

EHB 1597

THE STATE SENATE  
Monday, April 6, 2009

ENGROSSED

House Bill No. 1597

As Amended

ENGROSSED HOUSE BILL NO. 1597 - By: Sullivan of the House and Crain of the Senate.

[ civil procedure - substitution of parties - attorney-client privilege - codification - 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

1 preceding death may file with the court a statement of the death of  
2 another party conforming substantially to Form 22 of Section ~~29~~ 2027  
3 of this ~~act~~ title along with proof of death and serve the statement  
4 of death and proof of death on all other parties in the manner  
5 provided in Section ~~5~~ 2005 of this ~~act~~ title. Unless the motion for  
6 substitution is made within ninety (90) days of service of the  
7 statement of death, the action shall be dismissed without prejudice  
8 as to the deceased party.

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

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

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

1 transferred to be substituted in the action or joined with the  
2 original party. Service of the motion shall be made as provided in  
3 subsection A of 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  
6 official capacity of the public officer and during its pendency  
7 dies, resigns, or otherwise ceases to hold office, the action does  
8 not abate and ~~his~~ the successor of the public officer is  
9 automatically substituted as a party. Proceedings following the  
10 substitution shall be in the name of the substituted party, but any  
11 misnomer not affecting the substantial rights of the parties shall  
12 be disregarded. An order of substitution may be entered at any  
13 time, but the omission to enter such an order shall not affect the  
14 substitution.

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

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

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

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

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

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

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

15       5. A communication is "confidential" if not intended to be  
16 disclosed to third persons other than those to whom disclosure is  
17 made in furtherance of the rendition of professional legal services  
18 to the client or those reasonably necessary for the transmission of  
19 the communication.

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

- 1           1. Between the client or a representative of the client and the  
2 client's attorney or a representative of the attorney;
- 3           2. Between the attorney and a representative of the attorney;
- 4           3. By the client or a representative of the client or the  
5 client's attorney or a representative of the attorney to an attorney  
6 or a representative of an attorney representing another party in a  
7 pending action and concerning a matter of common interest therein;
- 8           4. Between representatives of the client or between the client  
9 and a representative of the client; or
- 10          5. Among attorneys and their representatives representing the  
11 same client.

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

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

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

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

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

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

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

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

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

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

4            1. The disclosure was inadvertent;

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

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

11        F. Disclosure of a communication or information meeting the  
12 requirements of an attorney-client privilege as set forth in this  
13 section or the work-product doctrine to a governmental office,  
14 agency or political subdivision in the exercise of its regulatory,  
15 investigative, or enforcement authority does not operate as a waiver  
16 of the privilege or protection in favor of nongovernmental persons  
17 or entities. Disclosure of such information does not waive the  
18 privilege or protection of undisclosed communications on the same  
19 subject unless:

20            1. The waiver is intentional;

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

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

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

6            A. As used in this section:

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

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

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

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

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

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

1 were made in the rendition of accounting services to the client.  
2 This privilege includes other confidential information obtained by  
3 the accountant from the client for the purpose of rendering  
4 accounting advice.

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

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

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

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

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

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

4 1. The disclosure was inadvertent;

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

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

11 F. Disclosure of a communication or information covered by the  
12 accountant-client privilege or the work-product doctrine to a  
13 governmental office, agency or political subdivision in the exercise  
14 of its regulatory, investigative, or enforcement authority does not  
15 operate as a waiver of the privilege or protection in favor of  
16 nongovernmental persons or entities. Disclosure of such information  
17 does not waive the privilege or protection of undisclosed  
18 communications on the same subject unless:

19 1. The waiver is intentional;

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

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

1           SECTION 4. This act shall become effective November 1, 2009.  
2   COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-31-09 - DO  
3   PASS, As Amended.