

Digest of Ethics Advisory Panel  
Opinion #91-27, Request #134  
Issued May 23, 1991

An attorney seeks Panel advice concerning the attorney's ethical obligations under circumstances in which the attorney may be issued a subpoena duces tecum by a special assistant attorney general directing the attorney to appear before a grand jury to produce evidence of dates, times, length of meeting, and visual observations of a client.

The Panel is of the opinion that the attorney-client privilege does not, in and of itself, excuse an attorney from appearing before a grand jury. It is the duty of the attorney to assert the privilege on behalf of the client. Because the privilege is that of the client, the attorney must disclose any information which he/she is instructed to reveal by the client.

The Panel takes the position that the attorney's testimony at the grand jury proceeding must be consistent with the attorney's obligations under Rhode Island Rule of Professional Conduct 1.6. Rule 1.6 provides in pertinent part:

Rule 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation . . .

The Panel is of the opinion that the attorney must appear before the grand jury if the attorney receives a subpoena. The attorney may decline to answer questions if the answers would run afoul of the attorney's obligations under Rule 1.6. The Panel notes, however, that the attorney may be required to provide a specific explanation of the attorney's reasons for declining to respond to each question which the attorney believes contravenes the attorney-client privilege. The ultimate question as to whether the attorney-client privilege precludes the attorney from giving certain testimony before the grand jury is a legal rather than an ethical one.

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.