



Committee on Professional Ethics

Opinion #330 - 3/21/74 (1-74)

Topic: Confidences and secrets of deceased client.

Digest: Circumstances under which disclosure to adopted child of name of natural parents after death of adoptive parents would be improper.

Code: EC 4-1, 4-6.
DR 4-101(A),(B),(C)

QUESTION

May attorney for deceased adoptive parents ethically reveal to adopted child the names of his natural parents.

OPINION

Whether a lawyer is legally obligated to advise an adopted child of the names of the natural parents, or is legally prohibited from doing so, is a question of law upon which this Committee does not pass.

EC 4-1 sets forth concisely the reasons for the requirement that a lawyer preserve the confidences and secrets of his client, and EC 4-6 provides that this requirement "continues after the termination of his employment....whether termination is due to death, disability, or retirement".

There is a distinction between a "confidence" and a "secret". A confidence "refers to information protected by the attorney-client privilege under applicable law". DR 4-101(A). Whether the names of the natural parents constitute a confidence also presents a question of law upon which this Committee does not pass. But if a confidence it may only be revealed if required by law or court order, DR 4-101(C), as consent of deceased clients may not, of course, be obtained. If, however, after full disclosure, such consent had been given during lifetime, disclosure would be proper.

A secret "refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client". DR 4-101(A). Disclosure would not be embarrassing or detrimental to the deceased clients and, therefore, the names of the natural parents would not be a secret unless the clients had asked, either expressly or by implication, that this information be held inviolate. Because adoptive parents who know or could know the identity of natural parents frequently keep such information from adoptive children, there would be a strong presumption that such information should be treated as a secret to be held inviolate, absent adequate affirmative evidence to the contrary.

Since DR 4-101(B) prohibits a lawyer from knowingly revealing a

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confidence or secret of his client except as permitted by DR 4-101(C)
(1) if the name of the natural parents is a confidence it may
ethically be divulged only if required by law or court order, or if
knowledgeable consent has previously been given; or (2) if such
information is a secret, it may be divulged only by law or court order.
