

## RECORDS RETENTION & DISPOSAL OF FILES

### A. RECORDS RETENTION

Records accumulating in filing areas, working areas, closets, basements, and inactive storage can cost the firm a significant amount. Establishing records retention guidelines can save money through space, staff, and equipment savings. It can also provide another opportunity to provide clients with pro-active legal services before the records problem becomes an issue in litigation. For clients, it also can represent another reason for a continued working relationship with the firm.

A good Records Retention plan can:

- Save money by reducing storage costs;
- Improve access to information by removing valueless files;
- Insure compliance with legal requirements, which reduces the chance of inconsistent, reckless, or personally-motivated destruction of records.
- Help to identify what files are available significantly reducing the time and cost of locating them.

Therefore, the following guidelines have been adopted for use by all attorneys and secretaries in all offices.

Phone message books	If used, keep for 7 years; then destroy
Paper records of voice-mail messages or print-outs of e-mail messages: (Client-related only)	Save in file until file is destroyed
Attorney Daybooks or Calendars	7 Years
Prebills	1 Month
Invoices	Save in file until file is destroyed
Rebills/Statements	Do not save
Duplicate chronological correspondence file, if insisted upon by attorney	1 Year
Duplicate time sheets	Do not save
Client Files	7 Years

The maximum retention of seven years exceeds the formal opinion of The Committee on Professional Ethics, State Bar of Wisconsin, who has advised that at a minimum, the files should not be destroyed until six years have passed after the last act which could result in a claim being asserted against the lawyer.

### B. ESTABLISHMENT OF NOTICE/REMOVAL PROCESS

The Ethics Committee has recommended that the initial engagement letter, the retainer agreement, or the termination letter include information advising the client how the records will be kept after the matter is handled. We need to advise the client:

1. We will retain the file for 7 years, unless the client requests that a copy of the file be returned to them prior to this time limitation.
2. All important original documents (Abstracts, Stipulation & Order for Dismissal, Releases) will be returned to the client. This should be done immediately upon conclusion of the matter or no later than as the last act performed prior to the closing of the file. (If the original documents are kept in a closed file, then they will probably get destroyed at the end of the 7 years as the files are not examined prior to destruction.)

3. Because of the firm's relatively secure safe and vault, the client may elect to have his original Will, Power of Attorney, and other Estate Planning original documents stored here until death, if the Client so chooses. Copies of such documents are kept in the general Will Files and are not destroyed until death.
4. At the end of 7 years, the client will be sent a letter at their last-known address advising them of the intent to destroy the file absent contrary client instructions.
  - a. If no response is received from the client within 30 days, the file will proceed to be destroyed.
  - b. If the notice is returned due to an insufficient address, then the responsible attorney will be notified before the file is destroyed. It will then be the attorney's responsibility to make the final decision on the file.
  - c. If the client indicates that the file should be returned to them, it will be given to the responsible attorney for review before being sent out.

**Note: If all new retainer letters and/or disengagement letters advise clients of our intent to destroy the file after 7 years unless they instruct us in writing to the contrary, then we would not have to follow Step 4 above.**

5. A record or index of the files destroyed will be kept indefinitely.
6. The file will be destroyed by shredder to insure the confidentiality of the file.

### C. CLOSING OF FILE

(Please refer to Section C for information about Will files and Estate Planning files, which are handled differently.)

Once a file has been completed and billed, and the attorney has authorized the file to be closed, the following steps should insure that the file has been closed properly and that it can be located again if needed:

1. Make sure all documents are securely fastened in the file. This is true especially in a manilla file folder. Documents may easily fall out and be lost if they are not fastened in the files.
2. Check for any original documents. All important original documents (Abstracts, Stipulations & Orders for Dismissal, Releases) should be returned to the client. This should be done immediately upon conclusion of the matter or no later than as the last act performed prior to the closing of the file.
3. Secretaries need to locate both the white and beige copy of the client cards. Previously, beige copies of the open cards were kept by Switchboard. The hard copy of the client card may need to be retrieved from the open files in the Switchboard Room.
4. If a client file card has not been previously prepared, the cards must be prepared as follows:
  - a. All file cards must be typed. Cards are to be made up as the file is closed.
  - b. The client name (last name first if it applies) and address are filled in.
  - c. The client and case number should be typed in the "File No." section.
  - d. The "Matter" is filled in as shown on the client's file and the date the file was opened is entered in the "Date" section.
  - e. The originating attorney's initials are placed under "Contact" and, if there is a file attorney other than the originating attorney, his/her initials are placed under "Assigned".
  - f. If this is a litigation case, insurance information must be put on the closed card.

- g. The cards are then pulled apart. The white copy stays at the secretary's desk or stapled in the file, whichever is preferred. The beige "hard" copy is then given to Switchboard to file in the closed card files.

If the name of the client is such that the card may not be easily located at a later date under one name such as an estate where the client is the personal representative and the estate is for a person with a different last name, another card may be made out labeled "cross reference".

5. If an expandable file is being closed, it is **ABSOLUTELY NECESSARY** that if the expandable contains any previously closed files that those files (and cards) be pulled and refiled under the old closed number. If it is the attorney's desire to keep these files together, then additional instructions under "Re-Closing Files" should be followed. This is especially important in tracking down files at a later date.

6. Closed file numbers may be obtained at a maximum of 10 numbers at a time. To avoid problems with filing closed files, it is necessary that each batch of 10 numbers be used before obtaining more numbers. Please use a pen or magic marker to write the closed number on the beige copy of the client card. Over the years, the carbonless ink fades and is difficult to see. When the closed file number is written on the client card, the closed file number is preceded by the year in which the file is closed, i.e. 87-495. Use a magic marker to write the closed number on the file in large print on the upper right hand corner of the file. **(DO NOT USE RED INK)**