

ETHICS ADVISORY PANEL  
Opinion #93-26, Request #359  
Issued June 2, 1993

Several years ago, the inquiring attorney conducted a real estate closing. It is unclear whether the attorney was representing the buyer or seller in the transaction, or both parties. The attorney was recently served with a subpoena to testify before a grand jury with regard to this transaction. The attorney admittedly is unclear as to whether buyer or seller were clients in this matter.

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

If both buyer and seller consent to the release of this material, then the information is no longer confidential and the attorney may comply with the subpoena. If both buyer and seller do not consent or if only one consents to the release of the material, then the attorney has an obligation to move to quash the subpoena to protect the client's interests. However, the comments to Rule 1.6 state that "If a lawyer is called as a witness to give testimony concerning a client, absent waiver by a 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.