

DEPUTY DIRECTOR
Denise A. Cardman
(202) 662-1761
cardmand@staff.abanet.orgSENIOR LEGISLATIVE COUNSEL
R. Larson Frisby
(202) 662-1098
frisbyr@staff.abanet.orgLillian B. Gaskin
(202) 662-1768
gaskinl@staff.abanet.orgLEGISLATIVE COUNSEL
Kristi Gaines
(202) 662-1763
gainesk@staff.abanet.orgKenneth J. Goldsmith
(202) 662-1789
goldsmithk@staff.abanet.orgKerry M. Lawrence
(202) 662-1766
lawrenck@staff.abanet.orgEllen McBarnette
(202) 662-1767
mcbarnee@staff.abanet.orgE. Bruce Nicholson
(202) 662-1769
nicholsonb@staff.abanet.orgDIRECTOR GRASSROOTS
OPERATIONS/LEGISLATIVE COUNSEL
Julie M. Strandlie
(202) 662-1764
strandlj@staff.abanet.orgINTELLECTUAL PROPERTY
LAW CONSULTANT
Hayden Gregory
(202) 662-1772
gregoryh@staff.abanet.orgSTATE LEGISLATIVE COUNSEL
Rita C. Aguilar
(202) 662-1780
aguilarr@staff.abanet.orgEXECUTIVE ASSISTANT
Julie Pasatiempo
(202) 662-1776
jpasatiempo@staff.abanet.orgSTAFF DIRECTOR FOR
INFORMATION SERVICES
Sharon Greene
(202) 662-1014
greenes@staff.abanet.orgEDITOR WASHINGTON LETTER
Rhonda J. McMillion
(202) 662-1017

March 21, 2008

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U. S. House of Representatives
Washington, D.C. 20515

The Honorable Howard L. Berman
Chairman
Subcommittee on Courts, the Internet
and Intellectual Property
Committee on the Judiciary
U. S. House of Representatives
Washington, D.C. 20515

The Honorable Lamar S. Smith
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Howard Coble
Ranking Member
Subcommittee on Courts, the Internet
and Intellectual Property
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Re: S. 2450, Legislation to Adopt Proposed Federal Rule of Evidence 502

Gentlemen:

On behalf of the American Bar Association (“ABA”) and its more than 413,000 members, I write to express our strong support for S. 2450, legislation that would adopt proposed Federal Rule of Evidence 502 (“FRE 502”) dealing with the attorney-client privilege and the work product doctrine, as approved by the Judicial Conference of the United States (“Judicial Conference”). Now that the Senate has passed S. 2450 by unanimous consent, we urge you to support prompt House passage of the legislation.

Recognizing the importance to practitioners of having consistent rules providing for protections against inadvertent waiver of the attorney-client privilege and the work product doctrine, in August 2006, the ABA adopted policy sponsored by our Section of Litigation to articulate consistent principles on these subjects. Since that time, the ABA has been actively involved in commenting upon the drafts developed by the Judicial Conference Committee on Rules of Practice and Procedure and its Advisory Committee on Evidence Rules.¹

¹ On February 15, 2007, the ABA submitted two separate comment letters to the Committee on Rules of Practice and Procedure of the Judicial Conference regarding consideration by the Advisory Committee on Evidence Rules of proposed Federal Rule of Evidence 502. The first letter addressing proposed FRE 502(b) regarding the issue of “Inadvertent Disclosure” is available online at <http://www.abanet.org/buslaw/attorneyclient/materials/079/079.pdf>. The second letter encouraging addition of a new subdivision to proposed FRE 502 that would address issues involving implied waiver during government investigations of organizations is available at <http://www.abanet.org/buslaw/attorneyclient/materials/078/078.pdf>.

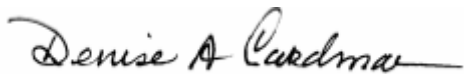
March 21, 2008

Page 2

After considering the ABA's comments regarding the original version of FRE 502(b) on the issue of inadvertent disclosure, the Advisory Committee on Evidence Rules added important refinements that substantially address our concerns. The Advisory Committee also made other beneficial changes to proposed FRE 502(a) regarding scope of waiver, including expanding its coverage to include not just disclosures "made in a federal proceeding" but also disclosures "to a federal office or agency." These revisions were approved by the Committee on Rules of Practice and Procedure and the Judicial Conference. S. 2450 reflects these revisions and is strongly supported by all major stakeholders, including the federal courts, the plaintiff and defense bars, and the business community.

The ABA believes that S. 2450 is a carefully crafted measure that will greatly improve the practice of law for those facing conflicting rules. Therefore, we urge you and your House colleagues to pass the measure as soon as possible, without amendment.

Sincerely,

A handwritten signature in cursive script that reads "Denise A. Cardman". The signature is written in black ink and is positioned above the typed name and title.

Denise A. Cardman
Acting Director

cc: Members of the House Judiciary Committee