I.R.E. 502. Lawyer-Client Privilege.

Idaho Rules of Evidence Rule 502. Lawyer-Client Privilege.

(a) Definitions. As used in this rule:

(1) Client. 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 the lawyer.

(2) Representative of the client. A "representative of the client" is one having authority to obtain professional legal services, or an employee of the client who is authorized to communicate information obtained in the course of employment to the attorney of the client.

(3) Lawyer. 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) Representative of the lawyer. A "representative of the lawyer" is one employed by the lawyer to assist the lawyer in the rendition of professional legal service.

(5) Confidential communication. 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 communications made for the purpose of facilitating the rendition of professional legal services to the client which were made (1) between the client or the client's representative and the client's lawyer or the lawyer's representative, (2) between the client's lawyer and the lawyer's representative, (3) among clients, their representatives, their lawyers,or their lawyers' representatives, in any combination, concerning a matter of common interest, but not including communications solely among clients or their representatives when no lawyer is a party to the communication*, (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.

* Comment: IRE 502(b)(3) is intended to provide that when clients who share a common interest in a legal matter are represented by different lawyers they can communicate with each other in an effort to develop a joint strategy or otherwise advance their interests, and their communications in that endeavor will be privileged; that each client involved has a privilege for all such communications; and that this privilege will survive a later falling-out among the parties. The privilege does not, however, extend to communications solely between the clients or their representatives when no lawyer is present. The rationale for this privilege was stated in In Re: Grand Jury Subpoenas, 902 F.2d 244, 249 (4th Cir. 1990): "[P]ersons who share a common interest in litigation should be able to communicate with their respective attorneys and with each other to more effectively prosecute or defend their claims." The original IRE 502(b)(3) was amended to expand the scope of the privilege to include all communications among clients, their representatives, their lawyers, and their lawyerís representatives when engaged in discussion of common legal concerns.

(c) Who may claim the privilege. The privilege may be claimed by the client or for the client through the client's lawyer, the guardian or conservator, or by 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 may claim the privilege but only on behalf of the client. The authority of the lawyer or lawyer's representative to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) Furtherance of crime or 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 the lawyer's client or by the client to the client's 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 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.

(6) Shareholder actions. As to a communication between a corporation and its lawyer or a representative of the lawyer, which was not made for the purpose of facilitating the rendition of professional legal services to the corporation during the litigation and concerning the litigation in which the privilege is asserted:

(A) in an action by a shareholder against the corporation which is based on a breach of fiduciary duty; or (B) in a derivative action by a shareholder on behalf of the corporation, provided that disclosure of privileged communications under either subpart (A) or

(B) of this exception shall be required only if the party asserting the right to disclosure shows good cause for the disclosure and provided further that the court may use in camera inspection or oral examination and may grant protective orders to prevent unnecessary or unwarranted disclosure.

(Adopted January 8, 1985, effective July 1, 1985; amended March 5, 2002, effective July 1, 2002.)

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