

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-280
Issued: January 1984

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May a lawyer charge a fee for duplication of a client's file after the lawyer has been discharged?

Answer: Qualified yes.

References: KBA E-235; KRS 31.200; KRS 31.110(1)(b).

OPINION

This question is an extension of KBA E-235 in which the committee held that the client who discharges his lawyer is entitled to receive what he has paid for and the return of what he has delivered to the lawyer and that the conscientious lawyer should not withhold from the client any item which could reasonably be anticipated to be useful to the client and to which the client is entitled to receive. The Committee decided, however, that the lawyer's work product privilege protects a lawyer from turning over his work product and such work product need not be given to the client in the event of discharge.

In Answering the question of whether a lawyer may charge a fee for duplication of a client's file after he has been discharged, it should be noted that in any instance in which a lawyer has included cost of duplication by express or implied contract in the fee, it would be improper for the discharged lawyer to then charge a second time for any duplication of documents. Likewise, the discharged lawyer should not charge a fee that is disproportionate to the actual cost of duplication. It would obviously be unethical for a lawyer to charge a disproportionate fee for duplication in retaliation for being discharged by the client.

It is, therefore, the opinion of the Committee that a discharged lawyer may charge his former client for the actual costs involved in the duplication of his file, provided the lawyer does not charge a fee disproportionate to the actual cost for such duplication. It should also be noted that in the case of indigent criminal defendants, the provisions of KRS 31.110 (1)(b) and KRS 31.200 might apply.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.