

Proposed Revisions of Rule 1.6, Comments [12] and [13]  
July 23, 2001  
(Changes from Final Draft shown in italics)

1 (b) A lawyer may reveal information relating to the representation of a client to the extent  
2 the lawyer reasonably believes necessary:

3  
4 (1) ...

5  
6 (6) to comply with other law or a court order.

7  
8 Comment

9  
10 [1] ...

11  
12 [12] Other law may require that a lawyer disclose information about a client. Whether  
13 such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules.  
14 When disclosure of information relating to the representation appears to be required by  
15 other law, the lawyer must discuss the matter with the client to the extent required by  
16 Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure,  
17 paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply  
18 with the law.

19  
20 [13] ~~Paragraph (b)(6) also permits compliance with a court order requiring a lawyer~~  
21 ~~to disclose information relating to a client's representation. A lawyer may be ordered to~~  
22 ~~reveal information relating to the representation of a client by a court or by another~~  
23 ~~tribunal or governmental entity claiming authority pursuant to other law to compel the~~  
24 ~~disclosure. If a lawyer is called as a witness to give testimony concerning a client or is~~  
25 ~~otherwise ordered to reveal information relating to the client's representation, however,~~  
26 ~~Absent informed consent of the client to do otherwise, the lawyer must should, absent~~  
27 ~~informed consent of the client to do otherwise, assert on behalf of the client all non-~~  
28 ~~frivolous claims that the order is not authorized by other law or that the information~~  
29 ~~sought is protected against disclosure by the attorney-client privilege or other applicable~~  
30 ~~law. In the event of an adverse ruling, the lawyer must consult with the client about the~~  
31 ~~possibility of appeal. See to the extent required by Rule 1.4. Unless review is sought,~~  
32 ~~however, paragraph (b)(6) permits the lawyer to comply with the court's order.~~

Reporter's Explanation

Comments [12] and [13] address the lawyer's responsibilities prior to disclosing information relating to a client's representation as permitted by Rule 1.6(b)(6) "to comply with other law or a court order." Comment [12] lays out the lawyer's duty when faced with a law that by its own terms requires disclosure. Comment [13] currently refers exclusively to the lawyer's duty when ordered by a court to reveal information relating to a client's representation. Neither Comment refers to orders of a tribunal other than a court or to an order of another governmental entity, such as a legislative Committee. Compliance with such orders would only be permitted if

the order was authorized by other law.

The American College of Trial Lawyers (ACTL) has asked the Commission to modify the Comments to Rule 1.6 so they will explicitly address the lawyer's responsibility when faced with a subpoena or order from a governmental entity other than a court, such as legislative or regulatory body. The Reporters agree that this situation occurs with sufficient frequency that it should be explicitly mentioned in the Comment. Thus, we recommend that Comment [13] be modified to refer not only to a court order, but also more comprehensively to orders of "another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure." Because compliance with the latter orders would only be permitted by paragraph (b)(6) if "authorized by other law," we have also added a reference to the lawyer's duty to raise non-frivolous claims that the order is not authorized by law. We believe the proposed Comment is consistent with ABA Formal Ethics Opinion 94-385 (Subpoenas of a Lawyer's Files) and District of Columbia Ethics Opinion No. 288 (Compliance with Subpoena from Congressional Committee to Produce Lawyer's Files Containing Client Confidences and Secrets).

We also recommend two other minor changes. The first is to provide that the lawyer "should," rather than "must," assert all non-frivolous claims that a disclosure order is not authorized by law or that the information is privileged. We think the lawyer should be afforded some discretion in choosing which non-frivolous claims to use to resist disclosure. The second is to clarify that the lawyer must consult with the client about the possibility of an appeal "to the extent required by Rule 1. 4." This change is consistent with the formulation in Comment [12].