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**E-89-9      Disclosures of client confidences:  
Preventing injury to another's financial  
or property interest**

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**Questions**

Must a lawyer reveal client confidences to prevent a client act when the lawyer entertains a reasonable doubt regarding either or both: (1) the criminal or fraudulent status of the act; or (2) the likelihood of resulting substantial injury to the financial or property interest of another? SCR 20:1.6(b).

**Opinion**

In pertinent part, SCR 20:1.6(b) requires a lawyer to reveal confidential information relating to the representation of a client “to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that the lawyer reasonably believes is likely to result . . . in substantial injury to the financial interest or property of another.” *See also* the definitions of “reasonable” and “reasonable belief” at SCR chapter 20, “Terminology.”

Conversely, an SCR:1.6(b) disclosure may *not* be made if:

1. the future client conduct either is not “criminal or fraudulent”; and/or
2. the lawyer does not reasonably believe the conduct likely to result “in substantial injury to the financial interest or property of another.”

If a reasonably prudent and competent lawyer entertained a reasonable doubt regarding either or both 1 and 2 above, this committee concludes that disclosure *or* nondisclosure should not constitute a violation of SCR 20:1.6(b). In this circumstance, a lawyer should not be constrained by the threat of possible discipline in fashioning a response to the proposed client conduct that would best serve and balance the other complex and competing interests of the client, the lawyer and the person whose interests may be threatened.

In so concluding, we concur with Professor Geoffrey C. Hazard Jr. that “the intermediate cases should be left to the conscientious judgment of the responsible

lawyer on the scene.” Hazard & Hodes, *The Law of Lawyering* 102 (1982, 1988 Supp.). And we also agree with professor Charles W. Wolfram that “matters whose legality is legitimately in doubt are precisely those that clients should be encouraged to bring to their lawyers for confidential guidance.” Wolfram, *Modern Legal Ethics* 280 (1986).

Whether a lawyer’s decision is to disclose or not to disclose in these cases of legitimate doubt, the potential consequences for the lawyer may nevertheless include exposure to: a civil suit by the client or the other person(s) with interests at stake; criminal charges; or a fee dispute with the client or loss of a client. To make the subtle judgments necessary in these circumstances, a lawyer must be free under SCR 20:1.6(b) to opt for either disclosure or nondisclosure. To arbitrarily construe SCR 20:1.6(b) to require one or the other in cases of doubt would be to ignore the reality of the complex task of balancing client, lawyer and third party interests in a multitude of factual settings.

For discussion of other disclosure issues presented by SCR 20:1.6, we would refer the reader to our Formal Opinions E-88-10 and E-88-11.