

MINUTES

COMMITTEE: Ethics Committee

DATE: October 28, 2004

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

Item A

A lawyer acts for a wife in negotiating a separation agreement with the husband. During the husband's access visit with the children, the parties' five year old daughter drew some pictures at the husband's residence and brought them back to the residence of the wife. On the other side of the drawings were the husband's typewritten notes regarding issues relating to the draft separation agreement between the parties. It appears that the husband prepared the notes for a discussion with his lawyer.

The wife faxed the notes to her lawyer prior to discussing what they were with her and the lawyer ultimately obtained the originals of the notes as well. The lawyer asks whether she can make use of the notes or whether they must be returned to the husband.

The Committee noted that the parties were living in separate residences and for that reason it was the Committee's view that the husband would have a reasonable expectation of privacy concerning the notes, which appear to have been released by the husband in error. For these reasons it was the Committee's view that the lawyer is required to return the notes in accordance with Chapter 5, Rule 15 of the *Professional Conduct Handbook*.

JO/

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