

MINUTES

COMMITTEE: Ethics Committee

DATE: May 6, 1999

6. CHAPTER 6: WHETHER LAWYER MAY ACCEPT INSURER INSTRUCTIONS TO SEND CONFIDENTIAL INFORMATION TO THIRD PARTY AUDITOR

The Committee considered whether it is proper for lawyers defending a claim for damages pursuant to a policy of insurance, in the absence of the informed consent of the insured, to accept insurer instructions to submit their accounts to a third party auditor engaged by the insurer to review the reasonableness of the accounts. Lawyers in these circumstances act for both the insured and the insurer and, for the purposes of this opinion, the Committee assumed that the accounts that would be forwarded to the auditor would contain confidential information relevant to the matters on which the lawyers are acting.

It was the view of the Committee that a lawyer who receives such instructions in these circumstances may forward accounts to the auditor without the informed consent of the insured provided:

- (a) it would be proper for the lawyer to provide the information to the insurer itself, and
- (b) the insurer confirms to the lawyer in writing that:
 - i) the auditor's services are required in order to facilitate the provision of legal services in the litigation,
 - ii) the arrangements in place with the auditor protect the confidentiality of the information the lawyer provides, and
 - iii) the insurer will notify the lawyer if condition i or ii above ceases to be true.

JO:ags
99-05