**Professional Responsibility-Research Questions**

Your Missouri law firm, which has been in existence for ten years, wishes to completely digitize its client files, scanning and then destroying any original print documents, and prospectively only using digital documents for future transactions. Can your firm do this without the client’s consent? What are the firm’s legal obligations with respect to the files?

**Working the Problem:** Firm needs internal policy for both retrospective and prospective file retention and transition to digital medium.

**Terms:** client files, digitize, document and file retention, scanning, ownership of files, original documents, print documents

**Most Relevant Rule:** Absent *informed* consent *in writing* from the client to the contrary, [Rule 4-1.22](http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/C0C6FFA99DF4993F86256BA50057DCB8/2EBE02DB3762FE6186257B9B0071467A) requires retention for *six years*, where completion or termination of representations occurs on or after July 1, 2016; otherwise the rule is 10 years. [Formal Opinion No. 127 - Scanning Client Files](http://www.mobar.org/uploadedFiles/Home/For_Lawyers/Professionalism/Formal_Opinions/formal-127.doc) requires that certain physical items of *intrinsic value* be retained in their non-digital form. Also the attorney has a duty to maintain software and equipment to access digitally stored records.

**Related Authority:** *In the Matter of Cupples*, 952 S.W.2d 226, 234 (Mo. banc 1997) (“The client’s files belong to the client not to the attorney representing the client. The client may direct an attorney or firm to transmit the file to newly retained counsel.”).

**Citation Analysis:** No issues. Check annotated rule and *Cupples.* For Formal Opinion No. 127, try searching the following in a Missouri (State and Federal) materials on Westlaw:

(“Formal Opinion” /s “No. 127) AND scan!

**Understanding:**

* David J. Bilinsky, Taking Your Firm Paperless, in Sharon D. Nelson, John W., Simek & Michael C. Maschke, The 2015 Solo and Small Firm Legal Technology Guide (ABA Law Practice Division) (copy on reserve at the circulation desk under Professor Callister's name).
* Sheila M. Blackford and Donna S.M. Neff, Paperless in One Hour for Lawyers (ABA Law Practice Division 2014) (copy on reserve at the circulation desk under Professor Callister's name).

**New Issues:** Departing lawyers (who has a right to the file?); what is the file? (meta data, emails, phone calls, notes, work product, etc.)