

Alabama Rules of Evidence

Article V. Privileges

Rule 501.

Privileges recognized only as provided.

Except as otherwise provided by constitution or statute or by these or other rules promulgated by the Supreme Court of Alabama, no person has a privilege to:

- (1) refuse to be a witness;
- (2) refuse to disclose any matter;
- (3) refuse to produce any object or writing; or
- (4) prevent another from being a witness or disclosing any matter or producing any object or writing.

Advisory Committee's Notes

This introductory rule, serving as a preface to the evidentiary privileges, embraces the historic common law principle that no privilege exists where none has been granted. A party to a civil action, for example, generally has no privilege not to be a witness. Ala. Code 1975, § 12-21-163. See *In re Sullivan*, 283 Ala. 514, 219 So.2d 346, cert. denied, *Sullivan v. Board of Comm'rs*, 396 U.S. 826 (1969). Additionally, a civil litigant has no general privilege to refuse to produce an object or a writing. *Rarden v. Cunningham*, 136 Ala. 263, 34 So. 26 (1903). Similarly, a witness has no common law privilege generally not to exhibit his or her body. *King v. State*, 100 Ala. 85, 14 So. 878 (1894); C. Gamble, McElroy's Alabama Evidence § 361.05 (4th ed. 1991). Generally, a witness has no privilege to refuse to answer a question on the ground that the answer would tend to be humiliating or degrading. *Ex parte Boscowitz*, 84 Ala. 462, 4 So. 279 (1888). One likewise, at least as a beginning principle, has no privilege to require that a communication not be disclosed merely because it was made or received in confidence. *Phillips v. Alabama Dep't of Pensions & Sec.*, 394 So.2d 51 (Ala.Civ.App.1981). See C. Gamble, McElroy's Alabama Evidence § 386.01 (4th ed. 1991).

Despite this beginning no-privilege premise, the law grants privileges. Witnesses, for example, have a constitutional privilege against self-incrimination. *International Bhd. of Teamsters v. Hatas*, 287 Ala. 344, 252 So.2d 7 (1971) (privilege of witnesses in civil actions). See C. Gamble, McElroy's Alabama Evidence § 373.01 (4th ed. 1991). An accused has a constitutional and statutory privilege not to be compelled to give incriminating evidence. U.S. Const. Amend. V; Ala. Const. Art. I, § 6 (1901); Ala. Code 1975, § 12-21-220. Additionally, privileges are provided in the rules following Rule 501 and in other rules promulgated by the

Supreme Court of Alabama.

A prime example of a privilege existing outside these Alabama Rules of Evidence is the “work product” privilege found in Ala.R.Civ.P. 26(b)(3). See *Hickman v. Taylor*, 329 U.S. 495 (1947); C. Gamble, *McElroy’s Alabama Evidence* § 290.02(15) (4th ed. 1977). A number of statutory privileges will continue to exist outside these Rules of Evidence. See, e.g., Ala. Code 1975, §§ 32-7-12 (motor vehicle accident reports), 34-24-59(c) (hospital disciplinary action reports). See generally J. Colquitt, *Alabama Law of Evidence* § 5.1 (1990).