

MINUTES

COMMITTEE: Ethics Committee

DATE: October 2, 2008

3. CHAPTER 5, RULE 15: WHETHER LAWYER HAS OBLIGATION TO RETURN DOCUMENTS

A lawyer asked whether he has any obligation under Rule 15. He is receiving instructions in a matrimonial matter from the Public Trustee, acting on behalf of the wife in a long term marriage. He is concerned that the husband has either been dissipating or hiding family assets.

The lawyer says the following:

Some time ago, the parties' adult daughter dropped off at my office a box of documents relating to the parties. The documents fill up a storage box which is approximately 12" x 12" x 18".

The general description of the documents are that they are financial records both of bank accounts and correspondence dealing with accounts, primarily in the name of the husband, unopened correspondence in the name of the husband from financial institutions, opened correspondence dealing with financial records of primarily the husband. All of these documents were mailed to the matrimonial home, or must have been in the matrimonial home when found.

At the time of the parties' separation the husband left the matrimonial home and the wife has occupied the home until recently. The wife is currently in a homecare facility. The documents were provided to my office following the wife's placement in the homecare facility. The husband had some access to the home at all times but I believe his position was generally not to attend at the home for various reasons.

The Committee noted the absence of information about any steps the husband may have taken to retrieve his mail or have it forwarded to a new address, or the length of time the husband has been away from the matrimonial residence. The Committee was of the view that in ordinary circumstances the husband would have a reasonable expectation that mail arriving at the former family residence addressed to him would remain unopened. For that reason, it was the Committee's view that unopened mail addressed to the husband must be forwarded to the husband's lawyer pursuant to Rule 15. Any opened mail left at the residence by the husband does not trigger any obligations under Rule 15.