Discovery Aspects Of Privileged And Confidential Information

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Discovery Aspects Of Privileged And Confidential Information

I. Introduction:

This lecture's purpose is to focus on the discovery aspects of privileged and confidential information, including how to pursue and defend claims of privilege and confidentiality. However, in order to obtain information which an opponent claims is privileged or confidential or to defend against requests for information believed to be privileged or confidential, a lawyer must also know how to recognize the information and what statutes and case-law apply to each type of claim.

II. Illinois Supreme Court Rules

Illinois Supreme Court Rule 201(n) now requires a party who withholds information or documents on the basis that they are privileged pursuant to any common law or statutory privilege, to make the claim specifically and to support the claim by a description of the nature of the documents, communications or other things not produced and to designate the exact privilege being claimed.

A. Seeking Privileged or Confidential Information: When attempting to obtain information when an opponent complies with Rule 201(n), a lawyer's only recourse is to the authorities on the specific privilege being claimed to determine the following:

1. What, if any, of the exceptions might be applicable.

2. What type of showing is necessary to overcome the privilege.

3. Whether facts exist evidencing a waiver of the privilege.

B. Defending Against Request for Privileged or Confidential Information: To defend against requests for information which a lawyer believes is protected, a lawyer should take the following steps:

1. Review the authority for the privilege to be claimed.

2. In the disclosure pursuant to Illinois Supreme Court Rule 201(n), the lawyer should mirror the language used in the cases and rules discussing the particular type of information to be protected

C. In-Camera Review: In attempting to obtain privileged material, it never hurts to ask the Court to conduct an in-camera review of the information so that someone other than the party who seeks to protect the information is the final arbiter of whether the information is truly confidential and subject to privilege. Remember to urge the Court to consider whether redaction or the release of portions of the information will protect the confidence.

D. Additional Interrogatories:

Under the new discovery rules, parties are more strictly limited in the number of interrogatories they may propound. However, the need to do the additional discovery needed to challenge a claim of privilege or confidentiality might merit the entry of an order granting leave to propound additional interrogatories.

III. Burden of Proof:

Any person claiming exemption from discovery by reason of some privilege bears the burden of showing facts that give rise to the privilege. *In Re Marriage of Daniels*, 240 Ill.App.3d. 314, 607 N.E.2d. 1255 (1st Dist. 1992).

IV. Specific Types of Privileged and/or Confidential Information:

A review of Illinois case-law, and statutes indicates that a number of diverse types of information and communications are privileged or confidential. Rather than restating statutory provisions, what follows sets forth particular aspects of each type of privilege or confidential information which a lawyer should consider when doing discovery or defending against a discovery request.

A. Work Product Doctrine - Illinois Supreme Court Rule 201(b)(2) protects attorney work product. The work product doctrine protects from disclosure documents and other tangible things that reflect a lawyer's mental impressions and thought processes. *Monier v. Chamberlain*, 35 Ill.2d 351 (1966) Work product falls into two categories: ordinary fact work product and core or opinion work product. Fact work product includes ordinary material prepared by a lawyer in anticipation of trial or litigation that does not contain the lawyer's mental impressions.

In contrast, opinion work product contains a lawyer's mental impressions and requires a much stronger showing of necessity and unavailability to obtain disclosure. The Illinois Supreme Court discussed the distinction between fact and opinion work product as defined in the federal system in its opinions in *Waste Management v. Intern. Surplus Lines*, 144 Ill.2d 178, 579 N.E.2d. 322 (1991), and *Consolidated Coal Co. v. Bucyrus-Erie Co.*, 89 Ill.2d. 103, 432 N.E.2d. 250 (1982). An attorney's notes and memoranda of oral conversations with witnesses are not routinely discoverable unless they are shown to constitute the only source of factual material. *Id.* Attorneys should also remember that there exists an absolute entitlement to an in-camera inspection of documents against which a privilege of communication has been asserted. *Buhr v. Lutheran General Hosp.*, 226 Ill.App.3d. 236, 589 N.E.2d. 723 (1st Dist. 1992).

Work product is immune from discovery to enable lawyers to work with a degree of privacy and thereby protect the adversary system. However, this goal conflicts with the policies behind allowing liberal discovery. In balancing these considerations, courts tend toward a case by case analysis that makes predicting the outcome virtually impossible. Accordingly, the time for a lawyer to think about potential exposure is before work product is created or used rather than at the time an opponent tries to compel production of the information.

1. *What Does It Protect?*

The work product rule protects not only documents actually prepared by a lawyer but those prepared by the client, the client's other representatives and the lawyer's agents. *Dalen v. Ozite Corp*, 230 Ill. App.3d. 18, 594 N.E.2d. 1365 (2nd Dist. 1992); *Mylnarski v. Rush Presbyterian St. Lukes*, 213 Ill.App.3d. 427, 572 N.E.2d. 1025 (1st Dist. 1991) In deciding whether a document constitutes work product, the lawyer must focus not on the identity of the author but on whether the document was prepared in anticipation of trial or litigation. If the lawyer requests that the client or a business entity in which the client owns an interest or the client's agent prepare a special summary or financial statement that would normally not be generated, the document should state on its face that it has been specially prepared at the lawyer's request and under the lawyer's directive for litigation purposes only.

2. *Who Can Assert Work Product Immunity?*

While the attorney-client privilege is the client's to assert, work product immunity belongs to the lawyer.

3. *Waiver Of Immunity.*

a. Deliberate Disclosure: Generally speaking, the deliberate disclosure of what would otherwise be protected information waives work product immunity. *Hercules, Inc. v. Exxon Corp.*, 434 F.Supp. 136, 156 (D. Del. 1977). In many instances, particularly involving testifying experts, waiver cannot be avoided.

b. At Issue Exception: *Waste Management, Inc. v. International Surplus Lines Insurance Co.*, 144 Ill.2d. 178, 579 N.E.2d. 322 (1991). The *Waste Management* decision stands for the proposition that if an attorney's work product itself becomes the subject of litigation, the parties seeking to assert the work product doctrine as a basis to bar discovery cannot use the doctrine as a sword rather than a shield. The same logic applicable to the work product doctrine in the *Waste Management* decision could be extended to any category of privileged information placed "at issue" by a party. For example, if a party claims that he or she should not be held in contempt of court for an action because they acted on the advise of their counsel who interpreted a court order for their benefit, it is only fair that the opposing party be allowed to discover what was said.

4. *Attorney-Client Privilege Distinguished*

Although work product immunity is often referred to as a privilege and is closely identified with the attorney-client privilege, the two doctrines are separate and distinct. *Hercules v. Exxon Corp.*, 434 F. Supp. at 150. In fact, the United States Supreme Court has avoided calling it a *privilege* and instead uses the term *doctrine* and *immunity* when discussing work product. *Bogosian v. Gulf Oil Corp.*, 738 F.2d 578, 599 n.10 (3d Cir. 1984) (Becker, J. dissenting).

The attorney-client privilege protects confidential communications between a client and his attorney nd focuses on the existence of a communication. By contrast, work product immunity does not hinge on any communication or the protection of the client's confidences. As such, work product protection extends to a broader range of information including the work of agents and experts. It even includes information the client has not seen at all. In *re Grand Jury Proceedings*, 601 F.2d 162 (5th Cir. Fla. 1979).

A waiver of the attorney-client privilege is not a *per se* waiver of work product immunity because of the distinct characteristics of the information protected by each. *Waste Management*. This distinction is crucial if your client unintentionally waives the attorney-client privilege and the privileged information has been incorporated into your work product. Although the attorney-client privilege may be gone, you can prevent further damage by not presuming your work product has become subject to disclosure.

B. Attorney/Client Privilege - Illinois Supreme Court Rule 201(b)(2)

Accidental Disclosures - A party does not waive the attorney/client privilege with respect to letters written to them by counsel even if the document is inadvertently released where once released, the party seeking to claim the privilege made every attempt possible to prevent further dissemination of the documents. *Robertson v. Yamaha Motor Corp*., 143 F.R.P.D. 194 (S.D. Ill. 1992)

1. *When does the privilege attach?*

Because the attorney/client privilege attaches to a communication to the attorney, it is immaterial whether the client is or is not a party to an action where the issue of the privilege arises. *People v. Jacobson*, 119 Ill.App.3d 103, 456 N.E.2d. (1st Dist. 1983). *Johnson v. Frontier Ford, Inc*., 68 Ill.App.3d. 315, 386 N.E.2d. 112 (2nd. Dist. 1979).

2. *Elements of the privilege* *Consolidated Coal Co. v. Bucyrus-Erie Co*., 89 Ill.2d. 103, 432 N.E.2d. 250 (1982):

a. Communication originated in confidence that it would not be disclosed.

b. Communication was made to attorney acting in the attorney's legal capacity.

c. Communication was made for the purpose of securing legal advise or services.

3. *Waiver*.

The attorney/client privilege can be waived if a client voluntarily discloses privileged information. However, voluntary disclosure of confidential information does not effectively

waive attorney/client privilege as to all of their non-disclosed communications which may have taken place. *In Re Estate of Hoover*, 226 Ill.App.3d. 422, 589 N.E.2d. 899 (1st Dist. 1992). Recently, the Illinois Supreme Court extended the privilege to include communications between a criminal defendant and a psychiatrist hired to help defense counsel but only because the psychiatrist would not testify and other experts would not use his notes, reports or opinions. *People v. Knuckles*, 165 Ill.2d. 125, 650 N.E.2d. 974 (1995).

4. *In-Camera Inspection.*

If their is not sufficient proof of facts demonstrating to the Court that the elements of attorney/client privilege exists, where privilege is claimed, it is reasonable for the trial court to conduct an in-camera examination of the disputed documents to find a basis to protect the privilege if warranted and to prevent the privilege's application if unwarranted. *Johnson v. Frontier Ford, Inc.*, 68 Ill.App.3d. 315, 386 N.E.2d. 112 (2nd. Dist. 1979)

C. Husband/Wife Privilege - 735 ILCS 5/8-801. It should be noted that the sole exceptions to the husband/wife privilege are "actions between such husband and wife, and in actions where the custody, support, health or welfare of their children or children in either spouses care, custody or control is directly in issue, and as to matters in which either has acted as agent for the other."

D. Physician and Patient - 735 ILCS 5/8-802 protects communications made to a physician by a patient and is the patient's to assert.

E. Statements Made to Rape Crisis Personnel - 735 ILCS 5/8-802.1

F. Personnel Counseling Victims of Violent Crimes - 735 ILCS 5/8-802.2

G. Clergy/Penitent - 735 ILCS 5/8-803

H. Reporter's Privilege - 735 ILCS 5/8-901 through 909

I. Interpreter's Privilege - 735 ILCS 5/8-911 provides that the presence of an interpreter does not waive the privileged nature of an otherwise privileged communication and prohibits the interpreter from disclosing the communication without the express consent of the person who has the right to claim the underlying privilege.

J. <u>Certified Public Accountant Privilege</u> - 225 ILSC 450/27 provides that a certified public accountant shall not be required by any court to divulge information or evidence obtained by the accountant in the accountant's confidential capacity as a public accountant. However, the statute expressly provides that the section shall not apply to any investigation or hearing undertaken pursuant to the Illinois Public Accounting Act. The Illinois Accountant's Privilege annures only to the accountant, *Dorfman v. Rombs*, 218 F.Supp. 905, 907 (N.D. Ill. 1963), by any Illinois or federal court sitting in Illinois can enforce the certified public accountant's privilege. *Palmer v. Fisher*, 228 F.2d. 603 (C.A. 1956). Further, the privilege belongs only to Illinois accountants. *Armour International Co. v. Worldwide Cosmetics, Inc.*, 689 F.2d. 134 (7th Cir. 1982). Finally, information given to an accountant to prepare a client's tax returns, together with the accountants workpapers prepared incident to compiling the returns are not confidential for purposes of the public accountant privilege. *In Re October 1985 Grand Jury*, No. 746, 124 Ill.2d. 466, 530 N.E.2d. 453 (1988). However, this rational does not extend to information given to a public accountant who a client engages to perform an audit because there is no expectation that the information will be disclosed. *FMC Corp. v. Liberty Mutual Insurance Co.*, 236 Ill.App.3d. 355, 603 N.E.2d. 716 (1st Dist. 1992)

Based upon the foregoing decisions, follow-up to any claim of privilege based on the public accountant privilege should include inquiry into the following areas:

1. Whether it is the accountant who is asserting the privilege.

2. Whether the accountant is registered in Illinois (keep in mind that pursuant to 225 ILCS 450/5 dealing with the certification of foreign accountants, accountants holding certificates issued under the laws of any other state, territory or the District of Columbia can become certified in Illinois.)

3. Whether the information the accountant has was given to the accountant for the purpose of preparing client tax returns.

4. For each piece of information not given for tax return purposes, inquire as to the purpose for providing the information to the accountant to see if public disclosure was contemplated.

K. <u>Therapist/Patient Privilege</u> - 740 ILCS 110/1 through 110/17 Mental Health and Developmental Disabilities Confidentiality Act describes the therapist/patient privilege which

belongs to the patient. *Goldberg v. Davis*, 215 Ill.App.3d 930, 575 N.E.2d. 1273 (1st Dist. 1991) Although the statute creates a waiver exception for situations where a party places his mental condition at issue, the Act specifically provides that bringing or defending an action brought under the Illinois Marriage and Dissolution of Marriage Act does not place mental condition at issue such that waiver applies, and that mental condition in an action under the IMDMA shall only be deemed to be introduced if the recipient or a witness on the recipient's behalf first testifies concerning the otherwise privileged record or communication. 740 ILCS 110/10(a)(1).

1. Disclosure is at the therapist's discretion in the following situations:

   a. Child Abuse and Neglect: In accord with the provisions of the abused and Neglected Child Reporting Act when and to the extent the therapist, in the therapist's sole discretion, determines that such disclosure is necessary to initiate or continue civil commitment proceeding or to otherwise protect a recipient or any other person against a clear imminent risk of serious physical or mental injury or disease or death being inflicted on the recipient of the treatment or by the recipient on himself or another.

   b. Threats of Violence: When, in the therapist's sole discretion, the disclosure is needed to warrant or protect a specific person against whom the recipient has made a specific threat of violence. 740 ILCS 110/11.

2. Written Consents: Information otherwise protected by the therapist/patient privilege can be obtained by using written consents which must be written and include very specific information. The Act specifically provides that "Blanket Consent to the disclosure of unspecified information shall not be valid." 740 ILCS 110/5. Consents can only be given by the individuals described in 740 ILCS 110/4, and a review of this provision indicates that it applies to minors. Sample consents for parents to execute to get children's records are included at the end of this paper. Further, privileged statements made to a therapist can not be admitted into evidence on a theory that a third party who is the

subject of the statement gives consent. *In Re Marriage of Semmler*, 90 Ill.App.3d 649, 413 N.E.2d. 502 (2nd Dist. 1980).

3. These provisions apply even beyond when the patient ceases to be a patient.

L. Records of the Identity, Diagnosis, Prognosis or Treatment in Connection With Alcoholism or Drug Abuse or Dependency Prevention or Treatment - 20 ILCS 305/8-102. Records under this section can be disclosed with the patient's prior written consent or under the following circumstances:

1. To medical personnel to meet a bona fide medical emergency.

2. If authorized by an appropriate Order of Court after an application showing good cause.

M. Police Investigatory Privilege - *In Re Marriage of Daniels*, 240 Ill.App.3d. 314, 607 N.E.2d. 1255 (1st Dist. 1992). This is a qualified privilege designed to protect information used by law enforcement agencies. The privilege stems, in part, from legislation providing limited protection to Illinois State Police records and partly from case-law. However, because the privilege may conflict with the Court's need for information when the party has reason to believe the police have information bearing on a child's best interests, it would not violate the privilege to allow the Court to receive as much information as possible without endangering informants involved in any criminal investigation.

In attempting to obtain discovery on information which is alleged to be protected by the police investigatory privilege, the lawyer should be sure to find out the following:

1. Whether the information is part of an ongoing investigation.

2. Whether the information bears on a child's best interests.

3. What danger might befall any informant involved in the criminal investigation.

V. Expert Witnesses.

More often than not, the materials provided to expert witnesses will include attorney work product or other privileged or confidential information. This presents a problem since

discovery rules and case-law usually entitle your opponent to all materials relied upon by expert witnesses who will be testifying at trial. As such, consulting experts not called to testify at trial do not pose the same problems. However, privileged or confidential information shared with consulting experts is not sacrosanct and is subject to discovery upon a showing of exceptional circumstances under which it is impracticable for the other party to obtain facts or opinions on the same subject matter by other means. S.Ct. Rule 201(b)(3).

The most obvious way to protect work product from disclosure when dealing with testifying experts is simply not to show it to them. This is usually not an option. A better approach is to take the same precautions taken to insure that the expert's testimony will be credible and avoid giving experts documents so reflective of opinions and trial strategy that their opinions are subject to criticism for bias. Additionally, provide only that work product necessary to the expert's task and do not turn over opinion work product, particularly if the same factual information is available from other sources. Finally, do not risk the forced disclosure of the work of consulting experts by giving their work product to testifying experts.

VI. Non-Expert Witnesses

Using privileged or confidential information to prepare witnesses for deposition or trial testimony can cause problems similar to those encountered with testifying experts. A lawyer will entitle an adverse party to look at any writings used to refresh a witness's recollection. *People v. Bailey*, 91 Ill.App.3d 910, 415 N.E.2d. 466, (1st Dist. 1980).

VII. Misdirected Communications

Misdirected communications and a lack of education cause most inadvertent waivers of work product immunity. A lawyer's only recourse lies in implementing defensive office procedures and in educating all those involved in the case regarding work product.

A. Mistakes

To reduce the incidence of misdirected communications, double check addresses, and be sure to note whether a clients still resides with his or her spouse. If so, the attorney should ask the client to designate an alternative address where correspondence can be directed to avoid confiscation. Also be sure your staff labels all communications personal and confidential.

For clients who ask you to fax documents to their place of business, be sure your staff phones first so the client can go to the machine. You an also incorporate language into your cover sheet stating that the transmittal is a confidential communication between attorney and client that may contain attorney work product and should be taken directly to the party to whom it is addressed.

B. Lack of Education

The initial interview is the place to begin guarding confidential information against inadvertent disclosure. Attorneys should explain the doctrine to clients and advise them of the problems they can cause by showing protected information to third parties. At the time experts witnesses are retained , the attorney should go through the same process.

Since clients, experts and other witnesses cannot be expected to recognize confidential information when they see it, correspondence should point out any work product it contains. Clients should also be conditioned to put correspondence from the attorney in a secure place immediately after receiving it.

VIII. Billing

All attorneys know how important it is to keep detailed time and billing records that specifically set forth the tasks performed for clients. It would be next to impossible to prevent these records from reflecting confidential information work product. Unfortunately, we do not always have the luxury of representing the party who holds the purse strings. However, if we want to get paid before the case ends, we risk exposing our work product to the opposing party by seeking the court's assistance.

Fortunately, one alternative exists that will both shield confidential information from discovery and enable the lawyer to seek fees from the opposition prior to the case's conclusion. Rather than filing a standard fee petition requesting payment for services already rendered, file a petition for prospective attorney's fees and costs setting forth an estimate of future litigation costs to the client. Making the request in this way deprives opposing counsel of the argument that work product immunity can not be used as both a sword and shield and allows the lawyer to get at least partial payment before the entry of judgment. The downside is that after hearing on reasonableness and necessity, the attorney could be required to refund fees.

XI. Mitigating Damage

Despite a lawyer's best efforts, occasions will arise where the Court decides that justice requires the production of privileged or confidential information or where the reasons for revealing such information outweigh the benefits of shielding it from disclosure. However, even if confidential material must be tendered to opposing counsel, it can still be protected using the following methods.

A. Be Helpful

Remember, to get at work product an opponent must not only prove that the denial of discovery will result in prejudice but that no other means exists to obtain the information. When the issue first arises, the lawyer should inform the opponent in writing of all alternative sources for the information. If possible, offer to provide the information. If that does not prevent the issue from reaching the courts, the lawyer should be sure to include the same information in any responsive pleading.

B. Request The Ability To Sanitize Documents

If the judge grants an opponent's motion, the lawyer should not step away from the bench without requesting that time be allowed to sanitize documents to prevent any unnecessary disclosure of confidential information.

C. Request the Entry of a Protective Order

Remember, the policy behind forcing attorneys to turn over work product is grounded in the need to insure adequate disclosure and allow for proper trial preparation. Just because a lawyers is forced to tender protected documents to an opponent does not mean that they should surrender them to the public at large. Likewise, if a lawyer decides that you want to use your work product to educate an opponent during settlement negotiations or to reach stipulations and narrow issues for trial, the lawyer should have an agreed protective order entered before tendering any documents. Although the lawyer may later decide to use some or all of the documents at trial and waive work product protection, this will keep options open.

The rules provide that courts may enter protective orders either on their own motion or at the request of a party "to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense." If a lawyer is unsure about a claim, the lawyer should seek entry

of a protective order and may even wish to include this in any pleading filed with the court as an alternative request for relief.

The order should specifically state that the disclosed information is confidential and being tendered for purposes of settlement only, that it was not produced in the ordinary course of business and that the disclosure will not go beyond the parties to the litigation, their attorneys and any experts they may retain. A lawyer can even include the additional demand that all copies of the documents be returned to you at the conclusion of the litigation keeping in mind that this is an extreme measure which an astute opponent will refuse to comply with.

D. First Amendment Consideration - Restraint of Free Speech

When presenting a motion for the entry of a protective order, an opponent may argue that the request imposes an impermissible restriction on free speech. When confronted with this issue, the United States Supreme Court held that a litigant has no First Amendment right of access to information made available to him only for purposes of trying his suit. *Seattle Times Co. v. Rhinehart,* 467 U.S. 20, 32 (1984). Since the discovery process gives litigants access to information they could not otherwise obtain, the court reasoned that granting a request for the entry of a protective order poses no threat of government censorship and should therefore not be denied on First Amendment grounds.

However, if a lawyer intend to rely on *Seattle Times,* remember that the statutory authority to enter protective orders stems from the need to guard against discovery abuses. If the lawyer attempts to use it to protect information obtained outside the discovery process, it will look foolish since the Supreme Court specifically stated that it found no First Amendment violation because the protective order did not restrict the use of information gained outside the discovery process. Id. at 37.

CONSENT TO BE SIGNED FOR CHILD OVER AGE 12 WHERE CHILD OBJECTS TO DISCLOSURE. THIS LANGUAGE SHOULD ONLY BE CHANGED BY AN ATTORNEY AFTER REVIEWING THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT BECAUSE A DEFECTIVE WAIVER CAN RESULT IN LEGAL ACTION AGAINST A THERAPIST WHO DISCLOSES INFORMATION IN RELIANCE ON THE WAIVER.

CONSENT FOR DISCLOSURE OF RECORDS AND COMMUNICATIONS PURSUANT TO THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CONFIDENTIALITY ACT

TO WHOM IT MAY CONCERN:

I, ■ ***[NAME OF CONSENTING PARTY],*** hereby give my consent for the disclosure of any communications between■ ***[THERAPIST'S NAME]*** and■ ***[NAME AND AGE OF PATIENT],*** ■ ***[RELATIONSHIP OF PATIENT TO CONSENTING PARTY (I.E. SON, DAUGHTER, FOR WHOM I AM THE GUARDIAN)],*** and of***[THERAPIST'S NAME'S]*** opinions, conclusions and beliefs regarding ■ ***[NAME OF PATIENT]*** , which are relevant to the adjudication of ■ ***[NAME OF PETITION OR DESCRIPTION OF ISSUES (I.E. MY PETITION TO REGISTER CHILDREN IN SCHOOL AND TO MODIFY RESPONDENT'S VISITATION,]*** filed ■ ***[DATE]*** in the matter of: ■ ***[IN RE THE MARRIAGE OF: CASE NAME, CASE NO.*** ■***, PENDING IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS/CIRCUIT COURT OF COOK COUNTY, ILLINOIS.]*** I give this consent based upon ■ ***[THERAPIST'S NAME'S]*** determination that there are no compelling reasons for denying access to the information specified herein. This consent shall expire on ■ ***[DATE CONSENT TO EXPIRE.] (WARNING: WITHOUT EXPIRATION DATE, CONSENT ONLY GOOD ON DATE GIVEN TO THERAPIST.)***

____
NAME OF CONSENTING PARTY

____
WITNESS

Dated:____________________

CONSENT TO BE SIGNED FOR CHILD UNDER AGE 12. THIS LANGUAGE SHOULD ONLY BE CHANGED BY AN ATTORNEY AFTER REVIEWING THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT BECAUSE A DEFECTIVE WAIVER CAN RESULT IN LEGAL ACTION AGAINST A THERAPIST WHO DISCLOSES INFORMATION IN RELIANCE ON THE WAIVER.

CONSENT FOR DISCLOSURE OF COMMUNICATIONS PURSUANT TO THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CONFIDENTIALITY ACT

TO WHOM IT MAY CONCERN:

I, ■*[NAME OF CONSENTING PARTY]*, hereby give my consent for the disclosure to the Court and all counsel of record of any communications between ■*[THERAPIST'S NAME]* and ■*[NAME AND AGE OF PATIENT* , ■*RELATIONSHIP OF PATIENT TO CONSENTING PARTY (I.E. SON, DAUGHTER, FOR WHOM I AM THE GUARDIAN)]* and of ■*[THERAPIST'S NAME'S]* opinions, conclusions and beliefs regarding ■*[NAME OF PATIENT]*, which are relevant to the adjudication of ■*[NAME OF PETITION OR DESCRIPTION OF ISSUES (I.E. MY PETITION TO REGISTER CHILDREN IN SCHOOL AND TO MODIFY RESPONDENT'S VISITATION,]* filed ■*[DATE]* in the matter of: ■*[IN RE THE MARRIAGE OF: CASE NAME, CASE NO.*■*]*, pending in the ■*[CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS/CIRCUIT COURT OF COOK COUNTY.]* This consent shall expire on ■*[DATE CONSENT TO EXPIRE. (WARNING: WITHOUT EXPIRATION DATE, CONSENT ONLY GOOD ON DATE GIVEN TO THERAPIST.]*

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■*NAME OF CONSENTING PARTY*

____
WITNESS

Dated:____________________