

ADVISORY ETHICS OPINION 95-05

SYNOPSIS:

Upon the death of a client, a lawyer, upon request, is ethically bound to turn over the client's papers and property only to the Executrix of the client's estate, but to no other person.

FACTS:

While Husband was hospitalized with a very guarded prognosis, Wife contacted Lawyer concerning the disposition of certain property in Husband's sole name, seeking to have Lawyer draft a deed for Husband to convey property to Son with a life estate to Wife. The following day Lawyer had a conference with Son. A deed was prepared and later executed by Husband, but Lawyer never spoke directly with Husband. (For purposes of this Opinion, the Committee assumes that Lawyer represented Husband.)

Husband later dies, an estate is opened and Wife is appointed personal representative to administer Husband's estate.

Wife now request that Lawyer turn over his "file" to Wife, and not inform Son because Wife apparently fears for her personal safety.

Lawyer requests an opinion of this Committee as to whether he can ethically release the "file" to Wife while keeping the matter secret from Son.

DISCUSSION:

While there are certain ethical issues relative to probate practice in particular, the majority of them recognize that the lawyer who represents a fiduciary, generally with respect to a fiduciary estate, is considered to stand in a lawyer-client relationship with the fiduciary and not with the beneficiaries.

In construing the applicable provisions of the Model Code of Professional Responsibility, the American Bar Association Committee by Formal Opinion 94-380, dated May 9, 1994, held that a lawyer who represents the fiduciary in a trust or estate matter is subject to the same limitations imposed by the Ethical Rules. The fact that the fiduciary has obligations to the beneficiaries does not in itself either expand or limit the lawyer's obligations to the fiduciary client, nor impose on the lawyer obligations toward the beneficiaries that the lawyer would not have toward other third parties. *Id.* Specifically, ABA Formal Opinion 94-380 holds that the lawyer's obligation to preserve the client's confidences is not altered by the circumstance that the client is a fiduciary. *Id.*

CONCLUSION:

Under the facts recited herein, it is the opinion of the Committee that Lawyer is under no ethical obligation other than to turn over to the Wife as Executrix, or to her attorney, the papers and property of Husband, to which he was entitled. See, e.g., Opinion No. 91-3 (a lawyer is obligated to return: (1) all of the property delivered to lawyer by client; (2) the "end product" of the lawyer's work; and (3) all other material which is useful to the client in fully benefiting from the services of the lawyer).