

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No. 98-02, Request No. 737
Issued January 28, 1998**

Facts:

The inquiring attorney has received a notice of deposition and a subpoena duces tecum that seeks information from him/her relating to the representation of a former client who is a party to a pending lawsuit. The inquiring attorney believes that the documents that are being sought are protected by the attorney-client privilege and by the work product doctrine. An attorney who is representing the inquiring attorney's former client in the pending action has advised the inquiring attorney that the client does not consent to disclosure of the information.

Issue Presented:

The inquiring attorney does not intend to produce the documents at the deposition and seeks the Panel's advice on this course of conduct.

Opinion:

The inquiring attorney has an obligation of confidentiality under Rule 1.6 of the Rules of Professional Conduct which does not permit him/her to disclose the information that is being sought. Pursuant to Rule 1.6, the inquiring attorney has a duty to invoke the attorney-client privilege and the work product doctrine with respect to documents and information which, in his/her professional judgment, are protected by the privilege or the doctrine. The inquiring attorney must comply with the final orders of a court requiring him/her to give information about the client.

Reasoning:

Rule 1.6(a) states:

Rule 1.6. Confidentiality of Information. -

- (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).

The information requested relates to the representation of the former client and therefore, pursuant to his/her obligation of confidentiality, the inquiring attorney may not disclose it without the client's consent. The official comments to Rule 1.6 further provide:

. . . . If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, paragraph (a) requires a 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 Panel concludes that the inquiring attorney has an obligation to keep the information sought confidential, and to object to its disclosure in the appropriate motions and/or at the deposition on the grounds of the attorney-client privilege, the work product doctrine, and his/her ethical obligation of confidentiality. See ABA Comm. on Ethics and Professional Responsibility, Formal Op. 94-385 (1994) (lawyer has professional responsibility to seek to limit subpoena or court order on any legitimate ground, such as attorney-client privilege, work product immunity, burden or relevance, to protect information to which obligations under Rule 1.6 apply.) The inquiring attorney must comply, however, with the final orders of a court requiring him/her to produce the documents sought or to give information about the former client. See Comment to Rule 1.6.