

NEW YORK STATE BAR ASSOCIATION
Committee on Professional Ethics

Opinion #398 - 6/10/75 (42-75)

Topic: Clients' files; release to withdrawing law partner

Digest: Law partnership may properly require instructions from client before turning over file to withdrawing partner

Code: EC 5-12, 7-38; DR 7-101(A)(1); 9-102(B)(4)

QUESTION

May a continuing law firm require instructions from firm clients before releasing the files of such clients to a partner who is withdrawing from the firm?

OPINION

The respective rights and obligations of withdrawing and continuing partners on the withdrawal of one or more partners from a continuing law firm may involve both legal and ethical questions. We express no opinion as to the legal questions.

Any client has a basic "right to be represented at all times by counsel of his own selection". ABA 10 (1926); N.Y. State 305 (1973). Absent a special agreement to the contrary, the clients of a law partnership employ the firm entity and not a particular member of the firm. A client has the right at any time to terminate his employment of the partnership entity, but this cannot be accomplished unilaterally by the withdrawing partner. Cf. EC 5-12. In the absence of a court order or express instructions from the client, the custody of the client's file properly reposes in the on-going partnership.

DR 9-102(B)(4) provides that:

"A lawyer shall promptly pay or deliver to the client as re-requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive".

Documents, correspondence between clients and persons other than the law firm, and papers which are not the lawyer's own work product, are property of the client within the meaning of DR 9-102(B)(4). Accordingly, subject to the firm's right to assert a lien thereon, they must be released to the client or his nominee (who may be any lawyer or law firm), upon the client's request. The Disciplinary Rule recognizes no one but the client as qualified to make the request. It is immaterial that the client was introduced to the firm or was served by the withdrawing partner.

It would not be improper for the partnership to require, both for its own protection and that of the client, that any instruction from the client to deliver a file to his nominee be in writing signed by the client.

Although the client is not entitled to require delivery of the firm's work product, nevertheless, if the firm is notified by the client that the withdrawing partner is to supersede it, the firm's duty to the client as well as professional courtesy to the withdrawing partner dictate that the partnership permit the client or its nominee to inspect and copy such memoranda of law and other papers as are necessary to guard the client's interest. Cf. N.Y. County 613 (1973); 12 Los Angeles Bar Bul. 327 (1937), indexed in Maru, Digest of Ethics Opinions 367 (1970); EC 7-38; DR 7-101(A)(1).