It is best to agree on the handling of your client file (copying charges, release of records from your file) at the *beginning* of your representation by a lawyer.

Am I entitled to a copy of my client file?

A lawyer cannot refuse to give you your client file if it would materially interfere with your legal interests. WSBA Formal Opinion 181 sets out a lawyer's obligation to return or forward a client's files and records. Attached is an excerpt of the Opinion. If you have a written fee agreement with the lawyer, the agreement may also outline the handling of your file, including copying charges and shipping costs.

What should I do if my lawyer does not give me my complete client file?

If your lawyer does not give you your complete client file, talk to your lawyer. In a criminal case, your lawyer may not be able to give you a copy of certain information, including discovery.

[Date]

Dear [name of lawyer]:

I need my client file to proceed with my case.

Please let me know when the file will be ready for [me, my new lawyer, whose name is].

Please contact me at [phone number, fax number, email address, mailing address, other].

I know that I can ask for help from the Washington State Bar Association, but I would prefer to resolve this with you directly.

Sincerely,

[your name]

What should I do if my lawyer will not talk to me about my concerns?

We suggest that you send your lawyer a letter. You might want to send the letter by return-receipt certified mail and keep a copy. Please see our sample letter — you do not need to include all parts, and you should make the letter fit your situation. With a letter, the lawyer has your concerns in writing so there is no misunderstanding, and your letter documents the problem.

Can you help me if my lawyer does not respond to my letter?

If you follow the steps above and receive no response from your lawyer within a reasonable amount of time, please call our Consumer Affairs staff at 206-727-8207 and leave a message. Although they cannot offer legal advice, they can try to resolve your file dispute when:

- your lawyer will not release your client file;
- your lawyer does not return your phone calls or respond to your emails;
- your lawyer's phone number is no longer in service;
- your lawyer does not respond to your letter; or
- you receive your letter back showing an incorrect address.

We cannot contact your lawyer for other reasons or to convey your disagreement with your lawyer's advice, your lawyer's fees, or the handling of your case. If you feel that your lawyer acted unethically, you might consider filing a grievance. Call us for forms or see www.wsba.org.



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FORMAL OPINION 181 EXCERPT

Below is an excerpt from WSBA Formal Opinion 181. For the full Opinion please see www.wsba.org.

At the conclusion of the representation of a client, the client often requests a copy of the "file." If the lawyer's fees remain unpaid, the lawyer may want to assert lien rights. If no lien rights are claimed, a question often arises as to what parts of the file must be provided and whether the lawyer can charge the client for the expense of copying the file. The Rules of Professional Conduct shed light on both questions.

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II. Responding to a former client's request for files

A. Issue: When a former client requests the file and no lien is asserted, what copying costs can a lawyer charge and what papers and files must be delivered?

- B. Conclusion: At the conclusion of a representation, unless there is an express agreement to the contrary, the file generated in the course of representation, with limited exceptions, must be turned over to the client at the client's request, and if the lawyer wishes to retain copies for the lawyer's use, the copies must be made at the lawyer's expense.
- C. Discussion: In analyzing this question a lawyer's file assembled in the course of representing a client can be broken down as follows:
- (a) Client's papers—the actual documents the client gave to the lawyer or papers, such as medical records, the lawyer has acquired at the client's expense.
- (b) Documents the disposition of which is controlled by a protective order or other obligation of confidentiality;
- (c) Miscellaneous material that would be of no value to the client; and
- (d) The balance of the file, including documents stored electronically.

Client's papers—the actual documents the client caused to be delivered to the lawyer or papers, such as medical records that the lawyer has acquired at the client's expense—must be returned to the client on the termination of the representation at the client's request unless a lien is asserted. If the lawyer wants to retain copies, the lawyer must bear the copying expense, and would hold the copies subject to the duty of confidentiality imposed by RPC 1.6.

Aside from principles of ownership, RPC 1.16(d) requires the lawyer, upon termination of representation, to take steps to the extent reasonably practical to protect a client's interests including surrendering papers and property to which the client is entitled. Subject to limited exceptions, this Rule obligates the lawyer to deliver the file to client. If the lawyer wants to retain copies for the lawyer's own use, the lawyer must pay for the copies.

While the client's interests must be the lawyer's foremost concern, if the lawyer can reasonably conclude that withholding certain papers will not prejudice the client, the lawyer may withhold those papers. Examples of papers the withholding of which would not prejudice the client would be drafts of papers, duplicate copies, photocopies of research material, and lawyers' personal notes containing subjective impressions such as comments about identifiable persons.

A protective order or confidentiality obligation that limits the distribution of documents or specifies the manner of their disposition may supersede a conflicting demand of a former client.

The lawyer and client can make an arrangement different from that outlined above. A lawyer and client could agree that the files to be generated or accumulated will belong to the lawyer and that the client will have to pay for all copies sent to the client. Similarly, if the client wishes the lawyer to retain copies it would be appropriate to charge the copying expense to the client.

[amended 2009]