



Committee on Professional Ethics

OPINION #88-3

Topic: Duty to return files to client

Digest: A lawyer shall turn over client's files to him, other than attorney work product, upon request by the client.

Code: DR 9-102(B)(4)

QUESTION

WHEN A CLIENT RETAINS A NEW ATTORNEY, WHAT ARE THE RESPONSIBILITIES OF THE FORMER ATTORNEY WITH REGARDS TO RETURNING CLOSED FILES TO THE FORMER CLIENT?

OPINION

DR 9-102(B)(4) provides that:

A lawyer shall promptly pay or deliver to the client as requested by the client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

New York Bar Association Opinion #398 (1975) states in relevant part:

Documents, correspondence between the clients and persons other than the law firm, and papers which are not the lawyer's own work product, are the property of the client within the meaning of DR9-102(b)(4). Accordingly, subject to the firm's right to assert a lien thereon, they must be released to the client or to his nominee (who may be any lawyer or law firm), upon their clients' request. The disciplinary rule recognizes no one but the client is qualified to make the request.

It would not be improper for the partnership to require, both for its own protection and that of the client, that any instructions from the client to deliver a file to his nominee be in writing signed by the client.

Based upon the foregoing, upon the former client's request, the cited materials contained in closed files must be turned over to the new lawyer.

There is no provision in the Code of Professional Responsibility for charging the former client a fee for copying the materials being turned over. The originals are the former client's property and he or she is entitled to them.

CONCLUSION

Upon a former client's request, the cited materials contained in closed files must be turned over to the new lawyer.
