

# Boone County Bar Association

The New File Retention Rule: What You Can Do  
To Reduce Costs, Free Up Space, and Care for  
Your Loved Ones After You are Gone



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# The New File Retention Rule

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# Productivity

Disorganization =

20%

Efficiency Loss

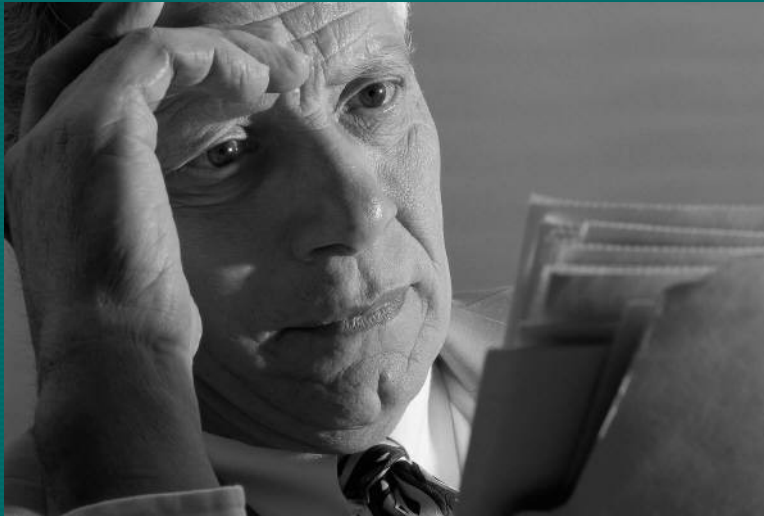


# Cost

- 400 Hours Per Year Lost
- \$100 Per Hour = \$40,000 Per Year In Lost Revenue!



# Caring for Your Loved Ones



# Old Rule

- Property of the Client  
(Unchanged)
- Return to Client OR – **Keep-**  
OR Have Other Agreement



## New Rule 4 1.15 Safekeeping Property (Emphasis Added)

(h) A lawyer shall *securely store* a client's file for 10 years after completion or termination of the representation absent *other arrangements* between the lawyer and client.

## New Rule 4 1.15 Safekeeping Property (Emphasis Added)

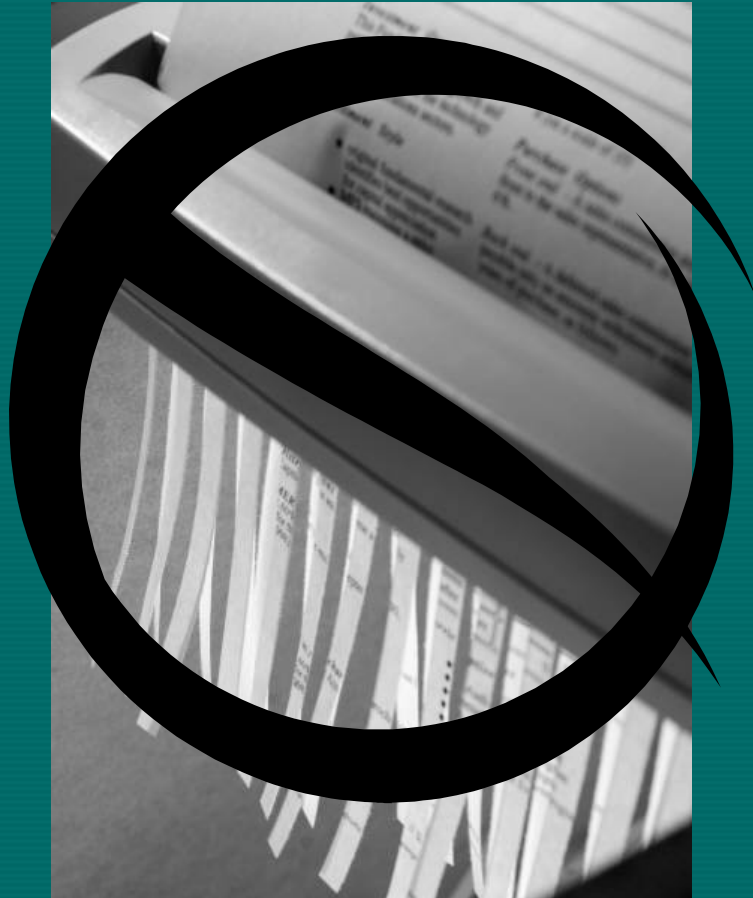
- If the client does not request the file within 10 years after *completion* or *termination* of the representation, the file shall be deemed abandoned by the client and may be destroyed.



# Rule 4- 1.15 Exceptions

- A lawyer shall not destroy a file pursuant to this Rule 4 1.15(h) if the lawyer knows or reasonably should know that:
  - (1) A legal malpractice claim is pending related to the representation;
  - (2) A criminal or other governmental investigation is pending related to the representation;
  - (3) A complaint is pending under Rule 5 related to the representation; or
    - Rule 5 – Rules Governing the Missouri Bar & the Judiciary – Complaints & Proceedings Thereon
  - (4) Other litigation is pending related to the representation

## Rule 4- 1.15 Prohibition



*Items in the file  
with  
intrinsic value  
shall never be  
destroyed.*

## Rule 4- 1.15 Destruction

- A lawyer destroying a file pursuant to this Rule 4 1.15(h) shall securely store items of intrinsic value or deliver such items to the state unclaimed property agency.
- The file shall be destroyed in a manner that preserves client confidentiality.

## Rule 4 1.15 Trust Fund Disclaimer

- A lawyer's obligation to maintain trust account records as required by Rule 4 1.15(a) is not affected by this Rule 4 1.15(h).
  - Rule 4 1.15(a) states, "...Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation."

# Issues to Consider:

- Multi-Jurisdictional Client or Matter
- Attorneys Licensed in Other States
- Recurring Clients
- Malpractice Claims
- Other Standards
  - Regulatory Agencies
  - Federal Law
  - Electronic Signature



# Practical Steps

- Communicate Policy With Client
  - Engagement Letter
  - Disengagement or Termination Letter
- Written Documentation When Items Returned
- File Closure Checklist
- Opportunity to Claim Items

# Practical Steps (cont)

- Intrinsic Value Inventory
- File Closure Procedure
- Other Procedures
- Buddy System / Letter to Executor
- Electronic Filing?



# Method of Storage

- Must Be Secure
- Must Preserve Client Confidentiality
- Items of Value
- Ease of Access
- Documentation







# Method of Destruction

- Must Preserve Client Confidentiality
  - Shredding
  - Documentation

# Malpractice Concerns

- **General Statute of Limitations**
  - 5 years
- **Other Items to Consider**
  - Representations of Minors
  - Estate Representations
  - Tax Representations
  - S of L on Substantive Claims Still Open
- **Potential Adverse Effect on Client**
  - Duty to Advise Prior to Destruction?



# Where Are Your Files?