

State Bar of South Dakota

Ethics Opinion 96-8

October 2, 1996

- **Rule 1.6**
- **Subject: Client confidences; Files of deceased client's; Release with no probate and no administrator.**
- **Summary: The attorney/client privilege continues after death and release of files is prohibited absent waiver by an approved estate representative or by final Order of a court.**

FACTS

A was a client of your office predecessor and has been deceased for a number of years. No probate has been commenced and no executor or administrator has been appointed. A's son has requested A's files from your office.

Based upon the above, you ask whether your duty to maintain confidentiality extends beyond A's death and prohibit release of the files?

OPINION

Rule 1.6 mandates "a lawyer shall not reveal information relating to representation of a client unless the client consents..." The comment to Rule 1.6 states, "a lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. SDCL 19-3-4 permits the privilege to be claimed by "the personal representative of a deceased client..."

It is the opinion of this committee that the attorney/client privilege does in fact continue after A's death and that you are precluded from releasing A's files absent waiver of the privilege by an appropriate estate representative or by a final Order of a Court of competent jurisdiction.

It should be noted that there may be provisions permitting the disclosure of a will under less stringent circumstances.

Lonnie R. Braun
Chair, Ethics Committee
State Bar of South Dakota