

SUPREME COURT OF ARIZONA

In the Matter of ) Arizona Supreme Court  
 ) No. R-09-0004  
PETITION TO ADOPT RULE 502, )  
ARIZONA RULES OF EVIDENCE )  
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**ORDER  
ADOPTING NEW RULE 502, ARIZONA RULES OF EVIDENCE**

A petition having been filed proposing to adopt new Rule 502, Arizona Rules of Evidence, and comments having been received, upon consideration,

IT IS ORDERED that Rule 502, Arizona Rules of Evidence, be adopted in accordance with the attachment hereto, effective January 1, 2010.

DATED this \_\_\_\_\_ day of September, 2009.

\_\_\_\_\_  
REBECCA WHITE BERCH  
Chief Justice

TO:  
Rule 28 Distribution

mwa

**ATTACHMENT**

**NEW RULE 502**

**ARIZONA RULES OF EVIDENCE**

**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 an Arizona proceeding; scope of a waiver.**

When the disclosure is made in an Arizona proceeding and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in an Arizona 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 an Arizona proceeding, the disclosure does not operate as a waiver in an Arizona 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 Arizona Rule of Civil Procedure 26.1(f)(2).

**(c) Disclosure made in a proceeding in federal court or another state.**

When the disclosure is made in a proceeding in federal court or another state and is not the subject of a court order concerning waiver, the disclosure does not operate as a waiver in an

Arizona proceeding if the disclosure:

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

(2) is not a waiver under the law governing the federal or state proceeding where the disclosure occurred.

**(d) Controlling effect of a court order.**

An Arizona 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 proceeding.

**(e) Controlling effect of a party agreement.**

An agreement on the effect of disclosure in an Arizona proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

**(f) 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.