



PUERTO RICO

P.R. LAWS ANN. tit. 32 Ap. 4, Rule 26-A

P.R. LAWS ANN. tit. 39, §652

Type of Privilege: Absolute

Privilege:

- Any victim of a crime, whether or not a party to the action, has the privilege to refuse to disclose or to prevent another from disclosing a confidential communication between the victim and the counselor, if any one of them reasonably believed such communication to be necessary for the treatment and help required. **P.R. LAWS ANN. tit. 32 Ap. 4, Rule 26-A (B).**
- The privilege may be claimed not only by the holder thereof, but also by a person authorized by the victim, a legal counsel or by the counselor who received the communication. **P.R. LAWS ANN. tit. 32 Ap. 4, Rule 26-A (B).**
- All communications between the persons attended to in the Women's Advocate Office and its personnel shall be privileged and shall be protected by the confidentiality privilege established in the Rules of Evidence of Puerto Rico. **P.R. LAWS ANN. tit. 39, §652.**
- All communications between a victim of domestic violence and any other public entity or body, which renders services to victims of domestic abuse, shall enjoy the same privilege and confidentiality, in harmony with Rule 26-A of the Rules of Evidence of Puerto Rico and the Bill of Rights of Victims and Witnesses of Crime. **P.R. LAWS ANN. tit. 39, §652.**

Statutory Exception to Privilege:

- If the victim files action for professional malpractice against the counselor or against the help and counseling center which the counsel is employed or serves as a supervised volunteer, said counselor's testimony is not subject to the privilege. **P.R. LAWS ANN. tit. 32 Ap. 4, Rule 26-A (E)**

In Camera Review:

- There is no mention of in-camera review with respect to the victim-counselor privilege.
- However, *Santiago v. Bobb y El Mundo, Inc.*, 12 P.R. Offic. Trans. 182 (P.R. 1986) provides that the court can make an in-camera inspection of documents or information that the State alleges is privileged. This case involved information from the Special Investigation Bureau that was considered privilege, but it suggests that in some instances, in-camera review is permitted.

Waiver:

- The fact that a victim testifies in court regarding the crime does not constitute a waiver of the privilege. **P.R. LAWS ANN. tit. 32 Ap. 4, Rule 26-A (D).**
- If, as part of a testimony given in court, the victim reveals part of the confidential communication, it shall be understood as a waiver of the privilege with respect to that portion of the testimony only. **P.R. LAWS ANN. tit. 32 Ap. 4, Rule 26-A (D)(1).**

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- The victim cannot waive the privilege through his legal counsel. **P.R. LAWS ANN. tit. 32 Ap. 4, Rule 26-A (E).**

DEFINITIONS:

Confidential Communication: Any information transmitted between the crime victim and his/her counselor, be it in private or before a third person whose presence is necessary to establish communication between the victim and the counselor, or to facilitate the counseling services needed by the victim when such information is disclosed during the course of the treatment that the counselor gives to deal with the victim's emotional or psychological condition produced by the commission of a crime and that is made in the confidence that the same will not be disclosed to third persons.

Victim: A person that has suffered emotional or psychological damage as a consequence of the commission of a crime and who resorts to a counselor or to a counseling and help center to obtain assistance or treatment.

Counseling: The assistance, diagnosis or treatment offered to the victim to mitigate the adverse emotional or psychological effects caused by the commission of a crime. It includes, but is not limited to, treatment during the emotional or mental crisis period.

Help and counseling center: Any person or private or government entity that has, as one of its main purposes, to offer treatment and help to crime victims.

Counselor: Any person duly authorized, certified or licensed by the Commonwealth of Puerto Rico to carry out the functions of a counselor, orientator, consultant, therapist or any employee or supervised volunteer of a help and counseling center that offers treatment and help to crime victims.

P.R. LAWS ANN. tit. 32 Ap. 4, Rule 26-A (A)

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