

PUBLIC Opinion

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Surrender of Client File Upon Termination of Representation

Upon termination of representation, a lawyer must surrender the client's papers and property. Further, upon written request, he must deliver to the client the entire original file, including work product. The lawyer may not condition delivery on payment of his bill or on payment of copying costs. Nor may he unreasonably insist upon a particular place or mode of delivery. If there is a single file for multiple clients, they should decide among themselves who will receive the original file.

The Rules of Professional Conduct Committee considers here the ethical concerns regarding the client's property, papers and the lawyer's file that arise when a lawyer's representation terminates. Under Rule 1.16(d) of the Louisiana Rules of Professional Conduct (2004) (the LRPC), a lawyer has a two-part obligation upon termination of representation. ²The first duty is automatic: he must surrender the "papers and property to which the client is entitled." The second duty, in contrast, only comes into play upon written request by the client. In that event, the lawyer must "promptly release to the client or the client's new lawyer the entire file relating to the matter." In our view, both parts of the Rule are intended to guide the lawyer in fulfilling what the Rule specifies is an obligation to "take steps to the extent reasonably practicable to protect a client's interests" upon termination of representation. The duty to surrender "papers and property to which the client is entitled" covers, for example, original documents brought to the lawyer by the client for purposes of administering an estate or for a closing. Money delivered to the attorney to pay a judgment is an example of property to which the client is entitled. The second sub-part of the Rule relating to the lawyer's file has two sub-parts. The first is that, upon written request, the lawyer must promptly release to the client or the client's new lawyer "the entire file relating to the matter." The second sub-part provides that the lawyer "shall not condition release over issues relating to the expense of copying the file or for any other reason." Failure to comply with the client's request for the file may result in the imposition of sanctions. *See, e.g., In re Turnage*, 790 So.2d 620 (La. 2001).

What Does “Entire File” Mean?

In our view, the specific provision regarding release of the “entire file relating to the matter” must be read in the context of the overall purpose of the Rule, which is protection of the client’s interests to the extent reasonably practicable. It serves to clarify the general duty to deliver “papers and property to which the client is entitled.” The clarification is intended to emphasize and insure the obligation to deliver the file expeditiously so that the client’s legal claims or rights will not be prejudiced. Its use of the term “entire file” allows no argument that work product containing mental impressions, research, analysis and the like is exempt from inclusion in what must be delivered to the client.³ The entire file must be delivered. The lawyer has the option of making a copy for his own records.

Can the Lawyer Retain the File Until His Bill is Paid?

The immediate predecessor to the current Rule⁴ (and now the current Rule⁵ has) changed the law that existed prior to its amendment on May 24, 2001. Retaining liens are now forbidden. Upon termination, a lawyer who receives a written request by the client for the file must promptly release it to the client or the client’s new lawyer, and may not condition release **for any reason**. See generally “Rule 1.16(d) of the Louisiana Rules of Professional Conduct — No ‘Hostages’ Allowed,” *Louisiana Bar Journal*, Vol. 50, No. 3, at p. 216.

What if There Are Multiple Clients Represented Jointly?

To the extent that the clients have delivered papers or property to the lawyer, these should be returned to the proper owners. However, given that the Rule contemplates delivery of the entire original file to the client, multiple clients must determine among themselves who gets the original. If they are unable to do so, the lawyer may file a concursus proceeding.

Where Must the File Be Delivered?

If a file contains photographs, original notes and other original documents, a lawyer may not wish to mail it to the client. On the other hand, there may be circumstances where the client is uncomfortable coming to the lawyer’s office or finds it inconvenient or difficult to do so. Therefore, while making the file available at the lawyer’s reception desk for inperson retrieval by the client normally would not be unreasonable, and the lawyer’s concern regarding the possibility of loss or damage in the event of mailing is legitimate, it would be improper to insist on in-office pickup without further inquiry and dialogue.

Two reasons compel further inquiry and dialogue. First, absent an investigation of alternatives, insisting on in-office pickup could be seen as placing a condition on the release, in violation of Rule 1.16(d). (On the other hand, a client’s unreasonable demands, such as in-person delivery in Outer Mongolia, do not have to be acceded to.) Second, a lawyer has a duty to communicate with his client, including a duty to “reasonably consult with the client about the means by which the client’s objectives are to be accomplished.” Rule 1.4. While the lawyer-client relationship may technically be over, Rule 1.16(d) envisions a continuing obligation to accomplish certain specified and limited objectives, one of which is surrender of the file. In our opinion, therefore, the lawyer

should not simply stand pat on delivery/pickup at the office, but should inquire whether any alternate method of delivery would be appropriate and acceptable to the client (*e.g.*, private courier, commercial courier, hand-delivery, etc). The cost of such delivery could, like the copying costs specifically mentioned in the Rule, be determined in an appropriate proceeding if a resolution cannot be achieved directly with the client. Alternatively, the client may be willing to sign a written release, authorizing the use of the mails and agreeing to hold the lawyer harmless in the event of the file's loss or damage as a result of that requested mailing. Written inquiry to the client on this subject would serve to provide support for the reasonableness of the lawyer's efforts in trying to release the file to the client while protecting his interests to the extent reasonably practicable. Similarly, unilaterally electing to deposit the file with a copy service and then requiring the client to pay the copying charges prior to or upon retrieval of the file from the copy service would be a violation of the Rule. The lawyer should not use a third party, such as a copying service, to try to accomplish what the Rule prohibits her from doing herself: conditioning "release over issues relating to the expense of copying the file." The lawyer should pay the copying costs to obtain a copy of the file to keep, as well as any other costs associated with promptly delivering the file to the client, and then seek reimbursement of those charges from the client, if allowable under the lawyer's fee agreement or contract law. No matter how delivery is accomplished, it would be prudent to obtain a signed and dated receipt evidencing safe delivery of the file to the client.

Can the Lawyer Charge for Organizing the Files Prior to Delivery to the Client?

If it is reasonable for the client to expect the files to be relatively organized based upon the fees paid prior to termination, it would be unreasonable to charge additional fees for any time required to organize the files to that level — *i.e.*, to do what the lawyer has presumably already been paid to do.