

**Committee to Ensure Constitutionally Adequate Access to Counsel  
Straw Votes on Recommendations, October 5 Meeting**  
(Sam Senft and Jane Orbeton, Office of Policy and Legal Analysis)

**The committee recommends that the following actions be taken to protect from monitoring and recording confidential attorney-client in-person, telephone and electronic communications.**

- *Note – the committee took straw votes on initial draft language. Unless otherwise noted, the vote was unanimous among members present in favor of the recommendation.*

**Policies and procedures to protect confidential attorney-client communications**

1. Direct the Office of the [choose from Attorney General, Commissioner of Corrections, Commissioner of Public Safety, Director of the Maine Criminal Justice Academy or the Maine Commission on Indigent Legal Services] to convene meetings of State, county and municipal law enforcement agencies, jails, the Maine Judicial Branch, Department of Corrections, the Maine Sheriffs Association, the Maine Prosecutors Association, the Maine Association of Criminal Defense Attorneys and the Maine Commission on Indigent Legal Services to develop a consistent set of policies and procedures to be implemented by all law enforcement agencies, district attorney offices, jails and correctional facilities that clearly describe the following:

- a. the process for protecting confidential attorney-client communications;
- b. the policies to be followed in the event there is a breach of confidentiality;
- c. the methods by which incarcerated persons will be provided with information regarding their right to confidential attorney-client communications.

2. Require that all State, county and municipal law enforcement agencies, jails, the Department of Corrections and district attorneys' offices adopt the policies and procedures described in Recommendation #1.

3. Direct the Board of Trustees of the Maine Criminal Justice Academy to amend the curriculum of Basic Correctional Officer training to include information related to confidential attorney-client communications and to the protection of those communications.

*[Question – should language regarding the training of AG staff be added?]*

4. Require that the Department of Corrections and sheriffs ensure access on a timely basis to private space in jails and correctional facilities for attorney-client meetings and for the review and exchange case materials, and that incarcerated persons have private and secure space available for the storage and viewing of case materials, including audio visual materials.

5. Amend Title 25, Section 2802 to require that the Board of Trustees of the Maine Criminal Justice Academy be increased from 18 to 19 by adding a seat that is designated for an attorney who represents defendants in criminal cases. *(Note – straw vote was 4-4)*

### **System for registering telephone [and other contact information]**

6. Direct the *[choose from Maine Commission on Indigent Legal Services or a state agency]* to develop a system for maintaining a registry of the telephone numbers *[and other contact information?]* given to them by attorneys providing legal services to persons who are incarcerated. The *[identified state entity]* must *[promptly or on a quarterly basis?]* provide the registry information to all contractors providing telephone and electronic communications services used by incarcerated persons.

*[Question: If registration of a phone number is mandatory, should the Board of Bar Overseers attorney registration include a statement that the attorney has registered their contact information? Note: There is concern from the chairs regarding the feasibility of this proposition.]*

7. Direct the Department of Corrections to adopt rules requiring correctional facilities to confirm on a timely basis the registration of attorney telephone numbers protected from monitoring for attorney-client confidentiality purposes.

8. Direct the Department of Corrections to amend the standards for jails requiring jails to confirm on a timely basis the registration of attorney telephone numbers protected from monitoring for attorney-client confidentiality purposes.

### **Issues set aside for consideration at meeting #4**

9. Direct that the Maine Judicial Branch work to ensure that space is available in public areas of courthouses and in secure holding areas of courthouses *[that are controlled by transport or correctional officer staff]* for confidential attorney-client communications, including the review of written, video and audio materials related to the criminal case.

10. Provide penalties for a breach of attorney-client confidentiality through monitoring or recording attorney-client telephone calls *[or other means of communication?]*.

11. Direct the Attorney General's Office to update its training for AG investigators to include information related to confidential attorney-client communications and to the protection of those communications. *[Lisa Marchese to provide information]*

12. Direct the district attorneys to update their training for district attorney investigators to include information related to confidential attorney-client communications and to the protection of those communications.