
**E-84-8 Disclosures of information to
investigative body**

Question

When summonsed or subpoenaed by the Internal Revenue Service, a grand jury or another investigative body, is it proper for a lawyer to reveal the name of a client, the amount of money paid to the lawyer by that client, the purpose of the payment, and other financial transaction information relevant to the client?

Opinion

Under the Wisconsin Code of Professional Responsibility, codified in Chapter 20 of the Wisconsin Supreme Court Rules, a lawyer has an ethical obligation to preserve the confidences and secrets of a client SCR 20.21. SCR 20.01(2) defines “confidence” as information protected by the attorney-client privilege under applicable law. SCR 20.01(8) defines “secret” as “information, other than a confidence gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or . . . detrimental to the client.” It can be seen that the ethical obligation of a lawyer to guard the confidences and secrets of a client is broader than the evidentiary attorney-client privilege. *See* SCR 20.21(4).

In light of the definitions of “confidence” and “secret” in SCR 20.21, the Committee on Professional Ethics is not in a position to determine whether a lawyer may properly reveal the name of a client and financial transaction information relevant to the client in the instances presented above. Whether such information is a confidence of the client and thus falls within the scope of the attorney-client privilege is a question of law to be determined in judicial proceedings. *See* ABA Informal Op. 293 (April 4, 1961). Whether the name of a client and financial transaction information relevant to the client is a secret of the client is a question which necessarily requires subjective determination applicable to a specific fact situation. Accordingly, the question presented is one to be resolved by the individual lawyer in light of the applicable attorney-client privilege statute, relevant case law and the particular facts and circumstances of the representation involved.

If a lawyer determines that the summonsed or subpoenaed information is a confidence or secret of the client, it is the general duty of the lawyer to assert on behalf of his or her client every objection or claim of privilege available if failure to do so might be prejudicial to the client. D.C. Bar Op. 14, 3 Dist. Law 50 (December/January 1978); *See also* Bar Assoc. of San Francisco Op. 1974-3 (July 25, 1974).

If a lawyer is summonsed or subpoenaed for information relative to a client which the lawyer believes is confidential or secret, the lawyer should not voluntarily reveal the information and should continue to assert objections to the questions in subsequent court proceedings. State Bar of Texas Informal Op. 101, 42 Tex. B.J. 765 (1979). Of course, if the lawyer does not successfully defend the action, he or she must comply with a court order resolving the issue. SCR 20.22(2)(b).