

Final

**ETHICS ADVISORY PANEL
OPINION NO. 96-34, REQUEST NO. 688
Issued November 14, 1996**

FACTS:

The inquiring attorney represented a client in a divorce action and in other domestic matters. The client died during the pendency of the divorce action. The client is survived by the estranged spouse, and by a child from a prior marriage. The client's estranged spouse has produced the client's will which names the spouse as executor, and has engaged counsel. The client's child has retained counsel in an effort to set aside the will. Counsel for the child and counsel for the estranged spouse have requested the inquiring attorney to produce various documents and other information contained in the deceased client's file.

ISSUES PRESENTED:

The inquiring attorney asks whether the attorney-client privilege extends beyond the death of the client. The inquiring attorney further asks under what circumstances and to what extent disclosure may be made if permitted at all, and to whom permitted disclosures may be made.

OPINION:

The inquiring attorney has an obligation of confidentiality to the client which continues after the client's death, under Rule 1.6 of the Rhode Island Supreme Court Rules of Professional Conduct, and may not disclose the information.

REASONING:

Rule 1.6(a) states that a lawyer "shall not reveal information relating to 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 Laweering, §1.6:101, at 130 (2nd ed. Supp. 1993).

The principle of confidentiality is given effect in two related bodies of law: the rule of confidentiality established in professional ethics, and the attorney-client privilege in the law of evidence. Comment to Rule 1.6. The scope and applicability of protection of information differs markedly between the privilege and the ethical duty of confidentiality. Annotated Model Rules of Professional Conduct, at 73 (3rd ed.1996). Rule 1.6 protects from disclosure a broader range of information than would be protected under the attorney-client privilege. In re Ethics Advisory Opinion No. 92-1, 627 A.2d 317 (R.I. 1993).

The Panel emphasizes that its opinion pertains only to the Rules of Professional Conduct. Regardless of whether the information requested of the inquiring attorney is protected under the attorney-client privilege, Rule 1.6 prevents the inquiring attorney from disclosing it because it relates to the representation of the client. See id. Should the inquiring attorney be ordered by a court to produce the information, production would be permissible. See Comment to Rule 1.6 (lawyer must comply with final orders of court or other tribunal requiring lawyer to give information about client); 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. 92-21 (1992) (lawyer whose client committed suicide may not testify as to communications with client, but if ordered by court to testify, lawyer must comply). Even then, the inquiring attorney must seek to limit disclosure. See ABA Comm. on Ethics and Professional Responsibility, Formal Op. 94-385 (1994) (lawyer has professional responsibility to seek to limit subpoena or court order on any legitimate ground, such as attorney-client privilege, work product immunity, burden or relevance, to protect information to which obligations under Rule 1.6 apply.)