

File Retention and Receiverships in Georgia



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Question: How long should a law firm or lawyer keep a client file?

**Answer: How long is a piece of string?
It depends.**



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States vary on retention policies. Check with your State Bar to determine its retention policies

The State of Georgia has no retention policy concerning client files, but does require that trust account, escrow account and IOLTA account records be retained for at least six (6) years.

**Most lawyers keep old,
closed client files for
their entire practice
which can be decades.**

What happens to client files if a lawyer becomes an “absent lawyer”?

What is an absent lawyer?

The Georgia Rules of Professional Conduct, Rule 4-228 defines "absent lawyer" as . . .

Absent Lawyer: A member of the State Bar of Georgia (or a Domestic or Foreign lawyer authorized to practice law in Georgia) who has disappeared, died, been disbarred, disciplined or incarcerated, become so impaired as to be unable to properly represent clients, or who poses such a substantial threat of harm to clients or the public that it is necessary for the Supreme Court of Georgia to appoint a receiver.

The Supreme Court of Georgia Appoints a receiver to return client files and possible handle other matters if:

Upon a final determination by the Supreme Court of Georgia, on a petition filed by the State Bar of Georgia, that a lawyer has become an absent lawyer, and that no partner, associate, or other appropriate representative is available to notify his clients of this fact, the Supreme Court of Georgia may order that a member or members of the State Bar of Georgia be appointed as receiver to take charge of the absent lawyer's files and records.

What does a receiver do?

The receiver shall review the client files, notify the absent lawyer's clients and take such steps as seem indicated to protect the interests of the clients and the public. The receiver should protect the administration of justice in the courts.

Do receivers handle funds?

Yes, sometimes they do.

The receiver shall be entitled to release to each client the papers, money, or other property to which the client is entitled. Before releasing the property, the receiver may require a receipt from the client for the property.

Trust accounts are very important and may contain client money and attorney fees

If after appointment the receiver should determine that the absent lawyer maintained one or more trust accounts and that there are no provisions extant that would allow the clients, or other appropriate entities, to receive from the accounts the funds to which they are entitled, the receiver may petition the Supreme Court of Georgia or its designee for an order extending the scope of the receivership to include the management of the said trust account or accounts.

What if a receiver encounters an unusual issue not covered by the Supreme Court order?

If the receiver should encounter, or anticipate, situations or issues not covered by the order of appointment, including but not limited to, those concerning proper procedure and scope of authority, the receiver may petition the Supreme Court of Georgia for such further order or orders as may be necessary or appropriate to address the situation or issue so encountered or anticipated.

Who is usually appointed receiver and why?

An appointed receiver will be a member of the State Bar and may be a lawyer the works for the State Bar.

Typically, a lawyer employee of the State Bar is appointed when no one wants anything to do with the absent attorney.

The "why" can vary:

Sometimes a disbarred lawyer has such a bad reputation that no other lawyer wants to be involved out of concern for their own reputation.

thatone rule

Southernisms:

You can't waller with the pigs
and not get dirty.

You can't sleep with the dogs
and not get fleas.

Sometimes an absent lawyer has no lawyer friends or was very difficult to work with . . .

Sad, but true.

The State Bar of Georgia urges lawyers to network with other lawyers and to share advice and tips among others in the profession. Not being as jerk helps too.

**THE JERK STORE
CALLED**



**THEY'RE RUNNING OUT OF
YOU.**

How can a Bar Investigator help a receiver?

By using your magical “skip/trace” powers and your powers of persuasion!

One of the largest challenges for a receiver is finding the client to return the files.

You may be asked to determine the extent of ownership of funds in a trust account.

Often with disbarred and/or impaired lawyers there will be more clients entitled to trust account funds than actually exist in the lawyer's accounts.

When investigating for a receiver, remember:

Confidentiality. The receiver shall not be permitted to disclose any information contained in the files and records in his care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the Supreme Court of Georgia or, upon application, by order of the Supreme Court of Georgia.

As a Bar Investigator, you must maintain confidentiality

Whenever in doubt, talk to the receiver and find out what he or she approves to be disclosed.

When dealing with clients of an absent lawyer, it is important to explain what a receivership entails.

The appointed receiver is **NOT** the client's new lawyer and the investigator works for the receiver **NOT** the client!
This should be explained to the client **POLITELY!**



An outside receiver can accept employment from a client that is part of the receivership.

A bar employee cannot take on a client outside of the Bar, however an outside receiver can agree to represent a client that is a part of the receivership.

4-228(f) states:

With full disclosure and the informed consent, as defined in Rule 1.0 (I), of any client of the absent lawyer, the receiver may, but need not, accept employment to complete any legal matter. Any written consent by the client shall include an acknowledgment that the client is not obligated to use the receiver.

What happens to files where the client cannot be found or refuses to accept their old client file(s)?

If upon completion of the receivership there are files belonging to the clients of the absent lawyer that have not been claimed, the receiver shall deliver them to the State Bar of Georgia. The State Bar of Georgia shall store the files for six years, after which time the State Bar of Georgia may exercise its discretion in maintaining or destroying the files.

What about critical documents such as original wills and deeds?

If the receiver determines that an unclaimed file contains a Last Will and Testament, the receiver may, but shall not be required to do so, file said Last Will and Testament in the office of the Probate Court in such county as to the receiver may seem appropriate.

Finding clients and having them to agree to accept an old client file is critical to what the receiver does.

Therefore, a Bar Investigator is critical to the success of any receivership. We all live in a time where email and even U.S. Mail may seem suspicious or be considered a hoax. A professional investigator can calm those fears and ensure that confidential files are returned to the proper owner.



Just one more thing . . .

What if the client is dead or incompetent?

Check with the receiver before divulging any information concerning a client file that is included in a receivership!

Example: Husband has a file with the absent lawyer. Husband is now dead. Who gets the file?

The wife? The Executor or Executrix?

What if the wife is the Executrix?

**The wife, of course.
Right?**

But consider this: What if the legal advice sought by the husband was about an illegitimate child that was born during the marriage as a result of adultery?

What about confidentiality? Would the husband want or expect that file to be given to his wife?

But as a court appointed Executrix, doesn't the wife have the right and the duty to get the file?



**What can you say?
What should you do?**



**KEEP
CALM
AND
PASS THE
BUCK**

Let the receiver decide!



Thanks for hanging in there!