

BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE

**FORMAL ETHICS OPINION 2015-F-160(a)**

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The Board of Professional Responsibility issues this amended Formal Ethics Opinion to clarify a lawyer's responsibility with regard to client files.

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**OPINION**

The Board of Professional Responsibility recommends a lawyer retain client files for five (5) years after termination of representation; however, this is merely a guideline and may be altered by client agreement or the type of representation and contents of the file.

**DISCUSSION**

Tennessee Rule of Professional Conduct 1.15(b) provides:

Funds belonging to clients or third persons shall be deposited in a separate account maintained in an FDIC member depository institution having a deposit-accepting office located in the state where the lawyer's office is situated (or elsewhere with the consent of the client or third person) and which participates in the required overdraft notification program as required by Supreme Court Rule 9, Section 35.1. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose. Other property shall be identified as such and appropriately safeguarded. Complete records of such 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.<sup>1</sup>

RPC 1.15(b) requires complete records of funds belonging to clients or third persons or other property be kept five (5) years after termination of representation.

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<sup>1</sup> Tenn. Sup. Ct. R.8 RPC 1.15(b) (2009).

Similarly, Tennessee Supreme Court Rule 9, Section 35.1(a)(2) provides:

Every attorney engaged in the practice of law in Tennessee shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accounting or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client. The five year period for preserving records created herein is only intended for the application of this rule and does not alter, change or amend any other requirements for record-keeping as may be required by other laws, statutes or regulations.<sup>2</sup>

These rules support the Board's recommendation that a lawyer retain client files for five years after termination of representation.

### **CONCLUSION**

Based on the above rules, the Board of Professional Responsibility recommends the following guidelines:

1. The Board of Professional Responsibility recommends a lawyer retain client files for five (5) years after termination of representation; however, this guideline may be altered by client agreement and/or the type of representation and contents of the file.
2. A client may consent to an attorney retaining a file for less than five years.<sup>3</sup> Authority to dispose of a file should be obtained from a client whenever possible, so the better practice would be to address file retention initially or contact all clients and determine their wishes.
3. Absent client authority to dispose of files, an attorney should individually review files and be satisfied that original documents that have economic, legal, or evidentiary value are not destroyed.

The Board of Professional Responsibility hereby modifies Formal Ethics Opinion 2015-F-160 as reflected above. All other provisions of Formal Ethics Opinion 2015-F-160 remain in effect.

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<sup>2</sup> Tenn. Sup. Ct. R. 9, § 35.1(a)(2) (Adopted August 30, 2013, effective January 1, 2014.)

<sup>3</sup> Requirements for record keeping as set forth in in Tenn. Sup. Ct. R. 8, RPC 1.15(b) and Tenn. Sup. Ct. R. 9, Section 35.1(a)(2) may not be altered by client consent.

This 11<sup>th</sup> day of March, 2016

ETHICS COMMITTEE:

Joe G. Riley

Michael U. King

Odell Horton, Jr.

APPROVED AND ADOPTED BY THE BOARD