

(0009J)

ETHICS ADVISORY PANEL  
Opinion #92-80, Request #308  
Issued November 18, 1992

An attorney seeks Panel advice regarding the duty to maintain client confidentiality pursuant to Rule 1.6 and the duty to report the misconduct of an attorney in light of Rule 8.3. An attorney represents a client who was involved in a fraudulent automobile accident. The client's original attorney was aware of the fraudulent circumstances surrounding this accident. Although the inquiring attorney declined this case, the attorney informed the client of his duties under the law and the attorney's duty to report misconduct of another attorney. The client refused the attorney's request that the client consent to the disclosure of this information to the appropriate authorities for fear of criminal prosecution. The attorney seeks advice regarding the duty to maintain confidentiality pursuant to Rule 1.6 and the duty to report misconduct under Rule 8.3.

Rule 8.3(c) entitled "Reporting Professional Misconduct" mandates that a lawyer shall inform the appropriate authorities whenever a violation of the Rules occurs unless otherwise protected by Rule 1.6. The comments to this Rule states that a report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

In addition, Rule 1.6 entitled "Confidentiality of Information" lends 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 and except as stated in paragraph (b).

The comments to this Rule state that a fundamental principle in the client-lawyer relationship is that the lawyer maintain confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.

It appears to the Panel that the inquiring attorney has acted responsibly in this delicate situation. The attorney declined to represent the client once the attorney had knowledge of the fraudulent accident as that representation would violate Rule 1.2(d). The attorney educated the client regarding his duties under the law and also enlightened the client to the fact that the attorney is also under an obligation to disclose fraudulent activities by members of the bar. Since the client has refused to consent to the attorney's disclosure of the fraudulent accident pursuant to Rule 1.6 the attorney is prohibited from revealing this information. The Panel gives no opinion as to the rule of evidentiary law as to attorney-client privilege. See comment to Rule 1.6.