

Proposed Rule

Reasons for Change

90.503. Psychotherapist-patient privilege

(1) For purposes of this section:

(a) A “psychotherapist” is:

1. A person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
2. A person licensed or certified as a psychologist under the laws of any state or nation, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
3. A person licensed or certified as a clinical social worker, marriage and family therapist, or mental health counselor under the laws of this state, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; ~~or~~
4. Treatment personnel of facilities licensed by the state pursuant to chapter 394, chapter 395, or chapter 397, of facilities designated by the Department of Children and Family Services pursuant to chapter 394 as treatment facilities, or of facilities defined as community mental health centers pursuant to s. 394.907(1), who are engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; or
5. An advanced registered nurse practitioner certified under s. 464.012, whose primary scope of practice is the diagnosis or treatment of mental or emotional conditions, including chemical abuse, and limited only to actions

Amended to add paragraph 5 and bring the statutory code and court rules into agreement regarding who qualifies as a “psychotherapist” for purposes of the psychotherapist-patient privilege, and thereby avoid the problem of determining which portions of these statutory code provisions are procedural and

performed in accordance with part I of chapter 464.

- (b) [NO CHANGE]
- (c) [NO CHANGE]
- (2) [NO CHANGE]
- (3) [NO CHANGE]
- (4) [NO CHANGE]

which are substantive.

[Editor's note: West's Florida Rules of Court — 2006 (November supplement) does not include this revision, which became effective July 1, 2006. This text has nonetheless been read against the session law, included as Appendix D.]

Proposed Rule

Reasons for Change

~~90.602. Testimony of interested persons~~

~~(1) No person interested in an action or proceeding against the personal representative, heir at law, assignee, legatee, devisee, or survivor of a deceased person, or against the assignee, committee, or guardian of a mentally incompetent person, shall be examined as a witness regarding any oral communication between the interested person and the person who is deceased or mentally incompetent at the time of the examination.~~

~~(2) This section does not apply when:~~

~~(a) A personal representative, heir at law, assignee, legatee, devisee, or survivor of a deceased person, or the assignee, committee, or guardian of a mentally incompetent person, is examined on his or her own behalf regarding the oral communication.~~

~~(b) Evidence of the subject matter of the oral communication is offered by the personal representative, heir at law, assignee, legatee, devisee, or survivor of a deceased person, or the assignee, committee, or guardian of a mentally incompetent person.~~

~~(3) For the purpose of this section, a “mentally incompetent person” is one who because of mental illness, mental retardation, senility, excessive use of drugs or alcohol, or other mental incapacity, is incapable of either managing his or her property or caring for himself or herself, or both.~~

Deleted to bring the statutory code and court rules into agreement regarding the “Deadman’s Statute.”

Proposed Rule

Reasons for Change

90.804. Hearsay exceptions; declarant unavailable

(1) DEFINITION OF UNAVAILABILITY. [NO CHANGE]

(2) HEARSAY EXCEPTIONS.—The following are not excluded under s. 90.802, provided that the declarant is unavailable as a witness:

(a) *Former testimony.* [NO CHANGE]

(b) *Statement under belief of impending death.* [NO CHANGE]

(c) *Statement against interest.* [NO CHANGE]

(d) *Statement of personal or family history.* [NO CHANGE]

(e) *Statement by deceased or ill declarant similar to one previously admitted.*—In an action or proceeding brought against the personal representative, heir at law, assignee, legatee, devisee, or survivor of a deceased person, or against a trustee of a trust created by a deceased person, or against the assignee, committee, or guardian of a mentally incompetent person, when a declarant is unavailable as provided in paragraph (1)(d), a written or oral statement made regarding the same subject matter as another statement made by the declarant that has previously been offered by an adverse party and admitted in evidence.

Amended to add (e) in the place of former §90.602, Fla. Stat., and thereby bring the statutory code and court rules into agreement regarding hearsay exceptions.