

**Formal Ethics Opinion
KENTUCKY BAR ASSOCIATION**

Ethics Opinion KBA E-451

Issued: July 17, 2020

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rule and comments, SCR 3.130 (available at <http://www.kybar.org/237>), before relying on this opinion.

Revealing a client's confidential information after the client's death

Question 1: After the death of a client may an attorney reveal information relating to the representation of the client?

Answer: Yes, if revealing the information is reasonably believed to be necessary to accomplish one of the purposes of the representation. SCR 3.130(1.2), Comment 1 & SCR 3.130(1.6), Comments 5 & 12.

Question 2: After the death of a client, may an attorney assert (or waive) the attorney client privilege on behalf of the client?

Answer: Yes. SCR 3.130(1.6), Comment 12; KRE 503(c).

Discussion

Attorneys have implied authority to disclose information reasonably believed necessary to carry out the purposes of the representation.¹ A client who hires an attorney to prepare and execute a will would expect the attorney to disclose information needed to meet an attack on the will based on undue influence or lack of testamentary capacity. The lawyer not only may, but should, disclose relevant information. The same principle applies to a dispute between claimants based on a document or transaction in which the decedent was represented by the lawyer. (KRE 503(d)(3) creates an exception to the attorney client privilege for relevant communications). The attorney may reasonably assume that the decedent would want the attorney to do what is necessary to effectuate the client's objectives.

Both the attorney of a deceased client and the personal representative of the decedent have standing to assert (or waive) the attorney client privilege. KRE 503 (c). The personal representative and the attorney for the decedent might disagree about the attorney client privilege waiver or its assertion; if they disagree, the court will decide who prevails.

¹ See Rule 1.2(a) ... A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. . . . , and Rule 1.6(a) 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). (Emphasis added.)

Note To Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530. This Rule provides that formal opinions are advisory only.