

WHEN CLIENT PROPERTY IS LOST OR MISPLACED

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Clients often entrust lawyers with all kinds of documents, from pay stubs to abstracts to birth certificates. Original documents can be time-consuming and expensive for clients to replace. But some client property cannot be re-created. Lawyers are responsible not only for safekeeping funds received from a client but also for safekeeping a client's property, including documents.

Lawyers should remember the importance of maintaining office procedures and proper staff training and supervision in the handling and storage of client property. Failure to ensure the safe storage and return of client property can result in lawyer discipline. The scenarios below were derived from ethics investigations that resulted in discipline for some of the lawyers involved.

Inadvertent inclusion

The client retained a lawyer to represent him in a criminal matter. The client was found guilty and sentenced to a term of imprisonment. The client later contacted the lawyer and requested that his client file be sent to him at the prison.

An employee of the law firm prepared and mailed the client the contents of his file, but inadvertently included audio tapes belonging to other clients. The lawyer did not have office procedures in place to ensure the safekeeping and return of client property, nor did he supervise the return of the client file. Due to the lack of office procedures, the firm was unable to determine which other clients were affected by the mistakenly sent tapes.

In addition, after the lawyer was successful in getting the tapes returned, he had to notify the clients whose tapes had been sent. The lawyer was admonished for violating Rules 1.15(c) and 5.3 of the Minnesota Rules of Professional Conduct (MRPC).

Misplaced file

In another case, the client retained the lawyer to represent her in a family law matter. Several months later, the client directed the lawyer to stop working on the case because her child was suffering from

medical problems.

The family law case lay dormant for the next two years. During this period the lawyer moved the client's file to a storage area. The lawyer did not have any office procedures for labeling or identifying client files placed in her storage area.

Eighteen months later the lawyer resumed working on the case but withdrew from representation shortly thereafter. The client requested return of her client file and original documents provided to the lawyer when initially retained. The lawyer was unable to locate the original file, and thereafter, failed to tell the client that the original file was misplaced.

After the client filed a complaint, the lawyer eventually located the missing file and returned it to the client. The client maintained that the lawyer had not returned all original property given to her. The lawyer was admonished for violating Rules 1.4(b), 1.15(c) and 1.16(d) of the MRPC.

Critical issues

Occasionally, client files or property are lost or misplaced. Not every lost or misplaced file is a cause for professional discipline. Critical issues in determining whether discipline is warranted typically focus on whether the lawyer's procedures and policies for handling and returning client files were reasonable under the circumstances.

Office policies and procedures that require client files and property to be clearly labeled and identified, securely stored and properly inventoried before being placed in long-term storage will limit exposure to discipline. These procedures should also include proper training and supervision of nonlawyer staff with respect to the handling, and especially the return, of client files and property.