

MINUTES

COMMITTEE: Ethics Committee

DATE: October 28, 2004

6. CHAPTER 5, RULE 15: WHETHER LAWYER REQUIRED TO RETURN DOCUMENTS

Item B

A lawyer described the following facts:

The lawyer acts for A who had a dispute with B which was the subject of a court proceeding. B died. C is one of the co-executors of B's will. C had supported B in the A - B dispute. C has not succeeded B as a party in the A-B proceeding. C and D are beneficiaries under B's will. Their interests under the will are the same. C and D are not friendly. D is loyal to A. D sees a document that has been left out at E's house. C and D both have access to the house and each knows that the other has access. D copies the document and gives it to the lawyer, thinking it may prove to be helpful to A. The document is a communication between C and F. F is the other co-executor of B's will. G was the lawyer for B until B died. C and F have not (at least not yet) retained G in connection with the A-B proceeding.

The lawyer asked whether he must return the document to C and whether he has any duty to D?

It was the Committee's view that because D has access to E's premises and E has not taken any steps to secure the document, the lawyer has no ethical duty to return the document to C under Rule 15. Rule 15 does not address the issue of whether the lawyer has any duties to D. Whether the lawyer has any other duties to D concerning the document will depend on the understanding between the lawyer and D at the time the lawyer accepted the document.