

Privilege and Communications Between Professionals: When Is There a Waiver? (A State-by-State Summary)



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Privilege and Communication Between Professionals

Summary of Research Findings

Question Addressed: Which jurisdictions allow two professionals—each of whom has a privileged relationship with a victim/survivor/client/patient—to confer or otherwise communicate with one another, without the communication between the two professionals resulting in a waiver of the victim/survivor/client/patient privilege.

Findings: Twenty-five (25) states and one (1) U.S. territory specifically allow, by statute or case law, such communications and do not consider them a waiver of the individual’s privileged communications.

| States | Yes or No to Recognition | Law |
|----------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Alabama | Yes | Alabama Rules of Evidence Rule 510 Rule states “This rule does not apply if the disclosure itself is privileged.” |
| 2. Alaska | Yes | Alaska EV code Rule 510. Rule states “this rule does not apply if the disclosure is itself a privileged communication.” |
| 3. Arizona | No | NA |
| 4. Arkansas | Yes | Ch. 41 Uniform Rules of EV. Rule 510 Waiver of privilege by voluntary disclosure. Rule states “This rule does not apply if the disclosure itself is privileged.” |
| 5. California | Yes | Cal EV code §912 (c) states “a disclosure that is itself privileged is not a waiver of any privilege.” |
| 6. Colorado | No | NA |
| 7. Connecticut | No | NA |
| 8. Delaware | Yes | Delaware Uniform Rules of EV-Rule 510 Waiver of privilege by voluntary disclosure. States “This rule does not apply if the disclosure itself is privileged.” |
| 9. DC | No | NA |
| 10. Florida | Yes | Title VII Evidence (90.507-waiver of privilege by voluntary disclosure. |

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| | | States “This section is not applicable when the disclosure is itself a privileged communication.” |
| 11. Georgia | No | NA |
| 12. Hawaii | Yes | Haw.Rev.Stat Rule § 511. States “This rule does not apply if the disclosure is itself a privileged communication.” |
| 13. Idaho | Yes | Idaho Rules of EV –Rule 510 Waiver of Privilege by voluntary disclosure. States “This rule does not apply if the disclosure is itself a privileged communication.” |
| 14. Illinois | No | NA |
| 15. Indiana | Yes | Indiana Rules of EV-Rule 501 (waiver of privilege by voluntary disclosure. States “This rule does not apply if the disclosure itself is privileged.” |
| 16. Iowa | No | NA |
| 17. Kansas | No | NA |
| 18. Kentucky | Yes | KRE Rule 509 Waiver of privilege by voluntary disclosure. States “this rule does not apply if the disclosure itself is privileged.” |
| 19. Louisiana | Yes | CE 502 (Louisiana code of EV). States “this rule does not apply if the disclosure itself is privileged.” |
| 20. Maine | Yes | Main rules of Ev-Rule 510 (waiver of privilege by voluntary disclosure). Same language as Louisiana. |
| 21. Maryland | No | NA |
| 22. Massachusetts | No | NA |
| 23. Michigan | No | NA |
| 24. Minnesota | No | NA |

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| 25. Mississippi | No | NA |
| 26. Missouri | No | NA |
| 27. Montana | Yes | Montana EV code Rule 503 (waiver of privilege by voluntary disclosure). States “This rule does not apply if the disclosure itself is privileged.” |
| 28. Nebraska | Yes | Neb. rev. stat 27-511 Waiver of privilege by voluntary disclosure. States “this rule does not apply if the disclosure is itself a privileged communication.” |
| 29. Nevada | Yes | Nev. Rev. Stat 49.385 Waiver of Privilege by voluntary disclosure. States “This section does not apply if the disclosure is itself a privileged communication. |
| 30. New Hampshire | Yes | New Hampshire EV code rule 510-waiver of privilege by voluntary disclosure. States “this rule does not apply if the disclosure itself is privileged.” |
| 31. New Jersey | Yes | NJ Evidence Rule 530 Waiver of Privilege by Contract or Previous Disclosure; Limitations. Language states “A disclosure which is itself privileged or otherwise protected by the common law, statutes or rules of court of this State, or by lawful contract, shall not constitute a waiver under this section. |
| 32. New Mexico | Yes | NM Ev Rule 11-511 Waiver of privilege by voluntary disclosure. States “this rule does not apply if the disclosure is itself a privileged communication.” |
| 33. New York | No | NA |
| 34. North Carolina | No | NA |

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| 35. North Dakota | Yes | North Dakota EV code Rule 510. States “This rule does not apply if the disclosure itself is privileged.” |
| 36. Ohio | No | NA |
| 37. Oklahoma | Yes | Okla. Stat. tit. 12 Sec. 2511 Waiver of Privilege by Voluntary Disclosure (Oklahoma Statutes (2013 Edition). States “this section does not apply if the disclosure itself is privileged.” |
| 38. Oregon | Yes! | ORS 40.280 (Rule 511) Waiver of privilege by voluntary disclosure. Section states “this section does not apply if the disclosure itself is a privileged communication.” |
| 39. Pennsylvania | No | NA |
| 40. Rhode Island | No | NA |
| 41. South Carolina | No | NA |
| 42. South Dakota | | SDCL 19-13-26 Rule 510 Waiver of Privilege by voluntary disclosure. States “this section does not apply if the disclosure itself is privileged. |
| 43. Tennessee | No | NA |
| 44. Texas | Yes | Texas EV Code Rule 511 Waiver of Privilege by Voluntary Disclosure. See statute. States “unless such disclosure itself is privileged.” |
| 45. Utah | Yes | Utah EV Code Miscellaneous Matters Rule 510. States “This privilege is not waived if the disclosure is itself a privileged communication.” |
| 46. Vermont | Yes | V.R.E Rule 510(a) Waiver of Privilege and Work Product by disclosure. States “ This rule does not apply if the disclosure itself is privileged.” |
| 47. Virginia | No | NA |

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| 48. Washington | No | NA |
| 49. West Virginia | No | NA |
| 50. Wisconsin | Yes | Wis. Stat. Sec 905.11 (a) Waiver of Privilege by Voluntary Disclosure. States "This section does not apply if the disclosure is itself a privileged communication." |
| 51. Wyoming | No | NA |
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| Territories | | |
| 1. American Samoa | No | NA |
| 2. Federated States of Micronesia | No | NA |
| 3. Guam | Yes | Guam Rules of Evidence Rule 503(c) Waiver of Privilege. States "a disclosure that is itself privileged is not a waiver of any privilege." |
| 4. Midway Islands | No | NA |
| 5. Northern Mariana Islands | No | NA |
| 6. Puerto Rico | No | NA |
| 7. Republic of Palau | Doubtful | Territory website down and Lexis does not have information on this territory. |
| 8. Republic of the Marshall Islands | No | NA |
| 9. US Virgin Islands | No | NA |