

LEGAL ETHICS OPINION 1790

CLIENT FILES – REFUSAL OF ATTORNEY TO
RELEASE A COPY OF THE DEFENDANT’S
PRE-SENTENCE REPORT TO THE
DEFENDANT.

Your request presented a hypothetical situation involving a client requesting a copy of his file from an attorney. Specifically, the attorney had represented the client in a criminal matter. The client was convicted in a Virginia circuit court. The trial judge set a sentencing hearing and ordered a probation officer to prepare a pre-sentence report for use at that hearing. The officer forwards a copy of the report to the attorney, who reviews it with his client. One day after the sentencing hearing, the client informs the attorney that the client will be petitioning the Supreme Court of Virginia for a writ of *habeas corpus*. The client requests that the attorney provide the file to the client, including the pre-sentence report.

The question raised by your hypothetical is whether the attorney has a duty to provide the pre-sentence report to the client. The pertinent provision of the Rules of Professional Conduct is Rule 1.16(e), which specifically governs the lawyer’s duty to transmit the client’s file upon termination of the relationship and at the request of the client. Whether the attorney must provide a copy or an original of the contents depends on the nature of each document; however, paragraph (e) does require provision of the client’s *entire* file, except for one narrow category:

Billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts, staffing considerations, or difficulties arising from the lawyer-client relationship.

A pre-sentence report is not the sort of internal document described by the exception. Therefore, the general requirement from this provision would apply: that the lawyer provide file contents or, in many instances, *copies* of those contents, to the client. Comment 11, however, sets forth an important limitation:

The requirements of paragraph (e) should not be interpreted to require disclosure of materials where the disclosure is prohibited by law.

Your request references Attorney General Jerry W. Kilgore’s Advisory Opinion, dated March 31, 2003, which interprets Virginia Code §19.2-299, as addressing the legal issue of whether disclosure of pre-sentencing reports by attorneys to their clients is prohibited by law. The exclusive purview of this committee is to interpret the Rules of Professional Conduct; it would be outside that purview for this committee to analyze other legal authority regarding disclosure of pre-sentence reports. This committee, therefore, declines to do so.

This opinion is advisory only, based solely on the facts you presented and not binding on any court or tribunal.