

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3441-20**

**BOROUGH OF ENGLEWOOD
CLIFFS,**

Plaintiff-Appellant,

v.

**JEFFREY SURENIAN, ESQ., and
THOMAS TRAUTNER, JR., ESQ.,**

Defendants,

and

**ALBERT H. WUNSCH, III, ESQ.,
and JOSEPH MARINIELLO, JR.,
ESQ.,**

Defendants-Respondents.

Argued June 1, 2022 – Decided November 2, 2022

Before Judges Fisher, DeAlmeida, and Smith.

On appeal from the Superior Court of New Jersey, Law
Division, Bergen County, Docket No. L-0787-21.

Jay B. Bohn argued the cause for appellant (Schiller, Pittenger & Galvin, PC, attorneys; Robert B. Woodruff, of counsel; Jay B. Bohn and Kieran M. Dowling, on the brief).

Albert H. Wunsch, III, argued the cause for respondent Albert H. Wunsch, III (Law Offices of Albert H. Wunsch, III, attorneys; Albert H. Wunsch, III, and Matthew R. Puma, on the brief).

Joseph R. Mariniello argued the cause for respondent Joseph R. Mariniello, Jr. (Mariniello & Mariniello, PC, attorneys; Joseph R. Mariniello, on the brief).

PER CURIAM

The Borough of Englewood Cliffs commenced this action seeking the return of its files from four former attorneys. Two defendants were voluntarily dismissed soon after the action was commenced; the other two defendants – Joseph R. Mariniello, Jr., Esq., and Alfred H. Wunsch, III, Esq. – successfully moved, under Rule 4:6-2(e), for dismissal of the complaint for failure to state a claim upon which relief may be granted. We reverse and remand.

Plaintiff's complaint is based on the rather unremarkable concept that an attorney's file is, in fact, the client's property. The very fact that a once discharged but uncompensated attorney may assert a lien and retain possession of a file in appropriate circumstances, see Brauer v. Hotel Assocs., Inc., 40 N.J. 415, 419-20 (1963); Frenkel v. Frenkel, 252 N.J. Super. 214, 217-21 (App. Div.

1991), demonstrates the law's recognition that the file is the client's property. See also Sage Realty Corp. v. Proskauer Rose Goetz & Mendelsohn, LLP, 689 N.E. 2d 879 (N.Y. 1997).¹

Despite the well-accepted principle that, absent a valid imposition of a retaining lien, a client is entitled to a return of its file and papers on demand, see RPC 1.16(d) (declaring that, "[u]pon termination of representation, a lawyer shall . . . surrender[] papers and property to which the client is entitled"), the motion judge found the municipality did not plead a valid cause of action. The judge's decision seems to have been based chiefly on the fact that RPC 1.13(a) and RPC 1.16(d) were extensively quoted and played prominent roles in the municipality's complaint. Viewing the complaint as being based on these Rules of Professional Conduct, the judge dismissed the action because the Supreme Court held in Meisels v. Fox Rothschild LLP, 240 N.J. 286, 299 (2020) that a violation of a Rule of Professional Conduct "does not create a cause of action for damages in favor of a person allegedly aggrieved by that violation." The

¹ The New York Court of Appeals observed in Sage Realty, 689 N.E. 2d at 881-83, that there is a disagreement among jurisdictions about ownership of attorney work product. As noted later in this opinion, we limit our holding to whether the municipality stated a claim upon which relief may be granted, so it would be premature to consider whether there may be things in the files in question that might not constitute the municipality's property.

judge's holding misinterpreted Meisels because the Court held only that "standing alone" the Rules of Professional Conduct do not create causes of action. See also Baxt v. Liloia, 155 N.J. 190, 198 (1998) (emphasis added) (observing that "no New Jersey case has allowed a cause of action based solely on a violation of the RPCs").

The Court has never said that the Rules of Professional Conduct cannot inform or enhance an attorney's obligation or standard of care. To the contrary, the Court held in Meisels, 240 N.J. at 299, that the Rules of Professional Conduct "can be relevant to the standard of care in civil cases against attorneys." See also Petrillo v. Bachenberg, 139 N.J. 472, 479 (1995) (finding the Rules of Professional Conduct useful in determining "[w]hether an attorney owes a duty to a non-client third party"). Similarly, the judge erred by apparently assuming – incorrectly – that the inclusion in the Rules of Professional Conduct of an existing common law duty precludes the maintenance of a cause of action based on a breach of that duty.

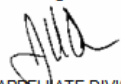
Because the complaint's fundament is the municipality's assertion that defendants are refusing to return files that belong to the municipality, we hold that the municipality stated a valid cause of action on which a court may – if the

allegations are sustained – enter judgment compelling the remaining defendants to turn over the municipality's property.²

In short, the complaint was dismissed solely because, in the judge's mistaken view, it failed to state a claim upon which relief may be granted. For that reason, we need not consider the parties' arguments about whether either remaining defendant has complied or substantially complied with the municipality's request for the return of its files, a question that ranges far beyond the parameters of Rule 4:6-2(e). The only relevant question is whether, under the Rule's liberal approach, Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989), the municipality sufficiently pleaded a cause of action. It did.

Reversed and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

² That the return of its property was the main thrust of the complaint is further revealed by the municipality's proper commencement of this action in General Equity. See Steiner v. Stein, 141 N.J. Eq. 478, 479-80 (Ch. 1948). The matter was transferred from that court only because other related actions were pending in the Law Division.