

L.E.I. 89-02  
COPYING CHARGES FOR FILES

Question presented: Under what circumstances, if any, can an attorney charge a client for copying a file, which must be returned to the client upon termination of the attorney's employment?

When an attorney/client relationship terminates, the attorney's duty does not stop at that point. For example, he/she must cooperate with succeeding counsel and minimize the possibility of harm to the client. Additionally, an attorney must protect the client's interest and must return the client's property paper and unearned advanced fee payment. Rule of Professional Conduct 1.16(d) provides: "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable, to protect the client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law."

The lawyer's duty to promptly return client papers upon termination of the representation, is well established. See Annotated Model Rules of Professional Conduct, pages 185-186.

The Committee on Legal Ethics has taken the position that papers, etc., may not be retained as security for a fee. However, there has been no West Virginia opinion or decision regarding who should bear the costs of copying such papers when the attorney desires either to retain a copy of the papers returned or, in the

alternative, to give the former client a copy of the papers while retaining the originals. The Committee finds that it is the general obligation of lawyers to return the original documents to their clients. There are obvious exceptions to this, such as original fee statements and firm records.

Despite the obligation to return original documents to clients, attorneys are entitled to keep copies of their clients' files. It is the Committee position that absent a prior agreement that the client will be responsible for copying charges, the attorney must bear the costs of such copying unless the copying is for the sole benefit of the client. Additionally, even if such an agreement exists, in the event the client refused to pay, the attorney must advance the costs and then add the charge to the client's outstanding bill.

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