

ETHICS ADVISORY PANEL
OPINION #94-38 REQUEST #502
Issued June 22, 1994

The attorney seeks guidance to determine whether his/her testimony at a court hearing in response to a subpoena duces tecum would violate Rule 1.6. The inquiring attorney has represented Client A for many years regarding his/her financial matters. Approximately four years ago, the client engaged Attorney B and the inquiring attorney regarding a legal matter. At a meeting with both attorneys and a social worker, the client agreed to allow the social worker to have access to specific knowledge of the client's financial affairs. Soon thereafter, the client discharged Attorney B and retained Attorney C. Attorney C notified the inquiring attorney A that the client no longer wanted the social worker to be privy to financial information. Soon thereafter, a law suit was commenced by a family member of Client A and the inquiring attorney was served a subpoena by this family member. The inquiring attorney seeks the Panel's opinion as to whether or not he/she must testify about specific information relating to his/her client in light of Rule 1.6.

The Comments to Rule 1.6 entitled "Confidentiality of Information" states 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."

The attorney should attempt to maintain the confidentiality of the client's affairs and if ordered by a court or other tribunal to reveal protected information, then the attorney must obey the final orders of that court. The Panel cautions the inquiring attorney not to confuse his responsibilities under Rule 1.6 with the evidentiary attorney-client privilege.