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

a. Attorney-client privilege is codified in Wyoming under Wyo. Stat. Ann. § 1-12-101(a)(i) (2019), which states that an attorney shall not testify regarding “a communication made to him by his client . . . in that relation, or his advice to his client[.]”

b. In addition, the Wyoming Supreme Court has stated that attorney-client privilege is limited to “those communications which the client either expressly made confidential or which he could reasonably assume under the circumstances would be understood by the attorney as so intended.” Oil, Chemical, and Atomic Workers Intern. Union v. Sinclair Oil Corp., 748 P.2d 283, 289 (Wyo. 1987) (quoting E. Cleary, McCormick on Evidence, §91 at 217 (3d Ed. 1984)).

II. Does the jurisdiction recognize/preserve the attorney-client 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?

a. The Wyoming Supreme Court has recognized the joint-defense exception to the waiver of attorney-client privilege when two clients are represented by the same attorney. The court stated, “[w]hen two or more persons, each having an interest in some problem, or situation, jointly consult an attorney, their confidential communications with the attorney, though known to each other, will of course be privileged in a controversy of either or both of the clients with the outside world . . . “ Id. at 290. Therefore, the requirement for establishing the joint-defense exception is a joint-interest in a problem between two clients who, together, consult the same attorney for purposes of representation or advice.
b. At the state level, Wyoming has yet to address whether it recognizes the common interest exception to the waiver of attorney-client privilege; the common-interest exception being whether communications between parties with different attorneys who have a common legal interest are protected.

i. However, Wyoming has recognized the common-interest exception at the federal level. See, e.g., Hedquist v. Patterson, 215 F.Supp.3d 1237, 1246 (D. Wyo. 2016).

ii. Additionally, the Wyoming Supreme Court has recognized the common-interest exception when it comes to cases involving slander or defamation. The exception is limited to slanderous statements made between parties who have common pecuniary interests or common interests in a business transaction. Williams v. Blount, 741 P.2d 595, 596 (Wyo. 1987).

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. Voluntary disclosure: Privilege may be waived by disclosure of confidential communications to a third party. Sinclair Oil Corp, 748 P.2d at 291.

b. Advice of counsel: The Wyoming Supreme Court has suggested that a defense of reliance on advice of counsel would waive the attorney-client privilege. The court stated, “[w]e recognize that reliance upon a defense of advice of counsel has, in some circumstances, been held to constitute a waiver of the attorney-client privilege.” Id. at 290.

c. Crime-fraud: Attorney-client privilege does not apply to communications made to further a crime or fraud. Id.

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

Defendant appealed the award of attorney’s fees to plaintiff, claiming that plaintiff violated the Wyoming rules of discovery by failing to produce a detailed attorney’s fee statement as evidentiary support of its claim. Dishman v. First interstate Bank, 362 P.3d 360, 366 (Wyo. 2015). Plaintiff asserted that it was not required to produce this statement as it was protected under attorney-client privilege. Id. at 363. The Wyoming Supreme Court stated that attorney billing information does not fall within the definition of attorney-client privilege [a communication made between the attorney and client] simply because they pertain to the attorney-client relationship, and is therefore not protected by attorney-client privilege. Id. at 368.