

**CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, CCB
266-4511**

September 21, 1998

OPINION #98-009

TO: Bill Knobeloch

FROM: Eunice Gibson, City Attorney

SUBJECT: Disclosure of Information Before the Transit and Parking Commission

You have asked (a) whether the identity of client must be disclosed if an attorney is representing a client before the Commission in a public setting such as a public hearing or a Commission meeting and (b) whether the relationship of a non-attorney testifying or giving information to another must be provided in the same setting.

(a) It is my view that an attorney may and should identify the fact of representation of a client under the circumstances described and may and should give the identity of the represented person without violating the attorney-client privilege.

Supreme Court Rule 20:3.9, entitled Advocate in Nonadjudicative Proceedings, reads in pertinent part:

A lawyer representing a client before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity. . . .

The Comment to the Rule speaks in terms of representation before bodies such as municipal councils and administrative agencies acting in a rule-making or policy-making capacity. The Commission is within those terms. The Rule speaks to disclosure of the fact of representation, not necessarily to the identity of the client. I am seeking to clarify the matter of disclosure of the identity of the client under this Rule with the State Bar.

In the meantime, I will rely on an Opinion of the Attorney General¹ which addresses the point.

¹ 68 OAG 411

In that Opinion, the Attorney General cites authority for the proposition that disclosure of the identity of the client, without more, does not constitute a violation of the attorney-client privilege. He writes:

McCormick on Evidence, *The Client's Privilege*, at pp. 185-187 points out:

The weight of authority denies the [attorney-client] privilege for the fact of consultation or employment, including the component facts of the identity of the client, such identifying facts about him as his address and occupation, the identity of the lawyer, and the scope or object of the employment.

There are, of course, exceptions to this general rule when because of potential embarrassment or risk of incrimination or the like the identity of the client must be protected. I do not see such circumstances occurring in the setting that you describe.

This general rule is consistent with the intent and purpose of the Supreme Court Rule cited to above. The Rule protects the integrity of the process by ensuring that the body has all relevant facts and interests before it when making its decisions or recommendations without unnecessary invasion into the confidences between the client and the attorney.

On a practical level, the Commission likely cannot actually compel the disclosure of the identity of the client. It can, however, advise the reluctant attorney that without disclosure, the attorney's words and arguments may be given less weight if there is a question of potential interests which would sway the thinking of the members in their deliberations.

(b) In settings where non-lawyers are testifying or providing information on behalf of others, there are no similar privilege concerns. The Chair or any member of the Commission may surely question the speaker about relevant relationships which may affect the weight of the testimony or information. If such questions are to be asked, they should be asked before testimony or discussion occurs. It then would be up to the Committee to determine whether to permit the reluctant speaker to continue or to advise him or her that without disclosure, the testimony or information will be given lesser or no weight. In my view, the later course is preferable as it does not completely preclude speech which may contain legitimate and valid points regardless of the relationship.

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If you have other questions or seek further clarification of the information here provided, please feel free to contact me.

Eunice Gibson
City Attorney

EG:LOB:ph

Index: Attorneys and others appearing in a representative capacity before legislative or administrative bodies in nonadjudicatory proceedings should disclose the fact of their representation and the identity of the person represented and relationships which bear on the issue before the body.

c: Mayor Bauman
Alder. Golden