

ETHICS ADVISORY PANEL
Opinion #92-50, Request #285
Issued August 12, 1992

An attorney seeks Panel advice regarding the following circumstances. The inquiring attorney was subpoenaed to appear before a commission. The commission requested billing records for legal services provided by the attorney regarding a specific client. The inquiring attorney asks whether the attorney must release the requested information, without the consent of the client; whether the subpoena should be honored and what if any are the limitations regarding the attorney's testimony concerning the representation of the client.

The Panel believes that Rule 1.6(a) and the comments thereto provide guidance to this inquiry. The Rule states that:

(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 comments to Rule 1.6 entitled "Disclosures Otherwise Required or Authorized" state that:

The attorney-client privilege is differently defined in various jurisdictions. 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 Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. See Rules 2.2, 2.3, 3.3 and 4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client.

While the Panel declines to comment on whether an actual attorney-client privilege exists in this matter, it does believe that Rule 1.6 requires an attorney to invoke the privilege whenever it becomes appropriate to the situation. The attorney must keep in mind however that an attorney must comply with final orders from a court regarding information about a client. The Panel declines to render an opinion regarding whether the attorney should honor the subpoena because it calls for a legal opinion rather than an ethical opinion.