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 jurisdiction will keep attorney-client communications privileged so long as these elements are met: “(1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is [the] member of a bar of a court, or his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client.” State v. von Burlow, 475 A.2d 995 (R.I. 1984) (quoting United States v. Kelly, 569 F.2d 928, 938 (5th Cir. 1978).

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?


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 may waive attorney-client privilege through consent, or by disclosing confidential information to a third party. State v. von Burlow, 475 A.2d 995, 1005-06 (R.I. 1984); see also Mortgage Guar. & Title Co. v. Cunha, 745 A.2d 156, 159 (R.I. 2000). It appears that Rhode Island
recognizes the crime fraud exception; however, this exception has not been successfully applied so far. See Curato v. Brian, 715 A.2d 631, 634 (R.I. 1998).

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

Attorney-client privilege is to be narrowly construed, and during a deposition, invoking the privilege must be on a question-by-question basis. North Kingstown School Committee v. Wagner, 176 A.3d 1097, 1100 (R.I. 2018).