

CHAPTER 5 - PRIVILEGES

501. PRIVILEGE OF ACCUSED

Rule 502 PRIVILEGE OF ACCUSED

- a. Every person has in any criminal action in which he or she is an accused a privilege not to be called as a witness and not to testify.
- b. An accused in a criminal action has a privilege to prevent his or her spouse from testifying in such action with respect to any confidential communication had or made between them while they were husband and wife, excepting only (1) in an action in which the accused is charged with (i) a crime involving the marriage relation, or (ii) a crime against the person or property of the other spouse or the child of either spouse, or (iii) a desertion of the other spouse or a child of either spouse, or (2) as to the communication, in an action in which the accused offers evidence of a communication between himself or herself and his or her spouse.
- c. An accused in a criminal action has no privilege to refuse, when ordered by the judge, to present his or her person for identification or do any act in the presence of the judge or the trier of the facts, except to refuse to be a witness against himself or herself.

502. DEFINITION OF INCRIMINATION

Rule 502 DEFINITION OF INCRIMINATION

A matter will incriminate a person within the meaning of this chapter if it constitutes, or forms an essential part of, or, taken in connection with other matters disclosed, is a basis for a reasonable inference of such a violation of the laws of the Nation as to subject the person to liability to punishment therefor, unless he or she has become for any reason permanently immune from punishment for such violation.

503. SELF-INCRIMINATION

Rule 503 SELF-INCRIMINATION

Subject to Rule 501 and Rule 511, every natural person has a privilege, which he or she may claim, to refuse to disclose in an action or to a public official of the Nation or any Nation governmental agency or division thereof any matter that will incriminate such person.

504. LAWYER-CLIENT PRIVILEGE

Rule 504 LAWYER-CLIENT PRIVILEGE

- a. General rule. Subject to Rule 511, and except as otherwise provided by subsection (b) of this section communications found by the judge to have been between a lawyer and his or her client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (1) if he or she is the witness to refuse to disclose any such communication, and (2) to prevent his or her lawyer from disclosing it, and (3) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer, or (ii) in a manner not reasonably to be anticipated by the client, or (iii) as a result of a breach of the lawyer-client relationship. The privilege may be claimed by the client in person or by his or her lawyer, or if an incapacitated person, by either his or her guardian or conservator, or if deceased, by his or her personal representative.
- b. Exceptions. Such privileges shall not extend (1) to a communication if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the commission or planning of a crime or a tort, or (2) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by inter vivos transaction, or (3) to a communication relevant to an issue of breach of duty by the lawyer to his or her client, or by the client to his or her lawyer, or (4) to a communication relevant to an issue concerning an attested document of which the lawyer is an attesting witness, or (5) to a communication relevant to a matter of common interest between two or more clients if made by any of them to a lawyer whom they have retained in common when offered in an action between any of such clients.
- c. Definitions. As used in this section (1) "client" means a person or corporation or other association that, directly or through an authorized representative, consults a lawyer or lawyer's representative for the purpose of retaining the lawyer or securing legal service or advice from the lawyer in his or her professional capacity; and includes an incapacitated person who, or whose guardian on behalf of the incapacitated person so consults the lawyer or the lawyer's representative in behalf of the incapacitated person; (2) "communication" includes advice given by the lawyer in the course of representing the client and includes disclosures of the client to a representative, associate or employee of the lawyer incidental to the professional relationship; (3) "lawyer" means a person authorized, or reasonably believed by the client to be authorized to practice law in any state or nation the law of which recognizes a privilege against disclosure of confidential communications between client and lawyer.

505. PHYSICIAN-PATIENT PRIVILEGE

Rule 505 PHYSICIAN-PATIENT PRIVILEGE

a. As used in this section:

1. "Patient" means a person who, for the sole purpose of securing preventive, palliative, or curative treatment, or a diagnosis preliminary to such treatment, of such person's physical or mental condition, consults a physician, or submits to an examination by a physician.
2. "Physician" means a person licensed or reasonably believed by the patient to be licensed to practice medicine or one of the healing arts in the jurisdiction in which the consultation or examination takes place.
3. "Holder of the privilege" means the patient while alive and not under guardianship or conservatorship or the guardian or conservator of the patient, or the personal representative of a deceased patient.
4. "Confidential communication between physician and patient" means such information transmitted between physician and patient, including information obtained by an examination of the patient, as is transmitted in confidence and by a means which, so far as the patient is aware, discloses the information to no third persons other than those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it is transmitted.

- b. Except as provided by subsections (c), (d), (e) and (f), a person, whether or not a party, has a privilege in a civil action or in a prosecution for a misdemeanor, other than a prosecution for a violation of Operating a Vehicle Under the Influence of Drugs or Alcohol, to refuse to disclose, and to prevent a witness from disclosing, a communication, if the person claims the privilege and the judge finds that: (1) The communication was a confidential communication between patient and physician; (2) the patient or the physician reasonably believed the communication necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefor; (3) the witness (i) is the holder of the privilege, (ii) at the time of the communication was the physician or a person to whom disclosure was made because reasonably necessary for the transmission of the communication or for the accomplishment of the purpose for which it was transmitted or (iii) is any other person who obtained knowledge or possession of the communication as the result of an intentional breach of the physician's duty of nondisclosure by the physician or the physician's agent or servant; and (4) the claimant is the holder of the privilege or a person authorized to claim the privilege for

the holder of the privilege.

- c. There is no privilege under this section as to any relevant communication between the patient and the patient's physician: (1) Upon an issue of the patient's condition in an action to commit the patient or otherwise place the patient under the control of another or others because of alleged incapacity or mental illness, in an action in which the patient seeks to establish the patient's competence or in an action to recover damages on account of conduct of the patient which constitutes a criminal offense other than a misdemeanor; (2) upon an issue as to the validity of a document as a will of the patient; or (3) upon an issue between parties claiming by testate or intestate succession from a deceased patient.
- d. There is no privilege under this section in an action in which the condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party.
- e. There is no privilege under this section: (1) As to blood drawn at the request of a law enforcement officer; and (2) as to information which the physician or the patient is required to report to a public official or as to information required to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed.
- f. No person has a privilege under this section if the judge finds that sufficient evidence, aside from the communication has been introduced to warrant a finding that the services of the physician were sought or obtained to enable or aid anyone to commit or to plan to commit a crime or a tort, or to escape detection or apprehension after the commission of a crime or a tort.
- g. A privilege under this section as to a communication is terminated if the judge finds that any person while a holder of the privilege has caused the physician or any agent or servant of the physician to testify in any action to any matter of which the physician or the physician's agent or servant gained knowledge through the communication.
- h. Providing false information to a physician for the purpose of obtaining a prescription-only drug shall not be a confidential communication between physician and patient and no person shall have a privilege in any prosecution for obtaining a prescription-only drug by fraudulent means.

506. MARITAL PRIVILEGE, CONFIDENTIAL COMMUNICATIONS

Rule 506 MARITAL PRIVILEGE, CONFIDENTIAL COMMUNICATIONS

- a. General rule. Subject to Rule 511 and except as otherwise provided in subsections (b) and (c) of this section, a spouse who transmitted to the other the information which constitutes the communication, has a privilege during the marital relationship which he or she may claim whether or not a party to the action, to refuse to disclose and to prevent the other from disclosing communications found by the judge to have been had or made in confidence between them while husband and wife. The other spouse or either his or her guardian or conservator may claim the privilege on behalf of the spouse having the privilege.
- b. Exceptions. Neither spouse may claim such privilege (1) in an action by one spouse against the other spouse, or (2) in an action for damages for the alienation of the affections of the other, or for criminal conversation with the other, or (3) in a criminal action in which one of them is charged with a crime against the person or property of the other or of a child of either, or a crime against the person or property of a third person committed in the course of committing a crime against the other, or bigamy or adultery, or desertion of the other or of a child of either, or (4) in a criminal action in which the accused offers evidence of a communication between him or her and his or her spouse, or (5) if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the communication was made, in whole or in part, to enable or aid anyone to commit or to plan to commit a crime or a tort.
- c. Termination. A spouse who would otherwise have a privilege under this section has no such privilege if the judge finds that such spouse while the holder of the privilege testified or caused another to testify in any action to any communication between the spouses upon the same subject matter.

507 PENITENTIAL COMMUNICATION PRIVILEGE

Rule 507 PENITENTIAL COMMUNICATION PRIVILEGE

- a. Definitions. As used in this section, (1) the term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his or her regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization; (2) the term "regular minister of religion"

means one who as his or her customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he or she is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister; (3) the term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his or her church, sect, or organization; (4) "penitent" means a person who recognizes the existence and the authority of God and who seeks or receives from a regular or duly ordained minister of religion advice or assistance in determining or discharging his or her moral obligations, or in obtaining God's mercy or forgiveness for past culpable conduct; (5) "penitential communication" means any communication between a penitent and a regular or duly ordained minister of religion which the penitent intends shall be kept secret and confidential and which pertains to advice or assistance in determining or discharging the penitent's moral obligations, or to obtaining God's mercy or forgiveness for past culpable conduct.

- b. Privilege. A person, whether or not a party, has a privilege to refuse to disclose, and to prevent a witness from disclosing a communication if he or she claims the privilege and the judge finds that (1) the communication was a penitential communication and (2) the witness is the penitent or the minister, and (3) the claimant is the penitent, or the minister making the claim on behalf of an absent penitent.

508. RELIGIOUS BELIEF.

Rule 508 RELIGIOUS BELIEF

Every person has a privilege to refuse to disclose his or her theological opinion or religious belief unless his or her adherence or non-adherence to such an opinion or belief is material to an issue in the action other than that of his or her credibility as a witness.

509. TRADE SECRET

Rule 509 TRADE SECRET

The owner of a trade secret has a privilege, which may be claimed by the owner or his or her agent or employee, to refuse to disclose the secret and to prevent other persons from disclosing it if the judge finds that the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.

510. IDENTITY OF INFORMER

Rule 510 IDENTITY OF INFORMER

A witness has a privilege to refuse to disclose the identity of a person who has furnished information purporting to disclose a violation of a provision of the laws of the Nation made to a representative of the Nation governmental division thereof, charged with the duty of enforcing that provision, and evidence thereof is inadmissible, unless the judge finds that: (a) the identity of the person furnishing the information has already been otherwise disclosed; or (b) disclosure of such person's identity is essential to assure a fair determination of the issues. The privilege extends to documenting records as well as testimony.

511. WAIVER OF PRIVILEGE BY CONTRACT OR PREVIOUS DISCLOSURE.

Rule 511 WAIVER OF PRIVILEGE BY CONTRACT OR PREVIOUS DISCLOSURE

A person who would otherwise have a privilege to refuse to disclose or to prevent another from disclosing a specified matter has no such privilege with respect to that matter if the judge finds that such person or any other person while the holder of the privilege has (a) contracted with a party against whom the privilege is claimed that he or she would not claim the privilege or, (b) without coercion, or without any trickery, deception, or fraud practiced against him or her, and with knowledge of the privilege, made disclosure of any part of the matter or consented to such a disclosure made by anyone.

512. ADMISSIBILITY OF DISCLOSURE WRONGFULLY COMPELLED

Rule 512 ADMISSIBILITY OF DISCLOSURE WRONGFULLY COMPELLED

Evidence of a statement or other disclosure is inadmissible against the holder of the privilege if the judge finds that he or she had and claimed a privilege to refuse to make the disclosure but was nevertheless required to make it.

513. REFERENCE TO EXERCISE OF PRIVILEGE; PRESUMPTION AND ADVERSE INFERENCE NOT PERMITTED

Rule 513 REFERENCE TO EXERCISE OF PRIVILEGE; PRESUMPTION AND ADVERSE INFERENCE NOT PERMITTED

If a privilege is exercised not to testify or to prevent another from testifying, either in the action or with respect to particular matters, or to refuse to disclose or to prevent another from disclosing any matter, the judge and counsel may not comment thereon, no presumption shall arise with respect to the exercise of the privilege, and the trier of fact may not draw any adverse inference therefrom. In those jury cases wherein the right to exercise

a privilege, as herein provided, may be misunderstood and unfavorable inferences drawn by the trier of the fact, or may be impaired in the particular case, the court, at the request of the party exercising the privilege, may instruct the jury in support of such privilege.

514. EFFECT OF ERROR IN OVERRULING CLAIM OF PRIVILEGE

Rule 514 EFFECT OF ERROR IN OVERRULING CLAIM OF PRIVILEGE

A party may predicate error on a ruling disallowing a claim of privilege only if such party is the holder of the privilege.