

BAR ASSOCIATION OF ERIE COUNTY
COMMITTEE ON PROFESSIONAL ETHICS

Opinion 06 02

Topic : May a retained defense counsel refuse access to client's personal counsel, access to client's legal file.

Digest : Both New York Ethical Consideration 7-8, 9-2 and Proposed Rule 1.4 (a)(4) admonish lawyers to consult with their client and to adhere to client's reasonable requests for information which includes access to client's file subject to limited work product exception.

Code : EC 7-8; EC 9-2
Proposed Rule 1.4(a)(4)

QUESTION

An opinion is requested as to whether a client's personal lawyer, with client's consent, is permitted to review client's file maintained by liability insurer's retained defense counsel. Client's defense counsel submits that correspondence between defense counsel and client's liability insurance company, deposition transcripts and reports and memoranda regarding evaluation of client's claim are considered work product of defense counsel and that defense counsel is under no obligation to disclose this information to either client or client's personal counsel.

OPINION

New York EC 7-8 provides that a lawyer shall consult with a client so that the client can make informed decisions. In addition, New York EC 9-2 specifically urges a lawyer to "fully and promptly inform (the) client of material developments in the matters being handled for the client".

The New York State Bar Association, Committee on Standards of Attorney Conduct, as adopted by the Delegates of the New York State Bar Association, propose adoption of

Model Rule 1.4(a)(4) which provides that a lawyer shall: “Promptly comply with a client’s reasonable request for information”.

This question was likewise addressed by the New York Court of Appeals decision *In the Matter of Sage Realty Corporation, et al. v. Proskauer, Rose, Goetz and Mendelsohn, LLP*, 91 NY2d 30, 689 NE2d 879, 666 NYS2d 985 (1997). The Court of Appeals noted that:

“ . . . when the attorney’s file is sought in connection with a pending matter, courts also have refused to recognize a property right of the attorney in the file superior to that of the client . . .” (emphasis added). *Id.* 666 NYS 2d at 988.

The Court further held that:

“Affording the client presumptive access to the attorney’s entire file on the represented matter, subject to narrow exceptions¹, is also supported, although not necessarily dictated, by the lawyer’s ethical obligations arising out of the representation in a given matter”. *Id.* 666 NYS 2d at 988.

CONCLUSION

New York Ethical Consideration 7-8 and 9-2 and Proposed Rule 1.4 (a)(4) *directs* lawyers to consult with their client and to adhere to client’s reasonable requests for information which includes access to client’s file, subject to limited work product exception.

¹ In a pending legal matter, non-access may be permitted to firm documents intended for internal law office review and use, so as to preserve the need for lawyers to be able to set down their thoughts privately in order to assure effective appropriate representation. *Id.* 666 NYS 2d at 989.