

Committee Opinion  
Reconsideration  
September 27, 1989

LEGAL ETHICS OPINION 1124

ATTORNEY'S LIEN – CLIENT'S FILE –  
TERMINATING REPRESENTATION:  
CONDITIONING CLIENT'S REQUEST  
FOR COPY OF ENTIRE FILE UPON  
PAYMENT OF PROFESSIONAL FEE.

You have advised that you represented a client for approximately two and one-half years. At present, the client is significantly in arrears in payment of fees for your professional services. The outstanding balance of your fee is not in dispute, but the client is either unwilling or unable to pay. Now the client has requested a complete copy of his entire file, which is rather extensive in volume.

You wish to know whether you may condition your compliance with the client's request for a copy of his file upon the payment of your fee.

Disciplinary Rule 2-108(D) states that "Upon termination of representation, a lawyer shall take reasonable steps for the continued protection of the client's interests, including giving reasonable notice to the client, allowing time for employment of another counsel, delivering all papers and property to which the client is entitled, and refunding any advance payment of fees that have not been earned. The lawyer may retain papers related to the client to the extent permitted by applicable law." It is the opinion of the Committee that the applicable law to which DR:2-108(D) presently refers is that which relates to an attorney's lien for legal fees owed by the client. (See LE Op. 1171) Therefore, the retaining lien or the common law possessory lien allows an attorney to retain a client's documents or property (except for trust funds) currently in the attorney's possession until the fee for professional services is paid. Thus, if there is no dispute about the fees and the client has the ability to meet the financial obligation, the lawyer may assert a retaining lien on the client's files as security for unpaid legal fees, unless the withholding of the files would prejudice or damage the client. ABA Informal Opinion 1461, adopted on November 11, 1989, articulates several circumstances under which the assertion of an attorney's lien for fees by retention of the client's file would prejudice the client and several criteria which need to be considered in determining whether to impose the lien.

While allowing an attorney to "retain papers relating to the client," the general provision of DR:2-108(D) requires that, upon termination of representation, the lawyer must take reasonable steps for the continued protection of the client's interests (emphasis added). Thus, an attorney must consider the welfare of the client and whether the retention of the client's files will materially interfere with the client's subsequent legal representation, thereby creating a prejudice to the client.

The Committee is of the opinion that even where a lien has been appropriately asserted, the lawyer may need to make the file available for the client's review if totally

Committee Opinion  
Reconsideration  
September 27, 1989

withholding the file would prejudice the client. It is further the opinion of the Committee that any charges imposed upon the client's account for copying the file, as a result of making the file available to the client, are similarly subject to available legal remedies for collection, which may not be asserted except under the appropriate circumstances.

Committee Opinion  
Reconsideration  
September 27, 1989

**Legal Ethics Committee Notes.** – Rule 1.16(e) governs a lawyer's duty to provide files to a former client.