

ETHICS ADVISORY PANEL
Opinion #93-8, Request #338
Issued March 15, 1993

An attorney seeks Panel advice regarding the confidentiality of information. The attorney was served with a subpoena duces tecum requesting the attorney to bring a client's closed file to a deposition. The attorney states that the information contained in the file is protected by the attorney/client privilege and intends to assert the privilege.

Rule 1.6 entitled "Confidentiality of Information" governs this situation. 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 comments to the Rule state that "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." In this situation, the attorney has the duty to assert the attorney/client privilege. If the attorney is ordered by the court to disclose the contents of the client's file, then the attorney must comply with the final orders of the court.