

## South Dakota Ethics Opinions

### Ethics Opinion 94-6

March 24, 1994

**Rules:** 1.6, 1.15

**Subject:** Retention of client files; Client confidences; Destruction of files; Personal property held in trust

**Summary:** ABA informal opinion 1384 adopted. While primarily a business management question, rules regarding safekeeping client's property and termination of representation require consideration of reasonable retention to avoid conduct detrimental to the client.

You have requested advice from this Committee concerning a lawyer's professional responsibility with respect to disposition of the lawyer's files relating to representation of or services to clients after the matters have terminated and the files have been closed or retired. This Committee has discussed this request and has decided to adopt the Informal Opinion No. 1384 of the American Bar Association on this issue. Informal Opinion No. 1384 states in relevant part:

... All lawyers are aware of the continuing economic burden of storing retired and inactive files. How to deal with the burden is primarily a question of business management, and not primarily a question of ethics or professional responsibility.

A lawyer does not have a general duty to preserve all of his files permanently. Mounting and substantial storage costs can affect the cost of legal services, and the public interest is not served by unnecessary and avoidable additions to the cost of legal services.

But clients (and former clients) reasonably expect from their lawyers that valuable and useful information in the lawyers' files, and not otherwise readily available to the clients, will not be prematurely and carelessly destroyed, to the clients' detriment.

...We cannot say that there is a specific time during which a lawyer must preserve all files and beyond which he is free to destroy all files.

Good common sense should provide answers to most questions that arise.

With the foregoing limitations in mind, we suggest the considerations set forth below

1. Unless the client consents, a lawyer should not destroy or discard items that clearly or probably belong to the client. Such items include those furnished to the lawyer by or in behalf of the

client, the return of which could reasonably be expected by the client, and original documents (especially when not filed or recorded in the public records).

2. A lawyer should use care not to destroy or discard information that the lawyer knows or should know may still be necessary or useful in the assertion or defense of the client's position in a matter for which the applicable statutory limitations period has not expired.
3. A lawyer should use care not to destroy or discard information that the client may need, has not previously been given to the client, and is not otherwise readily available to the client, and which the client may reasonably expect will be preserved by the lawyer.
4. In determining the length of time for retention of disposition of a file, a lawyer should exercise discretion. The nature and contents of some files may indicate a need for longer retention than do the nature and contents of other files, based upon their obvious relevance and materiality to matters that can be expected to arise.
5. A lawyer should take special care to preserve, indefinitely, accurate and complete records of the lawyer's receipt and disbursement of trust funds.
6. In disposing of a file, a lawyer should protect the confidentiality of the contents.
7. A lawyer should not destroy or dispose of a file without screening it in order to determine that consideration has been given to the matters discussed above.
8. A lawyer should preserve, perhaps for an extended time, an index or identification of the files that the lawyer has destroyed or disposed of.

*Michael S. McKnight*  
*Chair, Ethics Committee*

# BOYCE, MURPHY, McDOWELL & GREENFIELD

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March 24, 1994

Re: Request for Ethics Opinion 94-6

Dear

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\* \* \* \*

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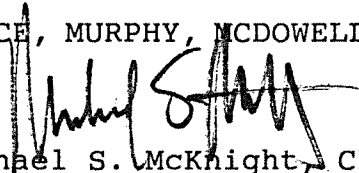
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Sincerely,

BOYCE, MURPHY, MCDOWELL & GREENFIELD

A handwritten signature in black ink, appearing to read "Michael S. McKnight". The signature is stylized with a large, prominent initial "M" and a long, sweeping horizontal stroke at the end.

Michael S. McKnight, Chairman  
Ethics Committee