

such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

(2) The motion described in rule 5.412(c)(1) shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in rule 5.412(b), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding rule 5.104(b), if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) If the court determines on the basis of the hearing described in rule 5.412(c)(2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

d. For purposes of this rule, the term "*past sexual behavior*" means sexual behavior other than the sexual behavior with respect to which sexual abuse is alleged.

[Report 1983; November 9, 2001, effective February 15, 2002]

Rules 5.413 to 5.500 Reserved.

ARTICLE V PRIVILEGES

Rule 5.501 General rule. Nothing in these rules shall be deemed to modify or supersede existing law relating to the privilege of a witness, person, government, state or political subdivision.

[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.502 Attorney-client privilege and work product; limitations on waiver. The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

a. Disclosure made in a court or agency proceeding; scope of a waiver. When the disclosure is made in a court or agency proceeding and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information only if:

- (1) The waiver is intentional;
- (2) The disclosed and undisclosed communications or information concern the same subject matter; and
- (3) They ought in fairness to be considered together.

b. Inadvertent disclosure. When made in a court or agency proceeding, the disclosure does not operate as a waiver if:

- (1) The disclosure is inadvertent;
- (2) The holder of the privilege or protection took reasonable steps to prevent disclosure; and
- (3) The holder promptly took reasonable steps to rectify the error, including (if applicable) following Rule of Civil Procedure 1.503(5)(b).

c. Controlling effect of a court order. A court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court in which event the disclosure is also not a waiver in any other proceeding.

d. Controlling effect of a party agreement. An agreement on the effect of disclosure in a state proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

e. Controlling effect of this rule. Notwithstanding rules 5.101 and 5.1101, this rule applies to all proceedings, in the circumstances set out in the rule.

f. Definitions. In this rule:

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

(2) "Work-product protection" means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial. [Report April 2, 2009; effective June 1, 2009]