



**WASHINGTON STATE BAR ASSOCIATION**

**GUIDE TO BEST PRACTICES FOR CLIENT FILE RETENTION  
AND MANAGEMENT**

**April 2007**

# GUIDE TO BEST PRACTICES FOR CLIENT FILE RETENTION AND MANAGEMENT

## I. PURPOSE OF THIS GUIDE

Despite prognostications of a paperless office, lawyers continue to be faced by mountains of paper and now electronic data. The client files start as no problem but grow insidiously until the files become the elephant in the room. One of the most frequently asked questions on the WSBA's Ethics Line (206-727-8284 or 800-945-WSBA) is what to do with client files.

### LAWYER RESPONSIBILITIES

Lawyer responsibilities rest chiefly upon RPC 1.15A & 1.15B that, among other things, requires the lawyer to identify, safeguard, account for and deliver to the client any property in the lawyer's possession that belongs to the client. Additional responsibilities may arise under local, state and federal law, such as, city or county licensing rules, state revenue rules and regulations, and federal tax laws.

### LIMITS OF THIS GUIDE

Information contained in this Guide is presented with the understanding that its user is the one responsible for compliance with appropriate ethical and legal requirements. **Neither the WSBA nor the Rules of Professional Conduct require a lawyer to retain a client file for a specific period of time.** A lawyer's engagement letter and fee agreement may include language that describes the lawyer's file retention policy. In Washington most, if not all, of the file is the property of the client unless a different understanding is reached with the client. Therefore, a file retention policy may specify that the lawyer returns the original file to the client after the conclusion of the matter. Circumstances and prudence dictate that the lawyer may wish to retain copies of certain contents of the client file as well as a record of the disposition, releases, receipts and so forth in perpetuity. Certain practice areas may dictate compliance with other guidelines. Compliance with the suggestions in this guide is not a bar to discipline or other proceedings.

### OTHER RESOURCES

See "Records Retention in the Private Legal Environment: Annotated Bibliography and Program Implementation Tools" at 93 Law Lib. Jour. 7 (2001).

For other materials, consult ARMA International ([www.ARMA.org](http://www.ARMA.org)), the Society for Human Resource Management ([www.SHRM.org](http://www.SHRM.org)), the Secretary of State, State of Washington (<http://www.secstate.wa.gov/archives/>), Internal Revenue Service ([www.irs.gov](http://www.irs.gov)), American Institute of Certified Public Accountants AICPA

([www.aicpa.org](http://www.aicpa.org)), and the American Bar Association ([www.abanet.org](http://www.abanet.org)) Model Rules of Professional Conduct and Opinions for additional records management information.

## **QUESTIONS ABOUT THE GUIDE**

If questions about the Guide arise, users are encouraged to contact the WSBA's Ethics Line at 206-727-8284 or the Law Office Management Assistance Program at 206-727-8237. You may also use the toll-free number of 800-945-WSBA.

## **SCOPE**

This guide describes best practices guidelines of records management for client files only. It is not possible to promulgate guidelines for records retention and management that are appropriate in all instances under all circumstances. The lawyer must evaluate each client file individually for the facts, circumstances and possible future needs for the materials in the file.

The lawyer should keep permanently a "file" of the disposition of the client's file that includes receipts, releases, description of disposition and copies of descriptions of materials (or copies of the materials themselves) that the lawyer returned to the client and to other appropriate parties.

This guide is limited to papers and records that become part of the client's file, not allied documents such as time records, billings or bank records. The management of other records such as firm personnel records, firm financial records, or computerized records (other than client files) is not considered here.

## **WHAT IS RECORDS MANAGEMENT**

Records management is (1) planning, description, documentation, administration, and the necessary training of all employees about the records management system and (2) the capturing, organizing, indexing, retention, storage, retrieval and destruction of the records in a client's file.

# **II. CLIENT RECORDS**

## **WHAT ARE EXAMPLES OF TYPES OF RECORDS**

There are several types of records including intrinsically valuable records, other paper records and electronic records.

Intrinsically valuable records include original photographs, stock certificates, wills, promissory notes, deeds, birth certificates, among others;

Other paper records include correspondence, pleadings, notes, memoranda, checks and other financial materials such as tax returns, bank statements, financial statements,

expense records, inventories; and telephone messages, emails, exhibits, case printouts, research materials and so forth;

Electronic records include computer files and other materials stored on portable media such as disks and CDs.

More generally, “client records” are records that come into possession of a lawyer as a result of representation of a client or records that the lawyer creates as a result of that representation. In dealing with the question of the assertion of an attorney’s lien on a client’s file, Formal Opinion 181 discusses the composition of a client file a lawyer assembles while representing a client. Such a file may include:

- Client papers – the actual documents the client gives to the lawyer or papers, such as medical records, the lawyer has acquired at the client’s expense;
- Documents the disposition of which is controlled by a protective order or other confidentiality;
- Miscellaneous material; and
- The balance of the file, including documents stored electronically.

#### **LIFE CYCLE OF A CLIENT FILE**

The life cycle of a client file begins with the formation of a record created on behalf of a client or the receipt of a document relating to the representation and ends with the delivery of the file to the client or its destruction by the lawyer. As the representation continues, the lawyer will add documents as they come into the lawyer’s hands as well as notes a lawyer may make about case progress, strategy, impressions of witnesses, results of investigation and so forth.

A critical stage of the cycle occurs when the representation is completed. At this point the lawyer needs to determine the disposition of the file from among several options depending on the following factors:

- any agreement with the client about the file
- the nature of the matter concluded
- ethical rules, court rules and other laws.

A typical life cycle of a file is outlined below coupled with suggested actions:

- Engagement Letter Signed by Client States the Conditions Agreed to by the Client as to Who Owns the File and the disposition of the file at the conclusion of the representation
- Assign Next File Number
- Open File on the Computer System

- Create Physical File Folder
- Create Duplicate Physical File for Client to Use for Copies of Documents Sent by the Lawyer
- File Active While Representation Continues
- Only Employees of the Law Practice Have Access to Client Files
- File Returned to Locked Cabinet Each Day
- File check out card describes who has current possession of file
- File new items for 15 uninterrupted minutes per day
- Representation Ends
- File Closed
- Contents of File Reviewed by Lawyer and File Culled for Unnecessary Items, intrinsically valuable items or original documents
- File Indexed
- File Stored On Site for Initial Period of Time
- File Returned to Client in Exchange for Signed Receipt from Client or
- File Stored Off Site for Remaining Time Based on Agreement with Client
- Written Notice Sent to Client's Last Address Describing Impending Disposition
- File Returned to Client in Exchange for Signed Receipt from Client or
- File Destroyed

### **III. BEST PRACTICES FOR CLIENT FILE MANAGEMENT**

Think carefully about the systems for paper flow. These flows will end up in the client's file. An example is the mail. Who opens it? Is it date stamped? Is it copied? Is it scanned? Is it noted on the back for which sub-file to file it in? Is information in the mail extracted and put in a calendar and/or to-do list? The file is both paper and electronic. The paper file may range from very small to rooms of documents.

#### **IN THE BEGINNING TALK ABOUT THE END**

At client intake, identify who owns the file, what documents the client is expected to provide initially, which documents will be returned to the client after the conclusion of the representation, which documents the lawyer will retain and for what duration, among other considerations. The Engagement Letter is the logical place for these disclosures.

## **IMPORTANCE OF SUBFILES**

The purpose of the paper file is to house all documents for a particular matter in a logical system that facilitates locating a document. Each client file may include sub-files that identify categories of documents, such as

- ☞ Correspondence
- ☞ Court Records
- ☞ Financial Records
- ☞ Intake Form
- ☞ Interrogatories
- ☞ Leases/Agreements
- ☞ Motions
- ☞ Notes
- ☞ Pleadings
- ☞ Research
- ☞ Miscellaneous

Keep a supply of these marked subfiles available as each client's file is constructed from the outset of the representation. Add the client's name and file number to the category tabs. Use a numbering system that is simple, logical and meaningful.

## **USING SCANNED IMAGES**

Consider scanning most or all of the most important documents for a case if others in your office need simultaneous access and/or you need frequent access to the documents. Another reason to use scanned images is to have access to documents remotely via the Internet or other network connection.

Follow a protocol for what is scanned, when it is to be scanned and who scans it. Mark the documents as "scanned" before they are filed. Using the documents electronically enables easier access and a reduced chance of missing paper documents from the file. Back up electronic documents onto other media.

## **FILE EVERY DAY**

Be sure to set aside 15 uninterrupted minutes a day to do the filing—no more, no less. That accumulates to one hour and fifteen minutes per week. This rule commits the lawyer or staff person to action within a timeframe that budgets proper time for this task.

Use an alphabetical accordion file to stage documents before filing and as a way to avoid losing any documents prior to their reaching their place in the proper file. The lawyer may decide to combine the scanning task with the filing task. Note which client sub-file will be home for each document on the reverse of the document if that question is the least ambiguous.

Copy the document for two or more subfiles if that makes sense for users likely to retrieve the document. Consider adding an index to the subfile that lists the documents within the subfile.

### **THE MATTER IS CONCLUDED**

The lawyer indexes the file to a closed file record, stores the file for a fixed period of time or returns the file to the client.

### **CAVEAT**

Understand that, absent client consent, destroying records always involves risk. The lawyer must weigh the benefit of destruction of a record with the associated risk.

### **CLOSING AND STORAGE PROTOCOL**

Washington's RPCs offer little specific guidance about the maintenance, storage or destruction of client files. RPC 1.15A & 1.15B require lawyers to safeguard client property. RPC 1.16 states that a lawyer must take reasonably practicable steps to return client property, including papers and documents, to the client at the termination of the representation. RPC 1.6 requires lawyers not to reveal information relating to the representation. These rules require that lawyers take reasonable steps to maintain client files properly, to protect any confidential information they contain and to dispose of them appropriately.

Active paper client files should be stored in secure cabinets. Files used during the day should be returned to the file at night. The lawyer may choose to have a "working file" that is comprised of copies of key documents. These files also should be secured in the evening. Be mindful of storage near sprinkler heads that could leak, particularly after an earthquake. In larger offices, use an "out" card to describe who has current possession of the client file.

When a case is concluded, it is usually time to close a file. Closing a file is more than physically putting a file into a storage cabinet or box. Closing a file includes a review of the work done to ascertain that the agreed representation has been completed and, if so, sending a closing letter to the client clearly stating that the representation is over. If the objectives have not been reached, the lawyer should assess the case to determine if more work should be done or if the lawyer needs to talk with the client so a decision can be made to continue the representation or to withdraw from the representation.

Before storing the file, consideration should be given to other dispositions, such as giving the file to the client after copying any documents the lawyer might need in the future. Beside the fact that most, if not all, the file belongs to the client absent an agreement with the client to the contrary, the lawyer will be complying with the ethical duty to return client property at the conclusion of the representation. The lawyer also avoids the expense of storage, the continuing risks of storage and the future difficulty of deciding

when and how to destroy the file. Keep in mind that it may likely be difficult to locate a client after a number of years have passed.

If the lawyer chooses to store the client files, the end of the representation is the time to cull the file of duplicate or otherwise unnecessary materials. Closed files are also stored in secure cabinets or in covered boxes. The storage can be offsite or onsite. Have a cross-index of each file and how to find it. This is particularly important for researching parties for apparent conflicts of interest.

### **DESTRUCTION PROTOCOL**

We suggest that the client files, particularly original wills, be returned to that client after the conclusion of representation. In Washington, wills may be filed with the local court of jurisdiction. Larger volumes of material may require a different answer. However, today lawyers face the end result of boxes upon boxes of unculted files that have become a burden both psychologically and financially.

With the client's written consent, shredding can be arranged for the appropriate files after the lawyer has culled the files of original documents or other materials of value to the client or to the lawyer. Remember to keep a file that describes the file, disposition, receipts, releases and date with any other papers the lawyer decides are prudent to keep. Use an index system to help locate the files in the future.

Destruction of files without client authority always includes some degree of risk.

### **THE FILES MAY BE IMMORTAL BUT WE ARE NOT**

In some instances, a lawyer may be unable to wind up the law practice. Consider arranging in writing for a named attorney to back up the practice in the event of the lawyer's disability or death. Such back up is crucially important for the solo practitioner. Include a protocol for handling your open and stored files. Ensure that the file system is described, orderly and current.

## **IV. Table of Dates for File Retention**

The following table suggests periods for retaining the client files that pertain to certain practice areas. The table is a suggested standard. Lawyers are free to choose a longer or shorter term of retention of client files. A permanent record will be maintained that describes the file and the disposition of the file. Include any releases and receipts for files that are no longer under your control.

Special considerations, such as long-term client relationships, may require longer retention of client files. For example, those files may contain information that is useful for other matters for that client.

<b>PRACTICE SPECIALTY</b>	<b>GUIDELINES</b>
Probate Claims & Estates	Excluding tax, 10 years after final judgment; tax basis information – permanently
Tort Claims (Plaintiff)	6 years after final judgment or dismissal, except when minor involved; then when minor attains majority plus three years
Tort Claims (Defense)	6 years after final judgment or dismissal.
Contract Action	3 years after satisfaction of judgment, dismissal, or settlement.
Bankruptcy Claims & Filings	6 years after discharge of debtor, payment of claim, or discharge of trustee or receiver
Dissolution	6 years after entry of final judgment or dismissal of action, or date at which settlement agreement is no longer effective, except when minor children are involved and then at the young attaining majority plus three years
Real Estate Transactions	Subject to guidelines and tax needs; otherwise 6 years after settlement date, judgment, termination of sale, foreclosure, or other completion of matter; Retain surveys and legal descriptions not of record
Leases	6 years after termination of lease
Original Wills	Return to client after signing and conclusion of matter or file with local court of proper jurisdiction
Criminal Cases	6 years after date of acquittal or length of incarceration

If questions about the Guide arise, users are encouraged to contact the WSBA’s Ethics Line at 206-727-8284 or the Law Office Management Assistance Program at 206-727-8237. You may use the toll-free number of 800-945-WSBA.