

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE AMENDMENT       )  
TO SDCL 19-19-502                       )

RULE 19-18

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A hearing was held on August 26, 2019, at Pierre, South Dakota, relating to the amendment to SDCL 19-19-502 and the Court having considered the proposed adoption and written presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 19-19-502 be and it is hereby amended to read in its entirety as follows:

**SDCL 19-19-502. Lawyer-client privilege.**

**(a) Definitions. As used in this section:**

(1) A "client" is a person, a fiduciary of a trust or estate, public officer, or corporation, limited liability company, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from him;

(2) A representative of the client is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client;

(3) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation;

(4) A "representative of the lawyer" is one employed by the lawyer to assist the lawyer in the rendition of professional legal services;

(5) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

**(b) General rule of privilege.** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(1) Between himself or his representative and his lawyer or his lawyer's representative;

(2) Between his lawyer and the lawyer's representative;

(3) By him or his representative or his lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(4) Between representatives of the client or between the client and a representative of the client; or

(5) Among lawyers and their representatives representing the same client.

**(c) Who may claim privilege.** The privilege may be claimed by the client, his guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

**(d) Exceptions.** There is no privilege under this section:

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

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

Rule 19-18

(3) Breach of duty by a lawyer or client. As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer;

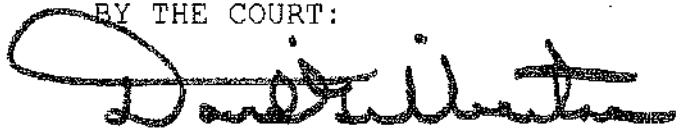
(4) Documents attested by a lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;

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

IT IS FURTHER ORDERED that this rule shall become effective immediately.

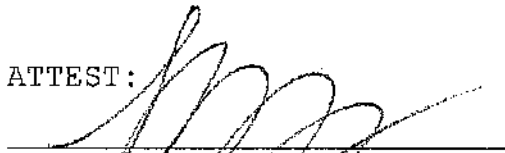
DATED at Pierre, South Dakota, this 6th day of September, 2019.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:

  
Clerk of the Supreme Court  
(SEAL)

STATE OF SOUTH DAKOTA

In the Supreme Court

I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this

6th day of Sept, 2019

  
Deputy

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

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Clerk