

## Opinion Number 559

July 2005

### QUESTION PRESENTED

May a lawyer who is appointed to represent a defendant in a criminal proceeding furnish to a court, in connection with obtaining payment for the lawyer's services, a detailed description of the lawyer's services, including the subject matter of records and documents obtained and reviewed, the subjects of legal research carried out, and the identity of persons contacted and interviewed?

### STATEMENT OF FACTS

A lawyer is appointed to represent an indigent defendant in a criminal case. The lawyer is paid a fee on an hourly basis, subject to certain conditions, including limitations on the total amount of the fee and the number of hours the lawyer expends for various services. As a condition of payment, the lawyer is required to submit to the court a statement itemizing services and the time spent in representing the defendant. The lawyer's statement must include a detailed description of the work performed by the lawyer, including the subject matter of records and documents examined by the lawyer, the subjects of legal research conducted by the lawyer, and the identity of persons contacted or interviewed.

### DISCUSSION

The question presented raises issues concerning disclosure of confidential information. [Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct](#) provides in pertinent part: "(b) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e), and (f), a lawyer shall not knowingly: (1) Reveal confidential information of a client or a former client to: (i) a person that the client has instructed is not to receive the information; or (ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm. (2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultations. (3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known. (4) Use privileged information of a client for the advantage of the lawyer or of a third person, unless the client consents after consultation." The exceptions provided in [Rule 1.05\(c\), \(d\), \(e\), and \(f\)](#) are not relevant to the question presented. Professional Ethics Committee Opinions 532 (September 2000) and 552 (August 2004) dealt with fact situations somewhat similar to the facts involved in this opinion in that these opinions involved the submission of detailed billing information to a third party auditor for an insurance company that was responsible for payment of a lawyer's fee for representing an insured. Citing Rule 1.08(e), these opinions state that a lawyer may not accept compensation from a person other than the client unless there is no interference with the lawyer's independent judgment or with the client-lawyer relationship and confidential information relating to the relationship is protected as required by [Rule 1.05](#). \*2 Absent the consent of the client or other circumstance permitting disclosure under [Rule 1.05](#), the dissemination by any means of confidential information, in this instance the lawyer's statement containing such detailed information, is prohibited. The circumstances involved in this opinion do not provide any basis other than informed client consent for the disclosure of confidential client information. Although a lawyer for an indigent defendant may not be prohibited from providing a report or statement containing a general description of services and hours, such as "Legal Research - X hours"

or "Interviewing potential witness - Y hours," a lawyer may not disclose confidential information obtained in connection with his representation of an indigent defendant unless the client consents. Under the facts presented, the lawyer must secure the client's informed consent to divulge confidential information required for payment of fees and advise the defendant that the delivery of confidential information required for payment may adversely affect the defendant. To obtain informed consent, the lawyer must advise the client of the disadvantages to the client's legal position which may arise should the confidential information lose its protected status through the lawyer's disclosure of the information in the statement. A consent given by the defendant at the time the lawyer is appointed or otherwise in advance of the preparation of the statement would not normally constitute informed consent since the facts detailed in the statement and the possible consequences of disclosure of that information could not possibly be known and discussed with the client at the time of such premature consent. Although [Rule 1.05\(c\)\(4\)](#) authorizes a lawyer to reveal confidential information when the lawyer has reason to believe such action is necessary in order to comply with a court order, the Committee believes that this provision does not apply to the facts presented because the requirement to provide confidential information is simply a condition to the payment for the lawyer's services and is not an unconditional court order which might be the subject of challenge in an appellate court.

#### CONCLUSION

A lawyer, who is appointed to represent a defendant in a criminal proceeding, is not permitted under the Texas Disciplinary Rules of Professional Conduct to furnish to a court in connection with obtaining payment for the lawyer's services a statement containing a detailed description of the lawyer's services, including the subject matter of records and documents obtained and reviewed, the subjects of legal research, and the identity of persons contacted and interviewed, unless the defendant consents to the disclosure of such confidential information after consultation about the consequences of the disclosure.