ENGROSSED SENATE AMENDMENTS
TO
ENGROSSED HOUSE
BILL NO. 1559 By: Jordan of the House

and

Newberry of the Senate

An Act relating to civil procedure; amending 12 O.S. 2001, Section 2502, as last amended by Section 2, Chapter 251, O.S.L. 2009 (12 O.S. Supp. 2010, Section 2502), which relates to attorney-client privilege; modifying attorney-client privilege exception for communication between a public officer or agency and its attorney; and providing an effective date.

AMENDMENT NO. 1. Page 2, line 9, after the word "is" and before the word "if" strike the word "confidential" and insert the word "<u>privileged</u>"

AMENDMENT NO. 2. Page 2, line 15, after the word "disclosing" and before the word "communications" strike the word "confidential" and insert the word "<u>privileged</u>"

AMENDMENT NO. 3. Page 1, strike the title to read

"[civil procedure - attorney-client privilege - effective date]"

Passed the Senate the 19th day of April, 2011.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2011.

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Presiding Officer of the House
of Representatives

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 2502, as last amended by Section 2, Chapter 251, O.S.L. 2009 (12 O.S. Supp. 2010, 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 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; or

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~~ when sought by a multicounty grand jury or a grand jury as part of their investigations and in removal actions or criminal actions resulting from such investigations.

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 2. This act shall become effective November 1, 2011.

Passed the House of Representatives the 15th day of March, 2011.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2011.

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Presiding Officer of the Senate