in Newman vs. Freitas, 129 Cal. 283, was declared void."

Learned writers in California have recognized the value of contingent fee contracts and have deplored the view held by some that such contracts are "a regrettable decadence from a loftier standard." Radin, Contingent Fees in California, 28 California Law Review, 587, 598.

Although contingent fees are probably legal when agreed to be paid for the rendition of services for the protection of a spouse's interest upon a division of community property (Krieger vs. Bulpitt, 40 Cal. 2d 97, Hill vs. Hill, 23 Cal. 2d 82), there appears to be no authority which diminishes the persuasiveness of Lynde vs. Lynde, supra, and Kyne vs. Kyne, supra.

It is this Committee's opinion that, under the clear decision of the New Jersey Court approved by the District Court of Appeal of this State, a contract for a contingent fee to recover already accrued alimony or support payments would be against public policy and void. Such a contract, not being sanctioned by law, would not be within the language of Canon 13 and entry into such a contract would, therefore, in the opinion of this Committee, be improper and unethical.

EDITOR'S NOTE: See Opinion No. 275, infra, in which the foregoing Opinion No. 263 was reconsidered and withdrawn by the Committee.

Opinion No. 264 (July 30, 1959)

CONFIDENTIAL COMMUNICATIONS. An attorney should not disclose information received in confidence from a client for the purpose of preventing a crime except where the intended acts by the client are of a nature so serious that the benefit flowing from their prevention outweighs the important policy requiring protection and prevention of the client's secrets.

A member of the profession has requested an opinion from the Legal Ethics Committee of the Los Angeles Bar Association concerning the propriety of disclosing confidential information received by an attorney from a client. The facts are as follows:

The attorney is a member of a committee of a non-profit charitable corporation which provides money for the care of indigent persons who, upon investigation, do not appear to have the necessary funds to support themselves.

Mr. X, an elderly person, is receiving aid from the charitable corporation. His application to the committee indicated that he had only a small pension which was insufficient to meet his needs, and a supporting letter from his daughter stated that she and her husband were paying X's expenses, such as medical bills, out of their own funds.

An adult son of X recently filed a Petition for Guardianship of his father as an incompetent. In the Petition the son charged his sister with misappropriation of X's funds. Someone recommended the attorney to X's daughter, and she subsequently employed the attorney to resist the Petition of her brother on behalf of both X and herself.

During the attorney's investigation of the case the daughter admitted to him that X has approximately $3,000.00 on deposit in a savings account. She further admitted that some time ago X had approximately $10,000.00 in a joint savings account with his son, but had later withdrawn it and placed it in a joint account with the daughter; and that she had thereafter withdrawn the residue on deposit in that account and placed it in a new account in her name. The daughter stated that she has been using this money to defray her father's expenses and that she has remaining some $4,000.00 which she intends to use for her father's care as the necessity arises.

If the existence of these funds had been disclosed to the committee for the charitable corporation, the committee would probably not have authorized the expenditures for X's care, but would have asked X and his daughter to first use at least a major portion of these funds to provide for him.

The daughter and the attorney agreed, by mutual consent, that the attorney should withdraw from the guardianship case and that matter was turned over to new counsel.

The inquiry is whether or not the attorney may, without violating ethical proscriptions, disclose the existence of these funds to the committee of the charitable organization.

The general duty of a lawyer to preserve the confidences of a client is set forth in Canon 37 of the Canons of Professional Ethics of the American Bar Association, which are commended as a guide for California lawyers by Rule 1 of the Rules of Professional Conduct of the State Bar. Section 6068(e) of the Business and Professions Code also provides:

"It is the duty of an attorney:

. . . (e) To maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client."

The Canon points out that this duty outlasts the lawyer's employment. However, the Canon contains two exceptions, one of which is stated as follows:

"The announced intention of a client to commit a crime is not included within the confidences which he is bound to respect. He may properly make such disclosure as may be necessary to prevent the act or protect those against whom it is threatened."

Section 6068(e) does not expressly recognize any exceptions to the attorney's duty to preserve the client's secrets; however, the courts of this state would in all likelihood construe the section to include by implication an exception preventing the extension of the lawyer's duty to secrecy to communications which contemplate future criminal acts. C.C.P. Sec. 1881.2, which deals with the attorney-client privilege, has been so construed. See Abbott v. Superior Court, 78 Cal. App. 2d 19 (1947).

In the matter under review it may be argued that each time X receives his monthly check from the charitable organization he will commit the crime of taking money under false pretenses. There is a reasonable inference from the facts set forth in the inquiry that X will continue to receive the aid, and that neither he nor his daughter intends to disclose to the committee the existence of the other

funds. Analysis of the daughter's position is more difficult, but perhaps it could be said that she will be equally guilty with X as an accessory before the fact.

In the opinion of this Committee the attorney should hesitate to assume the burden of deciding that all the necessary elements of a crime will exist upon the receipt by X of further aid. In view of the clear duty to preserve the client's secrets until a court shall decide as a matter of law that disclosure by the attorney is necessary in a particular case (Cf., In re Fisher, 51 F. 2d 424, 425; and see Los Angeles Bar Association Opinion No. 177), the attorney should not determine that he has the right to make a voluntary disclosure pursuant to the exception for preventing future crimes unless he has no doubt of the existence of an imminent danger that a crime will be committed.

Some authorities have decided that the exception in the second paragraph of Canon 37 relative to the announced intention to commit a crime should include a fraud on others. See Drinker, "Legal Ethics" (1953), page 138 and opinions cited there. It appears undeniable that the nondisclosure of the funds in the possession of X and his daughter constitutes a fraud upon the charitable corporation. However, this Committee is of the opinion that a California lawyer cannot voluntarily extend the scope of an exception to the ancient common law rule that an attorney must not disclose his client's confidences, in the absence of any indication by our courts that B & P Code Sec. 6068(e) will be construed as subject to an exception allowing the attorney to make disclosures to prevent intended civil fraud.

Similarly the Uniform Rules of Evidence in treating of the attorney-client privileges would extend the exception on future crimes to include future torts. Uniform Rules of Evidence 26(2)(a). However, this suggestion has not been adopted in this state, nor should it be in our opinion, considering the technical nature of many torts.

Whether or not a lawyer should make a voluntary disclosure of a client's confidence in order to prevent a future crime, in a situation where the lawyer has some doubt whether the contemplated action of the client will establish all the necessary elements of a crime, may depend upon such factors as the seriousness of the injury which the lawyer seeks to prevent. It seems apparent that in the ordinary case, the more serious the contemplated action, the less doubt there will be that the action will constitute a crime.

The present matter is complicated by the fact that disclosure by the attorney under a construction of X's probable intent to accept further aid as constituting a threat to commit a future crime will also result in the disclosure of completed wrongful acts which ordinarily should not be disclosed by a lawyer. Further, such disclosure by the attorney may ultimately prejudice the position of the attorney's former clients in the guardianship proceeding.

Even in cases where it is clear that a future crime is threatened rather than merely a fraud or other tort, the authorities are not in harmony whether a lawyer may properly disclose confidences in connection with criminal conduct past, present and future which constitute a continuing crime.

The American Bar Association Committee on Legal Ethics in Opinion No. 23 rendered in 1930, extended the duty of nondisclosure to the secrets of a client who had jumped bail, but the same Committee later, in Opinion No. 155, took the opposite view and said an attorney might be disciplined for refusing to disclose his client's whereabouts to the proper authorities. In Opinion No. 156 the Committee held that an attorney could reveal his client's address when his client had violated his probation. Further inconsistencies in the position of the A.B.A. Committee are indicated by Opinions Nos. 216 and 268 where it was indicated that attorneys should not reveal continuing frauds (which may have been criminal in nature).

In 1935 the Los Angeles Bar Association Committee held that the client's address was a privileged matter where the client was out of the jurisdiction in violation of his probation. Opinion No. 82. And in 1956, in Informal Opinion 1956-4, the Committee held that an attorney should not reveal the whereabouts of a client with tuberculosis who continued to violate provisions of the Health and Safety Code.

In summary, it has been the position of this Committee that the exception stated in Canon 37 is intended to relate to future crimes of an important nature where the violation of the confidence by the attorney may prevent immediate and serious injury. The rule against the divulging of confidential communications springs from the highest considerations of public policy and is designed to encourage the utmost freedom in acquainting an attorney with the problem with which a client is confronted. It is the opinion of this Committee that the acts which the attorney in this case desires to prevent are not of so serious a nature that the benefit flowing from their prevention would outweigh the important policy to be protected by nondisclosure of the client's secrets. Further, the Committee believes that the lawyer should not take it upon himself in this instance to decide that a crime could be prevented as distinguished from a civil fraud.

EDITOR'S NOTE: See Opinions Nos. 267, 271 and 274, infra. Cf. N.Y. County 301 (p. 702) and N.Y. City 62 (p. 27) in which it is stated that the right to disclose the confidential communication is a question of law and the Committee did not assume to define the limit of the client's privilege. See also N.Y. City 673 (p. 389); N.Y. City 736 (p. 443); Mich. Opinions 22, 59.

Opinion No. 265 (October 22, 1959)

PARTNERSHIP NAME. Neither of two sole surviving law partners has the right to use a former firm name which included the name of a deceased partner over the objection of the other surviving partner.

A and C have submitted a joint statement and they request a committee opinion as to the ethical considerations involved under the facts appearing therein as supplemented by separate statements of A and C and a statement submitted by the widow of B.

Reference is made to this com-