

## **2 California Evidence (4th), Witnesses**

### **I. ATTENDANCE AND COMPENSATION**

A. [§1] Who May Compel Attendance.

B. When Witnesses Must Attend.

1. Civil Cases.

(a) [§2] Witness Residing in County.

(b) [§3] Witness Residing Outside County.

(c) [§4] Law Enforcement Officers.

(d) [§5] Other State Employees.

2. Criminal Cases.

(a) [§6] Defendant's Constitutional Right.

(b) [§7] Territorial Limitations on Compulsory Attendance.

(c) [§8] Undertaking To Appear.

(d) Out-of-State Witnesses: Uniform Act.

(1) [§9] Nature of Act.

(2) [§10] Certificate as Prima Facie Evidence.

(3) [§11] Limitation of Cumulative Evidence.

(4) [§12] No Attorneys' Fees for Successful Resistance.

3. [§13] Prisoners.

C. [§14] Protection Against Reprisal.

D. Compensation of Ordinary Witnesses.

1. [§15] In General.

2. [§16] Statutory Fees and Mileage in Civil Cases.

3. [§17] Fees and Mileage in Criminal Cases.

4. [§18] Grand Jury, Coroner's Jury, and Juvenile Court.

5. [§19] Payment of Extra Compensation.

E. [§20] Compensation of In-Custody Informants.

F. Attendance and Compensation of Experts.

1. Right to Reasonable and Customary Compensation.

(a) [§21] Former Rule Denying Extra Compensation.

(b) [§22] Abrogation of Rule.

2. [§23] Right to Agreed Compensation.

G. Procedure.

1. Subpena.

(a) [§24] Nature and Form.

(b) [§25] Issuance.

(c) Service.

(1) [§26] In General.

(2) [§27] Special Rules.

(d) Penalties for Failure To Obey.

(1) Contempt.

(aa) [§28] In General.

(bb) [§29] Refusal To Answer Proper Questions.

(cc) [§30] Case No Longer Pending.

(2) [§31] Arrest.

- (3) [§32] Statutory Penalty and Damages.
    - (e) [§33] Special Agreement To Appear.
    - (f) [§34] Quashing Subpena.
  - 2. [§35] Compelled Testimony Without Subpena.
  - 3. [§36] Notice to Attorney for Party Witness.

## **II. COMPETENCY OF WITNESSES**

- A. Abolished Grounds of Disqualification.
  - 1. Common Law Grounds.
    - (a) [§37] General Rule.
    - (b) [§38] Exceptions and Distinctions.
  - 2. Dead Man Statute.
    - (a) [§39] Nature of Former Rule.
    - (b) [§40] Repeal of Statute.
- B. Remaining Grounds of Disqualification.
  - 1. Capacity To Understand and Express.
    - (a) [§41] In General.
    - (b) Children.
      - (1) [§42] Former Law: Age 10 Distinction.
      - (2) [§43] Abrogation of Age Distinction.
      - (3) [§44] Medical Records of Child Witness.
    - (c) [§45] Insane Persons.
  - 2. Personal Knowledge.
    - (a) [§46] In General.
    - (b) [§47] Hearsay Rule Distinguished.
  - 3. [§48] Examination, Determination, and Review.
- C. Judge Presiding.
  - 1. Disqualification by Objection.
    - (a) [§49] Nature of Problem.
    - (b) [§50] Uniform Rule and Evidence Code.
    - (c) [§51] Testimony in Subsequent Proceeding.
  - 2. [§52] Procedure Where No Objection.
- D. [§53] Juror.
- E. Attorney.
  - 1. Civil Cases.
    - (a) [§54] Attorney as Witness for Client.
    - (b) [§55] Opposing Attorney Called as Witness.
  - 2. Criminal Cases.
    - (a) [§56] Prosecutor as Witness.
    - (b) [§57] Defense Counsel as Witness for Defendant.
    - (c) [§58] Defense Counsel Called by Prosecution.

## **III. PRIVILEGE: IN GENERAL**

- A. [§59] Nature of Rules of Privilege.
- B. Privileges Statutory.
  - 1. [§60] General Rule.

- 2. Illustrations.
  - (a) [§61] General Duty To Testify.
  - (b) [§62] Nonstatutory Privileges Rejected.
  - (c) [§63] Distinction: Consular Privilege Under Treaty.
- 3. [§64] Nonstatutory Exceptions to Privilege Rejected.
- C. [§65] Scope and Construction of Division 8.
- D. [§66] Eavesdroppers and Other Interceptors.
- E. Waiver by Disclosure or Consent.
  - 1. What Constitutes Waiver.
    - (a) [§67] In General.
    - (b) Advance Waiver by Contract.
      - (1) [§68] Insurance Contracts.
      - (2) [§69] Other Contracts.
    - (c) Failure To Claim.
      - (1) [§70] What Constitutes Waiver.
      - (2) Conduct Not Amounting to Waiver.
        - (aa) [§71] Nonparty Client's Failure To Appear.
        - (bb) [§72] Disclosure of Subject Matter.
        - (bb-1) [§72A] (New) Designation of Party as Expert Witness.
        - (cc) [§73] Issuance of Subpena.
    - (d) [§74] Presence of Third Parties.
    - (e) Voluntary Disclosure to Third Person.
      - (1) [§75] In General.
      - (2) [§76] Distinctions.
    - (f) [§77] Refreshing Recollection With Communication.
    - (g) [§78] Attorney's Knowledge of Facts.
    - (h) [§79] Attorney's Investigation Used as Defense in Discrimination Case.
    - (i) [§80] Other Illustrations.
  - 2. Exceptions to Waiver Rule.
    - (a) [§81] Where Privilege Is Joint.
    - (b) [§82] Where Disclosure Itself Privileged.
    - (c) Necessary Confidential Disclosure.
      - (1) [§83] Nature of Exception.
      - (2) [§84] Clarifications and Distinctions.
    - (d) [§84A] (New) Disclosure in Course of Federal Investigation.
- F. Claim and Determination of Privilege.
  - 1. Presumption of Confidentiality.
    - (a) [§85] In General.
    - (b) [§86] Necessity of Preliminary Proof That Privilege Exists.
  - 2. Disclosure to Court.
    - (a) [§87] General Rule: No Compelled Disclosure.
    - (b) Exceptions: Required Disclosure to Judge.
      - (1) [§88] Statutory Basis.
      - (2) [§89] Constitutional Basis.
      - (3) [§90] Basis in Federal Common Law.
    - (c) [§91] Judge's Discretion To Deny In Camera Hearing.

3. [§92] Exclusion by Presiding Officer.
4. Effect of Overruling Claim.
  - (a) [§93] Claim Overruled in Present Proceeding.
  - (b) [§94] Claim Overruled in Prior Proceeding.

G. No Comment or Inference.

1. [§95] Former Law.
2. [§96] Evidence Code.
3. [§97] Illustrations.

#### **IV. LAWYER-CLIENT PRIVILEGE**

A. General Principles.

1. [§98] Nature of Privilege.
2. [§99] Liberal or Strict Construction.
3. [§100] Communications by Prisoners.

B. Lawyer Licensed or Believed Licensed.

1. [§101] General Requirement.
2. [§102] Exception: Client's Reasonable Belief.
3. [§103] Exception: Representative in AFDC Hearing.

C. Holder of the Privilege.

1. Client.
  - (a) [§104] Privilege Belongs to Client.
  - (b) [§105] Who Is Client in General.
  - (c) [§106] Corporation as Client.
2. [§107] Representative or Successor.

D. Communication.

1. [§108] Information or Advice.
2. [§109] Information Acquired Through Communication.
3. Distinction: Knowledge Without Communication.
  - (a) [§110] In General.
  - (b) [§111] Identity of Client.
  - (c) [§112] Knowledge of Client's Agent.

E. In Course of Relationship.

1. Professional Consultation.
  - (a) [§113] In General.
  - (b) [§114] Statement of Indigency to Public Defender.
  - (c) [§115] Termination or Continuation of Relationship.
2. Nonprofessional Employment or Consultation.
  - (a) [§116] In General.
  - (b) [§117] Client's Denial of Consultation.
  - (c) [§118] Attorney's Refusal To Represent Client.

F. Confidential Disclosure.

1. [§119] General Requirement.
2. [§120] Requirement Excused.
3. [§121] Presence of Third Persons.
4. Communication to Lawyer's Agent.
  - (a) [§122] In General.

- (b) [§123] Guardian Ad Litem as Agent.
  - 5. Communication by Client's Agent.
    - (a) [§124] Agent of Natural Person.
    - (b) Employee of Corporation or Public Entity.
      - (1) [§125] In General.
      - (2) [§126] Control Group Test Repudiated.
      - (3) [§126A] (New) Communications Not Involving Attorneys.
    - (c) [§127] Agent Who Is Also Party.
  - 6. Writings Transmitted to Attorney.
    - (a) [§128] Existing Papers Not Privileged.
    - (b) Reports Prepared for Litigation.
      - (1) [§129] Nature of Problem.
      - (2) [§130] Governing Law: Dominant Purpose Test.
      - (3) [§131] Report Must Emanate From Client.
      - (4) Where Corporation or Similar Entity Is Client.
        - (aa) [§132] Chadbourne Criteria.
        - (bb) [§133] Illustrations: Report Privileged.
        - (cc) [§134] Illustrations: Report Not Privileged.
    - (c) [§135] Distinction: Photograph or Film.
    - (d) [§136] Distinction: Expert Opinion.
  - 7. Attorney's Work Product.
    - (a) Federal Hickman Rule.
      - (1) [§137] Statement of Rule.
      - (2) [§138] Scope of Rule.
    - (b) [§139] California Cases Before 1963 Statute.
    - (c) [§140] Statutory Work Product Rule.
    - (d) Scope and Application of Rule.
      - (1) [§141] In General.
      - (2) [§142] Attorney Is Holder of Privilege.
      - (3) [§143] Crime-Fraud Exception Inapplicable.
      - (4) [§144] Work Product After Delivery to Client.
      - (5) [§145] Opinion of Expert Consultant.
      - (6) Identity of Lay Witnesses.
        - (aa) [§146] Conditional Protection.
        - (bb) [§147] Distinction: Disclosure of Witness Lists at Pretrial Conference.
      - (7) [§148] Writings of Lawyer-Negotiator.
    - (e) [§149] Rule Inapplicable.
    - (f) [§150] Waiver of Work Product Privilege.
  - 8. Waiver of Attorney-Client Privilege.
    - (a) [§151] Implied and Express Waiver.
    - (b) [§152] Information and Advice From Attorney.
- G. Exceptions to the Privilege.
- 1. Contemplated Crime or Fraud.
    - (a) Scope of Exception.
      - (1) [§153] Nature of Exception.

- (2) [§154] Evidence Code.
  - (3) [§155] Physical Evidence of Completed Crime.
  - (4) [§156] Fraud in Defending Insurance Bad Faith Action.
- (b) Procedure.
  - (1) [§157] Foundation.
  - (2) [§158] Where Evidence Seized Pursuant to Warrant.
  - (3) [§159] Federal Common Law.
- 2. [§160] Parties Claiming Through Deceased Client.
- 3. Breach of Duty.
  - (a) [§161] In General.
  - (b) [§162] Challenge of Competency of Counsel.
- 4. [§163] Lawyer as Attesting Witness.
- 5. [§164] Deceased Client's Dispositive Instrument.
- 6. Joint Clients.
  - (a) [§165] General Rule for Civil Proceeding.
  - (b) Action by Insured Against Insurer.
  - (c) [§168] No Waiver in Criminal Case.
- 1. [§166] In General.
- 2. [§167] Exception Not Applicable.

## **V. HUSBAND-WIFE PRIVILEGE**

### **A. Privilege Not To Testify Against Spouse.**

- 1. [§169] In General.
- 2. [§170] Federal Rule: Hawkins and Trammel.
- 3. Condition: Valid Marriage.
  - (a) [§171] General Rule on Void Marriage.
  - (b) [§172] Divorce or Annulment.
  - (c) [§173] Nonmarital Relationship.
- 4. Scope.
  - (a) [§174] Witness Spouse Alone Privileged.
  - (b) [§175] Privilege Not To Be Called.
  - (c) [§176] Witness Must Testify for Spouse.
- 5. Exceptions to the Privilege.
  - (a) [§177] In General.
  - (b) Civil Proceedings.
    - (1) [§178] Proceeding Between Spouses.
    - (2) [§179] Commitment and Competency Proceedings.
    - (3) [§180] Proceeding by Former Spouse, Other Parent, or Guardian.
  - (c) Criminal Proceedings.
    - (1) [§181] In General.
    - (2) [§182] Crime Against Other Spouse, Child, Parent, Relative, or Cohabitant.
  - (d) [§183] Proceedings Arising From Premarital Criminal Acts.
- 6. Waiver by Testimony or Interest.
  - (a) [§184] Testimony by Spouse.
  - (b) Direct Interest in Proceeding.

- (1) [§185] In General.
  - (2) [§186] "Immediate Benefit."
- B. Privilege for Confidential Marital Communications.
  - 1. [§187] Nature and Distinctions.
  - 2. Scope.
    - (a) [§188] Both Spouses May Claim.
    - (b) [§189] During Marriage and Afterwards.
    - (c) [§190] Communication.
    - (d) Confidential Disclosure.
      - (1) [§191] Statutory Requirement.
      - (2) [§192] Loss of Confidentiality.
  - 3. Exceptions to the Privilege.
    - (a) [§193] Civil Proceedings.
    - (b) [§194] Criminal Proceedings.
    - (c) [§195] Other Exceptions.

## **VI. PHYSICIAN-PATIENT PRIVILEGE**

- A. General Principles.
  - 1. [§196] Nature of Privilege.
  - 2. [§197] Liberal or Strict Construction.
- B. [§198] Physician Licensed or Believed Licensed.
- C. Holder of the Privilege.
  - 1. [§199] Patient, Representative, or Successor.
  - 2. [§200] Third-Party Recipient of Communication.
- D. Confidential Communication.
  - 1. [§201] In Course of Relationship.
  - 2. Confidential Information.
    - (a) [§202] Information Transmitted or Obtained.
    - (b) [§203] Confidential Disclosure.
- E. Exceptions to the Privilege.
  - 1. Patient-Litigant.
    - (a) [§204] Issue Tendered by Patient.
    - (b) [§205] Issue Tendered by Others.
  - 2. [§206] Criminal, Disciplinary, and Competency Proceedings.
  - 3. [§207] Contemplated or Committed Crime or Tort.
  - 4. Damage Suit: Good Cause for Disclosure.
    - (a) [§208] In General.
    - (b) [§209] Illustrations.
  - 5. [§210] Other Exceptions.

## **VII. PSYCHOTHERAPIST-PATIENT PRIVILEGE**

- A. Nature of Privilege.
  - 1. [§211] Former Law and Criticism.
  - 2. Evidence Code Restatement.
    - (a) [§212] In General.
    - (b) [§213] Criminal Proceedings.

- (c) [§214] No Exception for Lanterman-Petris-Short Act Records.
- B. [§215] Definition of Psychotherapist.
- C. [§216] Definition of Patient.
- D. [§217] Holder.
- E. Confidential Communication.
  - 1. [§218] In General.
  - 2. [§219] Communication by Parent of Patient.
  - 3. Identity of Patient Privileged.
    - (a) [§220] In General.
    - (b) [§221] Distinction: Where Need for Disclosure Is Great.
  - 4. [§222] Patient's Constitutional Right of Privacy.
- F. Exceptions to the Privilege.
  - 1. [§223] Those Similar to Physician-Patient Exceptions.
  - 2. [§224] Partial Waiver Through Litigation.
  - 3. [§225] Insanity Defense in Criminal Action.
  - 4. Dangerous Patient.
    - (a) [§226] Nature of Exception.
    - (b) [§227] Balancing Test: Tarasoff Case.
    - (c) [§228] Other Illustrations.
    - (d) [§229] In Camera Inspection.
    - (e) [§230] Statutory Authority and Duty.
  - 5. Psychotherapist Appointed by Court or Prison Board.
    - (a) [§231] Applicability of Exception.
    - (b) [§232] Where Criminal Defendant Requests Appointment.
    - (c) [§233] Where Prosecution Requests Appointment.
  - 6. [§234] Report of Child Abuse or Neglect.
  - 7. [§235] Criminal Defendant's Confrontation Rights.
  - 8. [§236] Coroner's Inquiry Into Decedent's Death.
- G. [§237] Overlapping of Privileges.

## **VIII. CLERGY-PENITENT PRIVILEGE**

- A. [§238] Nature of Privilege.
- B. [§239] Privileges of Penitent and Clergyman.
- C. [§240] Communications Not Privileged.

## **IX. SEXUAL ASSAULT VICTIM-COUNSELOR PRIVILEGE**

- A. [§241] Nature of Privilege.
- B. [§242] Procedure for Disclosure.

## **X. DOMESTIC VIOLENCE VICTIM-COUNSELOR PRIVILEGE**

- A. [§243] Nature of Privilege.
- B. [§244] Procedure for Disclosure.

## **X-A. (New) HUMAN TRAFFICKING VICTIM-CASEWORKER PRIVILEGE**

- A. [§244A] (New) Nature of Privilege.
- B. [§244B] (New) Procedure for Disclosure.

## **XI. PRIVILEGE FOR OFFICIAL INFORMATION**

- A. Nature and Purpose of Privilege.
  - 1. [§245] State Secrets.
  - 2. [§246] Official Information.
  - 3. [§247] Absolute and Conditional Privilege.
- B. [§248] Claim and Waiver.
- C. Determination and Sanction.
  - 1. Civil Case: Disclosure to Judge.
    - (a) [§249] General Rule: Showing of Necessity Required.
    - (b) [§250] Procedure.
    - (c) [§251] No Dismissal of Action.
  - 2. Criminal Case: Dismissal or Adverse Finding.
    - (a) [§252] General Rule.
    - (b) [§253] Illustrations.
    - (c) [§254] Balancing Process.
- D. Privilege for Taxpayer's Statements and Returns.
  - 1. Privileged Matters.
    - (a) [§255] Original Statements and Returns.
    - (b) [§256] Copies of Tax Returns.
    - (c) [§257] Information From Tax Consultants.
  - 2. Exceptions.
    - (a) [§258] In General.
    - (b) [§259] Family Law Proceedings.
    - (c) [§260] IRS Examination of Accountant's Audit.
    - (d) [§260A] (New) Punitive Damages Claim.
  - 3. [§261] Waiver.
- E. Privilege for Confidential Business Information.
  - 1. [§262] In General.
  - 2. [§263] Reporting Party May Not Waive Privilege.
- F. Privilege for Criminal History Records and Related Matters.
  - 1. [§264] In General.
  - 2. [§265] Statements in Connection With Deferred Entry of Judgment or Pretrial Diversion.
  - 3. [§266] Minor's Criminal or Juvenile Court Records.
  - 4. [§267] Statements to Police About Alleged Rape.
  - 5. [§268] Surveillance Location Privilege.
- G. [§269] Confidential Records of Licensing Board.
- H. [§270] Confidential Records of State Bar.
- I. Confidential Records of Social Service and General Assistance Programs.
  - 1. [§271] Privileged Matters.
  - 2. [§272] Clarifications and Distinctions.
- J. Confidentiality of Compulsory Vehicle Accident Reports.
  - 1. [§273] Confidential Matters.
  - 2. [§274] Exceptions and Distinctions.
  - 3. [§275] Reports and Data Generated.

4. [§276] Discovery by Criminal Defendant.
- K. [§277] Confidentiality of Administrative Proceeding Against Driver's License.
- L. California Public Records Act.
  1. [§278] Nature and Purpose of Act.
  2. [§279] Scope: Agencies and Officials Covered.
  3. Scope: Records Covered.
    - (a) [§280] In General.
    - (b) [§281] Court Clerk's Rough Minutes.
    - (c) [§282] Records of State Board of Equalization.
    - (d) [§283] Miscellaneous Records.
  4. Right To Inspect and Copy.
    - (a) [§284] In General.
    - (b) [§285] Inspection of Hazardous Waste Records.
  5. Proceedings To Enforce Rights.
    - (a) [§286] In General.
    - (b) [§287] Distinction: No Action by Governmental Entity.
  6. Exemptions.
    - (a) [§288] In General.
    - (b) Records of Intelligence Information.
      - (1) [§289] General Rule of Nondisclosure.
      - (2) [§290] Clarifications and Distinctions.
      - (3) Exceptions.
        - (aa) [§291] Specific Information to Specified Persons.
        - (bb) [§292] Specific Information to All Persons.
        - (cc) [§293] Specific Information for Specified Purposes.
    - (c) [§294] Records Exempted by Federal or State Law.
    - (d) Public Interest Exemption.
      - (1) [§295] In General.
      - (2) [§296] Executive or Deliberative Process Privilege.
    - (e) [§297] Miscellaneous Exemptions.
    - (f) [§298] Records Not Covered by Exemptions.
  7. [§299] In Camera Examination.
  8. [§300] Agency's Voluntary Disclosure.
  9. [§301] Waiver of Exemptions.
- M. [§302] Federal Freedom of Information Act.

## **XII. PRIVILEGE FOR ELECTED OFFICIALS AND THEIR AIDES**

- A. [§303] President of United States.
- B. [§304] Members of Congress and Aides.
- C. [§305] State and Local Officials.

## **XIII. PRIVILEGE FOR IDENTITY OF INFORMER**

- A. [§306] Nature of Privilege.
- B. Scope and Conditions.
  1. [§307] In General.
  2. [§308] Official Information Privilege Distinguished.

- C. [§309] Weighing Public Interest Against Necessity for Disclosure.
- D. Exceptions Necessary for Fair Trial.
  - 1. [§310] General Principles.
  - 2. [§311] Participating Informer.
  - 3. Nonparticipating Material Witness.
    - (a) Who Is Material Witness.
      - (1) [§312] In General.
      - (2) [§313] Illustrations.
    - (b) [§314] Disclosure at Trial.
    - (c) [§315] Disclosure at Preliminary Hearing.
    - (d) [§316] Disclosure in Probation Revocation Hearing.
  - 4. [§317] Informer Relied on for Arrest.
  - 5. Procedure in Raising and Determining Issue.
    - (a) [§318] Defendant's Request and Prosecution's Response.
    - (b) Hearing To Determine Issue.
      - (1) [§319] Outside Jury's Presence.
      - (2) In Camera Hearing.
        - (aa) [§320] In General.
        - (bb) [§321] No Requirement That Informant Testify.
      - (3) [§322] Test for Judge's Determination.
    - (c) [§323] Duty of Judge To Hold Hearing.
    - (d) [§324] Change of Circumstances After Denial.
- E. Where Disclosure Not Required.
  - 1. Search Under Search Warrant.
    - (a) [§325] Judicial Rule of Nondisclosure.
    - (b) [§326] Codification of Rule.
  - 2. [§327] Reasonable Cause To Arrest.
  - 3. [§328] Reasonable Cause Shown Without Informer.
- F. [§329] Disclosure Withheld Until Informer Unavailable.
- G. Duty To Locate Informer.
  - 1. [§330] Eleazer Rule of Good Faith.
  - 2. [§331] Effect of Reversal of Conviction.
  - 3. [§332] Distinction: Anonymous Informant.

#### **XIV. NEWSPERSON'S SHIELD LAW**

- A. [§333] Origin of Immunity.
- B. Nature and Scope of Immunity.
  - 1. [§334] Persons Protected.
  - 2. Matter Procured for Publication.
    - (a) [§335] Statutory Provisions.
    - (b) [§336] Undisseminated Source Materials.
    - (c) [§337] Nonconfidential Information.
  - 3. Immunity.
    - (a) [§338] Protection From Contempt.
    - (b) [§339] No Writ Review Before Contempt Judgment.
    - (c) [§340] Sanctions Other Than Contempt.

C. Limitations on Immunity.

1. [§341] In General.
2. [§342] Refusal To Testify.
3. Judicial Control of Court Proceedings.
  - (a) [§343] Rule Prior to Constitutional Immunity Provision.
  - (b) [§344] Effect of Constitutional Immunity Provision.

D. Constitutional Qualified Privilege.

1. [§345] First Amendment Basis.
2. [§346] Balancing Test for Civil Cases.
3. [§347] Balancing Test for Criminal Cases.

E. [§348] In Camera Review.

**XV. VOTER'S PRIVILEGE**

A. [§349] In General.

**XVI. TRADE SECRET PRIVILEGE**

A. [§350] Nature and Purpose.

B. Procedure.

1. [§351] In General.
2. [§352] Protective Order.
3. [§353] Exclusion of Public in Criminal Proceeding.
4. [§354] Request To Seal Articles.

**XVII. PRIVILEGE AGAINST SELF-INCRIMINATION**

A. General Principles.

1. Constitutional Basis.
  - (a) [§355] Federal and State Constitutions.
  - (b) [§356] Federal Constitution Applies to States.
  - (c) [§357] Evidence Code.
2. [§358] Policy of the Privileges.
3. [§359] Remedies for Denial.
4. Effects of Claim.
  - (a) [§360] In General.
  - (b) Claim by Public Officer or Employee.

1. [§361] Federal Cases.
2. [§362] California Cases.
  - (c) [§363] Claim by Attorney.
  - (d) [§364] Claim by Corporation Officer.

B. Privilege of Accused (Defendant in Criminal Case).

1. General Principles.
  - (a) [§365] Nature of Privilege.
  - (b) [§366] Improper Procedural Restrictions.
2. What Is a Criminal Case Against Accused.
  - (a) [§367] Criminal and Quasi-Criminal Proceedings.
  - (b) Noncriminal Judicial Proceedings.
    - (1) [§368] In General.
    - (2) [§369] Juvenile Court Hearings.

- (3) [§370] Fitness Hearings.
- 3. Nonjudicial Proceedings.
  - (a) [§371] Grand Jury or Legislative Investigation.
  - (b) [§372] Administrative Disciplinary Proceeding.
  - (c) Required Registration.
    - (1) [§373] Gambling Activity.
    - (2) [§374] Possession of Firearm.
    - (3) [§375] Criminal Subversive Activity.
    - (4) [§376] Supervised Occupation.
    - (5) [§376A] (New) Gang Membership.
  - (d) Required Disclosure of Identity.
    - (1) [§377] Driver's Identity and Involvement in Accident.
    - (2) [§378] Loiterer's Identity.
  - (e) [§379] False Statements in Required Reports.
  - (f) Probation Revocation Hearing.
    - (1) [§380] Limited Exclusionary Rule.
    - (2) [§381] Rule Survives Proposition 8.
  - (g) [§382] Psychiatric Examination on Competency.
  - (h) [§383] Psychiatric Examination on Insanity.
- 4. [§384] Evidence Without Testimony or Compulsion.
- 5. Compulsion Without Testimony.
  - (a) [§385] General Rule: Privilege Not Applicable.
  - (b) [§386] Compelled Production of Child.
  - (c) Handwriting Exemplars.
    - (1) [§387] Legally Procured Exemplar.
    - (2) [§388] Procurement After Illegal Arrest.
  - (d) Voice Identification.
    - (1) [§389] No Violation of Privilege.
    - (2) [§390] Warning and Precautions.
  - (e) [§391] Violation of Miranda Rule.
- 6. Lineup.
  - (a) Wade-Gilbert Rule: Counsel's Presence Required.
    - (1) [§392] Statement of Rule.
    - (2) [§393] Appointed Counsel Sufficient.
    - (3) [§394] When Counsel Should Be Present.
    - (4) Waiver and Objection.
      - (aa) [§395] Waiver of Lineup Right to Counsel.
      - (bb) [§396] Procedure for Objection.
  - (b) [§397] Preaccusatory Lineup.
  - (c) Due Process in Lineup.
    - (1) [§398] Unfair Lineup.
    - (2) Properly Conducted Lineup.
      - (aa) [§399] In General.
      - (bb) [§400] Defendant's Suggestive Conduct.
  - (d) Defendant's Right to Lineup.
    - (1) [§401] In General.

- (2) [§402] Right to Restricted Lineup.
  - (3) [§403] Sanctions for Witness' Failure To Attend Lineup.
- 7. Other Identification Methods.
  - (a) [§404] In-the-Field Identification.
  - (b) In-Custody Identification.
    - (1) [§405] Proper Method.
    - (2) [§406] Improper Where No Compelling Reason.
  - (c) [§407] Independent Origin of In-Court Identification.
  - (d) Pretrial Photographic Identification.
    - (1) [§408] General Rule: Substantial Likelihood of Misidentification.
    - (2) [§409] Illustrations.
    - (3) [§410] Simulated Lineup.
    - (4) Individual Photographs.
      - (aa) [§411] In General.
      - (bb) [§412] Clarifications and Distinctions.
- 8. Evidence Obtained by Brutality.
  - (a) [§413] Rochin Rule: Violation of Due Process.
  - (b) [§414] Brutal Body Examination.
  - (c) [§415] Other Evidence Brutally Obtained.
  - (d) Proper Procedures.
    - (1) [§416] General Rule: Reasonable Body Examination.
    - (2) [§417] Preventing Defendant From Swallowing Evidence.
    - (3) [§418] Procedure Used To Safeguard Defendant's Health.
    - (4) [§419] Search of Prison Inmate.
  - (e) Distinction: Surgery To Remove Physical Evidence.
    - (1) [§420] Operation Performed on Victim.
    - (2) [§421] Operation Performed on Accused.
- 9. Tests for Intoxication: In General.
  - (a) Blood Test.
    - (1) [§422] Early Decisions.
    - (2) [§423] Schmerber Test: Medical Procedure Reasonably Performed.
    - (3) [§424] Former Requirement of Lawful Arrest.
    - (4) [§425] Abrogation of Lawful Arrest Requirement.
  - (b) [§426] Other Tests.
- 10. [§427] Compulsory Driver's Test (Implied Consent Law).
- 11. Waiver of Privilege by Testifying.
  - (a) [§428] In General.
  - (b) Exceptions.
    - (1) [§429] Uninformed Waiver.
    - (2) [§430] Testimony in Prior Proceeding.
    - (3) [§431] Testimony on Motion To Suppress.
- 12. No Comment or Inference.
  - (a) [§432] Former Law Permitting Comment.
  - (b) [§433] Griffin Rule: Comment Prohibited.
  - (c) Application of Griffin Rule.
    - (1) [§434] Prosecutor's Comments.

- (2) [§435] Jury Instructions.
  - (3) [§436] Violation Following Defendant's Limited Testimony.
  - (4) [§437] Comment by Codefendant's Counsel.
  - (5) [§438] Where Privilege Waived.
- (d) Instructions on Griffin Rule.
  - (1) [§439] Defendant Not Testifying.
  - (2) [§440] Defendant Testifying.
- (e) [§441] Comments Not Violative of Rule.
- (f) Effect of Griffin Error.
  - (1) [§442] Harmless and Reversible Error.
  - (2) [§443] Error Invited.
- 13. [§444] No Proof of Prior Claim.
- 14. [§445] Grant of Use Immunity Constitutionally Compelled.
- C. Privilege of Witness in Any Proceeding.
  - 1. General Principles.
    - (a) Proceeding and Witness.
      - (1) [§446] Any Proceeding.
      - (2) [§447] Witness Alone Privileged.
      - (3) When Privilege Should Be Claimed.
        - (aa) [§448] Early Rule: In Jury's Presence.
        - (bb) [§449] Current Rule: Before Witness Takes Stand.
      - (4) [§450] Claim by Civil Defendant.
    - (b) Business Records of Corporation or Association.
      - (1) [§451] Corporation.
      - (2) [§452] Association or Partnership.
    - (c) Officer of Corporation or Association.
      - (1) Officer in Representative Capacity.
        - (aa) [§453] General Rule: No Privilege.
        - (bb) [§454] Illustrations.
      - (2) [§455] Distinction: Officer's Personal Privilege.
    - (d) Required Records and Reports.
      - (1) [§456] General Rule: No Privilege.
      - (2) [§457] Distinction: Gambling Registration.
    - (e) Personal Records.
      - (1) [§458] Tax Records.
      - (2) [§459] Other Records Disclosing Criminal Acts.
      - (3) Bank Records.
        - (aa) [§460] Federal Bank Secrecy Act.
        - (bb) [§461] California Right to Financial Privacy Act.
  - 2. What Constitutes Incriminating Evidence.
    - (a) [§462] Federal Standards Control.
    - (b) [§463] Threat of Criminal or Quasi-Criminal Penalty.
    - (c) [§464] Direct and Indirect Incrimination.
    - (d) Reasonable Danger of Incrimination.
      - (1) [§465] Former Conservative Rule.
      - (2) [§466] Modern View: Federal Cases.

- (3) [§467] Modern View: California Cases.
- 3. Possibility of Prosecution.
  - (a) [§468] Prosecution Barred.
  - (b) [§469] Liability to Prosecution in Other Jurisdiction.
- 4. Immunity of Witness.
  - (a) General Principles.
    - (1) [§470] Nature of Immunity Statutes.
    - (2) Statutory Authority.
      - (aa) [§471] In General.
      - (bb) [§472] Judicial Use Immunity.
    - (3) [§473] Standing To Challenge Grant of Immunity.
  - (b) Immunity in Civil Actions.
    - (1) [§474] In General: Proceeding by People.
    - (2) [§475] Action by Private Litigant.
    - (3) [§476] Improper Grant to Some Defendants.
  - (c) Immunity Coextensive With Privilege.
    - (1) [§477] In General: Counselman Rule.
    - (2) [§478] Use Immunity Sufficient.
    - (3) [§479] Transactional Immunity.
    - (4) [§480] Immunity Following Guilty Plea.
    - (5) [§481] Immunity Following Trial on Merits.
  - (d) Federal Statutes.
    - (1) [§482] Former Statutes.
    - (2) [§483] Immunity of Witnesses Act.
  - (e) [§484] Specific California Statutes.
  - (f) General California Statute.
    - (1) [§485] Nature and Scope.
    - (2) [§486] Claim of Privilege.
    - (3) Procedure To Compel Testimony.
      - (aa) [§487] Statutory Authority.
      - (bb) [§488] Effect of Noncompliance.
    - (4) [§489] Transactional or Use Immunity.
    - (5) [§490] No Immunity From Perjury or Contempt.
    - (6) [§491] Limited Grant of Immunity.
    - (7) [§492] Conditional Immunity to Accomplish.
  - (g) Agreement for Immunity.
    - (1) [§493] In General.
    - (2) [§494] Misdemeanor Proceeding.
- 5. Determination of Incriminating Character.
  - (a) [§495] Burden of Proof.
  - (b) [§496] Test.
- 6. Waiver of Privilege.
  - (a) [§497] Waiver Before Trial.
  - (b) Waiver at Trial or Hearing.
    - (1) [§498] Testifying Without Objection.
    - (2) [§499] Partial Disclosure.

- (3) [§500] Privilege in Later Proceeding.
- (c) [§501] Failure To Object to Interrogatories.
- (d) [§502] Claim and Waiver at Legislative Investigation.

## **XVIII. SPECIAL PRIVACY STATUTES**

### **A. Records of Medical Committees.**

- 1. [§503] Medical or Medical-Dental Staff Committee.
- 2. [§504] Medical or Psychiatric Quality Assurance Committee.
- 3. Medical Evaluation or Review Committee.
  - (a) Nature and Scope of Protection.
    - (1) [§505] In General.
    - (2) [§506] Hospital Staff Privileges.
    - (3) [§507] Multidisciplinary Infection Control Committee.
    - (4) [§508] Hospital Employee's Suit for Damages.
  - (b) Exceptions.
    - (1) [§509] Statutory List.
    - (2) [§510] No Effect on Immunity From Disclosure in Malpractice Cases.
    - (3) [§511] Applicability to Criminal Proceedings.
  - (c) Distinctions.
    - (1) [§512] Hospital Administration Files.
    - (2) [§513] Voluntary Testimony.
    - (3) [§514] Administrative Subpena.
- 4. [§515] Nonprofit Medical Care Foundation.
- 5. [§516] Mental Health Quality Assurance Committee.
- 6. [§517] Committee Reviewing Specialty Health Services.

### **B. Confidentiality of Medical Information Act.**

- 1. [§518] Nature and Scope of Act.
- 2. Illustrations.
  - (a) [§519] Authorization for Disclosure Required.
  - (b) [§520] Authorization for Disclosure Not Required.

### **C. [§521] Insurance Information and Privacy Protection Act.**

### **D. Tests and Research on AIDS.**

- 1. [§522] Confidentiality Requirements.
- 2. Exceptions.
  - (a) [§523] Reporting Requirements.
  - (b) [§524] Disclosure to Correctional Facility Personnel.
  - (c) [§525] Disclosure of Research Records.
  - (d) [§526] Disclosure of Public Health Records.
  - (e) [§527] Other Exceptions.

### **E. [§528] Identity, Address, and Phone Number.**

### **F. [§529] Miscellaneous Statutes.**