

Committee Opinion  
July 24, 1990

LEGAL ETHICS OPINION 1366

FILES – DUTY TO CLIENT: CONTENTS  
OF FILE TO WHICH THE CLIENT IS  
ENTITLED.

You have indicated that former clients have requested the entire contents of all files relating to legal services performed for them over a period of several years, which files include notes, multiple drafts and other documents which led to final documents or resulted in advice given as to a particular matter. You have also noted that the former clients in question were sent copies of all relevant documents prepared for them throughout the course of the firm's representation. You advise that your firm recognizes that any client has a right to receive all documents that it would have reason to need, including "work product" created for the client, and that you are willing to copy such documents at your (firm's) cost. Finally, you indicate that your former clients (and their new counsel) have declined your invitation to review all material of any kind that was prepared in representing them and, if that review uncovered any needed documents, those documents would be given to the former clients.

You have asked that the Committee opine as to whether, under the circumstances you describe, the "work product" to which the former client is entitled includes multiple drafts of documents and attorney's notes and internal memoranda.

For purposes of this opinion, the Committee assumes that no fees are owing to the firm as a result of its representation of the former clients.

The appropriate and controlling Disciplinary Rule relevant to your inquiry is DR:2-108(D) which, while permitting the lawyer to "retain papers relating to the client to the extent permitted by applicable law," requires that, upon termination of representation, the lawyer deliver to the client all papers and property to which the client is entitled. The operative concept involved in the pertinent Disciplinary Rule is meant to ensure that the former lawyer does not prejudice his former client in any way.

The Committee has earlier opined that the "applicable law" to which DR:2-108(D) refers is that which relates to an attorney's lien for legal fees owed by the client. See LE Op. 1171. Thus, under the assumption that your former client does not owe any fees, the Committee further assumes that no statutory or common-law possessory lien arises upon which you or your firm may base any retention of any materials in the client's file.

The Committee is of the view that any legal definition of "work product," as applied in the Rules of Evidence or elsewhere in a legal context is inapposite to the question of delivery of a client's file since a file may contain additional materials which were not prepared in anticipation of litigation or for trial. Rather, the Committee opines that the term's plain meaning is applicable and refers to all materials prepared or collected by the attorney, or at the attorney's direction, in relation to any legal services for which the client engaged the attorney or the law firm over the entire period of the provision of such services. Thus, the Committee is of the opinion that, with relation to the ownership of a

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client's file, where no fees are outstanding, "work product" includes, as you have enumerated, attorney's notes, internal memoranda and multiple drafts and other documents which lead to final documents or result in advice given as to a particular matter.

Thus, the Committee is of the further opinion that the client is entitled to the entire contents of his file and the attorney is not entitled to refuse to turn over that file or any portion thereof. The Committee reiterates its view that the entire file is "property to which the client is entitled," thereby eliminating any necessity for a determination by anyone other than the client as to what the client may need. Furthermore, such ownership of the file is irrespective of any earlier provision of copies to the client. LE Op. 1171; Scroggins v. Powell, Goldstein, Frazier and Murphy, 15 B.R. 232, 241 (Bankr. N.D. Ga. 1981), rev'd on other grounds, 25 B.R. 729 (N.D. Ga. 1982). See also Vargas v. United States, 727 F.2d 941, 944 (10th Cir. 1984), cert. denied, 469 U.S. 819 (1984).

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