

LOS ANGELES COUNTY BAR ASSOCIATION

ETHICS COMMITTEE

FORMAL OPINION NO. 417

(June 15, 1983)

CONFIDENTIAL COMMUNICATION - An attorney may not disclose confidential information, learned through the attorney-client relationship, absent client consent, even where the client has determined to follow a future cause of conduct which will result in receiving monies to which it would appear the client is not entitled.

AUTHORITIES CITED:

California Business and Professions Code Section 6068(d) and (e); California Rules of Professional Conduct, Rule 2-111(C)(1)(b), (c), and (d); LACBA Formal Opinions 264, 267, 353, 386; San Francisco Formal Opinion 1977-2.

Attorney represents Wife in a marital dissolution proceeding. One presumed asset of the community is an oil lease which Husband and Wife executed with Oil Company at a time when they together owned the real property incident to the lease. The marital settlement agreement, which is incorporated in the dissolution order of the court, provides in part that title in the oil lease is to be changed from joint tenancy to tenancy-in-common and that oil royalties are to be divided equally between Husband and Wife.

Attorney contacts Oil Company which requires, to make the title change, either a grant deed or certified copy of the dissolution order. Attorney therefore orders from Title Company copies of a 1970 grant deed and the oil lease. In reviewing the grant deed received from Title Company whereby Husband and Wife sold the real property to Buyers, Attorney realizes, for the first time, that there is no reservation of mineral rights in the property by sellers. When attorney confronts Wife with this information, Wife relates that since at the time of sale Buyers did not specifically request conveyance of oil rights, she and Husband assumed they retained title to the oil lease. Wife tells Attorney that for several years after the sale of the property she and Husband received no oil royalties but during the last few years they have been receiving monthly royalty payments which now aggregate approximately \$5,000.

Attorney again contacts Title Company and determines that the 1970 title report stated that the oil lease was unrecorded. However, a further check now reveals that the oil lease with Husband and Wife had been recorded by Oil Company in 1962. Title Company advises that a new title search and report establishing present ownership of the oil lease will cost about \$400.

Attorney reports to Wife that she and Husband may not be the actual owners of the oil lease. Attorney also

advises Wife of possible civil and criminal liability resulting from acceptance of oil royalty payments. Wife is informed of the cost of a new title report to establish present ownership of the oil lease. Wife refuses to pay for the title report, instructs Attorney not to pursue the matter further, but Wife still wants title in the oil lease changed to tenancy-in-common so she will be assured of receiving half the royalties.

Attorney inquires:

(1) Should Attorney send to Oil Company a copy of the dissolution order necessary to change title in the oil lease, or should Attorney leave the dissolution incomplete in respect thereto and send Wife a letter which absolves Attorney of liability for failure to complete the change of title?

(2) Does attorney have a duty to notify Buyers of the newly-discovered information respecting the title of the oil lease?

(3) Does Attorney have a duty to notify Oil Company of the newly-discovered information respecting the title of the oil lease?

Addressing first inquiry (1), California Business and Professions Code section 6068 subdivision (d) provides in pertinent part that an attorney is under a duty "[t]o

employ, for purposes of maintaining the causes confided to him such means only as are consistent with truth...." Since Attorney and Wife have been placed on notice that Husband and Wife may not be the actual owners of the oil lease, and Wife has instructed Attorney not to ascertain the true owner, Attorney cannot send to Oil Company a copy of the dissolution order which Attorney knows may not be truthful. (Id. See also Opinion 267.) It might be advisable for Attorney to again impress upon Wife that her continued acceptance of oil royalty payments, without verifying true ownership, may subject Wife to continuing civil liability as well as criminal liability now that Wife is aware that she may not be the owner of the oil lease. (Cf. Opinion 267.) If Wife refuses to accept Attorney's advise to determine present ownership of the oil lease, then Attorney may withdraw from further representation of Wife. (See Rule 2-111(c)(1)(b), (c) and (d); Opinions 305, 353, San Francisco Ethics Opinion 1977-2.)

Attorney's inquiry respecting absolution of legal liability addresses a question of law upon which this Committee does not comment.

Attorney's inquiries (2) and (3) raise analogous ethical concerns which are treated herein together. California Business and Professions Code section 6068 subdivision (e) provides that it is the duty of an attorney "[t]o maintain inviolate the confidence, and at every peril

to himself to preserve the secrets, of his client." Wife has refused to allow Attorney to disclose information obtained during, or as the result of, the confidential relationship between herself and Attorney. The prohibition against violation of this confidence extends to instances of civil fraud perpetrated by the client (Opinions 264, 274, 386). Attorney-client confidences may not be disclosed where future crime is contemplated by the client and the Attorney has received the information in confidence and in connection with confession of past crime. (Opinions 267, 386, see also Opinion 353). Additionally, no disclosure is permitted in respect to future crime where the client's intended acts are not of a nature so serious that the benefits flowing from their prevention do not outweigh the important policy requiring protection and preservation of client confidentiality. (Opinions 264, 353.) Here Wife's contemplated acceptance of future royalty payments has been revealed to Attorney through Wife's admission of acceptance of past payments. Moreover, although Wife's contemplated acceptance of future royalty payments might be theft, there may still exist some question as to who presently owns the oil lease. This Committee has held that client confidence is protected where the client receives monthly payments under circumstances of possible theft by false pretense. (Opinion 264.) A similar situation exists in the inquiry sub judice. The Committee is of the opinion that disclosure to anyone of the new information learned regarding the status of the title of the oil

lease, absent express client approval, is ethically prescribed. (California Business and Professions Code section 6068 subdivision (e), Opinions 264, 267, 353.)

This opinion is advisory only. The Committee acts only on specific questions submitted ex parte and its opinion is based on such facts only as are set forth in the questions submitted.