

ETHICS ADVISORY PANEL
OPINION # 95-4, REQUEST # 562
Issued March 6, 1995

The inquiring attorney was retained by a client in a domestic relations matter. The client provided to the inquiring attorney documents from the client's spouse's computer which allegedly contained incriminating evidence. The couple has reconciled and requested that the inquiring attorney destroy the computer documents. A government employee has requested that the inquiring attorney deliver to the government agency the information contained in the computer documents. The inquiring attorney seeks the Panel's advice regarding his/her obligations in this matter.

Rule 1.6 entitled "Confidentiality of Information" states the following:

- (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).
- (b) A lawyer may, but is not obligated to, reveal such information to the extent the lawyer reasonably believes necessary:
 - (1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or
 - (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

Rule 1.6 (a) prohibits an attorney from revealing information about a client that relates to representation of that client, unless the client consents. Rule 1.6(b) delineates permissive disclosure of confidential information to prospective conduct: (1) where there is a belief that a client intends to commit a crime likely to result in imminent death or substantial bodily harm or (2) to establish a defense to a criminal or civil charge. The determination as to whether imminent death or substantial bodily harm exists rests on the attorney's professional judgment. The comments to Rule 1.6 provide: "The lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client . . ."

Based upon the facts provided to the Panel, if the inquiring attorney reasonably believes that the client's actions are likely to result in imminent death or substantial bodily harm to another, then the attorney may disclose the file's contents to the appropriate authorities.

With regard to the file, the client is entitled to his/her file pursuant to Rule 1.17(d). However, the attorney may retain a copy of the file.