

**Louisiana State Bar Association**  
**Rules of Professional Conduct Committee**

**PUBLIC Opinion 06-RPCC-008<sup>1</sup>**

January 4, 2006

**Client File Retention**

*There is no comprehensive rule on retaining closed client files. The rule relating to safekeeping of clients' funds should be consulted and a file retention policy based on good judgment should be developed by every law firm and solo practitioner for the disposal of closed client files.*

Unfortunately, there are no hard and fast rules regulating a lawyer's obligation to retain and store client files in which the work has been concluded and the file closed. The volume of paperwork in client files has multiplied exponentially in the past years; and lawyers and law firms have been overwhelmed with the volume of closed files being stored and the expense of storage. Until digital storage is permitted wide-scale by the rules and becomes a generally accepted mode of storage for most, if not all documents, this problem will continue to create a burden on lawyers.

While there is no apparent general duty of a lawyer or a law firm to preserve a client's file indefinitely, Rule 1.15(a) of the Louisiana Rules of Professional Conduct (2004) (the "LRPC"), as well as Section 28(A) of Rule XIX of the Rules of the Supreme Court of Louisiana, provide

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for safekeeping of clients' funds and other property—and records thereof—for a period of five (5) years after termination of the representation.<sup>2</sup>

Although the LRPC and Rule XIX do not contain any specific provisions dealing with the retention of client files, the close connection between records of client property, trust accounts,

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<sup>2</sup>See Louisiana Rules of Professional Conduct (2004), Rule 1.15(a),

“...Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation....;”

and

Rules of the Supreme Court of Louisiana, Rule XIX, Section 28(A),

“...Every lawyer engaged in the practice of law in Louisiana shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records, check stubs, vouchers, ledgers, journals, closing statements, accounts or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client....”

See also, Informal Opinion 1384, of the ABA Committee on Ethics and Professional Responsibility, March 14, 1977.

Note also that Louisiana Civil Code Article 3496 provides that “An action by a client against an attorney for the return of papers delivered to him for purposes of a law suit is subject to a liberative prescription of three years. This prescription commences to run from the rendition of a final judgment in the law suit or the termination of the attorney-client relationship.”

funds, etc., and client files suggests that it is inadvisable for lawyers not to retain and keep safe client files (or copies of same, in the event that the original file has been otherwise relinquished to the client) for a minimum of five (5) years following the termination of the representation.<sup>3</sup>

Additionally, as there is still effectively no prescriptive period for attorney disciplinary complaints, except a recently adopted ten (10) year liberative prescriptive period on matters of attorney professional misconduct where the mental element is merely negligence,<sup>4</sup> we cannot begin to suggest that disposal of client files, even after the expiration of the minimum five (5) year period for safekeeping clients' property, might be advisable.

Practices of different lawyers and law firms are so varied and complex that disposal of certain files or types of files generated in one type of practice, such as criminal or insurance defense, might not be appropriate for another type practice, such as a transactional or estate planning/probate practice. Therefore, it is our opinion that every lawyer and/or law firm should develop a policy for the orderly and prudent disposition of closed client files.<sup>5</sup> In the development of such a policy, a number of considerations should be made, most of which are based on common sense.<sup>6</sup> Careful consideration should be given to particular types of files and sometimes a subjective approach must be used by the particular lawyer who worked on the file,

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<sup>3</sup>At the conclusion of the case, the lawyer may return the client's file to the client at the client's request retaining only the financial records mandated by the Louisiana Rules of Professional Conduct and the Rules of the Supreme Court of Louisiana, quoted *supra*.

<sup>4</sup>Rules of the Supreme Court of Louisiana, Rule XIX, Section 31, amendment effective May 30, 2003.

<sup>5</sup>A good document retention policy would include advising clients in the lawyer's initial engagement letter or representation agreement when the client's records might later be destroyed (e.g., after five years following termination of the representation).

<sup>6</sup>*Louisiana Bar Journal*, Vol. 49, No. 6, pp. 470-472.

if she is available.

An article entitled, “Spring Cleaning: A Dozen Pointers for Purging Files,” published in the ABA’s magazine, *The Young Lawyer*, and reprinted in the *Journal of the Kansas Bar Association*, May, 1997, suggests twelve guidelines for disposing of closed files.<sup>7</sup>

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<sup>7</sup>See “Spring Cleaning: A Dozen Pointers for Purging Files,” ABA Publication, April 1997, *The Young Lawyer*, reprinted in *Journal of the Kansas Bar Association*, May 1997, 66-MAY J. Kan. B.A. 18.

1. Before destroying any file, the lawyer or law firm should have it microfilmed or microfiched, (*or electronically scanned*) after tossing out irrelevant and obviously discardable materials. The cost of doing this is relatively nominal, and it reduces storage costs to almost nothing. (Italicized portion ours)
2. With continuing clients, make arrangements for returning files to the client or a time schedule for destruction. For single-matter clients, make suitable arrangements before the entire matter concludes.
3. If no arrangements have previously been made and the client is unavailable, hold any files that are likely to be important for a minimum of five years.
4. All trust account records, receipts and disbursements should be permanently maintained; or, at least, microfilmed prior to destruction of paper records.
5. On any matter where there might be a claim of malpractice, maintain the file for six years (*we suggest 10 years in Louisiana, in view of Section 31, Rule XIX, discussed supra*) and then microfilm before destroying it. (Italicized portion ours)
6. On matters involving contracts, notes, or any other matter with long statutes of limitation, retain the files for up to 15 years, or until the client’s consent is obtained for destruction.
7. On criminal matters, in general, maintain the files for at least six years after the end of the sentence or termination of the case. There are certainly exceptions to this rule, for example, in some cases involving

And the ABA Informal Opinion 1384, March 14, 1977, suggests the following considerations:

*1. Unless the client consents, a lawyer should not destroy or discard items that clearly or probably belong to the client. Such items include those furnished to the lawyer by or in (sic) behalf of the client, the return of which could reasonably be expected by the client, and original documents (especially when not filed or recorded in the public records).*

*2. A lawyer should use care not to destroy or discard information that the lawyer knows or should know may still be necessary or useful in the assertion or defense*

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repeat offenders.

8. On matters of guardianship or trust, keep the file at least six years after the termination of the guardianship or trust and coming of age or restoration to competency, except financial records, which should be maintained indefinitely.
9. On real estate matters, keep files at least six years and then microfilm prior to destruction; send all important papers to the client.
10. On tax matters, maintain files a bare minimum of five years; it is suggested to hold tax files for six years on normal matters and, if there is any hint of possible fraud, maintain the files indefinitely.
11. Family law, custody problems, and related files must be maintained as long as possible problems exist and then for at least six additional years. It is strongly recommended that these be microfilmed before destruction.
12. Tort matters involving adults could probably be safely destroyed after six years with prior notice to the client. These files should be microfilmed in case there is another injury claim. In tort actions involving minors, hold the files until at least two years after coming of age, or six years, whichever is longer.” (Emphasis and comments ours)

*of the client's position in a matter for which the applicable statutory limitations period has not expired.*

*3. A lawyer should use care not to destroy or discard information that the client may need, has not previously been given to the client, and is not otherwise readily available to the client, and which the client may reasonably expect will be preserved by the lawyer.*

*4. In determining the length of time for retention or disposition of a file, a lawyer should exercise discretion. The nature and contents of some files may indicate a need for longer retention than do the nature and contents of other files, based upon their obvious relevance and materiality to matters that can be expected to arise.*

*5. A lawyer should take special care to preserve indefinitely, accurate and complete records of the lawyer's receipt and disbursement of trust funds.*

*6. In disposing of a file, a lawyer should protect the confidentiality of the contents.*

*7. A lawyer should not destroy or dispose of a file without screening it in order to determine that consideration has been given to the matters discussed above.*

*8. A lawyer should preserve, perhaps for an extended time, an index or identification of the files that the lawyer has destroyed or disposed of.”<sup>8</sup>*

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<sup>8</sup>*Supra*, footnote 2, Informal Opinion 1384.

Because there are no specific rules regulating a lawyer's or law firm's retention of client files other than the rules governing safekeeping of client property, it is the Committee's opinion that each lawyer and/or law firm should promulgate a file retention policy tailored to the character of their respective clients and areas of practice. It would appear that the best practice would be to retain all closed client files for a minimum of five (5) years, to notify the client, if he is available, prior to destruction of the file to provide him a reasonable opportunity to take the file, and to develop a policy for disposal or retention of client files after that time.