

## GENERAL INFORMATION FORM

Submitting Entity: New York County Lawyers Association (“NYCLA”).

Submitted By: Carol A. Sigmond, NYCLA President; Elliot Dolby-Shields and Samuel B. Cohen, Co-Chairs, NYCLA Civil Rights & Liberties Committee.

### 1. Summary of Resolution(s)

The Resolution urges the Federal Bureau of Prisons to change its policy regarding the monitoring and reading of email communications between attorneys and their incarcerated clients. The Resolution relies on the assertion that emails between attorneys and their incarcerated clients are not meaningfully different from traditional letter mail between attorneys and their incarcerated clients, which has long been protected by the attorney-client privilege. This Report argues that email communications actually pose less of a security risk than traditional letter mail, because unlike letter mail, emails cannot secrete contraband such as illegal drugs. If the BOP were to reconfigure their email system by using popular encryption software, authenticating the identity of the sender would be more reliable than traditional letter mail. Additionally, the software can be programmed to preserve a permanent copy of all emails, which can be retrieved and reviewed by the court under proper circumstances. Thus, the Resolution provides strong policy and constitutional arguments for providing emails between attorneys and their incarcerated clients the same confidentiality protections as traditional letter mail.

### 2. Approval by Submitting Entities

The NYCLA Civil Rights & Liberties Committee approved the Resolution with Report on December 5, 2014. The NYCLA Board of Directors approved the Resolution with Report on March 9, 2015. The NYCLA Executive Committee approved the final Resolution with Report on July 23, 2015, pursuant to authority granted to it by the Board.

### 3. Has this or a similar Resolution been submitted to the House or Board previously?

No.

### 4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

The Resolution is consistent with and builds upon the cybersecurity principles previously developed by the ABA’s Cybersecurity Legal Task Force and adopted by the Board of Governors in November 2012, especially Principle 3—“[l]egal and policy environments must be modernized to stay ahead of or, at a minimum, keep pace with technological advancements”—and Principle 4—“[p]rivacy and civil liberties must remain a priority when developing cybersecurity law and policy.”<sup>74</sup> The Resolution is also consistent with ABA Model Rule of

---

<sup>74</sup> AM. BAR ASS’N CYBERSECURITY LEGAL TASK FORCE, REPORT TO THE BOARD OF GOVERNORS, (Nov. 2012), available at

Professional Conduct 1.6 (“Confidentiality of Information”), which prohibits lawyers from revealing confidential client information unless the client gives informed consent or one or more narrow exceptions apply. In addition, the Resolution is generally consistent with and would build upon other existing ABA policies (1) supporting the attorney-client privilege and the work product doctrine and opposing governmental policies, practices, or procedures that would erode those protections,<sup>75</sup> and (2) opposing new federal agency regulations on lawyers engaged in the practice of law where the effect would be to undermine the confidential lawyer-client relationship, the attorney-client privilege, or traditional state court regulation of lawyers. Lastly, the Resolution is also consistent with ABA Model Rule of Professional Conduct 1.4, which requires attorneys to promptly communicate with incarcerated clients regarding important case matters, such as whether to accept or reject proffered plea bargains, which can only be made by the client.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

Urgency exists as a result of the shortage of resources available to federal public defenders, who represent the vast majority of pretrial detainees in federal court.

6. Status of Legislation. (If applicable).

Not applicable.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

In consultation with the ABA Governmental Affairs Office, the NYCLA Civil Rights & Liberties Committee leaders would prepare communications to the Federal Bureau of Prisons and/or comment letters to relevant federal agencies, and may meet with agency staff to urge adoption of regulations consistent with the Resolution. Task Force leaders may also reach out to law firms, bar associations, other legal groups, and the courts in order to educate them about the growing problem of the BOP and prosecutors monitoring and reading emails between attorneys and their incarcerated clients.

8. Cost to the Association. (Both direct and indirect costs).

None.

9. Disclosure of Interest. (If applicable).

Not applicable.

---

[http://www.americanbar.org/content/dam/aba/marketing/Cybersecurity/aba\\_cybersecurity\\_res\\_and\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/marketing/Cybersecurity/aba_cybersecurity_res_and_report.authcheckdam.pdf).

<sup>75</sup> AM. BAR ASS’N TASK FORCE ON ATTORNEY-CLIENT PRIVILEGE, REPORT TO THE BOARD OF GOVERNORS (Aug. 2005), available at [http://www.americanbar.org/content/dam/aba/directories/policy/2005\\_am\\_111.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/directories/policy/2005_am_111.authcheckdam.pdf)

10. Referrals.

The proposed Resolution and Report has been sent to the Chairs and staff liaisons of the ABA Criminal Justice Section and Civil Rights Litigation Committee.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and email address).

Elliot Dolby-Shields  
Co-Chair NYCLA Civil Rights & Liberties Committee  
Law Office of Elliot Dolby-Shields, P.C.  
235 West 137<sup>th</sup> Street, No. 2F  
New York, New York 10030  
Phone: (585) 749-2089  
Email: edshieldslaw@gmail.com

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and email address).

Carol A. Sigmond  
Cohen Seglias Pallas Greenhall & Furman PC  
45 Broadway, 4th Floor  
New York, NY 10006  
Telephone: 212-981-2927  
Mobile: 917-376-8585  
Email: csigmond@cohenseglias.com