

The Safekeeping of Cheeseburgers

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In last week's column, the Office of Lawyers Professional Responsibility advised attorneys on the proper way to dispose of abandoned client funds. As this week's column makes clear, however, client funds do not constitute the only non-document client property entrusted to lawyers.

What is Penny Lawyer to do with the allegedly tainted cheeseburger entrusted to her for the purpose of pursuing an action against the local hamburger joint after her New Client disappears?

Initially Penny placed the half-eaten burger in her freezer to preserve it for later scientific testing. Before disappearing, New Client told Penny to hold off filing suit for two weeks due to her concern over how neighbors would react to her suing the favorite local burger joint. After not hearing from New Client and being unable to contact her, Penny wonders what can be done with the edible evidence preserved in her freezer.

Penny would like to get the burger out of her freezer. Besides needing the freezer space, she is concerned her kids, or more likely her husband, will pop the prima facie evidence into the microwave for a late night snack. Can she transfer the unclaimed frozen burger to the Commissioner of Commerce? Does it have to stay in her freezer forever?

Luckily for Penny, the South Carolina Bar Ethics Advisory Committee has already tackled this very important issue. According to the South Carolina Bar, Penny must write to New Client's last known address telling her she cannot hold the burger forever, and that it will only be held for "a fixed period of time" before being destroyed.

Unfortunately, the South Carolina Opinion sheds no light upon the duration of this fixed period or the criteria to be considered in determining a reasonable fixed period. Does Penny have to take into account the statute of limitations applicable to New Client's civil suit in deciding how long the cheeseburger has to stay in the freezer? Is it permissible for Penny to throw it out if her expert says it no longer has evidentiary value? If Penny's husband eats the evidence, becomes ill and dies, can Penny ethically sue New Client or the burger joint?

These arduous questions, like others, remain open for future scholarly debate by ethics authorities everywhere. Until they are answered, however, lawyers should understand that there is greater clarity in the standards relating to abandoned client funds than those applicable to entrusted cheeseburgers.