RULE 501. PRIVILEGE IN GENERAL

The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise:

* the United States Constitution;
* a federal statute; or
* rules prescribed by the Supreme Court.

But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.

# 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 Federal Proceeding or to a Federal Office or Agency; Scope of a Waiver.** When the disclosure is made in a federal proceeding or to a federal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a federal or state 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 federal proceeding or to a federal office or agency, the disclosure does not operate as a waiver in a federal or state 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 [Federal Rule of Civil Procedure 26](http://www.law.cornell.edu/jureeka/index.php?doc=FRCP&rule=26) (b)(5)(B).

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

**(1)** would not be a waiver under this rule if it had been made in a federal proceeding; or

**(2)** is not a waiver under the law of the state where the disclosure occurred.

**(d) Controlling Effect of a Court Order.** A federal 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 federal or state proceeding.

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

**(f) Controlling Effect of this Rule.** Notwithstanding Rules [101](http://www.law.cornell.edu/rules/fre/rule_101) and [1101](http://www.law.cornell.edu/rules/fre/rule_1101), this rule applies to state proceedings and to federal court-annexed and federal court-mandated arbitration proceedings, in the circumstances set out in the rule. And notwithstanding Rule 501, this rule applies even if state law provides the rule of decision.

**(g) 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.

http://www.law.cornell.edu/rules/fre/rule\_502