



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

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**This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rule of Professional Conduct 1.6. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.**

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**Opinion No. 93-4  
September 17, 1993**

Topic: Confidences and secrets of client: disclosure of clients' billing records.

Digest: The disclosure of amounts owed to a law firm by its clients, to the law firm's bank, may be the disclosure of confidences or secrets of the client, such that the law firm must obtain client consent prior to disclosure.

Ref.: Illinois Rules of Professional Conduct, Rule 1.6  
McDonald's Corp. v. Levine, 108 Ill.App.3d 732, 439 N.E.2d 475 (1982).  
U.S. v. DeFazio, 899 F.2d 626 (7th Circ. 1990)  
Matter of Witnesses Before the Special March, 1980 Grand Jury, 729 F.2d 489 (7<sup>th</sup> Circ. 1984)  
King v. King, 52 Ill.App.3d 749, 367 N.E.2d 1358, 1360 (4th Dist. 1977).

## **FACTS**

A law firm's bank, as part of its line of credit and other financial arrangements with the firm, requests that the firm furnish it with a list of its accounts receivable, identifying the name of the person or company owing on each account, the account balance, and the age of the account. The accounts receivable are owed by clients of the firm.

## **QUESTION**

Are a client's billing records his or her confidences or secrets which constitute information protected by the attorney/client privilege, and thus cannot be disclosed to the law firm's bank without consent by the client?

## **OPINION**

The attorney/client privilege is a rule of evidence, not a substantive right. McDonald's Corp. v. Levine, 108 Ill.App.3d 732, 439 N.E.2d 475, 484 (1982). Thus, not all communications between the attorney and client are privileged, but only those which constitute legal advice, or tend directly or indirectly to reveal the substance of client confidence. U.S. v. DeFazio, 899 F.2d 626, 635 (7th Cir. 1990).

Generally, information regarding a client's fees is not protected by the attorney/client privilege because payment of fees is not a confidential communication between the attorney and client, but an economic transaction, incidental to the relationship. Matter of Witnesses Before the Special March 1980 Grand Jury, 729 F.2d 489 (7<sup>th</sup> Cir. 1984).

However, courts have recognized that in exceptional circumstances, fee information may nevertheless be privileged. Id. at 491. Regardless, such non-privileged information would still be considered a secret. Thus, the disclosure of the identity of the payer of attorney's fees may reveal the substance of a confidential communication.

Rule 1.6(a) of the Illinois Rules of Professional Conduct states that an attorney may not reveal a confidence or secret of the client unless the client consents after disclosure. For the law firm in the fact situation above, we suggest that it obtain the consent of the clients involved prior to disclosing the fee information to the bank. We believe that in most instances, the disclosure of these billing records will not reveal any confidences or secrets of the clients. However, there may be some clients who will not consent to such disclosure. Since it is the client who determines what information remains a confidence or secret, see King v. King, 52 Ill.App.3d 749, 367 N.E.2d 1358, 1360 (4th Dist. 1977), the firm will be protected from a breach of confidentiality by requesting consent beforehand.

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