

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 670**

March 2018

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct, may a lawyer copy and retain client documents when departing a law firm?

STATEMENT OF FACTS

Just before leaving one law firm for another firm, a lawyer makes electronic and paper copies of client documents regarding matters in which the lawyer personally represented the client. The lawyer takes these copies to his new firm. The lawyer's former law firm later learns of the copying and retention of its client documents by the lawyer and demands their return from the lawyer and his new firm. The client whose documents were copied is not following the lawyer to the new firm and no continuing representation of the now former client by the lawyer or the new firm is contemplated. The lawyer wants to keep copies of his former client's documents for use as "forms" in his continuing practice.

DISCUSSION

Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct requires that a lawyer protect a client's "confidential information," as broadly defined in subsection (a) of the Rule. Generally speaking, documents in a client's file, whether in paper form or stored electronically, belong to the client and are part of the client's confidential information. *See* Professional Ethics Committee Opinions 657 (May 2016) and 627 (April 2013). A lawyer's ability to use or reveal a client's confidential information is subject to the limited exceptions set out in Rule 1.05. Upon departing a firm, a lawyer who authored or had access to documents during his personal representation of a client may, at the lawyer's expense, make and retain copies of those documents, subject, however, to important obligations under the Rules.

Subject to the exceptions in Rule 1.05, the departing lawyer is obligated to protect the client's copied documents from unauthorized disclosure and use for as long as those copied documents exist in any form. The lawyer must not share those client documents with anyone at the new firm who has not also personally represented the same client in the same matter unless expressly authorized by the client or permitted under the provisions of Rule 1.05. For example, paper copies of client documents must be stored in a secure fashion accessible by the departed lawyer only. Similarly, electronic copies must be

accessible by the departed lawyer only and not stored in a manner accessible by others within the new firm, absent express client consent.

There are reasons for permitting a lawyer to copy and retain a client's documents. For example, a lawyer may wish to be able to review a former client's documents in order to be able to answer questions posed to him after the conclusion of the representation.

A prior law firm's or former client's consent is not required for a lawyer to make and retain copies of a client's documents as long as the lawyer is reasonably responsive to the former client's requests for copies of documents retained by the lawyer. Although the client's file belongs to the client, the Rules do not prohibit a lawyer from making and retaining a copy of some or all of a client's file, at a lawyer's expense, subject to a lawyer's obligations under Rule 1.05 to protect the client or former client's confidential information. *See* Opinions 657 (May 2016) and 627 (April 2013).

As for using a former client's documents as a form, a lawyer must delete all of the former client's confidential information before sharing such forms with anyone who is not authorized by the former client or the Rules to have access to the former client's confidential information. Furthermore, if a former client's documents were so customized that any use of them as a form, even after deleting client-specific information, would reveal the former client's confidential information, then such use would be improper.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer who leaves a law firm may, at the lawyer's expense, make and retain copies of former clients' documents generated in matters in which the lawyer personally represented the clients. The lawyer must, however, comply with his obligation under the Rules to preserve the confidentiality of such documents by preventing the former clients' confidential information from being improperly used or revealed to others.