

THE PHILIPPINES
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1. DEFINITION - PERSPECTIVE

The attorney-client privilege is a disqualifying rule under the Philippine Rules of Court¹ (the “Rules”), which precludes an attorney from testifying against his client on certain matters. As a disqualification, the attorney is ethically obliged to claim the privilege for the client as it is not self-enforcing.² Moreover, the party asserting the privilege carries the burden of proving that the privilege applies and that mere assertions of the privilege are not enough.³

The privilege is intended to promote freedom of consultation and confidentiality between the attorney and the client, in view of its rationale:

“In order to promote freedom of consultation of legal advisors by clients, the apprehension of compelled disclosure from the legal advisors must be removed.”⁴

The purpose of the rule of confidentiality is to protect the client from possible breach of confidence as a result of a consultation with an attorney.⁵

2. SOURCES

Rule 130.24(b) of the Rules expressly provides:

¹ As amended per Resolution adopted on March 14, 1989.

² Philippine Code of Professional Responsibility, Rule 15.02.

³ *Ramcar, Inc. vs. Garcia*, G.R. No. L-16997, April 25, 1962.

⁴ Oscar Franklin B. Tan, *Articulating the Complete Philippine Right to Privacy in Constitutional and Civil Law: A Tribute to Chief Justice Fernando and Justice Carpio*, Philippine Law Journal, Volume 82 (2005).

⁵ *Hadjula vs. Madianda*, A.C. No. 6711, July 3, 2007.

Section 24. *Disqualification by reason of privileged communication.* — The following persons cannot testify as to matters learned in confidence in the following cases:

(b) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity[.]

The Philippine Supreme Court has time and again discussed the privilege. In *Burbe vs. Magulta*,⁶ the Philippine Supreme Court summarized the governing principles for the privilege:

1. An attorney-client relationship is established from the very first moment the client asked the attorney for legal advice regarding the former's business. To constitute professional employment, it is not essential that the client employed the attorney professionally on any previous occasion.
2. It is not necessary that any retainer be paid, promised, or charged; nor is it material that the attorney consulted did not afterward handle the case for which his service had been sought.
3. If a person, in respect to business affairs or troubles of any kind, consults an attorney with a view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces with the consultation, then the professional employments is established.
4. Likewise, an attorney-client relationship exists notwithstanding the close personal relationship between the attorney and the client or the non-payment of the former's fees.

Furthermore, the duty of a lawyer to preserve his client's secrets and confidence outlasts the termination of the attorney-client relationship, and continues even after the client's death.⁷

⁶ AC No. 99-634, June 10, 2002.

⁷ *Mercado vs. Vitriolo*, A.C. No. 5108, May 26, 2005.

3. SCOPE/LIMITS

For the attorney-client privilege to apply, the following requisites⁸ must be present:

1. Relationship of attorney and client;
2. Communication made by the client to the attorney, or advice given by the latter to the former;
3. Communication or advice must have been made confidentially;
4. Such communication must have been made in the course of professional employment.

Absent the existence of all these requisites, the privilege does not apply.

The privilege, however, is neither automatic nor unrestricted. Communications between a lawyer and another individual does not automatically mean that the communications are covered by the attorney-client privilege. The requisites mentioned above must be present. If the lawyer is a mere employee or agent, and not acting in his professional capacity, the privilege will not apply. The fact that the employee or agent is also an attorney does not protect the communications attending the acts with the privilege; hence, the communications may be testified to by him or by any other agent.⁹ More specifically, the communication made by a client to his attorney must not be intended for mere information, but for the purpose of seeking legal advice from his attorney as to his rights or obligations. Otherwise, the privilege does not attach to the communication.¹⁰

Also, as a general rule, the privilege may not be invoked to refuse to divulge the identity of the client. However, there are exceptions, which are: (a) when a strong probability exists that revealing the name would implicate that person in the very same activity for which he sought the lawyer's advice; (b) when disclosure would open the client to liability; and (c) when the name would furnish the only link that would form the chain of testimony necessary to convict.¹¹

The client may waive the attorney's confidentiality obligations such that the attorney, if he chooses to, may disclose the information in accordance with the waiver. In giving the waiver, the client should be fully aware of the circumstance and possible consequences that may arise. A waiver by the client must be given before any disclosure.

The privilege does not prevent the attorney from discussing the confidential information with members of his law office if it is for the purpose of finding solutions to the client's concerns.

⁸ Rules, Rule 130.24(b).

⁹ *Disini vs. The Honorable Sandiganbayan, et al.*, G.R. No. 180564, June 22, 2010.

¹⁰ *Mercado vs. Vitriolo*, A.C. No. 5108, May 26, 2005.

¹¹ *Regala, et al. vs. The Honorable Sandiganbayan*, G.R. No. 105938, September 20, 1996.

The privilege likewise applies to the staff of attorney who assisted the latter in handling the confidential information given by the client.

4. INHOUSE LAWYERS

The same principles apply to in-house lawyers as they are treated in the same way as attorneys who have their private practice.

5. PROSPECTIVE

The Philippine Supreme Court has been consistent in its position regarding the privilege. The Rule and jurisprudence are updated regularly with such updates including minor modifications to the doctrine.