

# LOUISIANA CODE OF EVIDENCE

== 2018 ==



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## LOUISIANA CODE OF EVIDENCE 2018

The goal of this 2018 edition of the Louisiana Code of Evidence<sup>1</sup> is to provide the practitioner with a convenient copy to bring to court or the office. It contains all articles as amended through the 2017 legislative sessions. Other titles such as Louisiana Civil Code, Louisiana Code of Civil Procedure, Louisiana Code of Criminal Procedure, and Federal Rules of Civil Procedure are available at [www.gulfcoastlegalpublishing.com](http://www.gulfcoastlegalpublishing.com). For bulk and academic discount inquiries, email [info@gulfcoastlegalpublishing.com](mailto:info@gulfcoastlegalpublishing.com).

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## CHAPTER 5. TESTIMONIAL PRIVILEGES

### Art. 501. Scope of privileges

Privileges as recognized in this Chapter are evidentiary in nature, do not of themselves create causes of action or other substantive rights, and are applicable to proceedings enumerated in Article 1101. Nothing in this Chapter is intended to regulate the content or waiver of constitutional rights, nor inferences to be drawn from their invocation.

Acts 1992, No. 376, §1, eff. Jan. 1, 1993.

### Art. 502. Waiver of privilege

A. Waiver. A person upon whom the law confers a privilege against disclosure waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.

B. Disclosure under compulsion or without opportunity to claim. A claim of privilege is not defeated by a disclosure which was compelled or made without opportunity to claim the privilege.

C. Joint holders. Where two or more persons are joint holders of a privilege, a waiver of the right of one joint holder to claim the privilege does not affect the right of another joint holder to claim the privilege.

Acts 1992, No. 376, §1, eff. Jan. 1, 1993.

### Art. 503. Comment on or inference from claim of privilege; instructions; exception

#### A. Comment, inference, and instructions.

(1) The claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inferences may be drawn therefrom.

(2) In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(3) Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

B. Exception in non-criminal proceedings. In non-criminal proceedings, under exceptional circumstances in the interest of justice, if a claim of privilege is sustained counsel may comment thereon, and, upon request, the court shall instruct the trier of fact that it may draw all reasonable inferences therefrom.

Acts 1992, No. 376, §1, eff. Jan. 1, 1993.

### Art. 504. Spousal confidential communications privilege

A. Definition. A communication is "confidential" if it is made privately and is not intended for further disclosure unless such disclosure is itself privileged.

B. Confidential communications privilege. Each spouse has a privilege during and after the marriage to refuse to disclose, and to prevent the other spouse from disclosing, confidential communications with the other spouse while they were husband and wife.

C. Confidential communications; exceptions. This privilege does not apply:

(1) In a criminal case in which one spouse is charged with a crime against the person or property of the other spouse or of a child of either.

(2) In a civil case brought by or on behalf of one spouse against the other spouse.

(3) In commitment or interdiction proceedings as to either spouse.

(4) When the communication is offered to protect or vindicate the rights of a minor child of either spouse.

(5) In cases otherwise provided by legislation.

Acts 1992, No. 376, §1, eff. Jan. 1, 1993.

#### Art. 505. Spousal witness privilege

In a criminal case or in commitment or interdiction proceedings, a witness spouse has a privilege not to testify against the other spouse. This privilege terminates upon the annulment of the marriage, legal separation, or divorce of the spouses. This privilege does not apply in a criminal case in which one spouse is charged with a crime against the person of the other spouse or a crime against the person of a child including but not limited to the violation of a preliminary or permanent injunction or protective order and violations of R.S. 14:79.

Acts 1992, No. 376, §1, eff. Jan. 1, 1993; Acts 2006, No. 191, §1.

#### Art. 506. Lawyer-client privilege

A. Definitions. As used in this Article:

(1) "Client" is a person, including a public officer, corporation, partnership, unincorporated association, or other organization or entity, public or private, to whom professional legal services are rendered by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(2) "Representative of the client" is:

(a) A person having authority to obtain professional legal services, or to act on advice so obtained, on behalf of the client.

(b) Any other person who makes or receives a confidential communication for the purpose of effectuating legal representation for the client, while acting in the scope of employment for the client.

(3) "Lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(4) "Representative of the lawyer" is a person engaged by the lawyer to assist the lawyer in the lawyer's rendition of professional legal services.

(5) A communication is "confidential" if it is not intended to be disclosed to persons other than:

(a) Those to whom disclosure is made in furtherance of obtaining or rendering professional legal services for the client.

(b) Those reasonably necessary for the transmission of the communication.

(c) When special circumstances warrant, those who are present at the behest of the client and are reasonably necessary to facilitate the communication.

B. General rule of privilege. A client has a privilege to refuse to disclose, and to prevent another person from disclosing, a confidential communication, whether oral, written, or otherwise, made for the purpose of facilitating the rendition of professional legal services to the client, as well as the perceptions, observations, and the like, of the mental, emotional, or physical condition of the client in connection with such a communication, when the communication is:

(1) Between the client or a representative of the client and the client's lawyer or a representative of the lawyer.

(2) Between the lawyer and a representative of the lawyer.

(3) By the client or his lawyer, or a representative of either, to a lawyer, or representative of a lawyer, who represents another party concerning a matter of common interest.

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

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

(6) Between representatives of the client's lawyer.

C. Exceptions. There is no privilege under this Article as to a communication:

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

(b) Made in furtherance of a crime or fraud.

(2) Which was with a client now deceased relevant to an issue between parties who claim through that client, regardless of whether the claims are by testate or intestate succession or by transaction inter vivos.

(3) Which is relevant to an issue of breach of duty by a lawyer to the client or by a client to the client's lawyer.

(4)(a) Which is relevant to an issue of authenticity or capacity concerning a document which the lawyer signed as a witness or notary.

(b) Concerning the testimony of a representative of a lawyer regarding a communication relevant to an issue of authenticity or capacity concerning a document to which the representative is a witness or notary.

(5) Which is relevant to a matter of common interest between or among two or more clients if the communication was made by any of them or their representative to a lawyer or his representative retained or consulted in common, when subsequently offered by one client against the other in a civil action.

(6) Concerning the identity of the lawyer's client or his representative, unless disclosure of the identity by the lawyer or his representative would reveal either the reason for which legal services were sought or a communication which is otherwise privileged under this Article.

D. Who may claim privilege. The privilege may be claimed by the client, the client's agent or legal representative, or the successor, trustee, or similar representative of a client that is a corporation, partnership, unincorporated 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 on behalf of the client, former client, or deceased client.

Acts 1992, No. 376, §1, eff. Jan. 1, 1993.

Art. 507. Subpoena of lawyer or his representative in criminal cases

A. General rule. Neither a subpoena nor a court order shall be issued to a lawyer or his representative to appear or testify in any criminal investigation or proceeding where the purpose of the subpoena or order is to ask the lawyer or his representative to reveal information about a client or former client obtained in the course of representing the client unless the court after a contradictory hearing has determined that the information sought is not protected from disclosure by any applicable privilege or work product rule; and all of the following:

(1) The information sought is essential to the successful completion of an ongoing investigation, prosecution, or defense.

(2) The purpose of seeking the information is not to harass the attorney or his client.

(3) With respect to a subpoena, the subpoena lists the information sought with particularity, is reasonably limited as to subject matter and period of time, and gives timely notice.

(4) There is no practicable alternative means of obtaining the information.

B. Waiver. Failure to object timely to non-compliance with the terms of this Article constitutes a waiver of the procedural protections of this Article, but does not constitute a waiver of any privilege.

C. Binding effect of determination; notice to client. The determination that a lawyer-client privilege is not applicable to the testimony shall not bind the client or former client unless the client or former client was given notice of the time, place, and substance of the hearing and had an opportunity fully to participate in that hearing.

D. Exceptions. This Article shall not apply in habitual offender proceedings when a lawyer is called as a witness for purposes of identification of his client or former client, or in post-conviction proceedings when a lawyer is called as a witness on the issue of ineffective assistance of the lawyer.

E. The procedural provisions and protections afforded by Paragraph A of this Article shall extend to lawyers serving as prosecutors in state, parish, or municipal courts, whether those functions are exercised in the name of the state of Louisiana or any parish or municipality, and whether the lawyer is the attorney general or assistant attorney general, a district attorney or assistant district attorney, or a parish or municipal prosecutor, and shall extend to lawyers employed by either house of the Louisiana Legislature.

Acts 1992, No. 376, §1, eff. Jan. 1, 1993; Acts 2007, No. 23, §1.

Art. 508. Subpoena of lawyer or his representative in civil cases

A. General rule. Neither a subpoena nor a court order shall be issued to a lawyer or his representative to appear or testify in any civil or juvenile proceeding, including pretrial discovery, or in an administrative investigation or hearing, where the purpose of the subpoena or order is to ask the lawyer or his representative to reveal information about a client or former client obtained in the course of representing the client unless, after a contradictory hearing, it has been determined that the information sought is not protected from disclosure by any applicable privilege or work product rule; and all of the following:

(1) The information sought is essential to the successful completion of an ongoing investigation, is essential to the case of the party seeking the information, and is not merely peripheral, cumulative, or speculative.

(2) The purpose of seeking the information is not to harass the attorney or his client.

(3) With respect to a subpoena, the subpoena lists the information sought with particularity, is reasonably limited as to subject matter and period of time, and gives timely notice.

(4) There is no practicable alternative means of obtaining the information.

B. Waiver. Failure to object timely to non-compliance with the terms of this Article constitutes a waiver of the procedural protections of this Article, but does not constitute a waiver of any privilege.

C. Binding effect of determination; notice to client. The determination that a lawyer-client privilege is not applicable to the testimony shall not bind the client or former client unless the client or former client was given notice of the time, place, and substance of the hearing and had an opportunity fully to participate in that hearing.

D. Scope. Nothing in this Article is intended to affect the provisions of Code of Civil Procedure Articles 863 and 1452(B).

E. The procedural provisions and protections afforded by Paragraph A of this Article shall extend to lawyers representing the state or any political subdivision, whether the lawyer is the attorney general or assistant attorney general, a district attorney or assistant district attorney, a parish attorney or assistant parish attorney; or a municipal or city attorney or assistant municipal or assistant city attorney; and shall extend to lawyers employed by either house of the Louisiana Legislature.

Acts 1992, No. 376, §1, eff. Jan. 1, 1993; Acts 2007, No. 23, §1.

Art. 509. Work product rule not affected

Nothing in this Chapter shall be construed as derogating from the protection afforded by the rules relating to work product.

Acts 1992, No. 376, §1, eff. Jan. 1, 1993.

Art. 510. Health care provider-patient privilege

A. Definitions. (1) The definitions of health care provider, physician, psychotherapist, and their representatives as provided in this Article include persons reasonably believed to be such by the patient or his representative. As used in this Article:

(1)(a) "Confidential communication" is the transmittal or acquisition of information not intended to be disclosed to persons other than:

(i) A health care provider and a representative of a health care provider.

(ii) Those reasonably necessary for the transmission of the communication.

(iii) Persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist.

(iv) A patient's health care insurer, including any entity that provides indemnification to a patient.

(v) When special circumstances warrant, those who are present at the behest of the patient, physician, or psychotherapist and are reasonably necessary to facilitate the communication.

(b) "Confidential communication" includes any information, substance, or tangible object, obtained incidental to the communication process and any opinion formed as a result of the

consultation, examination, or interview and also includes medical and hospital records made by health care providers and their representatives.

(2) "Health care provider" is a person or entity defined as such in R.S. 13:3734(A)(1), and includes a physician and psychotherapist as defined below, and also includes a person who is engaged in any office, center, or institution referred to as a rape crisis center, who has undergone at least forty hours of sexual assault training and who is engaged in rendering advice, counseling, or assistance to victims of sexual assault.

(3) "Health condition" is a physical, mental, or emotional condition, including a condition induced by alcohol, drugs, or other substance.

(4) "Patient" is a person who consults or is examined or interviewed by another for the purpose of receiving advice, diagnosis, or treatment in regard to that person's health.

(5) "Physician" is a person licensed to practice medicine in any state or nation.

(6) "Psychotherapist" is:

(a) A physician engaged in the diagnosis or treatment of a mental or emotional condition, including a condition induced by alcohol, drugs, or other substance.

(b) A person licensed or certified as a psychologist under the laws of any state or nation.

(c) A person licensed as a licensed professional counselor or social worker under the laws of any state or nation.

(7) "Representative" of a physician, psychotherapist, or other health care provider is:

(a) A person acting under the supervision, direction, control, or request of a physician, psychotherapist, or health care provider engaged in the diagnosis or treatment of the patient.

(b) Personnel of a "hospital", as defined in R.S. 13:3734(A)(3), whose duties relate to the health care of patients or to maintenance of patient records.

(8) "Representative of a patient" is any person who makes or receives a confidential communication for the purpose of effectuating diagnosis or treatment of a patient.

B.(1) General rule of privilege in civil proceedings. In a non-criminal proceeding, a patient has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication made for the purpose of advice, diagnosis or treatment of his health condition between or among himself or his representative, his health care provider, or their representatives.

(2) Exceptions. There is no privilege under this Article in a noncriminal proceeding as to a communication:

(a) When the communication relates to the health condition of a patient who brings or asserts a personal injury claim in a judicial or worker's compensation proceeding.

(b) When the communication relates to the health condition of a deceased patient in a wrongful death, survivorship, or worker's compensation proceeding brought or asserted as a consequence of the death or injury of the deceased patient.

(c) When the communication is relevant to an issue of the health condition of the patient in any proceeding in which the patient is a party and relies upon the condition as an element of his claim or defense or, after the patient's death, in any proceeding in which a party deriving his right from the patient relies on the patient's health condition as an element of his claim or defense.

(d) When the communication relates to the health condition of a patient when the patient is a party to a proceeding for custody or visitation of a child and the condition has a substantial bearing on the fitness of the person claiming custody or visitation, or when the patient is a child who is the subject of a custody or visitation proceeding.