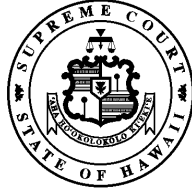


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FORMAL OPINION NO. 38

This Opinion addresses the following issue: Under what circumstances may an attorney disclose confidential information concerning a deceased client?

HRPC 1.6(a) provides that all information relating to the representation of a client is deemed to be confidential:

A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

Obtaining client consent is, of course, not possible if the client is deceased. Under HRPC 1.6, however, attorneys may reveal confidential information when disclosure has been impliedly authorized in order to carry out the representation. In determining what disclosures are necessary to carry out the representation of a deceased client, the attorney may consider the intentions of the client. For example, if an attorney reasonably and in good faith determines that confidentiality should be waived in order to effectuate the deceased clients' intended estate plan, the attorney would be permitted and obligated to make such disclosure.

A lawyer may also disclose confidential client information under HRPC 1.6(c)(7) "to the extent strictly necessary to comply with other law, fiduciary obligations, or court orders." See also HRPC 1.6, Comment [14].

The Disciplinary Board's mission is to maintain the integrity of the legal profession and protect the public from professional misconduct by attorneys.

This opinion does not address issues relating to the applicability of the attorney-client privilege to communications with a now deceased client. In this respect, we note that the duty of confidentiality is broader than the attorney-client privilege because it covers all information relating to the representation of the client, not just matters communicated in confidence by the client. HRPC 1.6, Comment [3]. For example, a client's heir or personal representative may have the authority to waive the attorney-client privilege, but that person has no authority to waive the confidentiality protection of HRPC 1.6. Additionally, even if the attorney-client privilege is deemed inapplicable to litigation involving the deceased client, issues of confidentiality may still exist.

In summary, an attorney may disclose confidential client information when that disclosure is impliedly authorized in order to carry out the representation. An attorney may also disclose confidential information if that disclosure is authorized by court order or other law.

DATED: Honolulu, Hawai'i, May 27, 1999

Bernice Littman
Chairperson, Disciplinary Board

UPDATED: Honolulu, Hawai'i, March 19, 2015



Hon. Clifford L. Nakea (Ret.)
Chairperson, Disciplinary Board