January 7, 2020

The Honorable Hakeem Jeffries
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Doug Collins
U.S. House of Representatives
Washington, D.C. 20515

Re: ABA support for the Effective Assistance of Counsel in the Digital Era Act

Dear Representatives Jeffries and Collins:

The American Bar Association (ABA) applauds your leadership in introducing the Effective Assistance of Counsel in the Digital Era Act in support of the attorney-client privilege and the Sixth Amendment right to counsel.

The attorney-client privilege is fundamental to our system of justice and critical to the work of lawyers who rely on confidential communications with their clients to represent their clients’ interests in legal proceedings and to insure fairness in the federal criminal justice system. While traditional letter mail, unmonitored telephone calls, and in-person meetings between attorneys and their clients incarcerated in Bureau of Prisons (BOP) facilities are already protected communications, your bill would expand that protection to also cover any electronic communications between them.

We recognize that there are certain narrow exceptions to the attorney-client privilege and that the BOP must monitor activity on its servers to ensure system security and integrity. We share your view, however, that while it may be appropriate for the BOP to monitor and retain non-privileged messages sent or received by an incarcerated person in certain circumstances, a warrant should be required before law enforcement officers can access these messages. But even if a warrant from a court of competent jurisdiction issues, attorney-client privileged communications should not be accessible to law enforcement. We believe your bill strikes the right balance between legitimate government interests and the countervailing importance of attorney-client confidentiality.

The ABA looks forward to working with you in support of this important legislation to help ensure its consideration and enactment this Congress. If you have any questions, please contact Ken Goldsmith, Senior Legislative Counsel in our Governmental Affairs Office, at (202) 662-1789 or kenneth.goldsmith@americanbar.org.

Sincerely,

Judy Perry Martinez