

THE HOUSE OF REPRESENTATIVES
Monday, February 16, 2009

House Bill No. 1597

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:

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

3 Section 2025.

4 SUBSTITUTION OF PARTIES

5 A. DEATH.

6 1. If a party dies and the claim is not thereby extinguished, the court may order
7 substitution of the proper parties. The motion for substitution may be made by any party

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

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

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

21 C. TRANSFER OF INTEREST. In case of any transfer of interest, the action may
22 be continued by or against the original party, unless the court upon motion directs the

1 person to whom the interest is transferred to be substituted in the action or joined with
2 the original party. Service of the motion shall be made as provided in subsection A of
3 this section.

4 D. PUBLIC OFFICERS; DEATH OR SEPARATION FROM OFFICE.

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

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

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

19 Section 2502. A. As used in this section:

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

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

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

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

8 5. A communication is "confidential" if not intended to be disclosed to third persons
9 other than those to whom disclosure is made in furtherance of the rendition of
10 professional legal services to the client or those reasonably necessary for the
11 transmission of the communication.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 1. The disclosure was inadvertent;

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

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

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

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

3 1. The waiver is intentional;

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

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

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

11 A. As used in this section:

12 1. “Accountant” means a certified public accountant (CPA) or a public accountant;

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

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

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

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

21 B. A client has a privilege to refuse to disclose, and to prevent any other person or
22 entity from disclosing, the contents of confidential communications with an accountant

1 when the other person or entity learned of the communication because the
2 communications were made in the rendition of accounting services to the client. This
3 privilege includes other confidential information obtained by the accountant from the
4 client for the purpose of rendering accounting advice.

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

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

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

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

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

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

22 1. The disclosure was inadvertent;

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

5 F. Disclosure of a communication or information covered by the accountant-client
6 privilege or the work-product doctrine to a governmental office, agency or political
7 subdivision in the exercise of its regulatory, investigative, or enforcement authority does
8 not operate as a waiver of the privilege or protection in favor of nongovernmental persons
9 or entities. Disclosure of such information does not waive the privilege or protection of
10 undisclosed communications on the same subject unless:

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

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

17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-12-09 - DO PASS,
18 As Coauthored.