LEGAL RESEARCH REPORT

Delaware DOC Legal Conference Calls

Attorney–client confidentiality • multiparty participation • public and confidential policy • Delaware APA • professional standards • other jurisdictions

Bottom line

The law does not create an unlimited right to use any three-way-call feature. DOC may prohibit ordinary merged, forwarded, or social calls for security. The stronger and more accurate position is that DOC should provide a written, neutral, prompt way to arrange a confidential legal conference when additional participants are reasonably necessary to legal services, disability access, a court event, or a lawful common-interest matter—and it must provide a workable alternative when it rejects the requested format.

Prepared	28 August 2026; authorities checked as of this date
Scope	Delaware law, federal constitutional law, ethics and privilege, disability access, policy design, and selected jurisdiction practices
Reading level	Executive summary is written in plain language; later sections preserve legal detail
Important	General legal information, not advice about a specific case. Facts, custody status, case stage, court orders, conflicts, and available alternatives can change the result.

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How to use this report

Start with the executive summary and the one-page model policy. Use the later legal sections to evaluate a stated policy, write a focused request, preserve a record, or brief counsel. Hyperlinked authorities are collected again in the source guide.

Executive summary

PLAIN-LANGUAGE ANSWER

A prison can block normal three-way or forwarded calls when it has a real security reason. But a legal conference is different from an ordinary personal call. A confidential legal conference may need more than one lawyer. It also may need an interpreter, paralegal, investigator, expert, guardian, mitigation specialist, social worker, disability aide, co-client, or another lawyer and client who share a lawful legal interest.

Attorney–client privilege is not limited to a call with only one lawyer and one client. Delaware Rule of Evidence 502 protects confidential communications made to obtain or provide legal services, including communications through people who help provide or transmit those services and certain communications among parties and lawyers who share a common legal interest. But an unnecessary friend, a witness without a legal-service role, or an adverse party can destroy confidentiality. Professional confidentiality is broader than courtroom privilege, but neither rule makes every multiparty call protected.

The Delaware Constitution gives an accused person the right to be heard by counsel and says that people held before conviction must be allowed access to friends and counsel on reasonable conditions. The Sixth Amendment protects meaningful consultation after criminal proceedings begin. The right of access to courts, due process, disability law, and court orders can also require workable legal communication. These authorities support reasonable, confidential access; they do not guarantee a particular phone brand, unlimited time, or automatic inclusion of every person requested.

A blanket rule that says “no three-way calls, ever,” with no legal-call exception and no workable alternative, is vulnerable when it blocks a necessary legal participant. A prison restriction is judged with deference under the Supreme Court’s Turner test, but the restriction still needs a real, neutral connection to safety or operations, must account for available alternatives, and should not be an exaggerated response. Procunier v. Martinez is especially useful because the Supreme Court rejected an absolute prison rule that kept law students and legal paraprofessionals from helping lawyers represent incarcerated people.

A “secret DOC policy” is not automatically unlawful in Delaware. Current 11 Del. C. § 4322(d) allows a DOC policy or procedure to remain confidential when, in the Commissioner’s judgment, it contains information that could jeopardize safety or security. That law is narrower than the former blanket secrecy provision considered in Jackson v. Danberg. A staff member’s statement that a rule is “secret” does not prove that the Commissioner made the statutory judgment, that an authorized policy exists, that it covers the situation, or that it is constitutional.

The Delaware Administrative Procedures Act does not use an outside board to “approve” a regulation. Instead, the agency adopts it through the process set by the General Assembly. For a substantive regulation, that normally means proposed text and notice in the Register of Regulations, legal authority, at least 30 days for public comment, consideration of submissions, a reasoned final order with the exact text, filing, publication, and a delayed effective date. DOC is an unlisted agency under 29 Del. C. § 10161(b), so it is subject to the APA’s regulation-making subchapters and limited judicial review provisions. A genuinely

nonsubstantive internal-procedure rule may use § 10113(b), but it still must be filed with an order to become official. Section 4322(d) may protect security-sensitive material, so the APA/public-access question requires a current, policy-specific analysis—not the broad claim that every DOC rule must be public.

Simplest lawful design

Keep the existing ban for ordinary merged or forwarded calls. Add one public legal-conference exception, one short request, cached lawyer verification, one staff coordinator, a two-business-day default decision, private audio, metadata-only logging, and one quick review. Put only operational security details—such as access codes or staff posts—in a confidential appendix if the Commissioner makes the finding required by § 4322(d).

The most accurate legal position

- No controlling case located creates an absolute right to three-way or multiparty telephone service in a Delaware correctional facility.
- DOC may impose neutral, reasonable conditions and may prohibit ordinary conference calls, call forwarding, number sharing, fraud, harassment, unverified callers, and circumvention of monitoring.
- DOC should not treat a verified legal conference as an ordinary social call when the requested participants are reasonably necessary to legal services or access and confidentiality can be protected.
- A denial is hardest to defend when it is categorical, unwritten or inconsistently applied, unsupported by an authorized decisionmaker, ignores a court order or disability need, causes concrete harm to a case, and offers no timely confidential alternative.
- A request is strongest when counsel identifies each participant's role, certifies the legal purpose and confidentiality basis, avoids legal merits, gives reasonable scheduling options, and asks for a written reason plus an alternative if denied.

1. The question must be divided into four rules

Rule	What it governs	Why it matters
Prison telephone rule	Whether a call may be connected, merged, forwarded, scheduled, monitored, or recorded.	Security and operational limits can be valid even when the communication is legal.
Attorney–client privilege	Whether a confidential communication may be withheld from compelled disclosure in a proceeding.	Privilege can include necessary helpers and common-interest participants, but not every third person.

Rule	What it governs	Why it matters
Lawyer confidentiality and conduct	What lawyers must protect and whom they may contact.	A lawyer must protect client information and may be barred from contacting a represented adverse person.
Constitutional/statutory access	Whether custody rules leave a meaningful, timely way to consult counsel, use courts, participate in proceedings, and receive disability access.	This is usually the best basis for challenging an inflexible rule, especially with concrete harm.

Calling all four subjects "privilege" can weaken an otherwise strong request. Privilege does not itself command a particular telephone feature. The better argument links the protected purpose and necessary participants to counsel access, court access, due process, disability law, a court order, and a reasonable policy exception.

2. Who may join without automatically defeating confidentiality?

Delaware's controlling evidence rule is Delaware Rule of Evidence 502. A communication is confidential when it is not intended to be disclosed beyond persons involved in furthering legal services or persons reasonably necessary to transmit the communication. The rule expressly recognizes client representatives, lawyer representatives, and certain common-interest communications.

Participant	Privilege/confidentiality result	What counsel should document
One or more attorneys for the client	Ordinarily within privilege if the call is confidential and for legal services.	Names, bar status, representation, and confidential legal purpose.
Paralegal, investigator, legal assistant, mitigation specialist	Can be protected when acting for counsel or helping provide legal services.	Role, supervising attorney, and necessity to the legal work.
Interpreter, relay operator, communication aide	Can be protected when reasonably necessary to communicate; disability law may independently require effective communication.	Qualification, need, and agreement to confidentiality.
Expert, social worker, medical or technical consultant	May be protected when retained or directed to help counsel render legal advice; not automatically protected merely because useful.	Engagement through counsel, task, and connection to legal advice.
Guardian, parent, or support person	Sometimes protected if legally authorized or reasonably necessary; mere emotional support is not enough.	Legal authority, client capacity, age, communication need, and purpose.

Participant	Privilege/confidentiality result	What counsel should document
Co-client, co-defendant, co-party, their counsel	May remain protected under a genuine common legal interest or joint-defense arrangement. Conflicts and no-contact rules still matter.	Shared legal—not merely commercial or personal—interest; confidentiality agreement; each lawyer's consent.
Court, clerk, mediator, all parties in an authorized proceeding	The event may be confidential or protected by other rules, but it is not an ordinary private attorney–client communication.	Court notice/order, event type, authorized participants, and recording rules.
Friend, family member, journalist, unretained witness, adverse party	Usually risks waiver or defeats privilege unless a separate doctrine or necessity applies.	Do not include by default; obtain case-specific legal analysis.

Privilege, common interest, and government intrusion

The Third Circuit's United States v. Melvin recognizes that communications in a joint-defense setting may be confidential even with several defendants and lawyers, but the surrounding facts must show an expectation of confidence and a common defense. The common-interest doctrine preserves an underlying privilege; it does not make an otherwise unprivileged conversation privileged. United States v. Levy treats purposeful government acquisition of defense strategy as a serious Sixth Amendment problem. By contrast, Weatherford v. Bursey rejects a per se rule based on mere presence where no confidential defense information was transmitted to prosecutors or used against the defendant.

Authorities: United States v. Melvin; United States v. Levy, 577 F.2d 200 (3d Cir. 1978);

Weatherford v. Bursey.

Privilege is not the same as confidentiality

Privilege is an evidentiary protection against compelled disclosure. Delaware Lawyers' Rule 1.6 is broader: it generally prevents a lawyer from revealing information relating to representation, subject to stated exceptions, and requires reasonable safeguards. A communication can be confidential under professional rules even if a court later decides privilege was waived. DOC employees are not governed by lawyer-conduct rules unless they are lawyers, but they remain subject to constitutional law, statutes, DOC rules, employment duties, and court orders.

3. Constitutional and statutory foundations

Delaware Constitution

Article I, § 7 of the Delaware Constitution protects an accused person's right to be heard personally and by counsel and preserves due process. Section 9 protects access to justice without denial or unreasonable delay or expense. Most directly, § 12(c) provides that when

people are confined before conviction, their friends and counsel may have access to them on reasonable conditions.

The words “reasonable conditions” matter both ways. They authorize scheduling, identity checks, device controls, visual supervision, and other legitimate measures. They also make it difficult to defend arbitrary or impossible conditions that effectively destroy access. Section 12(c) is strongest for pretrial detainees and does not by its text govern every sentenced-prisoner legal matter.

Sixth Amendment consultation

The Sixth Amendment right to counsel attaches when adversary criminal proceedings begin. Rothgery v. Gillespie County explains attachment at the initial appearance/formal accusation even when no prosecutor attends. Geders v. United States invalidated a total overnight ban on consultation during trial. Perry v. Leeke permits a narrow bar during a brief recess while the defendant is testifying. Together they show a strong right to meaningful consultation, not an unlimited right to consult at every moment or through every method.

Authorities: Rothgery v. Gillespie County;

Geders v. United States;

Perry v. Leeke.

Meaningful court access

Bounds v. Smith requires meaningful access to courts, while Lewis v. Casey requires actual injury for a backward-looking denial-of-access claim—such as loss or rejection of a nonfrivolous legal claim caused by the restriction. Telephone access is one method. Aswegan v. Henry illustrates that an incarcerated person ordinarily has no constitutional right to a preferred access method or unlimited legal calls when workable mail, visits, and other methods remain. Tucker v. Randall, by contrast, recognizes that a serious, unreasonable denial of lawyer contact can state a claim. The practical focus is the whole system, timing, confidentiality, and actual effect.

Authorities: Bounds v. Smith;

Lewis v. Casey;

Aswegan v. Henry;

Tucker v. Randall.

Prison deference is real, but not unlimited

Under Turner v. Safley, a prison rule affecting constitutional rights is valid when reasonably related to legitimate penological interests. Courts consider: (1) a valid, rational, neutral connection between the restriction and the asserted interest; (2) alternative means of exercising the right; (3) the impact of accommodation on staff, incarcerated people, and resources; and (4) whether obvious, easy alternatives indicate an exaggerated response. Turner does not require the least restrictive means, and practices in other states do not set

a constitutional floor. But a low-cost verification-and-scheduling exception is evidence that accommodation may be workable.

Authority: Turner v. Safley.

Procunier v. Martinez is a close functional analogy. The Supreme Court invalidated an absolute rule that barred lawyers from using law students and legal paraprofessionals to interview incarcerated clients. It recognized the prison's authority to impose reasonable identification and conduct rules, but not an unjustifiable obstruction to professional representation. A categorical one-lawyer/one-client telephone rule can raise a similar concern when it excludes a necessary legal-team member without a workable alternative.

Authority: Procunier v. Martinez.

Ordinary prison calls are different

Lanza v. New York explains that ordinary jail conversations can be monitored, while specially confidential relationships require protection. In Jarmon v. Chapman, the Third Circuit found no reasonable privacy expectation in ordinary prison calls where monitoring and recording were clearly disclosed. Jones v. Brown held that a policy of opening properly marked legal mail outside an incarcerated person's presence violated the First Amendment despite asserted security concerns. These cases support a clear separation between ordinary monitored calls and verified legal communications; Jones is an analogy, not a telephone holding.

Authorities: Lanza v. New York;

Jarmon v. Chapman;

Jones v. Brown.

Counsel of choice, conflicts, and represented parties

A person who can retain counsel has an important but nonabsolute Sixth Amendment interest in counsel of choice. An indigent defendant generally has no right to select a particular appointed attorney, and courts may reject conflicted representation. Wheat v. United States gives trial courts substantial latitude to protect the integrity of proceedings when joint representation presents actual or serious potential conflicts. Delaware Lawyers' Rule 4.2 also bars a lawyer from communicating about a matter with a person the lawyer knows is represented in that matter unless that person's lawyer consents or law/court order authorizes it. Therefore, "all parties" cannot always be placed on a call merely because the call concerns litigation.

Authorities: United States v. Gonzalez-Lopez;

Wheat v. United States;

Delaware Lawyers' Rules of Professional Conduct.

4. Disability and language access can require another participant

Title II of the Americans with Disabilities Act applies to state prisons. It bars disability discrimination in public services. The implementing rule, 28 C.F.R. § 35.160, requires public entities to take appropriate steps for effective communication and to furnish suitable auxiliary aids and services where necessary. The method must be timely and protect privacy and independence; the agency generally gives primary consideration to the person's requested aid, subject to regulatory defenses and effective alternatives.

A qualified sign-language interpreter, relay operator, communication aide, or other auxiliary service can therefore be a necessary third participant. DOC may verify the service, select an effective method, and rely on undue-burden or fundamental-alteration defenses when properly established. It should not deny a necessary participant merely because a general phone rule uses the label "three-way." Similar principles can arise under language-access law, due process, or a court order for a person with limited English proficiency.

Authorities: 42 U.S.C. § 12132;

28 C.F.R. § 35.160;

Pennsylvania Department of Corrections v. Yeskey.

5. Delaware DOC authority and duties

Under 11 Del. C. §§ 6516–6517, the Commissioner directs DOC and promulgates rules for departmental operation. Section 6537 permits visits and correspondence under reasonable conditions. Section 6535 requires disciplinary rules and reasonable access to applicable portions. Those provisions establish real operational authority, but they do not displace the Constitution, the APA where applicable, disability law, or court orders.

Delaware's Office of Defense Services statute, 29 Del. C. Chapter 46, also shows that appointed defense is a team function. The Chief Defender may appoint assistant attorneys, investigators, clerks, stenographers, and other necessary employees, and courts may appoint additional counsel for cause. A policy that assumes legal representation always consists of one lawyer and one client does not match that statutory structure.

DOC Policy 5.1, as discussed in Fatir v. Phelps, recognizes rights including access to counsel and courts. An internal policy does not itself create Superior Court appellate jurisdiction, but it is relevant to administration, consistency, and employee expectations.

Authority: Fatir v. Phelps.

6. “Secret policy”: what is lawful, doubtful, or unlawful?

The crucial correction

Delaware law does not require every DOC policy to be public. Current § 4322(d) permits confidentiality for a policy or procedure that, in the Commissioner’s judgment, contains information that could jeopardize safety or security. The legal question is whether that statutory basis actually exists for the particular material and whether the resulting rule is otherwise valid.

Situation	Legal/professional concern	Best proof or response
No authorized policy exists; staff invents a rule	Arbitrary action; inaccurate official information; possible DOC conduct violation; constitutional or statutory violation if protected access is actually blocked.	Ask for policy number, issuing authority, effective date, operative language, and written denial. Preserve names, dates, exact words, and harm.
A written rule exists but staff calls all of it secret	Section 4322(d) requires a safety/security judgment by the Commissioner. The scope may be broader than necessary, and current law no longer makes every DOC policy confidential by default.	Request the public-facing standard, the Commissioner’s basis for confidentiality, and a segregable/redacted version; use FOIA remedies where available.
The rule changes public rights or forbids conduct but was never adopted	It may be a substantive “regulation” under the APA and vulnerable for failure to follow Subchapter II, unless another law validly exempts the material.	Search the Register; request adoption order; petition under § 10114; consider § 10141 declaratory review with counsel.
The rule is genuinely an internal, nonsubstantive procedure	It may use § 10113(b), but the regulation and order must be filed with the Registrar to become official. Labels do not control substance.	Request the filed rule/order and test whether it actually changes rights or prohibitions.
The rule contains access standards plus operational security details	A sensible split is possible: public standards and review rights; confidential codes, staff posts, vendor controls, or exploit-sensitive instructions.	Ask for partial disclosure and a public legal-conference rule with a security appendix.
The rule is clear but has no legal-call exception	It may be overbroad as applied when it blocks counsel, a court event, a necessary legal-team member, or effective disability communication and offers no alternative.	Make a participant-specific request; propose verification, scheduling, visual-only supervision, and an alternate confidential platform.

Current 11 Del. C. § 4322

Current 11 Del. C. § 4322(c), (d), and (j) provides the governing Delaware confidentiality framework. Subsection (c) restricts providing incarcerated people with copies that could jeopardize safety or security. Subsection (d) makes a DOC policy or procedure confidential

when, in the Commissioner's judgment, it contains information that could jeopardize security, and permits disclosure with written authority. Subsection (j) permits a person denied access under (c) or (d) to seek relief under FOIA's enforcement provision.

The General Assembly materially narrowed the former law in 2022 so that disclosure turns on danger rather than a blanket category. Later amendments changed wording and added subsection (j). The exact version and effective date applicable to a past denial should always be checked.

Legislative history: House Bill 394 (151st General Assembly).

Jackson v. Danberg must be read against the current statute

In 2008, Jackson v. Danberg held that the old version of § 4322(d)—which declared DOC policies and procedures confidential as a class—exempted lethal-injection procedures from APA public promulgation. The decision remains important, but its statutory premise was the former blanket wording. No current Delaware appellate decision located for this report resolves how the narrower safety/security language applies to a legal-call rule. It is therefore inaccurate either to ignore Jackson or to treat its old blanket result as automatically controlling every current DOC rule.

Authority: Jackson v. Danberg (Delaware Superior Court);

Delaware Supreme Court affirmance.

FOIA is useful but also limited

Delaware FOIA, 29 Del. C. Chapter 100, declares that open government permits citizens to monitor public officials. It requires prompt access to public records, written reasons for denial, and an enforcement process. State-agency denials may be petitioned to the Chief Deputy Attorney General within 60 days and then appealed as authorized. The custodian bears the burden of justifying a denial.

FOIA excludes records in DOC possession when the requester is an incarcerated person in DOC custody, but current § 4322(j) expressly provides a route to seek relief from denials under § 4322(c) or (d). Counsel or another citizen may have a different requester status. Exempt material should be separated from nonexempt material when the law permits. A request should ask for the public-facing legal-call rule, adoption order, revision history, forms, and segregable portions—not exploit-sensitive details.

7. Delaware Administrative Procedures Act

WHAT THE APA ACTUALLY REQUIRES

The APA does not "approve" a DOC policy in the sense of a second agency signing off. The adopting agency must classify and adopt the rule through the procedure the General Assembly prescribed; the Registrar of Regulations publishes and files it; and courts can review qualifying challenges.

The relevant statutes are 29 Del. C. §§ 10101–10119 and

29 Del. C. § 10161. DOC is not one of the agencies listed in § 10161(a). Under § 10161(b), unlisted agencies are subject to Subchapters I and II and §§ 10141, 10144, and 10145, but not the ordinary case-decision appeal provision in § 10142. Fatir confirms that distinction.

Is a legal-call rule a "regulation"?

Section 10102(7) broadly defines a regulation as an agency statement of law, procedure, policy, right, requirement, or prohibition that functions as a rule, standard, or guide. Section 10102(9) defines a substantive rule to include one that allows, requires, or forbids conduct that otherwise could or could not occur. A generally applied rule that forbids merged legal calls or restricts who may join looks regulatory and may be substantive because it changes permissible conduct and access. A purely internal routing instruction that does not change the public standard may be procedural or nonsubstantive. The agency's label is relevant but not conclusive.

Ordinary adoption path—brief checklist

1. Draft exact proposed text, identify statutory authority, and explain the rule's purpose and effect.
2. File notice and the proposed text with the Registrar for publication in the Register of Regulations under § 10115; provide the public-comment method and any hearing information.
3. Allow at least 30 days for written submissions and consider the record under §§ 10116 and 10118.
4. Issue a final order that summarizes the evidence and comments, states findings and reasons, supplies the exact final text, identifies the effective date, and carries the required signatures.
5. File the final order and text for publication; normally make the rule effective no earlier than 10 days after final publication.
6. Use the emergency route in § 10119 only for an imminent peril; state written reasons, observe the time limit, publish, and allow a petition.

Nonsubstantive/internal procedure route

Section 10113(b) permits adoption without the full notice-and-comment procedure for rules concerning organization, internal procedure or practice, delegation of authority, or other nonsubstantive matters. Even then, the agency must file the regulation and an order explaining the exemption with the Registrar for the rule to become official. A rule cannot escape public process merely by being called "policy" if it actually creates a substantive prohibition.

Public-benefit practice information

Section 10111 directs each agency to make available descriptions of its organization and operations, how the public may obtain information or make submissions, and a statement of rules of practice and procedure. Section 10112 ties public records to FOIA. These provisions favor a clear public front-end process even if a security appendix remains

confidential under § 4322(d). A person should not need to learn the operative request and review standards only from an oral “secret policy.”

APA remedies and timing

Section 10114 allows an interested person to petition an agency to adopt, amend, or repeal a regulation; the agency must initiate rulemaking or deny the petition with reasons. Section 10141 permits qualifying declaratory review of a regulation’s lawfulness. It generally uses a 30-day period after publication in the Register, presumes agency action valid, and places a demanding burden on the challenger. Timing, standing, prejudice, exhaustion, and the applicable statutory version should be reviewed immediately with Delaware counsel.

Authorities: 29 Del. C. § 10141;

Fatir v. Phelps.

8. Vagueness, clarity, consistency, and due process

A policy is strongest when an ordinary person can understand what is prohibited, staff have objective standards, and similar requests receive similar treatment. Grayned v. City of Rockford explains the classic vagueness concerns: fair notice and explicit enforcement standards that reduce arbitrary and discriminatory application. Vagueness doctrine is especially powerful when a rule supports discipline or punishment; not every internal administrative ambiguity becomes a constitutional violation. Even when constitutional vagueness is not established, unclear oral standards are poor administration and make pretext, inconsistency, and inadequate training harder to disprove.

Authority: Grayned v. City of Rockford.

A well-designed government policy should be authorized, necessary, evidence-based, lawful, neutral, clear, concise, accessible, consistent, feasible, timely, reviewable, documented, privacy-protective, and periodically reviewed. “Efficient” does not mean no process; it means the smallest process that reliably separates ordinary security risks from protected legal needs.

9. Professional conduct and employee accountability

The posted Delaware DOC Employee Code of Conduct requires fair and impartial performance, timely and effective service consistent with law and policy, honesty, accurate reports and official information, respect for rights, and reporting of unprofessional conduct. It identifies oppressive conduct, neglect, incompetence, false reports, and violations of law, regulation, or DOC policy as possible misconduct. The Code is an employment standard; it does not itself prove a constitutional tort or crime.

Delaware Merit Rule 12.1 provides that classified employees may be disciplined for just cause. The exact bargaining agreement, job classification, appointing authority, and investigative process may add requirements.

Conduct	Possible characterization	Important caution
Knowingly says a nonexistent rule is official	Dishonesty or inaccurate official information; neglect; arbitrary administration; possibly a constitutional violation if access is blocked.	Prove what was said, knowledge, authority, and actual policy before accusing.
Follows a real rule but refuses every exception	May be poor judgment, inadequate training, or an as-applied legal violation when a protected need is shown.	A line employee may lack discretion; seek the designated decisionmaker and preserve the request.
Discloses or listens to protected legal substance	Possible privilege/confidentiality breach, Sixth Amendment intrusion, privacy violation, policy breach, or court-order violation.	The result depends on notice, purpose, transmission/use, prejudice, and available safeguards.
Selectively blocks calls because of protected speech, disability, race, religion, or retaliation	Potential First Amendment, Equal Protection, ADA, or other discrimination claim.	Comparators, stated reasons, chronology, and actual injury matter.
Lawyer makes a misrepresentation or obstructs justice	Delaware Lawyers' Rules 3.2, 4.1, 8.4(c), or 8.4(d) may apply, depending on facts.	Lawyer rules govern lawyers, not every DOC employee; disciplinary bodies determine violations.
Knowingly unauthorized official act intended for personal benefit or harm	Could implicate Delaware official-misconduct law, 11 Del. C. § 1211.	This requires specific criminal elements. Do not label an ordinary policy dispute a crime without evidence.

Delaware lawyer duties relevant to the call

The Delaware Lawyers' Rules of Professional Conduct include diligence (Rule 1.3), communication and client participation (Rule 1.4), confidentiality and reasonable safeguards (Rule 1.6), expedition of litigation (Rule 3.2), the represented-person rule (Rule 4.2), truthfulness (Rule 4.1), and prohibitions on dishonesty and conduct prejudicial to justice (Rules 8.4(c)–(d)). These rules can require counsel to seek a safe method, limit who joins, disclose technical risks, obtain consent, and avoid direct contact with represented adverse persons.

10. What other jurisdictions are doing

Other jurisdictions are useful as feasibility examples, not binding law in Delaware and not a constitutional "lowest common denominator." The most relevant models separate ordinary conference-call misuse from verified legal conferences and legal-team access.

Jurisdiction	Relevant practice	Lesson for Delaware
Utah DOC Policy FD05	General three-way calls and forwarding are prohibited. An attorney may show cause for a legal-purpose three-way call; a deputy warden/designee may approve; a case manager facilitates. Verified legal calls are not monitored, and the policy includes accessibility safeguards.	Best direct state-DOC model: retain the security rule, add an attorney-requested exception and staff-facilitated connection.
Ohio Policy 76-VIS-02 (official 50-state compilation)	The Maine Legislature's official research compilation reproduces an Ohio process for court-scheduled pretrial conference calls involving an incarcerated plaintiff, counsel, defendants, and courts. The managing officer coordinates private telephone access; observation is visual rather than audio.	A correctional facility can coordinate true multiparty litigation events without listening to substance.
Maine DOC Policy 21.3	Ordinary three-way and conference calls are barred, while privileged-call categories include attorneys, paralegals, private investigators, court clerks, and legal advocacy organizations; verified calls are marked private and audited.	Define "legal team" broadly and verify once. Maine is a team-access model, not a general remote multiparty guarantee.
New York City DOC attorney video conferences	The city jail system publicly schedules Microsoft Teams conferences for attorneys and also supports social workers, mitigation work, examinations, depositions, co-defendant interviews, and specified justice-system bodies. Its form permits adding a participant.	A public form can route multi-professional events with minimal staff judgment. This is a city-jail example, not state DOC law.
Florida Admin. Code r. 33-602.205	The rule bars three-way or merged calls as a general matter but permits people physically present with the called party to speak and creates narrower review/reinstatement mechanisms; attorney and court calls receive protections from certain suspensions.	Even a strict rule can draw precise lines and provide review instead of using an unqualified oral ban.
Federal BOP, 28 C.F.R. § 540.102	Federal facilities must establish procedures for unmonitored attorney calls when written correspondence, visits, or ordinary monitored calls are inadequate.	Confidential legal calls can be exception-based and scheduled without promising unlimited service.
Federal BOP FOIA / public policies	BOP publishes many program statements and marks statutory redactions rather than treating all operational material alike.	Use a public policy plus targeted redactions or a confidential security appendix.

Additional examples from the official 50-state compilation

The Maine Legislature's Office of Policy and Legal Analysis compilation also reports confidential legal-call procedures in jurisdictions such as Colorado and North Dakota. Colorado verifies attorneys and authorized representatives and facilitates confidential contact. North Dakota verifies legal calls and excludes them from audio monitoring or recording. Because policies change and the compilation dates to 2022, these entries should be confirmed with the issuing department before litigation. Their value here is practical: verification, private audio, and legal-team categories are ordinary correctional tools.

11. The lowest-work policy Delaware DOC can use

ONE PUBLIC PAGE + ONE INTERNAL CHECKLIST

DOC does not need a complex committee, a new entitlement, or unrestricted conference calling. The lowest-work defensible design uses a standing rule and makes escalation the exception.

Element	Lean design	Why it saves work
Public rule	One page defining legal conference calls, permitted roles, request data, decision time, confidentiality, denial grounds, and review.	Fewer repeated disputes and staff interpretations.
Request	Lawyer sends one email or form: client name/ID, matter type, date windows, participant names/roles, and certifications. No legal merits.	Enough information to act; no unnecessary record or privilege risk.
Verification	Verify the lawyer once through a bar directory, court appointment, agency roster, or letterhead; cache the result for 12 months. Lawyer certifies other roles.	Avoids rechecking known counsel and shifts professional-role accuracy to counsel.
Approver	Case manager or designated legal-call coordinator approves routine requests. Shift commander handles urgent requests. Deputy warden reviews only denials.	Keeps leadership out of ordinary scheduling.
Default rule	Approve if identity and permitted role are complete, unless a listed denial ground is documented. Decide within two business days.	Creates predictable, fast triage.
Connection	DOC or approved vendor starts the call/VTC; no call forwarding by the incarcerated person. Private audio; visual observation allowed; verify identities at start.	Controls security risk without staff listening to legal substance.

Element	Lean design	Why it saves work
Denial	Four grounds only: identity not verified; conflict with court/protective/no-contact order; specific current security risk; or no resource slot after reasonable attempts.	Objective choices reduce writing and inconsistency.
Alternative	If requested format cannot be used, offer the earliest workable private phone, VTC, visit, court-arranged conference, or approved bridge.	Preserves access and reduces emergency motions.
Record	Log date, participants, connection type, decision, and reason code—never legal substance.	Supports audit and litigation response with minimal privacy risk.
Security appendix	Keep access codes, vendor vulnerabilities, staff-post details, and exploit-sensitive instructions in a separate document if § 4322(d) applies.	Public clarity without exposing operations.

Fast decision tree

1. Is the request from verified counsel, a court, or an approved legal-service organization? If no, request verification; if yes, continue.
2. Does each additional participant have a certified legal-service, court-event, common-interest, guardianship, interpretation, or disability-access role? If no, exclude only that participant or request clarification; if yes, continue.
3. Is there a specific court-order conflict, identity problem, or current security concern that cannot be controlled by DOC initiation, identity check, visual observation, or a different approved platform? If no, approve. If yes, document the reason and offer an alternative.
4. Is the need urgent because of a hearing, filing, plea, deposition, limitation period, or safety issue? If yes, use same-day command review; otherwise schedule within the published window.

12. Model public policy—short form

Drafting note

This model is intentionally short. Delaware counsel should confirm statutory authority, APA classification, collective-bargaining implications, vendor capabilities, records retention, cybersecurity, accessibility, and the current text of § 4322 before adoption.

1. Purpose. To permit secure and confidential legal communication while preventing unauthorized call forwarding, harassment, fraud, and circumvention of ordinary telephone controls.

2. General rule. Three-way, merged, forwarded, or conference calls are prohibited on ordinary incarcerated-person telephone accounts unless this policy or a court order authorizes the call. This rule does not bar a DOC-facilitated legal conference call.

3. Legal conference call. A legal conference call is a telephone or video conference arranged for legal services, a court-authorized event, effective disability or language communication, or a certified common-interest matter. Participants may include one or more attorneys and reasonably necessary paralegals, investigators, interpreters, relay operators, experts, mitigation or social-work professionals, guardians, co-clients, co-parties, or their counsel. Inclusion does not determine privilege; counsel remains responsible for ethics, conflicts, consent, and confidentiality.

4. Request. Verified counsel, a court, or an approved legal-service organization shall submit the client's name and DOC number, the matter or case number if available, two scheduling windows, each participant's name and role, and a certification that the conference is for an authorized legal purpose and complies with applicable court orders and professional rules. The request must not disclose legal advice or case strategy.

5. Verification and decision. DOC shall reuse current verification of counsel and may rely on counsel's certification of supervised or retained participants unless specific facts require confirmation. A designated coordinator shall approve a complete routine request within two business days. A shift commander shall review a documented urgent request.

6. Security and confidentiality. DOC or its approved provider shall initiate or control the connection and verify identities at the start. Staff may visually observe for safety but shall not listen to or record legal substance, except as lawfully authorized after notice. DOC may use reasonable location, scheduling, device, and identity controls.

7. Denial and alternative. DOC may deny or modify a request only because identity cannot be verified, the call would conflict with a court/protective/no-contact order or professional-contact restriction, a specific current safety or security risk cannot reasonably be controlled, or no requested resource is available after reasonable scheduling efforts. DOC shall give a short written reason code and the earliest workable confidential alternative. A deputy warden or designee shall review a denial promptly.

8. Accessibility. DOC shall provide effective communication and reasonable modifications required by law, including qualified interpreters, relay services, or other appropriate auxiliary aids.

9. Records. DOC shall retain only administrative metadata needed to schedule, verify, audit, and respond to grievances. Staff shall not request or record legal substance.

10. Publication and security appendix. DOC shall publish this policy, the request method, decision time, and review route. Exploit-sensitive technical or staffing instructions may be placed in a separate confidential appendix when authorized by 11 Del. C. § 4322(d).

13. One-page request and response form

The following fields can be an email template, web form, paper form, or grievance attachment. Requiring more information usually adds work without improving security.

Request field	Entry
Client	Name; DOC number; facility/housing location if known
Requester	Lawyer/court/legal organization; contact information; bar or agency identifier
Matter	Case number or short matter type; do not state strategy
Timing	Two preferred date/time windows; deadline/hearing date if urgent
Participants	Name, organization, and role for each person
Certification	“I certify that this is for an authorized legal purpose; each listed participant is reasonably necessary or authorized; the call complies with known court orders and professional-contact rules; and I will protect confidentiality.”
Requested method	DOC-facilitated phone, approved bridge, VTC, court connection, or confidential alternative
DOC response	Approved/date; clarification needed; modified/alternative; denied with reason code; reviewer/contact

Reason codes

- V1—requester or participant identity not yet verified
- O1—court, protective, no-contact, or represented-person restriction
- S1—specific current safety/security risk not controlled by standard safeguards
- R1—requested resource unavailable; alternative date or method offered
- C1—clarification needed about a participant’s legal role

A reason code plus one sentence and an alternative is usually enough. Staff should not write case strategy, speculate about privilege, or demand a joint-defense agreement unless counsel’s certification leaves a real legal-role question.

14. How to evaluate or challenge an existing restriction

BUILD A CLEAN RECORD

1. Have counsel make the request in writing. Identify every participant and role; explain necessity without disclosing substance; propose two or more secure methods and times.

2. Ask whether the denial is based on a statute, published regulation, DOC policy, facility procedure, vendor limitation, oral instruction, or individual decision. Request the policy number, version, issuing authority, effective date, and public portion.
3. If DOC claims confidentiality, ask whether the Commissioner made the § 4322(d) safety/security judgment and request the segregable public standard, adoption order, request form, denial criteria, and review path.
4. Ask for a written decision stating the specific risk, the participant affected, the earliest confidential alternative, and the reviewer. Do not demand exploit-sensitive technical information.
5. Use the facility grievance and appeal process promptly. The Prison Litigation Reform Act generally requires exhaustion of available administrative remedies before a federal conditions-of-confinement action.
6. If disability access is involved, separately request an ADA modification or auxiliary aid and identify why the communication method must be effective, timely, private, and independent.
7. If a case deadline, plea, deposition, hearing, settlement conference, or preparation need is affected, ask counsel to seek a focused court order. Courts can specify participants, confidentiality, timing, and connection method.
8. For policy access, consider a targeted FOIA request and the § 4322(j)/§ 10005 process. For regulation change, consider an APA petition under § 10114. Observe short review periods with counsel.
9. Document concrete harm: missed deadline, inability to interpret, failed preparation, loss of claim, delayed plea decision, inability to review evidence, or increased cost. Actual injury matters for many access-to-courts claims.

Suggested concise request language

Sample

Counsel requests a DOC-facilitated confidential legal conference for [client/name and DOC number] on [two time windows]. Participants are [names and roles]. Each is reasonably necessary to provide or transmit legal services, to provide effective communication, or to participate in an authorized court/common-interest matter. Counsel certifies compliance with known court orders, conflicts rules, and Delaware Rule 4.2. DOC may verify identities, initiate the connection, and visually observe for safety, but the audio should not be monitored or recorded. If the requested method cannot be used, please provide within two business days the specific written reason, the governing public policy or policy number, and the earliest workable confidential alternative.

15. Possible remedies, limits, and defenses

Potential routes include an internal grievance, command review, ADA accommodation request, FOIA petition, APA petition for rulemaking, declaratory relief under § 10141, a

motion in the pending case, or a federal action under 42 U.S.C. § 1983. The correct route depends on the requested relief and the source of the right.

Issue	Potential relief	Common limitation
Pending criminal or civil case	Court order for a confidential call/VTC, specified participants, schedule, or access to evidence/counsel.	The judge controls the case; conflicts, security evidence, and alternatives matter.
Unlawful regulation	APA petition or declaratory review; injunction or invalidation if standards are met.	Strict timing, standing, presumption of validity, § 4322 confidentiality, and DOC's limited APA status.
Public-record denial	Chief Deputy AG review and/or Superior Court relief under FOIA as authorized.	Requester status, exemptions, 60-day deadlines, and security-sensitive records.
Constitutional access violation	Prospective injunction/declaration; possibly damages under § 1983.	Turner deference, actual injury, causation, qualified immunity, Eleventh Amendment, exhaustion.
Disability communication	Reasonable modification, auxiliary aid, injunction, and other ADA remedies.	Effective alternatives, fundamental alteration/undue burden, causation, procedural requirements.
Employee or lawyer misconduct	Internal investigation/discipline or professional grievance where supported.	Discipline is not a substitute for obtaining immediate access; good-faith factual basis is essential.

Federal prison-condition litigation also implicates 42 U.S.C. § 1997e(a), which generally requires exhaustion of available remedies, and 18 U.S.C. § 3626, which limits prospective relief to what is narrowly drawn, necessary, and least intrusive. Qualified immunity can protect individual officials from damages when the specific federal right was not clearly established, even when prospective relief may remain available. These defenses make a focused, documented request and narrow remedy especially important.

16. Conclusions

- The defensible claim is not "three-way calls can never be limited." It is that DOC must administer security rules lawfully and reasonably and must not use an ordinary-call ban to defeat necessary, confidential legal access without a prompt workable alternative.
- Delaware privilege can include multiple lawyers and necessary legal-service or transmission participants, plus qualifying common-interest communications. It does not protect every party, friend, or conference.
- A lawyer cannot automatically call every represented party. Rule 4.2, conflicts, court orders, protective orders, victim/witness rules, and safety restrictions may require consent or separate arrangements.
- A secret rule is not automatically illegal. Current § 4322(d) protects genuinely security-sensitive policy material based on the Commissioner's judgment. A line employee's unsupported claim does not establish that basis, and public standards can be separated from operational details.

- A generally applied substantive legal-call restriction likely warrants careful APA analysis. DOC is subject to the APA's rulemaking subchapters, but § 4322 and the old Jackson decision create a Delaware-specific confidentiality issue that must be analyzed under current text.
- The lowest-work solution is a short public exception, a cached verification list, a staff-facilitated connection, objective denial codes, a prompt alternative, and a security appendix. Utah, Ohio, Maine, NYC, Florida, and federal examples show pieces of this design are operationally feasible.

Source guide

Links below are primary or official sources where available. Cases hosted by Justia are used when a convenient official HTML copy was not located. Authorities should be checked for later amendment, history, and application to the exact facts.

- Delaware Constitution, Article I — Counsel, due process, open courts, and pretrial access on reasonable conditions.
- 11 Del. C. § 4322 — Current DOC policy confidentiality and FOIA-relief provisions.
- 11 Del. C. §§ 6516–6517 — Commissioner's authority and operational responsibilities.
- 11 Del. C. §§ 6535, 6537 — Discipline rules; visits and correspondence under reasonable conditions.
- 29 Del. C. Chapter 46 — Office of Defense Services and legal-team personnel.
- Delaware APA, Subchapters I–II — Definitions and rulemaking requirements.
- 29 Del. C. § 10141 — Declaratory review of regulations.
- 29 Del. C. § 10161 — Agencies covered; limited application to unlisted agencies such as DOC.
- Delaware FOIA — Public-record policy, requests, exemptions, and enforcement.
- Delaware Rule of Evidence 502 — Privilege, representatives, transmission, and common interest.
- Delaware Lawyers' Rules of Professional Conduct — Diligence, communication, confidentiality, no-contact rule, truthfulness, and misconduct.
- DOC Employee Code of Conduct — Accuracy, impartiality, rights, reporting, and professional conduct.
- Fatir v. Phelps — DOC's limited APA status and limits of judicial review.
- Jackson v. Danberg — Former blanket § 4322(d) and APA disclosure; must be read against current statute.
- Turner v. Safley — Reasonable relationship test for prison restrictions.
- Procunier v. Martinez — Unjustifiable interference with lawyer use of legal assistants.
- Geders v. United States — Total overnight trial-consultation ban invalid.
- Perry v. Leeke — Narrow brief-recess consultation restriction permitted.
- Bounds v. Smith — Meaningful court access.
- Lewis v. Casey — Actual injury for denial-of-access claims.
- Jones v. Brown — Third Circuit legal-mail confidentiality and Turner analysis.
- United States v. Melvin — Confidentiality in a joint-defense setting.
- United States v. Levy — Government acquisition of confidential defense strategy.

- Weatherford v. Bursey — No automatic Sixth Amendment violation from presence alone.
- Rothgery v. Gillespie County — Attachment of the Sixth Amendment right to counsel.
- Lanza v. New York — Ordinary jail monitoring and specially confidential relationships.
- Jarmon v. Chapman — No privacy expectation in warned, recorded ordinary prison calls.
- Aswegan v. Henry — No general right to a preferred legal-access method.
- Tucker v. Randall — Serious unreasonable lawyer-contact restrictions may state a claim.
- United States v. Gonzalez-Lopez — Nonabsolute retained-counsel-of-choice right.
- Wheat v. United States — Conflicts and joint representation can justify limits.
- Grayned v. City of Rockford — Fair notice and explicit enforcement standards.
- 42 U.S.C. § 12132 — ADA Title II nondiscrimination.
- 28 C.F.R. § 35.160 — Effective communication and auxiliary aids.
- Pennsylvania DOC v. Yeskey — ADA Title II applies to state prisons.
- Utah DOC Policy FD05 — Attorney-requested, DOC-facilitated legal three-way call exception.
- Official Maine Legislature 50-state policy compilation — Ohio multiparty pretrial conference procedure and additional state examples.
- Maine DOC Policy 21.3 — Verified legal-team calls; ordinary conference-call ban.
- NYC DOC attorney video conference page — Public scheduling for multi-professional legal video events.
- Florida Admin. Code r. 33-602.205 — General three-way ban with precise exceptions and review.
- 28 C.F.R. § 540.102 — Federal procedures for unmonitored attorney calls.

Research cautions

- No factual finding is made that Delaware DOC currently has, lacks, misstates, or unlawfully applies a particular three-way-call policy.
- No controlling decision located for this report holds that Delaware DOC must permit every requested multiparty call or that every current DOC policy must be public.
- Facility classification, custody status, pretrial versus sentenced status, pending charges, representation, conflicts, protective orders, disability, participant roles, notice of monitoring, and available alternatives can change the analysis.
- Policies and statutes change. Obtain the operative DOC policy, current vendor rules, the current Delaware Register record, and case-specific advice before filing or accusing an employee of misconduct.

END OF REPORT