

## **ADVANCED CRIMINAL EVIDENCE: PRIVILEGES**

Paul M. Newby, Associate Justice of the Supreme Court of North Carolina  
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**Rule 501, North Carolina Rules of Evidence:** "Except as otherwise required by the Constitution of the United States, the privileges of a witness, person, government, state or political subdivision thereof shall be determined in accordance with the law of this State."

### **OVERVIEW**

- 1) Purpose behind privilege
- 2) Sources of privilege: Constitution, common law, statute
- 3) Analysis of privilege:
  - a) Who may claim the privilege?
  - b) When may it be invoked?
  - c) What is the scope of the privilege?
  - d) In what way is the privilege limited?
  - e) When is the privilege waived?
  - f) If privileged information is disclosed during trial, is a cure required? If so, what?

### **PRIVILEGE AGAINST SELF-INCRIMINATION**

- 1) Constitutional
  - a) Fifth Amendment of the U.S. Constitution
  - b) Article I, Section 23 of the N.C. Constitution
- 2) Analysis of privilege
  - a) Who: protects individuals
  - b) When: any type of proceeding
  - c) Scope: Covers admissions of guilt and any answer that might tend to prove or provide a clue as to guilt, but there are limits
  - d) Waiver: *Miranda* rights

### **ATTORNEY-CLIENT PRIVILEGE**

- 1) Common law

A communication is privileged if made:
  - i) During attorney-client relationship;
  - ii) In confidence;
  - iii) Regarding a matter for which attorney is professional consulted; and
  - iv) In the course of seeking/giving legal advice.
- 2) Analysis of privilege
  - a) Who: Belongs to the client but attorney should claim it
  - b) When: Whenever disclosure is sought
  - c) Scope: All communications between client and attorney in confidence
  - d) Limits: can be limited by the court
  - e) Waiver: Express or implied
- 2) **Work Product:** Even if material is not privileged, it may be protected from disclosure as attorney work product

## **HUSBAND-WIFE PRIVILEGE**

- 1) Statutory
- 2) Analysis of privilege
  - a) Who: The communicating spouse is protected from disclosure of the communication by the other spouse.
  - b) When: may be invoked in any civil, criminal, or judicial proceeding
  - c) Scope: Covered marital communication, even after couple divorces
  - d) Limits
  - e) Waiver: implied waiver – no objection

## **CLERGYMAN-COMMUNICANT PRIVILEGE**

- 1) Statutory
  - Communicant must be
    - i) seeking advice and counsel of minister and
    - ii) The information is entrusted as a confidential communication
- 2) An absolute privilege

## **ADDITIONAL STATUTORY PRIVILEGES**

- 1) Physician-patient
- 2) Psychologist-patient
- 3) School counselor
- 4) Licensed marital and family therapist
- 5) Social worker
- 6) Counselor
- 7) Optometrist-patient
- 8) Peer support group
- 9) Journalist (includes newspapers and other news agencies)
- 10) Agents of rape crisis centers and domestic violence programs
- 11) Nurse