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August 3, 2023

Advisory Committee on Rules
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301

Re: New Hampshire Rules of Evidence Rule 504

Dear Committee on Rules,

I recently had a case which implicated New Hampshire Rules of Evidence Rule 504, the "Husband and Wife Privilege." The text of rule 504 states that: "Husband and wife are competent witnesses for or against each other in all cases, civil and criminal, except that unless otherwise specifically provided, neither shall be allowed to testify against the other as to any statement, conversation, letter or other communication made to the other or to another person, nor shall either be allowed in any case to testify as to any matter which in the opinion of the Court would lead to a violation of marital confidence."

The rule utilizes an antiquated perception that marriage involves a "husband" and "wife." With the prevalence of same sex marriage, the rule should be updated to reflect a "spousal" privilege which exists for individuals who are married, regardless of the titles "husband" and "wife."

I would respectfully propose the following changes: "Rule 504. ~~Husband and Wife~~ *Spousal Privilege. Husband and wife* Individuals who are married are competent witnesses for or against each other in all cases, civil and criminal, except that unless otherwise specifically provided, neither shall be allowed to testify against the other as to any statement, conversation, letter or other communication made to the other or to another person, nor shall either be allowed in any case to testify as to any matter which in the opinion of the Court would lead to a violation of marital confidence."

Thank you,

A handwritten signature in black ink, appearing to read "S. Endres".

Steven Endres
Assistant County Attorney