

DIGEST OF ETHICS ADVISORY PANEL
OPINION #90-27, REQUEST #104
Issued June 25, 1990

An attorney seeks Panel advice as to whether he can properly testify as to certain matters under the circumstances he describes.

The attorney advises the Panel that he represented a woman, Mrs. X, in connection with her divorce. The attorney states that the matter has been concluded, the final decree entered and that he no longer represents Mrs. X. The attorney indicates that he has recently learned that an inconsistency between the final decree and the transcript of the Judge's order has been discovered with regard to the disposition of the marital domicile. The attorney states that he has been served with a subpoena duces tecum, issued by Mrs. X's former husband, requiring him to bring all pertinent records and to testify before the Family Court regarding the divorce proceeding. The attorney advises the Panel that Mrs. X has not waived the attorney-client privilege. He asks the Panel what testimony, if any it is proper for him to give.

Rule 1.6, titled "Confidentiality of Information" provides, in pertinent part:

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation . . .

The comment thereto provides, in pertinent part:

The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.

* * *

If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, paragraph (a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

* * *

The duty of confidentiality continues after the client-lawyer relationship has terminated.

The Panel takes the position that absent either a court order or the express consent of the former client, Mrs. X, the attorney not testify as to any confidential matters covered by Rule 1.6. Absent a court order or the

former client's consent the attorney may not reveal any of the contents of his client file except those documents which have been previously filed in connection with the case, and therefore are no longer privileged.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.