

**The perils of holding client files hostage**  
by  
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Whether it's the lawyer who says, "I quit," or the client who says, "You're fired," the termination of representation can be a time of great stress.

Even when emotions run high, however, attorneys must remember that they have certain duties to their clients. Among those is the duty to surrender papers and property to which the client is entitled.

An attorney's duty to return client files has not always been as well-defined as it is today. Prior to 2005, Rule 1.16 of the Minnesota Rules of Professional Conduct required an attorney to surrender papers and property to which the client is entitled, just as it does today. However, the pre-2005 rule provided no guidance as to exactly what papers and property a client could expect to receive.

The Lawyers Professional Responsibility Board issued Opinion 13 on June 15, 1989. Within that opinion, the board stated its position on what documents an attorney is obligated to surrender upon the termination of representation, and explicitly stated that an attorney may not withhold the file to secure payment of copying costs or unpaid legal fees.

When Rule 1.16 was amended in 2005, much of the language from Opinion 13 was incorporated into the rule, with some changes and clarifications along the way. Although Opinion 13 has never been repealed, attorneys seeking to determine exactly what must be produced should first look to the language of the current Rule 1.16(e).

A frequent question that arises during this process is whether an attorney may charge a client reasonable expenses for copying the client file.

In *In re X.Y.*, 529 N.W.2d 688 (Minn. 1995), the Minnesota Supreme Court stated that when an attorney copies the client file at the termination of the representation, the copy is actually being made for the benefit of the attorney. Under Rule 1.16(f), the attorney is permitted to charge the client reasonable copying and retrieval costs only if the client has agreed to such charges, in writing, prior to the termination of the representation.

Even when an attorney properly charges a client for the costs of producing the file, according to Rule 1.16(g), the attorney is specifically restricted from withholding client papers and property to secure payment of those costs, or to secure the payment of his fees.

Attorneys' refusals to provide ex-clients with their papers and property are often the subject of complaints submitted to this office.

Complaints alleging the failure of an attorney to return a file until costs are paid will most likely trigger an investigation, and if the facts are as alleged, may result in discipline. Withholding client property for payment of fees or costs is sufficient to warrant discipline, even when accompanied by no other violation. See *In re X.Y.*, 529 N.W.2d 688 (Minn. 1995) and *In re Admonition Issued in Panel File No. 94-24*, 533 N.W.2d 852 (Minn. 1995).

In addition, the court has issued public discipline where the failure to return a file is part of a larger pattern of misconduct. See *In re Rhodes*, 740 N.W.2d 574 (Minn. 2007) and *In re Mayrand*, 723 N.W.2d 261 (Minn. 2006).

Attorneys also frequently ask whether they need to return the file if they have sent the client copies of each pleading and item of correspondence as the documents have been generated.

It has consistently been the position of the director of the Office of Lawyers Professional Responsibility that an attorney may not avoid the obligation to surrender client property by forcing the client to maintain a copy of the file.

At the termination of representation, an attorney who wishes to avoid entanglement with the disciplinary system must relinquish client property without regard to whether copies have already been provided.