

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

2
3 **(a) Definitions.**

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

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

12
13 (3) "Lawyer referral service" means an organization, either non-profit or for-
14 profit that is providing intake or screening services to clients or prospective
15 clients for the purpose of referring them to legal services.

16
17 (4) "Legal services" means the provision by a lawyer or lawyer referral service
18 of:

19 (A) professional counsel, advice, direction or guidance on a legal
20 matter or question;

21 (B) professional representation on the client's behalf on a legal matter;

22 or

23 (C) referral to a lawyer.

24
25 ~~(3)~~ "Lawyer's representative of the lawyer" means a person or entity
26 employed to assist the lawyer in a the rendition of professional legal services.

27
28 ~~(4)~~ "Client's representative of the client" means a person or entity ~~having~~
29 authority authorized by the client to:

30
31 ~~(A)~~ to obtain professional legal services for or on behalf of the client;

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33 ~~(B)~~ to act on advice rendered pursuant to legal services for or on behalf
34 of the client; or

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36 ~~(C)~~ person or entity specifically authorized to communicate with the
37 lawyer concerning a legal matter provide assistance to the client that is
38 reasonably necessary to facilitate the client's confidential communications.

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40 (D) disclose, as an employee or agent of the client, confidential
41 information concerning a legal matter to the lawyer.

42
43 ~~(5)~~ "Communication" includes:
44

45 (A) advice, direction or guidance given by the lawyer, the lawyer's
46 representative or a lawyer referral service in the course of ~~representing~~
47 ~~the client~~ providing legal services; and

48
49 (B) disclosures of the client and the client's representatives to the lawyer
50 ~~or, the lawyer's representatives~~ or a lawyer referral service incidental to
51 ~~the professional relationship~~ client's legal services.

52
53 (8) ~~(6)~~ "Confidential communication" means a communication not intended to be
54 disclosed to third persons other than those to whom disclosure is in furtherance
55 of rendition of ~~professional~~ legal services to the client or to those reasonably
56 necessary for the transmission of the communication.

57
58 **(b) Statement of the Privilege.** A client has a privilege to refuse to disclose, and to
59 prevent any other person from disclosing, confidential communications if:

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61 (1) the communications were made for the purpose of or in the course of
62 obtaining or facilitating the rendition of professional legal services to the client;
63 and

64
65 (2) the communications were ~~between~~:

66
67 (A) between (i) the client and or the client's representatives and (ii) the
68 lawyer, lawyers the lawyer's representatives, and lawyers or a lawyer
69 representing others in matters of common interest;

70
71 (B) ~~among the client's~~ between clients or clients' representatives lawyers,
72 lawyer's representatives, and lawyers representing other in as to
73 matters of common interest but only if each clients' lawyer or lawyer's
74 representatives was also present or included in the communications; ~~or~~

75
76 (C) between (i) the client or the client's representatives and (ii) a lawyer
77 referral service; or

78
79 (D) between (i) the client's lawyer or lawyer's representatives and (ii) the
80 client's lawyer referral service.

81
82 **(c) Who May Claim the Privilege.** The privilege may be claimed by:

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84 (1) the client;

85
86 (2) the client's guardian or conservator;

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88 (3) the personal representative of a client who is deceased;

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90 (4) the successor, trustee, or similar representative of a client that was a
91 corporation, association, or other organization, whether or not in existence; and

92
93 (5) the lawyer or the lawyer referral service on behalf of the client.

94
95 **(d) Exceptions to the Privilege.** Privilege does not apply in the following
96 circumstances:

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98 (1) Furtherance of the Crime or Fraud. If the services of the lawyer were sought
99 or obtained to enable or aid anyone to commit or plan to commit what the client
100 knew or reasonably should have known to be a crime or fraud;

101
102 (2) Claimants through Same Deceased Client. As to a communication relevant
103 to an issue between parties who claim through the same deceased client,
104 regardless of whether the claims are by testate or intestate succession or by inter
105 vivos transaction;

106
107 (3) Breach of Duty by Lawyer or Client. As to a communication relevant to an
108 issue of breach of duty by the lawyer to the client;

109
110 (4) Document Attested by Lawyer. As to a communication relevant to an issue
111 concerning a document to which the lawyer was an attesting witness; or

112
113 (5) Joint Clients. As to the communication relevant to a matter of common
114 interest between two or more clients if the communication was made by any of
115 them to a lawyer retained or consulted in common, when offered in an action
116 between any of the clients.

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118
119 **2017 Advisory Committee Note.** – The 2017 amendments to this rule recognize that clients may
120 require or benefit from the assistance of others to facilitate confidential communications with
121 their lawyers, and the presence of such facilitators does not destroy the privilege. On the other
122 hand, the expansion of the scope of a facilitating “client representative” is to be interpreted
123 against an objective standard and applied so as to avoid abuse. The application of the privilege
124 in any given situation will be largely fact driven, with an eye toward fostering legitimate
125 protection of confidential communications but not hiding from discovery, or making
126 inadmissible, communications not legitimately deserving of such protection.

127
128 The amendments also clarify the nature of the communications to be protected, explicitly stating
129 by and between whom the communications are made that are cloaked with the privilege. It is the
130 intent of this rule to protect communications between clients and attorneys or between clients
131 and lawyer referral services made to obtain or facilitate legal services and intended to be
132 confidential, but not extend the privilege to every communication simply because a lawyer is
133 involved in it.

134

135 The amendments recognize that interaction with a lawyer referral service may entail
136 communications that are intended to be confidential and are made for the purposes of obtaining
137 and rendering legal services, about which the same policy considerations support confidentiality.
138 A definition of “lawyer referral service” has been added, referrals are included within the ambit
139 of “legal services,” and other provisions have been added to make explicit that the rule applies to
140 lawyer referral communications when appropriate. These amendments are limited to the scope
141 of the attorney-client privilege. Nothing in the amendments is intended to suggest that for other
142 purposes, such as application of the Utah Rules of Professional Conduct or principles of attorney
143 liability, an attorney forms an attorney-client relationship with a person merely by making a
144 referral to another lawyer, even if privileged confidential communications are made in the
145 process of that referral.