

# Trust, BUT VERIFY

**ATTORNEY SOPHIA IS REPRESENTING A CLIENT WHO IS THE SOLE TRUSTEE OF AN IRREVOCABLE TRUST.** The client is being sued individually as trustee by one of the beneficiaries—his adult son from an earlier marriage. The son is claiming that his father breached his fiduciary duty as trustee. That lawsuit settles and Sophia closes her file.

Several years later the client dies, and the client’s widow and son become co-trustees under the terms of the will. They disagree about the terms of the trust, and the resolution of that dispute will determine their respective rights and obligations under the trust, including how trust distributions are made.

The client’s widow, as executor of the client’s estate, requests that Sophia provide her with certain attorney-client communications and work product from the prior lawsuit between the client and client’s son. Sophia is not representing any party in this new dispute. The requested information does not relate to the will or the estate, nor does the dispute involve any claim against the estate.

Sophia is concerned about whether she can provide any of her client’s confidential information when the client is not able to authorize it. According to a recent ethics opinion, which of the following is accurate?

- Sophia cannot reveal any confidential information to an executor, in this case the client’s wife.
- Sophia cannot reveal confidential information unless the client specifically authorized its release before his death.
- Sophia cannot reveal any confidential information if she has reason to believe that the client would not have authorized its release had he been alive.
- Sophia must reveal her client’s confidential information to a properly authorized executor of the client’s estate.



#### ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer’s Creed, and a variety of other online ethics resources by computer or smart device at [legaleticstexas.com](http://legaleticstexas.com).

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The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.



**ANSWER:** The operative rule here is Texas Disciplinary Rules of Professional Conduct Rule 1.05, which prohibits a lawyer from revealing confidential information. Confidential information includes both privileged attorney-client information and non-privileged confidential information, which the rule defines as “all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.”

The rule includes a list of exceptions to that general rule of non-disclosure. One is Rule 1.05(c), which provides that information may be revealed to the client’s “representatives” except “when otherwise instructed by the client.” Here, the client is not alive to provide any guidance to Sophia, and the client did not previously provide any information about his preferences.

However, Ethics Opinion 697 (2023) found that a “client-designated executor” does qualify as a representative under Rule 1.05(3), but the decision to disclose is permissive, not mandatory. The opinion also states that a lawyer should not disclose “when there is reason to believe that the decedent would have opposed the disclosure,” such as revealing the existence of a “secret child from an extra-marital relationship.” The correct response is C. For more analysis, go to [legaleticstexas.com/ethics-question-of-the-month](http://legaleticstexas.com/ethics-question-of-the-month). **TBJ**