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  
U.S. v. DeFazio, 899 F.2d 626 (7th Cir. 1990)  
Matter of Witnesses Before the Special March, 1980 Grand Jury, 729 F.2d 489 (7th Cir. 1984)  

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 Circ. 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 (7th Circ. 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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