

OEC 503 Lawyer-Client Privilege

1981 CONFERENCE COMMITTEE COMMENTARY

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Subsection (1)

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Paragraph (b). A confidential communication is defined in terms of intent. Intent is to be inferred from the circumstances, e.g., taking or failing to take precautions. A communication made in public or meant to be relayed to outsiders or which is divulged to third persons by the client or by the lawyer at the direction of the client can scarcely be considered confidential. McCormick section 91; *Leathers v. United States*, 250 F.2d 159 (9th Cir. 1957) (no privilege for communication knowingly made by client in presence and hearing of third person); *Baum v. Denn*, 187 Or. 401, 211 P.2d 478 (1949) (no privilege for attorney's negotiation with third party made at client's direction). Unless an intent to disclose is apparent, however, the attorney-client communication is confidential. *Bryant v. Dukehart*, *supra* (letter from client to attorney offered by opposing party, held privileged regardless of how communication came into possession of party seeking to use it).