

A Thousand Pictures Are Worth A Few Words

by
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By now, every lawyer should know that when a lawyer's representation of a client terminates, the lawyer must return the client's property and files as required by Rule 1.15, Minnesota Rules of Professional Conduct (MPC), and Lawyers Professional Responsibility Board Opinion 13. Indeed, this topic has been the subject of two recent Minnesota Lawyer articles.^{Ftn 1} But, what should a lawyer do when her obligation to return the client's "file" conflicts with the duty to obey a court order? That very issue was the subject of a private admonition issued earlier this year.

In that case, an attorney represented the husband in an acrimonious dissolution. Husband and wife apparently had been quarrelling over many items, including the possession of the family photographs. Thousands of their photographs were in dispute. Consequently, the provisions of the final decree included a paragraph devoted to just that subject.

Specifically, the decree provided:

[Wife] shall have delivered to the offices of [husband's] counsel [], all original family photographs. [Husband] shall be allowed to review all photographs at all times in the physical presence of a representative of [attorney's] law firm. [Husband] shall not destroy or remove any photographs. [Husband] shall designate which photographs he would like. [Wife] shall then review those photographs and either make the original photograph available to [husband] or she shall have the photograph selected by [husband] duplicated and the parties shall share equally the cost of such duplication.

The attorney representing husband received the photographs from wife in January. Approximately four months later, the attorney withdrew from further representation of husband. Husband, however, was not yet done reviewing the photographs. The withdrawing attorney accordingly provided her client with the "client's file." The materials she provided, however, included the thousands of original family photographs described in the portion of the decree quoted above.

Upon receipt of the ethics complaint, the attorney stated that she returned the photographs to the client because they were a part of the client's file and that she, in good faith, believed that she had a duty to return the photographs to the client. The attorney's response, however, failed to account for the specific terms of the court's order which carefully set forth the conditions under which husband was supposed to have access to the photographs. Because the decree clearly provided that the original photographs were to remain in the attorney's office rather than be turned over to the client (indeed, the decree indicated that a representative of the firm was required to be physically present during husband's review of the photographs), the attorney's conduct warranted a private admonition.

The admonition noted that the attorney's conduct violated Rule 8.4(d), MRPC, which provides that it is

professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

While attorneys generally have an obligation to return client files upon termination of the representation, that obligation is not superior to the obligation to obey an order of the court. Here, the photographs were the subject of a very specific court order which controlled the possession of the photographs. In this instance, the attorney erred by releasing the photographs to her client upon withdrawal from representation.

Attorneys are reminded that the Director's Office provides a free advisory opinion service to licensed Minnesota attorneys to assist them in addressing situations such as the one presented in this case: a lawyer facing apparently conflicting duties. The advisory opinion service may be reached at (651) 296-3952, or by calling the toll-free number of 1-800-657-3601.

¹ See, Craig D. Klausung, "Lawyers Duties to Protect the Property of Clients," *Minnesota Lawyer*, February 22, 1999, and Timothy M. Burke, "Board Opinion No. 13 Revisited," *Minnesota Lawyer*, June 12, 2000.