

Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

(a) Disclosure Made in a State Court Proceeding; Scope of a Waiver. When the disclosure is made in a state court proceeding and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a state court proceeding only if:

- (1) the waiver is intentional;
- (2) the disclosed and undisclosed communications or information concern the same subject matter; and
- (3) they ought in fairness to be considered together.

(b) Inadvertent Disclosure. When made in a state court proceeding, the disclosure does not operate as a waiver if:

- (1) the disclosure is inadvertent;
- (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
- (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Minnesota Rule of Civil Procedure 26.02(f)(2).

(c) Controlling Effect of a Court Order. A state court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court - in which event the disclosure is also not a waiver in any other state court proceeding.

(d) Controlling Effect of a Party Agreement. An agreement on the effect of disclosure in a state proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(e) Definitions. In this rule:

- (1) "attorney-client privilege" means the protection that applicable law provides for confidential attorney-client communications; and
- (2) "work-product protection" means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

(Added effective January 1, 2019.)

Committee Comment - 2018

Rule 502 is modeled closely on Fed. R. Evid. 502. Consistent with Minnesota Statutes, section 595.02, subdivision 1(b), and section 480.0591, subdivision. 6, clauses (1) and (5), this rule is not meant to alter Minnesota law, but to clarify it. In its note to the federal rule, the Supreme Court Advisory Committee explained:

The rule seeks to provide a predictable, uniform set of standards under which parties can determine the consequences of a disclosure of a communication or information covered by the attorney-client privilege or work-product protection. Parties to litigation need to know, for example, that if they exchange privileged information pursuant to a confidentiality order, the court's order will be enforceable....

The rule makes no attempt to alter federal or state law on whether a communication or information is protected under the attorney-client privilege or work-product immunity as an initial matter. Moreover, while establishing some exceptions to waiver, the rule does not purport to supplant applicable waiver doctrine generally.