**Client Notification Requirements in the Wake of a Disaster**

*Created for Lawyers Mutual of Kentucky by Sarah McKenna, Board Member, and her*

*Dinsmore attorney colleagues, Chase Cunningham, John Selent, and Joe Tucker.*

***The following summary of the law and related documents are educational and not intended as legal advice. Any templates provided must be tailored to your particular situation and should be drafted in consultation with your professional liability carrier, if other than Laywers Mutual of Kentucky.***

In the event that any client or former client files are damaged or destroyed due to a disaster, attorneys may have an obligation to provide notice to each affected client or former client, as well as advise the client or former client of efforts to reconstruct the client file. The following resources may be helpful in understanding your obligations in this regard:

* [The ABA Comm’n on Ethics & Prof’l Responsibility, Formal Op. 482 (2018)](https://www.lmick.com/_resources/documents/disaster-relief/aba-formal-opinion-482.pdf)
* [The ABA article, “Ethical Obligations to clients in the wake of a disaster”](https://www.lmick.com/_resources/documents/disaster-relief/aba-ethical-obligations-to-clients-in-the-wake-of-a-disaster.pdf)
* A template client letter to tailor to your situation, below

**Notice to Client Regarding RE Risk of Disclosure of Confidential Information**

Attorneys must first determine whether notice is required to clients regarding risk of disclosure of confidential or privileged information. Based on the ABA’s Opinion, above, attorneys are required to notify the client if there was a risk of disclosure of confidential information as a result of the destruction of the physical file (e.g., a confidential document or file was removed from the office in the storm and has not been located such that it may be discovered by a third-party).

**Notice to Client Regarding Destruction and Reconstruction of the Client File**

Next, attorneys must determine whether notice to clients is required regarding efforts to reconstruct the client file. The ABA’s Opinion 482 also outlines the following situations that generally do not require notice to the client regarding reconstruction:

* Electronic Back-Up: “A lawyer need not notify either current or former clients about lost documents . . . for which there are electronic copies.” (Formal Op. 482 at 9.) Thus, when a physical file is destroyed but the file was stored via an off-site electronic restorable backup and can be fully restored, notice regarding reconstruction is not required.
* Ability to Reconstruct: If an attorney is already able to reconstruct files from other sources, there is no need to notify clients or former clients of the loss, which is effectively already over. (Formal Op. 482 at 9.)
* No Intrinsic Value: “A lawyer need not notify either current or former clients about lost documents that have no intrinsic value [or] that serve no useful purpose to the client or former client.” (Formal Op. 482 at 9.) Attorneys will have to make this determination on a case-by-case basis, but it is possible that some files will contain nothing other than public records, not otherwise destroyed, and papers that no longer serve any purpose. Under such circumstances, there most likely is no loss to disclose.

**Notice to Client Requirements**

Once an attorney has determined whether there is a need to advise a current client or former client regarding the destruction of their physical file, the letter to the client must include the following elements:

*Notice* — It is an attorney’s responsibility to “keep the client reasonably informed” of a matter’s status. SCR 3.130(1.4). An attorney also must safely maintain any property held for clients or third parties, such as former clients. *See* SCR 3.130(1.15).

*Reconstruction* — Furthermore, an attorney must “provide competent representation” and “act with reasonable diligence and promptness in representing a client.” SCR 3.130(1.1), 3.130(1.3). In doing so, the attorney must inform the client or former client of the steps being taken to recreate the damaged file.

*Disclosure* — Finally, it is an attorney’s responsibility to protect confidential client information. *See* SCR 3.130(1.6). The attorney must advise their client of the risk of potential disclosure of confidential information as part of the destruction of the client or former’s client file, to the extent applicable. This is likely to be the case if the file has been removed from the office and cannot be located rather than a file that was destroyed by water damage, but remains in the attorney’s possession.

***As always, LMICK is here for you. If you have any questions regarding this issue, please contact us at 502-568-6100.***

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*Updates by LMICK in 2022*

**[Letterhead]**

**[Date]**

**[Delivery]**

**[Recipient]**

 **Re: Inadvertent Destruction of Client Files by Natural Disaster**

Dear **[Name]**,

I regret to share with you that my office was damaged during **[DESCRIBE EVENT, i.e., the recent flooding event]** of **[DATE(S)]**. Consequently, the files and records for your legal matters have been partially or entirely lost.

This letter constitutes my notice to you of the inadvertent destruction of files caused by the **[EVENT, i.e., flood waters]**. It is possible that original documents with intrinsic value, such as wills, deeds or negotiable instruments, have been lost. It is also possible that other materials which could be useful to you, in your legal affairs or otherwise, have been lost. The extent of damage done is still being determined.

I will make every reasonable effort to reconstruct your files, whether for litigation or any other purpose, by recovering documents with intrinsic value and otherwise useful materials.

To do so, I ask for your help. If you have copies or originals of documents, which constitute parts of your files, please let me know at your earliest opportunity. I will work with you to acquire copies of those documents and restore them to your files. I am also working with the relevant courts or other attorneys involved in your legal affairs to recover copies that they possess. **[*IF APPLICIABLE INCLUDE***: However, please note that the **[*EVENT*]** has also destroyed the law offices of many other attorneys in the community **[*as well as the \_\_\_\_\_\_ County Courthouse*].** Therefore, it is possible that copies of materials maintained there **[*by the state court, the county clerk, the county attorney, or other state agencies*]**have also been inadvertently destroyed.

This letter is my disclosure to you of the possibility that inadvertent breach of privileged or confidential material in your files has occurred. Certain records have been scattered from my office or otherwise exposed to the outside world. It is regretfully possible that such materials will be found by individuals other than myself, my colleagues and our staff. Please know that we are making every effort to limit this risk and to retrieve privileged or confidential material privately.

Thank you for reviewing this letter. I will keep you apprised as I continue my work to reconstruct your files. If you have any questions or concerns, please contact me at your earliest opportunity. I hope that you and yours, as well as our entire community, will recover as much and as quickly as we can from this tragedy.

Very truly yours,

**[Signature]**

**[Name]**

**[Cc:]**