



RETENTION OF CLIENT FILES

Adopted June 25, 2019 – Effective September 1, 2019

Rule 1.15A. Client Files.

(a) For purposes of this Rule, the client's file consists of the following physical and electronically stored materials:

- (1) all papers, documents, and other materials, whether in physical or electronic form, that the client supplied to the lawyer;
- (2) all correspondence relating to the matter, whether in physical or electronic form;
- (3) all pleadings and other papers filed with or by the court, administrative tribunal, arbitrator or mediator or served by or upon any party relevant to the client's claims or defenses;
- (4) all investigatory or discovery documents, including but not limited to medical records, photographs, tapes, disks, investigative reports, expert reports, depositions, and demonstrative evidence; and
- (5) all intrinsically valuable documents of the client.

Paragraph (a) does not impose an obligation to preserve documents that a lawyer following customary practices would not normally preserve in the client's file. For purposes of subparagraph (5), documents are intrinsically valuable where they constitute trust property as defined in Rule 1.15 or have legal, operative, personal, historical or other significance in themselves, including wills, trusts and other executed estate planning documents, deeds, securities, negotiable instruments, and official corporate or other records.

(b) A lawyer must make the client's file available to a client or former client in either commonly available electronic or hard copy form as reasonably acceptable to the client or former client, within a reasonable time following the client's or former client's request for the file, provided however, that:

- (1) the lawyer may at the lawyer's own expense retain electronic or paper copies of documents turned over to the client; and

(2) the lawyer is not required to turn over to the client documents for which the client is obligated to pay under the fee agreement but has not paid.

(c) Except for materials governed by paragraphs (d), (e) and (f), a lawyer shall take reasonable measures to retain a client's file in a matter until at least five years have elapsed after completion of the matter or termination of the representation in the matter unless

(1) the lawyer has transferred the file or items to the client or successor counsel, or as otherwise directed by the client, or

(2) the client agrees in writing to an alternative arrangement for the file's custody or destruction, provided, however, that files relating to the representation of a minor shall be retained until at least five years after the minor reaches the age of majority.

If the client has not requested the file within five years after completion or termination of the representation or within five years after a minor reaches the age of majority, the file may be destroyed except as provided in paragraphs (d), (e), and (f) below.

(d) Intrinsically valuable documents that constitute trust property of the client must be delivered to the client as provided in Rule 1.15. All other intrinsically valuable documents must be appropriately safeguarded and delivered in accordance with paragraph (b) above or retained until such time as the documents no longer possess intrinsic value. If the client cannot be found, the lawyer shall securely retain such documents or, where applicable, deliver such items to an appropriate governmental repository.

(e) A lawyer shall not destroy a client's file if the lawyer knows or reasonably should know that:

(1) a lawsuit or other legal claim related to the client matter is pending or reasonably anticipated;

(2) a criminal or other governmental investigation related to the client matter is pending or reasonably anticipated; or

(3) a disciplinary investigation or proceeding related to the client matter or a claim before the Client Protection Fund Committee is pending or reasonably anticipated.

(f) Criminal defense counsel, counsel in juvenile cases and protective counsel appointed pursuant to the Wyoming Rules of Disciplinary Procedure shall retain a client's files as follows:

(1) for the life of the client if the matter resulted in a conviction and a sentence of death or life imprisonment with or without the possibility of parole;

(2) in all other criminal matters, for ten years after the latest of the completion of the representation, the conclusion of all direct appeals, or the running of an incarcerated

defendant's maximum period of incarceration, but in no event longer than the life of the client; and

(3) in all juvenile matters, for five years after the later of the completion of the representation or the conclusion of all direct appeals, but in no event longer than the life of the client;

(g) A lawyer shall take reasonable measures to ensure that the destruction of all or any portion of a client file shall be carried out in a manner consistent with all applicable confidentiality obligations.

COMMENT

[1] In order to represent clients competently in a matter, lawyers customarily maintain a file of papers and electronically stored information that will in the lawyers' judgment aid in the representation. This Rule governs lawyers' obligations with respect to the custody and destruction of client files. A lawyer's obligations with respect to client funds and trust property such as jewelry or other valuables are governed by Rule 1.15. Lawyers are encouraged to address disposition of client files in a written engagement letter and, in instances where particular arrangements for disposition or transfer have not been made, in the lawyer's final communication to the client at the conclusion of a matter.

[2] The client's file in a given matter consists of those items that must be made available upon the client's direction to the client or successor counsel to provide a reasonably complete record of the services provided and, if the matter is unfinished, to give successor counsel what is needed to complete the representation. Thus, the client file for a litigation matter would include the pleadings and court filings, rulings and other documents issued by the court, all correspondence including with the client and opposing counsel, deposition transcripts, documents produced or received in discovery (subject to applicable protective orders), investigatory materials and expert reports, the trial record, memorialized legal research and analysis, and any settlement documents. In a case with a limited number of parties, the pleadings would include all the material pleadings. In a large case with many parties, such as a large bankruptcy proceeding, the pleadings would only include those directly relevant to the client's claims and defenses. The client file for a transactional matter would include all correspondence, including with the client and counterparties and the exchange of drafts, contracts and other documents establishing the terms of the transaction (often gathered into a "closing binder"), and memorialized legal research and analysis.

[3] Multiple copies or drafts of the same document ordinarily do not constitute part of the client's file unless the matter is unfinished, and the client and successor counsel must have the drafts to complete the representation. Similarly, a lawyer's personal notes ordinarily do not constitute part of the client's file unless the notes are the only record of a witness interview, a settlement negotiation, a meeting with regulators or prosecutors, or some similar event. Once a document is finalized or personal notes of an event are memorialized, this Rule does not require preservation of the drafts or notes. However, documents that are part of the client's file at the time of a request for the file must thereafter be preserved and

produced. Except as provided in comment [4], this Rule does not require preservation of any physical documents that have been converted to electronic form.

[4] Unless other applicable law requires a particular document to be physically preserved for its legal effectiveness, a lawyer may maintain a client's file in electronic form, provided, however, that, for documents stored only in electronic form, the lawyer must make reasonable efforts to store such electronic files in a form that can be read with available technology for any period during which the file must be retained. If the original form of the document is important, however, it should not be destroyed without the client's permission.

[5] The client's file does not include a lawyer's administrative files such as conflict checks, billing and accounting records, and communications within a law firm concerning matters of administration such as account creation, billing and collections, logistics, and the assignment and evaluation of personnel assigned to the matter. Such documents may be subject to discovery in a dispute concerning the representation, but ordinarily do not need to be provided to the client or successor counsel at the client's direction.

[6] Rule 1.15A does not supersede obligations imposed by court order, rules of a tribunal, or other law including discovery rules in civil cases, subpoenas and other mandatory process, and the law of spoliation and obstruction of justice. The maintenance of records required for trust property and trust accounts is governed exclusively by Rule 1.15. A document may be subject to more than one retention requirement, in which case the lawyer should retain the document for the longest applicable period.

[7] Under paragraphs (c) and (f) of this Rule, the nature of the underlying case dictates the minimum time period that a file must be retained before it may be destroyed without client agreement. In addition, a lawyer may not destroy the files under paragraph (e) if the lawyer knows that there are legal or disciplinary proceedings pending or anticipated that relate to the matter for which the lawyer created the files, if the materials at issue are intrinsically valuable documents under paragraph (d), or if the lawyer has agreed otherwise. If the conditions imposed by this Rule are satisfied, the lawyer may destroy the files in a manner consistent with the lawyer's obligation to maintain the confidentiality of information relating to the representation under Rules 1.6 and 1.9 and other applicable law. A lawyer may destroy a client's file in accordance with this Rule notwithstanding the possibility that there could be further proceedings after the expiration of the time limits set forth in this Rule (such as a motion for a new trial or for relief from a judgment in light of changes in the law or the discovery of additional evidence), so long as such proceedings are not pending or reasonably anticipated at the time of the destruction.

[8] The lawyer's obligations under this Rule to retain and return files to the client are not excused because the lawyer forwarded papers to the client from time to time during the course of the representation.

[9] Nothing in this Rule is intended to mandate that a lawyer destroy a file. A lawyer appropriately may decide to retain certain types or portions of files, or portions of files for longer than five years, such as files relating to a structured settlement or other matters

creating long-term obligations to or by the client. Unless the lawyer and the client have otherwise agreed, a lawyer may retain a copy of the file or any document in the file.