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## A GUIDE TO ETHICS AND THE ATTORNEY-CLIENT PRIVILEGE

- The ethics rules regarding client confidences is broader than the attorney-client privilege. Under MRPC 1.6, “confidence” refers to information protected by the attorney-client privilege, while “secret” refers to other information gained in the professional relationship that the client has requested be held inviolate because the disclosure of it would be embarrassing or detrimental to the client. The scope of “secrets” can include any information relating to the representation of a client. (RI-261).
- Procedure for revealing client confidences. Before an attorney can reveal a client’s confidences and secrets, the attorney must await a subpoena, assert the attorney-client privilege, and await the presiding judge’s instruction on whether to release the requested information. (RI-207, JI-32, CI-925).
- Exception: Client consent. Client can consent to the revelation of confidential information, but only after full disclosure. MRPC 1.6(c)(1).
- Limited Exception: Death of client. Although normally the privilege does not die with the client, there is a limited exception when the privileged information is necessary to determine the testamentary intent of the decedent and to carry out their wishes in the division of their property under their will. (RI-261).
- Exception: Client has used the lawyer’s services to further client’s illegal or fraudulent acts. MRPC 1.6(c)(3). When an attorney *knows* the client committed perjury or fraud, for instance, the attorney has a duty to rectify the situation and reveal the client’s perjury or fraud to the court or the opposing party. If the attorney *simply suspects* perjury or fraud, there is no duty to investigate or bring it to the court’s attention. (RI-13, RI-33, RI-151). After discharge, the lawyer may not disclose such confidences and secrets to successor counsel without the client’s consent. (RI-156).
- Exception: Client has informed attorney that he is about to commit a crime. MRPC 1.6(c)(4), 3.3(a)(2); (RI-160).
- Client information. While client identity and fee information are, absent special circumstances, not privileged (RI-54, RI-160), an attorney cannot disclose a former client’s address without the client’s consent. (RI-207).
- Observations of Client. Information gained from communications by client in presence of third parties and merely from the attorney’s observations of client may be privileged. Observations derived during representation of client may constitute “secrets.” (RI-261).