

47 **(c) When Lawyer May Reveal Information.** A lawyer may reveal such
48 information to the extent the lawyer reasonably believes necessary:
49

50 (1) to serve the client's interest unless it is information the client specifically
51 requires not to be disclosed;

52
53 (2) to establish a claim or defense on behalf of the lawyer in a controversy
54 between the lawyer and client;

55
56 (3) to establish a defense to a criminal charge or civil claim against the
57 lawyer based upon conduct in which the client was involved;

58
59 (4) to respond to allegations in any proceeding concerning the lawyer's
60 representation of the client; or

61
62 (5) to comply with the Rules of Professional Conduct.
63

64 **(d) Exhaustion of Appellate Remedies.** When required by a tribunal to
65 reveal such information, a lawyer may first exhaust all appellate remedies.
66

67 **(e) Limitation on Amount of Disclosure.** When disclosure is mandated or
68 permitted, the lawyer shall disclose no more information than is required to meet
69 the requirements or accomplish the purposes of this rule.
70

71 The comment to the rule states that “[t]he duty of confidentiality continues after the
72 client-lawyer relationship has terminated.”

73 A request for information from a personal representative, beneficiaries or heirs-at-law of
74 a decedent’s estate, or their counsel will generally involve information “relating to the
75 representation of a client,” and a lawyer ordinarily should not voluntarily disclose such
76 information without the client’s informed consent. *See* Florida Ethics Opinion 92-5. There are
77 exceptions to the confidentiality rule that either require or permit a lawyer to disclose
78 confidential information. The Committee cannot envision every instance in which a personal
79 representative, beneficiaries or heirs-at-law of a decedent’s estate, or their counsel may request
80 information from a decedent’s lawyer, but will provide several examples in an effort to illustrate
81 the appropriate analysis.

82 The exception to the confidentiality rule that is most likely to apply in such requests is set
83 forth in subdivision (c)(1): “to serve the client's interest unless it is information the client
84 specifically requires not to be disclosed.” Thus, if a personal representative asks for confidential
85 information relating to a decedent’s estate plan and the decedent’s lawyer determines that
86 disclosure of the information would aid in the proper distribution of the decedent’s estate
87 according to the decedent’s wishes, the lawyer may properly disclose the information to the
88 personal representative, unless the decedent specifically required that the information be kept
89 confidential. For example, in Florida Ethics Opinion 72-40, a client instructed the inquiring
90 lawyer who was hired to assist the client with estate planning to “forget” that the client had a
91 “large amount of bearer bonds, registered jointly with his wife.” The opinion concludes that the
92 lawyer may not disclose the existence of these assets to the bank which was to be the sole

93 executor of the client's estate unless the client gave consent to the disclosure or unless ordered to
94 do so by a court, whether the inquiry was made before or after the client's death. The opinion
95 states that "the duty to preserve a client's confidences survives his death. . . ." Thus, a lawyer
96 must undertake the appropriate analysis under the confidentiality rule, even if it is the personal
97 representative who requests information of the decedent from a lawyer who assisted in the
98 decedent's estate planning and the information sought relates specifically to that estate plan.

99 Similarly, if a beneficiary or heir-at-law asks for specific information and the decedent's
100 lawyer determines that voluntary disclosure of the information would serve the decedent's
101 interests, the lawyer may disclose that specific information. For example, a lawyer might
102 provide a copy of the decedent's will or disclose information relating to the execution of a will to
103 a beneficiary or heir-at-law if the lawyer reasonably believes that disclosure of the information
104 would forestall litigation by the beneficiary or heir-at-law, thereby conserving assets of the estate
105 in the exercise of the lawyer's professional discretion. However, information that the decedent
106 specifically required the lawyer not to disclose to others may not be disclosed by the lawyer to
107 the beneficiary or heir-at-law, regardless of whether the information is privileged. For example,
108 a deceased client may have specifically instructed the lawyer not to disclose information to
109 anyone about an illegitimate child or an extra-marital relationship.

110 Under Florida Statutes §90.502(3)(c), the *personal representative* may claim the privilege
111 on behalf of the decedent. It would be difficult for the personal representative to claim or waive
112 privilege on behalf of the decedent without knowing the content of the information which is
113 subject to the privilege. Therefore, a lawyer who represented the decedent in estate planning
114 matters may disclose information from the file to the personal representative, unless the decedent
115 specifically required that the information not be disclosed. Disclosure of such information is
116 impliedly authorized, to the extent the decedent did not specifically require that its
117 confidentiality be maintained, to carry out the decedent's wishes involving the estate.

118 On the other hand, a lawyer who represented the decedent on matters other than estate
119 planning would have no such implied authorization to disclose information to the personal
120 representative. For example, a lawyer who represented a client in a criminal defense matter
121 would not have implied authorization to disclose information to the personal representative, but
122 instead should decline to voluntarily provide information to the personal representative or other
123 third parties unless a different exception to the confidentiality rule clearly applies.

124 Similarly, beneficiaries or heirs-at-law may attempt to compel the decedent's lawyer to
125 provide information that the lawyer has determined within the lawyer's professional discretion
126 not to provide voluntarily, because it either would not serve the decedent's interests or the
127 decedent previously indicated must not be disclosed. When under compulsion of a subpoena, the
128 lawyer acts ethically by complying with the subpoena as to any information sought that is not
129 privileged. However, the lawyer should raise the appropriate privilege on behalf of the decedent
130 regarding any information for which there is a good faith basis to raise privilege and request that
131 the court make a determination as to disclosure of the information. This may be particularly true
132 of privileged information that may be embarrassing to the decedent. As above, the lawyer
133 should not make any disclosure of information for which the lawyer has raised privilege in good
134 faith until the court orders disclosure of the information. If the court finds that the information is
135 not privileged or that an exception to privilege applies, the lawyer may either comply with the
136 order by disclosing the information or "first exhaust all appellate remedies." See Rule 4-1.6(d)
137 and Florida Ethics Opinions 65-7, 70-40, and 71-29.

138 Doubts about whether information should be voluntarily disclosed should be resolved in
139 favor of nondisclosure.