

**ALASKA BAR ASSOCIATION
ETHICS OPINION NO. 2011-1**

**MUST A LAWYER PROVIDE THE ORIGINAL FILE TO A FORMER CLIENT ON
REQUEST, RATHER THAN A COPY?**

QUESTION PRESENTED

If a former client asks a lawyer to provide his original file to him or to his new attorney, must the lawyer provide the original file rather than a copy?

CONCLUSION

Yes. The file belongs to the client, and the lawyer must provide the original file, rather than a copy, to the client or the client's new attorney, if the client requests.

DISCUSSION

Previous opinions address a lawyer's obligation to provide materials from his or her file to a former client, when the client requests.¹ These opinions focus principally on which materials in a file must be provided, and which if any may be withheld. But an earlier opinion, Ethics Opinion No. 95-6 also provides an answer to the question that most recently has been asked:

[T]he client's original files are the property of the client. Accordingly, a lawyer must make available to his or her client all papers and property to which the client is entitled, and may not make receipt of them contingent upon payment for copying. . . .

A lawyer may not charge the client for making a copy of the original documents for his or her own purposes.

The Committee now reiterates explicitly what is implicit in Ethics Opinion 95-6: The lawyer may make a *copy* for his or her own purposes, at the lawyer's own expense, but the lawyer must provide the *original* file to the client or the client's new counsel if requested.

¹ See Ethics Opinion No. 2003-3 (lawyer need not disclose documents when disclosure would violate a duty to a third party, and need not disclose documents intended only for internal law office review and use, such as a preliminary assessment of the legal or factual issues in the case, unless non-disclosure would significantly prejudice the client); Ethics Opinion No. 2004-1 (lawyer may not withhold a report of an expert or an investigator, if withholding it would prejudice the client).

To the extent that previous opinions from this Committee may inadvertently suggest that the lawyer could keep the original and give the client the copy,² the Committee disavows that suggestion.

This opinion does not modify any prior opinion with respect to which materials in a file may be withheld completely.³ Neither does this opinion modify the obligations imposed by statute or court rule not to disclose certain materials directly to a client.⁴

This opinion also does not impose any new obligations on the attorney for file maintenance. The point is simply that, when a client requests his or her file, the lawyer must provide the original file as it exists at that time, rather than a copy of the file that then exists (subject, as noted above, to rules and statutes that permit or require the lawyer not to provide certain materials at all).

Finally, this opinion does not modify Ethics Opinion No. 2008-1, which authorizes lawyers to maintain certain materials electronically. If the routine practice of a law office in accordance with Ethics Opinion No. 2008-1 is to save most portions of closed files by scanning the materials to CDs, for example, and then discarding the papers, the lawyer would not violate this opinion by producing only the CD if the CD is all that the lawyer has retained at the time the file is requested by the former client.

Approved by the Alaska Bar Association Ethics Committee on December 2, 2010.

Adopted by the Board of Governors on January 27, 2011.

² See, e.g., Ethics Opinion No. 2003-3 (framing the question as whether the lawyer must “provide a copy of everything in the file to the client”); Ethics Opinion No. 2004-1 (framing the question as whether the lawyer may “withhold a copy of an expert or investigator’s report”).

³ See, e.g., Ethics Opinion No. 2003-3 (giving examples of documents in a file that a lawyer need not provide to a client who requests his file).

⁴ See, e.g., AS 12.61.120(a); Alaska Crim. R. 16(d)(3).