

Updated Timeframes for Holding Client Files and Client Trust Account Records Starting July 1, 2016: What You Need to Know

By: Melinda J. Bentley

The Supreme Court of Missouri entered an Order on March 7, 2016, that will modify recordkeeping requirements for lawyers in Missouri.¹ Most notably, the requirement under Rule 4-1.22 that client files be maintained for 10 years after the completion or termination of the representation has been reduced to 6 years as of July 1, 2016. This means lawyers in Missouri may need less storage space in the future. This article will highlight the changes in the new versions of Rule 4-1.22 – Retaining Client Files, and Rule 4-1.15 – Client Trust Accounts and Property of Others.

Rule 4-1.22 – Retaining Client Files

First, the title of this Rule has changed from “File Retention” to “Retaining Client Files,” which should help distinguish that this is a separate requirement from maintenance of client trust account records in accordance with Rule 4-1.15.

Second, as noted above, the required time to maintain client files after the completion or termination of the representation has been reduced from 10 years to 6 years as of July 1, 2016. The Rule provides that this new 6 year requirement applies where the completion or termination of the representation occurs *on or after* July 1, 2016. If the completion or termination of the representation occurs prior to July 1, 2016, that client file retention requirement will be 10 years under the previous Rule.

Third, the new version of Rule 4-1.22 still permits lawyers to hold the files for a lesser period of time, but clarifies that to do so will require an “agreement between the lawyer and client through informed consent, confirmed in writing.”² Just as in other situations where the Rules of Professional Conduct require such “informed consent, confirmed in writing,” lawyers are reminded that the standards of “informed consent” and “confirmed in writing” are defined terms under Rule 4-1.0 – Terminology.³ If lawyers choose to destroy a client’s file before 6 years have passed, the new version requires that lawyers “maintain the written record of the client’s consent of destruction for at least six years after completion or termination of employment.”

Fourth, lawyers may destroy client files after the 6 year period if the client does not request the file; however, the same exceptions are still maintained in this rule. Under those exceptions, lawyers are prohibited from destroying files if they know or reasonably should know that there is a malpractice claim, criminal or other governmental investigation pending, complaint under Rule 5, or other litigation that is related to the representation.⁴ These exceptions apply to all file destruction pursuant to Rule 4-1.22,

whether the file is abandoned or the client has consented to its earlier destruction. Further, Rule 4-1.22 still provides that lawyers shall never destroy items of intrinsic value but shall securely store those items. The Rule's new version also includes that for such items of intrinsic value the lawyer may choose to deliver them to the state unclaimed property agency when otherwise destroying the file pursuant to the Rule.⁵ As always, when destroying client files, confidentiality must be maintained.

Fifth, the new version of Rule 4-1.22 provides that client files may be maintained by electronic, photographic, or other media provided that printed copies can be produced, and requires that the records be readily accessible to the lawyer.⁶

Sixth, the new version provides that if a law firm dissolves, reasonable arrangements must be made to maintain client files, and if a law firm is sold, the seller shall make reasonable arrangements to maintain the files and provide written notice to the client as to the location of the file.⁷

Finally, this new version of the Rule clarifies that the obligations under Rules 4-1.145 to 4-1.155 to maintain client trust account records are not affected by this Rule 4-1.22.⁸

Rule 4-1.15 – Client Trust Accounts and Property of Others

First, as of July 1, 2016, the title to Rule 4-1.15 will be “Client Trust Accounts and Property of Others” instead of just “Safekeeping Property.” This change more clearly defines the purposes of the Rule.

Second, a new version of Rule 4-1.15(f) is adopted. It clarifies that the records being maintained under this provision are “client trust account records.”⁹

Finally, the new version of Rule 4-1.15(f) contains a parallel time requirement to maintaining client files under Rule 4-1.22. Both are now 6 years, whereas such records under the previous Rule 4-1.15(f) required only 5 years. Under the amended Rule 4-1.15, complete client trust account records “shall be maintained and preserved for a period of at least six years after the later of: (1) termination of the representation, or (2) the date of the last disbursement of funds.”¹⁰ It is important to note that Rule 4-1.15(f) *does not* permit this 6 year time frame to be reduced.

Implementing these New Provisions

I encourage each of you to review the full text of these amended rules, review your internal policies on handling client trust account records and client files, and train your staff on these procedures. Of course, you are always welcome to contact the Legal Ethics Counsel office (www.mo-legal-ethics.org) to seek an informal advisory opinion about your specific future conduct under Rule 4, including these new provisions.

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¹ See full text of March 7, 2016 Order at:

<http://www.courts.mo.gov/sup/index.nsf/d45a7635d4bfdb8f8625662000632638/5fda2e584626f29b86257f7100594b7a?OpenDocument>.

² See Rule 4-1.22, effective July 1, 2016.

³ Rule 4-1.0(e) provides: “‘Informed consent’ denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the materials risks of and reasonably available alternatives to the proposed course of conduct.” Rule 4-1.0(b) provides: “‘Confirmed in writing,’ when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent.... If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.”

⁴ See Rule 4-1.22(a) – (d), effective July 1, 2016.

⁵ See Rule 4-1.22, effective July 1, 2016. See also, Advisory Committee of the Supreme Court of Missouri Formal Opinion 118 (1988); and Missouri Informal Advisory Opinions 2011-01, 2010-0011, 20070038, 20040013, 990008, and 960158.

⁶ See Advisory Committee of the Supreme Court of Missouri Formal Opinion 127 on Scanning Client Files (2009).

⁷ See Rule 4-1.22, effective July 1, 2016.

⁸ See Rule 4-1.22, effective July 1, 2016.

⁹ See Rule 4-1.15(f), effective July 1, 2016.

¹⁰ See Rule 4-1.15(f), effective July 1, 2016.