

CHAPTER 49 - PRIVILEGES

GENERAL PROVISIONS

[SECTION 49.015](#)
[SECTION 49.025](#)
[SECTION 49.027](#)

Privileges recognized only as provided.
Required reports privileged by statute.
Prevention of disclosure of privileged matter by interpreter.

LAWYER AND CLIENT

[SECTION 49.035](#)
[SECTION 49.045](#)
[SECTION 49.055](#)
[SECTION 49.065](#)
[SECTION 49.075](#)
[SECTION 49.085](#)
[SECTION 49.095](#)
[SECTION 49.105](#)
[SECTION 49.115](#)

Definitions.
“Client” defined.
“Confidential” defined.
“Lawyer” defined.
“Representative of the client” defined.
“Representative of the lawyer” defined.
General rule of privilege.
Who may claim privilege.
Exceptions.

ACCOUNTANT AND CLIENT

[SECTION 49.125](#)
[SECTION 49.135](#)
[SECTION 49.145](#)
[SECTION 49.155](#)
[SECTION 49.165](#)
[SECTION 49.175](#)
[SECTION 49.185](#)
[SECTION 49.195](#)
[SECTION 49.205](#)

Definitions.
“Accountant” defined.
“Client” defined.
“Confidential” defined.
“Representative of the accountant” defined.
“Representative of the client” defined.
General rule of privilege.
Who may claim privilege.
Exceptions.

PSYCHOLOGIST AND PATIENT

[SECTION 49.207](#)
[SECTION 49.209](#)
[SECTION 49.211](#)
[SECTION 49.213](#)

Definitions.
General rule of privilege.
Who may claim privilege.
Exceptions.

DOCTOR AND PATIENT

[SECTION 49.215](#)
[SECTION 49.225](#)
[SECTION 49.235](#)
[SECTION 49.245](#)

Definitions.
General rule of privilege.
Who may claim privilege.
Exceptions.

MARRIAGE AND FAMILY THERAPIST AND CLIENT

[SECTION 49.246](#)
[SECTION 49.247](#)
[SECTION 49.248](#)

Definitions.
General rule of privilege.
Who may claim privilege.

[SECTION 49.249](#) Exceptions.

CLINICAL PROFESSIONAL COUNSELOR AND CLIENT

[SECTION 49.2502](#) Definitions.
[SECTION 49.2504](#) General rule of privilege.
[SECTION 49.2506](#) Who may claim privilege.
[SECTION 49.2508](#) Exceptions.

SOCIAL WORKER AND CLIENT

[SECTION 49.251](#) Definitions.
[SECTION 49.252](#) General rule of privilege.
[SECTION 49.253](#) Who may claim privilege.
[SECTION 49.254](#) Exceptions.

VICTIM'S ADVOCATE AND VICTIM

[SECTION 49.2541](#) Definitions.
[SECTION 49.2542](#) "Domestic violence" defined.
[SECTION 49.2543](#) "Sexual assault" defined.
[SECTION 49.2544](#) "Victim" defined.
[SECTION 49.2545](#) "Victim's advocate" defined.
[SECTION 49.2546](#) When communication deemed to be confidential; "communication" defined.
[SECTION 49.2547](#) General rule of privilege.
[SECTION 49.2548](#) Who may claim privilege.
[SECTION 49.2549](#) Exceptions.

OTHER OCCUPATIONAL PRIVILEGES

[SECTION 49.255](#) Confessor and confessant.
[SECTION 49.285](#) Public officer as witness.
[SECTION 49.290](#) Counselor and pupil.
[SECTION 49.291](#) Teacher and pupil.

MISCELLANEOUS PRIVILEGES

[SECTION 49.295](#) Husband and wife: General rule of privilege; exceptions.
[SECTION 49.305](#) Husband and wife: Exception for insanity.
[SECTION 49.315](#) Political vote.

IDENTITY OF INFORMER

[SECTION 49.335](#) Privilege to refuse disclosure of identity of informer.
[SECTION 49.345](#) Who may claim.
[SECTION 49.355](#) Voluntary disclosure; informer a witness.
[SECTION 49.365](#) Testimony on guilt or innocence.
[SECTION 49.375](#) Legality of obtaining evidence.

WAIVER AND COMMENT

[SECTION 49.385](#) Waiver of privilege by voluntary disclosure.
[SECTION 49.395](#) Privileged matter disclosed under compulsion or without opportunity to claim privilege.
[SECTION 49.405](#) Comment upon or inference from claim of privilege; instruction.

GENERAL PROVISIONS

SECTION 49.015 Privileges recognized only as provided.

1. Except as otherwise required by the Constitution of the United States or the Ely Shoshone Tribe, and except as provided in this title or title 14 of the Nevada Revised Statutes, no person has a privilege to:

- (a) Refuse to be a witness;
- (b) Refuse to disclose any matter;
- (c) Refuse to produce any object or writing; or
- (d) Prevent another from being a witness or disclosing any matter or producing any object or writing.

2. This section does not:

- (a) Impair any privilege created by title 14 of the Nevada Revised Statutes or by the Nevada Rules of Civil Procedure which is limited to a particular stage of the proceeding; or
- (b) Extend any such privilege to any other stage of a proceeding.

SECTION 49.025 Required reports privileged by statute.

1. A person making a return or report required by law to be made has a privilege to refuse to disclose and to prevent any other person from disclosing the return or report, if the law requiring it to be made so provides.

2. A public officer or agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report if the law requiring it to be made so provides.

3. No privilege exists under this section in actions involving false statements or fraud in the return or report or when the report is contained in health care records furnished in accordance with the provisions of [SECTION 629.061](#).

SECTION 49.027 Prevention of disclosure of privileged matter by interpreter. A person who has a privilege against the disclosure of a matter may prevent the disclosure of that matter by an interpreter to whom the matter was disclosed merely to facilitate a privileged communication of the matter.

LAWYER AND CLIENT

SECTION 49.035 Definitions. As used in [SECTION 49.035](#) to [49.115](#), inclusive, the words and phrases defined in [SECTION 49.045](#) to [49.085](#), inclusive, have the meanings ascribed to them in [SECTION 49.045](#) to [49.085](#), inclusive.

SECTION 49.045 “Client” defined. “Client” means a person, including a public officer, corporation, association or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from him.

SECTION 49.055 “Confidential” defined. A communication is “confidential” if it is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

SECTION 49.065 “Lawyer” defined. “Lawyer” means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

SECTION 49.075 “Representative of the client” defined. “Representative of the client” means a person having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.

SECTION 49.085 “Representative of the lawyer” defined. “Representative of the lawyer” means a person employed by the lawyer to assist in the rendition of professional legal services.

SECTION 49.095 General rule of privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications:

1. Between himself or his representative and his lawyer or his lawyer’s representative.
2. Between his lawyer and the lawyer’s representative.
3. Made for the purpose of facilitating the rendition of professional legal services to the client, by him or his lawyer to a lawyer representing another in a matter of common interest.

SECTION 49.105 Who may claim privilege.

1. The privilege may be claimed by the client, his guardian or conservator, the personal representative of a deceased client, or the successor, trustee or similar representative of a corporation, association or other organization, whether or not in existence.
2. The person who was the lawyer at the time of the communication may claim the privilege but only on behalf of the client. His authority to do so is presumed in the absence of evidence to the contrary.

SECTION 49.115 Exceptions. There is no privilege under [SECTION 49.095](#) or [49.105](#):

1. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.
2. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.
3. As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer.
4. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness.
5. As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

ACCOUNTANT AND CLIENT

SECTION 49.125 Definitions. As used in [SECTION 49.125](#) to [49.205](#), inclusive, the words and phrases defined in [SECTION 49.135](#) to [49.175](#), inclusive, have the meanings ascribed to them in [SECTION 49.135](#) to [49.175](#), inclusive.

SECTION 49.135 “Accountant” defined. “Accountant” means a person certified or registered as a public accountant under [chapter 628](#) of the Nevada Revised Statutes who holds a live permit.

SECTION 49.145 “Client” defined. “Client” means a person, including a public officer, corporation, association or other organization or entity, either public or private, who is rendered professional accounting services by an accountant, or who consults an accountant with a view to obtaining professional accounting services from him.

SECTION 49.155 “Confidential” defined. A communication is “confidential” if it is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of

professional accounting services to the client or those reasonably necessary for the transmission of the communication.

SECTION 49.165 “Representative of the accountant” defined. “Representative of the accountant” means a person employed by the accountant to assist in the rendition of professional accounting services.

SECTION 49.175 “Representative of the client” defined. “Representative of the client” means a person having authority to obtain professional accounting services, or to act on advice rendered pursuant thereto, on behalf of the client.

SECTION 49.185 General rule of privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications:

1. Between himself or his representative and his accountant or his accountant’s representative.
2. Between his accountant and the accountant’s representative.
3. Made for the purpose of facilitating the rendition of professional accounting services to the client, by him or his accountant to an accountant representing another in a matter of common interest.

SECTION 49.195 Who may claim privilege.

1. The privilege may be claimed by the client, his guardian or conservator, the personal representative of a deceased client, or the successor, trustee or similar representative of a corporation, association or other organization, whether or not in existence.
2. The person who was the accountant may claim the privilege but only on behalf of the client. His authority to do so is presumed in the absence of evidence to the contrary.

SECTION 49.205 Exceptions. There is no privilege under [SECTION 49.185](#) or [49.195](#):

1. If the services of the accountant were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.
2. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.
3. As to a communication relevant to an issue of breach of duty by the accountant to his client or by the client to his accountant.
4. As to a communication relevant to an issue concerning the examination, audit or report of any financial statements, books, records or accounts which the accountant may be engaged to make or requested by a prospective client to discuss for the purpose of making a public report.
5. As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to an accountant retained or consulted in common, when offered in an action between any of the clients.
6. As to a communication between a corporation and its accountant:
 - (a) In an action by a shareholder against the corporation which is based upon a breach of fiduciary duty;or
 - (b) In a derivative action by a shareholder on behalf of the corporation.

PSYCHOLOGIST AND PATIENT

SECTION 49.207 Definitions. As used in [SECTION 49.207](#) to [49.213](#), inclusive, unless the context otherwise requires:

1. A communication is “confidential” if it is not intended to be disclosed to third persons other than:
 - (a) Those present to further the interest of the patient in the consultation, examination or interview;
 - (b) Persons reasonably necessary for the transmission of the communication; or
 - (c) Persons who are participating in the diagnosis and treatment under the direction of the psychologist, including members of the patient’s family.

2. "Patient" has the meaning ascribed to it in [SECTION 641.0245](#) of the Nevada Revised Statutes.
3. "Psychologist" has the meaning ascribed to it in [SECTION 641.027](#) of the Nevada Revised Statutes.

SECTION 49.209 General rule of privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications between himself and his psychologist or any other person who is participating in the diagnosis or treatment under the direction of the psychologist, including a member of the patient's family.

SECTION 49.211 Who may claim privilege.

1. The privilege may be claimed by the patient, by his guardian or conservator or by the personal representative of a deceased patient.
2. The psychologist of a patient may claim the privilege but only on behalf of the patient. The authority of the psychologist to claim the privilege is presumed in the absence of evidence to the contrary.

SECTION 49.213 Exceptions. There is no privilege pursuant to [SECTION 49.209](#) or [49.211](#):

1. For communications relevant to an issue in a proceeding to hospitalize the patient for mental illness, if the psychologist in the course of diagnosis or treatment has determined that the patient requires hospitalization.
2. For communications relevant to an issue of the treatment of the patient in any proceeding in which the treatment is an element of a claim or defense.
3. If disclosure is otherwise required by state or federal law.
4. For communications relevant to an issue in a proceeding to determine the validity of a will of the patient.
5. If there is an immediate threat that the patient will harm himself or other persons.
6. For communications made in the course of a court-ordered examination of the condition of a patient with respect to the specific purpose of the examination unless the court orders otherwise.
7. For communications relevant to an issue in an investigation or hearing conducted by the Board of Psychological Examiners if the treatment of the patient is an element of that investigation or hearing.
8. For communications relevant to an issue in a proceeding relating to the abuse or neglect of a person with a disability or a person who is legally incompetent.

DOCTOR AND PATIENT

SECTION 49.215 Definitions. As used in [SECTION 49.215](#) to [49.245](#), inclusive:

1. A communication is "confidential" if it is not intended to be disclosed to third persons other than:
 - (a) Those present to further the interest of the patient in the consultation, examination or interview;
 - (b) Persons reasonably necessary for the transmission of the communication; or
 - (c) Persons who are participating in the diagnosis and treatment under the direction of the doctor, including members of the patient's family.
2. "Doctor" means a person licensed to practice medicine, dentistry or osteopathic medicine in any state or nation, or a person who is reasonably believed by the patient to be so licensed, and in addition includes a person employed by a public or private agency as a psychiatric social worker, or someone under his guidance, direction or control, while engaged in the examination, diagnosis or treatment of a patient for a mental condition.
3. "Patient" means a person who consults or is examined or interviewed by a doctor for purposes of diagnosis or treatment.

SECTION 49.225 General rule of privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications among himself, his doctor or persons who are participating in the diagnosis or treatment under the direction of the doctor, including members of the patient's family.

SECTION 49.235 Who may claim privilege.

1. The privilege may be claimed by the patient, by his guardian or conservator, or by the personal representative of a deceased patient.
2. The person who was the doctor may claim the privilege but only on behalf of the patient. His authority so to do is presumed in the absence of evidence to the contrary.

SECTION 49.245 Exceptions. There is no privilege under [SECTION 49.225](#) or [49.235](#):

1. For communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the doctor in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.
2. As to communications made in the course of a court-ordered examination of the condition of a patient with respect to the particular purpose of the examination unless the court orders otherwise.
3. As to written medical or hospital records relevant to an issue of the condition of the patient in any proceeding in which the condition is an element of a claim or defense.
4. In a prosecution or mandamus proceeding under [chapter 441A](#) of the Nevada Revised Statutes.
5. As to any information communicated to a physician in an effort unlawfully to procure a dangerous drug or controlled substance, or unlawfully to procure the administration of any such drug or substance.
6. As to any written medical or hospital records which are furnished in accordance with the provisions of [SECTION 629.061](#) of the Nevada Revised Statutes.
7. As to records that are required by [chapter 453](#) of the Nevada Revised Statutes to be maintained.
8. If the services of the physician are sought or obtained to enable or aid a person to commit or plan to commit fraud or any other unlawful act in violation of any provision of [chapter 616A](#), [616B](#), [616C](#), [616D](#) or [617](#) of the Nevada Revised Statutes which the person knows or reasonably should know is fraudulent or otherwise unlawful.

MARRIAGE AND FAMILY THERAPIST AND CLIENT

SECTION 49.246 Definitions. As used in [SECTION 49.246](#) to [49.249](#), inclusive, unless the context otherwise requires:

1. "Client" means a person who consults or is interviewed by a marriage and family therapist for the purpose of diagnosis or treatment.
2. A communication is "confidential" if it is not intended to be disclosed to any third person other than a person:
 - (a) Present during the consultation or interview to further the interest of the client;
 - (b) Reasonably necessary for the transmission of the communication; or
 - (c) Participating in the diagnosis or treatment under the direction of the marriage and family therapist, including a member of the client's family.
3. "Marriage and family therapist" has the meaning ascribed to it in [SECTION 641A.060](#) of the Nevada Revised Statutes and includes a marriage and family therapist intern.

SECTION 49.247 General rule of privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications among himself, his marriage and family therapist or any other person who is participating in the diagnosis or treatment under the direction of the marriage and family therapist.

SECTION 49.248 Who may claim privilege.

1. The privilege may be claimed by the client, by his guardian or conservator, or by the personal representative of a deceased client.
2. The person who was the marriage and family therapist may claim the privilege but only on behalf of the client. His authority to do so is presumed in the absence of evidence to the contrary.

SECTION 49.249 Exceptions. There is no privilege under [SECTION 49.247](#) or [49.248](#):

1. If the client communicates to the marriage and family therapist that he intends or plans to commit what the client knows or reasonably should know is a crime.
2. If the marriage and family therapist is required to testify in an administrative or court-related investigation or proceeding involving the welfare of his client or the minor children of his client.
3. For communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the marriage and family therapist in the course of diagnosis or treatment has determined that the client is in need of hospitalization.
4. As to communications relevant to an issue of the treatment of the client in any proceeding in which the treatment is an element of a claim or defense.

CLINICAL PROFESSIONAL COUNSELOR AND CLIENT

SECTION 49.2502 Definitions. As used in [SECTION 49.2502](#) to [49.2508](#), inclusive, unless the context otherwise requires:

1. “Client” means a person who consults or is interviewed by a clinical professional counselor for the purpose of diagnosis or treatment.
2. “Clinical professional counselor” has the meaning ascribed to it in [SECTION 641A.031](#) of the Nevada Revised Statutes and includes a clinical professional counselor intern.
3. A communication is “confidential” if it is not intended to be disclosed to any third person other than a person:
 - (a) Present during the consultation or interview to further the interest of the client;
 - (b) Reasonably necessary for the transmission of the communication; or
 - (c) Participating in the diagnosis or treatment under the direction of the clinical professional counselor, including a member of the client’s family.

SECTION 49.2504 General rule of privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications among himself, his clinical professional counselor or any other person who is participating in the diagnosis or treatment under the direction of the clinical professional counselor.

SECTION 49.2506 Who may claim privilege.

1. The privilege may be claimed by the client, by his guardian or conservator, or by the personal representative of a deceased client.
2. The person who was the clinical professional counselor may claim the privilege but only on behalf of the client. The authority of the clinical professional counselor to do so is presumed in the absence of evidence to the contrary.

SECTION 49.2508 Exceptions. There is no privilege under [SECTION 49.2504](#) or [49.2506](#):

1. If the client communicates to the clinical professional counselor that he intends or plans to commit what the client knows or reasonably should know is a crime.
2. If the clinical professional counselor is required to testify in an administrative or court-related investigation or proceeding involving the welfare of his client or the minor children of his client.
3. For communications relevant to an issue in proceedings to hospitalize the client for mental illness, if the clinical professional counselor in the course of diagnosis or treatment has determined that the client is in need of hospitalization.
4. As to communications relevant to an issue of the treatment of the client in any proceeding in which the treatment is an element of a claim or defense.

SOCIAL WORKER AND CLIENT

SECTION 49.251 Definitions. As used in [SECTION 49.251](#) to [49.254](#), inclusive, unless the context otherwise requires:

1. "Client" means a person who consults or is interviewed by a social worker for the purpose of diagnosis or treatment.
2. A communication is "confidential" if it is not intended to be disclosed to any third person other than a person:
 - (a) Present during the consultation or interview to further the interest of the client;
 - (b) Reasonably necessary for the transmission of the communication; or
 - (c) Participating in the diagnosis or treatment under the direction of the social worker, including a member of the client's family.
3. "Social worker" means any person licensed under [chapter 641B](#) of the Nevada Revised Statutes.

SECTION 49.252 General rule of privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing confidential communications among himself, his social worker or any other person who is participating in the diagnosis or treatment under the direction of the social worker.

SECTION 49.253 Who may claim privilege.

1. The privilege may be claimed by the client, his guardian or conservator or by the personal representative of a deceased client.
2. The person who is the social worker may claim the privilege, but only on behalf of the client. His authority to do so is presumed in the absence of evidence to the contrary.

SECTION 49.254 Exceptions. There is no privilege under [SECTION 49.252](#) or [49.253](#):

1. If the services of the social worker are sought or obtained to enable or aid anyone to commit or plan to commit what the client knows or reasonably should have known is a crime or fraud.
2. If the social worker is required to testify in an administrative or court-related investigation or proceeding involving the welfare of his client or the minor children of his client.
3. If the communication is relevant to an issue of breach of duty by the social worker to his client or by the client to his social worker.
4. If the communication is with persons who are participating in the diagnosis and treatment of the client of the social worker, including members of the patient's family.
5. If disclosure is otherwise required by state or federal law.

VICTIM'S ADVOCATE AND VICTIM

SECTION 49.2541 Definitions. As used in [SECTION 49.2541](#) to [49.2549](#), inclusive, the words and terms defined in [SECTION 49.2542](#) to [49.2545](#), inclusive, have the meanings ascribed to them in those sections.

SECTION 49.2542 "Domestic violence" defined. "Domestic violence" means an act described in [SECTION 33.018](#).

SECTION 49.2543 "Sexual assault" defined. "Sexual assault" means a violation of [SECTION 200.366](#) or an attempt to violate or conspiracy to violate [SECTION 200.366](#).

SECTION 49.2544 "Victim" defined. "Victim" means a person who alleges that an act of domestic violence or sexual assault has been committed against the person.

SECTION 49.2545 "Victim's advocate" defined. "Victim's advocate" means a person who works for a nonprofit program that provides assistance to victims with or without compensation and who has received at least 20 hours of relevant training.

SECTION 49.2546 When communication deemed to be confidential; “communication” defined.

1. A communication shall be deemed to be confidential if the communication is between a victim and a victim’s advocate and is not intended to be disclosed to third persons other than:

- (a) A person who is present to further the interest of the victim;
- (b) A person reasonably necessary for the transmission of the communication; or
- (c) A person who is participating in the advice, counseling or assistance of the victim, including, without limitation, a member of the victim’s family.

2. As used in this section, “communication” includes, without limitation, all records concerning the victim and the services provided to the victim which are within the possession of:

- (a) The victim’s advocate; or
- (b) The nonprofit program for whom the victim’s advocate works.

SECTION 49.2547 General rule of privilege. Except as otherwise provided in [SECTION 49.2549](#), a victim who seeks advice, counseling or assistance from a victim’s advocate has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications set forth in [SECTION 49.2546](#).

SECTION 49.2548 Who may claim privilege.

1. The privilege provided pursuant to [SECTION 49.2547](#) may be claimed by:

- (a) The victim;
- (b) The guardian or conservator of the victim;
- (c) The personal representative of a deceased victim; and
- (d) The victim’s advocate, but only on behalf of the victim.

2. The authority of a victim’s advocate to claim the privilege is presumed in the absence of evidence to the contrary.

SECTION 49.2549 Exceptions. There is no privilege pursuant to [SECTION 49.2547](#) if:

1. The purpose of the victim in seeking services from a victim’s advocate is to enable or aid any person to commit or plan to commit what the victim knows or reasonably should have known is a crime or fraud;

2. The communication concerns a report of abuse or neglect of a child, older person or vulnerable person in violation of [SECTION 200.508](#), [200.5093](#) or [200.50935](#), but only as to that portion of the communication;

3. The communication is relevant to an issue of breach of duty by the victim’s advocate to the victim or by the victim to the victim’s advocate; or

4. Disclosure of the communication is otherwise required by law.

OTHER OCCUPATIONAL PRIVILEGES

SECTION 49.255 Confessor and confessant. A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character.

SECTION 49.285 Public officer as witness. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

SECTION 49.290 Counselor and pupil.

1. As used in this section, “counselor” means a person who is regularly employed by a public or private school in this State as a counselor, psychologist or psychological examiner for the purpose of counseling pupils, and who holds a valid certificate issued by the Superintendent of Public Instruction authorizing the holder to engage in pupil counseling.

2. Except for communications relating to any criminal offense the punishment for which is death or life imprisonment, communications by a pupil to a counselor in the course of counseling or psychological examination are privileged communications, and a counselor shall not, without the consent of the pupil, be examined as a witness concerning any such communication in any civil or criminal action to which such pupil is a party.

SECTION 49.291 Teacher and pupil.

1. As used in this section, “teacher” means a person who is regularly employed by a public or private school in this State as a teacher or administrator and who holds a valid license issued by the Superintendent of Public Instruction authorizing the holder to teach or perform administrative functions in schools.

2. Communications by a pupil to a teacher concerning the pupil’s possession or use of drugs or alcoholic beverages made while the teacher was counseling or attempting to counsel the pupil are privileged communications and the teacher must not, without the consent of the pupil, be examined as a witness concerning any such communication in any civil or criminal action to which the pupil is a party.

MISCELLANEOUS PRIVILEGES

SECTION 49.295 Husband and wife: General rule of privilege; exceptions.

1. Except as otherwise provided in subsections 2 and 3 and [SECTION 49.305](#):

(a) A husband cannot be examined as a witness for or against his wife without his consent, nor a wife for or against her husband without her consent.

(b) Neither a husband nor a wife can be examined, during the marriage or afterwards, without the consent of the other, as to any communication made by one to the other during marriage.

2. The provisions of subsection 1 do not apply to a:

(a) Civil proceeding brought by or on behalf of one spouse against the other spouse;

(b) Proceeding to commit or otherwise place a spouse, the property of the spouse or both the spouse and the property of the spouse under the control of another because of the alleged mental or physical condition of the spouse;

(c) Proceeding brought by or on behalf of a spouse to establish his competence;

(d) Criminal proceeding in which one spouse is charged with:

(1) A crime against the person or the property of the other spouse or of a child of either, or of a child in the custody or control of either, whether the crime was committed before or during marriage.

(2) Bigamy or incest.

(3) A crime related to abandonment of a child or nonsupport of a wife or child.

3. The provisions of subsection 1 do not apply in any criminal proceeding to events which took place before the husband and wife were married.

SECTION 49.305 Husband and wife: Exception for insanity. When a husband or wife is insane, and has been so declared by a court of competent jurisdiction, the other shall be a competent witness to testify as to any fact which transpired before or during such insanity, but the privilege of so testifying shall cease when the party declared insane has been found by a court of competent jurisdiction to be of sound mind, and the husband and wife shall then have the testimonial limitations and privileges provided in [SECTION 49.295](#).

SECTION 49.315 Political vote. Every person has a privilege to refuse to disclose the tenor of his vote at a political election conducted by secret ballot unless the vote was cast illegally.

IDENTITY OF INFORMER

SECTION 49.335 Privilege to refuse disclosure of identity of informer. The Tribe has a privilege to refuse to disclose the identity of a person who has furnished to a law enforcement officer information purporting to reveal the commission of a crime.

SECTION 49.345 Who may claim. The privilege may be claimed by an appropriate representative of the Tribe, regardless of whether the information was furnished to an officer of the Tribe.

SECTION 49.355 Voluntary disclosure; informer a witness. No privilege exists under [SECTION 49.335](#) or [49.345](#) if the identity of the informer or his interest in the subject matter of his communication has been disclosed by a holder of the privilege or by the informer's own action, or if the informer appears as a witness.

SECTION 49.365 Testimony on guilt or innocence. If the tribe elects not to disclose the identity of an informer and the circumstances indicate a reasonable probability that the informer can give testimony necessary to a fair determination of the issue of guilt or innocence, the judge shall on motion of the accused dismiss the proceedings, and he may do so on his own motion.

SECTION 49.375 Legality of obtaining evidence.

1. If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the judge is not satisfied that the information was received from an informer reasonably believed to be reliable, he may require the identity of the informer to be disclosed.

2. The judge may permit the disclosure to be made in camera or make any other order which justice requires. All counsel shall be permitted to be present at every stage at which any counsel is permitted to be present.

3. If disclosure of the identity of the informer is made in chambers, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal.

WAIVER AND COMMENT

SECTION 49.385 Waiver of privilege by voluntary disclosure.

1. A person upon whom these rules confer a privilege against disclosure of a confidential matter 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 matter.

2. This section does not apply if the disclosure is:

- (a) Itself a privileged communication; or
- (b) Made to an interpreter employed merely to facilitate communications.

SECTION 49.395 Privileged matter disclosed under compulsion or without opportunity to claim privilege. Evidence of a statement or other disclosure of privileged matter is inadmissible against the holder of the privilege if the disclosure was:

- 1. Compelled erroneously; or
- 2. Made without opportunity to claim the privilege.

SECTION 49.405 Comment upon or inference from claim of privilege; instruction.

1. The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference 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 outside the presence 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.