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**Request for Ethics Opinion**

CLERK SUPREME COURT

April 30, 2019

FILED  
MAY 01 2019  
JANET JOHNSON  
CLERK SUPREME COURT  
BY: *das*

Supreme Court of Arizona  
Court Clerk's Office  
1501 West Washington, Suite #402  
Phoenix, AZ 85007-3231

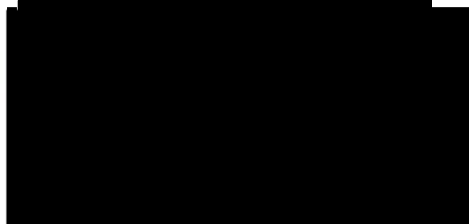
EO-19-0009

Re: Request for Ethics opinion

Dear Clerk:

Pursuant to Arizona Supreme Court Rules, Rule 42.1 please find enclosed a brief statement outlining the question presented, the facts and a brief discussion of the issues.

Should you require anything further in order to process this request, please contact me via email



Enc:

**Question Presented:**

Does a lawyer have an ethical obligation to provide to the client, at the client's request upon termination of the representation, electronically stored file "notes" which are entered by the lawyer and/or non-lawyer, office staff?

**Facts:**

Our law firm uses an electronic case management system (CMS) that *inter alia* allows for lawyers and office staff to electronically enter "notes" in the system. These notes are electronically stored along with other case information. The purpose of the notes varies from lawyer to lawyer. Some lawyers enter comprehensive notes, which may include everything from case planning and strategy to communication between the lawyer, a client, and non-lawyer office staff. Our firm has a document retention and destruction policy, which is referenced in our retainer agreement. Our firm expects lawyers to maintain electronic case notes so that if the case is reassigned to a different lawyer, the new lawyer can quickly come up to speed in prosecuting the case. Although the retention/destruction of these electronically entered notes are not specifically mentioned in the policy, our firm currently retains these electronically entered notes indefinitely. The lawyers at this firm have differing interpretations of Ethic Opinion 15-2 with some arguing that the opinion mandates the release of electronic notes.

**Discussion:**

Although the term "client file" is not defined by the Rules of Professional Conduct, Ethics Opinion 15-2 provides some guidance as to what is a client file in its conclusion that lawyers are ethically obligated, upon a client's request at the conclusion of representation, to provide the client with the client's documents and all documents reflecting work performed for the client. This obligation does not require lawyer to retain paper or electronic documents generated or received in the course of the representation, that are duplicative of other documents generated or received in the course of the representation, incidental to the representation, or not typically maintained by a working lawyer, unless the lawyer has reason to believe that, in all the circumstances, the client's interests require that these documents be preserved for eventual turning over to the client at the conclusion of the representation.

However, the opinion goes on to reference Comment 9 to E.R. 1.16(d) that holds that:

Ordinarily, the documents to which the client is entitled, at the close of the representation, include (without limitation) pleadings, legal documents, evidence, discovery, legal research, work product, transcripts, correspondence, drafts, and notes, but not internal practice management memoranda. A lawyer shall not charge a client for the cost of copying any documents unless the client already has received one copy of them.

This request is an attempt to reconcile the conclusions reached in [Ethics Opinion 15-2](#) and Comment 9 to E.R. 1.16.