

COMMITTEE: Ethics Committee

DATE: November 12, 2009

4. CHAPTER 10, RULE 8: EXTENT OF LAWYER'S OBLIGATION TO PROVIDE FILES IN ELECTRONIC FORM

A lawyer advised that a number of former clients of his firm have asked for copies of their files in electronic form. Although the lawyer reviewed the opinion of the Ethics Committee of December 2008 (item 2), that opinion left a number of issues unresolved. The December 2008 opinion states:

CHAPTER 10, RULE 8: WHETHER LAWYER HAS ETHICAL OBLIGATION TO PROVIDE FILE TO CLIENT IN ELECTRONIC FORM

A lawyer asked whether a lawyer has an obligation to provide a client, on the client's request, with copies of electronic documents relating to the client's matter which the lawyer has in electronic form. She also asks whether a lawyer in possession of such documents has an obligation to give them to the client in a usable form: that is, not PDF.

The Committee noted that Chapter 10, Rule 8 requires a lawyer, on withdrawal from a matter, to take all reasonable steps to assist in the transfer of a client's file.

It was the Committee's view that a lawyer has an ethical duty, on the request of the client, to provide a client with documents that, at law, the client is entitled to have. Should those documents be held by the lawyer in electronic form, the Committee was of the opinion that a lawyer has an obligation to provide copies of the documents in the same electronic form in which the lawyer holds them at the time of the client's request for electronic copies of the documents.

The lawyer's questions of the Committee and the Committee's opinion with respect to the questions are set out below:

- (1) Is the lawyer's firm required to provide any electronic documents to a former client when it has already provided them in the ordinary course of providing legal services to the client?

Answer: In the Committee's opinion the answer to this question is "yes." The file belongs to the client and the lawyer is not excused from the obligation to provide the file, even if the lawyer has previously provided individual documents in the course of providing legal services to the client.

- (2) If the lawyer's firm has to provide some electronic documents, does it have to provide all documents requested by a former client, including where the former client requests all documents relating to the former client, is it required to provide only those individual documents specifically identified by the former client, or is it entitled to negotiate for the purposes of trying to settle a reasonable number of documents to be provided?

Answer: In the Committee's opinion the lawyer is obliged to make reasonable efforts to meet the request of the client, whether the client requests identifiable documents or makes a general request for documents. The lawyer is entitled to negotiate for the purposes of trying to settle a reasonable number of documents to be provided.

- (3) If the lawyer's firm has to provide electronic documents, can it charge the client for the time required to find the documents, to scrub them and save them onto a disk and for the cost of the disk/memory stick?

Answer: It was the Committee's view that it is proper for a lawyer to charge a reasonable amount to the client for providing the documents and the cost of materials required to do so.

- (4) If the lawyer's firm has to provide electronic documents, over what time period should it be required to complete the task?

Answer: In the Committee's opinion the documents must be provided within a reasonable time.

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