

# Federal Rule of Evidence 502 (Text of Federal Rule of Evidence 502)

This **FRE 502 Text Page** includes the terms of Federal Rule of Evidence 502 as of the date of enactment, September 19, 2008. A PDF version of the rule is available at [Pub. L. No. 110-322](#), 122 Stat. 3537 (Sept. 19, 2008). Other information on the [FRE 502 Resource Pages](#), includes an [Overview](#); [Legislative Materials](#); Additional [Background Materials](#); Key [Cases](#); and coverage in the [Federal Evidence Blog](#).

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## 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(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 and 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."

(Added [Sept. 19, 2008](#), eff. Sept. 19, 2008.)