence the examinee's answers. Further, the presence of counsel could affect the examiners' ability to establish a rapport with Braun, an element which is crucial to obtaining a valid mental examination. Both of these could affect the integrity of the examination. Testimony to this effect was provided by both experts retained by Toyota to conduct the examinations. No evidence to the contrary was presented by Plaintiff's counsel.

As such, the Appellate Court held that Braun's counsel had no right to either be present for the examination, to contemporaneously listen to the examination in a separate room, or to speak with his client during the examination absent a showing that Braun's rights would somehow be violated. The Appellate Court issued a writ precluding Braun's counsel from engaging in any of these activities. However, it should be noted that Braun was allowed to record the examination for counsel to listen to at a later time.