

1 **Rule 504. Lawyer - Client.**

8/16 draft

2 **(a) Definitions.**

3 (1) "Client" means a person, public officer, corporation, association, or other organization or
4 entity, either public or private, who is rendered professional legal services by a lawyer or who
5 consults a lawyer with a view to obtaining ~~professional~~ legal services.

6 (2) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to
7 practice law in any state or nation.

8 (3) "Representative of the lawyer" means a person or entity employed to assist the lawyer in a
9 rendition of ~~professional~~ legal services.

10 (4) "Representative of the client" means a person or entity:

11 (A) having authority to obtain ~~professional~~ legal services;

12 (B) having authority to act on advice rendered pursuant to legal services ~~on behalf of the client~~;
13 or

14 (C) specifically authorized to communicate with the lawyer concerning a legal matter.

15 (5) "Communication" includes:

16 (A) advice given by the lawyer in the course of representing the client; and

17 (B) disclosures of the client and the client's representatives to the lawyer or the lawyer's
18 representatives incidental to the professional relationship.

19 (6) "Confidential communication" means a communication not intended to be disclosed to third
20 persons other than those to whom disclosure is in furtherance of rendition of ~~professional~~ legal
21 services to the client or those reasonably necessary for the transmission of the communication.

22 **(b) Statement of the Privilege.** A client has a privilege to refuse to disclose, and to prevent any
23 other person from disclosing, confidential communications if:

24 (1) the communications were made for the purpose of facilitating the rendition of ~~professional~~
25 legal services to the client; and

26 (2) the communications were ~~between~~ among:

27 (A) the client and the client's representatives, lawyers, lawyer's representatives, and lawyers
28 representing others in matters of common interest; or

29 (B) ~~among~~ the client's representatives, lawyers, lawyer's representatives, and lawyers
30 representing others in matters of common interest.

31 **(c) Who May Claim the Privilege.** The privilege may be claimed by:

- 32 (1) the client;
- 33 (2) the client's guardian or conservator;
- 34 (3) the personal representative of a client who is deceased;
- 35 (4) the successor, trustee, or similar representative of a client that was a corporation, association,
- 36 or other organization, whether or not in existence; and
- 37 (5) the lawyer on behalf of the client.

38 **(d) Exceptions to the Privilege.** Privilege does not apply in the following circumstances:

- 39 (1) Furtherance of the Crime or Fraud. If the services of the lawyer were sought or obtained to
- 40 enable or aid anyone to commit or plan to commit what the client knew or reasonably should
- 41 have known to be a crime or fraud;
- 42 (2) Claimants through Same Deceased Client. As to a communication relevant to an issue
- 43 between parties who claim through the same deceased client, regardless of whether the claims
- 44 are by testate or intestate succession or by *inter vivos* transaction;
- 45 (3) Breach of Duty by Lawyer or Client. As to a communication relevant to an issue of breach of
- 46 duty by the lawyer to the client;
- 47 (4) Document Attested by Lawyer. As to a communication relevant to an issue concerning a
- 48 document to which the lawyer was an attesting witness; or
- 49 (5) Joint Clients. As to the communication relevant to a matter of common interest between two
- 50 or more clients if the communication was made by any of them to a lawyer retained or consulted
- 51 in common, when offered in an action between any of the clients.

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53 **2016 Advisory Committee Note** The definition of “Representative of the client” has been

54 revised to be more grammatically correct, and to clarify the application of the term “specifically

55 authorized” in subparagraph (a)(4). The 2011 Advisory Committee Note made clear that a

56 “representative of the client” includes “employees who are specifically authorized to

57 communicate to the lawyer on a legal matter.” An individual client might in a similar vein

58 specifically authorize a person, such as a spouse, to communicate with the lawyer on a specific

59 matter, with the same assurance of confidentiality under the privilege. The authorization need not

60 be written, but may be inferred from the circumstances.

61 The 2011 Advisory Committee Note recognizes that a representative of the client may be an
62 independent contractor (such as a consultant or an advisor). So too might a spouse or other
63 individual be specifically authorized to communicate with the lawyer, as described above.
64 Minor typographical errors were also corrected.