

ETHICS ADVISORY PANEL  
Opinion #93-2, Request #332  
Issued March 15, 1993

An attorney seeks Panel advice with regard to a confidentiality issue. The attorney represented a woman in a divorce proceeding. After the divorce was granted the client retained a new attorney. Prior to the entry of final judgment, the new attorney filed a motion to reopen the case alleging that the client was coerced into a divorce by the inquiring attorney. Subsequently, the inquiring attorney was subpoenaed to appear in court by the husband's attorney. The attorney informed opposing counsel that the testimony would be detrimental to the husband, however, opposing counsel did not withdraw the subpoena. The inquiring attorney seeks guidance on how to proceed while not violating the client's confidences.

Rule 1.6 entitled "Confidentiality of Information" applies. The Rule states that:

(b) A lawyer may, but is not obligated to reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm: or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceedings concerning the lawyer's representation of the client.

The comments to this Rule explicitly state that "If the lawyer is charged with a wrong doing in which in the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge." "Such a charge can arise in a civil proceeding and can be based on a wrong allegedly committed by the lawyer against the client, or on a wrong alleged by a third person . . ." "Lawyers must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure."

In this case, the attorney has a duty to invoke the attorney-client privilege, unless the client waives the privilege. However, "a 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."