



Advocacy Bulletin: Regarding the Privilege of Confidential Advocates

Inspiring Colorado to End Domestic Violence

Effective date: August 1, 2016

Background:

Confidentiality is the cornerstone of all advocacy services provided by community based advocates.

The privilege established by [C.R.S. 13-90-107](#):

Who **may not** testify without consent states:

(k) (I) A victim's **advocate** shall not be examined as to any communication made to such victim's **advocate** by a victim of domestic violence, as defined in [section 18-6-800.3 \(1\), C.R.S.](#), or a victim of sexual assault, as described in [sections 18-3-401](#) to [18-3-405.5](#), [18-6-301](#), and [18-6-302, C.R.S.](#), in person or through the media of written records or reports without the consent of the victim.

(II) For purposes of this paragraph (k), a "victim's advocate" means a person at a battered women's shelter or rape crisis organization or a comparable community-based advocacy program for victims of domestic violence or sexual assault and does not include an advocate employed by any law enforcement agency:

(A) Whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault; and

(B) Who 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

(C) Who supervises employees of the program¹, administers the program, or works under the direction of a supervisor of the program.

Colorado's privilege for advocates is considered a strong statute, however for advocate privilege to apply each individual advocate and/or agency volunteer who works directly with clients **MUST** at a minimum have completed the necessary 15 training hours before an advocate can claim privilege for any and all client conversations including answering a crisis line, providing advocacy services, or providing supervision of staff/volunteers who work directly with clients.

While there is good case law¹ protecting confidential privilege, it is possible a court may be able to successfully subpoena the advocate to provide proof of their training.

¹ Members of an organization's board of directors who are the supervisors of the executive director or similar role are ultimately administrators of a program and should also have received a minimum of 15 training hours to be able to assert privilege if needed.

Advocacy:

Confidential community based advocates offer a unique and necessary service to Survivors of domestic violence and sexual assault. Federal and state law clearly recognizes the need for a safe and confidential relationship in Survivors services. Seeking information about services including the an initial disclosure of abuse, safety planning, safe and confidential sheltering, legal advocacy and counseling all deserve to be protected/privileged moments Survivors can freely access as needed. To protect a Survivors right to confidentiality all advocates must understand and comply with the initial training requirement to make sure a program/individual advocate can claim privilege to be able to quash subpoenas for information in either criminal or civil cases.

Action:

New advocates/volunteers should complete 15 hours of training prior to engaging with clients.

Advocates should keep documentation of their training in individual training files^{2, 3}.

Training files should be kept separate from employment records and/or personnel files to protect against possible unnecessary disclosure of employee information if an attorney was successfully able to subpoena documentation related to an advocates training.

If you have any questions about this or other domestic violence policy work, please contact Lydia at the Colorado Coalition Against Domestic at lwaligorski@ccadv.org.

Key words: subpoena of court records, domestic violence, confidentiality, quash, Victim's Rights, Survivor, Colorado, advocacy, SDT, training, privilege

² CO case law: The victim **advocate** privilege in subsection (1)(k)(I) extends to records of service or assistance provided by the victim's **advocate**, because the records are a part of "any communication" made to the **advocate** by the domestic violence victim. People v. Turner, 109 P.3d 639 (Colo. 2005).

Privileges are strictly construed and the burden of proving that a communication is protected by a privilege is upon the person asserting the privilege. People v. Agado, 964 P.2d 565 (Colo. App. 1998)

A defendant may not obtain records of any assistance, advice, or other communication provided by a victim's **advocate** to a victim unless the defendant demonstrates that the victim has waived the privilege. People v. Turner, 109 P.3d 639 (Colo. 2005).

The mere endorsement of a domestic violence expert by the prosecution cannot operate to waive the privilege. People v. Turner, 109 P.3d 639 (Colo. 2005).

³ A training file contents should be limited only to documentation of an employee/volunteers training. The file can and should also include ongoing documentation of continuing education.