



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS & URBAN AFFAIRS

Preserving Privilege: Don't Accidentally Waive It

Phone Calls:

When a client calls you without special arrangements, the call is monitored! There is no privilege. Do not discuss anything privileged on the phone line. It is being recorded. You are deemed to understand that.

Some facilities claim that once a number is designated as an attorney number, the call is not monitored. Even if that is the case, calling from a phone in a jail or prison is not private. Other inmates are still able to listen.

No one is supposed to three-way a call. Most facilities think they have blocked this capability, but that is not always the case. If the facility finds out that you are accepting "three-way" calls, you may be blocked from receiving calls. If you find out your client is calling you on a three-way, hang up immediately. Do not three-way a call for anyone.

In many facilities, you can set up a "legal call" by calling the Case Manager (or other similar facility employee) for the client. Often in the federal system, the Case Manager sits in the room and listens. Obviously, that is not privileged. When requesting a call, be clear that you want it only visually, not audibly, monitored. Be prepared to fight about this. Ask your client if anyone is listening. Sometimes you have to compromise and just ask yes and no questions.

Letters:

Letters are the best way to communicate with your client and to keep your collect call bills down. Be insistent that clients write you, if they can.

Letters must be sent as legal mail and must be properly marked.

For the many facilities, it is enough to write "Legal Mail" above the address.

For federal facilities, you must write "Special Mail: Do Not Open Except in Inmate's Presence." You must also write your name in the return address and it must be followed by "attorney," not "esquire."

Check your local regulations to see if your system has a similar specific rule.

Do not agree to forward letters or send in contraband, which is anything not permitted by the facility.

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