

Committee Opinion
December 19, 1988

LEGAL ETHICS OPINION 1176

FEES: RETENTION OF CLIENT FILES
UNTIL FEES ARE PAID.

You have asked whether an attorney may retain his work product prepared for a client (e.g., written memoranda of law, copies of cases and statutes, etc.) until his legal fee has been paid in full. You have also made the same inquiry as it concerns various documents of the client which the client provided the attorney.

Disciplinary Rule 2-108(D), states as follows:

Upon termination of representation, a lawyer shall take reasonable steps for the continued protection of a client's interests, including giving reasonable notice to the client, allowing time for employment of other counsel, delivering all papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by applicable law.

Whether or not "applicable law" permits the attorney to retain work product papers relating to the client or the client's papers which were delivered to the attorney, is a legal question which is beyond the province of this Committee to answer.

Even if applicable law permits the attorney to retain papers relating to the client, the Committee opines that to do so, under certain circumstances, may be unreasonable, and thereby violate the first sentence of DR:2-108(D). That is, under certain circumstances retention of papers relating to the client may be inconsistent with taking "reasonable steps for the continued protection of a client's interests" Determination of whether or not retention of papers is unreasonable, even when permitted by applicable law, can only be made on a case-by-case basis, considering such things as the ability of the client to pay the fee, whether the fee is in dispute and the harm to the client if papers are retained.

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