

**ETHICS OPINION NUMBER 105
OF THE MISSISSIPPI BAR
RENDERED SEPTEMBER 9, 1985
AMENDED APRIL 6, 2013**

CLIENT FILES--In the absence of controlling language in any applicable employment agreement, an attorney discharged by his client in a pending matter may ethically charge his client for the actual cost of duplicating the client's file but may not condition the release of the duplicate file to the client on the prior payment of the copying costs.

The Ethics Committee of The Mississippi Bar has been asked to render its opinion concerning the following proposed conduct by an attorney: An attorney has been discharged by a client prior to conclusion of the client's case. The client has requested that the attorney provide the client with a copy of the client's file, or transfer the file to the client's new attorney. Is it proper for the attorney to require the ex-client to pay all copy costs prior to releasing the client file?

Would the circumstances be any different, if the client had requested the file after the conclusion of the client's cause of action and the attorney desired to keep a copy of the file in the attorney's office?

Rule 1.16(a) of the Mississippi Rules of Professional Conduct (MRPC) commands that a lawyer representing a client shall withdraw from the representation when he is discharged by the client. Rule 1.16(d), MRPC, requires the withdrawing lawyer to take reasonable steps to protect the client's interests, including delivering all papers and property to which the client is entitled. This Committee has previously interpreted these provisions as requiring a discharged lawyer to deliver to his client the file on a matter involved in pending litigation without being paid first for his services and expenses. The Mississippi Bar, Ethics Opinion No. 49 (May 4, 1979).

The ABA Committee on Ethics and Professional Responsibility has determined that the question of the propriety of a lawyer's charging a client for copies of items in a client's file is not "a question of ethics, but rather a matter of the lawyer's usual and customary practice or, if not, a matter of his agreement with his client." ABA Comm. on Ethics and Professional Responsibility, Informal Opinion No. 1376 (Feb. 18, 1977). However, at least one state bar association has opined that a lawyer discharged by a client may charge his former client for the actual costs involved in the duplication of the client's file, but he may not charge a fee disproportionate to the actual cost. Kentucky Bar Ass'n Ethics Comm., Opinion No. E-280 (Jan. 1984), reported at 1 ABA/BNA Lawyers' Manual on Professional Conduct (Current Reports) 110 (1984).

But see Bar Ass'n of San Francisco Legal Ethics Comm., Opinion No. 1984-1 (Jan. 26, 1984), reported at 1 ABA/BNA Lawyers' Manual on Professional Conduct (Current Reports) 109-110 (1984).

The Committee concludes that it should address these questions as questions of ethics. This Committee concludes that, in the absence of controlling language in any applicable employment agreement, a lawyer discharged by his client in a pending matter may ethically charge his client for the actual cost of duplicating the client's file but that the lawyer may not ethically condition release of the duplicate file on the prior payment of the copying costs. Because there is no apparent potential for prejudice to the client where the subject of the representation is concluded, the Committee concludes that after the conclusion of a matter the lawyer may charge a client for the actual copying costs for duplicating a file and condition the release of the duplicate file on the prior payment of the copying costs.