

ETHICS ADVISORY PANEL  
Opinion #92-88, Request #316  
Issued March 15, 1993

An attorney seeks Panel advice with regard to the following situation. The inquiring attorney compiled a title report for an out of state lending institution. During the course of drafting this report, the attorney prepared abstracts and charts for the attorney's own benefit. The attorney forwarded a title report to the lender, for use in a possible foreclosure proceeding. Soon thereafter, the attorney was informed that a third party purchased the loan. Through counsel, the third party demanded the entire contents of the inquiring attorney's file. The attorney asks whether the third party is entitled to his entire file, including the abstracts and charts prepared for the attorney's own benefit.

Upon withdrawal or termination of representation, a client is entitled to the "papers and property" belonging to that client. See Rule 1.16(d). The Panel believes that the client is entitled to the contents of the file excluding the attorney's work product. See, ABA/BNA Lawyer's Manual of Professional Conduct, 91:2211(1987).

It is the Panel's understanding that the client has not requested the attorney to release anything. Rather, the third party, with which no attorney/client relationship exists, has demanded the papers. The Rules of Professional Conduct do not require the attorney to release those papers. Indeed, Rule 1.6 would prohibit this without the client's consent.

In addition Rule 2.3 entitled "Evaluation For Use By Third Persons" states that:

(b) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

The comments to Rule 2.3 state that "An evaluation may be performed at the client's direction but for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender." Such information cannot be given out without the consent of the third party.