

06-EV-010


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November 20, 2006

Honorable Jerry E. Smith, Chair
Advisory Committee on Evidence Rules
Committee on Rules of Practice and Procedure
Judicial Conference of the United States
Washington, DC 20544

Dear Sir,

In a review of the proposed changes to Rule 502 concerning the Waiver of Attorney-Client Privilege and Work product, I noticed an ambiguity that requires clarification. Rule 502(c), Selective Waiver, states "In a federal or state proceeding, a disclosure of a communication or information covered by the attorney-client privilege or work product protection – when made to a federal public office or agency in the exercise of its regulatory, investigative, or enforcement authority – does not operate as a waiver of the privilege or protection in favor of non-governmental persons or entities."

However, this passage does not specify whether it relates to foreign government offices or agencies. The committee notes cite to the *Westinghouse Electric v Republic of Philippines*, implying that the rule applies to disclosures to foreign governments, but the plain text of Rule 502(c) does not specifically state that it applies to foreign governments. The addition of the term "United States or foreign" before the words "federal or state proceeding" and again before "federal public office" should clear the ambiguity.

Thank you for your consideration of this suggestion.

Sincerely,



Richard A. Baker, Jr.