

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENT TO THE IDAHO )  
RULES OF PROFESSIONAL CONDUCT )  
(I.R.P.C.) )  
\_\_\_\_\_ )

ORDER

The Board of Commissioners of the Idaho State Bar having presented proposed changes to the Idaho Rules of Professional Conduct (I.R.P.C.) to add a new Rule 1.16A with commentary, and the Idaho Supreme Court having reviewed and approved the recommendations;

NOW, THEREFORE, IT IS ORDERED that the I.R.P.C. as they appear in the Idaho State Bar Rule Book and on the Idaho State Bar website be, and they are hereby, amended to add the following new Rule 1.16A:

## **RULE 1.16A: CLIENT FILES**

- (a) A lawyer must make the client's file available to the client or former client within a reasonable time after the client's request for the file.
- (b) For purposes of this Rule, the client's file consists of the following materials, regardless of whether the materials are in physical or electronic form:
  - (1) all materials provided by the client to the lawyer;
  - (2) all correspondence relating to the client's matter;
  - (3) all pleadings and other legal documents filed with a tribunal or completed but not yet filed with a tribunal or served upon any party relevant to the client's matter;
  - (4) all orders and other records of a tribunal;
  - (5) all investigatory or discovery documents, including but not limited to interrogatories and their answers, deposition transcripts, medical records, photographs, investigative reports, expert reports, witness statements, and exhibits;
  - (6) legal opinions issued at the client's request;
  - (7) third-party assessments, evaluations, or records paid for by the client; and
  - (8) copies of notes, documents, and tangible materials prepared in the course of the representation of the client by the lawyer or at the lawyer's direction by the lawyer's employee, agent, or consultant, and not otherwise described in subsections (1) through (7) above, regardless of whether it is considered "work product" by the lawyer.
- (c) Notwithstanding the provisions of subsections (a) and (b) above, a lawyer may withhold the following file documents from the client despite the client's request for the entire file:
  - (1) documents or information to which the client is not entitled, such as a legal memorandum from a different case not involving the client, which the lawyer used in preparing a memorandum or related document for the client;

- (2) communications showing the lawyer consulted other counsel or the lawyer's professional malpractice insurer to discuss the lawyer's potential exposure to professional discipline or malpractice liability;
  - (3) communications with others in the same law firm relating to administrative matters including but not limited to work assignments, routine conflicts reviews, the client's creditworthiness, time and expense records, or personnel matters;
  - (4) electronic documents or information such as metadata that would be unreasonably burdensome or expensive for the lawyer to identify, locate, and produce in a readable or accessible format;
  - (5) documents for which there is applicable law or a court order prohibiting the delivery of the documents or the information contained in those documents, in whole or in part, to the client;
  - (6) drafted but unexecuted estate plans, title opinions, contracts, documents regarding the formation, operation, or termination of business or other association, or any other unexecuted document, unless the lawyer has already received compensation for preparing the document; and
  - (7) documents which the lawyer has reasonable cause to believe would endanger the health, safety, or welfare of the client or others if the documents or the information contained in those documents, in whole or in part, were provided to the client.
- (d) Paragraph (b) requires a lawyer to preserve only those materials that a reasonable lawyer would preserve.
- (e) Upon request by a client or former client for the client's file, a lawyer may require the client to pay:
- (1) copying charges for copying the file documents consistent with the lawyer's actual copying cost, excluding time and labor, unless the client has already paid for but not yet received copies of the respective documents; and
  - (2) the lawyer's actual cost for the postage to mail or otherwise deliver the file documents to the client.
- (f) A lawyer is not required to turn over to the client or former client documents for which the client is obligated to pay under an enforceable fee agreement but has not paid, provided however, that a lawyer may not refuse to make available materials in the client's file on the grounds of nonpayment if such retention would result in imminent prejudice to the client. See Rule 1.16(d).
- (g) A lawyer shall not destroy a client's file if the lawyer knows or reasonably should know that:
- (1) a lawsuit or other legal claim related to the client's matter is pending or anticipated;
  - (2) a criminal or other governmental investigation related to the client's matter is pending or anticipated; or
  - (3) a disciplinary investigation or proceeding related to the client's matter or a Client Assistance Fund claim is pending or anticipated.

#### *Commentary*

[1] This Rule governs lawyers' obligations with respect to the custody of client files. A lawyer's obligations with respect to client funds and the maintenance of records required for trust property and trust accounts are governed by Rule 1.15.



[2] Lawyers should address the disposition of client files in a written fee agreement or engagement letter or, if specific arrangements for the disposition or transfer of client files have not been made, in the lawyer's final communication to the client at the conclusion of a matter.

[3] Except as provided in Comment [4], this Rule does not require lawyers to preserve physical documents that have been converted to electronic form.

[4] Unless other applicable law requires a particular document to be physically preserved for its legal effectiveness, a lawyer may maintain a client's file in electronic form, provided however, that for documents stored only in electronic form, the lawyer shall make reasonable efforts to store such electronic files in a form that can be read with available technology for the period during which the file must be retained. If the original form of the document is important, the document should not be destroyed without the client's authorization.

[5] Rule 1.16A does not supersede obligations imposed by court order, rules of a tribunal, or other law including discovery rules in civil cases, subpoenas and other mandatory processes, and the law of spoliation and obstruction of justice. Similarly, Rule 1.16A does not supersede specific retention requirements imposed by other Idaho Rules of Professional Conduct. A document may be subject to more than one retention requirement, in which case the lawyer should retain the document for the longest applicable period.

[6] The lawyer's obligations under this Rule to retain and return files to the client are not excused because the lawyer forwarded documents to the client during the course of the representation, provided however, that a lawyer may require the client to pay for the lawyer's actual copying and delivery costs for providing additional copies upon request, consistent with paragraph (e).

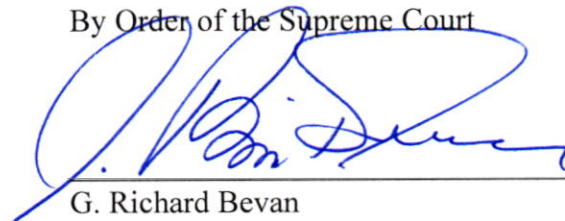
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IT IS FURTHER ORDERED, that this order and these amendments shall be effective March 3, 2025.

IT IS FURTHER ORDERED, that notice of this Order shall be published for three consecutive weeks on the Idaho State Bar's website and in its weekly E-Bulletin, and that, as soon as practicable, a summary of the amendment effected by this Order shall be published in one issue of *The Advocate*.

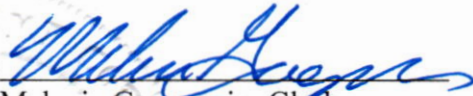
DATED this 2<sup>nd</sup> day of February, 2025.

By Order of the Supreme Court



G. Richard Bevan  
Chief Justice, Idaho Supreme Court

ATTEST:



Melanie Gagnepain, Clerk

