ALASKA BAR ASSOCIATION

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ALASKA BAR ASSOCIATION

By fax

DATE: February 24, 2014

DELIVER TO: House State Affairs Committee
Rep. Bob Lynn 907-465-4316
Rep. Wes Keller 907-465-3818
Rep. Lynn Gattis 907-465-4586
Rep. Shelley Hughes c/o Rep. Lance Pruitt
907-465-4565
Rep. Doug Isaacson 907-465-2197
Rep. Charisse Millette 907-465-2069
Rep. Jonathan Kreiss- Tomkins
907-465-2652

YOUR FAX NO: 278-8536

SENT BY: Gail Welt, Executive Assistant
For Bar Counsel Stephen J. Van goor

RE: Committee Substitute for House Bill No. 127

IF YOU EXPERIENCE ANY PROBLEMS RECEIVING THIS FAX, PLEASE CALL Gail at (907) 272-7469. THANK YOU

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P. O. Box 100279 • Anchorage, Alaska 99510-0279
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ALASKA BAR ASSOCIATION

February 24, 2014

Rep. Bob Lynn, Chair,
House State Affairs Committee
State Capitol, Room 108
Juneau, AK 99801-1182

Rep. Wes Keller, Vice-Chair
House State Affairs Committee
State Capitol, Room 118
Juneau, AK 99801-1182

Rep. Lynn Gattis, Member
House State Affairs Committee
State Capitol, Room 420
Juneau, AK 99801-1182

Rep. Shelley Hughes, Member
House State Affairs Committee
State Capitol, Room 409
Juneau, AK 99801-1182

Rep. Doug Isaacson, Member
House State Affairs Committee
State Capitol, Room 13
Juneau, AK 99801-1182

Rep. Charisse Millett, Member
House State Affairs Committee
State Capitol, Room 403
Juneau, AK 99801-1182

Rep. Jonathan Kreiss-Tomkins,
Member
House State Affairs Committee
State Capitol, Room 426
Juneau, AK 99801-1182

RE: Committee Substitute for House Bill No. 127

Dear Rep. Lynn and members of the Committee:

I'm writing regarding Section 6 of Committee Substitute for House Bill No. 127 that would add the word "instrumentality" to the definition of "agency" for the purpose of AS 24.55.330(2) and Sections 3 and 8 regarding indirect court rule amendments to Alaska Rules of Evidence 501 and 503 regarding attorney/client privilege.

Section 6

Since the Alaska Bar Association is an instrumentality of the state under AS 08.08.010, the amendment would make the Bar Association subject to ombudsman investigations.

While I can't speak for other instrumentalities of the state, I can advise the Committee that if this section is adopted, the Bar Association would be unable to comply with an ombudsman request for review of confidential lawyer grievance files.

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Article IV, Section 1 of the Alaska Constitution invests the judicial power of the state of Alaska in the Alaska Supreme Court. Pursuant to that inherent authority, the Court has adopted the Rules of Disciplinary Enforcement in the Alaska Bar Rules which bind the Bar Association in the investigation and prosecution of lawyer misconduct. Legal Services Director Doug Gardner's March 21, 2013 memo to the Committee confirms the Supreme Court's authority. Document 09.

Under Bar Rule 22(b), grievance investigations are confidential prior to the initiation of formal proceedings. However, under this same rule, a respondent lawyer may waive confidentiality of a grievance filed against the lawyer in writing. Document 16. In addition, Bar Rule 21(c) lists seven exceptions to the confidentiality requirements. Document 16. Finally, the Supreme Court may issue an order directing public disclosure of a disciplinary matter on a showing of good cause.

If there is no waiver by the respondent lawyer, no exception under Bar Rule 21(a), or no order of the Supreme Court, the Bar Association could not respond to an ombudsman request to review a grievance file. If the ombudsman initiates any type of enforcement action, the Bar Association would be bound to bring that enforcement action to the Supreme Court since only the Supreme Court has the authority to determine the application of the Bar Rules on lawyer grievance confidentiality.

The attorney grievance process is already subject to strict supervision by the Disciplinary Board of the Bar Association as well as the Supreme Court. If a complainant is dissatisfied with a grievance intake decision, the complainant may ask for review by the Board Discipline Liaison under Bar Rule 22(a). Document 16. If the complainant is still dissatisfied, the complaint may file an original application for review by the Alaska Supreme Court. *Anderson v. Alaska Bar Association,* 91 P.3d 271 (Alaska 2004). Document 09. If a complaint is dissatisfied with a decision to dismiss a grievance following investigation, the Bar Rule 25 provides for review by an area hearing division member. Copy attached.

In her February 26, 2013 memo to the Committee, the ombudsman found eleven (11) complaints against the Bar Association from December 1999 through February 2013. Document 04. Of those, she reported that two (2) were declined as premature, one (1) was resolved, one (1) was declined due to a lack of merit on its face, and seven (7) were declined due to a jurisdiction dispute. Of the seven (7), six (6) complaints alleged that the Bar Association had failed to adequately investigate a complaint about attorney competence—generally complaints by criminal defendants about the court-appointed counsel and the seventh complaint involved a client's effort to collect a fee arbitration award.

In essentially the same period from January 2000 to December 2012, the Bar Association processed 3079 grievance matters. The 6 complaints about the Bar Association's investigation amounted to .2 of 1%

of the grievances processed. The present grievance investigation process is working.

Finally, Representative Gattis suggested an amendment to House Bill 127 on March 24 2013 that would add the Alaska Bar Association to the list of officials exempted under Section 6. Document 23. Adding "Alaska Bar Association" after the word "judge" on Page 3, line 26 of the Committee Substitute for House Bill 127 would answer the ombudsman's question regarding jurisdiction and avoid the problems I've expressed in this letter.

Sections 3 and 8

Section 8 of the Committee Substitute advises that the change to Section 3 has the effect of changing Alaska Rules of Evidence 501 and 503 regarding attorney-client privilege. Essentially, there would be no waiver of privilege or work product if that information was disclosed to the ombudsman.

As it applies to Bar Association investigations, this amendment would create significant problems for lawyers responding to grievances and leave clients with no recourse if privileged information is disclosed.

Alaska Rule of Professional Conduct 1.6(b)(5) permits a lawyer to make reasonably necessary disclosures of client confidences and secrets in order to respond to a client's allegation of misconduct. Copy attached. This isn't a blank check to reveal anything that the lawyer wants to reveal. The lawyer is ethically bound only to disclose information reasonably necessary to respond to the complaint. However, if that information is reviewed outside of the grievance process by a person or agency not bound by the Rules of Professional Conduct, that protection will be lost.

Public defenders and public advocates are mostly likely to be affected by this since they need to disclose details of their representations in defending ineffective assistance allegations. If they know that a nonlawyer outside the grievance process may have access to client information, they would understandably be reluctant to disclose information that may harm the client in ongoing proceedings or appeals.

Section 8 is apparently designed to prevent this from happening, but, since the ombudsman and the ombudsman's staff are not lawyers to my knowledge, there would be no recourse for the client if the information was disclosed.

Consequently, Sections 3 and 8 of the Committee Substitute would not protect clients complaining about their lawyers in the lawyer grievance process.

Conclusion

The Bar Association requests an addition to the Committee Substitute for House Bill 127 on page 3, line 26, that adds the words "Alaska Bar Association" after the word "judge." This would exclude the Bar Association from the ombudsman's jurisdiction.

Thank you for the opportunity to present the Bar Association's position on this proposed legislation.

If there is any further information I may provide, please let me know.

Sincerely,

ALASKA BAR ASSOCIATION

Stephen J. Van Goor
Bar Counsel

Encl.

cc: Michael Moberly, President
Deborah O'Regan, Executive Director

Alaska Bar Rule 25. Appeals; Review of Bar Counsel Determinations.

(a) Interlocutory Appeal. Only upon the conditions and subject to the Rules of Procedure set forth in Part IV of the Alaska Rules of Appellate Procedure may parties petition the Court for review of an interlocutory order, recommendation, or decision of

(1) any member of any Area Division;

(2) a Hearing Committee or a single member thereof; or

(3) the Board or a single member thereof.

(b) Admonition Not Appealable. A Respondent cannot appeal the imposition of a written private admonition. In accordance with Rule 22(d), (s)he may request initiation of formal proceedings before a Hearing Committee within 30 days of receipt of the admonition.

(c) Appeal by Complainant from Bar Counsel's Decision to Dismiss. A Complainant may appeal the decision of the Bar Counsel to dismiss a complaint within 15 days of receipt of notice of the dismissal. The Director will appoint a member of an Area Division of the appropriate area of jurisdiction to review the Complainant's appeal. The appointed Area Division member may reverse the decision of Bar Counsel, affirm the decision, or request additional investigation. This Division member will be disqualified from any future consideration of the matter should formal proceedings be initiated.

(d) Review of Bar Counsel's Decision to File Formal Petition. A decision by Bar Counsel to initiate formal proceedings before a Hearing Committee will be reviewed by the Board Discipline Liaison prior to the filing of a formal petition. The Board Discipline Liaison will, within 20 days, approve, modify, or disapprove the filing of a petition, or order further investigation.

(e) Appeal by Bar Counsel. Bar Counsel may appeal the decision made under Section (d) of this Rule within 10 days following receipt of the Board Discipline Liaison's decision. The Director will designate an Area Division Member to hear this appeal. The decision of the Area Division Member will be final.

(f) Appeal of Hearing Committee Findings, Conclusions, and Recommendation. Within 10 days of service of the Hearing Committee's report to the Board, as set forth in Rule 22(1), the Respondent or Bar Counsel may appeal the findings of fact, conclusions of law, or recommendation by filing with the Board, and serving upon opposing party, a notice of appeal. Oral argument before the Board will be waived unless either Bar Counsel or Respondent requests argument as provided in Section (l) of Rule 22.

(g) Respondent Appeal from Board Recommendation or Order. Respondent may appeal from a recommendation or order of the Board made under Rule 22(n) by filing a notice of appeal with the Court within 10 days of service of the Board's recommendation or order. Part II of the Rules of Appellate Procedure will govern appeals filed under this Rule.

(h) Bar Counsel Petition for Hearing of a Board Recommendation or Order. Bar Counsel may petition from a recommendation or order of the Board made under Rule 22(n) by filing a petition for hearing with the Court within 10 days of service of the Board's recommendation or order. Part III of the Rules of Appellate Procedure will govern petitions filed under this Rule.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 17 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 658 effective March 15, 1986; by SCO 962 effective July 15, 1989; and by SCO 1082 effective January 15, 1992)

Alaska Rule of Professional Conduct 1.6. Confidentiality of Information.

(a) A lawyer shall not reveal a client's confidence or secret unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation and disclosures permitted by paragraph (b) below or Rule 3.3. For purposes of this rule, "confidence" means information protected by the attorney-client privilege under applicable law, and "secret" means other information gained in the professional relationship if the client has requested it be held confidential or if it is reasonably foreseeable that disclosure of the information would be embarrassing or detrimental to the client. In determining whether information relating to representation of a client is protected from disclosure under this rule, the lawyer shall resolve any uncertainty about whether such information can be revealed against revealing the information.

(b) A lawyer may reveal a client's confidence or secret to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain:

(A) death;

(B) substantial bodily harm; or

(C) wrongful execution or incarceration of another;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

(c) A lawyer must act competently to safeguard a client's confidences and secrets against inadvertent or unauthorized disclosure by the lawyer, by other persons who are participating in the representation of the client, or by any other persons who are subject to the lawyer's supervision. See Rules 1.1, 5.1, and 5.3. When transmitting a communication that includes a client's confidence or secret, the lawyer must take reasonable precautions to prevent this information from coming into the hands of unintended recipients.

(SCO 1123 effective July 15, 1993; amended by SCO 1332 effective January 15, 1999; and rescinded and repromulgated by SCO 1680 effective April 15, 2009)

ALASKA COMMENT

The Court decided to continue Alaska's amendment to this rule to tie the lawyer's confidentiality obligation to a "confidence" or "secret" of the client. The Committee concluded the language used in Model Rule 1.6 ("information" relating to representation of a client) was excessively broad. The terms "confidence" and "secret" are defined in the amended rule in substantively the same way as those terms were defined in DR 4-101(A) of the ABA Model Code of Professional Responsibility. The Committee expects that court decisions interpreting "confidence" and "secret" under DR 4-101(A) will be persuasive authority for interpreting the amended Alaska rule.

The final sentence of paragraph (a) has been added to require that a lawyer approach any decision about disclosing confidences or secrets of a client from the standpoint that the information is generally protected from disclosure.

In paragraph (b)(1)(C), the court included an additional limited exception to the normal rule requiring lawyers to preserve the confidences and secrets of their clients. This provision is modeled on the similar Massachusetts rule; its core purpose is to permit a lawyer to reveal confidential information in the specific situation in which that information discloses that an innocent person has been convicted of a crime and has been sentenced to imprisonment or execution.

The lawyer's decision to disclose information under this rule is governed by objectively reasonable standards (*see* Rule 9.1(m) and (n)) and by all the facts and circumstances of which the lawyer is aware or reasonably should be aware at the time the decision is made.

Paragraph (c) is taken from the commentary to the ABA version of the rules. The Committee created paragraph (c) because the Committee concluded that standards of professional conduct subject to enforcement through disciplinary proceedings should be stated in the text of the Rules rather than in commentary.

COMMENT

[1] This Rule governs the disclosure by a lawyer confidences and secrets of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal confidences and secrets of a former client, and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal a client's confidences and secrets. See Rule 9.1(g) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and to ascertain what conduct is legal and correct.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in the

Rules of Professional Conduct. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality also applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all client secrets. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. A determination that disclosure of client information is permitted by the crime-fraud exception to the ethics rule does not necessarily lead to the same result under the crime-fraud exception to the attorney-client privilege. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing confidences and secrets of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other confidences and secrets of a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidences and secrets of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in Rule 1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(2) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of

the client in such circumstances, and Rule 1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[8] Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose client confidences and secrets to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(2) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct. To the extent practicable, a lawyer should use hypothetical facts when seeking this legal advice.

[10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary, or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity or other misconduct has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges misconduct, so the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, when a proceeding has been commenced.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of confidences and secrets appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

[13] A lawyer may be ordered to reveal confidences and secrets of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court's order.

[14] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the lawyer should ask the tribunal to limit access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

Disclosures Otherwise Required or Authorized

[15] Paragraph (b) permits but does not require the disclosure of confidences and secrets of a client to accomplish the purposes specified in paragraphs (b)(1) through (b)(6). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

[16] In various circumstances, a lawyer is permitted or required to disclose client confidences and secrets. See, for example, Rules 2.3, 3.3, and 4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes or augments Rule 1.6 is a matter of interpretation beyond the scope of these Rules.

[17] The attorney-client privilege is defined differently in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, paragraph (a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

Withdrawal

[18] If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1). After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences and secrets, except as otherwise permitted by Rule 1.6. Neither this Rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like. Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

[19] The duty of safeguarding communications described in Rule 1.6(c) does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the