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Monitoring Telephone Calls to Attorneys

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Reference Number: CTAS-1422

In *Massey v. Wheeler*, 221 F.3d 1030, 1036 (7th Cir. 2000), the Seventh Circuit Court of Appeals noted the importance of unmonitored communication between attorneys and inmates but stated that the court could find no cases that establish a right to unrestricted and unlimited private telephone calls.

In *Robinson v. Gunja*, 92 Fed.Appx. 624, 626-627 (10th Cir. 2004), the Tenth Circuit Court of Appeals upheld the dismissal of a pretrial detainee's claim that his Fourth Amendment rights were violated when prison officials monitored his telephone calls to attorneys and paralegals. Robinson failed to follow prison regulations, which required inmates to submit a request to make unmonitored legal telephone calls. The court found that because Robinson was using the inmate telephone system, which was clearly subject to monitoring, he had no reasonable expectation of privacy and his rights were not violated. The court also found that, because calls placed on the inmate telephone system were subject to recording and monitoring, the district court properly dismissed Robinson's Fifth and Sixth Amendment claims.

The legality of monitoring inmate calls to an attorney is not settled. It has been held that the presence of a custodial officer when prisoners place or receive a phone call is constitutionally objectionable. See *Moore v. Janing*, 427 F.Supp. 567, 576 (D. Neb.1976). It has also been held that prison officials may tape a prisoner's telephone conversations with an attorney if such taping does not substantially affect the prisoner's right to confer with counsel. *Tucker v. Randall*, 948 F.2d 388, 391 (7th Cir. 1991).

Arney v. Simmons, 26 F.Supp.2d 1288, 1296 (D. Kan. 1998) (finding that the automatic monitoring of attorney calls on "facility phones" presented no constitutional infringement where inmates were allowed to make unlimited nonmonitored calls on "inmate phones").

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