



Legal Ethics  
**Ethics Opinions**

LEGAL ETHICS

**OPINION 1996-1**

Unless the client and attorney agree otherwise, the attorney may dispose of any writing in the "client file," except to the extent retention is necessary to avoid reasonably foreseeable prejudice to the client's legal rights.

**ISSUE:**

What are the duties of an attorney with respect what has, euphemistically, been called "the client file" created by or obtained by the attorney during the engagement and under what circumstances may an attorney dispose of materials?

**DIGEST:**

Unless the client and attorney agree otherwise, the attorney may dispose of any writing except to the extent retention is necessary to avoid reasonably foreseeable prejudice to the client's legal rights.

**AUTHORITIES INTERPRETED:**

California Rules of Professional Conduct, Rule 3-700 (D)(1).

**DISCUSSION**

California Rules of Professional Conduct, Rule 4-100, governs an attorney's responsibilities to clients with respect to "funds," "securities," and "properties." Rule 3-700 governs an attorney's responsibilities with respect to "papers" and "property" upon termination of employment. In this opinion, we evaluate the ethical duties of an attorney with respect to client papers and property, as well as to any other writings created or obtained by the attorney.

To the extent the client or his or her agents have deposited with an attorney any personal property belonging to the client and the attorney is acting as a bailee with respect thereto, such property must be returned to the client, except to the extent the attorney and client have agreed otherwise.

This opinion is not concerned with a variety of reasons why an attorney may not wish to dispose of writing relating to a client matter, including client writings, because of client relations, possible need to justify fees, general business reasons, malpractice concerns, etc. We do so not because these other considerations are unimportant. Rather, we do so because this opinion address ethics issues and is not a treatise on law office management.

There is no clear definition of the term "client file." A prospective client may inquire of an attorney who may make a note or perhaps do preliminary research before deciding to accept or reject the case. During the course of representation, attorneys may create and receive papers, including papers from the client and others (e.g., depositions) storing them in "manila" folders, labeled with the client's name. In addition, information is often created, received, and stored electronically, and indexed under the client's name or otherwise identified with the client. Also, materials, e.g., office forms and memoranda, which the attorney created during representation of other clients may be applicable and, if so, copied or otherwise placed in the "client file." Accounting and administrative records, such as adding the client's name to a database, entering the conflict of interest information on the attorney's (and/or firm's) conflict register, and entering dates on calendars, may also be created. In more complex or extended matters the above materials may be stored elsewhere and the location of the material only noted in a file (e.g., documents subject to court protective order or extensive discovery documents).

While the foregoing are writings (see Evidence Code, section 250), we believe that term is not dispositive in determining which, if any, must be maintained. For purposes of this opinion, the term "client file" will not be used, but rather we will employ "client papers" as used in rule 3-700, subdivision (D)(1), irrespective of where

such client papers may be located or maintained. In discussing terminations of employment, California Rules of Professional Conduct, rule 3-700 (D)(1) provides:

A member whose employment has terminated shall:

Subject to any protective order or non-disclosure agreement, promptly release to the client, at the request of the client, all the client papers and property. 'Client papers and property' includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to the client's representation, whether the client has paid for them or not;

Rule 3-700 (D)(1) does not establish a fixed time period for which any particular item must be retained. Moreover, it does not provide guidance on when, if ever, a particular item may be discarded. Obviously, not every writing placed in a client file must be maintained forever. "[T]he concept of a 'client file' is not static, and its 'content' will change depending on circumstance." (Bar Association of San Francisco, Legal Ethics Committee, Formal Opinion 1990-1 ["Formal Opinion 1990-1"], State Bar of California, California Compendium on Professional Responsibility ["Compendium"], sec. II, subd. B, p.131.) In BASF Formal Opinion 1990-1 we discussed in some detail the issue of reasonably foreseeable prejudice to the client and in so doing defined what constitutes the "client file" (herein "client papers"). That opinion, among other matters, stated that an attorney may not ethically withhold client papers and property, including the attorney's uncommunicated work product, where such information and materials are reasonably necessary to the client's representation. We reaffirm that opinion and particularly the discussion relating to client papers. (See also Bar Association of San Francisco, Legal Ethics Committee, Formal Opinions 1975-4, Compendium p. 71; 1979-3, Compendium p. 107; and 1984-1, Compendium p. 119, also deal with various aspects of what client papers belong to the client.)

We must stress that the foregoing definition does not address the number of years which an attorney must retain client papers. There is no rule that provides such a time period and, in our view, no rule should. The key to retention of client papers, absent client agreement to other arrangements, is the attorney's obligation as a bailee of the client's personal property and the need to retain those.

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