

Client Instruction Not to Scan Documents

Folks,

I am going more and more paperless. I just met with a client and told her I would scan in the documents. She asked me not to and says she doesn't want me storing electronic copies of documents for her. She is an older woman.

Anyone have that happen before? How do you respond to them?

Thanks!

I run my business the way I want to run it. If a client doesn't want their documents stored digitally, they won't be my client.

I would explain to her that we use secure technologies and strong passwords to keep our digital information safe, and I would tell her that if she wants to work with me, she's choosing to have her files stored digitally.

If she doesn't like that, she can look for another attorney.

Andrew Flusche, Virginia

The answer depends on the firmness of your office policy. As I see it, you have two choices. You can make an exception by maintaining a paper file for the client's case or you can let them walk. Potential clients have all types of requests that can deviate from a representation agreement. They can dicker about rate or retainer. They can dicker about postal or electronic mail. They can dicker about whether there will be an arbitration clause, and evergreen clause, etc. The list seems endless. The question is whether you wish to stand firm on the issue. You may also consider whether the potential client's presentment of the issue give you concern whereby you may just want to let them walk.

I hope that helps.

Bill Driscoll, Massachusetts

I have a litigation practice and have gone to scanning and relying on digital files and images as my "primary" files since 2007 BUT cannot avoid paper for discovery courts

that do not e-file etc. suggest you tell the client that is how you operate but will agree at the conclusion of your representation to give her the paper and digital files and will delete your scans of her docs. Consider having language in your engagement agreement regarding how you will handle esi and what will be done with client files (paper as well as esi) when engagement is concluded or terminated.

Michael Boli

Spend 5 minutes with her explaining why you scan documents, how it benefits your clients, and how it is safe. Sounds like she has some concerns that you could easily address.

Hope this helps!

Dave Rakowski, Pennsylvania

Rather than telling the client how and why you do what you do, ask what her concerns are. She may have a legitimate reason or some whack-a-doodle reason for her request. If it's security, you can explain that electronic documents are as secure Or more secure than paper documents that are exposed to the cleaning service and anyone else who has access to the building and the physical offices. If it's something else, you deal with that. If it's off-the-wall, you may not want to have this client.

Miriam Jacobson, Pennsylvania

Thanks for all of the ideas. This woman is a nice woman and I think she has concerns about her personal information being on a computer. I am going to talk to her more tomorrow.

Jonathan Stein, California

BTW, I scanned everything that comes in, and send the paper to clients.

Anything that I create is digital to begin with and stays that way unless I have to send USPS mail. Most of my clients and other counsel receive digital documents via email. I can't tell you how little I have in paper files. I'm down to destroying my last four file boxes That are 10 years old on a predetermined schedule. I don't have enough paper files left to fill a box for future storage or destruction.

Miriam Jacobson

Your question prompted me to think about my own practice. Here in MA we are way behind technologically, at least as far as Probate and Family Court is concerned. There is just one pilot county that recently began to accept electronic filings for certain types of cases but it is predominately paper filings elsewhere. Clerks are often reluctant to give out email addresses and I often time fax docs to get things rescheduled, etc. That being said, I wonder what methods/software you and other folks use to digitize the practice? I think the time has come for me to begin looking into this. Thanks!

Natalia Bukhanova, Massachusetts

A scanner and adobe PDF.. that is really all you need. From there you can make a decent file tree out of folders to store things (that's how I started years ago)

Now I have electronic fax (they come to my email, and I email my faxes out) so that all comes in PDF and I can store everything in my cloud based case management software, with an additional, final copy that I keep stored on a standalone hard drive

Erin M. Schmidt, Ohio

I too would ask what her specific concerns are, and then address them.

I doubt she realizes that if you (or she) are photocopying documents, you (or she) are scanning them. And in most cases, they are stored on a computer (within the copier) for some length of time. Oftentimes these types of things are distrust due to lack of understanding.

Cynthia V. Hall, Florida

Don't forget to let us know after you've met with her what the outcome was.

Miriam Jacobson

And, depending on the printer, a third party might even be able to tell which specific printer was used from the printer dots.

<https://www.eff.org/deeplinks/2017/06/printer-tracking-dots-back-news>

James S. Tyre, California

I am late to this thread - what was the outcome of your conversation with your client, if you can share?

And do others feel that you are required to inform the client in advance of how you are storing their files? Our fee agreement outlines that we will store their files for 7 years, but it does not specify whether it is in boxes or electronically. Lately, we have been taking our old files and converting them to electronic storage. Is this something that requires notice to the client?

Brian C. Hagner, Wisconsin

We talked about it. She had a concern that an electronic file wasn't secure. I explained to her how I keep these things secure, that it is just as secure, if not more secure, than a paper copy, and that it makes it easier for her to get a copy of something if she needs it. I think this was an age/culture issue with her. But she is okay with it now.

I don't think you have to tell a client how you will keep their file. I tell my clients I do almost everything electronically and I keep electronic copies of documents. I even tell them when I order medical records, I ask for them electronically. But my tendency is to over disclose, not under disclose.

Jonathan Stein, California

Not sure if it's required, but we include a consent to electronic storage in our fee agreements, partly because it's important that the client understands we don't keep originals of most documents. We give the client the option to keep them or have us shred them.

Kevin W. Grierson, Virginia

I don't know if it's required, but I include language in my engagement letter that I store *everything* electronically, that I've chosen my vendors with security in mind, and that any originals will be scanned and returned to the client. I think I started with some language from a presentation by Carolyn Elefant. She wrote a book on the topic that I keep meaning to pick up.

<https://myshingle.com/art-science-ethics-21st-century-retainer-now-available-unbundled-form/>

Vincent A. Dongarra

I purchased Carolyn's book a couple of years ago when I was revising our fee agreement. I highly recommend it.

Kevin W. Grierson

Actually, client sounds like a wise lady. An electronic copy, if hacked or inadvertently released, would be capable of infinite reproduction and dissemination as evidenced by the myriad of security breaches involving highly sensitive information. Do your bar rules require you to keep a copy of all client files or is it permissible to have client keep possession of their own documents? If permitted, I would just ask client to sign an acknowledgment that she will serve as sole repository of her own file.

Duke Drouillard, Nebraska

