

## OPINION 506

September 1994

### Question Presented

Does an attorney violate [Rule 1.05](#), Confidentiality of Information, of the Texas Disciplinary Rules of Professional Conduct by providing the documentary evidence requested by the Texas Workers' Compensation Commission regarding legal services performed on behalf of his clients?

### Statement of Facts

To claim a fee before the Texas Workers' Compensation Commission an attorney must submit written evidence to the Commission of his time and expenses. The commission is authorized to request additional documentary evidence from the attorney in order to fairly evaluate the fee claim. (Texas Workers' Compensation Rule 152.3).

Pursuant to this provision, the Commission requests an attorney, when he submits application for attorney's fees, to provide additional documentary evidence in the form of a general description of the nature of each conference with his clients. Such a description might read, for example, "Discussed client's medical treatment" or "Discussed client's weekly income benefits."

### Discussion

The information requested by the commission constitutes "confidential information" that, under [Rule 1.05](#), generally may not be disclosed by an attorney to any third person unless one of the exceptions set forth in Rule 1.05 applies.

In view of the fact that the requested information involves a general description of the nature of conferences between the attorney and client and not a report of the substance of communications between the client and the attorney, the requested information will normally constitute confidential information that is not "privileged information" as that term is defined in Rule 1.05(a):

"Privileged information" refers to the information of a client protected by the lawyer-client privilege of [Rule 5.03](#) of the Texas Rules of Evidence or of Rule 5.03 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 5.01 of the Federal Rules of Evidence for United States Courts and Magistrates.

Rule 5.01 of the Federal Rules of Evidence provides for privileges under the principles of the common law, which generally recognizes a privilege with respect to communications between client and lawyer. Rule 5.03(b) of the Texas Rules of Evidence and Rule 5.03(b) of the Texas Rules of Criminal Evidence provide for a privilege with respect to "confidential communications" between client and lawyer. Hence a disclosure that does not involve the disclosure of the substance of a communication does not involve the lawyer-client privilege and is subject to the provisions of Rule 1.05 relating to "unprivileged client information" as that term is defined in Rule 1.05(a).

Unprivileged client information may be disclosed by a lawyer "[w]hen the lawyer has reason to believe it is necessary to do so in order to ... prove the services rendered to a client, or the reasonable value thereof, or both, in an action against another person or organization responsible for the payment of the fee for services rendered to the client." (Rule 1.05(d)(2)(iv)). In these circumstances, the Committee believes that the term "action" as used in this provision should be interpreted to include the filing with

the Workers' Compensation Commission of a claim for the payment of the attorney's legal fees. In addition, in the absence of special circumstances, such disclosure should normally be viewed as impliedly authorized in order to permit the attorney to carry out the representation. Hence disclosure would also normally be permitted by Rule 1.05(d)(1), which authorizes an attorney to disclose unprivileged information "[w]hen impliedly authorized to do so in order to carry out the representation."

## **Conclusion**

Under [Rule 1.05](#) of the Texas Disciplinary Rules of Professional Conduct, an attorney may disclose unprivileged information on the general nature of attorney/client conferences when such disclosure is required by the Texas Workers' Compensation Commission in order for the attorney to obtain payment of the attorney's fee for services to the client.