

**ETHICS OPINION NUMBER 234  
OF THE MISSISSIPPI BAR  
RENDERED SEPTEMBER 19, 1996**

**CLIENT FILES**--1) An attorney who has been terminated during a pending case may ask the client to sign a receipt for the client's file that releases the attorney from any further responsibility on the client's case or that acknowledges responsibility for payment of an owed legal fee plus interest, but the attorney may not require the client to sign the receipt as a condition for releasing the file. 2) An attorney who has concluded a case, however, may require his client to acknowledge receipt of the file and to relieve the attorney of responsibility for maintaining the file.

The Ethics Committee of The Mississippi Bar has been asked to render an opinion on two different situations involving requiring clients to sign receipts for client files.

(1) In the first situation, the facts are as follows:

An attorney has been discharged while a client's case is pending. The client asks for the file. The attorney wants the client to sign a receipt for the file that relieves the attorney of any further liability for the file and that acknowledges an attorney fee owed to the lawyer as well as acknowledges that interest will be charged on the unpaid balance.

The question is whether the attorney may require the client to sign the receipt before the file is released.

Rule 1.16(d) of the Mississippi Rules of Professional Conduct (MRPC) provides that:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, surrendering papers and property to which the client is entitled and refunding any advance payment that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

This rule has been considered in two previous ethics opinions that apply to the question presented. In Ethics Opinion No. 105, the Committee held that a lawyer could ask that copying costs be paid in advance before a file was released to the client,

but the lawyer could not require that the costs be paid as a condition for releasing the file. In Ethics Opinion No. 144, the Committee held that a lawyer could not require a client to pay legal fees owed to the attorney as a condition for releasing a file unless it was necessary to prevent fraud or gross imposition by the client.

Based on the foregoing, the Ethics Committee is of the opinion that, while an attorney who has been terminated during a pending case may ask the client to sign a receipt for the client's file that releases the attorney from any further responsibility on the client's case or that acknowledges responsibility for payment of an owed legal fee plus interest, See Formal Interpretative Opinion No. 100 for rules concerning charging interest on delinquent accounts with the client's agreement.

the attorney may not condition the release of the file upon the client signing the receipt. If the client refuses to sign the receipt, the attorney must still release the file. The attorney is encouraged to have some documentation concerning what is delivered to the client whether through an acknowledgment signed by the client or other means.

In the second situation presented, the facts are as follows:

An attorney has concluded a client's case. The attorney wants the client to sign a statement acknowledging receipt of the originals and/or copies of all records and releasing the attorney from the responsibility of maintaining the client's file.

The question is whether the attorney may require the client to sign the receipt and release before giving the client the originals and/or copies of the records.

In this second situation, the client's case is not pending; it has been concluded. The attorney's obligations are different than when a client has a pending case (which would be prejudiced by the attorney refusing to release the client's file).

The general rule of an attorney's obligation to maintain a client's file was stated in Ethics Opinion No. 114. In that opinion, the Ethics Committee said:

. . . files must be maintained by someone as long as there is unfinished business relating to the representation. Beyond that, there is a balancing between the client's expectations that valuable and potentially useful materials in the file will not be destroyed and the costs that storage imposes on the lawyer.

In the facts presented, the case has been concluded. Once concluded, the attorney only has an obligation to preserve and protect the client's original documents and such "valuable and useful information [that is] not otherwise available to the [client]." Ethics Opinion No. 98 and MRPC Rule 1.15.

In the facts presented, the attorney plans to return to the client all original and/or copies of the client's records. So long as the attorney gives the client all of the original documents that belong to the client and gives originals and/or copies of all other documents, the attorney has complied with the MRPC. An attorney is not required to store a client's file after a case has been concluded if he can give the file to the client. The attorney may require his client to acknowledge receipt of the file and to relieve the attorney of responsibility for maintaining the file.

Attorneys should note, however, that the MRPC requires that attorneys keep records of trust account disbursements for a period of seven years after representation ends. The Ethics Committee is of the opinion that this requirement is mandatory and cannot be released by the client.