

1 **SENATE FLOOR VERSION**

2 April 11, 2011

3 As Amended

4 ENGROSSED HOUSE

5 BILL NO. 1559

By: Jordan of the House

and

Newberry of the Senate

7
8 **[civil procedure - attorney-client privilege -
9 effective date]**

10
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. AMENDATORY 12 O.S. 2001, Section 2502, as
13 last amended by Section 2, Chapter 251, O.S.L. 2009 (12 O.S. Supp.
14 2010, Section 2502), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

10 D. There is no privilege under this section:

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

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

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

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

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

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

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

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

18 1. The disclosure was inadvertent;

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

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

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

10 1. The waiver is intentional;

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

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-11 - DO PASS,
17 As Amended.

18

19

20

21

22

23

24