

Turning Over File to New Lawyer

A new attorney is taking over a divorce case and he asked for

Please provide me with all emails between you and her, you and opposing counsel and any other emails related to her case

Is that reasonable. Could be 150 emails and would take a fair bit of time?

Some states have a more expansive definition of what is considered the client's file than others. I am not a CA lawyer, so I don't know yours.

As a practical matter, I would probably search for any meaningful discussions. Of course, in my practice I would not generally have very many on a single case. I don't go back and forth much with opposing counsel or a client on one case. Meaningful conversations would typically be PDF and in client folder already under my typical practice.

Having said that, doing searches in most email packages for client name and email and opposing counsels' email would not take long. You can extract them in PDF form fairly easily from most email managers.

Darrell G. Stewart, Texas

I recently took over a case from another attorney. The prior attorney says he gave me everything, but I have been unable to locate or get copies of discovery, initial disclosures, designation of witnesses, etc. I may have no choice but to file a malp claim. I think it is more important to provide the copies/emails than worry about some time spent in locating them.

Randy Birch, Utah

Looking at this from another angle, perhaps looking at how you maintain client files, including e-mails should be reviewed.

For instance, I have client files on my server that look like this:

CLIENT NAME

MATTER NAME

Billing

Correspondence

Documents

E-Mails

Year

Months

Pleadings

I also have folders in Outlook in which I segregate e-mails in to client and matter files.

I could very easily copy an entire client file in that situation in a matter of a few minutes and not have to worry about it again.

Walter D. James III, Texas

The emails, communications, even notes taken about calls, etc. are all part of the file. It all has to be provided. Here, the originals belong to the client and if you want copies, they are made and kept at your expense. I do not think "reasonableness" has anything to do with it. It belongs to the client and withholding it can be prejudicial.

The only exception that I recall seeing is for work product that has not been paid for.

If the issue is what it will entail to find and compile the information, you may need to rethink how you maintain files.

Phil A. Taylor, Massachusetts

Depending on your email client, it's generally pretty easy to search for emails. If it were me, I'd provide either PDF or hard copies of 150 emails.

It seems relatively easy to do, and could prevent headaches for you down the road.

My \$.02.

Scott I. Barer, California

Follow up question (thanks for the replies):

If it takes me 20 minutes to gather the emails...is that reasonable to bill for said work as per our agreement?

Matthew Rosenthal, California

I'd say no since the time involved likely has more to do with how you kept the emails (not efficiently to turn over file) and it would be more of an administrative task related, not representing client.

Primarily, I'd say no as it would not likely be worth the risk of a complaint, etc.

Phil A. Taylor

Couldn't one take the position that the client already has all the emails?

Obviously, the client might not have all of the emails between you and the opposing counsel. Depending on how the client departed, you may be able to ask for a fee to compile all this information.

The times I've had a similar request, I was very happy to see the client go. In one, I didn't want to include the volumes of email correspondence between me the former client; he was a very disturbed individual. I didn't want to do anything that would make new counsel rethink taking the case.

Ryan Young, Virginia

That is what I would say as well, Ryan, i.e., get the emails from your new client, she already has them.

Bobby Lott, Jr., Alabama

One thing I'm a bit confused about here: it would take me less than a minute to select all of the e-mails in a client's folder in Thunderbird* and copy them to a folder on the hard drive or on a flash drive. These would then all be in text readable format, importable into another e-mail program. Is it significantly more complicated to do this using other programs?

Michael A. Koenecke, Texas

I am not sure how to do this in Gmail, which is my provider. I can rapidly identify all emails that I want to provide because I always have the subject line include the case name. I am confused about the next step in the process to gather and send them to new counsel.

Matthew Rosenthal

Just give them the bleeping emails and move on. You're way over-thinking this.

Scott I. Barer

Step 1: Locate the emails.

Step 2: Print them out.

Step 3: Put them into your scanner.

Step 4: Scan said emails into a PDF file.

Step 5: Email said PDF file to new counsel. If file is too large to email, copy to a flash drive or CD and mail to new counsel.

Step 6: Move on.

Scott I. Barer

Matthew, I wouldn't turn them over. In 20 years of practice, I have never had another atty ask for emails between me and a former client. It's none of their business what we talked or emailed about. Although it isn't confidential technically, I suppose, it's pretty damn close, and it might even constitute work product.

Don't do the other guys work for him.

Make copies for your files and then delete them.

Bobby Lott, Jr.

And are you willing to risk a Bar complaint about not turning-over 150 emails when requested to do so by your former client's new attorney? Maybe I'm too risk averse, but I'm not willing to play that game over a handful of emails and 15 minutes of time to print, scan, and provide them to new counsel.

Scott I. Barer

E-mails between you and OC that are relevant to the proceeding (ie. not "let's grab coffee after the hearing") should be turned over. It's no different than letters to OC and we have no difficulty turning those over.

E-mails between you and the cl - theoretically the cl already has those.

However, the new CA rule is really broad. "**All** client materials." I would not want to be on the other side of a Bar complaint if I didn't turn those over at client's request. Now since this is new counsel requesting them (not your client), if you have a good working relationship with your soon-to-be-former client, you can ask him or her if they want you to turn over those e-mails. There may be a reason they don't want them turned over to the new attorney.

Here's what CA rule 1.16 says:

"subject to any applicable protective order, non-disclosure agreement, statute or regulation, the lawyer promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property"

includes correspondence, pleadings, deposition transcripts, experts' reports and other writings,* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably* necessary to the client's representation, whether the client has paid for them or not;"

DO NOT BILL FOR THIS. Yes, you probably could. Would your malpractice carrier want you to bill for it? No. Would you want to get sued because you billed for it? No. Is the client going to refuse to pay for it? Yes.

Not knowing anything at all about the case, my guess is new counsel wants to know what deals have gone on behind the scenes and how you relayed those deals to the client. Maybe the opposing party was super reasonable and your client was turning down all reasonable offers because they wanted to keep everything. Maybe the opposing party or their counsel have been unreasonable. Whatever the case, it's not unreasonable for a new attorney to want to get the full lay of the land.

Corrine Bielejeski, California

I am like you in a way, Scott, in that too much time has been spent on this.

Bobby Lott, Jr.

Looks like the best approach is to access it via Outlook (or Thunderbird would work also) via IMAP, and export from there:

<https://www.nucleustechnologies.com/blog/ways-to-export-gmail-emails-to-csv/>

Michael A. Koenecke
