

Nebraska Ethics Advisory Opinion for Lawyers
No. 71-6

THE INQUIRER REQUESTS AN OPINION ON THE
QUESTION OF WHETHER THE GENERAL PRACTICE OF
AN ATTORNEY'S RETAINING ORIGINAL WILLS OF
CLIENTS CONSTITUTES UNETHICAL CONDUCT

The Advisory Committee has considered this question and is of the opinion that it is ethical for a lawyer to retain in a safe place the original will of a client where it is done with a client's express permission or at his express request.

This precise question has been before the A.B.A. Standing Committee on Professional Ethics. The subject matter of Informal Opinion No. 981 rendered April 21, 1967, was: "Propriety of Attorney Acting as Repository for Original of Client's Will".

Informal Opinion No. 981 provides in part as follows:

"It is the opinion of this Committee that as to the practice of attorneys acting as custodians for their client's wills, there is no question of ethics involved. Nor has there been any ruling or opinion of this Committee on the question presented. Moreover, it appears that the question here is one of law and not of ethics.

The Committee finds nothing unethical about a lawyer ... acting as custodian of the original of a client's will if this is done with the client's express permission."

The Code of Professional Responsibility appears to confirm such opinion. DR 9-102 in treating the subject of preserving the identity of funds and property of a client, provides in subparagraph (B):

"(B) A lawyer shall:

. . . .
(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive."

This disciplinary rule assumes that property of a client will be left in the possession of a lawyer from time to time. It makes no distinction between an original will and other valuable documents of the client, and there would seem to be no reason why such a distinction should be made.

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