

Nebraska Ethics Advisory Opinion for Lawyers
No. 88-3

IT IS NOT POSSIBLE TO STATE A DEFINITE TIME AS TO WHEN CLOSED CLIENT FILES MAY BE DESTROYED. THE RETENTION OR DESTRUCTION OF CLIENT FILES IS PRIMARILY A MATTER OF GOOD JUDGMENT, WEIGHING THE CLIENTS' INTERESTS AND EXPECTATIONS IN THE RETENTION OF FILE MATERIALS, THE REASONABLY EXPECTED FUTURE USEFULNESS OF THE FILE CONTENTS, THE CAREFUL PRESERVATION OF CONFIDENTIALITY, AND THE AVAILABILITY OF STORAGE SPACE.

QUESTION PRESENTED

How long must an attorney keep a closed client file before destroying it?

DISCUSSION

DR 9-102 (B) of the Code of Professional Responsibility as adopted by the Nebraska Supreme Court clearly establishes the duty upon lawyers to maintain inviolate the ownership of property belonging to clients.

The Committee has reviewed Opinion CI-22 of the Committee on Professional and Judicial Ethics of the State Bar of Michigan, Opinion 74 of the Maine Board of Bar Overseers Professional Ethics Committee, and Formal Opinion 1986-4 of the Association of the Bar of the City of New York. The thrust of these opinions, with which this Committee concurs, is that no general rule can be fashioned setting forth a specific period of time after which it is safe to destroy a client's file.

An attorney does not have a duty to preserve permanently all of his files. Mounting and substantial storage costs can raise the cost of legal services, and the public interest is not served by unnecessary and avoidable cost increases. Clients and former clients, on the other hand, have a right to expect that valuable

information in their lawyers' files, not otherwise available to them, will not be carelessly destroyed.

The following are suggested guidelines to assist the attorney in making the decision as to the retention or destruction of client files:

1. The file may include original documents or other property furnished by or on behalf of the client, the return of which might reasonably be expected by the client. Before destroying such documents or property, the client should be asked whether he wants delivery of them. Alternatively, the lawyer may simply deliver such documents to the client with appropriate advice regarding factors which the client should consider in determining which items to preserve. Where unable to contact the client, the lawyer should be guided by the foreseeable need for the documents in determining whether to destroy them.

2. An attorney must use care not to destroy or discard information that he knows or should know may still be necessary or useful in the assertion or defense of the client's position in a matter for which a statute of limitations has not expired.

3. An attorney must consider the reasonable expectations of the client for the preservation of files.

4. 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 relevance and materiality to matters that can be expected to arise in the future.

5. Disposition of client files must be made in such a manner as to protect fully the confidentiality of the contents.

It should also be noted that an attorney should retain indefinitely accurate and complete records of all receipts and disbursements of trust funds.

CONCLUSION

It is not possible to state a definite time as to when closed client files may be destroyed. The retention or destruction of client files is primarily a matter of good judgment, weighing the clients' interests and expectations in the retention of file materials, the reasonably expected future usefulness of the file contents, the careful preservation of confidentiality, and the availability of storage space.

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