

Proposed Rule Change

Chapter 33 COLORADO RULES OF EVIDENCE

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 Colorado Proceeding or to a Colorado Office or Agency; Scope of a Waiver. When the disclosure is made in a Colorado proceeding or to an office or agency of a Colorado state, county, or local government and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a Colorado 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 Colorado proceeding or to an office or agency of a Colorado state, county, or local government, the disclosure does not operate as a waiver in a Colorado proceeding 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 C.R.C.P. 26(b)(5)(B).

(c) Disclosure Made in a Federal or other State Proceeding. When the disclosure is made in a proceeding in federal court or the court of another state and is not the subject of a court order concerning waiver, the disclosure does not operate as a waiver in a Colorado proceeding if the disclosure:

- (1) would not be a waiver under this rule if it had been made in a Colorado proceeding; or
- (2) is not a waiver under the law governing the state or federal proceeding where the disclosure occurred.

(d) Controlling Effect of a Court Order. A Colorado 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 proceeding.

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

(f) 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.