

5.05. Confidential Communication to Clergy Privileged (CPLR 4505)

Unless the person confessing or confiding waives the privilege, a clergyman, or other minister of any religion or duly accredited Christian Science practitioner, shall not be allowed [to] disclose a confession or confidence made to him in his professional character as spiritual advisor.

Note

This rule is reproduced verbatim from CPLR 4505, albeit with the addition of “[to].” (*See* Vincent C. Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR 4505.)

The Court of Appeals has observed that “the privilege originally applied only to communications with members of the clergy who were enjoined from disclosing the substance of such communications under the rules or practices of their religion.” (*Lightman v Flaum*, 97 NY2d 128, 134 [2001] [citation omitted].) Now, however, “[a]lthough often referred to as a ‘priest-penitent’ privilege, the statutory privilege is not limited to communications with a particular class of clerics or congregants. . . . On the contrary, in enacting CPLR 4505, the Legislature intended to recognize the urgent need of people to confide in, without fear of reprisal, those entrusted with the pressing task of offering spiritual guidance without regard to the religion’s specific beliefs or practices.” (*People v Carmona*, 82 NY2d 603, 608 [1993] [citations and internal quotation marks omitted].) The Court added that “the New York statute is intentionally aimed at all religious ministers who perform ‘significant spiritual counselling which may involve disclosure of sensitive matters’ (Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR 4505, at 683).” (*Carmona*, 82 NY2d at 608-609.)

As to the nature of the communications to which the privilege applies, the Court has made clear that “[t]he priest-penitent privilege arises not because statements are made to a clergyman. Rather, something more is needed. There must be reason to believe that the information sought required the disclosure of information under the cloak of the confessional or was in any way confidential[,] for it is only confidential communications made to a clergyman in his spiritual capacity which the law endeavors to protect.” (*Matter of Keenan v Gigante*, 47 NY2d 160, 166 [1979] [citations and internal quotation marks omitted].) “New York’s test for the privilege’s applicability distills to a single inquiry: whether the communication in question was made in confidence and for the purpose of obtaining spiritual guidance.” (*Carmona*, 82 NY2d at 609, *citing Matter of Keenan v Gigante*, 47 NY2d at 166.)

In *Carmona*, the Court of Appeals has offered as examples of communications to which the privilege did not apply:

- where disclosures were made to a rabbi for the purpose of obtaining his assistance in securing an attorney and a favorable plea bargain (citing *People v Drelich*, 123 AD2d 441 [2d Dept 1986]);
- where a congregant apologized to a priest in the priest's capacity as a victim and solicited the priest's aid in contacting an attorney (citing *People v Schultz*, 161 AD2d 970 [3d Dept 1990]);
- and where a priest informed a congregant of allegations made against him by his wife and stepdaughter and warned him that the authorities would be advised unless he quit his job at a day-care center (citing *Matter of N. & G. Children*, 176 AD2d 504 [1st Dept 1991]). (*Carmona*, 82 NY2d at 609.)

A person to whom the privilege contemplated by the statute applies may expressly waive it or may implicitly waive it by his or her conduct. (*Carmona*, 82 NY2d at 611.)