

## **Article V. Privileges**

### **N.J.R.E. 500. General Rule**

Privileges as they now exist or may be modified by law shall be unaffected by the adoption of these rules. For convenience in reference certain existing provisions of law relating to privileges are enumerated in Article V.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993.

### **N.J.R.E. 501. Privilege of Accused**

N.J.S.A. 2A:84A-17 provides:

**(1)** Every person has in any criminal action in which he is an accused a right not to be called as a witness and not to testify.

**(2)** The spouse or one partner in a civil union couple of the accused in a criminal action shall not testify in such action except to prove the fact of marriage or civil union unless (a) such spouse or partner consents, or (b) the accused is charged with an offense against the spouse or partner, a child of the accused or of the spouse or partner, or a child to whom the accused or the spouse or partner stands in the place of a parent, or (c) such spouse or partner is the complainant.

**(3)** An accused in a criminal action has no privilege to refuse when ordered by the judge, to submit his body to examination or to do any act in the presence of the judge or the trier of the fact, except to refuse to testify.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; section 2A:84A-17 amended by the Legislature, L. 1992, c. 142, § 1, eff. Nov. 17, 1992; L. 2006, c. 103, § 90, eff. Feb. 19, 2007.

### **N.J.R.E. 502. Definition of Incrimination**

N.J.S.A. 2A:84A-18 provides:

Within the meaning of this article, a matter will incriminate (a) if it constitutes an element of a crime against this State, or another State or the United States, or (b) is a circumstance which with other circumstances would be a basis for a reasonable inference of the commission of such a crime, or (c) is a clue to the discovery of a matter which is within clauses (a) or (b) above; provided, a matter will not be held to incriminate if it clearly appears that the witness has no reasonable cause to apprehend a criminal prosecution. In determining whether a matter is incriminating under clauses (a), (b) or (c) and whether a criminal prosecution is to be apprehended, other matters in evidence, or disclosed in argument, the implications of the question, the setting in which it is asked, the applicable statute of limitations and all other factors, shall be taken into consideration.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993.

### **N.J.R.E. 503. Self-Incrimination**

N.J.S.A. 2A:84A-19 provides:

Subject to Rule 37 [Rule 530], every natural person has a right to refuse to disclose in an action or to a police officer or other official any matter that will incriminate him or expose him to a penalty or a forfeiture of his estate, except that under this rule:

**(a)** no person has the privilege to refuse to submit to examination for the purpose of discovering or recording his corporal features and other identifying characteristics or his physical or mental condition;

**(b)** no person has the privilege to refuse to obey an order made by a court to produce for use as evidence or otherwise a document, chattel or other thing under his control if some other person or a corporation or other association has a superior right to the possession of the thing ordered to be produced;

**(c)** no person has a privilege to refuse to disclose any matter which the statutes or regulations governing his office, activity, occupation, profession or calling, or governing the corporation or association of which he is an officer, agent or employee, require him to record or report or disclose except to the extent that such statutes or regulations provide that the matter to be recorded, reported or disclosed shall be privileged or confidential;

**(d)** subject to the same limitations on evidence affecting credibility as apply to any other witness, the accused in a criminal action or a party in a civil action who voluntarily testifies in the action upon the merits does not have the privilege to refuse to disclose in that action, any matter relevant to any issue therein.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993.

### **N.J.R.E. 504. Lawyer-Client Privilege**

N.J.S.A. 2A:84A-20 provides:

**(1) General rule.** Subject to Rule 37 [Rule 530] and except as otherwise provided by paragraph 2 of this rule communications between lawyer and his client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (a) to refuse to disclose any such communication, and (b) to prevent his lawyer from disclosing it, and (c) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer, or (ii) in a manner not reasonably to be anticipated, or (iii) as a result of a breach of the lawyer-client relationship, or (iv) in the course of a recognized confidential or privileged communication between the client and

such witness. The privilege shall be claimed by the lawyer unless otherwise instructed by the client or his representative; the privilege may be claimed by the client in person, or if the client is incapacitated or deceased, by his guardian or personal representative. Where a corporation or association is the client having the privilege and it has been dissolved, the privilege may be claimed by its successors, assigns or trustees in dissolution.

**(2) Exceptions.** Such privilege shall not extend (a) to a communication in the course of legal service sought or obtained in aid of the commission of a crime or a fraud, or (b) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by inter vivos transaction, or (c) to a communication relevant to an issue of breach of duty by the lawyer to his client, or by the client to his lawyer. Where 2 or more persons have employed a lawyer to act for them in common, none of them can assert such privilege as against the others as to communications with respect to that matter.

**(3) Definitions.** As used in this rule (a) "client" means a person or corporation or other association that, directly or through an authorized representative, consults a lawyer or the lawyer's representative for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity; and includes a person who is incapacitated whose guardian so consults the lawyer or the lawyer's representative in behalf of the person who is incapacitated, (b) "lawyer" means a person authorized, or reasonably believed by the client to be authorized to practice law in any State or nation the law of which recognizes a privilege against disclosure of confidential communications between client and lawyer. A communication made in the course of a relationship between lawyer and client shall be presumed to have been made in professional confidence unless knowingly made within the hearing of some person whose presence nullified the privilege.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; amended 2013, c. 103, § 16, eff. Aug. 7, 2013.

## **N.J.R.E. 505. Psychologist Privilege**

N.J.S.A. 45:14B-28 provides:

The confidential relations and communications between and among a licensed practicing psychologist and individuals, couples, families or groups in the course of the practice of psychology are placed on the same basis as those provided between attorney and client, and nothing in this act shall be construed to require any such privileged communications to be disclosed by any such person.

There is no privilege under this section for any communication: (a) upon an issue of the client's condition in an action to commit the client or otherwise place the client under

the control of another or others because of alleged incapacity, or in an action in which the client seeks to establish his competence or in an action to recover damages on account of conduct of the client which constitutes a crime; or (b) upon an issue as to the validity of a document as a will of the client; or (c) upon an issue between parties claiming by testate or intestate succession from a deceased client.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; section 45:14B-28 amended by the Legislature, L. 1994, c. 134, § 11, eff. Oct. 31, 1994; 1997, c. 379, § 11, eff. Jan 19, 1998.

### **N.J.R.E. 506. Patient and Physician Privilege**

**(a)** N.J.S.A. 2A:84A-22.1 provides: As used in this act, (a) "patient" means a person who, for the sole purpose of securing preventive, palliative, or curative treatment, or a diagnosis preliminary to such treatment, of the patient's physical or mental condition, consults a physician, or submits to an examination by a physician; (b) "physician" means a person authorized or reasonably believed by the patient to be authorized, to practice medicine in the State or jurisdiction in which the consultation or examination takes place; (c) "holder of the privilege" means the patient while alive and not under the guardianship of the guardian of the person of a patient who is incapacitated, or the personal representative of a deceased patient; (d) "confidential communication between physician and patient" means such information transmitted between physician and patient, including information obtained by an examination of the patient, as is transmitted in confidence and by a means which, so far as the patient is aware, discloses the information to no third persons other than those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it is transmitted.

**(b)** N.J.S.A. 2A:84A-22.2 provides: Except as otherwise provided in this act, a person, whether or not a party, has a privilege in a civil action or in a prosecution for a crime or violation of the disorderly persons law or for an act of juvenile delinquency to refuse to disclose, and to prevent a witness from disclosing, a communication, if he claims the privilege and the judge finds that (a) the communication was a confidential communication between patient and physician, and (b) the patient or the physician reasonably believed the communication to be necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefor, and (c) the witness (i) is the holder of the privilege or (ii) at the time of the communication was the physician or a person to whom disclosure was made because reasonably necessary for the transmission of the communication or for the accomplishment of the purpose for which it was transmitted or (iii) is any other person who obtained knowledge or possession of the communication as the result of an intentional breach of the physician's duty of nondisclosure by the physician or his agent or servant and (d) the claimant is the holder of the privilege or a person authorized to claim the privilege for him.

(c) N.J.S.A. 2A:84A-22.3 provides: There is no privilege under this act as to any relevant communication between the patient and his physician (a) upon an issue of the patient's condition in an action to commit him or otherwise place him under the control of another or others because of alleged incapacity, or in an action in which the patient seeks to establish his competence or in an action to recover damages on account of conduct of the patient which constitutes a criminal offense other than a misdemeanor, or (b) upon an issue as to the validity of a document as a will of the patient, or (c) upon an issue between parties claiming by testate or intestate succession from a deceased patient.

(d) N.J.S.A. 2A:84A-22.4 provides: There is no privilege under this act in an action in which the condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party or under which the patient is or was insured.

(e) N.J.S.A. 2A:84A-22.5 provides: There is no privilege under this act as to information which the physician or the patient is required to report to a public official or as to information required to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed.

(f) N.J.S.A. 2A:84A-22.6 provides: No person has a privilege under this act if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the services of the physician were sought or obtained to enable or aid anyone to commit or to plan to commit a crime or a tort, or to escape detection or apprehension after the commission of a crime or a tort.

(g) N.J.S.A. 2A:84A-22.7 provides: A privilege under this act as to a communication is terminated if the judge finds that any person while a holder of the privilege has caused the physician or any agent or servant of the physician to testify in any action to any matter of which the physician or his agent or servant gained knowledge through the communication.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; section 2A:84A-22.3 amended by the Legislature, L. 1997, c. 379, § 10, eff. Jan. 19, 1998; amended 2013, c. 103, § 18, eff. Aug. 7, 2013.

### **N.J.R.E. 507. Utilization Review Committees of Certified Hospital or Extended Care Facility; Exceptions**

(a) N.J.S.A. 2A:84A-22.8 provides: Information and data secured by and in the possession of utilization review committees established by any certified hospital or extended care facility in the performance of their duties shall not be revealed or disclosed in any manner or under any circumstances by any member of such committee except to: (a) a patient's attending physician, (b) the chief administrative officer of the hospital or extended care facility which it serves, (c) the medical executive committee, or comparable enforcement unit, of such hospital or extended care facility, (d)

representatives of, including intermediaries or carriers for, government agencies in the performance of their duties, under the provisions of Federal and State law, or (e) any hospital service corporation, medical service corporation or insurance company with which said patient has pertinent coverage under a contract, policy or certificate, the terms of which authorize the carrier to request and be given such information and data.

**(b)** N.J.S.A. 2A:84A-22.9 provides: No member of a utilization review committee may be held liable for damages or otherwise prejudiced in any manner by reason of recommendations or findings made by said committee or for furnishing information or data obtained in the course of his duties as a member of a committee to the persons and officials mentioned in section 1 [2A:84A-22.8] hereof.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993.

### **N.J.R.E. 508. Newsperson's Privilege**

**(a)** N.J.S.A. 2A:84A-21 provides: Subject to Rule 37 [Rule 530], a person engaged on, engaged in, connected with, or employed by news media for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public or on whose behalf news is so gathered, procured, transmitted, compiled, edited or disseminated has a privilege to refuse to disclose, in any legal or quasilegal proceeding or before any investigative body, including, but not limited to, any court, grand jury, petit jury, administrative agency, the Legislature or legislative committee, or elsewhere:

**a.** The source, author, means, agency or person from or through whom any information was procured, obtained, supplied, furnished, gathered, transmitted, compiled, edited, disseminated, or delivered; and

**b.** Any news or information obtained in the course of pursuing his professional activities whether or not it is disseminated.

The provisions of this rule insofar as it relates to radio or television stations shall not apply unless the radio or television station maintains and keeps open for inspection, for a period of at least 1 year from the date of an actual broadcast or telecast, an exact recording, transcription, kinescopic film or certified written transcript of the actual broadcast or telecast.

**(b)** N.J.S.A. 2A:84A-21a provides: Unless a different meaning clearly appears from the context of this act, as used in this act:

**a.** "News media" means newspapers, magazines, press associations, news agencies, wire services, radio, television or other similar printed, photographic, mechanical or electronic means of disseminating news to the general public.

**b.** "News" means any written, oral or pictorial information gathered, procured, transmitted, compiled, edited or disseminated by, or on behalf of any person engaged

in, engaged on, connected with or employed by a news media and so procured or obtained while such required relationship is in effect.

**c.** "Newspaper" means a paper that is printed and distributed ordinarily not less frequently than once a week and that contains news, articles of opinion, editorials, features, advertising, or other matter regarded as of current interest, has a paid circulation and has been entered at a United States post office as second class matter.

**d.** "Magazine" means a publication containing news which is published and distributed periodically, has a paid circulation and has been entered at a United States post office as second class matter.

**e.** "News agency" means a commercial organization that collects and supplies news to subscribing newspapers, magazines, periodicals and news broadcasters.

**f.** "Press association" means an association of newspapers or magazines formed to gather and distribute news to its members.

**g.** "Wire service" means a news agency that sends out syndicated news copy by wire to subscribing newspapers, magazines, periodicals or news broadcasters.

**h.** "In the course of pursuing his professional activities" means any situation, including a social gathering, in which a reporter obtains information for the purpose of disseminating it to the public, but does not include any situation in which a reporter intentionally conceals from the source the fact that he is a reporter, and does not include any situation in which a reporter is an eyewitness to, or participant in, any act involving physical violence or property damage.

**(c)** N.J.S.A. 2A:84A-21.1 provides: Where a newsperson is required to disclose information pursuant to a subpoena issued by or on behalf of a defendant in a criminal proceeding, not including proceedings before administrative or investigative bodies, grand juries, or legislative committees or commissions, the provisions and procedures in this act are applicable to the claim and exercise of the newsperson's privilege under Rule 27 (C. 2A:84A-21).

**(d)** N.J.S.A. 2A:84A-21.2 provides: Proceedings pursuant to this act shall take place before the trial, except that the court may allow a motion to institute proceedings pursuant to this act to be made during trial if the court determines that the evidence sought is newly discovered and could not have been discovered earlier through the exercise of due diligence.

**(e)** N.J.S.A. 2A:84A-21.3 provides:

**a.** To sustain a claim of the newsperson's privilege under Rule 27 [Rule 508(a)] the claimant shall make a prima facie showing that he is engaged in, connected with or employed by a news media for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public or on whose behalf news

is so gathered, procured, transmitted, compiled, edited or disseminated, and that the subpoenaed materials were obtained in the course of pursuing his professional activities.

**b.** To overcome a finding by the court that the claimant has made a prima facie showing under a. above, the party seeking enforcement of the subpoena shall show by clear and convincing evidence that the privilege has been waived under Rule 37 [Rule 530] (C. 2A:84A-29) or by a preponderance of the evidence that there is a reasonable probability that the subpoenaed materials are relevant, material and necessary to the defense, that they could not be secured from any less intrusive source, that the value of the material sought as it bears upon the issue of guilt or innocence outweighs the privilege against disclosure, and that the request is not overbroad, oppressive, or unreasonably burdensome which may be overcome by evidence that all or part of the information sought is irrelevant, immaterial, unnecessary to the defense, or that it can be secured from another source. Publication shall constitute a waiver only as to the specific materials published.

**c.** The determinations to be made by the court pursuant to this section shall be made only after a hearing in which the party claiming the privilege and the party seeking enforcement of the subpoena shall have a full opportunity to present evidence and argument with respect to each of the materials or items sought to be subpoenaed.

(f) N.J.S.A. 2A:84A-21.4 provides: Upon a finding by the court that there has been a waiver as to any of the materials sought or that any of the materials sought meet the criteria set forth in subsection 3.b. [C.2A:84A-21.3(b)], the court shall order the production of such materials, and such materials only, for in camera inspection and determination as to its probable admissibility in the trial. The party claiming the privilege and the party seeking enforcement of the subpoena shall be entitled to a hearing in connection with the in camera inspection of such materials by the court, during which hearing each party shall have a full opportunity to be heard. If the court, after its in camera review of the materials, determines that such materials are admissible according to the standards set forth in subsection 3.b., the court shall direct production of such materials, and such materials only.

(g) N.J.S.A. 2A:84A-21.5 provides: After any hearing conducted by the court pursuant to section 3 or 4 [C.2A:84A-21.3 or 2A:84A-21.4] hereof, the court shall make specific findings of fact and conclusions of law with respect to its rulings, which findings shall be in writing or set forth on the record.

(h) N.J.S.A. 2A:84A-21.6 provides: An interlocutory appeal taken from a decision to uphold or quash a subpoena shall act as a stay of all penalties which may have been imposed for failure to comply with the court's order. The record on appeal shall be kept under seal until such time as appeals are exhausted. In the event that all material or any part thereof is found to be privileged, the record as to that privileged material shall remain permanently sealed. Any subpoenaed materials which shall, upon exhaustion and determination of such appeals, be found to be privileged, shall be returned to the party claiming the privilege.

(i) N.J.S.A. 2A:84A-21.7 provides: Where proceedings are instituted hereunder by one of several co-defendants in a criminal trial, notice shall be provided to all of the co-defendants. Any co-defendant shall have the right to intervene if the co-defendant can demonstrate, pursuant to section 3 [C.2A:84A-21.3], that the materials sought by the issuance of the subpoena bear upon his guilt or innocence. Where such intervention is sought by a co-defendant, that co-defendant shall be required, prior to being permitted to participate in any in camera proceeding, to make that showing required of a defendant in section 3.

(j) N.J.S.A. 2A:84A-21.8 provides: If the court finds no reasonable basis for requesting the information has been shown, costs, including counsel fee, may be assessed against the party seeking enforcement of the subpoena. Where an application for costs or counsel fee is made, the judge shall set forth his reasons for awarding or denying same.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993.

### **N.J.R.E. 509. Marital Privilege -- Confidential Communications**

N.J.S.A. 2A:84A-22 provides:

(1) Except as otherwise provided in this section, no person shall disclose any communication made in confidence between such person and his or her spouse or civil union partner.

(2) There is no privilege:

(a) if both spouses or partners consent to the disclosure;

(b) if the communication is relevant to an issue in an action between the spouses or partners;

(c) in a criminal action or proceeding in which either spouse or partner consents to the disclosure;

(d) in a criminal action or proceeding coming within section 17 of P.L. 1960, c. 52 (C.2A:84-17); or

(e) in a criminal action or proceeding if the communication relates to an ongoing or future crime or fraud in which the spouses or partners were or are joint participants at the time of the communication.

(3) When a spouse or partner is incapacitated or deceased, consent to the disclosure may be given for such spouse or partner by the guardian, executor, or administrator. The requirement for consent shall not terminate with divorce, dissolution of civil union or separation. A communication between spouses or partners while living separate and apart under a divorce from bed and board or legal separation from a partner in a civil union shall not be a privileged communication.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; section 2A:84A-22 amended by the Legislature, L. 1992, c. 142, § 2, effective Nov. 17, 1992; amended by the Legislature, L. 2015, c. 138, adopted Dec. 8, 2015, effective Nov. 9, 2015, with conforming amendment to the rule adopted Dec. 8, 2015 to be effective retroactive to Nov. 9, 2015.

### **N.J.R.E. 510. Marriage Counselor Privilege**

N.J.S.A. 45:8B-29 provides:

A communication between a marriage and family therapist and the person or persons in therapy shall be confidential and its secrecy preserved. This privilege shall not be subject to waiver, except where the marriage and family therapist is a party defendant to a civil, criminal or disciplinary action arising from the therapy, in which case, the waiver shall be limited to that action.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; section 45:8B-29 amended by the Legislature, L. 1995, c. 366, § 16, eff. Jan. 5, 1996.

### **N.J.R.E. 511. Priest-Penitent Privilege**

N.J.S.A. 2A:84A-23 provides:

Any communication made in confidence to a cleric in the cleric's professional character, or as a spiritual advisor in the course of the discipline or practice of the religious body to which the cleric belongs or of the religion which the cleric professes, shall be privileged. Privileged communications shall include confessions and other communications made in confidence between and among the cleric and individuals, couples, families or groups in the exercise of the cleric's professional or spiritual counseling role.

As used in this section, "cleric" means a priest, rabbi, minister or other person or practitioner authorized to perform similar functions of any religion.

The privilege accorded to communications under this rule shall belong to both the cleric and the person or persons making the communication and shall be subject to waiver only under the following circumstances:

**(1)** Both the person or persons making the communication and the cleric consent to the waiver of the privilege; or

**(2)** The privileged communication pertains to a future criminal act, in which case, the cleric alone may, but is not required to, waive the privilege.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; section 2A:84A-23 amended by the Legislature, L. 1994, c. 123, § 1, eff. Oct. 26, 1994.

### **N.J.R.E. 512. Religious Belief**

N.J.S.A. 2A:84A-24 provides: Every person has a privilege to refuse to disclose his theological opinion or religious belief unless his adherence or nonadherence to such an opinion or belief is material to an issue in the action other than that of his credibility as a witness.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993.

### **N.J.R.E. 513. Political Vote**

N.J.S.A. 2A:84A-25 provides: Every person has a privilege to refuse to disclose the tenor of his vote at a political election unless the judge finds that the vote was cast illegally.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993.

### **N.J.R.E. 514. Trade Secret**

N.J.S.A. 2A:84A-26 provides: The owner of a trade secret has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose the secret and to prevent other persons from disclosing it if the judge finds that the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993.

### **N.J.R.E. 515. Official Information**

N.J.S.A. 2A:84A-27 provides: No person shall disclose official information of this State or of the United States (a) if disclosure is forbidden by or pursuant to any Act of Congress or of this State, or (b) if the judge finds that disclosure of the information in the action will be harmful to the interests of the public.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993.

### **N.J.R.E. 516. Identity of Informer**

N.J.S.A. 2A:84A-28 provides: A witness has a privilege to refuse to disclose the identity of a person who has furnished information purporting to disclose a violation of a provision of the laws of this State or of the United States to a representative of the State or the United States or a governmental division thereof, charged with the duty of enforcing that provision, and evidence thereof is inadmissible, unless the judge finds that (a) the identity of the person furnishing the information has already been otherwise disclosed or (b) disclosure of his identity is essential to assure a fair determination of the issues.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993.

### **N.J.R.E. 517. Victim Counselor Privilege**

**(a)** N.J.S.A. 2A:84A-22.13 provides:  
The Legislature finds and declares that:

**a.** The emotional and psychological injuries that are inflicted on victims of violence are often more serious than the physical injuries suffered;

**b.** Counseling is often a successful treatment to ease the real and profound psychological trauma experienced by these victims and their families;

**c.** In the counseling process, victims of violence openly discuss their emotional reactions to the crime. These reactions are often highly intertwined with their personal histories and psychological profile;

**d.** Counseling of violence and victims is most successful when the victims are assured their thoughts and feelings will remain confidential and will not be disclosed without their permission; and

**e.** Confidentiality should be accorded all victims of violence who require counseling whether or not they are able to afford the services of private psychiatrists or psychologists.

Therefore, it is the public policy of this State to extend a testimonial privilege encompassing the contents of communications with a victim counselor and to render immune from discovery or legal process the records of these communications maintained by the counselor.

**(b)** N.J.S.A. 2A:84A-22.14 provides:  
As used in this act:

**a.** "Act of violence" means the commission or attempt to commit any of the offenses set forth in subsection b. of section 11 of P.L.1971, c.317 (C.52:4B-11).

**b.** "Confidential communication" means any information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and which is disclosed in the course of the counselor's treatment of the victim for any emotional or psychological condition resulting from an act of violence. It includes any advice, report or working paper given or made in the course of the consultation and all information received by the victim counselor in the course of that relationship.

**c.** "Victim" means a person who consults a counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by an act of violence.

**d.** "Victim counseling center" means any office, institution, or center offering assistance to victims and their families through crisis intervention, medical and legal accompaniment and follow-up counseling.

**e.** "Victim counselor" means a person engaged in any office, institution or center defined as a victim counseling center by this act, who has undergone 40 hours of training and is under the control of a direct services supervisor of the center and who has a primary function of rendering advice, counseling or assisting victims of acts of violence. "Victim counselor" includes a rape care advocate as defined in Section 4 of P.L.2001, c.81 (C.52:4B-52).

**(c)** N.J.S.A. 2A:84A-22.15 provides:

Subject to Rule 37 [Rule 530] of the Rules of Evidence, a victim counselor has a privilege not to be examined as a witness in any civil or criminal proceeding with regard to any confidential communication. The privilege shall be claimed by the counselor unless otherwise instructed by prior written consent of the victim. When a victim is incapacitated or deceased consent to disclosure may be given by the guardian, executor or administrator except when the guardian, executor or administrator is the defendant or has a relationship with the victim such that he has an interest in the outcome of the proceeding. The privilege may be knowingly waived by a juvenile. In any instance where the juvenile is, in the opinion of the judge, incapable of knowing consent, the parent or guardian of the juvenile may waive the privilege on behalf of the juvenile, provided that the parent or guardian is not the defendant and does not have a relationship with the defendant such that he has an interest in the outcome of the proceeding. A victim counselor or a victim cannot be compelled to provide testimony in any civil or criminal proceeding that would identify the name, address, location, or telephone number of a domestic violence shelter or any other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

**(d)** N.J.S.A. 2A:84A-22.16 provides:

Nothing in this act shall be deemed to prevent the disclosure to a defendant in a criminal action of statements or information given by a victim to a county victim-witness

coordinator, where the disclosure of the statements or information is required by the Constitution of this State or of the United States.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; section 2A:84A-22.14 amended by the Legislature, L. 2001, c. 81, § 1, eff. May 4, 2001; amended 2013, c. 103, § 19, eff. Aug. 7, 2013.

### **N.J.R.E. 518. Social Worker Privilege**

N.J.S.A. 45:15BB-13 provides:

A social worker licensed or certified pursuant to the provisions of this act shall not be required to disclose any confidential information that the social worker may have acquired from a client or patient while performing social work services for that client or patient unless:

- a. Disclosure is required by other State law;
- b. Failure to disclose the information presents a clear and present danger to the health or safety of an individual;
- c. The social worker is a party defendant to a civil, criminal or disciplinary action arising from the social work services provided, in which case a waiver of the privilege accorded by this section shall be limited to that action;
- d. The patient or client is a defendant in a criminal proceeding and the use of the privilege would violate the defendant's right to a compulsory process or the right to present testimony and witnesses on that person's behalf; or
- e. A patient or client agrees to waive the privilege accorded by this section, and, in circumstances where more than one person in a family is receiving social work services, each such member agrees to the waiver. Absent a waiver from each family member, a social worker shall not disclose any information received from any family member.

**NOTE:** Adopted September 15, 1998 to be effective July 1, 1999.

### **N.J.R.E. 519. Mediator Privilege**

(a) N.J.S. 2A:23C-4 provides:

a. Except as otherwise provided in section 6 of P.L. 2004, c. 157 (N.J.S. 2A:23C-6), a mediation communication is privileged as provided in subsection b. of this section and shall not be subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 5 of P.L. 2004, c. 157 (N.J.S. 2A:23C-5).

b. In a proceeding, the following privileges shall apply:

**(1)** a mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

**(2)** a mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

**(3)** a nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

**c.** Evidence or information that is otherwise admissible or subject to discovery shall not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

**(b)** N.J.S. 2A:23C-5 provides:

**a.** A privilege under section 4 of P.L. 2004, c. 157 (N.J.S. 2A:23C-4) may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

**(1)** in the case of the privilege of a mediator, it is expressly waived by the mediator; and

**(2)** in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

**b.** A person who discloses or makes a representation about a mediation communication that prejudices another person in a proceeding is precluded from asserting a privilege under section 4 of P.L. 2004, c. 157 (N.J.S. 2A:23C-4), but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

**c.** A person who intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 4 of P.L. 2004, c. 157 (N.J.S. 2A:23C-4).

**(c)** N.J.S. 2A:23C-6 provides:

**a.** There is no privilege under section 4 of P.L. 2004, c. 157 (N.J.S. 2A:23C-4) for a mediation communication that is:

**(1)** in an agreement evidenced by a record signed by all parties to the agreement;

**(2)** made during a session of a mediation that is open, or is required by law to be open, to the public;

**(3)** a threat or statement of a plan to inflict bodily injury or commit a crime;

**(4)** intentionally used to plan a crime, attempt to commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

**(5)** sought or offered to prove or disprove a claim or complaint filed against a mediator arising out of a mediation;

**(6)** except as otherwise provided in subsection c., sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

**(7)** sought or offered to prove or disprove child abuse or neglect in a proceeding in which the Division of Youth and Family Services in the Department of Human Services is a party, unless the Division of Youth and Family Services participates in the mediation.

**b.** There is no privilege under section 4 of P.L. 2004, c. 157 (N.J.S. 2A:23C-4) if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

**(1)** a court proceeding involving a crime as defined in the "New Jersey Code of Criminal Justice," N.J.S. 2C:1-1 et seq.; or

**(2)** except as otherwise provided in subsection c., a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

**c.** A mediator may not be compelled to provide evidence of a mediation communication referred to in paragraph (6) of subsection a. or paragraph (2) of subsection b.

**d.** If a mediation communication is not privileged under subsection a. or b., only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection a. or b. does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

**(d)** N.J.S. 2A:23C-7 provides:

**a.** Except as required in subsection b., a mediator may not make a report, assessment, evaluation, recommendation, finding, or other oral or written communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

**b.** A mediator may disclose:

(1) whether the mediation occurred or has terminated, whether a settlement was reached, and attendance; or

(2) a mediation communication as permitted under section 6 of P.L. 2004, c. 157 (N.J.S. 2A:23C-6).

**c.** A communication made in violation of subsection a. may not be considered by a court, administrative agency, or arbitrator.

**(e)** N.J.S. 2A:23C-8 provides:

Unless made during a session of a mediation which is open, or is required by law to be open, to the public, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State.

**NOTE:** Adopted September 17, 2007 to be effective July 1, 2008.

## **N.J.R.E. 520 to 529 [Reserved]**

### **N.J.R.E. 530. Waiver of Privilege by Contract or Previous Disclosure; Limitations**

**(a)** Except as provided herein with respect to the attorney-client privilege or work-product doctrine, a person waives his right or privilege to refuse to disclose or to prevent another from disclosing a specified matter if he or any other person while the holder thereof has (1) contracted with anyone not to claim the right or privilege or, (2) without coercion and with knowledge of his right or privilege, made disclosure of any part of the privileged matter or consented to such a disclosure made by anyone.

**(b)** Except as provided herein with respect to the attorney-client privilege or work-product doctrine, a disclosure which is itself privileged or otherwise protected by the common law, statutes or rules of court of this State, or by lawful contract, shall not constitute a waiver under this section. The failure of a witness to claim a right or privilege with respect to one question shall not operate as a waiver with respect to any other question.

**(c)** 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.

(1) Disclosure Made in a State Proceeding or to a State Office or Agency; Scope of a Waiver. When the disclosure is made in a state proceeding or to a state office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication in a state proceeding only if:

**(A)** the waiver is intentional;

**(B)** the disclosed and undisclosed communications or information concern the same subject matter; and

**(C)** they ought in fairness to be considered together.

**(2)** Inadvertent Disclosure. When made in a state proceeding or to a state office or agency, the disclosure does not operate as a waiver in a state proceeding if:

**(A)** the disclosure is inadvertent;

**(B)** the holder of the privilege or protection took reasonable steps to prevent disclosure; and

**(C)** the holder promptly took reasonable steps to rectify the error.

**(3)** Disclosure Made in Another Forum. When the disclosure is made in another state or in a federal proceeding, the disclosure does not operate as a waiver in the New Jersey proceeding if the disclosure:

**(A)** would not be a waiver under this rule if it had been made in a New Jersey proceeding; or

**(B)** is not a waiver under the law of the forum where the disclosure occurred.

**(4)** 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 federal or state proceeding. The existence of such an agreement between the parties shall not limit a party's right to conduct a review of documents, electronically stored information or other information for relevance, responsiveness or segregation of privileged or protected information before production.

**(5)** Controlling Effect of a Party Agreement. An agreement on the effect of a disclosure in a state proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

**(6)** Definitions. In this rule:

**(A)** "attorney-client privilege" means the protection afforded under New Jersey Rule of Evidence 504; and

**(B)** “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.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; text amended and paragraphs (a) and (b) redesignated, and new paragraph (c) adopted September 16, 2019 to be effective July 1, 2020.

### **N.J.R.E. 531. Admissibility of Disclosure Wrongfully Compelled**

N.J.S.A. 2A:84A-30 provides: Evidence of a statement or other disclosure is inadmissible against the holder of the privilege if the disclosure was wrongfully made or erroneously required.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993.

### **N.J.R.E. 532. Reference to Exercise of Privileges**

N.J.S.A. 2A:84A-31 provides: If a privilege is exercised not to testify or to prevent another from testifying, either in the action or with respect to particular matters, or to refuse to disclose or to prevent another from disclosing any matter, the judge and counsel may not comment thereon, no presumption shall arise with respect to the exercise of the privilege, and the trier of fact may not draw any adverse inference therefrom. In those jury cases wherein the right to exercise a privilege, as herein provided, may be misunderstood and unfavorable inferences drawn by the trier of the fact, or be impaired in the particular case, the court, at the request of the party exercising the privilege, may instruct the jury in support of such privilege.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993.

### **N.J.R.E. 533. Effect of Error in Overruling Claim of Privilege**

N.J.S.A. 2A:84A-32 provides:

**(1)** A party may predicate error on a ruling disallowing a claim of privilege only if he is the holder of the privilege.

**(2)** If a witness refuses to answer a question, under color of a privilege claimed pursuant to Rules 23 through 38 [Rules 501 through 531], after the judge has ordered the witness to answer, and a contempt proceeding is brought against the witness, the court hearing the same shall order it dismissed if it appears that the order directing the witness to answer was erroneous.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993.

### **N.J.R.E. 534. Mental Health Service Provider – Patient Privilege**

**(a) Definitions.** In this rule:

**(1)** "Confidential communications" means such information transmitted between a mental-health service provider and patient in the course of treatment of, or related to, that individual's condition of mental or emotional health, including information obtained by an examination of the patient, that is transmitted in confidence, and is not intended to be disclosed to third persons, other than:

**(i)** those present to further the interest of the patient in the diagnosis or treatment;

**(ii)** those reasonably necessary for the transmission of the information, including the entity through which the mental-health service provider practices; and

**(iii)** persons who are participating in the diagnosis or treatment of the patient under the direction of a mental-health service provider, including authorized members of the patient's family, the patient's guardian, the patient's conservator, and/or the patient's personal representative.

**(2)** "Diagnosis or treatment" shall include consultation, screening, interview, examination, assessment, evaluation, diagnosis or treatment.

**(3)** "Mental-health service provider" means a person authorized or reasonably believed by the patient to be authorized to engage in the diagnosis or treatment of a mental or emotional condition, and is specifically intended to include:

**(i)** Psychologists, consistent with the definition under N.J.R.E. 505 and N.J.S.A. 45:14B-2(a), 'licensed practicing psychologist,' and N.J.S.A. 45:14B-6(a)(1), (b), (c), (d), (e), (f), and (g), governing persons engaged in authorized activities of certain unlicensed practicing psychologists;

**(ii)** Physicians, including psychiatrists, consistent with the definition under N.J.R.E. 506 and N.J.S.A. 2A:84A-22.1(b);

**(iii)** Marriage and family therapists, consistent with the definition under N.J.R.E. 510 and N.J.S.A. 45:8B-2(a), "licensed marriage and family therapist," and N.J.S.A. 45:8B-6, governing unlicensed persons who may engage in specified activities related to, consisting of marriage and family therapy;

**(iv)** Social workers, consistent with the definition under N.J.R.E. 518 and N.J.S.A. 45:15BB-3, and including social work interns and certified school social worker as defined in N.J.S.A. 45:15BB-5(b) and (c);

(v) Alcohol and drug counselors, consistent with the definitions under N.J.S.A. 45:2D-3 and N.J.A.C. 13:34C-4.5 (licensed and certified Alcohol and drug counselors);

(vi) Nurses, consistent with the definition under N.J.S.A. 45:11-23;

(vii) Professional counselors, associate counselors or rehabilitation counselors consistent with the definition under N.J.S.A. 45:8B-40, -41, -41.1 8, and persons authorized to provide counseling pursuant to N.J.S.A. 45:8B-48(b), (c), (d);

(viii) Psychoanalysts, consistent with the definition under N.J.S.A. 45:14BB-3;

(ix) Midwives, consistent with the definition under N.J.S.A. 45:10-1

(x) Physician assistants, consistent with the definition under N.J.S.A. 45:9-27.15; and

(xi) Pharmacists, consistent with the definition under N.J.S.A. 45:14-41.

(4) "Patient" means an individual, who undergoes diagnosis or treatment with or by a mental-health service provider for the purpose of diagnosis or treatment related to that patient's condition of mental or emotional health, including addiction to legal or illegal substances, whether referred to as client, person in therapy, or some other equivalent term in the context of the relationship.

**(b) General Rule of Privilege.** A patient has a privilege to refuse to disclose in a proceeding, and to prevent any other person from disclosing confidential communications, as defined in subsection (a)(1).

**(c) Who May Claim the Privilege.** The privilege under this rule may be claimed by the patient, the patient's guardian or conservator, the personal representative of a deceased patient, or if authorized by the patient, a member or members of the patient's family. The person who was the mental-health service provider at the time of the communication is presumed to have authority to claim the privilege, but only on behalf of the patient or deceased patient. The mental-health service provider shall claim the privilege unless otherwise instructed by the patient or, as applicable, members of the patient's family, the patient's guardian or conservator, or the personal representative of a deceased patient.

**(d) Violent Crime Victim; Other Communications.**

**(1) Violent Crime Victim.** Any confidential communication between any of the mental health service providers listed in this rule and a victim of violent crime, as defined in N.J.S.A. 2A:84A-22.14c, shall be evaluated under the provisions of the "Victim Counselor Privilege" contained in N.J.R.E. 517, and not under the provisions set forth herein. Nothing in this act shall be construed to dilute or alter the scope of the Victim Counselor Privilege.

**(2) Other Communications.** Nothing in this rule shall be construed to limit or otherwise affect any privileges that may apply to communications outside the scope of confidential communications as defined in subsection (a)(1) above.

**(e) Exceptions.** There is no privilege under this rule for a communication:

**(1)** Relevant to an issue of the patient's condition in a proceeding to commit the patient or otherwise place the patient under the control of another or others because of alleged incapacity;

**(2)** Relevant to an issue in a proceeding in which the patient seeks to establish his competence, or in a criminal matter where the defendant's competence to stand trial is put at issue;

**(3)** Relevant to an issue in a proceeding to recover damages on account of conduct of the patient which constitutes a crime;

**(4)** Upon an issue as to the validity of a will of the patient;

**(5)** Relevant to an issue in a proceeding between parties claiming by testate or intestate succession from a deceased patient;

**(6)** Made in the course of any investigation or examination, whether ordered by the court or compelled pursuant to Court Rule, of the physical, mental, or emotional condition of the patient, whether a party or a witness, with respect to the particular purpose for which the examination is ordered, unless the court orders otherwise, and provided that a copy of the order is served upon the patient prior to the communication, indicating among other things that such communications may not be privileged in subsequent commitment proceedings;

**(7)** Relevant to an issue in a proceeding in which the condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party or under which the patient is or was insured;

**(8)** If the court finds that any person, while a holder of the privilege, has caused the mental-health service provider to testify in any proceeding to any matter of which the mental-health service provider gained knowledge through the communication;

**(9)** In the course of mental health services sought or obtained in aid of the commission of a crime or fraud, provided that this exception is subject to the protections found in N.J.R.E. 501 and N.J.R.E. 509 and is not intended to modify or limit them;

(10) Relevant to an issue in a proceeding against the mental-health service provider, arising from the mental-health services provided, in which case the waiver shall be limited to that proceeding.

(11) Relevant to a proceeding concerning an application to purchase, own, sell, transfer, possess or carry a firearm, including but not limited to applications pursuant to N.J.S.A. 2C:58-3, or 2C:58-4, or a proceeding concerning the return of a firearm pursuant to N.J.S.A. 2C:25-21(d)(3).

**(f) Disclosure Pursuant to Statutory Duty to Report to a Public Official or Office.** Nothing in this rule shall prevent a court from compelling disclosure of a statement by a mental-health service provider, patient or other third party to a public official when such statement is made in compliance with a statutory duty to report to a public official, or information required to be recorded in a public office that was in fact recorded in a public office, including but not limited to reports of child or elder abuse or neglect or the abuse or neglect of disabled or incompetent persons, unless the statute requiring the report of record specifically provides that the statement or information shall not be disclosed.

**(g) Disclosure Where Waiver or Where Exercise of Privilege Would Violate a Constitutional Right.** Nothing in this rule shall prevent a court from compelling disclosure where:

(1) the patient has expressly or implicitly waived the privilege or authorized disclosure; or

(2) exercise of the privilege would violate a constitutional right.

**NOTE:** Adopted September 15, 2015 to be effective July 1, 2016.