

# APPENDIX 1

# Clergy/Penitent Privilege Statutes & Rules

## Federal Rules of Evidence – Privilege in General

The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute; or
- rules prescribed by the Supreme Court.

But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.

## UNIFORM RULES OF EVIDENCE

### RULE 505. RELIGIOUS PRIVILEGE.

(a) Definitions In this rule:

(1) "Cleric" means a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the individual consulting the cleric.

(2) A communication is "confidential" if it is made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. An individual has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the individual to a cleric in the cleric's professional capacity as spiritual adviser.

(c) Who may claim the privilege. The privilege under this rule may be claimed by an individual or the individual's guardian or conservator, or the individual's personal representative if the individual is deceased. The individual who was the cleric at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

## AK: Rules of Evidence, Rule 506 Communications to Clergymen

(a) Definitions. As used in this rule: (1) A member of the clergy is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the individual. (2) A communication is confidential if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General Rule of Privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in that individual's professional character as spiritual adviser.

(c) Who May Claim the Privilege. The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The member of the clergy may claim the privilege on behalf of the person. The authority so to do is presumed in the absence of evidence to the contrary.

### **AL: Rules of Evidence, Rule 505**

(a) Definitions. As used in this rule:

(1) A "clergyman" is any duly ordained, licensed, or commissioned minister, pastor, priest, rabbi, or practitioner of any bona fide established church or religious organization; the term "clergyman" includes, and is limited to, any person who regularly, as a vocation, devotes a substantial portion of his or her time and abilities to the service of his or her church or religious organization.

(2) A communication is "confidential" if it is made privately and is not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. If any person shall communicate with a clergyman in the clergyman's professional capacity and in a confidential manner, then that person or the clergyman shall have a privilege to refuse to disclose, and to prevent another from disclosing, that confidential communication.

(c) Who may claim the privilege. The privilege may be claimed by the communicating person, by that person's guardian or conservator, or by that person's personal representative if that person has died, or by the clergyman.

### **AR: Rules of Evidence, Rule 505 – Religious Privilege**

(a) Definitions. As used in this rule: (1) A "clergyman" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him. (2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General Rule of Privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

(c) Who May Claim the Privilege. The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

### **AZ: Ariz. Rev. Stat. Ann. § 12-2233**

In a civil action a clergyman or priest shall not, without the consent of the person making a confession, be examined as to any confession made to him in his character as clergyman or priest in the course of discipline enjoined by the church to which he belongs.

### **Ariz. Rev. Stat. Ann. § 13-4062**

A person shall not be examined as a witness in the following cases:

1. A husband for or against his wife without her consent, nor a wife for or against her husband without his consent, as to events occurring during the marriage, nor can either, during the marriage or afterwards, without consent of the other, be examined as to any communication made by one to the other during the marriage. These exceptions do not apply in a criminal action or proceeding for a crime committed by the husband against the wife, or by the wife against the husband, nor in a criminal action or proceeding against the husband for abandonment, failure to support or provide for or failure or neglect to furnish the necessities of life to the wife or the minor children. Either spouse may be examined as a witness for or against the other in a prosecution for an offense listed in section 13-706, subsection F, paragraph 1, for bigamy or adultery, committed by either spouse, or for sexual assault committed by the husband if either of the following occurs:

(a) Before testifying, the testifying spouse makes a voluntary statement to a law enforcement officer during an investigation of the offense or offenses about the events that gave rise to the prosecution or about any statements made to the spouse by the other spouse about those events.

(b) Either spouse requests to testify.

2. An attorney, without consent of the attorney's client, as to any communication made by the client to the attorney, or the attorney's advice given in the course of professional employment.

3. A clergyman or priest, without consent of the person making the confession, as to any confession made to the clergyman or priest in his professional character in the course of discipline enjoined by the church to which the clergyman or priest belongs.

4. A physician or surgeon, without consent of the physician's or surgeon's patient, as to any information acquired in attending the patient which was necessary to enable the physician or surgeon to prescribe or act for the patient.

## **CA: Evid. Code §§ 1030-1034**

ARTICLE 8. Clergy Penitent Privileges [1030 - 1034] (*Heading of Article 8 amended by Stats. 2002, Ch. 806, Sec. 18.*)

1030.

As used in this article, a “member of the clergy” means a priest, minister, religious practitioner, or similar functionary of a church or of a religious denomination or religious organization.  
(Amended by Stats. 2002, Ch. 806, Sec. 19. Effective January 1, 2003.)

1031.

As used in this article, “penitent” means a person who has made a penitential communication to a member of the clergy.  
(Amended by Stats. 2002, Ch. 806, Sec. 20. Effective January 1, 2003.)

1032.

As used in this article, “penitential communication” means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member’s church, denomination, or organization, is authorized or accustomed to hear those communications and, under the discipline or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret.

(Amended by Stats. 2002, Ch. 806, Sec. 21. Effective January 1, 2003.)

1033.

Subject to Section 912, a penitent, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication if he or she claims the privilege.

(Amended by Stats. 2002, Ch. 806, Sec. 22. Effective January 1, 2003.)

1034.

Subject to Section 912, a member of the clergy, whether or not a party, has a privilege to refuse to disclose a penitential communication if he or she claims the privilege.

(Amended by Stats. 2002, Ch. 806, Sec. 23. Effective January 1, 2003.)

### **CO: Colo. Rev. Stat. § 13-90-107**

(b) A clergy member, minister, priest, or rabbi shall not be examined without both his or her consent and also the consent of the person making the confidential communication as to any confidential communication made to him or her in his or her professional capacity in the course of discipline expected by the religious body to which he or she belongs.

### **Colo. Rev. Stat. § 13-90-107 (k) (II)**

Does not include an advocate employed by any law enforcement agency whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault, has undergone not less than fifteen hours of training as a victim's advocate or, with respect to an advocate who assists victims of sexual assault, not less than thirty hours of training as a sexual assault victim's advocate, and who supervises employees of the program, administers the program, or works under the direction of a supervisor of the program.

### **CT: Conn. Gen. Stat. § 52-146b (2022)**

A clergyman, priest, minister, rabbi or practitioner of any religious denomination accredited by the religious body to which he belongs who is settled in the work of the ministry shall not disclose confidential communications made to him in his professional capacity in any civil or criminal case or proceedings preliminary thereto, or in any legislative or administrative proceeding, unless the person making the confidential communication waives such privilege herein provided.

### **DC: D.C. Code Ann. § 14-309**

A priest, clergyman, rabbi, or other duly licensed, ordained, or consecrated minister of a religion authorized to perform a marriage ceremony in the District of Columbia or duly accredited practitioner of Christian Science may not be examined in any civil or criminal proceedings in the Federal courts in the District of Columbia and District of Columbia courts with respect to any —

(1) confession, or communication, made to him, in his professional capacity in the course of discipline enjoined by the church or other religious body to which he belongs, without the consent of the person making the confession or communication; or

(2) communication made to him, in his professional capacity in the course of giving religious or spiritual advice, without the consent of the person seeking the advice; or

(3)(A) communication made to him, in his professional capacity, by either spouse or domestic partner, in connection with an effort to reconcile estranged spouses or domestic partners, without the consent of the spouse or domestic partner making the communication.

(B) for the purposes of this paragraph, the term “domestic partner” shall have the same meaning as provided in § 32-701(3).

## **DE: Del. R. Evid. 505 – Religious Privilege**

**(a) Definitions.** As used in this rule: **(1)** "Cleric means" a minister, priest, rabbi, accredited Christian Science practitioner or other similar functionary of a religious organization, or a person that an individual who consulted that person for spiritual advice reasonably believed to be a cleric. **(2)** "Confidential communication" means a communication made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

**(b) General rule of privilege.** An individual has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication between the individual and the cleric while the cleric is serving as the individual's spiritual adviser.

**(c) Who may claim the privilege.** The individual may claim the privilege on the individual's own behalf. The cleric is presumed to have authority to claim the privilege on the individual's behalf. If the individual is incompetent or deceased, then an authorized personal representative may claim the privilege on the individual's behalf.

## **FL: Fla. Stat. § 90.505**

90.505 Privilege with respect to communications to clergy.—

(1) For the purposes of this section:

(a) A “member of the clergy” is a priest, rabbi, practitioner of Christian Science, or minister of any religious organization or denomination usually referred to as a church, or an individual reasonably believed so to be by the person consulting him or her.

(b) A communication between a member of the clergy and a person is “confidential” if made privately for the purpose of seeking spiritual counsel and advice from the member of the clergy in the usual course of his or her practice or discipline and not intended for further disclosure except to other persons present in furtherance of the communication.

(2) A person has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication by the person to a member of the clergy in his or her capacity as spiritual adviser.

(3) The privilege may be claimed by:

(a) The person.

(b) The guardian or conservator of a person.

(c) The personal representative of a deceased person.

(d) The member of the clergy, on behalf of the person. The member of the clergy’s authority to do so is presumed in the absence of evidence to the contrary.

## **GA: Ga. Stat § 24-9-22**

Every communication made by any person professing religious faith, seeking spiritual comfort, or seeking counseling to any Protestant minister of the Gospel, any priest of the Roman Catholic faith, any priest of the Greek Orthodox Catholic faith, any Jewish rabbi, or to any Christian or Jewish minister, by whatever name called, shall be deemed privileged. No such minister, priest, or rabbi shall disclose any communications made to him by any such person professing religious faith, seeking spiritual guidance, or seeking counseling, nor shall such minister, priest, or rabbi be competent or compellable to testify with reference to any such communication in any court.

## **HI: Rules of Evidence, Rule 506 Communications to Clergymen (2020)**

(1) A "member of the clergy" is a minister, priest, rabbi, Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the communicant.

(2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in the latter's professional character as spiritual advisor.

(c) Who may claim the privilege. The privilege may be claimed by the communicant or by the communicant's guardian, conservator, or personal representative. The member of the clergy may claim the privilege on behalf of the communicant. Authority so to do is presumed in the absence of evidence to the contrary.

## **ID: Id Code § 9-203**

(3) A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

## **IL: 735 Ill. Comp. Stat. 5/8-803**

Sec. 8-803. Clergy. A clergyman or practitioner of any religious denomination accredited by the religious body to which he or she belongs, shall not be compelled to disclose in any court, or to any administrative board or agency, or to any public officer, a confession or admission made to him or her in his or her professional character or as a spiritual advisor in the course of the discipline enjoined by the rules or practices of such religious body or of the religion which he or she professes, nor be compelled to divulge any information which has been obtained by him or her in such professional character or as such spiritual advisor.

## **IN: Ind. Ann. § 34-46-3.1 (2020) – Persons Not Required to Testify**

Sec. 1. Except as otherwise provided by statute, the following persons shall not be required to testify regarding the following communications:

(3) Clergymen, as to the following confessions, admissions, or confidential communications:

(A) Confessions or admissions made to a clergyman in the course of discipline enjoined by the clergyman's church.

(B) A confidential communication made to a clergyman in the clergyman's professional character as a spiritual adviser or counselor.

### **IW: Iowa Code § 622.10**

A practicing attorney, counselor, physician, surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, or the stenographer or confidential clerk of any such person, who obtains information by reason of the person's employment, or a member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the usual course of practice or discipline.

### **KS: Kan. Stat. § 60-429**

(a) **Definitions.** As used in this section, (1) the term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his or her regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization; (2) the term "regular minister of religion" means one who as his or her customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he or she is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister; (3) the term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his or her church, sect, or organization; (4) "penitent" means a person who recognizes the existence and the authority of God and who seeks or receives from a regular or duly ordained minister of religion advice or assistance in determining or discharging his or her moral obligations, or in obtaining God's mercy or forgiveness for past culpable conduct; (5) "penitential communication" means any communication between a penitent and a regular or duly ordained minister of religion which the penitent intends shall be kept secret and confidential and which pertains to advice or assistance in determining or discharging the penitent's moral obligations, or to obtaining God's mercy or forgiveness for past culpable conduct.

(b) **Privilege.** A person, whether or not a party, has a privilege to refuse to disclose, and to prevent a witness from disclosing a communication if he or she claims the privilege and the judge finds that (1) the communication was a penitential communication and (2) the witness is the penitent or the minister, and (3) the claimant is the penitent, or the minister making the claim on behalf of an absent penitent.

### **KY: Ky. Rev. Stat. § 505**

(a) **Definitions.** As used in this rule:



(1) A "clergyman" is a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.

(2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication between the person and a clergyman in his professional character as spiritual adviser.

(c) Who may claim the privilege. The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

### **LA: La. Code Evid. Ann. § art.511 – Communications to clergymen (2003)**

**A. Definitions.** — As used in this Article:

(1) A "clergyman" is a minister, priest, rabbi, Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.

(2) A communication is "confidential" if it is made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

**B. General rule of privilege.** — A person has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

**C. Who may claim the privilege.** — The privilege may be claimed by the person or by his legal representative. The clergyman is presumed to have authority to claim the privilege on behalf of the person or deceased person.

### **MA: Mass. Ann. Laws ch. 233, § 20A**

Section 20A. A priest, rabbi or ordained or licensed minister of any church or an accredited Christian Science practitioner shall not, without the consent of the person making the confession, be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs; nor shall a priest, rabbi or ordained or licensed minister of any church or an accredited Christian Science practitioner testify as to any communication made to him by any person in seeking religious or spiritual advice or comfort, or as to his advice given thereon in the course of his professional duties or in his professional character, without the consent of such person.

### **MD: Md. Code Ann., Cts. & Jud. Proc. § 9-111 – Privileged Communications – Minister Clergyman or Priest**

A minister of the gospel, clergyman, or priest of an established church of any denomination may not be compelled to testify on any matter in relation to any confession or communication made to him in confidence by a person seeking his spiritual advice or consolation.

## **ME: Me. R. Evid. 505 – Religious Privilege**

(a) Definitions. As used in this rule:

(1) A "member of the clergy" is an individual who has been ordained or accredited as a spiritual advisor, counselor, or leader by any religious organization established on the basis of a community of faith and belief, doctrines, and practices of a religious character, or an individual reasonably believed so to be by the person consulting that individual.

(2) A communication is "confidential" if:

(A) It is made privately; and

(B) It is not intended for disclosure other than to other persons present in furtherance of the purpose of the communication.

(b) General rule. A person has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made to a member of the clergy who was acting as a spiritual adviser at the time of the communication.

(c) Who may claim the privilege. The privilege can be claimed by:

(1) The person who made the communication;

(2) The person's guardian or conservator; or

(3) The person's personal representative, if the person is deceased.

The person who was a clergy member at the time of the communication also has presumptive authority to claim the privilege on behalf of the person who made the communication.

## **MI: Mich. Comp. Laws Serv. § 600.2156**

No minister of the gospel, or priest of any denomination whatsoever, or duly accredited Christian Science practitioner, shall be allowed to disclose any confessions made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination.

## **MN: Minn. Stat. Ann. § 595.02**

(1) (c) A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character, in the course of discipline enjoined by the rules or practice of the religious body to which the member of the clergy or other minister belongs; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person seeking religious or spiritual advice, aid, or comfort or advice given thereon in the course of the member of the clergy's or other minister's professional character, without the consent of the person.

## **MO: Mo. Rev. Stat. § 491.060**

The following persons shall be incompetent to testify:

- (4) Any person practicing as a minister of the gospel, priest, rabbi or other person serving in a similar capacity for any organized religion, concerning a communication made to him or her in his or her professional capacity as a spiritual advisor, confessor, counselor or comforter;

## **MS: Miss. R. Evid. 505 – Communications to Clergy (2016)**

(a) **Definitions.** — In this rule:

- (1) “Clergy member” means a minister, priest, rabbi, or other similar functionary of a church, religious organization, or religious denomination.
- (2) A communication is “confidential” when:
  - (A) made privately, and
  - (B) not intended to be disclosed except to further the purpose of the communication.

(b) **General rule of privilege.** — A person has a privilege to refuse to disclose – and to prevent others from disclosing – a confidential communication made by the person to a clergy member as spiritual adviser.

(c) **Who may claim the privilege.** —

- (1) The privilege may be claimed by:
  - (A) the person who made the communication;
  - (B) the person’s guardian or conservator; or
  - (C) a deceased person’s personal representative.
- (2) Unless the privilege is waived, the clergy member must claim it on the person’s behalf.

(d) **Clerical staff.** — A clergy member’s secretary, stenographer, or clerk must not be examined about any fact learned in that capacity without the clergy member’s consent.

## **MT: Mont. Code Ann. § 26-1-804 – Confessions made to members of the clergy**

A member of the clergy or priest may not, without the consent of the person making the confession, be examined as to any confession made to the individual in the individual’s professional character in the course of discipline enjoined by the church to which the individual belongs.

## **ND: N.D.R. Ev. Rule 505 – Religious Privilege**

(a) **Definitions.** In this rule:

- (1) "Cleric" means a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the cleric.
- (2) A communication is "confidential" if it is made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

**(b) General rule of privilege.** An individual has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the individual to a cleric in the cleric's professional character as spiritual adviser.

**(c) Who may claim the privilege.** The privilege under this rule may be claimed by an individual or the individual's guardian or conservator, or the individual's personal representative if the individual is deceased. The individual who was the cleric at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

### **NC: N.C. Gen. Stat. § 8-53.2 – Communications between clergymen and communicants**

No priest, rabbi, accredited Christian Science practitioner, or a clergyman or ordained minister of an established church shall be competent to testify in any action, suit or proceeding concerning any information which was communicated to him and entrusted to him in his professional capacity, and necessary to enable him to discharge the functions of his office according to the usual course of his practice or discipline, wherein such person so communicating such information about himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted, provided, however, that this section shall not apply where communicant in open court waives the privilege conferred.

### **NE: Neb. Rev. Stat. § 27-506**

**(1)** As used in this rule:

**(a)** A clergyman is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him; and

**(b)** A communication is confidential if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

**(2)** A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual advisor.

**(3)** The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The clergyman may claim the privilege on behalf of the person. His authority so to do is presumed in the absence of evidence to the contrary.

### **NH: N.H. Rev. Stat. Ann. § 516:35 – Religious Leaders**

A priest, rabbi or ordained or licensed minister of any church or a duly accredited Christian Science practitioner shall not be required to disclose a confession or confidence made to him in his professional character as spiritual adviser, unless the person confessing or confiding waives the privilege.

### **NJ: N.J. Stat. § 2A:84A-23 – Clergy-penitent privilege**

Rule 511.

Any communication made in confidence to a cleric in the cleric's professional character, or as a spiritual advisor in the course of the discipline or practice of the religious body to which the cleric belongs or of the religion which the cleric professes, shall be privileged. Privileged communications shall include confessions and other communications made in confidence between and among the cleric and individuals, couples, families or groups in the exercise of the cleric's professional or spiritual counseling role.

As used in this section, "cleric" means a priest, rabbi, minister or other person or practitioner authorized to perform similar functions of any religion.

The privilege accorded to communications under this rule shall belong to both the cleric and the person or persons making the communication and shall be subject to waiver only under the following circumstances:

- (1) both the person or persons making the communication and the cleric consent to the waiver of the privilege; or
- (2) the privileged communication pertains to a future criminal act, in which case, the cleric alone may, but is not required to, waive the privilege.

## **NM: 11-506 NMRA – Communications to clergy**

**A. Definitions.** For purposes of this rule,

- (1) a "member of the clergy" is a minister, priest, rabbi, or similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting that person;
- (2) a communication is "confidential" if made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication.

**B. Scope of the privilege.** A person has a privilege to refuse to disclose, or to prevent another from disclosing, a confidential communication made for the purpose of seeking spiritual advice by the person to a member of the clergy.

**C. Who may claim the privilege.** The privilege may be claimed by

- (1) the person who consults with a member of the clergy;
- (2) the person's guardian or conservator; or
- (3) the person's personal representative if the person is deceased.

The privilege may be asserted on the person's behalf by the member of the clergy. Authority to claim the privilege is presumed absent evidence to the contrary.

## **NV: Nev. Rev. Stat. § 49.255**

A member of the clergy or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to the member of the clergy or priest in his or her professional character.

## **NY: N.Y. C.P.L.R. Law § 4505**

Confidential communication to clergy privileged. Unless the person confessing or confiding waives the privilege, a clergyman, or other minister of any religion or duly accredited Christian Science practitioner, shall not be allowed disclose a confession or confidence made to him in his professional character as spiritual advisor.

## **OH: Ohio Rev. Code Ann. § 2317.02 (2017)**

The following persons shall not testify in certain respects:

### **(C)**

(1) A cleric, when the cleric remains accountable to the authority of that cleric's church, denomination, or sect, concerning a confession made, or any information confidentially communicated, to the cleric for a religious counseling purpose in the cleric's professional character. The cleric may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust and except that, if the person voluntarily testifies or is deemed by division (A)(4)(c) of [section 2151.421 of the Revised Code](#) to have waived any testimonial privilege under this division, the cleric may be compelled to testify on the same subject except when disclosure of the information is in violation of a sacred trust.

(2) As used in division (C) of this section:

- (a) "Cleric" means a member of the clergy, rabbi, priest, Christian Science practitioner, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect.
- (b) "Sacred trust" means a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if both of the following apply:
  - (i) The confession or confidential communication was made directly to the cleric
  - (ii) The confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.

## **OK: Okla. Stat. tit. 12, § 2505 – Religious Privilege**

A. As used in this section:

1. A "cleric" is a minister, priest, rabbi, accredited Christian Science practitioner or other similar functionary of a religious organization, or any individual reasonably believed to be a cleric by the person consulting the cleric; and
2. A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. A person has a privilege to refuse to disclose and to prevent another from disclosing his confidential communication made to a clergyman acting in his professional capacity.

C. The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The cleric is presumed to have authority to claim the privilege but only on behalf of the communicant.

**OR: Or. Rev. Stat. § 40.260 Rule 506**

(1)

As used in this section, unless the context requires otherwise:

(a)

“Confidential communication” means a communication made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b)

“Member of the clergy” means a minister of any church, religious denomination or organization or accredited Christian Science practitioner who in the course of the discipline or practice of that church, denomination or organization is authorized or accustomed to hearing confidential communications and, under the discipline or tenets of that church, denomination or organization, has a duty to keep such communications secret.

(2)

A member of the clergy may not be examined as to any confidential communication made to the member of the clergy in the member's professional character unless consent to the disclosure of the confidential communication is given by the person who made the communication.

(3)

Even though the person who made the communication has given consent to the disclosure, a member of the clergy may not be examined as to any confidential communication made to the member in the member's professional character if, under the discipline or tenets of the member's church, denomination or organization, the member has an absolute duty to keep the communication confidential.

**PA: 42 Pa. Cons. Stat. Ann. § 5943 – Privileged communications to clergymen**

No clergyman, priest, rabbi or minister of the gospel of any regularly established church or religious organization, except clergymen or ministers, who are self-ordained or who are members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers, who while in the course of his duties has acquired information from any person secretly and in confidence shall be compelled, or allowed without consent of such person, to disclose that information in any legal proceeding, trial or investigation before any government unit.

**RI: R.I. Gen. Laws Section 9-17-23 – Privileged communications to clergy.**

In the trial of every cause, both civil and criminal, no member of the clergy or priest shall be competent to testify concerning any confession made to him or her in his or her professional character in the course of discipline enjoined by the church to which he or she belongs, without the consent of the person making the confession. No duly ordained minister of the gospel, priest, or rabbi of any denomination shall be allowed in giving testimony to disclose any confidential communication, properly entrusted to him or her in his or her professional capacity, and necessary and proper to enable him or her to discharge the functions of his or her office in the usual course of practice or discipline, without the consent of the person making the communication.

## **SC: S.C. Code Ann. § 19-11-90 – Priest-penitent privilege**

In any legal or quasi-legal trial, hearing or proceeding before any court, commission or committee no regular or duly ordained minister, priest or rabbi shall be required, in giving testimony, to disclose any confidential communication properly entrusted to him in his professional capacity and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline of his church or religious body. This prohibition shall not apply to cases where the party in whose favor it is made waives the rights conferred.

## **SD: S.D. Codified Laws § 19-19-505 – Religious privilege – Definitions – General Rule - Who may claim**

(a) **Definitions.** As used in this section:

- (1) A “clergyman” is a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him;
- (2) A communication is “confidential” if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) **General rule of privilege.** A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

(c) **Who may claim privilege.** The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

## **TN: Tenn. Code Ann. § 24-1-206 Clergy – Communications confidential – Waiver – Misdemeanor offense**

(a)

- (1) No minister of the gospel, priest of the Catholic Church, rector of the Episcopal Church, ordained rabbi, or regular minister of religion of any religious organization or denomination usually referred to as a church, over eighteen (18) years of age, shall be allowed or required in giving testimony as a witness in any litigation, to disclose any information communicated to that person in a confidential manner, properly entrusted to that person in that person's professional capacity, and necessary to enable that person to discharge the functions of such office according to the usual course of that person's practice or discipline, wherein such person so communicating such information about such person or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted.
- (2) It shall be the duty of the judge of the court wherein such litigation is pending, when such testimony as prohibited in this section is offered, to determine whether or not that person possesses the qualifications which prohibit that person from testifying to the communications sought to be proven by that person.

(b) The prohibition of this section shall not apply to cases where the communicating party, or parties, waives the right so conferred by personal appearance in open court so declaring, or by an affidavit properly sworn to by such a one or ones, before some person authorized to administer oaths, and filed with the court wherein litigation is pending.



(c) Nothing in this section shall modify or in any way change the law relative to “hearsay testimony.”

(d) Any minister of the gospel, priest of the Catholic Church, rector of the Episcopal Church, ordained rabbi, or any regular minister of religion of any religious organization or denomination usually referred to as a church, who violates this section, commits a Class C misdemeanor.

### **TX: Texas Rules of Evidence, Rule 505**

Rule 505 - Privilege For Communications to a Clergy Member(a) Definitions. In this rule:(1) A "clergy member" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization or someone whom a communicant reasonably believes is a clergy member.(2) A "communicant" is a person who consults a clergy member in the clergy member's professional capacity as a spiritual adviser.(3) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present to further the purpose of the communication.(b) General Rule. A communicant has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication by the communicant to a clergy member in the clergy member's professional capacity as spiritual adviser.(c) Who May Claim. The privilege may be claimed by:(1) the communicant;(2) the communicant's guardian or conservator; or(3) a deceased communicant's personal representative.

The clergy member to whom the communication was made may claim the privilege on the communicant's behalf-and is presumed to have authority to do so.

### **UT: Utah Code Ann. § 78B-1-137 – Witness - privileged communications**

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in the following cases:

(3) A member of the clergy or priest cannot, without the consent of the person making the confession, be examined as to any confession made to either of them in their professional character in the course of discipline enjoined by the church to which they belong.

### **VT: Vt. Stat. Ann. Title 12 § 1607**

A priest or minister of the gospel shall not be permitted to testify in court to statements made to him or her by a person under the sanctity of a religious confessional.

### **VA: Va. Code Ann. § 8.01-400 – Communications between ministers of religion and persons they counsel or advise**

No regular minister, priest, rabbi, or accredited practitioner over the age of eighteen years, of any religious organization or denomination usually referred to as a church, shall be required to give testimony as a witness or to relinquish notes, records or any written documentation made by such person, or disclose the contents of any such notes, records or written documentation, in discovery proceedings in any civil action which would disclose any information communicated to him in a confidential manner, properly entrusted to him in his professional capacity and necessary to enable him to discharge the functions of his office according to the usual course of his practice or discipline, wherein such person so communicating such information about

himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted.

### **WA: Wash. Rev. Code § 5.60.060 – Who is disqualified – Privileged communications (2020)**

(3) A member of the clergy, a Christian Science practitioner listed in the Christian Science Journal, or a priest shall not, without the consent of a person making the confession or sacred confidence, be examined as to any confession or sacred confidence made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

### **WI: Wis. Stat. § 905.06**

(1) Definitions. As used in this section:

(a) A “member of the clergy” is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the individual.

(b) A communication is “confidential” if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(2) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in the member's professional character as a spiritual adviser.

(3) Who may claim the privilege. The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The member of the clergy may claim the privilege on behalf of the person. The member of the clergy's authority so to do is presumed in the absence of evidence to the contrary.

(4) Exceptions. There is no privilege under this section concerning observations or information that a member of the clergy, as defined in s. 48.981 (1) (cx), is required to report as suspected or threatened child abuse under s. 48.981 (2) (bm) or as a threat of violence in or targeted at a school under s. 175.32.

### **WV: W. Va. Code § 57-3-9 – Communications to priests, nuns, clergy, rabbis, Christian Science practitioners or other religious counselors not subject to being compelled as testimony**

No priest, nun, rabbi, duly accredited Christian Science practitioner or member of the clergy authorized to celebrate the rites of marriage in this State pursuant to the provisions of article two [§§ 48-2-101 et seq.], chapter forty-eight of this code shall be compelled to testify in any criminal or grand jury proceedings or in any domestic relations action in any court of this State:

(1) With respect to any confession or communication, made to such person, in his or her professional capacity in the course of discipline enjoined by the church or other religious body to which he or she belongs, without the consent of the person making such confession or communication; or

(2) With respect to any communication made to such person, in his or her professional capacity, by either spouse, in connection with any effort to reconcile estranged spouses, without the consent of the spouse making the communication. This subsection is in addition to the protection and

privilege afforded pursuant to section three hundred one [§ 48-1-301], article one, chapter forty-eight of this code.

**MILITARY RULES OF EVIDENCE: Mil. R. Evid. 503(a)**

"A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman or to a clergyman's assistant, if such communication is made either as a formal act of religion or as a matter of conscience."