

Document Retention and Destruction:

Rules of Professional Conduct 1.15(a). **Safekeeping Property**

A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

Rules of Professional Conduct 1.16(d). **Declining or terminating representation.**

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer must provide, upon request, the client's file to the client. The lawyer may reproduce and retain copies of the client file at the lawyer's expense.

Comment

Upon termination of representation, a lawyer shall provide, upon request, the client's file to the client notwithstanding any other law, including attorney lien laws. It is impossible to set forth one all encompassing definition of what constitutes the client file. However, the client file generally would include the following: all papers and property the client provides to the lawyer; litigation materials such as pleadings, motions, discovery, and legal memoranda; all correspondence; depositions; expert opinions; business records; exhibits or potential evidence; and witness statements. The client file generally would not include the following: the lawyer's work product such as recorded mental impressions; research notes; legal theories; internal memoranda; and unfiled pleadings. The Utah rule differs from the ABA Model Rule in requiring that papers and property considered to be part of the client's file be returned to the client notwithstanding any other laws or fees or expenses owing to the lawyer.

Compare ABA Model Rules of Professional Conduct 1.16(d):

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Best Practices in client relations:

Have a written policy. Vary retention based on types of documents and cases. Follow the policy.

Give the policy to your client or state it in an agreement.

Do not take originals. Take a copy and note on the back that the client retained the original.

If originals must be kept, keep them in a vault subject to a log.

Tell the client that the client will receive copies as the case proceeds and that additional copies will be provided at the client's expense.

Your documentation should not make you a repository.

Records Retention in the Private Legal Environment: Annotated Bibliography and Program Implementation Tools (PDF)

http://www.aallnet.org/products/pub_llj_v93n01/2001_01.pdf

Four major sections, each with its own introduction: (1) an annotated bibliography focusing on materials published from the early 1990s to 2000; (2) an annotated listing of recent state and local ethics opinions pertaining to records retention; (3) sample records retention policies representing both client and administrative records; and (4) retention program implementation exemplars.



Records Management in the Legal Environment

Member: \$89 Non-Member: \$129 Year: 2003

ISBN: 978-1-931786-09-6

Author: Jean Barr, CRM; Beth Chiaiese, CRM; and Lee R. Nemchek, CRM

ARMA International

Best practices for the unique records management processes and procedures encountered in the private legal environment. Major topic areas include

- operational “back office” procedures, such as personnel management, space management, and accounting/budgeting practices
- “front office” processes that directly support the practice of law. These include conflicts of interest (i.e., searching, identifying, analyzing, and resolving conflicts of interest), client/matter intake, docket/calendar, litigation support, and business development
- the management of records resulting from specialized law practice areas, which – with their unique workflow and procedures – produce records with different recordkeeping requirements

The book's appendices include annotated lists and forms packages; bibliography with full citations and further readings; and an indexed table of authorities, including cases, statutes, regulations, restatements, model codes, and ethics opinions of various issuing bodies.