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## Returning Client Files After Termination

We regularly receive inquiries from lawyers regarding returning client files after termination of representation. This article concerns those situations in which the client's legal matter is ongoing, as distinguished from completed or closed matters.

Hawaii Rule of Professional Conduct ("HRPC") 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect the client's interests, such as surrendering papers and property to which the client is entitled. The lawyer may retain papers relating to the client to the extent permitted by other law such as HRPP 16(e)(3) (custody of materials). *See also* HRPC 1.15(f)(4) (lawyer shall promptly deliver property which the client is entitled to receive).

The rule embodies the policy that an attorney, following termination or withdrawal, must take reasonable steps to mitigate adverse consequences to the client. Absent a contrary obligation such as a court order, an attorney should turn over all file materials which, if not released to the client, would prejudice the rights of the client. *See* Maryland State Bar Association Opinion 97-18 (1997). Attorneys cannot, of course, assert a retaining lien against the file, even if provided for in the attorney-client fee agreement. Disciplinary Board Formal Opinion 28 (1983).

Along these lines, it is fairly obvious that all pleadings and legal memoranda prepared for or filed by the attorney on behalf of the client should be provided to the client. The same applies to final contracts, conveyances, agreements, and other end-product documentation prepared by the attorney. Correspondence which is relevant to further continuation of the client's case should also be provided. It is likewise essential that the attorney return all documents and other materials provided by the client to

the attorney.

Questions as to what is the lawyer's property in a particular case are normally questions of law. However, all materials related to the preparation of the case must be provided to the client upon request. An attorney's work product, including papers revealing the attorney's impressions, conclusions, opinions, legal research, and legal theories, is reasonably necessary to the representation and must be turned over to avoid prejudice to the client. *See* State Bar of California Opinion 1992-127 (1992).

Under the view that file material that would benefit the client or former client in the continuation of their legal matter should be provided to the client, any notes and internal memoranda fitting that description should be turned over to the client. Questions regarding the beneficial nature of those materials should be resolved in favor of release to the client. Again, the interests of the client should not be prejudiced by their inability to obtain file materials from the attorney.

## Discipline Notice

The Supreme Court suspended Honolulu attorney **THOMAS M. FOLEY** from the practice of law for five (5) years effective May 2, 1997. The suspension is thus retroactive to the date Foley was enjoined from engaging in the practice of law following his criminal conviction.

Foley was suspended due to his conviction for Negligent Homicide in the First Degree. Foley fell asleep while driving under the influence of alcohol and collided with another automobile, killing one person and seriously injuring another. *State of Hawaii v. Thomas M. Foley*, Cr. No. 96-0353 (Circuit Court of the First Circuit, State of Hawaii).

According to the Court, Foley's criminal act reflected adversely on his fitness as a lawyer and, given the severe consequences of that act, he should be suspended for a significant period of time. A five (5) year suspension was consistent with the Court's prior deci-