



OLR RESEARCH REPORT

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OWNERSHIP OF PERSONAL DOCUMENTS PROVIDED BY CLIENT TO ATTORNEY

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You asked whether documents given to an attorney by a client become the attorney's property. Your question relates to a client who gave an attorney "personal documents" during the course of representation. Now the client wants the documents back and the attorney will not release them.

The Office of Legislative Research is not authorized to give legal opinions and this should not be considered one.

SUMMARY

We did not find a statute relating to ownership of property that a client gives to their attorney. But the Rules of Professional Conduct set ethical standards for returning property belonging to a client. Legal ethics rules suggest that generally "personal documents" given to an attorney by a client are the client's property and should be returned upon request. But ownership of property depends on the facts and circumstances of each situation.

The Connecticut Bar Association Committee on Professional Ethics (CBA Ethics Committee) and the American Bar Association (ABA) publish opinions based on specific situations to help clarify the Rules of Professional Conduct. A number of factors may affect the attorney's obligation to give certain documents to his or her client, including the length of time that has passed since the case concluded, the type of documents, dispute over fees, and the terms in a retainer agreement.

The statutes subject attorneys to court rules and orders (CGS § 51-84). Courts can sanction attorneys for violating the Rules of Professional Conduct and attorneys can be subject to grievances for their violations. The Statewide Grievance Committee may impose conditions and sanctions on attorneys for misconduct. One of the conditions the committee may impose is an order that the attorney return a client's file to the client.

RULES OF PROFESSIONAL CONDUCT

Connecticut's Rules of Professional Conduct, included in the [Connecticut Practice Book](#), set the ethical standards governing lawyers in the state. These rules are modeled after the ABA Model Rules of Professional Conduct. Rules 1.16 and 1.15 address a client's request for papers and property.

Rule 1.16 provides the standards for declining or terminating the lawyer-client relationship. Rule 1.16(d) provides in relevant part:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled . . . The lawyer may retain papers relating to the client to the extent permitted by other law.

The official comment to the rule explains that "a lawyer must take all reasonable steps to mitigate the consequences to the client" upon termination of the relationship. And the comment clarifies that "the lawyer may retain papers as security for a fee" as permitted by law.

Rule 1.15 provides standards for safekeeping a client's property. Rule 1.15(b) states that a lawyer must hold property of clients in connection with the representation separate from the lawyer's own property. This includes funds and other property. And, Rule 1.15(e) provides, with exceptions, that a lawyer must promptly deliver to the client property that the client is entitled to receive. The official comment to this rule states that "A lawyer should hold property of others with the care required of a professional fiduciary."

Under Rule 1.15(f), if interest in property is disputed by two or more persons (one of whom may be the lawyer), that property must be kept separate by the lawyer until the dispute is resolved.

ETHICS OPINIONS

The ABA and the CBA Ethics Committee publish opinions to provide guidance for interpreting the Rules of Professional Conduct. These opinions are based on the facts and circumstances of an individual case.

CBA Ethics Committee Informal Opinion 94-26 listed three duties owed to a client upon termination of representation under Rule 1.16(d). A firm must provide notice that it is withdrawing, suggest employment of other counsel, and return all papers and property upon termination.

CBA Ethics Committee Informal Opinion 94-12 addressed types of material in a client's file that a client is entitled to receive under Rule 1.16(d). Quoting language from ABA Informal Opinion 1376 (1977), the CBA ethics committee opinion acknowledged, "the attorney clearly must return all of the material supplied by the client to the attorney." And, quoting language from the Kansas Bar Association Advisory Opinion 92-05, the CBA Ethics Committee included in the definition of "client property" documents given to the attorney by the client.

ABA Informal Opinion 1384 (March 14, 1977), addressed the disposition of a lawyer's closed or dormant client files. That opinion stated that a lawyer cannot destroy items that belong to a client without the client's consent. Items that belong to the client include "those furnished to the lawyer by or in behalf of the client."

In certain circumstances, an attorney may exercise a retaining lien on the client file as a security for a fee (CBA Ethics Committee Informal Opinion 00-3; *Marsh, Day & Calhoun v. Solomon*, 204 Conn. 639, 645-646 (1978)).

STATEWIDE GRIEVANCE COMMITTEE

Courts can sanction attorneys for violating the Rules of Professional Conduct and attorneys are subject to a grievance process for their violations.

The Statewide Grievance Committee investigates allegations of attorney ethical misconduct. If the committee determines that probable cause of misconduct exists, it conducts a hearing. After the hearing, the committee may impose sanctions and conditions against the attorney including, but not limited to, an order that the attorney return a client's file to the client (Superior Court Rule 2-37, 2011 Connecticut Practice Book).

HYPERLINK

Connecticut Practice Book

http://www.jud.ct.gov/Publications/PracticeBook/PB_2011.pdf

JB:df