

DIGEST OF ETHICS ADVISORY PANEL  
OPINION #91-2, REQUEST #128  
Issued February 20, 1991

An attorney seeks Panel advice as to the appropriate disposition of a client file created during the representation of a married couple in the context of an adoption proceeding. The couple is in the midst of divorce proceedings. The attorney has not been asked to represent either party in the marriage dissolution matter. The wife and the child have authorized release of the file to the wife's divorce attorney. The husband objects to the release of the file.

The attorney represented Mr. and Mrs. A in the adoption proceedings of Mrs. A's son from a prior marriage.

The Ethics Advisory Panel refers to Opinion #119 for guidance in resolution of this dispute. In Opinion #119, the Panel stated that the contents of the clients' file are the property of the clients. Thus, the clients are both entitled to the file. Since a dispute over possession of the contents of the file has arisen between the clients, the attorney should attempt to seek an arrangement to which both the clients can agree. If both clients are unable to agree, it is then permissible to turn complete copies of the client files over to each client and notify their lawyers that the attorney will retain the originals in escrow until such time as the clients notify the attorney as to the agreed upon recipient or until a court of competent jurisdiction renders appropriate instructions.

The Panel believes the matter should be brought to the attention of the Family Court for possible resolution.

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.