

TEXAS RULE OF EVIDENCE 504 – SPOUSAL PRIVILEGES

(a) ***Confidential Communication Privilege.***

(1) *Definition.* --A communication is "confidential" if a person makes it privately to the person's spouse and does not intend its disclosure to any other person.

(2) *General Rule.* --A person has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made to the person's spouse while they were married. This privilege survives termination of the marriage.

(3) *Who May Claim.* --The privilege may be claimed by:

- (A) the communicating spouse;
- (B) the guardian of a communicating spouse who is incompetent; or
- (C) the personal representative of a communicating spouse who is deceased.

The other spouse may claim the privilege on the communicating spouse's behalf - and is presumed to have authority to do so.

(4) *Exceptions.* --This privilege does not apply:

(A) *Furtherance of Crime or Fraud.* --If the communication is made - wholly or partially - to enable or aid anyone to commit or plan to commit a crime or fraud.

(B) *Proceeding Between Spouse and Other Spouse or Claimant Through Deceased Spouse.* --In a civil proceeding:

- (i) brought by or on behalf of one spouse against the other; or
- (ii) between a surviving spouse and a person claiming through the deceased spouse.

(C) *Crime Against Family, Spouse, Household Member, or Minor Child.* --In a:

(i) proceeding in which a party is accused of conduct that, if proved, is a crime against the person of the other spouse, any member of the household of either spouse, or any minor child; or

(ii) criminal proceeding involving a charge of bigamy under *Section 25.01 of the Penal Code.*

(D) *Commitment or Similar Proceeding.* --In a proceeding to commit either spouse or otherwise to place the spouse or the spouse's property under another's control because of a mental or physical condition.

(E) *Proceeding to Establish Competence.* --In a proceeding brought by or on behalf of either spouse to establish competence.

(b) ***Privilege Not to Testify in Criminal Case.***

(1) *General Rule.* --In a criminal case, an accused's spouse has a privilege not to be called to testify for the state. But this rule neither prohibits a spouse from testifying voluntarily for the state nor gives a spouse a privilege to refuse to be called to testify for the accused.

(2) *Failure to Call Spouse.* --If other evidence indicates that the accused's spouse could testify to relevant matters, an accused's failure to call the spouse to testify is a proper subject of comment by counsel.

(3) *Who May Claim.* --The privilege not to testify may be claimed by the accused's spouse or the spouse's guardian or representative, but not by the accused.

(4) *Exceptions.* --This privilege does not apply:

(A) *Certain Criminal Proceedings.* --In a criminal proceeding in which a spouse is charged with:

- (i) a crime against the other spouse, any member of the household of either spouse, or any minor child; or
- (ii) bigamy under *Section 25.01 of the Penal Code.*

(B) *Matters That Occurred Before the Marriage.* --If the spouse is called to testify about matters that occurred before the marriage.