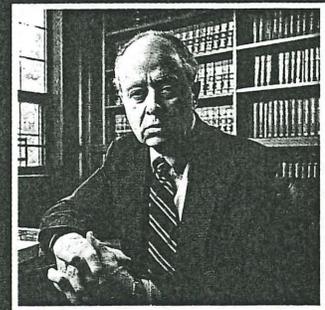


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"Federal law enforcement is using 8300 forms as part of a concerted effort to prevent criminal defendants ... from hiring a good lawyer."

—Daniel Monnat

Lawyer Wins Early Round in IRS Battle

Kansas judge questions ethics of reporting names of some cash-paying clients

In a war between the Internal Revenue Service and the criminal defense bar over a requirement that lawyers report the names of some cash-paying clients, the lawyers finally have a weapon to use.

It is a Jan. 13 opinion by U.S. District Judge Patrick Kelly, the chief judge of the Kansas district. In it he questions whether lawyers should be forced to tell the IRS on its Form 8300 the names of clients who pay more than \$10,000 cash.

Calling the client-attorney relationship "a sacred trust" not to be lifted by the government at a whim, Kelly temporarily suspended IRS action against Wichita lawyer Daniel Monnat. *United States v. Monnat*, No. 93-1326-PFK.

Lawyer Sees Victory

Monnat, 42, president of the Kansas Association of Criminal Defense Lawyers, called Kelly's decision "a huge victory that lawyers in my position can use" against the IRS.

"I think federal law enforcement is using 8300 forms as part of a concerted effort to prevent criminal defendants, especially those in drug cases, from hiring a good lawyer," Monnat said. "It's had a definite chilling effect."

Until *Monnat*, the IRS was winning its cases against lawyers who filed the form but failed to report client names. Many criminal defense lawyers had resisted the IRS mandate, citing client-attorney privilege and the client's Sixth Amendment right to counsel.

Instead of ruling on the case, Kelly referred the attorney-client privilege issue to the Federal Court Committee on Attorney Conduct, a body created by the Kansas federal judges to examine ethical questions that confront judges and lawyers. He gave it 120 days to report back.

"It is clear to this court," Kelly wrote, "that if and when a client consults with an attorney, retaining him for whatever purpose, the canons mandate that the client's very identity must be preserved."

Two federal appeals courts that also considered the issue ruled that attorney-client privilege does not excuse the lawyer from revealing a client's name. *United States v. Laventhal*, 961 F.2d 936 (11th Cir. 1992), and *United States v. Goldberger*, 935 F.2d 501 (2nd Cir. 1991).

Relying on those two cases, federal courts have rejected defense lawyers' pleas for relief from IRS Code 6050I, enacted in 1984.

Kelly wrote that he was "troubled" by those decisions. He said their reasoning flies in the face of the attorney's role. "The attorney is not expected to confer with a client as in a commercial venture," he wrote. "It is a relationship different from any other in our society, save for the confessor or physician. In the court's view, it is a sacred trust and should not be intruded in."

At about the same time Kelly wrote about his doubts, the IRS hit about a dozen lawyers across the country, most of them high-profile, with fines ranging from \$25,000 to \$100,000 for repeated failures to report clients' names on Form 8300.

Unpleasant Mail

IRS officials confirmed that several fines had been mailed, but would not give the names of attorneys who were targeted.

One lawyer who revealed he was asked to pay a fine is Don Samuel of Atlanta. The criminal defense lawyer received the IRS notice the same day Kelly issued his ruling. It said he was being fined \$100,000 and that he would have to pay that amount before appealing it.

The agency is "trying to make us informants against our own clients," Samuel said. "The IRS is punishing us for being good lawyers, for vigorously defending our clients, and for following the ethical guidelines mandated by our state bar."

Samuel was referring to a 1985 ethics opinion by the State Bar of Georgia telling lawyers to withhold the name of a client on the 8300 forms until a federal judge orders it and all appeals are exhausted.

Ten other states and the District of Columbia have issued similar opinions. (They are Alabama, Arizona, Florida, Kentucky, New Mexico, New York, Ohio, Pennsylvania, Washington and Wisconsin.)

Samuel had a similar fight with the IRS in 1992 over his failure to name two clients who paid large sums of cash. The IRS sued and won.

Besides the ethical and constitutional problems posed by the IRS actions, they also raise the issue whether the tax agency is targeting the wrong lawyers, said Gerald Lefcourt, the vice president of the National Association of Criminal Defense Lawyers.

"They are punishing the ethical lawyers, the lawyers who actually report to the IRS that they have received large amounts of cash and are paying taxes on it," Lefcourt said. "The IRS should be going after the unethical lawyers, the lawyers who accept the large amounts of cash, but don't report it."

Randolph Stone, the chair of the ABA Criminal Justice Section and a University of Chicago law professor, said there was "hope that the Department of Justice under Bill Clinton would be much more understanding and modify these policies."

"It has been very disappointing that this has not happened," he said.

—Mark Curriden