

Committee Opinion
January 19, 1990

LEGAL ETHICS OPINION 1316

CONFIDENCES AND SECRETS –
CLIENT'S WHEREABOUTS:
ATTORNEY'S DUTY TO WITHHOLD
CLIENT'S SECRET.

Your inquiry advises that you represent a client who is currently involved in a medical practice [sic] suit and that counsel in that case is attempting to have you divulge your client's whereabouts. In a subsequent telephone conversation on January 10, 1990, you advised assistant bar counsel that your representation of the individual was in a matter unrelated to the matter for which his whereabouts are being requested. In that conversation, you also indicated that your client would be a defendant named in that other action. Finally, you said that your client has specifically requested that you not divulge his whereabouts under the circumstances.

You have requested that the Committee opine as to the propriety of your divulging that information.

The appropriate and controlling disciplinary rule applicable to the question you have raised is DR:4-101 which precludes a lawyer from knowingly revealing either a secret or a confidence of a client and from using his client's secret or confidence to the disadvantage of the client or to the advantage of the lawyer or a third person, unless the client consents after full disclosure. Subpart (A) of DR:4-101 defines a "confidence" as information protected by the attorney-client privilege under applicable law. The question of whether information about the client's whereabouts is privileged requires a legal determination which is beyond the purview of this Committee. Subpart (A) of DR:4-101 also defines a "secret" as other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client. Furthermore, under subpart (C) of the same rule, a lawyer is permitted to reveal confidences or secrets (1) if the client consents; or (2) if required by law or court order; or (3) if the lawyer has information which clearly establishes that his client has, in the course of the representation, perpetrated a fraud relative to the subject matter of the representation on a third party; or (4) if necessary to establish the reasonableness of his fee or to defend himself against an accusation of wrongful conduct. Finally, a lawyer is required to reveal information regarding his client's intention to commit a crime or information which clearly establishes that his client has perpetrated a fraud upon the court during the course of the representation.

The Committee has earlier opined that where a client is engaged in a "continuing wrong," in stating his intention to remain a fugitive from trial, and has sent the attorney an unsolicited letter bearing a specific postmark outside the jurisdiction, the lawyer may not reveal the client's whereabouts. (See LE Op. 929; See also ABA Formal Opinion 155; ABA Informal Opinion 1141) In a factual situation dealing with a lawyer's disclosure of a client's double identity, the Committee has opined that, where the lawyer is not representing the client in the case where the client is using the assumed name, the lawyer

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is under an ethical duty not to reveal the true identity absent any legal duty to do so. (See LE Op. 1270. See also Alabama State Bar Opinion No. 88-111 (December 9, 1988), ABA/BNA Law. Man. on Prof Conduct 901:1049)

The Committee is of the opinion that under the circumstances you have described in your letter and telephone conversation, the client's whereabouts constitute a secret which you gained during the course of your professional relationship and which the client has requested be held inviolate. Therefore, absent a legal determination that your client intends to commit a crime or is fleeing from criminal prosecution, and absent the client's rescinding his request that the information be kept inviolate, it is the opinion of the Committee that you are precluded from disclosing that information to counsel in the medical case.

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