

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 1559

6 By: Jordan

7 COMMITTEE SUBSTITUTE

8 An Act relating to civil procedure; amending 12 O.S.
9 2001, Section 2502, as last amended by Section 2,
10 Chapter 251, O.S.L. 2009 (12 O.S. Supp. 2010, Section
11 2502), which relates to attorney-client privilege;
12 modifying attorney-client privilege exception for
13 communication between a public officer or agency and
14 its attorney; and providing an effective date.

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

16 SECTION 1. AMENDATORY 12 O.S. 2001, Section 2502, as
17 last amended by Section 2, Chapter 251, O.S.L. 2009 (12 O.S. Supp.
18 2010, Section 2502), is amended to read as follows:

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

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

23 2. A "client" is a person, public officer, or corporation,
24 association, or other organization or entity, either public or
private, who consults an attorney with a view towards obtaining

1 legal services or is rendered professional legal services by an
2 attorney;

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

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

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

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

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

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

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

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

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

5 C. The privilege may be claimed by the client, the client's
6 guardian or conservator, the personal representative of a deceased
7 client, or the successor, trustee, or similar representative of a
8 corporation, association, or other organization, whether or not in
9 existence. The person who was the attorney or the attorney's
10 representative 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 privilege under this section:

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

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

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

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

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

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

8 7. As to a communication between a public officer or agency and
9 its attorney ~~unless the communication concerns a pending~~
10 ~~investigation, claim or action and the court determines that~~
11 ~~disclosure will seriously impair the ability of the public officer~~
12 ~~or agency to process the claim or conduct a pending investigation,~~
13 ~~litigation or proceeding in the public interest~~ when sought by a
14 multicounty grand jury or a grand jury as part of their
15 investigations and in removal actions or criminal actions resulting
16 from such investigations.

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

20 1. The disclosure was inadvertent;

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

23 3. The holder of the privilege took reasonable steps to rectify
24 the error including, but not limited to, information falling within

1 the scope of paragraph 4 of subsection B of Section 3226 of this
2 title, if applicable.

3 F. Disclosure of a communication or information meeting the
4 requirements of an attorney-client privilege as set forth in this
5 section or the work-product doctrine to a governmental office,
6 agency or political subdivision in the exercise of its regulatory,
7 investigative, or enforcement authority does not operate as a waiver
8 of the privilege or protection in favor of nongovernmental persons
9 or entities. Disclosure of such information does not waive the
10 privilege or protection of undisclosed communications on the same
11 subject unless:

12 1. The waiver is intentional;

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

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

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

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