

Advisory Opinion 1988-1

In response to an inquiry regarding the destruction of closed files, our committee offers the following response.

It is obviously cumbersome for a firm to retain intact all files indefinitely. Before routinely destroying files, one should consider several points regarding a file.

Obviously, court pleadings and recorded documents can usually be reconstructed from records elsewhere. All original documents should be returned to the client, and a client should always be furnished with a conformed set of copies of formal documents, such as contracts, agreements, settlements, etc., even if the original is not available. All property of the client must be returned to the client. (Rules of Professional Conduct No. 16-115)

The lawyer should examine and segregate the contents of a file as to:

1. Documents that are the client's property and are of intrinsic value, such as wills and deeds, which should be retained indefinitely or deposited with the court;
2. Documents that are the client's property and which the client would expect returned or documents that are not the client's property but may be of future use which should be retained for a reasonable period; and
3. All other documents which may be destroyed.

A reasonable amount of time depends on the circumstances of the case. In each case, the lawyer should attempt to contact and deliver the documents to the former client.

The lawyer should examine the file to determine the nature, content and value to the client and to continue to protect the client's confidences.

A lawyer should retain an accurate and complete record of receipts and disbursements of trust funds and an index of destroyed files.

An additional concern would be in the area of professional liability defense, which is only indirectly related to ethical questions. Once the lawyer's correspondence and notes of interviews with clients and other attorneys are destroyed, the lawyer may be unable to respond accurately to inquiries about what was done, why, and what information was given to the client.

The lawyer should use discretion in destroying the contents of a file, and some types of files should be kept longer than others. For example, a lawyer may have to defend the manner of preparing a will 20 years after the fact.