

Disposing of Old Client Files

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Is your file or storage room beginning to look like one of those "garbage houses" you occasionally see on the evening news? You know the type, papers piled to the ceiling, narrow pathways carved through precariously piled documents. Is the only thing standing between your storage room and the evening news the absence of a large number of cats? Before you talk to the landlord about exercising the option on the adjacent office space, please consider the following: the Minnesota Rules of Professional Conduct do not require you to maintain closed or dormant client files forever.

The ABA Committee on Ethics and Professional Responsibility has recognized that the cost of storing retired and inactive files can place an economic burden on the lawyer (ABA Informal Opinion 1384).^{[Ftn 1](#)} Moreover, the ABA has acknowledged that the burden can affect the costs of providing legal services to other clients. On the other hand, clients (and the Director's Office) expect that lawyers will not dispose of information that is not otherwise available to the client or to which the client is clearly entitled. Finding the proper balance between these concerns requires the application of a little common sense and a few general principles.

The contents of a closed or inactive client file should never be destroyed simply because of the age of the file. For the reasons discussed below, even files that have been closed for years may contain documentation or items that should not be destroyed and should be provided to the client. Prior to determining what to keep, what to return, and what to discard, the lawyer should review the file keeping in mind several considerations.

First, unless the lawyer has the client's permission, the lawyer should not destroy items belonging to the client or discard information that may still be of value to the client. For example, as part of the handling of your client's purchase of a cabin you come into possession of the original deed for the property. Or during the course of pursuing the workers' compensation case you researched a possible third-party claim against the widget maker. The deed is the type of document that the client would reasonably expect would be returned. The research on the lawsuit (if it has not previously been given to the client) should also not be destroyed as long as it may be necessary or useful to the client.

Second, in determining how long to retain material, the lawyer should consider the nature and the contents of the file. That research memo you prepared on suing the territorial government of Alaska probably has limited relevance now and could be safely discarded. On the other hand, research that your client paid you to perform on an issue that remains topical (and again, was not previously provided to the client) should be retained. Before discarding or destroying any of the client's file consider its possible relevance and materiality to the client.

Third, after you have made the decision that a file (in whole or in part) can be discarded, you must take reasonable steps to maintain the confidentiality of its contents. As noted in the comment to Rule 1.6 of the Minnesota Rules of Professional Conduct (Confidentiality of Information), "the lawyer's obligation to preserve the client's confidences and secrets continues after termination of employment." This means that

the salacious documentation pertaining to your client's dissolution proceeding should not be thrown in the open recycling bin outside the door of your skyway office. While you do not necessarily need to go to the expense of hiring one of the companies that specialize in document destruction, reasonable steps should be taken to prevent the information in the file from being disclosed.

Finally, keep an index of the files that you have disposed of or destroyed. If the client who was thinking about suing the territorial government of Alaska suddenly reappears, rather than spending hours going through that storage room looking for a file that no longer exists, you can quickly tell him that the file has been destroyed.

Remember the disposition of old and inactive files and the ethical practice of law are not mutually exclusive.

¹ The considerations discussed in this article are based upon ABA Informal Opinion 1384, *Disposition of a Lawyer's Closed or Dormant Files Relating to Representation of or Service to Clients* (March 14, 1977).