



**IOWA STATE BAR ASSOCIATION
COMMITTEE ON
ETHICS AND PRACTICE GUIDELINES**

NICK CRITELLI, JD, CHAIRMAN,
317 SIXTH AVENUE
SUITE 950
DES MOINES, IA 50309
515.243.3122
NICK@CRITELLILAW.COM

DAN MOORE, JD. SIOUX CITY, IA
DAVE PHIPPS, JD. DES MOINES, IA
ERIC LAM, JD. CEDAR RAPIDS, IA
TIMOTHY SWEET, JD. REINBECK, IA

March 4, 2008

Mr. Dwight Dinkla
Executive Director
Iowa State Bar Association
625 East Court
Des Moines, IA 50309

Re: Opinion 08-02 File Storage and Retention Policy

Dear Mr. Dinkla

Members of the Bar have requested guidance regarding their obligation to keep and retain client files after closure of the matter. While there is no legally prescribed time that a lawyer must keep a file there are certain considerations a lawyer may use in determining when and under what circumstances a file may be destroyed. This opinion is issued to give guidance to the Bar in making that determination.

1. **Shared ownership of the file.** We start the analysis by recognizing that in most instances the file will be jointly owned by the client and the lawyer. The file may contain documents that are solely owned by the client, were created by the lawyer for the client and notes and memoranda that may constitute the business records of the lawyer and law firm. In some instances the file may contain documents which are irreplaceable could affect both the client and lawyers rights in the future. When the matter on which the lawyer has been engaged has concluded we

believe it good practice to return to the client as much of the file contents as practical retaining only those contents that concern the business of the lawyer and law firm. However lawyers are cautioned that there is always a possibility that at some future date the file and its original contents may become relevant in litigation and ethical matters. Consequently when in doubt a lawyer would be well advised to keep a copy of the file intact.

2. Contact your insurance carrier for advice: A lawyer should first make inquiry of their professional liability carrier regarding the carrier's file destruction requirement and, if the carrier has specific requirements, formulate their file destruction policy in accordance therewith. Some carriers have specific time recommendations while others recommend that the lawyers follow the guidance of their state Bar or Supreme Court.

3. Create a written file destruction policy: Lawyers are advised to create a written file destruction policy that describes how long the lawyer will retain client files and under what conditions they will be destroyed.

4. Retention Periods: Unless the lawyer's insurance carrier requires a longer period of retention: (a) a lawyer's written file destruction policy should be no shorter than six years after the last legal service was rendered as evidence by date of the file closing letter¹; or (b) in the event the lawyer does not have a written file destruction policy in place or it was not applicable to the matter in question, the file may be destroyed ten years after the date the last legal service was rendered in compliance with the protocol described in paragraph 5².

5. Utilize File Closing Letters: A lawyer is advised to embody the details of their file destruction policy in their initial

¹ See SupCtRule 45.2(2): "Maintaining records, providing accounting, and returning funds or property. A lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the lawyer's possession and regularly account to the client for them. Except as stated in this chapter or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and shall promptly render a full accounting regarding such property. Books and records relating to funds or property of clients shall be preserved for at least six years after completion of the employment to which they relate.[Court Order April 20, 2005, effective July 1, 2005]"

²See Court Rule Ch.22 Judicial Administration Rule 22.37

written engagement agreement with the client so that the client has full notice of the policy. Furthermore, when legal services have been concluded and the file is closed, lawyers are advised to send a closing letter to the client advising them of the file destruction policy and giving them an opportunity to retrieve the file.

6. Give a Final Notice: When a file is about to be destroyed in accordance with the lawyer's file destruction policy and the client has previously been made aware of the same, the client should again be advised in writing that the file is about to be destroyed and given an opportunity to retrieve it. If after reasonable inquiry the client cannot be located the lawyer may then destroy the file pursuant the lawyer's file destruction policy. In those situations where the lawyer did not have a file destruction policy the client should be advised in writing that the file is about to be destroyed and given an opportunity to retrieve it. If after receiving the notice the client fails to retrieve the file the lawyer may proceed to destroy the file.

7. Procedure for destruction without benefit of Notice after Ten Years: In those situations where the either lawyer had no file destruction policy or that the client was not made aware of it and the client can no longer be located before destroying the file, the lawyer should review the contents of the file and, before destroying the same make a determination as to: (a) the statute of limitations that may be applicable to any matter that may naturally arise from the services rendered to the client; (b) whether the file contains evidence or documents affecting rights of any third parties that would be adversely affected by the destruction of the contents of the file; and/or (c) whether the file contains documents, papers or other articles that could not be replaced from other sources, in which case that portion of the file and its contents should not be destroyed. In no event should a file be destroyed until ten years has passed after the last legal service has been rendered to the client.

8. Storage Fees. File storage is not an inexpensive cost of business item. Furthermore under some situations a lawyer may be considered a bailee with respect to the storage of the file. We believe that if a client wishes a lawyer to retain possession and store the closed file, the lawyer would be entitled to charge a reasonable fee to offset the cost of storage and insurance. Best practice would be to enter into a written agreement with the client where the terms and conditions of the storage and costs associated therewith are fully disclosed. Of course the client would always have the option of taking possession of the file.

9. Sample file destruction policy as embodied in an engagement agreement

File Destruction Policy

is the policy of the firm that we will keep and store your file for < no less than six> years after the date of the last legal service as evidenced by the date of the letter closing the file. Thereafter, the file and all of its contents will be permanently destroyed without further notice to you. You may retrieve your file and all of its contents at any time during that period.

10. Sample file destruction policy as embodied in a closing letter.

File Destruction Closing Letter

Your case has now been closed. Under the firm's file destruction policy, we will keep your file for 10 years from the above date after which time the file will be permanently destroyed. You may retrieve your file and its contents at any time during that period.

11. Sample file destruction notice prior to actually destroying the file.

Notice of File Destruction

You are advised that as per the File Destruction Closing Letter dated <DATE> a copy of which is attached, your file will be destroyed any time after <DATE>. You may retrieve the file at any time before that date.

For the Committee,



Nick Critelli