

**ETHICS OPINION NUMBER 98  
OF THE MISSISSIPPI BAR  
RENDERED OCTOBER 5, 1984  
AMENDED APRIL 6, 2013**

**CLIENT FILES** - Attorney who proposes to destroy old files of deceased attorney must inform the affected clients and take whatever steps are necessary to protect the confidences of these clients.

The Ethics Committee of The Mississippi Bar has been requested to render an opinion on the following facts.

The requester's father was a practicing attorney who died over ten years ago. The requester, an attorney, did not practice law with his father.

Two questions are raised: (1) may the requester destroy the files of his father's former clients, and (2) if so, what procedures relative to notice to the deceased attorney's former clients must be followed.

The Mississippi Rules of Professional Conduct (MRPC) are silent as to the circumstances under which the file of a client may be destroyed. In Informal Opinion 1384 of the American Bar Association, dated March 14, 1977, the committee was responding to a request for advise to a lawyer's professional responsibility with respect to disposition of his client's files. The opinion states, in part:

A lawyer does not have a general duty to preserve all of his files permanently. Mounting and substantial storage costs can affect the cost of legal services, and the public interest is not served by unnecessary and avoidable additions to the cost of legal services. But clients (and former clients) reasonably expect from their lawyers that valuable and useful information in the lawyer's files, and not otherwise readily available to the clients, will not be prematurely and carelessly destroyed to the clients' detriment.

We cannot say that there is a specific time during which a lawyer must preserve all files and beyond which he is free to destroy all files. Good common sense should provide answers to most questions that arise. With the foregoing limitations in mind, we suggest the following considerations:

Unless the client consents, a lawyer should not destroy or discard items that clearly or probably belong to the client. Such items include those furnished to the lawyer by or in behalf of the client, the return of which could reasonably be expected by the client, and original documents (especially when not filed or recorded in the public records).

A lawyer should use care not to destroy or discard information that the lawyer knows or should know may still be necessary or useful in the assertion or defense of the client's position in a matter for which the applicable statutory limitations period has not expired.

A lawyer should use care not to destroy or discard information that the client may need, has not previously been given to the client, and is not otherwise readily available to the client, and which the client may reasonably expect will be preserved by the lawyer.

In determining the length of time for retention or disposition of a file, a lawyer should exercise discretion. The nature and contents of some files may indicate a need for longer retention than do the nature and contents of other files, based upon their obvious relevance and materiality to matters that can be expected to arise.

A lawyer should take special care to preserve accurate and complete records of the lawyer's receipt and disbursement of trust funds for seven years as provided in Rule 1.15, MRPC.

In disposing of a file, a lawyer should protect the confidentiality of the contents.

A lawyer should not destroy or dispose of a file without screening it in order to determine that consideration has been given to the matters discussed above.

A lawyer should preserve, perhaps for an extended time, an index or identification of the files that the lawyer has destroyed or disposed of.

Rule 1.6, MRPC, provides that an attorney may not disclose the confidences or secrets of a client except in specified instances that are not relevant here. Despite the fact that the clients involved were never your clients, it is our opinion that once you assume custody or control over the files you must ensure confidentiality as if they were your clients. However, even though you have this responsibility, you do not have a *carte blanche* to review the files yourself.

It is our opinion that you should first notify each client that you propose to destroy his or her file and then proceed in a manner consistent with Informal Opinion no.

1384. In some instances, it will be necessary for you to go into the file itself to determine the identity or address of the client, or the nature of the representation. In those cases, you may not review this file generally, but must limit your search to the items essential to your providing the client with notice.

Finally, there will be instances in which you are unable to contact the client. In those situations you must examine the contents of the file and remove therefrom any documents or other things that may be of value to the client or the client's estate in the future. An example of such an item would be a will in a situation where you do not know whether the client is dead or if his or her will has been probated.