

Final

Rhode Island Supreme Court
Ethics Advisory Panel Opinion No. 2000-8, Request No. 811
Issued October 18, 2000

Facts

The inquiring attorney is co-administrator of a probate estate. About three months before the decedent died, the inquiring attorney was retained by the decedent for the purpose of drafting a will. However, the decedent died before executing the will and died intestate. A claim has been filed against the estate in which the claimant alleges that the decedent promised, in return for the rendition of various services, to make a will naming the claimant and his/her siblings as the beneficiaries. The inquiring attorney has received notice that counsel for the claimant will take the inquiring attorney's deposition. The inquirer anticipates that claimant's counsel will ask who were the intended beneficiaries in the proposed will.

Issue Presented:

Does Rule 1.6 of the Rules of Professional Conduct prohibit the inquiring attorney from disclosing at the deposition the intended beneficiary of the proposed will or other information relating to the representation?

Opinion:

Yes. Under Rule 1.6, the inquiring attorney has an obligation of confidentiality which continues after the client's death. Pursuant to Rule 1.6, the inquiring attorney has a duty to invoke the attorney-client privilege, the ethical obligation of confidentiality, and if applicable, the work product doctrine. The inquiring attorney must comply, however, with the final orders of a court requiring him/her to disclose information related to the representation of the client.

Reasoning:

Rule 1.6(a) states that a lawyer "shall not reveal information relating to the representation of a client...." The duty of confidentiality continues after the attorney-client relationship has terminated. Comment to Rule 1.6. The ethical duties of loyalty and confidentiality continue even after the relationship is terminated by the client's death. Geoffrey C. Hazard, Jr. and W. William Hodes, The Law of Lawyering, §1:6:101, at 130 (2nd ed. Supp. 1993); see Curato v. Brain, 715 A.2d 631 (R.I. 1998) (attorney-client privilege generally will survive client's death.) The identity of decedent's intended beneficiaries is information related to the representation and pursuant to his/her obligation of confidentiality, the inquiring attorney may not disclose it.

The official comments to Rule 1.6 further provide:

...If a lawyer is called as a witness to give testimony concerning

a client, absent waiver by the client, paragraph (a) requires a lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The Panel therefore advises the inquiring attorney that he/she has an obligation not to disclose information relating to the decedent's representation, and to object to its disclosure in the appropriate motions and/or at the deposition on the grounds of attorney-client privilege, the work product doctrine, and his/her ethical obligation of confidentiality with respect to documents and information which in his/her professional judgment are protected by Rule 1.6(a). See R.I. Sup. Court Ethics Advisory Panel, Op. 96-34 (1994). The inquiring attorney must comply, however, with the final orders of a court requiring him/her to produce documents or to disclose information related to the representation. See N.D. State Bar Ass'n. Ethics Comm., Op. 95-11 (1995) (lawyer may not give notes about deceased client's will to relatives challenging will unless client consented, but if court orders production, lawyer must comply); Pa. Bar Ass'n Comm. On Legal Ethics and Professional Responsibility, Op. 94-385 (1994) (lawyer whose client committed suicide is prohibited from testifying about communications with client, but if ordered to testify, lawyer must comply).