

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 951

By: Shortey of the Senate

and

Kern and Blackwell of the
House

10 COMMITTEE SUBSTITUTE

11 An Act relating to civil procedure; amending 12 O.S.
12 2011, Section 2502, which relates to attorney-client
13 privilege; modifying term; and providing an effective
14 date.

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

17 SECTION 1. AMENDATORY 12 O.S. 2011, Section 2502, is
18 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

1 private, who consults an attorney with a view towards obtaining
2 legal services or is rendered professional legal services by an
3 attorney;

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

7 4. A "representative of the client" is:

8 a. one having authority to obtain professional legal
9 services, or to act on advice rendered pursuant
10 thereto, on behalf of the client, or

11 b. any other person who, for the purpose of effectuating
12 legal representation for the client, makes or receives
13 a confidential communication while acting in the scope
14 of employment for 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 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;

23 2. As to a communication relevant to an issue between parties
24 who claim through the same deceased client, regardless of whether

1 the claims are by testate or intestate succession or by inter vivos
2 transaction;

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

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

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

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

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

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

24 1. The disclosure was inadvertent;

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

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

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

16 1. The waiver is intentional;

17 2. The disclosed and undisclosed communications or information
18 concern the same subject matter; and

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

21 SECTION 2. This act shall become effective November 1, 2013.

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23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/10/2013 - DO
24 PASS, As Amended and Coauthored.