



Returning a Client's Files Who Pays the Copying Costs?

One of the most frequently asked questions addressed to this column is who pays the copying costs at the end of a representation when either the client or another lawyer asks for "the file." The answer: You do, unless you have already provided the client with a copy of what is being requested. Let's look at the rules.

ERs 1.15 and 1.16,¹ read together, provide that a lawyer must promptly deliver to the client any property the client is entitled to receive and that, upon termina-

tion of a client's file free of charge. Once you have provided the client with all documents to which the client is entitled, you have fulfilled your ethical obligations and may properly charge for the actual cost of making additional copies of documents that had been provided.

There is at least one corollary to this general rule. ER 1.4 requires us to keep our clients reasonably informed and to comply promptly with reasonable requests for information. This probably means that

"Any documents in the file that actually belong to the client ... are the client's property and must be returned to the client—even if his account is delinquent."

if you keep your client informed by sending copies of correspondence and pleadings generated in the case, you should not be charging the client for doing so. Some clients may not mind not being sent copies of everything. If, however, at the end of the representation, the client wants copies of correspondence and pleadings you did not send, you have to pay for the copies.

tion of representation, the lawyer must surrender papers and property to which the client is entitled.

For the present purposes, let's assume that the client's account is current. The rule in Arizona is that unless you have previously provided the client with a copy of what has been requested, you must provide the client with the original documents, and the copies you make for yourself are at your expense.

Although these rules are not specifically addressed in the current ERs, Arizona Ethics Opinion No. 93-03 (March 17, 1993) makes it clear that a lawyer is not ethically obligated to provide extra copies

Any questions about this area in the future certainly are answered directly in Comment 9 to the new ER 1.16, which will be effective as of Dec. 1, 2003.² There, it is specifically stated that "A lawyer shall not charge a client for the cost of copying any papers unless the client already has received one copy of them."

What if the client's account is not current? What do you do when he asks for his file?

First, you need to know that any documents in the file that actually belong to the client, such as income tax returns, corporate papers and insurance policies, are the client's property and must be returned to

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the client—even if his account is delinquent. ER 1.16 requires this.

And, before you attempt to assert what is commonly referred to as an “attorneys’ lien” on the remaining part of the file, you need to read *National Sales and Serv. Co. v. Superior Court*,³ which discusses the validity and scope of such liens in Arizona. The case is most often cited for Justice Feldman’s concurring opinion, in which he points out that an attorney’s work product (such as research notes) may be withheld to secure payment, but that no retaining lien may be asserted against property that belongs to the client or against anything in the file if the lawyer either has abandoned the client or has been justifiably discharged. And any right to withhold items in the file from a nonpaying client must be carefully measured against the harm you may do to him if you do not send him the items requested. After December 1, ER 1.16(d) will state, in part, “The lawyer [upon termination of representation] must provide the client with all of the client’s documents and papers reflecting work performed for the client if withholding them would prejudice the client’s rights.”

We all know that the attorneys’ lien is most effective when the client really needs the file. This is just the situation you need to avoid, however, to keep from violating ER 1.16 and the teachings of *National Sales and Service Co.* ▲

endnotes

1. Rule 42, ARIZ.R.S.C.T.
2. See www.supreme.state.az.us/rules/Recent_rules.htm and click on R-02-0045, “Order Amending Rules 42 and 43.”
3. 667 P.2d 738 (Ariz. 1983).