

ETHICS ADVISORY PANEL
OPINION #93-84 REQUEST #427
Issued October 19, 1993

The inquiring attorney represented a client in various matters over a two (2) year period. During that time, the inquiring attorney learned that the client allegedly forged a signature on a document that released the client from liability in a matter. The inquiring attorney also learned that the client allegedly forged a signature on contractual documents relating to a civil lawsuit. He/she learned of this forgery in a report prepared by an expert document examiner hired by the inquiring attorney with the client's consent. The inquiring attorney did not offer the documents at issue as evidence. The client now demands that the inquiring attorney give him/her the documents, the test sheets that were produced by the examiner and the document examiner's report. The test sheets cannot be duplicated. The inquiring attorney asks whether he/she may reveal the information concerning the forgeries and whether he/she is required to return the document examiner's report and test sheets to the client. The inquiring attorney has withdrawn from the representation of the client.

With respect to whether the inquiring attorney may reveal information concerning the alleged forgeries, Rule 1.6 entitled "Confidentiality of Information" applies. That Rule provides as follows:

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may, but is not obligated to reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

The Comment to the Rule further explains that a lawyer's "duty of confidentiality continues after the client/lawyer relationship has terminated." Thus, a lawyer may not reveal information relating to the representation absent client consent after consultation, unless an exception applies pursuant to subsection (b). See, Opinion #92-1 (Issued January 14, 1992).

Under the facts as stated by the inquiring attorney, the Panel does not believe the exceptions delineated in subsection (b) are applicable. It is therefore the Panel's opinion that the inquiring attorney may not disclose his/her knowledge of the client's alleged forgeries.

With respect to whether the inquiring attorney must return the documents and test sheets, Rule 1.17(d) outlines a lawyer's duties upon terminating representation of a client. That Rule provides as follows:

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned (emphasis added).

In this case, the inquiring attorney has terminated his/her representation of the client and must therefore surrender to the client papers and property to which the client is entitled under Rule 1.17. The Panel believes that the client is entitled to receive the documents that are at issue, as those documents were given to the inquiring attorney by the client to undertake the representation. Thus, now that the representation has been terminated, the inquiring attorney is obligated to return to the client the original documents. However, the inquiring attorney may, at his/her own expense, produce photocopies for him/herself.

With respect to the inquiring attorney's obligation to return to the client the test sheets produced by the document examiner, and the document examiner's report, the Panel believes the client is entitled to receive those documents as well. From the facts, it is apparent that the client authorized the inquiring attorney to pursue the document examination during the course of the representation, and that the client provided the original documents to the inquiring attorney. The document examiner's report and the test sheets were produced from the original documents. Thus, the Panel believes that they must be returned to the client along with the original documents. However, as stated above, the inquiring attorney may produce photocopies of the documents for him/herself at his/her own expense.