

North Dakota Supreme Court Notices

Amendments to the N.D.R. Prof. Conduct and N.D.R. Lawyer Discipl. as adopted- 20010001

RULE 1.19 FILES, PAPERS, AND PROPERTY RELATED TO A REPRESENTATION

(a) A lawyer shall not assert a retaining lien against a client's files, papers, or property.

(b) The following constitute a client's files, papers (including items only electronically stored), or property:

1. All papers and property provided by the client to the lawyer other than as payment.
2. All pleadings, motions, discovery, memoranda, and other litigation materials which have been executed and served or filed regardless whether the client has paid the lawyer for drafting and serving and/or filing the document(s).
3. All correspondence regardless of whether the client has paid the lawyer for drafting or sending the correspondence.
4. All items of potential evidentiary value regardless of whether the client has reimbursed the lawyer for any costs or expenses which the lawyer has advanced, including depositions, expert opinions and statements, business records, and witness statements.

(c) A lawyer may not condition the return of client files, papers, or property on payment of copying costs. Nor may the lawyer condition return of the client files, papers, or property upon payment of the lawyer's fee.

(d) Unless copies have earlier been provided to the client by the lawyer, a lawyer who has withdrawn from a representation or has been discharged from a representation may only charge the former client the cost of copying for the client, or electronically retrieving for the client, the client's files, papers, and property when the client has, prior to termination of the lawyer's services, agreed in writing to reimburse the lawyer for copying and retrieval expense. Any such charge must be reasonable in amount.

(e) The following, regardless of form, are not client files, papers, or property:

1. Pleadings, discovery, motion papers, memoranda, and correspondence which have been drafted but not filed, sent, or served, unless the client has already paid for the drafting or creating of the item(s).
2. Drafted but unexecuted or undelivered estate plans, title opinions, contracts, documents regarding the formation, operation, dissociation, dissolution, or termination of business or other associations or governing the relationship of those involved in them, or any other unexecuted or undelivered document, unless the client has already paid for the drafting and preparation of the item(s).
3. Any lawyer work product not expressly defined as client files, papers, or

property by paragraph (b).

(f) In connection with the return of any file or paper, including client files or papers, a lawyer may make copies for retention by the lawyer. The client may not be charged for these copies.

Comment

Rule 1.15 governing turning over papers during the representation, and Rule 1.16 governing turning over papers when declining or terminating representation, impose an obligation to deliver or surrender items to which the client or prospective client is entitled. This Rule provides guidance regarding the items to which the client's entitlement extends, and speaks also to other questions associated with common lawyer/client issues regarding files and papers. This Rule also makes it improper for a lawyer to assert a retaining lien of any kind (common law, statutory, or contractual) against the client's files, papers, or property.

The obligations of Rule 1.6 of these Rules persist as to any files or papers retained by the lawyer, as to any copies made by the lawyer in conjunction with returning files or papers under paragraph (f) of this Rule, and as to any information relating to the representation contained in any file or paper. With respect to copying documents and charging a client, paragraph (d) pertains to copies made for or at the request of the client and paragraph (c) pertains to copies made and retained by the lawyer.

Reference: Minutes of the Joint Committee on Attorney Standards on 6/8/99, 9/16/99, 11/19/99, 3/23/00, 6/13/00, 9/15/00, 11/17/00, and 6/12/01.