

Rule 503 Lawyer-client privilege

- (a) Definitions. As used in this rule:
- (1) "Client" means a person, including a public officer, 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" means:
 - (A) A person having authority to obtain professional legal services, or to act on advice thereby rendered on behalf of the client; or
 - (B) Any employee or representative of the client who makes or receives a confidential communication:
 - (i) In the course and scope of his or her employment;
 - (ii) Concerning the subject matter of his or her employment; and
 - (iii) To effectuate legal representation for the client.
 - (3) "Lawyer" means 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" means a person employed by the lawyer to assist the lawyer in rendering 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 a confidential communication made for the purpose of facilitating the rendition of professional legal services to the client:
- (1) Between the client or a representative of the client and the client's lawyer or a representative of the lawyer;
 - (2) Between the lawyer and a representative of the lawyer;
 - (3) By the client or a representative of the client or the client's 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, the client's 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 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 transaction *inter vivos*;
 - (3) Breach of duty by a lawyer or client. As to a communication relevant to an issue of breach of duty by a lawyer to the client or by a client to the 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; and
 - (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.

Effective: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 25; amended 1992 Ky. Acts ch. 324, sec. 8; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Legislative Research Commission Note. (6/8/2011). When this rule was enacted in 1990, it was intended to mirror Section 502 of the Uniform Rules of Evidence Act which was recommended for enactment in all the states by the National Conference of Commissioners on Uniform State Laws. Section 502, subsection (b)(3) contained the words "to a lawyer or a representative of a lawyer" preceding the word "representing." However, that phrase was omitted during the drafting of 1990 HB 214, Section 25 (1990 Ky. Acts ch. 88) because the drafter apparently erroneously considered it to be duplicative of prior text and an error in the language of the Uniform Rule. It is clear to the Reviser of Statutes that it is not duplicative since it is describing to whom a privileged communication may be made. The Reviser of Statutes has reinserted that phrase into subsection (b)(3) to correct that manifest clerical or typographical error under the authority of KRS 7.136.