



We can show you more.®

# PROFESSIONAL COUNSEL<sup>SM</sup>

ADVICE AND INSIGHT INTO THE PRACTICE OF LAW®

Resolving Disputes  
Regarding the Client File

The CNA *File Retention and Destruction Guide* emphasized the importance of a law firm investing the necessary time to create a file retention and destruction policy. Implementing and enforcing such a policy helps safeguard client confidences and organize information to permit effective representation, among other advantages. Properly maintaining client files during the lawyer-client relationship and for an established time period thereafter benefits both the lawyer and client. Moreover, disputes also may arise between lawyer and client regarding ownership and access to the client file.

Are lawyers required to place the client's interests above their own interests and relinquish the entire file when faced with a client request or demand? Or, may lawyers refuse to turn over any documents from the client file if the client owes outstanding legal fees or costs? The answer usually lies between these two extreme positions. In order to determine how to respond to a request or demand for the client file from a current or former client, lawyers should examine the ethics opinions, laws and rules of professional conduct within their own jurisdiction. Opinions vary among the states on how lawyers should resolve disputes with clients over client files. See [Appendix](#). Despite the differences in viewpoints, certain general concepts should be considered when involved in these types of disputes.

## Client Files

As discussed in the CNA *File Retention and Destruction Guide*, client files consist of numerous types of documents, many of which are generated by or exchanged between lawyer and client to facilitate the legal services being rendered and documents generated as a result of research or discovery performed on the client's behalf. One state bar ethics opinion has itemized client files into seven basic types of documents:

1. documents and other materials furnished by the client;
2. correspondence between the lawyer and client;
3. correspondence between the lawyer and third parties;
4. copies of pleadings, briefs, applications and other documents prepared by the lawyer and filed with courts or other agencies on the client's behalf;
5. copies of contracts, wills, corporate records and other similar documents prepared by the lawyer for the client's use;
6. administrative materials relating to the representation such as memoranda concerning potential conflicts of interest or the client's creditworthiness, time and expense records, or personnel matters; and
7. the lawyer's notes, drafts, internal memoranda, legal research, and factual research materials, including investigative reports, prepared for the lawyer for the use of the lawyer in the representation.<sup>1</sup>

<sup>1</sup> Illinois Bar Ass'n Ethics Op. 94-13 (1995)

### Who owns the client file?

The question of file ownership does not arise in most representations. Typically, the lawyer compiles and maintains the file during the pendency of the representation and for a set time period thereafter, until it is destroyed. However, when disputes between lawyers and clients occur, questions of file ownership inevitably arise. The *ABA Model Rules of Professional Conduct* (“ABA Rules”) instruct lawyers that, when dealing with client files, they must:

- properly protect such materials (Rule 1.15),
- maintain client confidences with such files (Rule 1.6), and
- “surrender papers and property to which the client is entitled” when the representation terminates (Rule 1.16).

The ABA Rules remain silent, however, on the issue of who owns the client file. Thus, lawyers must look to other resources to determine who owns the client file.

### Majority View

Almost all of the states that have examined the issue of file ownership have concluded that the client owns the file. Variations exist among these states as to how much of the client file the client is entitled to receive. The majority view holds that, when faced with a request for the file from the client, the lawyer must relinquish the “entire file,” excluding only documents intended for internal use. While some jurisdictions phrase this rule in terms of a more general standard, see, e.g., Oklahoma Bar Ass’n Ethics Op. 295 (1979) (The lawyer should produce all materials which “could reasonably be anticipated to be useful to the client.”), the end result is largely the same.

The Washington D.C. Bar, an “entire file” jurisdiction, noted that while the work product doctrine shields discovery of work product from opposing counsel, “it does not shield that same attorney work product from the attorney’s own client.” Washington D.C. Bar Ethics Op. 333 (2005). The Alabama Bar agrees, reasoning that a lawyer’s fiduciary relationship with a client would be impaired if the lawyer withheld any documents from the client without good cause. Alabama Bar Ethics Op. 2010-02.

### More Limited Views

A minority of jurisdictions take a more limited view in terms of the client’s right to the file. Some states place a burden on the client to demonstrate a need for the attorney’s work product, e.g., Delaware Bar Ass’n Ethics Op. 1997-5 (client not “automatically entitled” to attorney’s mental impressions and work product), while others expressly reject the client’s claim to such documents. E.g., Rhode Island Supreme Court Ethics Op. 2010-06. Still other jurisdictions afford the client only the “end product” of the attorney’s work, allowing the attorney to retain all memoranda, research, notes, or other materials generated in furtherance of the representation. See Mississippi Bar Ethics Op. 144 (1988, amended 2013).

Along the same lines, some jurisdictions have concluded that the client does not own, or has only a limited ownership interest in, the client file. The State Bar of Michigan, for example, reasoned that the client pays for the lawyer’s skill and expertise and not a physical product. It follows, therefore, that although the client has a right of access to certain information within the file, the client does not own the file. See, e.g., Michigan Bar Ethics Op. R-19 (2000). The Court of Appeals of Florida expressed this sentiment in *Donahue v. Vaughn*, stating that “[t]he contents of an attorney’s file relating to professional services performed for a client are the personal property of the attorney, not the client.” 721 So. 2d 356, 357 (Fla. Dist. Ct. App. 1998). In summary, the issue of file ownership and

access is hardly cut and dry, and attorneys would be wise to review local ethics rules and opinions before asserting or relinquishing any rights they may have in the client file.

### **What about retaining liens?**

The issue of ownership of the client file by the client becomes more complex when the client fails to pay the lawyer's fees and expenses. In some jurisdictions, lawyers may withhold a nonpaying client's file and assert a retaining lien as a method of obtaining payment. The trend among most jurisdictions, however, focuses on protecting the client's interests. *ABA Lawyers' Manual on Professional Conduct*, Fees: Retaining Liens, 29 Law. Man. Prof. Conduct 449 (07/17/13). Courts may consider a retaining lien unethical if any of the following conditions exist:

- the client is unable to pay;
- a criminal charge or important liberty interest is at stake;
- the lien will prejudice the client's interests; or
- the lien is not necessary to prevent a fraud or gross imposition by the client.

Lawyers should check the relevant jurisdiction's opinions and case law on retaining liens before asserting one. See [Appendix](#). In addition, lawyers should bear in mind that fee disputes are a leading cause of legal malpractice actions.<sup>2</sup> Withholding the client file as a means to extract payment may cause the client to file a legal malpractice lawsuit. Moreover, if a lawyer's assertion of a retaining lien prevents the former client from successfully pursuing or defending the underlying legal matter, the lawyer may face liability from the former client. Bar disciplinary authorities also may sanction a lawyer for asserting a retaining lien that harms the former client. Lawyers should carefully evaluate whether the risks of asserting a retaining lien outweigh any expected benefits.

### **Assuming that a retaining lien is not at issue, who pays for copies of the client file?**

Closely tied to the issue of client file ownership is the question of who is responsible for paying retrieval, organization, and copying costs. Most states deem that since the client owns the file, the lawyer is obligated to return the original file to the client. However, the lawyer is authorized to produce and maintain a copy of the client file if the lawyer pays the copying costs. See [Appendix](#). Some states, however, permit the lawyer to charge the client for copying costs of the client file.

In its comments to Rule 1.16, the *Kentucky Rules of Professional Conduct* state a lawyer may charge a client a reasonable copying cost. KRPC 1.16 cmt. 9. Michigan goes a step further by permitting a lawyer to also charge for the retrieval and review of the file in connection with a client's request for the client file. Michigan Bar Ethics Op. R-19 (2000). Louisiana takes a dim and more mainstream view: "If it is reasonable for the client to expect the files to be relatively organized based upon the fees paid prior to termination, it would be unreasonable to charge additional fees for any time required to organize the files to that level—i.e., to do what the lawyer has presumably already been paid to do." Louisiana Bar Ass'n Ethics Op. 05-RPCC-003 (2005).

Lawyers should review the law and ethics opinions of the relevant jurisdiction to determine whether clients may be charged for copying costs and related services. Some states recognize that lawyers may charge such expenses if the engagement agreement with their client clearly states that clients are responsible for paying such charges. See, e.g., Minnesota RPC 1.16(f) ("A lawyer may charge a client for the reasonable costs of duplicating or retrieving the client's papers and property after the termination of the representation if the client has, prior to termination of the lawyer's services, agreed in writing to such a charge.")<sup>3</sup>

<sup>2</sup> See *Taking Stock of a Potential Fee Collection Suit* at [www.cna.com](http://www.cna.com).

<sup>3</sup> See *Lawyers' Toolkit 3.0* at [www.cna.com](http://www.cna.com).

Regardless of whether or not copying costs may be passed on to the client, lawyers should maintain a copy of the file for a set period of time for two main reasons. First, an issue in the underlying matter may arise where the lawyer will need documentation in the client file in order to resolve the issue. Second, if the client or a third party questions the lawyer's handling of the matter, the client file may provide defenses to any allegations of neglect or wrongdoing. If, in the event of a dispute, the lawyer is unable to provide documentation to support the lawyer's version of events, the party contesting the lawyer increases its chances of prevailing. Judges and juries expect lawyers to document key events and discussions, such as advice to the client. Saving money on copying charges by not retaining a copy of the file may ultimately become expensive if the lawyer loses a legal malpractice case due to a lack of documentation that would have aided the lawyer's defense.

One step lawyers may take to reduce the likelihood of a dispute with a client over copying costs is to make a regular practice of sending pleadings and other important documents to clients as the case develops. Lawyers should maintain a log or checklist of what has been sent to the client during the course of the representation as well as the date the materials were sent. Once the case is concluded, the client should already have most of the contents of the client file. If the client then requests the client file, copying costs and related expenses can be avoided by sending only those records the client lacks.

#### **What if a law firm receives a litigation hold order on a client file?**

The most common basis for suspending destruction of a client file is the existence of a litigation hold. A litigation hold may be necessary due to a dispute between the client and another party about the underlying matter, or an actual or potential legal malpractice claim against the lawyer or firm. In such circumstances, the firm should follow established procedures to preserve the records according to applicable jurisdictional rules.

In most cases, the litigation hold order will require that the *status quo* of the records subject to the hold be maintained and undisturbed. The failure to initiate, enforce or comply with the terms of a litigation hold order can result in the destruction of records with continued potential importance to the firm or to third parties.

Therefore, in the event of a litigation hold or similar order, having a procedure in place that allows the firm to suspend or modify regular record processes is critical. Such a procedure permits lawyers to avoid allegations of spoliation and also take advantage of safe harbor provisions under civil procedure rules. Lawyers should also review their legal malpractice insurance policies to determine if their insurance carrier offers coverage for subpoena assistance. The fact that a former client or third party has subpoenaed the client file may lead the attorney to believe that such action is a precursor to a claim, in which case the lawyer should notify their carrier.

## Conclusion

Part of any comprehensive file retention and destruction policy should reflect how the law firm will respond to client requests for client files. Crafting a suitable policy will require the law firm to review the law, rules, and ethics opinions of any and all relevant jurisdictions. See [Appendix](#). Some client file disputes may be avoided by addressing the issue of file retention and destruction at the outset in the engagement letter and by providing the client with relevant documents during the course of the representation. Lawyers contemplating withholding client files as leverage in fee disputes should consider not only the client's financial situation and need for the file but also the risks of being sued for legal malpractice by the client in retaliation.

By addressing client file disputes in a clear and consistent policy, an attorney is able to enhance operational efficiency, optimize client relationships, and reduce the potential for litigation in this important aspect of the representation.

# Appendix

## Selected Jurisdictional Client File Rules and Regulations

Prepared: February 2015

The information contained herein was believed to be accurate as of the date it was written. As laws, regulations and ethical opinions may change, they must be checked for updates.

STATE	FILE OWNERSHIP	FILE PRODUCTION	COPYING & ANCILLARY COSTS	RETAINING LIEN OVER FILE*	REFERENCE
AL	The client owns the entire file.	The attorney must promptly produce a copy of the entire file upon the client's request. If the attorney determines that production of the entire file is unreasonable or inappropriate, the attorney must provide reasonable notice to the client that portions of the file have been redacted or removed for good cause.	The attorney may not charge the client for the cost of providing an initial copy of the file, but may charge for any additional copies. If the client requests that the file be produced by mail, common carrier, or at a location other than the lawyer's office, the client is responsible for those costs.	Allowed (Ala. Code § 34-3-61)	Alabama Formal Ethics Opinion 2010-02
AK	The client owns the entire file.	The attorney must presumptively accord the client access to the entire file unless substantial grounds exist to refuse. The attorney need not disclose documents intended for internal law office use or documents whose disclosure would violate a duty owed to a third party or otherwise imposed by law.	Unless the lawyer's fee agreement specifically sets forth the understanding of the parties regarding copy charges, the lawyer may make a copy of the file at the lawyer's own expense, but must provide the original file to the client.	Allowed (Alaska Stat. § 34.35.430)	Alaska Ethics Opinions 95-6, 2003-3, & 2011-1
AZ	The attorney owns the file; the client has an interest and right of access	Absent substantial justification, e.g., a court order or a risk of harm to the client or a third party, the lawyer must produce the entire file, which includes work product, drafts, notes, and all other documents received or generated in connection with the representation, excepting only internal practice memoranda.	The lawyer should not charge the client for delivery of the original (or copy) of the file. If the lawyer wishes to retain a copy, the client should not be charged. After the original or one full copy has been given, the lawyer may ethically charge for additional copies.	Allowed ( <i>National Sales &amp; Service Co. v. Superior Court</i> , 136 Ariz. 544 (1983))	Ariz. R. Prof. Cond. 1.16 cmt. [9]; Arizona Ethics Opinions 98-07 & 13-02
AR	Unclear	No approach has been formally adopted but, at a minimum, the attorney must provide upon request all documents that are the end product of the attorney's representation, along with work product the client demonstrates as necessary to understand the end product documents.	The issue has not been addressed.	Allowed ( <i>Orsini v. Larry Moyer Trucking, Inc.</i> , 310 Ark. 179, 184-85 (1992))	<i>Travis v. Supreme Court Comm. on Prof'l Conduct</i> , 2009 Ark. 188 (2009)

STATE	FILE OWNERSHIP	FILE PRODUCTION	COPYING & ANCILLARY COSTS	RETAINING LIEN OVER FILE*	REFERENCE
CA	The client owns the entire file.	Subject to any protective order or non-disclosure agreement, the attorney must promptly release, at the request of the client, all client papers and property, including correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to the client's representation, whether the client has paid for them or not.	A discharged attorney who wants to keep a copy of the file normally must bear the copying expense, absent an agreement to the contrary with the client.	Disallowed ( <i>Acad. of California Optometrists, Inc. v. Superior Court</i> , 51 Cal. App. 3d 999 (Ct. App. 1975))	Cal. R. Prof. Cond. 3-700(D) (1); California Formal Ethics Opinions 1994-134 & 2001-157
CO	The client has a right of access to the file.	The lawyer must produce all documents relating to the representation that the client reasonably needs to protect the client's interests, including preliminary drafts, legal research, and research memoranda. The lawyer need not produce personal work product, e.g., administrative documents, conflicts checks, personnel assignments, and notes reflecting personal impressions, or documents whose disclosure would violate a duty owed to a third party or otherwise imposed by law.	If the lawyer decides to retain a copy of the client's file for the lawyer's own purposes, the lawyer must bear the duplication costs. However, in the event that the lawyer voluntarily produces personal work product, it is appropriate for the attorney to charge the duplication costs of these documents to the client.	Allowed (Colo. Rev. Stat. § 12-5-120)	Colorado Formal Ethics Opinion 104
CT	The client owns the entire file.	The attorney must produce, upon request, the entire contents of the client's files, including but not limited to all notes, memoranda and correspondence constituting work product unless the attorney can reasonably conclude that failure to deliver requested materials will not prejudice the former client's interests.	An attorney wishing to retain copies of the file materials does so for his or her own benefit, and absent an express agreement between a client and an attorney prior to the termination of that representation, it must be done at the attorney's sole cost and expense.	Allowed ( <i>Marsh, Day &amp; Calhoun v. Solomon</i> , 204 Conn. 639 (1987))	Connecticut Informal Ethics Opinions 95-1 & 00-3
DE	Unclear	The attorney should provide all documents and factual information, including any legal research, to the client. The client is not automatically entitled to the attorney's mental impressions and work product, and the attorney may withhold information subject to a nondisclosure agreement with a third party.	Primary authorities remain unclear, but the cited article recommends that the attorney incur the cost of retaining a copy of the file for the attorney's own benefit.	Allowed ( <i>Judy v. Preferred Commc'n Sys., Inc.</i> , 29 A.3d 248 (Del. Ch. 2011))	Delaware Ethics Opinion 1997-5; Charles Slanina, <i>Ethically Speaking</i> , In re: (Mar 2001)



STATE	FILE OWNERSHIP	FILE PRODUCTION	COPYING & ANCILLARY COSTS	RETAINING LIEN OVER FILE*	REFERENCE
DC	The client owns the entire file.	The attorney must produce all material that the client or another attorney would reasonably need to take over the representation of the matter, material substantively related to the representation, and material reasonably necessary to protect or defend the client's interests. An attorney need not surrender material that relates solely to the prior management of the case or to matters that are completely unrelated to the substance of the representation.	Absent an agreement to the contrary, the lawyer may make the files available for pick-up or delivery at the client's expense. However, where materials are reasonably necessary to protect the former client's interests, the lawyer may, for clients unable to pay for delivery of the files, have an obligation to pay the delivery charges.	Allowed ( <i>Wolf v. Sherman</i> , 682 A.2d 194, 197 (D.C. 1996))	D.C. Ethics Opinions 283 & 333
FL	The attorney owns the file, excluding documents provided by the client.	An attorney should make available to the client copies of information in the file where such information would serve a useful purpose to the client.	There is no duty upon a private attorney to give any files to a client free of charge, save documents which are solely those of the client and held by the lawyer.	Allowed ( <i>Daniel Mones, P.A. v. Smith</i> , 486 So. 2d 559 (Fla. 1986))	Florida Ethics Opinion 88-11; <i>Donahue v. Vaughn</i> , 721 So. 2d 356, 356-57 (Fla. Dist. Ct. App. 1998)
GA	The client owns the entire file.	Barring a showing by the attorney of good cause to refuse access, the client is entitled to the entire file, including all work product for which the client has been or will be charged. For matters handled under arrangements other than hourly charges, any work product intended for use in the case should be included.	Attorneys are entitled to keep copies of papers in their client files, but, absent a prior agreement as to costs, the attorney bears the cost of copying.	Allowed (Ga. Code § 15-19-14)	Georgia Formal Ethics Opinion 87-5; <i>Swift, Currie, McGhee &amp; Hiers v. Henry</i> , 276 Ga. 571 (2003)
HI	Unclear	Primary authorities remain unclear, but the cited article recommends that the attorney provide all file material that would benefit the client, including any notes and internal memoranda fitting that description.	This issue has not been addressed.	Disallowed (Hawaii Formal Ethics Opinion 28)	<i>Ethics &amp; Issues</i> , Hawaii Bar Journal, (Sept 1998)
ID	Unclear	The attorney must produce all parts of the client's file, except that portion constituting work product.	This issue has not been addressed.	Allowed ( <i>Defendant A v. Idaho State Bar</i> , 134 Idaho 338, 342 (2000))	<i>Defendant A v. Idaho State Bar</i> , 134 Idaho 338, 342 (2000)
IL	The attorney owns the file, excluding documents provided by the client.	The attorney must produce originals of any materials furnished by the client, copies of significant correspondence, and all documents comprising the end product of the attorney's work. The attorney need not produce any drafts or working copies, internal administrative materials, notes, or research material. The attorney may also withhold information where disclosure risks harm to the client or others.	The attorney may keep a copy of the client's originals at the attorney's expense. Of the documents owed to the client, the client is entitled to one copy, which includes any copies previously received during the ordinary course of representation. The attorney may charge for any additional copies, or for copies of documents the attorney was under no obligation to provide. The attorney may also charge for reasonable storage and retrieval costs.	Allowed ( <i>Sanders v. Seelye</i> , 128 Ill. 631 (1889))	Illinois Ethics Opinions 94-13, 94-14 & 95-2

STATE	FILE OWNERSHIP	FILE PRODUCTION	COPYING & ANCILLARY COSTS	RETAINING LIEN OVER FILE*	REFERENCE
IN	Unclear	The attorney must produce all documents received from the client, all documents received on behalf of the client, and all documents produced by the attorney for which the client was billed.	Primary authorities remain unclear, but the cited article recommends that, absent an agreement to the contrary, the lawyer should return the file to the client and bear the cost of retaining a copy.	Allowed ( <i>In re Newman</i> , 958 N.E.2d 792, 798 (Ind. 2011))	Ind. Code Ann. § 33-43-1-9; <i>In re Schneider</i> , 710 N.E.2d 178, 182 (Ind. 1999); Donald R. Lundberg, <i>File, File, Who's Got the File? Client Rights to Return of Property</i> , Res Gestae (Sept 2007)
IA	The client owns the entire file.	The attorney must produce the entire file, including attorney work product. Narrow exceptions exist for documents reasonably intended only for internal review or where production of a document would violate the attorney's duty to another.	This issue has not been addressed.	Allowed (Iowa Code § 602.10116)	<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Gottschalk</i> , 729 N.W.2d 812 (Iowa 2007)
KS	The client owns the entire file.	The attorney must produce the entire file, excluding only firm documents intended for internal office use and documents that would violate a duty owed to a third party or otherwise imposed by law. Work product, including opinion work product, must be produced.	A lawyer may charge actual costs only for copying documents not considered client property. "Client property" includes: documents provided to the lawyer by the client or client's agents; deposition or other discovery documents for which the client is billed and has paid; and pleadings and other court documents as are necessary to understand and interpret the above listed documents.	Allowed (Kan. Stat. Ann. § 7-108)	Kansas Ethics Opinion 92-5; S.E.C. v. <i>McNaul</i> , 277 F.R.D. 439 (D. Kan. 2011)
KY	The client owns the entire file.	The attorney must produce the entire file, excluding only work product for which the attorney has not been paid. Documents or other relevant evidence, the original of which may be required for trial preparation or as evidence for trial, must be surrendered in the original form.	The lawyer may charge the client for the actual costs involved in the duplication of the file, provided the lawyer does not charge a fee disproportionate to the actual cost for such duplication.	Disallowed (Kentucky Ethics Opinion E-395, reaff'd in E-424)	Kentucky Ethics Opinions E-280, E-395 & E-424; <i>Kentucky Bar Ass'n v. Roberts</i> , 431 S.W.3d 400, 414 (Ky. 2014)
LA	The client owns the entire file.	The lawyer must produce the entire file, including work product containing mental impressions, research, and analysis.	The lawyer should pay the copying costs to obtain a copy of the file to keep, as well as costs associated with delivering the file to the client, and then seek reimbursement from the client if allowable under the lawyer's fee agreement or contract law. If it is reasonable for the client to expect the files to be relatively organized based upon fees already paid, it would be unreasonable to charge additional fees for any time required to organize the files to that level.	Disallowed ( <i>In re Am. Metrocomm Corp.</i> , 274 B.R. 641 (Bankr. D. Del. 2002))	Louisiana Ethics Opinion 05-RPCC-003

STATE	FILE OWNERSHIP	FILE PRODUCTION	COPYING & ANCILLARY COSTS	RETAINING LIEN OVER FILE*	REFERENCE
ME	The client owns most of the file.	The attorney must produce all documents provided by the client, finished work product for which the client has paid, pleadings, correspondence, research memoranda, notes of interviews or containing facts, and useful drafts. The attorney need not produce internal administrative documents, memoranda concerning the attorney's general impressions of the case or how to handle it, or unimportant drafts.	The cost of any copying should be borne by the attorney since any such copies would be solely for his or her own benefit. The client, however, assumes the cost of mailing or other form of delivery if the client is unwilling to pick up the file at the attorney's office.	Disallowed ( <i>Libner v. Maine Cnty. Comm'rs Ass'n</i> , 845 A.2d 570 (Me. 2004))	Maine Ethics Opinions 120 & 187
MD	The client owns the entire file.	In the absence of a contractual agreement between the client and the attorney to the contrary, the attorney must produce all documents in the file, with the possible exception of work product.	The Maryland Bar Ass'n has declined to render an opinion on the issue, and the courts have not yet addressed it.	Allowed ( <i>Rhoads v. Sommer</i> , 401 Md. 131, 148 n.12 (2007))	Maryland Ethics Opinions 89-11 & 97-18
MA	The client owns the entire file.	The lawyer must produce all materials supplied by the client, pleadings, filings, investigatory or discovery documents for which the client has paid, and work product for which the client has paid. In the event of a contingent fee agreement, the client is entitled to all work product.	The lawyer may charge the client for the actual cost of copying pleadings, filings and work product. The lawyer may retain a copy of materials supplied by the client and investigatory or discovery documents at the lawyer's own expense.	Open Question (See <i>Torphy v. Reder</i> , 357 Mass. 153, 156-57 (1970))	Mass. R. Prof. Cond. 1.16(e); Massachusetts Ethics Opinion 92-4
MI	The client has a right of access to the file.	The lawyer must afford the client access to the file, including but not limited to, all write-ups, work-up or intake sheets, and file interview notes, with the possible exception of the lawyer's personal observation notes or memos with respect to the client's character or competency traits and, particularly, if and when negative.	The lawyer may charge for the service of searching the files to provide the client access to information and for the reproduction or other methods of access to such information. To determine what if any portions of the file are the property of the client, the lawyer's files may need to be examined or retrieved from storage. The lawyer may ethically charge the client a reasonable fee for this service.	Allowed ( <i>Kysor Indus. Corp. v. D.M. Liquidating Co.</i> , 11 Mich. App. 438 (1968))	Michigan Formal Ethics Opinions R-5, R-12 & R-19
MN	The client owns the entire file.	The client is entitled to all documents the client provided to the lawyer, all litigation materials which have been executed and served, all correspondence, and all items for which the lawyers has advanced costs and expenses which may have evidentiary value. The client is not entitled to documents drafted but not sent, served, or executed for which the client has not paid.	The lawyer may charge a former client for the reasonable costs of copying or electronically retrieving the client's files, papers and property only if the client has, prior to termination of the lawyer's services, agreed in writing to such a charge.	Disallowed (Minn. Stat. Ann. § 481.13)	Minn. R. Prof. Cond. 1.16(e)-(f); Minnesota Ethics Opinion 13 (amended 2010); <i>In re X.Y.</i> , 529 N.W.2d 688, 690 (Minn. 1995)

STATE	FILE OWNERSHIP	FILE PRODUCTION	COPYING & ANCILLARY COSTS	RETAINING LIEN OVER FILE*	REFERENCE
MS	The client owns only part of the file.	The lawyer should produce to the client all materials provided by the client, pleadings or other end product developed by the lawyer, correspondence engaged in by the lawyer for the client's benefit, and any investigative reports paid for by the client. The lawyer need not deliver the lawyer's work product to the client.	In the absence of controlling language in any applicable engagement agreement, a lawyer discharged by his client in a pending matter may ethically charge his client for the actual cost of duplicating the client's file.	Allowed ( <i>Tyson v. Moore</i> , 613 So. 2d 817, 826 (Miss. 1992))	Mississippi Ethics Opinions 105, 144 & 254
MO	The client owns the entire file.	The attorney must produce the original file, cover to cover, except those items for which the attorney has borne out-of-pocket expenses such as, but not limited to, transcripts. The attorney may retain those items until the attorney is reimbursed for the expense and then they must be immediately delivered to the client. All work product belongs to the client and must be produced.	If the lawyer wishes to keep a copy of the file for his own use or protection, then the lawyer must bear the costs of copying the file.	Disallowed (Missouri Formal Ethics Opinion 115)	Missouri Formal Ethics Opinion 115; <i>Matter of Cupples</i> , 952 S.W.2d 226, 234 (Mo. 1997)
MT	Unclear	The lawyer is entitled to retain and is not obliged to deliver to the client papers or materials personal to the lawyer or created or intended for internal use by the lawyer. Such materials typically include informal and candid items which contain mental impressions, conclusions, opinions, or legal theories, e.g., notes or intraoffice memoranda, but not drafts or research.	The lawyer shall deliver either the originals or copies of papers or materials requested or required by a client or former client and bear the copying costs involved.	Allowed (Montana Ethics Opinion 000210)	Mont. R. Prof. Cond. 1.16(d); Montana Ethics Opinions 910510 & 950221
NE	The client owns the entire file.	The client is entitled to all documents the client provided to the attorney, everything acquired through discovery, all correspondence, and all notes, memoranda, briefs, memos, and other materials generated by counsel bearing on the client's matter. Production may consist of scanned or hard copy.	Though counsel may retain copies of the file, absent an agreement from the client, such copies must be made at counsel's expense.	Allowed (Neb. Rev. Stat. § 7-108)	Nebraska Ethics Opinions 01-3 & 12-09
NV	The client owns the entire file.	The attorney shall, upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property that belong to or were prepared for that client. An attorney who is in doubt as to the ownership of any materials may deposit the materials with the clerk of the court, which will adjudicate the rights of persons claiming an interest in them.	Primary authorities remain unclear, but the cited article recommends that if the client wants the original file and the attorney desires to maintain a copy, the attorney should bear the copying costs. However, the attorney is simply required to make the file available to the client and is not required to incur costs for shipping.	Allowed ( <i>Figliuzzi v. District Court</i> , 111 Nev. 338 (1995))	Nev. Rev. Stat. Ann. § 7.055; Denise A. Bradshaw, <i>A View from Bar Counsel: Quick Answers to Common Ethical Dilemmas</i> , Nev. Lawyer (Mar 2013)

STATE	FILE OWNERSHIP	FILE PRODUCTION	COPYING & ANCILLARY COSTS	RETAINING LIEN OVER FILE*	REFERENCE
NH	The client owns the entire file.	Upon request, the attorney has an obligation to provide all files pertinent to representation of the client, including work product. The attorney may include a fee agreement provision expressing an intention to retain certain materials, e.g., personal notes, only if they are not necessary to protect the client's interests. The attorney may be permitted to withhold certain materials where substantially justified.	Absent a written agreement requiring the client to pay reasonable costs of copying his or her file, if the attorney wishes to retain a copy of the client's file, the attorney must pay the associated costs.	Disallowed (New Hampshire Ethics Opinion 1982-83/19)	New Hampshire Ethics Opinions 1986-87/1 & 2005-06/3; <i>Averill v. Cox</i> , 145 N.H. 328 (2000); NHBA Ethics Committee, <i>Clients Are Entitled To Their Files</i> , Practical Ethics Article (Dec 1998)
NJ	The client owns the entire file.	The attorney must produce, upon request, the file with everything which is or was essential for the completion of the litigation. The attorney may exclude data taken from another unrelated file.	When a client changes attorneys, the costs of copying materials from the file should rest with the client and his new attorney.	Allowed ( <i>Brauer v. Hotel Associates, Inc.</i> , 40 N.J. 415 (1963))	New Jersey Ethics Opinions 554, 692 & 692 (Supplement)
NM	The client owns the entire file.	The attorney must produce to the client all original documents or other documents that are the client's property. The client is also entitled to, at a minimum, all documents for which the client has paid.	This issue has not been addressed.	Allowed ( <i>In re Grand Jury Proceedings</i> , 727 F.2d 941, 944-945 (10th Cir. 1984))	New Mexico Ethics Opinion 2005-01; <i>In re Grand Jury Proceedings</i> , 727 F.2d 941, 944 (10th Cir. 1984)
NY	The client owns the entire file.	Barring a substantial showing by the attorney of good cause to refuse access, the client is entitled to inspect and copy all documents, including work product, for the creation of which they paid during the course of representation. The attorney need not disclose documents which might violate a duty owed to a third party or otherwise imposed by law, or any documents intended for internal law office review and use.	The attorney may retain copies of the file at the attorney's expense. Unless the attorney has already been paid for assemblage and delivery of documents to the client, performing that function is properly chargeable to the client under customary fee schedules of the attorney or pursuant to the terms of any governing retainer agreement.	Allowed ( <i>People v. Keeffe</i> , 50 N.Y.2d 149, 150 (1980))	New York Ethics Opinions 766 & 780; <i>Sage Realty Corp. v. Proskauer Rose Goetz &amp; Mendelsohn L.L.P.</i> , 91 N.Y.2d 30 (1997)
NC	The client owns the entire file.	Generally, anything in the file that would be helpful to successor counsel should be turned over. This includes materials provided by the client, such as original instruments, correspondence, and canceled checks. The lawyer should release copies of all correspondence received and generated by the lawyer and all legal instruments, pleadings, and briefs submitted by either side or prepared and ready for submission. Personal notes and incomplete work product need not be released.	The lawyer must incur the cost of making one set of copies to keep as the lawyer's own record of the file. The lawyer may charge the client for copying the file if the client requests more than one copy of the file or a part of the file. The client may be charged for duplicate copies of the same document unless the lawyer retained the original. The lawyer may charge the client the actual cost of retrieving a closed client file from storage subject to certain conditions.	Disallowed (N.C. R. Prof. Cond. 1.16 cmt. [10])	N.C. R. Prof. Cond. 1.16 cmt. [10]; North Carolina Ethics Opinions RPC 178, RPC 209 & Formal Opinion 98-9

STATE	FILE OWNERSHIP	FILE PRODUCTION	COPYING & ANCILLARY COSTS	RETAINING LIEN OVER FILE*	REFERENCE
ND	The client owns the entire file.	The lawyer must produce, regardless of whether the client has paid for them: all materials provided by the client; all pleadings, motions, discovery, memoranda, or other litigation materials which have been served or filed; all correspondence; and all items of evidentiary value. The lawyer need not produce, unless the client has already paid for them: documents drafted but not filed, sent, served, or executed; and any work product not expressly defined in N.D. R. Prof. Cond. 1.19(b).	In connection with the return of any file or paper, including client files or papers, a lawyer may make copies for retention by the lawyer. The lawyer may not charge the client for such copies, but may charge the client if the client requests additional copies. While the lawyer must surrender the file to the client upon request, the lawyer need not pack or ship the file to the client.	Disallowed (N.D. R. Prof. Cond. 1.19(a))	N.D. R. Prof. Cond. 1.19; North Dakota Ethics Opinion 08-05; 1995 N.D. Op. Att’y Gen. L-174
OH	The client owns the entire file.	The attorney must produce all correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert reports, and other items reasonably necessary to the client’s representation. Notes regarding facts of the case should most likely be produced, while internal office memoranda and personal notes may likely be retained.	Any expense, such as copying costs, incurred by the attorney in turning over the file to a client upon request must be borne by the attorney.	Allowed (Ohio Ethics Opinion 92-8)	Ohio R. Prof. Cond. 1.16(d); Ohio Ethics Opinions 92-8 & 2010-2
OK	The client owns the entire file.	The lawyer must produce all materials supplied by the client, all materials for which the client has paid, and any item which the attorney can reasonably anticipate as being useful to the client. Other items that have been created by the lawyer for his own use (and apparently not for the use of the client) need not be returned.	Any items the client has given to the lawyer should be returned to the client and if the lawyer desires to retain copies, it should be at the lawyer’s expense. Whether or not the lawyer may charge for copies of other items should be determined by a reference to the lawyer’s normal practice (i.e., if the lawyer normally furnishes an existing client with a copy of a document without charge, then the same should be done for a terminated client).	Allowed ( <i>State ex rel. Oklahoma Bar Ass’n v. Cummings</i> , 863 P.2d 1164, 1168-69 (Okla. 1993))	Oklahoma Ethics Opinion 295; <i>Girl Scouts-W. Oklahoma, Inc. v. Barringer-Thomson</i> , 252 P.3d 844, 849 (Okla. 2011)
OR	The client owns the entire file.	The lawyer must produce the entire file, including: materials provided by the client; litigation materials, including pleadings, memoranda, and discovery materials; all correspondence; all items the lawyer obtained from others, including expert opinions, records, and witness statements; and notes or internal memoranda that may constitute work product. The lawyer need not produce memoranda prepared in whole or in part for another client, notes that do not bear on the case, or documents withheld pursuant to law or court order.	The lawyer cannot charge for copies of original documents provided by the client or prepared by the lawyer, but may retain a copy at the lawyer’s expense. Costs to copy other parts of the file are dictated by the fee agreement. The lawyer may not charge for costs to segregate materials the lawyer chooses not to produce, but may charge for segregating materials the lawyer is legally prohibited from producing or not requested by the client. The lawyer may charge copying or labor costs if asked to produce materials previously made available.	Allowed (Or. Rev. Stat. § 87.430)	Oregon Formal Ethics Opinion 2005-125

STATE	FILE OWNERSHIP	FILE PRODUCTION	COPYING & ANCILLARY COSTS	RETAINING LIEN OVER FILE*	REFERENCE
PA	The client owns the entire file.	The client is entitled to the entire file, but the lawyer may generally exclude, unless significant: drafts, personal notes, copies of electronic messages, internal office memoranda, and restricted items subject to other legal obligations. However, the client is entitled to specifically request and receive such documents unless there are substantial grounds to decline the request.	The lawyer may retain a copy of the file, but where the client has paid for the creation of the file, the cost of the lawyer's copy should be borne by the lawyer, absent agreement to the contrary. All other costs associated with copying, compiling, and delivering the file should be handled according to the fee agreement.	Allowed ( <i>Smyth v. Fid. &amp; Deposit Co. of Maryland</i> , 326 Pa. 391, 392 (1937))	Pennsylvania Formal Ethics Opinion 2007-100
RI	The client owns the file, excluding work product.	The client is entitled to the entire file excluding the attorney's work product.	The attorney may not charge the client for the time and cost of copying the client's file and, absent an agreement, may not charge for the cost of mailing or otherwise delivering the file. The attorney may retain a copy of the file at the attorney's own expense.	Allowed ( <i>Tyler v. Superior Court</i> , 30 R.I. 107 (1909))	Rhode Island Ethics Opinions 92-88, 96-35, 2000-6 & 2010-06
SC	Unclear	Absent an agreement, the lawyer must return materials provided by the client, any original documents obtained by the lawyer on the client's behalf, all relevant correspondence, and materials prepared in final form by the lawyer on the client's behalf, including pleadings and legal memoranda. The lawyer need not produce notes regarding personal impressions of the client or documents relating to other matters that were copied to the file for reference.	The attorney must bear the cost to retain a copy of materials provided by the client, original documents obtained on the client's behalf, and other materials the client is due that have not been provided to the client previously. The client should bear the cost of copying materials previously received and any materials which do not belong to the client as a matter of law.	Allowed ( <i>Matter of White</i> , 328 S.C. 88 (1997))	South Carolina Ethics Opinions 92-19 & 92-37
SD	Unclear	The lawyer must return materials delivered by the client and those for which the client paid. Beyond that, the lawyer should, upon request, provide the client any item which could reasonably be deemed useful to the client. The lawyer need not deliver internal notes and memos generated primarily for the lawyer's own purposes in working on the case.	Whether the lawyer charges for copies of items or for the time searching for material to which the client is entitled is a matter of the lawyer's usual and customary practice with that client or a matter of agreement in the original retainer contract.	Allowed (S.D. Codified Laws Ann. § 16-18-21)	South Dakota Ethics Opinion 96-7
TN	Unclear	The lawyer must promptly surrender documents to which the client is entitled and any work product prepared by the lawyer for the client for which the lawyer has been compensated.	The lawyer may, at the lawyer's own expense, make a copy of client file materials for retention by the lawyer prior to surrender.	Allowed ( <i>Schmitt v. Smith</i> , 118 S.W.3d 348, 353 n.2 (Tenn. 2003))	Tenn. R. Prof. Cond. 1.16(d)

STATE	FILE OWNERSHIP	FILE PRODUCTION	COPYING & ANCILLARY COSTS	RETAINING LIEN OVER FILE*	REFERENCE
TX	The client owns the entire file.	The lawyer must produce the entire file, including work product and notes related to the client and the lawyer's representation of the client. The lawyer may withhold certain notes (or portions of notes) when required to do so by a court, or where disclosure would violate a duty owed to a third party or cause serious harm to the client.	In the absence of agreement with clients for a different treatment, ordinary costs of complying with applicable rules, whether relating to the treatment of client files or other matters, should be borne by the lawyers incurring these costs and should be treated as part of the costs of providing legal services to clients.	Allowed ( <i>Casey v. Mar.</i> , 30 Tex. 180 (1867); Texas Ethics Opinion 411)	Texas Ethics Opinions 570 & 627; <i>In re McCann</i> , 422 S.W.3d 701 (Tex. Crim. App. 2013)
UT	The client owns at least part of the file.	The client is generally entitled to: all materials the client provided to the lawyer; litigation materials such as pleadings, motions, discovery, and legal memoranda; all correspondence; depositions; expert opinions; business records; exhibits or potential evidence; and witness statements. The client is generally not entitled to: the lawyer's work product and notes; internal memoranda; unfiled or unexecuted documents; information legally prohibited from disclosure; and information whose disclosure would harm the client or aid crime or fraud.	The lawyer may reproduce and retain copies of the client file at the lawyer's expense.	Disallowed ( <i>In re Discipline of Brussow</i> , 286 P.3d 1246, 1253-54 (Utah 2012))	Utah R. Prof. Cond. 1.16(d) & cmt. [9]; Utah Ethics Opinions 96-02, 06-02 & 06-04
VT	The client owns only part of the file.	The lawyer must produce: all property delivered to the lawyer by the client; the end product of the lawyer's work; and all other material which is useful to the client in fully benefiting from the services of the lawyer. Notwithstanding the foregoing, the lawyer need not deliver internal notes and memos which have been generated for the lawyer's own purposes in working on the client's problem.	This issue has not been addressed.	Allowed ( <i>In re Bucknam</i> , 160 Vt. 355, 365 n. (1993))	Vermont Ethics Opinion 1999-07
VA	The client owns the entire file.	The lawyer must provide the client, upon request: all original, client-furnished documents and any originals of legal instruments or official documents; and copies of all communications, client-furnished documents (unless originals returned), transcripts, pleadings, discovery responses, working and final drafts of legal instruments, official documents, investigative reports, legal memoranda and other attorney work product, research materials, and previously submitted bills. The lawyer need not produce copies of billing records and documents intended only for internal use.	If the lawyer wants to keep a copy of original client-furnished or official documents, the lawyer must incur the cost of duplication. The lawyer may bill and seek to collect from the client the costs associated with making a copy of all other materials.	Disallowed (Va. R. Prof. Cond. 1.16(d)-(e))	Va. R. Prof. Cond. 1.16(d)-(e); Virginia Ethics Opinion 1690



STATE	FILE OWNERSHIP	FILE PRODUCTION	COPYING & ANCILLARY COSTS	RETAINING LIEN OVER FILE*	REFERENCE
WA	Unclear	The lawyer must produce all documents provided by the client or acquired at the client's expense, and may withhold documents only where the lawyer can reasonably conclude that doing so will not prejudice the client (e.g., drafts, duplicate copies, research material, personal notes), or where documents are subject to a protective order or confidentiality obligation.	Absent an alternative lawyer-client arrangement, the lawyer must bear the costs of copying materials furnished to the client that the lawyer wishes to retain.	Allowed (Wash. Rev. Code § 60.40.010)	Washington Ethics Opinion 181
WV	The client owns the entire file.	The attorney must produce all material provided by the client; all correspondence; all pleadings, motions, other filings and discovery, including depositions; all documents with evidentiary value and which are discoverable, such as business records; and all work product for which the client has paid.	The attorney must provide the client with original documents, excluding obvious exceptions such as original fee statements and firm records, but may retain copies. Absent a prior agreement, the attorney bears copying costs unless the copying is for the sole benefit of the client.	Allowed ( <i>Capehart v. Church</i> , 136 W. Va. 929, 933 (1952))	West Virginia Ethics Opinions 89-02, 92-02 & 2002-01
WI	The client owns only part of the file.	The lawyer must produce all material supplied by the client and the end product of the lawyer's work, as well as, upon request, all other material which may reasonably be useful to the client. The lawyer need not produce documents subject to a duty of nondisclosure to a third party or personal work product, including internal memoranda, conflicts checks, and personal notes reflecting impressions relating to the representation.	The lawyer may charge the client for duplicate copies of documents previously sent to the client but, absent an agreement to the contrary, the lawyer must bear the cost of initial copies of documents to which the client is entitled. The lawyer may charge the client for costs associated with segregating documents for the client where the client has requested select documents, but not where the attorney has segregated documents for the attorney's own benefit.	Open Question (Wisconsin Ethics Opinion E-95-4)	Wisconsin Ethics Opinions E-82-7 & E-00-03,
WY	Unclear	Primary authorities remain unclear, but the cited article recommends that the attorney produce all documents relating to the representation unless substantial grounds exist to refuse. Such grounds may involve a duty to a third party, a reasonable belief that a document will be used to commit a crime, potential harm to the client, or documents intended only for internal review.	Primary authorities remain unclear, but the cited article recommends that the attorney deliver the original files to the client and retain any copies at the attorney's expense.	Allowed (Wyo. Stat. § 29-1-102)	Prof. John M. Burman, <i>Ownership, Access, and Retention of Client Files: An Update</i> , Wyo. Lawyer (Feb 2005)

\* Most jurisdictions allow a retaining lien, but most also place significant ethical limitations on its execution

Distributed By:



800-679-7154 <http://www.locktonrisk.com/iowabar/>  
Contact: Michael Schrandt [mschrandt@locktonaffinity.com](mailto:mschrandt@locktonaffinity.com)

The purpose of this guide is to provide information, rather than advice or opinion. It is accurate to the best of the author's knowledge as of the publication date. Accordingly, this guide should not be viewed as a substitute for the guidance and recommendations of a retained professional. In addition, CNA does not endorse any coverages, systems, processes or protocols addressed herein unless they are produced or created by CNA. Any references to non-CNA Web sites are provided solely for convenience, and CNA disclaims any responsibility with respect to such Web sites. To the extent this guide contains any examples, please note that they are for illustrative purposes only and any similarity to actual individuals, entities, places or situations is unintentional and purely coincidental. In addition, any examples are not intended to establish any standards of care, to serve as legal advice appropriate for any particular factual situations, or to provide an acknowledgement that any given factual situation is covered under any CNA insurance policy. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All CNA products and services may not be available in all states and may be subject to change without notice. CNA is a registered trademark of CNA Financial Corporation. Copyright © 2015 CNA. All rights reserved. Republished 6/2015