

You advise that you represent a client who was injured in an accident, at which time he was employed and was the beneficiary of a health and disability policy. In order to receive benefits of this policy, your client agreed to reimburse the insurance company. The agreement to reimburse, according to the documents that your client signed, constitutes a first lien upon all sums of money recovered from any third party to the extent that such recovery is attributable to expenses from which your client received benefits. You have now settled this case and your client forbids you to disclose to the insurance company any information regarding either the settlement or that his settlement has taken place.

You wish to know whether or not you may disclose this information without violating any client confidences or secrets.

Disciplinary Rule 4-101(C)(3) [ DR:4-101] states that a lawyer may reveal information which clearly establishes that his client has, in the course of the representation, perpetrated upon a third party a fraud related to the subject matter of the representation. The Committee believes that because your client has not notified the insurance company that settlement has been received, he has perpetrated a fraud upon that company. Pursuant to DR:4-101(C)(3), the Committee believes that you may reveal this information to the insurance company.

Committee Opinion  
May 17, 1988