

**COMMITTEE: ETHICS COMMITTEE**  
**DATE: OCTOBER 28, 2004**

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

**Item C**

In representing a client in a matrimonial matter a lawyer who represents the husband obtained from his client a copy of the client's estranged spouse's journal. The journal contains references to the spouse's legal situation. Although the lawyer has not read the journal the lawyer's client advises that it contains records of his wife's thoughts and feelings, including statements or notes about recent court proceedings, and matters she had discussed or might discuss both with her personal counselor and with her lawyer. The husband maintains that, with his wife's knowledge, he has a key to the filing cabinet where the journal was stored. The wife disputes that and maintains the husband improperly removed the key to the cabinet from her and took the journal without her permission.

It was the Committee's view that the question whether the wife has a reasonable expectation of privacy regarding the journal will depend on whether she took reasonable steps to secure it. Whether she did so will depend on whether she knew the husband had access to the locked cabinet in question and that is a matter that is in dispute between the parties. Given the dispute between the parties on that issue, it was the Committee's view that the lawyer must return the document (and any copies) to the wife in accordance with Rule 15. That does not prevent the lawyer from arguing that the journal is a relevant document in the proceedings and seeking its disclosure. Whether it ought to be disclosed is a legal issue, not an ethical one, and the Committee expressed no view on that question.