



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

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**ISBA Advisory Opinions on Professional Conduct are prepared as an educational service to members of the ISBA. While the Opinions express the ISBA interpretation of the Illinois Rules of Professional Conduct and other relevant materials in response to a specific hypothesized fact situation, they do not have the weight of law and should not be relied upon as a substitute for individual legal advice.**

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**This Opinion was AFFIRMED by the Board of Governors in January 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.4(a), 1.6(a), and 1.15(d). This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.**

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**Opinion No. 01-01  
July, 2001**

Topic: Lawyer's files; access to files stored on law firm's computer

Digest: When a former client is entitled to receive file material from a law firm, a law firm may not refuse a request to download onto disk such former client file materials stored on its computer system when such downloading can be accomplished easily and without disclosing the confidences of the firm's other clients.

Ref.: Illinois Rules of Professional Conduct 1.4(a); 1.6(a); and 1.15(b)  
Illinois Supreme Court Rules 201(b)(1) and 214  
ISBA Advisory Opinion Nos. 94-13; 94-14; and 95-2  
ABA Formal Ethics Opinion No. 99-414

## **FACTS**

Attorney Jones leaves the ABC law firm (ABC) in June 2000. Clients of Attorney Jones have written letters to ABC, stating that they wish their client file materials, including any generated, stored or archived on computer, to be transferred to attorney Jones. Any outstanding legal fees have been paid.

ABC law firm packs up Attorney Jones' files and sends them to Attorney Jones at his new law firm. Before those files were sent, ABC did not undertake to search its computer for client materials, nor did the firm undertake any comparison of documents on computer with the file materials put in boxes and sent over to attorney Jones. The only overture the ABC law firm has made to the clients is to have Attorney Jones go through the boxes and see what documents are, or may be, missing. The ABC law firm would then make an attempt to search the firm's computer to see about the whereabouts of those particular documents. (Attorney Jones has no access to ABC's computer). Attorney Jones has requested that the ABC law firm merely download onto disk(s) all the client(s) file materials and then Attorney Jones would compare what is on the disk(s) to what is contained in the boxes.

To download client file materials is easy to accomplish and client file materials on computer are accessed by attorney ID number, attorney initials and/or client name. The ABC law firm refuses to turn over client materials on computer to date.

### **QUESTION**

Is a law firm obligated to download client files from its computer system and provide them to a former partner of the firm, per the clients' request, in order to ascertain that the client has received all documents to which the client is entitled?

### **OPINION**

The principal rules governing a lawyer or law firm's duty to provide information and documents or other material to a client are Rules 1.4(a) and 1.15(b) of the Illinois Rules of Professional Conduct.

Rule 1.4(a) provides:

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.15(b) provides:

Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Therefore, a client cannot be denied access to his or her files, as this Committee stated in ISBA Opinion No. 95-02. The Rules of Professional Conduct, however, do not specify the format in which the client must be provided with his or her files. In light of modern business practices in this era of rapidly developing technology, the Committee believes it is important to address a law firm's obligation to provide its clients or former clients with files maintained on its computer system.

ISBA Opinion No. 94-13 has reviewed in detail seven categories of materials normally maintained in a client's file and evaluated the lawyer's duty to turn over or disclose each separate category of material, the issue of which of the clients' documents must be provided to the clients is not addressed herein. For purposes of this Opinion, it is noteworthy that the Committee concluded in ISBA Opinion No. 94-13 that a client is not entitled to an attorney's work product, including the attorney's notes, internal memoranda, legal research and factual research materials.

In the fact inquiry presented, the ABC law firm sent Attorney Jones his files without undertaking to search its computer for client materials, nor did the ABC law firm compare the documents it provided to Attorney Jones with those stored on its computer system. Although the Rules of Professional Conduct are silent as to whether the ABC law firm has any obligation to do so, the Illinois Supreme Court rules governing discovery are instructive. Rule 201(b)(1) defines the word "documents" to include "papers, photographs, films, recordings, memoranda, books, records, accounts, communications and all retrievable information in computer storage." The Committee Comments note that the definition of "documents" was expanded to include "all retrievable information in computer storage" in recognition of the "increasing reliability on computer technology." Thus, the Committee Comments conclude, a party is obligated to "produce on paper those relevant materials which have been stored electronically."

Likewise, Supreme Court Rule 214, which governs document discovery, requires "a party to include in that party's production response all responsive information in computer storage in printed form." Committee Comments, Rule 214. The Committee Comments to Rule 214 further note "that there can be no question but that a producing party must search its computer storage when responding to a request to produce documents pursuant to this rule."

While discovery rules do not control issues of professional conduct, both sets of rules are promulgated by the Illinois Supreme Court, and should therefore be interpreted in a consistent manner. Under the facts presented, it is the Committee's opinion that the ABC law firm **must** download Attorney Jones's client file materials onto disks.

It is also the Committee's opinion that the request to have client file materials downloaded onto disk is a "reasonable" request as set forth in Rule 1.4(a), and that the client is entitled to receive his or her files in the format in which the lawyer or law firm maintains such files. Moreover, as the facts represent that downloading client file materials is easy to accomplish, it would be far more efficient and cost-effective to proceed in this manner rather than to require Attorney Jones to search through the boxes in order to figure out what documents may be missing. Although the expense which would be incurred in downloading the client file materials is likely to be minimal, as set forth in ISBA Opinion No. 94-14, the ABC law firm may be entitled to compensation for the reasonable expense involved in retrieving the files in question and providing on disk copies of materials that were already provided to Attorney Jones and his clients.

Moreover, under the facts presented, there are no confidentiality concerns, which would warrant the ABC law firm's refusal to download the client files onto disks. Rule 1.6(a) provides that "a lawyer

shall not, during or after termination of the professional relationship with the client, use or reveal a confidence or secret of the client known to the lawyer unless the client consents after disclosure." While it is certainly true that there would be information on the law firm's other client files stored on the computer that would constitute a confidence or secret of the other clients, the fact inquiry states that client file materials on the ABC law firm's computer are accessed by attorney i.d. number, attorney initials and/or client name. Accordingly, the ABC law firm could download only Attorney Jones's client files without fear of disclosing the confidences of its other clients.

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