ARKANSAS JUDICIARY
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Rule 502. Lawyer-Client Privilege.

(a) Definitions. As used in this rule:
(1) A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from him.
(2) A ["] representative of the client ["] is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.
(3) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation.
(4) A "representative of the lawyer" is one employed by the lawyer to assist the lawyer in the rendition of professional legal services.
(5) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.
(b) General Rule of Privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communcations [communications] made for the purpose of facilitating the rendition of professional legal services to the client (1) between himself or his representative and his lawyer or his lawyer's representative, (2) between his lawyer and the lawyer's representative, (3) by him or his representative or his lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein, (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.
(c) Who May Claim the Privilege. The privilege may be claimed by the client, his guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.
(d) Exceptions. There is no privilege under this rule:
(1) Furtherance of crime of fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;
(2) Claimants through same deceased client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;
(3) Breach of duty by a lawyer or client. As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer;

(4) Document attested by a lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;
(5) Joint clients. As to a communication relevant to a matter of common interest between or among two [2] or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients; or
(6) Public officer or agency. As to a communication between a public officer or agency and its lawyers unless the communication concerns a pending investigation, claim, or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest.
(e) Inadvertent disclosure. A disclosure of a communication or information covered by the attorney-client privilege or the work-product doctrine does not operate as a waiver if the disclosing party follows the procedure specified in Rule 26(b)(5) of the Arkansas Rules of Civil Procedure and, in the event of a challenge by a receiving party, the circuit court finds in accordance with Rule 26(b)(5)(D) that there was no waiver.
(f) Selective waiver. Disclosure of a communication or information covered by the attorney-client privilege or the work-product doctrine to a governmental office or agency in the exercise of its regulatory, investigative, or enforcement authority does not operate as a waiver of the privilege or protection in favor of non-governmental persons or entities.

Explanatory Note: New subdivision (e) cross-references the 2007 amendment to Rule of Civil Procedure 26(b), which governs inadvertent disclosures of privileged or otherwise protected material during discovery.

Under new subdivision (f), disclosure of information covered by the attorney-client privilege or the work-product doctrine to a government agency conducting an investigation of the client does not constitute a general waiver of the information disclosed. In short, this provision adopts a rule of ?selective waiver? consistent with the Eighth Circuit?s view that disclosure of protected information to the government does not constitute a general waiver, so that the information remains shielded from use by other parties. E.g., Diversified Industries, Inc. v. Meredith, 572 F. 2d 596 (8 th Cir. 1977).

This is the minority view among the federal circuits. Most have held that waiver of privileged or protected information to a government agency constitutes a waiver for all purposes. E.g., In re Quest Communications Intern, Inc., 450 F. 3d 1179 (10 th Cir. 2006). Others have recognized selective waiver only if the disclosure was made subject to a confidentiality agreement with the government agency. E.g., Teachers Insurance & Annuity Ass?n v. Shamrock Broadcasting Co., 521 F. Supp 638 (S.D.N.Y. 1981).

Subdivision (f) adopts the Eighth Circuit?s position, which is also reflected in a draft that the Federal Advisory Committee on Evidence has published for public comment. See http://www.uscourts.gov/rules/Excerpt_EV_Report_Pub.pdf#page=4 [1].

Associated Court Rules:
Arkansas Rules of Evidence
Group Title:
Article V. Privileges

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