

## **Federal Rule of Evidence 501 Privilege in General**

The common law—as interpreted by the United States courts in the light of reason and experience—governs a claim of privilege unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute; or
- rules prescribed by the Supreme Court.

But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule or decision.

## **Federal Rule of Evidence 502**

### **Attorney-Client Privilege and Work Product; Limitations on Waiver**

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work product protection.

**(a) Disclosure Made in a Federal Proceeding or to a Federal Office or Agency;**

**Scope of a Waiver.** When the disclosure is made in a federal proceeding or to a federal officer or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a federal or state proceeding only if:

- (1) the waiver is intentional;
- (2) the disclosed and undisclosed communications or information concern the same subject matter; and
- (3) they ought in fairness to be considered together.

**(b) Inadvertent Disclosure.** When made in a federal proceeding to a federal office or agency, the disclosure does not operate as a waiver in a federal or state proceeding if:

- (1) the disclosure is inadvertent;
- (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
- (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26(b)(5)(B).

**(c) Disclosure made in a State Proceeding.** When the disclosure is made in a state proceeding and is not the subject of a state-court order concerning

the waiver, the disclosure does not operate as waiver in a federal proceeding if the disclosure:

(1) Would not be waiver under this rule if it had been made in a federal proceeding; or

(2) Is not a waiver under the law of the state where the disclosure occurred.

**(d) Controlling Effect of a Court Order.** A federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other federal or state proceeding.

**(e) Controlling Effect of a Party Agreement.** An agreement on the effect of disclosure in federal proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

**(f) Controlling Effect of This Rule.** Notwithstanding Rule 101 and 1101, this rule applies to state proceedings and federal court-annexed and federal court-mandated arbitration proceedings, in the circumstances set out in the rule. And notwithstanding Rule 501, this rule applies even if state law provides the rule of decision.

**(g) Definitions.** In this rule:

(1) “attorney-client privilege” means the protection that applicable law provides for confidential attorney-client communications; and

(2) “work-product privilege” means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.