

ENROLLED HOUSE  
BILL NO. 1597

By: Sullivan of the House

and

Crain of the Senate

An Act relating to civil procedure; amending 12 O.S. 2001, Section 2025, which relates to substitution of parties; updating statutory references; allowing certain attorney of record to file statement of death of another party; amending 12 O.S. 2001, Section 2502, as amended by Section 32, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2008, Section 2502), which relates to attorney-client privilege; providing that certain communications do not operate as waivers under certain circumstances; stating circumstances; providing for circumstances in which disclosure of certain information waives privilege or protection of certain undisclosed communications; defining terms; providing for privileged communications between an accountant and client; providing for confidentiality in specific communications; stating person or representative who may claim privilege; stating exceptions to privilege; providing that certain communications do not operate as waivers under certain circumstances; stating circumstances; providing for circumstances where disclosure of certain information waives privilege or protection of certain undisclosed communications; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2001, Section 2025, is amended to read as follows:

Section 2025.

## SUBSTITUTION OF PARTIES

### A. DEATH.

1. If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Section 5 2005 of this ~~act~~ title and upon persons not parties in the manner provided in Section 4 2004 of this ~~act~~ title for the service of a summons. During the pendency of an action any party or any attorney who was an attorney of record for the deceased party immediately preceding death may file with the court a statement of the death of another party conforming substantially to Form 22 of Section 29 2027 of this ~~act~~ title along with proof of death and serve the statement of death and proof of death on all other parties in the manner provided in Section 5 2005 of this ~~act~~ title. Unless the motion for substitution is made within ninety (90) days of service of the statement of death, the action shall be dismissed without prejudice as to the deceased party.

2. In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. A statement of death conforming substantially to Form 22 of Section 29 2027 of this ~~act~~ title along with proof of death shall be filed with the court by any party and served on all other parties, and the action shall proceed in favor of or against the surviving parties.

B. INCOMPETENCY. If a party becomes incompetent, the court upon motion served as provided in subsection A of this section may allow the action to be continued by or against ~~his~~ the representative of the incompetent party.

C. TRANSFER OF INTEREST. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subsection A of this section.

D. PUBLIC OFFICERS; DEATH OR SEPARATION FROM OFFICE.

1. When a public officer is a party to an action in ~~his~~ the official capacity of the public officer and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and ~~his~~ the successor of the public officer is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

2. When a public officer sues or is sued in ~~his~~ the official capacity of the public officer, ~~he~~ the public officer may be described as a party by ~~his~~ the official title of the public officer rather than by name; but the court may require ~~his~~ the name of the public officer to be added.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 2502, as amended by Section 32, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2008, Section 2502), is amended to read as follows:

Section 2502. A. As used in this section:

1. An "attorney" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation;

2. A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who consults an attorney with a view towards obtaining legal services or is rendered professional legal services by an attorney;

3. A "representative of an attorney" is one employed by the attorney to assist the attorney in the rendition of professional legal services;

4. A "representative of the client" is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client; and

5. A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is

made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

B. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

1. Between the client or a representative of the client and the client's attorney or a representative of the attorney;

2. Between the attorney and a representative of the attorney;

3. By the client or a representative of the client or the client's attorney or a representative of the attorney to an attorney or a representative of an attorney representing another party in a pending action and concerning a matter of common interest therein;

4. Between representatives of the client or between the client and a representative of the client; or

5. Among attorneys and their representatives representing the same client.

C. The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the attorney or the attorney's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

D. There is no privilege under this ~~rule~~ section:

1. If the services of the attorney were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

2. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

3. As to a communication relevant to an issue of breach of duty by the attorney to the client or by the client to the attorney;

4. As to a communication necessary for an attorney to defend in a legal proceeding an accusation that the attorney assisted the client in criminal or fraudulent conduct;

5. As to a communication relevant to an issue concerning an attested document to which the attorney is an attesting witness;

6. As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to an attorney retained or consulted in common, when offered in an action between or among any of the clients; or

7. As to a communication between a public officer or agency and its attorney unless the communication concerns a pending investigation, claim or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

E. A disclosure of a communication or information covered by the attorney-client privilege or the work-product doctrine does not operate as a waiver if:

1. The disclosure was inadvertent;

2. The holder of the privilege took reasonable steps to prevent disclosure; and

3. The holder of the privilege took reasonable steps to rectify the error including, but not limited to, information falling within the scope of paragraph 4 of subsection B of Section 3226 of this title, if applicable.

F. Disclosure of a communication or information meeting the requirements of an attorney-client privilege as set forth in this section or the work-product doctrine to a governmental office, agency or political subdivision in the exercise of its regulatory, investigative, or enforcement authority does not operate as a waiver of the privilege or protection in favor of nongovernmental persons or entities. Disclosure of such information does not waive the

privilege or protection of undisclosed communications on the same subject unless:

1. The waiver is intentional;

2. The disclosed and undisclosed communications or information concern the same subject matter; and

3. Due to principles of fairness, the disclosed and undisclosed communications or information should be considered together.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2502.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Accountant" means a certified public accountant (CPA) or a public accountant;

2. "Client" means any person, public officer, corporation, association, or other organization or entity, either public or private, who consults an accountant for the purpose of obtaining accounting services; and

3. A communication between an accountant and a client of the accountant is "confidential" if not intended to be disclosed to third persons other than:

a. those to whom disclosure is in furtherance of the rendition of accounting services to the client, and

b. those reasonably necessary for the transmission of the communication.

B. A client has a privilege to refuse to disclose, and to prevent any other person or entity from disclosing, the contents of confidential communications with an accountant when the other person or entity learned of the communication because the communications were made in the rendition of accounting services to the client. This privilege includes other confidential information obtained by the accountant from the client for the purpose of rendering accounting advice.

C. The privilege provided for in this section may be claimed by the client, the guardian or conservator of the client, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the accountant at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

D. There is no accountant-client privilege under this section:

1. When the services of the accountant were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or should have known was a crime including, but not limited to, fraud;

2. When a communication is relevant to an issue of breach of duty by the accountant to the client of the accountant or by the client to the accountant; or

3. When a communication is relevant to a matter of common interest between two or more clients, if the communication was made by any of the clients to an accountant retained or consulted in common when offered in a civil action between clients.

E. A disclosure of a communication or information covered by the accountant-client privilege or the work-product doctrine does not operate as a waiver if:

1. The disclosure was inadvertent;

2. The holder of the privilege took reasonable steps to prevent disclosure; and

3. The holder of the privilege took reasonable steps to rectify the error including, but not limited to, information falling within the scope of paragraph 4 of subsection B of Section 3226 of Title 12 of the Oklahoma Statutes, if applicable.

F. Disclosure of a communication or information covered by the accountant-client privilege or the work-product doctrine to a governmental office, agency or political subdivision in the exercise of its regulatory, investigative, or enforcement authority does not operate as a waiver of the privilege or protection in favor of nongovernmental persons or entities. Disclosure of such information

does not waive the privilege or protection of undisclosed communications on the same subject unless:

1. The waiver is intentional;
2. The disclosed and undisclosed communications or information concern the same subject matter; and
3. Due to principles of fairness, the disclosed and undisclosed communications or information should be considered together.

SECTION 4. This act shall become effective November 1, 2009.

Passed the House of Representatives the 14th day of May, 2009.

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Presiding Officer of the House of  
Representatives

Passed the Senate the 18th day of May, 2009.

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Presiding Officer of the Senate