

60-426a. 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 court or agency proceeding; scope of waiver.* When the disclosure is made in a court or agency proceeding and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in any 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 be considered together.

(b) *Inadvertent disclosure.* When made in a court or agency proceeding, the disclosure does not operate as a waiver in any 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 subsection (b)(7)(B) of K.S.A. 60-226, and amendments thereto.

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

- (1) Would not be a waiver under this section if it had been made in a Kansas proceeding; or
- (2) is not a waiver under the law of the jurisdiction where the disclosure occurred.

(d) *Controlling effect of a court order.* A 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 a proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(f) *Definitions.* As used in this section:

- (1) "Attorney-client privilege" means the protection that applicable law provides for confidential attorney-client communications.
- (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.

History: L. 2011, ch. 96, § 1; July 1.