

State Bar of South Dakota

Ethics Opinion 99-2

April 16, 1999

- **Rules: 1.6, 1.8**
- **Subject: Confidentiality; Outside Auditors of Detailed Legal Bills**
- **Summary: Counsel needs client's informed consent to submit detailed legal bills to outside auditing companies.**

FACTS

Your firm is hired by various insurance companies to defend their insureds. Several of those companies have begun using outside auditing firms to review your bills, which are submitted directly to the outside auditing firms. Because the billing guidelines adopted by these companies require a great deal of detail in each time entry, you are often required at a minimum to disclose the subject matter of all communication, written or oral, with the client.

You ask whether disclosure of this information to the auditing firm violates your duty of confidentiality with respect to client communications.

DISCUSSION

This committee is of the opinion that such disclosure implicates Rules 1.6(a): Client Confidentiality:

A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized to carry out the representation

and 1.8(f)(3):

(f) [A] lawyer shall not accept compensation for representing a client from one other than the client unless:

...

(3) information relating to representation of a client is protected as required by Rule 1.6.

With respect to two threshold issues, the committee is of the opinion that:

- (a) the insured, not the insurer, is your client; and
- (b) such disclosures are not ordinarily "impliedly authorized to carry out the representation."

The committee is of the opinion that the two rules taken together make it clear that the client must consent before you can disclose that information and that disclosure without client consent would violate the rules. It may be that your client has already "consented," under the insurance policy. If that is the case, you should review and renew that consent with your client. If the issue is not

addressed in the policy, you should obtain your client's consent. The committee cannot opine on the form that consent should take.

Committee members Lonnie Braun and Susan Brunick Simons did not participate in this opinion.

John F. Hagemann,
Acting Chair