

Verbiage for Fee Agreement Regarding Destroying File and Only Maintaining Electronic Copy of File

Greetings,

Anyone out there have fee agreement verbiage they'd like to share? I want to be able to return all original documents to the client upon completion of services and only retain an electronic version of the file. This is mostly for my litigation clients not not estate planning related.

Jx = California if that matters.

Thanks so much.

I do not address it in my fee agreement. I guess I could and it may make it more clear, but I choose to address it with each client in a closing letter that I send once the matter is complete. It is my practice not to retain original documents unless absolutely necessary. I inspect the file when the letter is being drafted for originals and if I find any it is returned with the closing letter. Here is the relevant language that complies with Florida's requirements:

If you have any questions about this feel free to contact me via phone or email. Otherwise, I will consider this matter resolved and our office will close this file 90 days from today. Your file does not contain any original documents. A copy of your closed file will be retained for a period of six years. After the six-year period your file will be securely destroyed without further notice to you. If you believe your file contains a document that you would like to receive let me know immediately so that a copy of that document can be provided to you.

J. Bart Countess, Florida

I think you are taking the short-sighted approach; give your clients a choice. Ask client if they prefer to pick up their files within ten days (no charge), have it mailed to them (postage and handling), stored for them (only \$99.95 per year; \$399.95 for 5 years; requires credit card). I think most of your clients will come pick up the file, but if they don't would you really mind under those terms?

D.A. "Duke" Drouillard, Nebraska

With the understanding that different practice areas have their own requirements, it is SOP in my office (estate planning and probate, real estate and general municipal law), that, at the conclusion of a matter 1. All original documents are returned to the client (if they have not already been returned to the client during the course of the matter); 2. The client is given instructions re safe-keeping and retention of original / photocopies of documents; 3. The client is advised that my office will retain the file re the matter for seven years, after which it will be destroyed; and 4. The client is advised as to where copies of documents can be located in the event of the client's loss thereof and/or the date of my office's file destruction date has elapsed (ex - County Clerk's Office for certified / uncertified copies of deeds, mortgages, etc, or the Surrogate's Court for copies of probate / administration documents). This procedure ensures that you have established a closing and termination date for your services with respect to the matter and will satisfy your state's requirements re document and record retention.

Rod Klafehn, New York

Check your jurisdiction's ethics opinions. In Arizona, I think that we can put it in an engagement letter (litigation) but I have the impression that we have to do something more at the time when the case is closed. I think we have to repeat again that we will destroy our file after a particular date. We do have to return to the client the client's "original" documents, such as those the client provided when we opened the file and in the early course of discovery. We do not have to send to the client the "original" document received from an opposing party during litigation, as long as we have previously or at close of the case sent to client a copy. Easiest thing to do - - Send to client a "file closing" letter in which you list the original documents you are returning to the client. State in the file closing letter that you will destroy the file ___ years from the date of the letter and that if client wants the file, he/she/it should state as much within ___ days. If client says it wants the file, you then keep a scanned file and send the paper to client.

Curtis D. Drew, Arizona

Not precisely what you are looking for (and probably a bit outdated), but this is from our probate fee agreement:

The Law Firm charges a fixed fee (currently \$50.00) to open and close new files, scan, purge, and record on a CD ROM documents for internal storage and retention purposes by our office and other service relating to this matter. You will not receive a copy of this CD.

PLEASE NOTE: YOUR FILE MAY BE DESTROYED AT SOME TIME IN THE FUTURE SO BE SURE TO OBTAIN AND RETAIN ANY ORIGINAL DOCUMENTS AND COPIES OF DOCUMENTS YOU MAY WISH TO KEEP AS YOUR RECORDS.

Cynthia V. Hall, Florida

I don't see a problem with this, but I'm going to double check Montana's Rules of Pro Res on returning the file, specifically, if I return the file to you now, do I still have to keep another copy for 5-7 years?

Until just this second, I recoiled at the suggestion we charge the client for storing the file. Now I'm not so squeamish about it. The only thing the client doesn't receive during the matter is my work product. I even give a mini "document retention" talk when I'm first hired -- "I send to you copies of everything I receive and send to OC and the Court. Make sure you keep your file in a safe place so you can refer to it when we talk." So why can't I count on them to be responsible for that stuff when the law assumes they're responsible enough to marry at 18 and retain custody of dependent babies when they're 16 and younger? You're 50 and you need me to hold onto your stuff? Hmm.

What I'm going to do is consider NOT retaining the paper file in the future, but saving bits of it to CD. I actually do retrieve documents years later to use as templates for an infrequent special motion, for instance.

C.J. Stevens, Montana
