

LOS ANGELES COUNTY BAR ASSOCIATION

ETHICS COMMITTEE

FORMAL OPINION NO. 454

July, 1988

Ethical Responsibilities to Third Parties In Handling Trust Accounts. The attorney's fiduciary obligation extends to all third-party assets in his possession, not only to client funds. The trust account normally must be maintained in California, and it may be controlled by people who are not members of the State Bar.

Authorities Cited:

Murray v. State Bar, 40 Cal.3d 575, 584 (1985)

Vaughn v. State Bar, 6 Cal.3d 847, 858 (1972)

Crooks v. State Bar, 3 Cal.3d 346, 355 (1970)

Johnstone v. State Bar, 64 Cal.2d 153, 155-56 (1966)

State Bar Rule 8-101

FACTS

The Committee's opinion is requested based on the following facts:

Two independent California attorneys, Attorney A and Attorney B, were associated in representing a plaintiff on a contingency basis. During the course of a lawsuit, Attorney B moved his principal office to another state and formed a partnership with Attorney C. Attorney B maintained his membership

in the State Bar of California, but Attorney C is not a member.

The litigation eventually was resolved, and a settlement check was deposited to a client's trust account maintained by Attorneys B and C outside of the State of California. There is no dispute with the client over the portion of the settlement amount to which he or she is entitled, but a dispute has arisen between Attorney A and Attorney B as to the amount of their shares and as to conditions imposed by Attorney B before he will disburse any portion to Attorney A.

Based on these facts, we are asked four questions:

1. Is it proper for a client's trust account to be maintained outside the State of California?
2. Is it proper for anyone other than members of the State Bar of California to have control over a member's client's trust account?
3. Is Attorney B held to the standards of a fiduciary in dealing with his co-counsel on the settlement funds?
4. Has Attorney B acted improperly in failing to disburse the settlement share claimed by Attorney A?

DISCUSSION

Rule 8-101 of the California Rules of Professional Conduct specifies: "All funds received or held for the benefit of clients by a member of the State Bar or firm of which he is a member . . . shall be deposited in one or more identifiable bank accounts . . . maintained in the State of California, or, with written consent of the client, in such other jurisdiction where there is a substantial relationship between his client or his client's business and the other jurisdiction. . . ." Thus, the client's trust account normally will be maintained in California, although limited exceptions do exist. We express no opinion on whether the exceptions apply here.

We are not aware of any rule requiring that the client's trust account be under the control only of members of the State Bar. We understand that it is common practice for the member to retain exclusive control over the client's trust account, but we believe this is based on the heavy ethical as well as civil implications of the account. The member may delegate authority with regard to trust funds, but he cannot delegate his ethical responsibilities or civil liability.

As to the obligations of Attorney B in dealing with people other than his client in the handling of his client's trust account, we are not aware of any rule that limits the trust aspect of the account to the client. To the contrary: "When an attorney receives money on behalf of a third party who

is not his client, he nevertheless is a fiduciary as to such third party. Thus the funds in his possession are impressed with a trust, and his conversion of such funds is a breach of the trust." Johnstone v. State Bar, 64 Cal.2d 153, 155-56 (1966).

As a result, we believe that the fiduciary obligations of the attorney extend to any third party's assets in his possession and not only client funds that pass through the attorney's client's trust account. To a similar effect is Crooks v. State Bar, 3 Cal.3d 346, 355 (1970). Violation of Rule 8-101 does not require harm to the client. See, Murray v. State Bar, 40 Cal.3d 575, 584 (1985) and Vaughn v. State Bar, 6 Cal.3d 847, 858 (1972).

The conclusion that Attorney B has a fiduciary obligation with regard to any funds under his control does not prevent the existence of a good faith dispute between Attorney A and Attorney B concerning their obligations to one another. We have made no attempt to judge the legitimacy or good faith of the positions taken by Attorney A and Attorney B in their dispute, but we emphasize that Attorney B is held to fiduciary standards so long as third-party funds are under his control.

This opinion is advisory only. The Committee acts only on specific questions submitted ex parte, and the opinions are based only on the facts set forth in the questions presented.