I. State the general circumstances under which the jurisdiction will treat a communication as attorney-client privileged, including identification of all required elements/circumstances.

The attorney-client privilege protects confidential communications between clients and their attorneys that are made for purposes of seeking or rendering legal advice. N.J.S.A. 2A:84A-20; N.J.R.E. 504; N.J. Court Rules, RPC 4.4(b). Communications are privileged when they are: 1) made between a client and an attorney acting in his or her professional capacity as a lawyer; and 2) disclosed in confidence. See In re Advisory Op. No. 544 of N.J. Supreme Court Advisory Comm. on Prof'l Ethics, 511 A.2d 609, 611 (N.J. 1986); O'Boyle v. Borough of Longport, 94 A.3d 299, 309 (N.J. 2014).

II. Does the jurisdiction recognize/preserve the attorney-privilege for communications among co-defendants in joint-defense or common-interest situations? If so, what are the requirements for establishing two or more co-defendants’ communications qualify?

Yes, New Jersey extends the attorney-client privilege to communications amongst clients and attorneys in joint-defense agreements and common-interest situations. In cases involving multiple defendants, co-defendants and their counsel may elect to mount a joint defense strategy and memorialize that strategy in a joint defense agreement. New Jersey extends the attorney-client privilege to parties and their counsel that have entered a joint defense agreement. O'Boyle v. Borough of Longport, 94 A.3d 299, 309 (N.J. 2014).

A “common-interest” situation is a broader term referring to two or more parties sharing similar interests in a legal matter. LaPorta v. Gloucester Cnty. Bd. of Chosen Freeholders, 774 A.2d 545, 549 (N.J. Super. Ct. App. Div. 2001) (quoting U.S. v. McPartlin, 595 F.2d 1321, 1336 (7th Cir. 1979)). New Jersey extends attorney-client privilege to communications between parties whose interests are not identical but share a “common purpose” such as the same adversary. O'Boyle, 218 N.J. at 176. Under those circumstances, a communication is protected when it is exchanged regarding an ongoing or expected litigation, and is disclosed with the expectation of
confidentiality. *LaPorta*, 774 A.2d at 549 (quoting *Holland v. Island Creek Corp.*, 885 F. Supp. 4, 6 (D.D.C. 1995)).

III. Identify key pitfalls/situations likely to result in the loss of the ability to claim the protections of the privilege – e.g., failure to assert, waiver, crime-fraud exception, assertion of advice of counsel, transmittal to additional non-qualifying recipients, etc.

A client waives the attorney-client privilege when it knowingly and intentionally discloses, or consents to disclosing, a confidential communication to a third-party. *See Stengart v. Loving Care Agency, Inc.*, 990 A.2d 650, 664 (N.J. 2010). However, a consultation with a third-party may be protected under the privilege if the third party is essential to the client’s legal representation. *State v. Kociolek*, 129 A.2d 417, 424 (N.J. 1957).

The attorney-client privilege is also waived when a client asserts a defense based on inadequate advice of counsel because it puts the communications with counsel at issue in the litigation. *State v. Mauti*, 33 A.3d 1216, 1223-24 (N.J. 2012) (citing *Kinsella v. Kinsella*, 696 A.2d 556 (N.J. 1997)).

New Jersey also recognizes a crime or fraud exception to the attorney-client privilege. If a client communicates with counsel for the purpose of furthering criminal or fraudulent conduct, the privilege does not apply. *Fellerman v. Bradley*, 493 A.2d 1239, 1244 (N.J. 1985).

IV. Identify any recent trends or limitations imposed by the jurisdiction on the scope of the attorney-client privilege.

New Jersey courts have clarified who can assert or waive the attorney-client privilege on behalf of an organization such as a corporation or government entity. New Jersey extends attorney-client privilege to communications made by employees of an organization to the organization’s attorney. *Hedden v. Kean Univ.*, 82 A.3d 238, 244 (N.J. Super. Ct. App. Div. 2013). Similarly, attorney-client privilege extends to protect communications exchanged between a government entity’s employees and its attorney. *See In re Grand Jury Subpoenas Duces Tecum Served by Sussex Cnty.*, 574 A.2d 449, 454-55 (N.J. Super. Ct. App. Div. 1989). However, only officers or directors who manage or control the organization’s activities may waive the attorney-client privilege on behalf of the organization. *Hedden*, 82 A.3d at 247; *In re Estate of Fedor*, 811 A.2d 970, 972 (N.J. Super. Ct. 2001).