

The Basics of Client Files and Paperless Systems:

Opening, Closing, Documentation and Ticklers

A Malpractice Insurance Company's Perspective

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MINNESOTA LAWYERS MUTUAL
INSURANCE COMPANY

PROTECTING YOUR PRACTICE IS OUR POLICY.™

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Opening, Closing, Documentation and Ticklers

A Malpractice Insurance Company's Perspective

PUBLISHED BY:

Minnesota Lawyers Mutual
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Minneapolis, MN 55402
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ABOUT MINNESOTA LAWYERS MUTUAL

Founded in 1982 by members of the Minnesota State Bar Association, Minnesota Lawyers Mutual Insurance Company (MLM) provides professional liability insurance and risk management services for the legal community. MLM is committed to being an efficient, accountable and permanent practice management resource. Additionally, we have returned a dividend to policyholders every year since 1987.

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There are literally hundreds of books and articles covering just about every aspect of law practice management. So, why write another one? And, why should you read it?

Minnesota Lawyers Mutual has been in the risk management business for 30 years and we've seen plenty of well-planned, well-crafted and wonderfully maintained risk management materials. Unfortunately, we've also "paid the price" in instances where an insured attorney simply wasn't familiar with a particular risk management concept or didn't know "where to go" to find that information.

So, Minnesota Lawyers Mutual has developed a Law Practice Management Booklet Series written from the perspective of an *errors and omissions insurance company*. Our goal is to provide a single source of accurate, practical information and best practices for everything from conflict of interest, to client communications, to law office technology, with the additional commitment to keep it current and accessible.

By compiling all this information into checklists, avoidance tips and examples, we've turned a mountain of material into convenient, easy-to-scan, simple-to-use "chunks" of information organized by topic. In addition, you'll find reasonably detailed real-life experiences to ponder.

Using the tools in this book will help you "cover all the bases" from a risk management perspective. Use the checklists and tips as guidelines, not requirements set in stone. At the same time, understand that each of the items is included in this book for a particular reason. Hopefully, you'll be able to match your needs with our material and in doing so, avoid potential malpractice claims.

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INTRODUCTION

Proper maintenance of client files is a critical administrative function within a law office. A client file containing work product, client history, and critical correspondence is a valuable item which must be effectively organized and maintained. Numerous malpractice claims have resulted from lost files or misplaced documents, which were, of course, largely preventable had an organized internal filing system existed. Malpractice prevention aside, organized files are cost-effective and efficient, both for the firm and client.

Devising an effective record and file management system requires exploration of the following issues: initial physical file organization, centralized vs. decentralized filing, file documentation, periodic file inventories, file closing, and file retention and destruction.

There have been many changes in recent years regarding digital technology systems, and lawyers have more options than ever when choosing how to create and retain client files. Systems involving scanning paper and storing files electronically are now available at affordable rates. With the right tools and systems in place, a law firm of any size now has the option of saving client files digitally and reducing much of its paper.

Initial file organization sets the standard for effective file maintenance. Right or wrong, competence is associated with organization; and client perception is crucial to malpractice claim avoidance and client retention. If clients must routinely wait on the phone or in attorneys' offices while attorneys and secretaries frantically search through files for documents located either in file cabinets or on computers, competence is questioned.

Every law practice, regardless of size, should establish a uniform file organization system, applicable to both litigation and non-litigation files. From a risk management perspective, standardized files reduce the chance of lost or misplaced documents. From an operations standpoint, standardized files are very efficient and reduce the amount of time spent searching through other firm members' files for documents, trying to figure out their method of organization.

Guidelines for Implementing Uniform File Organization

The following rules for establishing and maintaining compliance with uniform, initial file organization procedures presuppose that the law practice has at least one support staff person who may assume responsibility for opening and setting up files. Practitioners who handle administrative tasks themselves will have to modify these rules to fit their particular routines. See **Appendix I** for a good example of a file opening checklist.

As a part of opening files and client intake, the file should be documented to reflect appropriate contact information on clients. Intake of a new client matter should include questions about the client's preferred mode of communication and whether or not telephone numbers, faxes and e-mail addresses are accessible by others, be it family members, or employees or an employer at work. This will then allow the attorney and staff to determine the most appropriate methods of communication based on the nature of this information.

No file number should be assigned for billing purposes until the retainer agreement is signed and the conflicts check has been completed. This is the practice at most larger firms and recommended in MLM's Law Practice Management's *Avoiding Conflicts of Interest* booklet.

FILE ORGANIZATION GUIDELINES



Centralization of file opening and organization is optimal

Preferably, one person within a law practice should be responsible for entering new client/matter information into the time/billing system, assigning a new client and/or matter number, and physically organizing the files. Practically speaking, this centralization prevents duplicate client/matter number assignments and promotes uniform file organization.



If file opening responsibilities must be decentralized among individual office units, then they obviously should be responsible for physically setting up and organizing the files.



Standardized Subfile Categories with Corresponding Color Codes

Every law practice should identify, through analysis of practice areas, standard subfile categories. The following is a standard list of categories, although certain areas of law require more specialized subfiles:

- correspondence
- attorney notes and file memoranda
- substantive pleadings
- discovery pleadings
- legal research
- client documents
- drafts
- corporate documents
- demonstrative/documentary evidence



Color Code Subfiles

In order to readily identify a subfile within a voluminous file, each subfile category should be assigned a different color and the subfiles tabbed accordingly. For example, “correspondence” files will display a blue-framed tab which displays all necessary file information. “Attorney notes and memoranda” will display a red-framed tab.



Every Subfile Displays Case/Matter Name and Attorney Initials

In order to readily identify a subfile within a voluminous file, each subfile category should display case/matter name and attorney initials.



Client and Matter Designations

Every client represented and every matter handled by a law practice must have designation, whether alphabetical, numerical, or alpha-numerical, so that time billed can be attributed to the appropriate client/matter and that files can be located quickly and easily.

FILE ORGANIZATION GUIDELINES (continued)



Many law practices designate their clients and matter either alphabetically, by client last name and matter title, or numerically by sequential number. Although there is certainly nothing wrong with these designation methods, they reveal very little about the client or the matter.



Law firms should consider adopting more elaborate designations which reveal the following:

- client's last name
- length of time client has been with the firm
- year matter opened
- type of matter

Designation Method:



EXAMPLE

An example of this type of designation is as follows:

AN/001/89/3

This means that client Pam Anders was the first client under AN in 1989, when the matter was opened. The matter is a personal injury case (code #3). A particularly effective application of this designation is with word processing. The file number may be used as the prefix on word processing document names. Consistent display of the above file number on outgoing correspondence makes it exceptionally quick and easy to identify the file to which a misplaced document belongs.

Centralized Filing

File tracking and maintenance is most effectively achieved through centralized filing. Although the concept of keeping all active and active-suspended files in a central file room is anathema to those accustomed to having their files in various decentralized locations, centralized filing is a more efficient and accountable process. File tracking and maintenance is handled by a designated file clerk, rather than by individual secretaries or attorneys, giving them more time to handle substantive, billable projects.

All active and active-suspended files will be kept in a central file room, filed either alphabetically or in accordance with the firm's file designation system. If an attorney or support staff member needs a file, that individual contacts central filing and requests the file be delivered. The file clerk will then check out the file, either on the computer or by check-out sheet. The requesting party's name (and anyone else who will be reviewing the file), check-out date and file name and number are entered into the check-out system with a return date.

Each day, central filing will identify those files which are scheduled to be returned. If the file has not been returned, the file clerk should be authorized to contact the attorney to determine file status and location. If the file still requires work, a new return date is assigned and the process is repeated.

Decentralized Filing

Decentralized filing usually translates into files stored in offices, on a staff member's desk, in empty offices, and other locations which greatly increase the possibility of lost or "seriously misplaced" files. In reality, many attorneys maintain that they do not have the physical space to accommodate a central file room which is the framework within which the following recommendations are made regarding file tracking and maintenance.

Regardless of the type of designation a law practice uses for its clients and matters, files should always be maintained alphabetically within the decentralized filing cabinets.

CENTRALIZED VS. DECENTRALIZED

These filing cabinets should be within close proximity, although not located in the attorneys' offices.

In order to track file location, each file should have a file-sized check-out card (9x12) which should be titled and dated at the time the file is opened. The check-out card should be of a distinguishing color, such as red, so that it can be easily recognized within the file or file drawer. Whenever a staff member or attorney removes a file from its designated permanent location, he/she must initial the check-out card and enter the date the file or subfile was removed.

If only a subfile is removed, this should be designated on the check-out card. If the entire file is removed from the file cabinet, the card will either replace the file or be placed in a "file out card" basket on the staff member's desk. Thereafter, a file may be found by either looking in the appropriate file cabinet or in the staff member's out-card basket.

File documentation is critical in order to prevent and defend malpractice claims, as well as to promote work product control. Without written memorialization of verbal discussions with clients, third parties, or other attorneys, it is extremely difficult to reconstruct the substance of these communications several years later, when memories are fading and tempers are flaring. In the worst case scenario, a legal malpractice action may turn on whether the fact finder believes the testimony of the attorney or the client, without the benefit of documentary evidence. In light of the general public's view that an attorney should be well organized, the jury may well lean toward the client-plaintiff.

File Documentation Guidelines

When a material event takes place concerning a client's file, the correspondence (whether by letter, e-mail or fax) should be placed in the file or if communicated in person or by phone, notes should be written to the file and a confirming letter sent to the client.

FILE DOCUMENTATION GUIDELINES



File documents should include the following:

- Date that the event took place
- Whether the communication was by telephone, in person, by fax or by e-mail
- Identification of all persons present
- The substance of what was discussed or decided
- The follow-up action for which the attorney is or is not responsible
- Notes to the file should be dated and maintained in a separate subfile



Examples of material events which warrant documentation are:

- Communication and discussion of settlement offers with client
- Client's rejection of attorney advice

FILE DOCUMENTATION GUIDELINES (continued)

- Discussions regarding client goals, objectives and expectations, and counsel's responsibilities within this framework
- Potential or actual conflicts of interest
- Communication problems with client, by virtue of client's unavailability or non-cooperation



Remember that e-mails and faxes become a part of the client's file. A system should be developed to insure that copies of e-mails are put into the file as documentation of matters communicated. Regarding faxes, if a time-sensitive piece of correspondence is faxed, a confirmation sheet with date and time should be placed in the file along with the faxed documentation or communication. And don't forget to make sure the confirmation shows the correct date and time.

A regular file review system is critical to malpractice prevention and efficient handling client matters. A file review or “tickler” system can take many forms, depending upon firm size and personnel availability. The fundamental purpose of a tickler system is to keep files out of attorney's offices and in centralized file locations (or if absolutely necessary, decentralized file drawers), until periodic review is warranted.

The advantages of a tickler system are obvious. First, a tickler system dramatically reduces the possibility of a lost file or forgotten deadline. Second, procrastination is less likely when an office is clean and the attorney has a finite number of matters to review on any given day. Third, periodic file review enables attorneys to proactively contact clients to communicate file status. Finally, greater efficiency is achieved when both support staff and attorneys know where a file is located.

The easiest and most effective method of establishing and complying with a tickler system is to integrate it with the perpetual calendar system. Case management software routinely includes automated perpetual calendar systems, but always remember that your automated system is only as good as the information that is entered into it. Some examples of current case management software available to lawyers are Amicus, Time Matters, and ProLaw. Double check (or triple check)

the dates for accuracy as they are entered into your system. In a manual tickler system, regular review dates are assigned to new matters by the responsible attorneys and entered into the calendar system as a docket item. On the review dates, files are retrieved from the centralized file room by the file clerk, or from decentralized file drawers by secretaries, and given to the responsible attorneys for review.

The attorney then has a limited number of files requiring his or her attention on any given day. If no action is required, the file is assigned a new review date and returned to the centralized file room or file drawers.

Periodic review dates should not exceed 30 days, even when activity is not anticipated for many months. This is also an excellent opportunity to send the short status report to the client and to monitor ongoing conflicts potential.

A tickler system, whether automated or manual, will alleviate the need to keep files stacked on attorney desk if they are not active. The system also prevents files from falling through the cracks.

See **Appendix II** for a list of Tickler and Calendar Systems: Suggested Dates and Deadlines.

File Tickler Basics



1. When first setting up a file, automatically mark the file for review in 30, 60 and 90 days.
2. Mark the review dates on both the file and a separate calendar accessible by staff.
3. A file **MUST** be delivered to the reviewing attorney on the scheduled review date.
4. All files should be reviewed at least every 30 days.
5. When reviewing the file, the attorney should always add future review dates.
6. No file should be placed back in the shelves without at least two future file review dates.

File Closing

Just as opening a file is a regular and significant event, so too should closing it when the work is finished. Closing a file can have several benefits, from having a positive impact on a conflicts analysis, to improving file room organization, to even recycling unused supplies.

Ethically, a lawyer has certain duties to the client upon terminating the representation. These duties are stated in Rule 1.16 Declining or Terminating Representation in Model Rules of Professional Conduct. See **Appendix III** for the complete version of this Model Rule, but specifically on point, Rule 1.16(d) states: “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.” The overall standard is to take steps “reasonably practicable to protect a client’s interests.” With regard to a retaining lien, be sure to check your own jurisdiction to see if you are allowed by law in your state to assert a retaining lien against the client’s file for unpaid fees and costs. Accordingly, when the matter is completed, every attempt should be made to collect any fees owed and promptly close the file.

Another benefit to promptly closing files is that the room in file storage area(s) can be increased and organization better maintained without the unnecessary clutter of completed files. Finally, the file closing process affords an opportunity to cull files and return client materials and even recycle unused legal pads and file folders.

File Closing and Off-Site Closing Checklist

When preparing a file for closing and off-site storage, the following guidelines should be followed:

FILE CLOSING & OFF-SITE STORAGE GUIDELINES



In order to increase the firm’s conflict of interest data bank capacity, each attorney will first review the file to identify adverse parties, affiliates, shareholders and other conflicts

FILE CLOSING & OFF-SITE STORAGE GUIDELINES (continued)

information not previously memorialized and entered into the conflict database.

- ✓ Return all original materials and personal property to the client or other appropriate parties. Original documents and materials include stock certificates, abstracts and deeds, wills and living trusts and insurance policies. Require a receipt or confirming letter.
- ✓ Tort actions should be reviewed to make sure any appeal periods have expired.
- ✓ Corporate documents have longer retention periods because of the ongoing nature of the businesses and the tax ramifications. Certainly, some corporate records fall under the “permanent” category, but the files can be stripped down to the bare file necessities.
- ✓ Check your state’s version of the American Bar Association’s Model Rule 1.15 Safekeeping Property which mandates that all records regarding client funds shall be retained for a specific length of time. *See Appendix IV* for ABA Model Rule 1.15 Safekeeping Property.
- ✓ Also, some states have “Required Bookkeeping Records” that mandate preservation of financial client records including, but not limited to, retainer and compensation agreements with clients, all client bills and all client closing statements for a minimum length of time. Check carefully for any “Books and Records” rules in your own jurisdiction.



Closed files should be:

- *Assigned to a numbered box, and the box numbers and contents maintained on a list or spreadsheet in the law firm office.*
- *Marked with a destruction date for the file.*
- *Kept 10 years with exceptions for corporate or estate planning matters. Criminal files can be destroyed a short time after the client’s last possible appeal has expired or been exhausted.*

The Myths About Paperlessness

For several years, lawyers have been hearing about the concept of the “Paperless Office” and the value it will bring to the practice of law. However, due to the state of scanning devices, the limited availability of storage memory, and the cost of everything, many lawyers have concluded that the concept is not ready for prime time.

One other matter that seemed to hinder the adaptation of electronic data storage in the law firm is the fact that the decision makers in the firm usually had trouble counting up on one hand the benefits of throwing away all the firm’s paper. Yes, it would be nice to convert the file storage area to a new work area that the firm can lease out, but is that worth the cost of such a conversion?

Why Start Scanning?

Two recent developments in the computer industry has taken the concept of a paperless law firm a lot closer to practical reality. One, the cost of data storage has gone down dramatically. You may have noticed if you have gone shopping for a computer in recent years that you now get a computer that stores about 20 times the information that a computer purchased in 2000 would store for a fraction of the price.

The second development that has contributed greatly to making massive electronic data storage more of a reality is the availability (and perhaps more importantly, the affordability) of quality high-speed scanners. Crucial to storing and securing massive amounts of the law firm’s data is having a tool on-site that can quickly scan paper documents and load the scanned images into a software program where the image can be codified and retrieved. Big law firms, especially those that practice in the area of litigation, have owned these tools for sometime. But just as laser tools and digital thermometers have become affordable for home use, so has fast scanning become affordable for the smallest of firms.



Other persuasive reasons to go paperless include:

- *Savings on document storage costs.*
- *Ease of reviewing documents within a law firm.*
- *Reduced postage and paper expense by sending clients documents by e-mail.*
- *Reduced costs of coping files when client relationship ends (the client's file can simply be burned to a CD).*
- *Savings on file clerk staff and sending and retrieving paper files from centralized storage (offsets time spent scanning and file naming).*
- *Protecting client files in the case of a disaster such as flood or fire.*

What You Will Need

If you are considering moving your office system to a digitized client data system that involves little paper, here are the tools and systems for achieving the system that is becoming more and more common.

Scanner

Instead of taking all the mail that comes into a firm and dividing it into lawyer slots (where presumably it is then divided by client matters) a firm with a digital storage format opens and scans all incoming mail the day it arrives. This can be achieved with scanning hardware that can scan documents just as fast as a photocopier can run paper through its feeder.

Generally, the manufacturers of printers and photocopiers are the leaders in producing good quality scanners. Among the notable manufacturer names are Fujitsu, Ricoh, Kodak, Cannon, HP, and Visioneer. Fujitsu is the most popular for solo practitioners.

You want to select a scanner that will self-feed and will scan over 30 pages per minute (both sides at once). Generally, you get what you pay for, so a small scanner that records images of copies at 20+ pages per minute can go for as little as \$200 while a faster 60+ pages per minute scanner can cost as much as \$5,000.

You may be surprised to find out that some of the tools you own or lease can scan documents as well – like a high-speed photo copier. If you haven't purchased or leased a photocopier in recent years, you will likely be asked whether you want a scanning feature on your next photocopier.

Purchasing a scanning unit that performs other office functions is fine – especially if your office could use the space saving it provides, but make sure that the scanner you purchase is networkable. You want to be able to immediately send the digital images to your computer files after they have been scanned.

Imaging Software

Once all the documents are scanned, they are then saved in the system as image files. Many scanning systems automatically save the image as a TIF or PDF file, the same way that your computer saves faxes or photographs. It is not saved as a Word or similar text file.

The painstaking part of the digital system is not actually standing in front of a scanner feeding it documents, but sitting down at a computer terminal and viewing each image and assigning it a file name. Many scan servicing companies will provide law firms with the software necessary to do this task. The person viewing each image, codifies the document and sorts the day's images in files that are distributed through e-mail to the mail recipients. Lawyers should be encouraged to create a file naming system for important nonclient documents as well, such as bank statements, law firm leases and contracts, employee records, etc.

Adobe Acrobat is the most popular imaging software available today. The section, "Using Adobe Acrobat PDF" of this booklet focuses on the many uses and features of the Adobe Acrobat products.

Storing In-house Documents

Once the recipient receives a "folder" in their e-mail of the scanned images of the days mail, the recipient can read through the documents on the screen and determine which if any, should be printed out. If not, the documents are then closed out and saved to a client directory that is within the network system.

FILE RETENTION AND A PAPERLESS OFFICE

How you organize the client matters on the network is essentially up to the firm. A simple method is to make up a directory, or folder, on the system with the client's name on it, and all the scanned images relating to that client's matter will be saved to that location. Many firms opt to use the file management features in a case management system to determine where on the network the scanned images are stored. The advantage of that system is that the attorney who is in the client's file in the case management system can view the scanned images from the case management program.

Moving Data to a Portable Storage Format

A small but necessary step in the digital data storage system is to move the scanned files to disk or some other portable storage for off-site storage. Storing data in a safe and secure manner is the lifeblood of a firm that is creating digital images. It is imperative that all firms store their electronic data off-site as a backup in case of accidental data loss or destruction.



Many paperless lawyers are buying larger computer screens and having two screens on their desks to allow them to view multiple documents at once. A monitor of 22" or larger is not very expensive (about \$200) and it allows one to put two full-sized documents side-by-side on the same screen, which is very convenient for cutting and pasting and just reviewing information or case law while drafting.

A System for Scanning

Much of what is recommended concerning the handling of paper documents and converting them to digital images was first promoted by David L. Masters, a Colorado attorney and author of the book, *The Lawyers Guide to Adobe Acrobat* (ABA Publishing 2005). Masters' book was meant to be a software how-to guide, but it goes well beyond the ins and outs of Adobe software and tackles many of the questions lawyers have struggled with when converting to a digital filing system. The book serves as a blueprint on how to go paperless in your law firm.

FILE RETENTION AND A PAPERLESS OFFICE

Law Office Information Systems

Most law offices manage paper document systems in the same way. A document related to a file comes into the firm and it is immediately photocopied. One copy goes to the client and the original stays in the attorney's file.

For complex litigation matters, this simple system can vary quite a bit with more copying and bates numbering added to the routine; but for the most part, this routine is standard in law firms. The flowchart in Figure 1 shows how this is depicted.

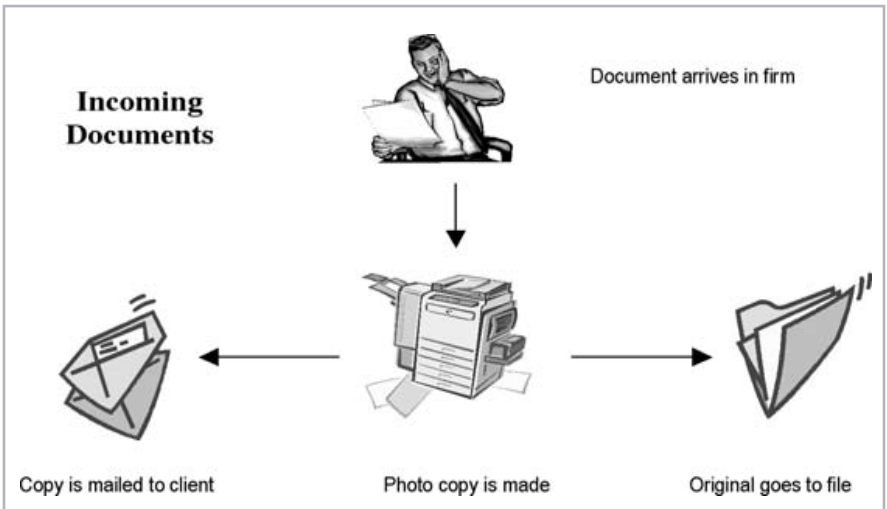


Figure 1

For outgoing documents the routine is different only in the fact that the original document goes to the recipient and the copies go to the client and the file (see Figure 2).

FILE RETENTION AND A PAPERLESS OFFICE

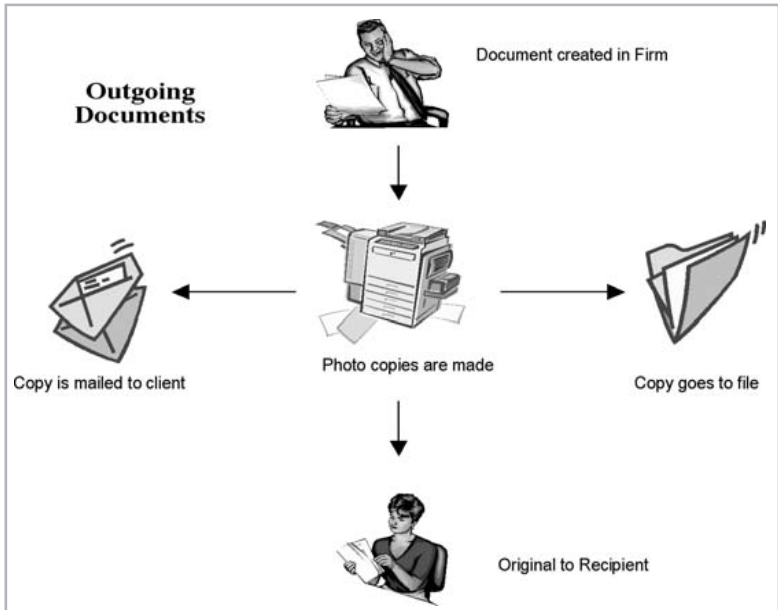


Figure 2

Document Management in a Paperless Office

Attorney David L. Masters, author of *The Lawyers Guide to Adobe Acrobat* (ABA Publishing, Second Edition 2005) has described a system in his book that is becoming the standard for creating an image-only filing system in the law office.

Practitioners who “go paperless” adhere to three simple rules according to Masters. Rule one: All incoming documents get scanned immediately. Rule two: All outgoing documents are printed to PDF. Rule three: Store digital images in logical files.

The chart in Figure 3 shows what Masters describes as the new route for incoming documents to the law office. In the chart, the box with the broken borders represents the document in its paperless state.

FILE RETENTION AND A PAPERLESS OFFICE

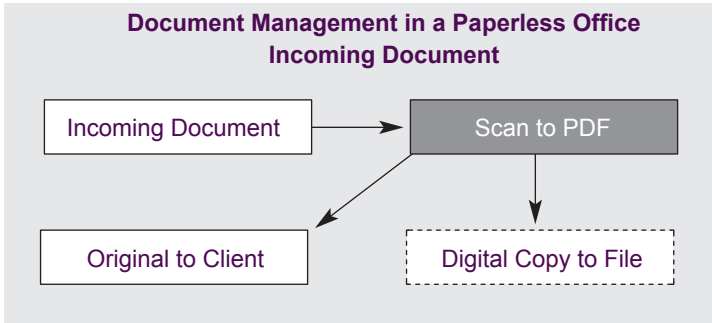


Figure 3

The chart in Figure 4 is the outgoing route of a document created in a paperless law office. The digital images are convenient for not only storing the image but sending a copy to the client via e-mail.

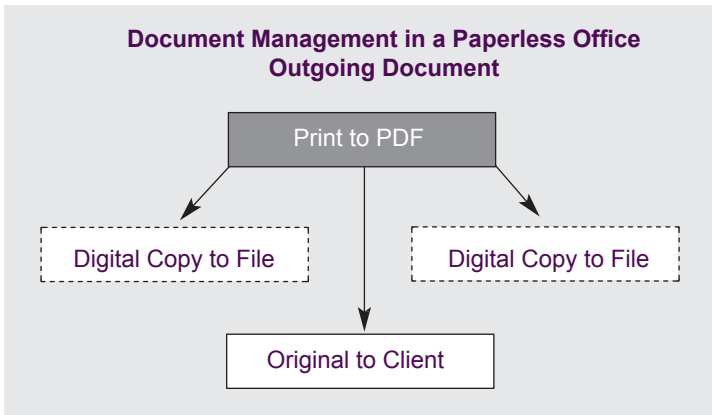


Figure 4

Digital Filing System

The key to creating a digital filing system is to store the files in a logical naming sequence on your network. It is up to the firm to decide what is the logical file naming conventions that will help any person in the firm find any document.

Whatever the standardization method for file naming that is chosen by the firm, the system should be published and understood by every member of the firm who handles client matter documents.

For a typical file matter you may want to consider organizing it as follows:

```
c:\work\smith\pleadPDF\050327 complaint
```

In this example, every client has a file in the “Work” directory. The file in this matter is for the client “Smith” and the document is a PDF of a complaint received on March 27, 2005. (Dates should always start with the year so the numbers will always fall in chronological order.)

What is a PDF?

A PDF document is an image file just like any other image file such as a TIFF or JPEG. It literally displays a picture, rather than a set of words. Think of it as a photograph of a typewritten document. By looking at the photograph, you may be able to read all the words on the paper, but it would be very difficult for you to alter any of the words by using any method of correction.

For quite some time, PDF documents have been considered “safer” for use because of the characteristics of the image file versus that of a DOC or WPD document. An image file delivers to your computer screen the look of the image when all the pixels are assembled in the correct order – and nothing more.

By comparison, the DOC or WPD file spends only part of its resources organizing what you see on your computer screen. It also delivers information to your computer below the surface instructing the PC on everything from the margin settings to the name of the person who owned the computer where the document was first written. All of that extra information that is “below the surface” of the DOC or WPD file travels with the file and it is called metadata.

So why have PDFs become the standard for creating and sending “safer” documents? PDF is an open file format, meaning that anyone

can manufacture software that creates PDF's and reads them. Over 1,800 vendors are already doing so. Therefore, PDF readers are abundant and free of charge.

Another reason why lawyers are quickly finding that PDF has become the standard for image documents is because courts and governmental institutions have chosen PDF over other image formats.

PDF has become the standard for electronic submissions to the FDA and the Federal Bankruptcy Court. Federal District Courts and the United State Courts of Appeals are moving that way as well. For a few years now, the Internal Revenue Service has made all of its forms available in PDF format in response to the Paperwork Reduction Act of 1995.

PDF has also become the standard for image documents because of some special characteristics that it has over other file types. Just based on image characteristics, PDF captures document images more clearly than other image formats – making it more “readable” by other software programs such as those with Optical Character Recognition (OCR) features.

Unlike other image files, PDF's are able to carry with them some background text that can help give further meaning to the document without attaching several layers of metadata to the document. The added text can be seen by a search engine or in a computer file directory, so the PDF is more functional than other image files when you are trying to find a small bit of information in a large collection of files.

Finally, PDF has one added benefit that makes it a user's choice when sending one as an e-mail attachment. PDF is “lighter” in file weight – meaning that it takes less memory to transfer a PDF image via e-mail than other file image types like TIFF.

Using Adobe Acrobat PDF

For creating PDF files, no manufacturer is better known than Adobe. Adobe popularized the PDF format as an e-mail attachment by giving computer users free access to Adobe Reader and allowing them to easily open PDF attachments.

Many computer users had no idea what technology they were using when they first clicked on the PDF icon attached to an e-mail, but since the content of the PDF was not viewable until the preinstalled Adobe Acrobat Reader was launched, it was a no-brainer for most computer users to make use of the Adobe product.

Also, for those computer users who never bothered to open PDF attachments in their e-mail, they still found themselves using a preinstalled Adobe Reader when reading online content in a PDF format.

Reading PDF documents has never been much of a problem for most computer users since tools to read PDF are widely distributed on the internet, and come preinstalled in most computers. But have you ever wondered how to create a PDF document? Have you ever wondered how to create a PDF document with bookmarks, tabs, links and color graphics? Do you know which tool to use? For some guidance on selecting the right PDF tool for you, take a look at the following products available.

Three Types of Products

Not all PDF creation tools by Adobe are the same. Some are designed to perform very simple quick functions, and others are quite elaborate in their offerings.

Adobe Acrobat Reader

Adobe Acrobat Reader is likely the tool that is already installed on your computer. It is a very simple software application that allows you to view, print, and search PDF files. It is also available free of charge for download at most web sites that display content in PDF format.

Adobe Acrobat Standard

To get the full-compliment of features for creating and editing PDF documents, you need to be using Adobe Acrobat Standard or better. It will create any PDF documents from any application that prints, including one-button creation from Microsoft Word, Excel, and Power Point. It allows you to also create dynamic PDF files with features like book marking and adding notes and links.

You may have seen very robust PDF documents come your way via e-mail from a government agency or a firm or company that relies heavily on PDF. These documents allow you to do more than just read the PDF. If the PDF happens to be several pages long, the bookmarks that appear as tabs along the side of the document give you some relief when you want to quickly navigate through the material. Documents like this can be created in Adobe Standard.

For most law firms, the features offered in the Adobe Standard product are sufficient for creating and editing the types of PDF documents that are useful to your firm. The product sells for about \$275 and is licensed to work on a single desktop. The Standard edition also extends the one-button ease to Microsoft Outlook, Internet Explorer, Access and Publisher.

Adobe Acrobat Professional

Although there are a few key differences between Adobe Acrobat Professional and Adobe Acrobat Standard, the main difference between the products is that there are features in the Professional tool that allow the computer user to create forms.

Forms with boxes, like an ordinary tax form, could be scanned into your computer and by using the Professional edition of Acrobat, you can turn each box into a field and the form can be filled out on the computer every time. Such a feature virtually eliminates any need for a typewriter in the law firm.

Creating a PDF Document

When you have a software application installed like Adobe Standard or Professional, creating a PDF document is a quick and easy task. In most cases, you can create the PDF with a touch of a button.

With a simple program like Adobe, you don't even open another application to turn a Word document into a PDF. After the program is installed, to turn any word processing document into a PDF, you choose the options that you would normally choose to print the document. However, the program adds a new option to your printer choices – one that's labeled "Adobe PDF." Select the Adobe PDF as your printer and after that you will only be required to give your PDF document a name.

FILE RETENTION AND A PAPERLESS OFFICE

Because the creation of a PDF is done through the normal printing routine, you will often hear someone who is creating a PDF document say that they are, “Printing to PDF.”

There is another, simpler way to create PDF documents in Adobe Acrobat Standard and Acrobat Professional. Both of those software applications install a new set of Adobe buttons to the tool bars in your most popular software applications. By using Acrobat Professional, if you see a web page that you would like to convert to a PDF document, you would simply click the Adobe button that has been added to the tool bar of your Windows Explorer program and it will save the web page as a PDF document under any name that you assign to it.

Creating Bookmarks in PDF

As stated earlier, one of the best and most indispensable features you will find in your Acrobat Standard or Professional program is the ability to bookmark pages in your newly created PDF document.

Think of bookmarking like a table of contents for any long PDF document. A PDF document of 20 pages or more is frustrating to navigate without printing unless you have a quick tool like bookmarks to assist you in jumping around quickly. The image in Figure 5 shows how the bookmarks appear on the left of the document in a lengthy PDF document. By clicking any bookmark, the PDF document is immediately forwarded to the page that is bookmarked.

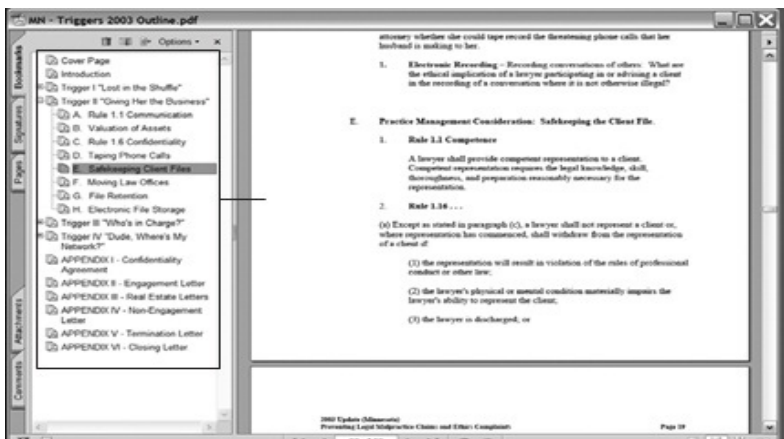


Figure 5

To create a bookmark in Acrobat Standard or Professional, you display the page that you would like to have book marked and you use the keyboard stroke **Ctrl + B**. The new bookmark will appear in the left window pane as “Untitled.” Give the bookmark a short name and move on to the next place in the document you would like to bookmark.

You can also “nest” your bookmarks by turning them into subcategories of other bookmarks. Looking at the bookmarks in the image in Figure 5 you will see that several of them have a “+” symbol next to them. The symbol is an indicator that other bookmarks are nested within the one with the symbol. To reveal the nested bookmarks just click the symbol. (The nested bookmarks under the bookmark “Trigger II Giving Her the Business” are revealed in the image.)

Nesting bookmarks is necessary whenever your list of bookmarks runs on too long. The result is an easy-to-use navigational tool, similar to the creation of file folders in Microsoft Explorer that allow you to quickly navigate a lengthy document.

Creating Links in PDF

You can turn any word, section, picture, or symbol in a PDF document into a hot link using Acrobat Standard or Professional. The link you create can lead to a page view within the document, another file, a web page or a custom link. (For example, the link could open another application like a sound file, etc.)

When you create a link in your PDF document, you also have several options to format how your link will appear. For example, you can place a box around a word that will change colors when the mouse is hovered over the area – indicating that the area is a link to another page, document or web page. You can also simply make a blind link so that the user reading the PDF document can click anywhere on the page to lead to the link.

What to Do With All that Paper?

Lawyers moving toward a digitized system for file maintenance struggle with the question of, “What should the firm do with the documents after they have been scanned into the system?” The

answer to that question can change dramatically depending on the circumstances.

There are many firms that are committed to an electronic filing system to the degree that they destroy all paper documents soon after they are scanned into the system. These firms will scan all the documents into the system, and after a waiting period of 30 to 60 days, will destroy the scanned paper in a safe and confidential way. As trends go, it is likely that more and more firms will be handling their scanned documents this way.

Firms that destroy paper soon after it has been scanned make great efforts to ensure the documents set for destruction do not include original documents. Original documents such as signed wills, trust agreements, executed contracts, abstracts, tax filings and warranty deeds are documents that by definition, are owned by the client, and their power is often carried in the retention of the physical document. In some cases, there are strict regulatory guidelines as to how long certain documents must be retained after the conclusion of the matter.

It is important for all firms to inform their clients at the start of the representation of the firm's file retention policy. If the firm intends to destroy the paper documents that arrive into the firm some time after scanning them into the system, it should inform the client up front at the start of the legal matter in a retainer agreement. A provision in the firm's retainer agreement should provide sufficient warning to the clients as to how their file will be maintained. For example, the provision may read as follows:

“This firm maintains electronic records of all client files and destroys all paper documents related to the matter within ___ days after it has been received and preserved digitally. Therefore, clients wishing to receive paper copies of all file documents should notify the firm within 30 days of the commencement of the matter...”

For many practical reasons, most firms that save digital copies of their files still retain the paper documents that are associated with the matter – at least up until the time that the file is closed and put into storage. For these firms, convenience and information safety are the motivating factors for creating digital versions of the files. Destroying the scanned paper to save clutter and storage space is not necessarily a risk worth taking.

FILE RETENTION AND A PAPERLESS OFFICE

Always remember that destroying file documents must be done in a safe and confidential way. By retaining a reputable document management company, you can be assured that your scanned paper documents will be completely and thoroughly destroyed, and that the confidential information within them will be safely protected for all time.

If you are in doubt as to what is the best protocol for retaining and destroying scanned documents in your firm, discuss the issue with your local ethics counsel or an ethics representative from your state bar association. It is important that you be comfortable with your office procedures for maintaining client files and that, whatever procedure you choose, it is the procedure your firm will be satisfied with for the long run.



File closing procedures may change in a paperless office:

- *Review the file to determine whether any handwritten notes or other documents have not been scanned*
- *Convert all client e-mails to a single electronic file and store with the client's electronic documents.*
- *Check to ensure original documents have been returned to the client.*
- *Move the electronic client folder to an archive directory.*

File Opening Checklist

Client/Matter Name: _____ Client/Matter No.: _____
 File Opening Date: _____ Billing Attorney: _____

CRITICAL DATES

Event	Actual Date	Advance	Reminder	Dates
Statute of limitations:	_____	_____	_____	_____
File tickler date:	_____	_____	_____	_____
Court dates:	_____	_____	_____	_____
Other:	_____	_____	_____	_____

TASK ASSIGNMENTS

Task	Due Date	Who	Done	Status/Notes
Administrative Tasks				
Conflicts Check				
Complete/submit new client intake form				
Prepare file folder(s)				
Prepare engagement ltr/fee agreements				
Enter all critical dates				
Assign/enter new file number				
Set up client in time and billing system				
Substantive Tasks* (Enter due dates in Tickler System)				

*Substantive tasks assigned are based on practice area, type of case and facts of case.

Tickler & Calendar Systems

Suggested Dates & Deadlines

- Statutes of limitations
- All appointments and meetings
- Court dates
- Dates from Scheduling Order
- Interrogatories
- Depositions
- Tax Returns
- Real estate closings
- Lien notifications
- Pleadings
- Discoveries
- Subpoenas
- Corporate tax dates and stockholders' meetings
- Hearings before administrative agencies, commissions and boards
- Due dates of the opposition on court cases
- All dates related to follow-up activities
- All dates from "area of practice" checklists
- Promises made to others or by others
- All other self-imposed discretionary deadlines

ABA Model Rules of Professional Conduct Client-Lawyer Relationship

Rule 1.16 Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the rules of professional conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(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.

COMMENT

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. *See* Rules 1.2(c) and 6.5. *See* also Rule 1.3 Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. *See* also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client Upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. *See* Rule 1.15.

ABA Model Rules of Professional Conduct Client-Lawyer Relationship

Rule 1.15 Safekeeping Property

(a) 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. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. 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.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

COMMENTS

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and

personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. See, e.g., ABA Model Financial Recordkeeping Rule.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.

[6] A lawyers' fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.



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General Public \$14.95