

**ETHICS OPINION NUMBER 119
OF THE MISSISSIPPI BAR
RENDERED JUNE 5, 1986
AMENDED APRIL 6, 2013**

CLIENT CONFIDENCES - An attorney owes a duty of confidentiality to a deceased client but may reveal confidences and secrets with consent of client's personal representative or heirs or when required by law or court order.

The Ethics Committee of The Mississippi Bar has been asked to render an opinion of the following inquiry:

An attorney has seen an elderly gentleman concerning preparation of a new will. Because the client insisted upon some rather nonstandard provisions, and because of client's age, the attorney elected to do some further investigation before preparing the document. Shortly thereafter, the attorney learned that the client had been murdered. The attorney has been contacted by law enforcement authorities regarding possible suspects and/or motives for the killing. The attorney requests an Opinion on the following issues:

- (1) What duty of confidentiality, if any, is a deceased client?
- (2) Is a duty of confidentiality breached by cooperating with law enforcement officials investigating the client's death?
- (3) Is a court order necessary before doing so?
- (4) In the event of a will contest, is it a violation of ethical standards for an attorney to testify as to facts learned through the attorney-client relationship?

As to the first question, Rule 1.6(a) of the Mississippi Rules of Professional Conduct (MRPC), provides that a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b). The comment to Rule 1.6, MRPC, states that the duty of confidentiality continues after the client-lawyer relationship has terminated.

Accordingly, it is the opinion of the committee that a deceased client should be afforded all the duty of confidentiality owed to a living client.

In regard to the second question, the attorney would breach the duty of confidentiality by cooperating with law enforcement officials investigating the client's death. Rule 1.6(b), MRPC, lists six instances of what a lawyer may reveal:

A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interest or property of another and in furtherance of which the client has used or is using the lawyer's services;
- (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
- (4) to secure legal advice about the lawyer's compliance with these rules;
- (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.
- (6) to comply with other law or a court order.

Questions 3 and 4 would be answered by our Opinion No. 95, rendered June 7, 1984, which found that an attorney may reveal confidences or secrets of his client when required by law or court order. That Opinion gave the following guidance:

Rule 1.6(b)(6) provides that a lawyer may reveal confidences or secrets when required by law or court order. When a rule of law or a specific court order requires the revelation of the confidences or secrets, even though the lawyer may believe they have nothing to do with the pending litigation, he is required to make those disclosures and his revelations are not inconsistent with the requirements of the Rules of Professional Conduct.

It is the opinion of the committee that, while an attorney is not subject to disciplinary action for revealing confidences or secrets of a client under court order, he is nonetheless required by Canon 7 to raise the issue of the confidentiality or secrecy of the information, and any attendant attorney-client privilege, in the proceedings where the disclosure is sought and to actively assert this confidentiality, secrecy, or privilege, by motion for protective order or other available procedural means.

Also, the Wisconsin Bar Association's Opinion E-77-5, decided in 1979, decided the following concerning an attorney's testifying about a deceased client's conversation over appointment of a guardian: ". . . if the court decides however, that the attorney should testify about the conversation, the attorney should not be disciplined for revealing client confidences if he complies with the court's decision."