

Advisory Committee of the Supreme Court of Missouri

Formal Opinion 127

SCANNING CLIENT FILES

This opinion addresses the issue of destruction of the client's paper file, without client consent, if the firm has a complete electronic version of the file.

Formal Opinion 115, as amended, states that the file belongs to the client, cover to cover. *In the Matter of Cupples*, 952 S.W.2d 226, 234 (Mo. banc 1997), reinforces the client's ownership of the file. Rule 4-1.15(j) requires attorneys to maintain the file for a period of ten years, or for such other period as agreed upon with the client. However, no rule or previous opinion addresses the issue of whether the file may be maintained in electronic form.

Several issues must be considered in relation to maintaining the file in electronic form, if the paper file will be destroyed. Will the electronic storage media have integrity for the period the file must be stored? During the period in which the file must be stored, will it be accessible using the hardware and software currently available? Is it permissible to destroy the entire paper file? How will the file be provided to the client? If an attorney properly addresses these issues, it is permissible for a client file to be stored solely in electronic format, without obtaining client consent.

It is not possible to specify the type of electronic media that may be used for file storage. The storage media must be established as having archive quality integrity for the entire period that the file must be stored. Alternatively, the firm must transfer the data to new media, periodically, during the storage period, to ensure the integrity of the data. The firm must also ensure that software and hardware necessary to access the data will be available during the storage period. These issues involve knowledge of technology standards and developments. To the extent necessary, an attorney must consult those with appropriate expertise regarding these aspects of technology.

An attorney may destroy most, but not necessarily all, of the paper file, if the file is stored electronically. Items of intrinsic value may not be destroyed. Originals that may have legal significance, as originals, during the representation may not be destroyed. We encourage firms to offer the paper file to the client prior to destruction.

For purposes of accessing the file, the attorney must have the necessary software and hardware available. However, if the client requests the file, the attorney must provide it to the client in a manner in which the client will be able to access it using commonly used, relatively inexpensive, software and hardware, any time during the ten years the attorney is required to maintain the file or for such other time as the attorney and client have agreed. Alternatively, the attorney may provide the file to the client in paper format, unless that is contrary to an agreement between the attorney and client. During or after the ten year or agreed upon period, the attorney must provide the file to the client without charge, except for shipping or delivery charges.

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