



**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 May 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.4 and 1.15(a) and (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. 95-2  
July 14, 1995**

Topic: Lawyer's files; access to closed files.

Digest: A lawyer no longer with a law firm may have access to closed files of that firm where the lawyer was in an attorney-client relationship with the client of the file in question.

Ref.: Illinois Rules of Professional Conduct 1.4 and 1.15(a) and (b).  
ISBA Advisory Opinion Nos. 94-13 and 94-14

## **FACTS**

A non-equity partner in a law firm left the firm. Prior to leaving, she requested that she be allowed to remove closed files for clients whom she had represented during her tenure with the firm. Her practice consisted almost entirely of divorce litigation which often results in post-dissolution matters such as custody modifications. The equity partners denied her request but offered her two options: 1) that she could photocopy the files and return the originals, or in the alternative, 2) the firm would locate the closed files, photocopy them and provide copies to her and charge her for the clerical time spent and the cost per page. Either of the alternatives required a signed authorization from the client requesting that a copy of the file be forwarded to the departed attorney.

The firm takes the position that the closed client files belong to the firm and not to the client. It is

the firm's position that a closed client file is substantively and materially different from an open file in that, once the matter is concluded, the client has received the services bargained for and has no further ownership interest in the file. In addition, the firm has already provided the client copies of all correspondence and pleadings as the matter progressed, so the client already possess all items of relevance. However, the firm agrees that the client may receive a copy of the file at his or her request upon paying an appropriate fee.

## **QUESTIONS**

The inquiry consisted of two questions: 1) whether or not the firm's position is correct and whether there are any ethical considerations that were overlooked, and 2) what is the ethical propriety of a letter to clients explaining the firm policy.

## **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 1.14(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) states:

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 file, and neither rule distinguishes between open and closed files.

The law firm in question is taking the position that closed files "belong" to the firm, since the client has received the services bargained for. However, there are a number of circumstances which may arise after a file is closed, when a departed lawyer would need access to a closed file without client consent. As mentioned above, divorce proceedings often have matters arise following the actual dissolution. In addition, the lawyer may have continuing legal and ethical responsibilities regarding that file, such as an ARDC inquiry, review for conflict, etc.

Either or both the client and the lawyer involved may need access to the file. Even if the lawyer is no longer associated with the firm, that lawyer should be able to have access to that file. It is the opinion of this committee that a lawyer no longer with a law firm may have access to closed files of that firm where the lawyer had an attorney-client relationship with the client of the file in question.

Consistent with Opinion No. 94-13, this Committee does not believe that a lawyer is required to act as a storage facility for clients, and therefore the firm is entitled to compensation for the reasonable expense of retrieving the files in question and providing copies of materials.

If the lawyer is requesting the copies for herself, then she should bear the cost in question. If she is requesting copies on behalf of her client, then the client should be informed of the potential cost involved. The firm's form letter to clients explaining the cost and asking for the client's signature before the costs are incurred is an appropriate method of informing the client. Advance disclosure of costs is consistent with Rule 1.4 of the Rules of Professional Conduct, which concerns communication with clients. Rule 1.4 requires that the lawyer shall keep a client reasonably informed and shall explain matters to the extent necessary to permit the client to make informed decisions regarding the representation. A client should be informed about the possibility of an expenditure of money in order to decide if the expenditure is truly necessary. Therefore, the firm's letter does comply with the requirements of proper communication with clients.

With the consent of the client, access can be granted to the client's file. But note that "access" means reasonable access. ISBA Opinion No. 94-13 sets out seven categories of materials that are in a client's file, and discusses to which categories a client can have access. Please refer to that opinion for specifics.

An additional consideration: Illinois law firms are required to retain client property and materials for a period of seven years after termination of the representation. Illinois Rule of Professional Conduct 1.15(a).

It is the opinion of the Committee that the firm's position is correct and they have not overlooked any ethical considerations. As to the ethical propriety of a letter to clients explaining the firm policy, the Committee believes that it is an appropriate description of the costs that will be incurred by the client and helpful in explaining the firm position in advance of the expenditure.

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