

DIGEST OF ETHICS ADVISORY PANEL
OPINION #89-13, REQUEST #59
Issued July 20, 1989

An attorney seeks Panel advice as to what his response ought to be to a request concerning his client. He advises the Panel that he represents a client, Mr. X, in connection with a recent accidental injury. He states that some time after this representation commenced he received a form letter from the office of Attorney Y asking him to forward a copy of his file on Mr. X's accident to the law offices of Attorney Y for "review". It appears from the inquiring attorney's letter and its accompanying exhibits that Mr. X does not wish to discharge him and retain Attorney Y. The attorney asks the Panel what his responsibilities are upon receipt of such a request and what the ramifications of the request are for the attorney-client relationship.

Rule 1.1, titled "Competence," provides:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2, titled "Scope of Representation" provides, in pertinent part, that:

A lawyer shall abide by a client's decisions concerning the objectives of representation, and shall consult with the client as to the means by which they are to be pursued.

Mr. X's request that Attorney Y review his file is a "client decision" within the meaning of Rule 1.2. The Panel takes the position that the inquiring attorney has an obligation to make available copies of documents in Mr. X's file to Attorney Y. Documents in the file which represent the inquiring attorney's work product need not, of course, be made available to Attorney Y.

Since Mr. X is not discharging the inquiring attorney, the inquiring attorney's request for advice must be considered in light of his obligation to continue to provide the competent representation referenced in Rule 1.2. Thus it is appropriate and necessary for him to continue to pursue settlement opportunities on Mr. X's behalf. It is also appropriate for the inquiring attorney to charge either Attorney Y or Mr. X for the cost of copying the file, just as he would in preparing portions of a file for any other outside professional review which he and his client concluded was appropriate.

The inquiring attorney may wish to simply copy Mr. X's file, minus documents which are his work product, and send it to Attorney Y. An alternative would be for the inquiring attorney to make the file available in his office at a mutually convenient time. Attorney Y could then review the file, excluding any work product, and request copies of documents if he wished. The inquiring attorney will necessarily have to spend some amount of time removing his work product from the file. It is not inappropriate for him

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to charge either Attorney Y or Mr. X for the time involved. The Panel assumes that once this screening is accomplished, a subsequent request from Mr. X that his file be reviewed by a different outside attorney could be accomplished with little of the inquiring attorney's time required to screen out his work product.

The only question remaining unanswered is whether or not the attorney-client relationship has suffered once a client requests review of his or her file by an outside attorney. It is beyond the purview of the Panel to make such a determination either in the case presented or any other. It is possible to imagine a situation where an intervening attorney's words diminish a client's faith in his original counsel. But it is also possible to imagine a situation where a client's contact with an intervening attorney will ultimately serve merely to heighten the client's appreciation of his original counsel.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.