

Judicial Branch Celebrates Forty Years of Continuing Education and Expands Training Facility

In 1978, Arizona's Legislature directed that judges obtain continuing education. Arizona Revised Statute § 12-112 states, "The Supreme Court shall establish a program of continuing education for justices of the peace and magistrates. The program shall include such courses of study as the Supreme Court deems necessary or desirable." Arizona Revised Statute § 1-215 defines a magistrate as "an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the chief justice and justices of the Supreme Court, judges of the Superior Court, judges of the Court of Appeals, justices of the peace and judges of a municipal court."

In the forty years that have passed since the statute took effect, Arizona has earned a national reputation for the success of its innovative training programs, not only for judges, but for all judicial branch employees.

What started as a means for promoting a competent and qualified bench of judges has become a culture of developing public servants into knowledgeable court professionals. The education and training of judges, court staff, and probation officers is now a critical administrative function in ensuring judicial excellence and access to swift, fair justice. The Division's twenty-five full-time employees provided nearly two-thousand-five-hundred hours of training in 2018 to nearly five thousand participants, using more than one thousand faculty instructors from within and outside the judicial branch. Judicial branch employees must obtain sixteen hours of accredited continuing education each year. Due to repurposing of the space the Division called home for many years in downtown Phoenix, the Division recently moved to midtown Phoenix. The new Judicial Education Center provides ample training room, a production studio, and technology that promotes computer-based training in courts across the state.

The Supreme Court's Education Services Division provides training that includes orientation for new judges; a certification academy for new probation officers; and required programs for judicial staff, including programs on ethics and cyber security. The Division administers a statewide system of judicial education reaching all of Arizona's

more than one-hundred-and-fifty courts by managing compliance with judicial education standards; facilitating comprehensive curriculum and program development committees; supporting local training coordinators who accredit and monitor local training; developing faculty for statewide judicial education; and conducting conferences, workshops, seminars, videos, and broadcasts for judges and court staff.

The Division also implements directives from the Committee on Judicial Education and Training and its standing committees: The Judicial College of Arizona, the Committee on Probation Education, Judicial Staff Education Committee, and the Court Leadership Institute of Arizona.

In addition to training and education developed and accredited locally, Arizona offers nationally-certified court management training in partnership with the National Center for State Court's Institute for Court Management (ICM). More than four hundred court professionals have received leadership certification, with forty-six judicial branch leaders completing the ICM Fellowship, a nationally-recognized certification that requires candidates to prepare a comprehensive research paper evaluating a court improvement initiative undertaken in the candidate's jurisdiction.

The education and training standards for the Arizona Judicial Branch are found in the Arizona Code of Judicial Administration (ACJA). The ACJA states its purpose this way: "The education and training of judicial officers and court employees is necessary to maintain judicial independence and carry out the judicial branch's obligation to administer justice impartially and competently. The following standards shall ensure that judges and judicial branch employees continually receive education and training necessary to achieve the highest standard of competence, ethical conduct, integrity, professionalism, and accountability."

The Arizona Supreme Court and Administrative Office of the Courts congratulate the Education Services Division for more than forty years of developing court professionals and strengthening the administration of justice in Arizona. ■

Q&A



LAWYER LIABILITY AND ETHICS

Can a Client Order You to Not Keep a Copy of the File?



Joseph Brophy

It is well known that lawyers have an obligation to surrender a client's file to the client upon the termination of the representation. Rule 1.15(d)(4) of the Arizona Rules of Professional Conduct requires that a lawyer deliver to the client any property the client is entitled to receive. Rule 1.16(e) provides that, upon termination of representation, a lawyer must take reasonable steps to avoid foreseeable prejudice to the rights of the client, including delivering to the client all papers and property to which the client is entitled.

Although a lawyer is entitled to keep a copy of the client's file after the end of the representation, a more difficult question is presented when the client directs the lawyer to not keep a copy of (read: destroy) the file. In March 2019, the New York State Bar Association looked at the issue in NYSBA Ethics Opinion 1164.

The facts addressed by the NYSBA were about a lawyer and a client in a dispute with the client's former employer. The former employer alleged that the client misappropriated proprietary information, some of which the client provided to the lawyer. The client terminated the lawyer and hired new counsel. The lawyer forwarded the file to the new counsel, but kept a copy of the file, including digital copies of the proprietary information at issue. The terms of the eventual settlement required that the client "retrieve and destroy" all of the proprietary data, including backups. The client asked the lawyer to destroy the information and the lawyer sought an advisory opinion from the NYSBA.

The NYSBA responded that a lawyer has a valid interest in keeping a copy of a former client's file (two examples are a requirement by a malpractice insurance carrier or to defend against accusations of wrongful conduct), and the general rule is that a law-

yer may do so even over a former client's objection. However, the lawyer's right is not unqualified, which begs the question: under what circumstances does the client's interest outweigh the lawyer's interest?

As is so often the case, there is no bright line rule and the inquiry is "fact intensive." Among the factors to be considered are the strength of the client's claim to ownership; the sensitivity of the documents; the centrality of their sensitivity to the object of the representation; the legitimacy of the client's request for destruction; the extent to which the documents slated for destruction comprise the client file (i.e., one document versus the entire file); the difficulty associated with destruction of the documents; the degree to which the lawyer is subject to a meaningful risk of later liability; and the availability and feasibility of provisions protective of the lawyer's interests. A lawyer may condition compliance with a former client's instruction to destroy copies of the file on obtaining a release and hold-harmless agreement from the former client, or on creating an inventory of the material provided to the lawyer by the former client.

Ultimately, the NYSBA concluded that the client in that case had a "legitimate reason" for the lawyer to comply with the client's request. The State Bar of Arizona has not specifically addressed this issue. If you have received a request from a former client to destroy a copy of your file, I would make two suggestions in addition to the guidance provided by the NYSBA: (1) if you ask your client to sign a release or hold-harmless agreement, you should advise the client in writing to seek independent counsel; and (2) include your malpractice insurance carrier in any decision to destroy copies of information provided to you by your former client. ■

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