

1    **Rule 510. Miscellaneous ~~m~~Matters.**2    **Effective: ~~5/7/2025~~**3    **(a) Waiver of ~~p~~Privilege.**4    (1) Except as provided in paragraph (a)(2) or (a)(3), a person who holds a privilege  
5    under these rules waives the privilege if the person or a previous holder of the  
6    privilege:7        (A) voluntarily discloses or consents to the disclosure of any significant part of the  
8        matter or communication; or

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

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

11      (3) If a party is an entity that is subject to an audit by the legislative auditor general  
12      under Utah Constitution, Article VI, Section 33, and information that is privileged  
13      under [Rule 504](#) is disclosed to the legislative auditor general or an arbitrator as  
14      described in Utah Code section 36-12-15, the disclosure to the legislative auditor  
15      general or the arbitrator does not waive the privilege under paragraph (a)(1).**Formatted:** Indent: Left: 0.25", First line: 0"16      **(b) Inadmissibility of ~~d~~Disclosed ~~i~~Information.** Evidence of a statement or other  
17      disclosure of privileged matter is not admissible against the holder of the privilege if  
18      disclosure was compelled erroneously or made without opportunity to claim the  
19      privilege.20      **(c) Comment or ~~i~~Inference ~~n~~Not ~~p~~Permitted.** The claim of privilege, whether in the  
21      present proceeding or upon a prior occasion, is not a proper subject of comment by judge  
22      or counsel. No inference may be drawn from any claim of privilege.23      **(d) Claiming ~~p~~Privilege ~~w~~Without the ~~j~~Jury's ~~k~~Knowledge.** To the extent practicable,  
24      jury cases shall be conducted to allow claims of privilege to be made without the jury's  
25      knowledge.

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

29 (f) **Privilege ~~a~~Against ~~s~~Self-Incrimination in ~~c~~Civil ~~c~~Cases.** In a civil case, the  
30 provisions of paragraphs (c) through (e) do not apply when the privilege against self-  
31 incrimination has been invoked.

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

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35 **2011 Advisory Committee Note.** The language of this rule has been amended as part of  
36 the restyling of the Evidence Rules to make them more easily understood and to make  
37 class and terminology consistent throughout the rules. These changes are intended to be  
38 stylistic only. There is no intent to change any result in any ruling on evidence  
39 admissibility.

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

44 Proposed Federal Rule 511 became Rule 510(a), replacing Rule 37. Proposed Federal Rule  
45 512 became Rule 510(b), replacing Rule 38. Proposed Federal Rule 513 became Rule  
46 510(c), replacing Rule 39. No replacement was adopted for Rule 40 since the Committee  
47 determined that the subject matter of that rule need not be covered by a rule of evidence.

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

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

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

60 Subparagraph (c).

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

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

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

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

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