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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, 1.6, 1.15, and 1.16. 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.

Opinion No. 94-14 January, 1995

Topic: Lawyer's Files; Duty to Return client papers.

Digest: Upon termination of representation, a lawyer is required to return all papers and property received from the client, but may retain copies at the lawyer's expense. If the client requests copies of other parts of the lawyer's file, the lawyer should make copies of those materials in the lawyer's file to which the client is entitled to access available at the client's expense.

Ref: Illinois Rules of Professional Conduct, Rules 1.4, 1.6, 1.15 and 1.16. ISBA Opinion No. 94-13 (1995).

FACTS

The inquiring lawyer served as village attorney for a Village for thirty years prior to retirement. Upon retirement, the lawyer turned over all active files to his successor. Recently, the Village Administrator has asked the lawyer to turn over all files, both active and inactive. Most of the files are now in storage, together with files of clients from the lawyer's former and present law firm. The lawyer believes that the Village Administrator's request is overly broad and burdensome. To alleviate the burden, the Village Administrator has offered to send someone to the lawyer's storage facility to assist in sorting and pulling the relevant files.

QUESTIONS

- 1. Is the Village Administrator entitled to both the lawyer's active and inactive files?
- 2. If the Village Administrator is entitled to both active and inactive files, who bears the cost of copying the files?
- 3. If the lawyer were to permit the Village Administrator's personnel to assist in pulling and sorting files, would this breach the lawyer's obligation to protect and maintain the secrets and confidence of other clients?

OPINION

- 1. It appears that the Village has in effect discharged the lawyer and the designated successor. This situation is treated as a withdrawal from representation under the Illinois Rules of Professional Conduct. Rule 1.16(d) provides in relevant part:
 - ... A lawyer shall not withdraw from employment until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including ... delivering to the client all papers and property to which the client is entitled....

Generally, a lawyer may retain a client's papers or property only if asserting a common law or statutory retaining lien. In the facts presented, the lawyer has not suggested that any fee is owed relating to representation of the Village. Accordingly, there does not appear to be a retaining lien on the Village's files. In its recent Opinion No. 94-13, the Committee discussed the lawyer's duty under Rule 1.4(a) and Rule 1.15(b) to provide copies of and access to the various types of material usually contained in a lawyer's files. In general, the client is entitled under Rule 1.15(b) to the return of all materials that the client has provided to the lawyer; and the lawyer's obligation extends to both active and inactive files. Similarly, the client's right to access to other types of file material extends to both active and inactive files.

- 2. As noted above, Opinion No. 94-13 reviewed in detail the types of materials normally maintained in a lawyer's file and evaluated the lawyer's duty to turn over or disclose each separate category of material. All original papers delivered to the lawyer by the client must be returned to the client. The lawyer may make copies of such material, if desired, at the lawyer's expense. With respect to other parts of the lawyer's file to which the client is entitled to access, including copies of documents that the client has already received, the originals may be retained by the lawyer and the client should be permitted to have copies at the client's expense. Consistent with Opinion No. 94-13, the Committee does not believe that a lawyer is required to act as a storage facility for clients, and therefore the lawyer is entitled to compensation for the reasonable expense involved in retrieving the files in question and providing copies of materials that the client has already received. The lawyer is also entitled to compensation for the reasonable expense of providing copies of any materials, such as routine administrative correspondence with third parties, that the client may not have received because the lawyer had no duty to provide the client with copies of such materials in the normal course of the representation, but to which the client is entitled to access upon reasonable request.
- 3. Rule 1.6(a) provides that a lawyer generally shall not, either during or after termination of

the professional relationship with the client, use or reveal a confidence or secret of the client, unless the client consents after disclosure. Clearly there would be information on the lawyer's other files in storage that would constitute a confidence or secret of the other clients, whether it be the client's name, address, or a labeling of the subject matter. Assuming that the lawyer does not obtain the consent of every current or former client for whom there is a file in storage, allowing personnel from the Village to sort through those files would violate Rule 1.6. As noted in Opinion No. 94-13, the lawyer may charge the reasonable expense of locating and copying those parts of the lawyer's file that the client has not provided, but to which the client is entitled to access.

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