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October 30, 1992

BY FEDERAL EXPRESS

Ms. Celeste Baker  
Assistant Attorney General Opinion  
Committee  
Office of the Attorney General  
1124 IH-35  
Austin, Texas 78704

Re: OR92-592

Dear Ms. Baker:

We are in receipt of your letter dated October 22, 1992 designated as OR92-592. In your letter, you determined that all of the detailed attorney bills of law firm of Bracewell & Patterson, and Henslee, Ryan & Groce, P.C. must be released in their entirety. In your letter you state that I "have not met your burden of establishing that the requested information is exempt from disclosure."

I am enclosing two former decisions from the Attorney General Opinion Committee indicating that our detailed billings just like those submitted are exempt from disclosure. Our office made the exact type of submission concerning these other requests for our detailed billings. As you can see, we did not detail exactly why each entry contained in each bill was protected. Since the requester is entitled to a copy of the request for an Attorney General opinion, it is impossible to detail exactly why each entry is protected without releasing the client confidence we seek to protect. We are concerned that your ruling in OR92-592 contradicts prior recent rulings from the Opinion Committee.

In the request which is the subject of OR92-592, we did reference specific types of entries that contain confidences. We believe it is the Attorney General's responsibility to review the bills and determine if any of the information that we claimed was protected is not protected. If your office is imposing a new requirement that lawyers identify each client confidence that it seeks to protect then we do not

ADDITIONAL COPIES FILED SEPARATELY

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understand why your office asks attorneys to send representative copies of billings. How could an attorney meet this additional requirement if the attorney is not even required to submit all of the bills it seeks to protect?

In ORD No. 574, on which you rely in part, the Attorney General clearly conducted its own review of documents sought to be protected. The Attorney General found that a large majority of the documents to be protected did not contain client confidences and determined they must be released. The only requirement set forth in ORD No. 589 is "if a governmental body seeks to withhold attorney fee bills under Section 3(a)(7), the governmental body must submit the bills (or representative samples) to this office for review and identify the portions that reveal client confidences or attorney advice."

In conversations with your office, I was instructed to submit representative samples of Pasadena ISD's bills. Although I intended to send the bills with my first request dated July 8, 1992, the documents were inadvertently omitted. The omission of the attached bills were clearly obvious by reading my letter which indicated that the bills were attached as Exhibit D. See page 3 of my letter dated July 8, 1992. It is also quite clear that I recognized my obligation under ORD No. 589 which I referenced on page 4 of my letter. The eight entries in invoice 924032 are those I considered not to be protected. —I forwarded a copy of the highlighted bill summaries on August 28, 1992 after I was notified that I did not enclose copies of the bills.

Nowhere in ORD No. 589 does the Attorney General place an affirmative duty to describe in detail how it is protected. If your office disagrees with any assertions that entries are protected and you believe they are not, you certainly can determine that certain entries must be revealed. However, we do not believe it is within your discretion to order all entries released; even those that clearly contain client confidences, because you believe an attorney did not meet his or her obligation under the Act. This is especially true because neither the Act nor prior decisions from your office put us on notice of this additional obligation. We believe your ruling is a violation of Article 6252-17(a), Section 7(b), which requires the Attorney General to issue a decision consistent with the standards of due process, to determine

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whether requested information is a public record or within one of the stated exceptions. We were not put on notice of the consequences of not complying with this additional obligation you have imposed of which we had no knowledge.

We will concede that we did not specifically indicate which cases were pending litigation for which we were asserting protection under 3(a)(3). I apologize for this oversight. The only invoice that pertains to pending litigation at the time we made the request was invoice number 921662. Additionally, we recognize that in prior rulings, your office has opined that entries by lawyers on billings indicating attorney time spent in preparing pleadings that are filed with a court and that become public records, are not protected. Although we do not necessarily agree with that opinion, we will release entries that fall within this category of information. Additionally, we have highlighted three more entries on invoice number 926512 on November 19, and November 20, for which we are not seeking protection.

We reurge all reasons asserted in our original request for an opinion from your office, and they are incorporated by reference into this request for reconsideration. Additionally, there is a very important public policy reason why our detailed billings should be protected. As you are aware, our law firm provides a detail billing statement to the PISD. Some lawyers send clients a bill stating "for services rendered" and indicating the total amount of the invoice, with no description of the actual services performed. We provide detail billing statements to the PISD because we and the PISD believe the client should be aware of how public funds are expended. These detail billings enable the client to recall what advice has been requested and rendered, who requested advice information, the actual advice rendered, and which attorney rendered the advice. If our detail billings are not protected from disclosure under the Open Records Act, attorneys will be disinclined to continue the practice of providing detail billing, a result that would disserve both public clients and the public.

We respectfully request that you reconsider your opinion contained in OR92-592 and request that you review the bills we submitted to you. We are resubmitting copies of the representative bills we originally sent to you. If there are entries you believe do not contain client confidences, you

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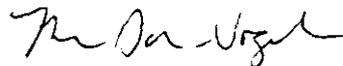
should indicate those entries and return the bills to us. At that time we can determine whether the District wants to accept your assessment or whether the District wants to pursue the issue in litigation.

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file*

Thank you for your consideration.

Very truly yours,

Bracewell & Patterson



Merri Schneider-Vogel

MSV/rk  
Enclosures

cc: Dr. Larry R. Vaughn  
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