

ETHICS ADVISORY PANEL
OPINION #94-62 REQUEST #533
Issued August 25, 1994

A client sought advice from the inquiring attorney concerning a fee agreement the client entered into with a second attorney. Based upon the contents of said fee agreement and other relevant facts disclosed by the client the inquiring attorney has a "strong suspicion" that the second attorney has violated a number of Rules of Professional Conduct. The inquiring attorney informed the client of these violations and encouraged the client to consent to their disclosure. The client would not consent to the disclosure.

The inquiring attorney asks whether he/she must report these violations pursuant to Rule 8.3 and in light of Rule 1.6.

Rule 8.3 entitled "Reporting Professional Misconduct" states in pertinent part:

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6.

A lawyer who has knowledge that another lawyer has violated a rule which questions that lawyer's honesty, trustworthiness or fitness as a lawyer shall report it. The comments to Rule 8.3 state that "A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests." Pursuant to Rule 8.3(c) and the comments that follow the attorney is not under an obligation to report the misconduct of another attorney as the information is confidential and protected by Rule 1.6. See, Ethics Advisory Panel Opinion 92-1.