

Rule 510. Miscellaneous ~~m~~Matters.**Effective: ~~5/7/2025~~****(a) Waiver of ~~p~~Privilege.**

(1) Except as provided in paragraph (a)(2) or (a)(3), a person who holds a privilege under these rules waives the privilege if the person or a previous holder of the privilege:

(A) voluntarily discloses or consents to the disclosure of any significant part of the matter or communication; or

(B) fails to take reasonable precautions against inadvertent disclosure.

(2) The privilege is not waived if the disclosure is itself a privileged communication.

(3) If a party is an entity that is subject to an audit by the legislative auditor general under Utah Constitution, Article VI, Section 33, and information that is privileged under [Rule 504](#) is disclosed to the legislative auditor general or an arbitrator as described in Utah Code section 36-12-15, the disclosure to the legislative auditor general or the arbitrator does not waive the privilege under paragraph (a)(1).

(b) Inadmissibility of ~~d~~Disclosed ~~i~~Information. Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if disclosure was compelled erroneously or made without opportunity to claim the privilege.

(c) Comment or ~~i~~Inference ~~n~~Not ~~p~~Permitted. The claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn from any claim of privilege.

(d) Claiming ~~p~~Privilege ~~w~~Without the ~~j~~Jury's ~~k~~Knowledge. To the extent practicable, jury cases shall be conducted to allow claims of privilege to be made without the jury's knowledge.

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(e) **Jury i**nstruction. Upon request, any party against whom the jury might draw an adverse inference from the claim of privilege is entitled to a jury instruction that no inference may be drawn from that claim of privilege.

(f) **Privilege a**gainst **s**elf-**i**ncrimination in **c**ivil **c**ases. In a civil case, the provisions of paragraphs (c) through (e) do not apply when the privilege against self-incrimination has been invoked.

Amended effective May 7, 2025, pursuant to 2025 S.J.R. 4 "Joint Resolution Amending Court Rules on Attorney Confidentiality."

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2011 Advisory Committee Note. The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make class and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Original Advisory Committee Note. The subject matter of Rule 510 was previously included in Utah Rules of Evidence 37, 38, 39 and 40. The language recommended by the Committee, however, is largely that of proposed Federal Rules 511, 512 and 513, rules not included among those adopted by Congress.

Proposed Federal Rule 511 became Rule 510(a), replacing Rule 37. Proposed Federal Rule 512 became Rule 510(b), replacing Rule 38. Proposed Federal Rule 513 became Rule 510(c), replacing Rule 39. No replacement was adopted for Rule 40 since the Committee determined that the subject matter of that rule need not be covered by a rule of evidence.

Subparagraph (a). Since the purpose of evidentiary privileges is the protection of some societal interest or confidential relationship, the privilege should end when the purpose is no longer served because the holder of the privilege has allowed disclosure or made disclosure. For the same reason, although Rule 37 required a knowing waiver of the privilege, Rule 510(a) as drafted does not require such knowledge. A stranger to the

communication may testify to an otherwise privileged communication, if the participants have failed to take reasonable precautions to preserve privacy.

Subparagraph (b). Once disclosure of privileged matter has occurred, although confidentiality cannot be restored, the purpose of the privilege may still be served in some instances by preventing use of the evidence against the holder of the privilege. For that reason, privileged matter may still be excluded when the disclosure was not voluntary or was made without an opportunity to claim the privilege.

Subparagraph (c).

(1) Allowing inferences to be drawn from the invocation of a privilege might undermine the interest or relationship the privilege was designed to protect.

(2) For the same reason, the invocation of a privilege should not be revealed to the jury. Doing so might also result in unwarranted emphasis on the exclusion of the privileged matter.

(3) Whether to seek an instruction is left to the judgment of counsel for the party against whom the inference might be drawn. If requested, such an instruction is a matter of right.

(4) The provisions of subparagraph (c)(4) are not intended to alter the common law rules as to inferences that may be drawn or as to when a party may comment or be entitled to a jury instruction when the privilege has been invoked.