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CLIENT FILE RETENTION

The Ohio Board of Professional Conduct recently issued [Opinion 2019-6 Ethical Obligation to Deliver a Former Client's File](#). The Opinion states:

- **A lawyer does not have a duty to preserve client files permanently.**
- **A lawyer is not required by the Rules of Professional Conduct to maintain a former client's file for a minimum period of time after termination of representation.**
- **NOTE: IOLTA records must be maintained for 7 years. See Rule 1.15.**

The Opinion provides guidance on:

The period to retain the file:

- Unless the file is returned to the client at termination, the retention period of a client file should be determined by whether the file will be needed to protect the interests of the former client or the lawyer knows the file may be necessary in the assertion or defense of a future claim when the applicable statutory limitations period has not expired.

Client notification prior to destruction:

- When a firm's records retention policy calls for destruction of the file, a lawyer should contact the client to claim the physical file or give advance notice of the impending destruction of a physical or digital file.

Providing digital copies of the file:

- A former client's file should be delivered in the same manner it was maintained or in an accessible format, if the file was stored digitally. Absent prior agreement, a client may request conversion of digital files that are not accessible to another digital format or paper at the lawyer's expense.



BEST PRACTICES TIPS:

- **Adopt a records retention policy and office procedures to deliver the client's file:**
 - at the end of representation or
 - at a future date certain determined by firm's record retention policy
- **Notify the client in the engagement fee agreement that:**
 - the file and all original papers and property will be returned at the termination of representation or
 - kept for the length of time specified in the firm's records retention policy
- **At the termination of representation:**
 - send a File Closing Letter
 - return the file to the client
 - get a receipt for Return of File from the client
- **Keep relevant documentation from the file in the event of allegations of legal malpractice:**
 - this information can be retained digitally
- **If the firm has a records retention policy:**
 - follow the policy
 - at the end of the retention time period, notify clients they may obtain the file that is scheduled for destruction

OBLIC is here to help you! If you have any questions about this or any other topic, please do not hesitate to contact me.

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Need more information or a quote? Call 800-227-4111, we would love to talk to you.



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