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ILLINOIS STATE BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

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Opinion No. 94-19

March, 1995 Topic: Lawyer's Files; Disposal of Case Files.

Digest: If appropriate steps are taken to preserve client property, disposal of legal clinic's case files five years after case closing is permissible.

Ref: Illinois Rules of Professional Conduct, Rules 1.4 and 1.15.

ISBA Opinion No. 94-13 (1995).

Illinois Supreme Court Rule 769.

Restatement, The Law Governing Lawyers, § 58 (Tentative Draft No. 4, April 10, 1991).

FACTS

A legal services program ("Program") has been existence for more than fourteen years. Its staff of forty-seven lawyers provides low or no-cost legal services to low-income persons. The Program's yearly case load has averaged between 20,000 and 23,000 clients over the past five years.

The Program retains case files and "conflict cards" for a period of five years after case closing. It permanently or indefinitely retains original documents (deeds, wills); documents in pending guardianship files; files which are or may be the subject of a pending or anticipated complaint, lawsuit or investigation; case-related materials which may have value as a part of the Program's archives; money on deposit in the Program's office or client trust accounts; and materials relating to open, active cases

which are significantly related to another case of a client's now pending in the office.

The Program routinely offers to return all materials furnished by the client to the program prior to the destruction of case files. If no materials were furnished, no offer is made.

#### QUESTIONS

1. May the Program routinely destroy case files five years after case closing?

2. May the Program routinely destroy "conflict cards" five years after case closing?

#### OPINION

1. While it is clear that a lawyer is required to preserve and protect client property in the lawyer's possession, there is virtually no clear guidance with respect to the lawyer's duty to retain those portions of the lawyer's file that are not client property. For example, §58 of the Restatement of the Law Governing Lawyers (Tentative Draft No. 4, April 10, 1991) provides that a lawyer must take reasonable steps to safeguard documents in the lawyer's possession relating to the representation of a client or former client. In Comment *c* to §58, the reporters note that a law firm need not preserve client documents indefinitely and may destroy documents that are outdated or no longer of consequence. In addition, Illinois Rules of Professional Conduct, Rule 1.15(a) requires:

(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. **B.** Other complete records of such account and other property shall be preserved for a period of seven years after termination of the representation.

In its Opinion No. 94-13 (1995), the Committee reviewed in detail the lawyer's duty to return or provide access to various categories of materials normally maintained in a lawyer's file. Because there are various types of materials (like internal administrative documents) which the lawyer need not provide either copies or access to the client, the Committee believes there is no reason to require retention of such materials after the records are no longer of use to the Program. Given that the Program retains deeds, wills and other critical documents indefinitely and offers to return any material furnished by the clients, the Committee believes that the Program is not required to retain the rest of the case files for a period of seven years to comply with Rule 1.15(a). If the Program has kept each client reasonably informed about the status of the client's matter in compliance with Rule 1.4(a), then the rest of the case file may be discarded after five years or any reasonable period of time consistent with the nature of the particular matter.

2. Illinois Supreme Court Rule 769(1) requires a lawyer to maintain a record of each client's name and last known address without reference to any period of time. For that reason, the Committee believes that the "conflict cards", which the Committee assumes reflects the information

required by Rule 769(1), should be retained indefinitely. However, if the information required by Rule 769(1) is collected and stored in some other form, then the Committee sees no reason to retain the actual "conflict cards" beyond five years after a matter is closed.

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