

ETHICS ADVISORY PANEL
OPINION #94-52 REQUEST #522
Issued July 27, 1994

The inquiring attorney received a summons from a government agency seeking certain client records in the lawyer's possession. The attorney asks if he/she must comply with the summons and if so, would he/she violate the attorney-client 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 Rule 1.6 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 production of the requested records would run afoul of the attorney's obligations under Rule 1.6. If the attorney is ordered by a court or other tribunal to disclose the client's records, then the attorney must comply with the final orders of the court.