

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Advisory Opinion #1986-87/8
Client Files
January 13, 1987

RULE REFERENCES:

- *Rule 1.6(a)
- *Rule 1.15(a)(1)
- *Rule 1.16(d)

SUBJECTS:

- *Client Funds and Property
- *Confidentiality
- *Files of Client
- *Termination/Withdrawal of Attorney-Client Relationship

ANNOTATION:

In destroying original client files, and microfilming same, a law firm must return original documents to the client, and exercise care to preserve the confidentiality of client files. (Rules 1.15(a)(1); 1.16(d); 1.6(a))

QUESTION:

Do the Rules of Professional Conduct permit the destruction of the original client files after they have been microfilmed?

SUMMARY OF FACTS:

In order to save space, a New Hampshire law firm proposes to microfilm its closed client files and then destroy the original files. Once the files have been microfilmed, they can be reprinted upon request.

RESPONSE:

Nothing in the Rules of Professional Conduct prohibits the microfilming of closed client files and then the destruction of the original files. However, the law firm should make certain that any original documents such as deeds, wills, etc., or other items of client property are first returned to the client. See Rule 1.15(a)(1) governing a lawyer's obligation to safeguard client property and Rule 1.16 (d) governing a lawyer's duty upon the termination of the lawyer's representation of a client.

The law firm must also exercise care to preserve the confidentiality of the client files, during both the microfilming process and the subsequent destruction of the original files. See Rule 1.6(a).

In a prior opinion on the confidentiality issues raised by a law firm's use of an outside word processing company, the Ethics Committee indicated that such an arrangement would be permitted as long as the law firm exercised due care to protect client confidences. In that opinion, the Committee stated that the law firm should regularly confirm that the outside agency fully understands its obligations regarding confidentiality. The Committee also suggested that it might be appropriate to require the word processing company to post a bond. See Opinion 82-3/16.

With regard to present inquiry concerning an outside microfilming company, the Committee believes that the use of such an agency's services for the microfilming of client files is permitted, so long as similar steps are taken to preserve confidentiality. See also ABA Informal Opinion 1384, March 14, 1977, for an often cited general discussion of file retention issues.