FILE MANAGEMENT:

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RETENTION AND DESTRUCTION

RISK MANAGEMENT PRACTICE GUIDE OF LAWYERS MUTUAL



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FILE MANAGEMENT: RETENTION AND DESTRUCTION

Risk Management Practice Guides of Lawyers Mutual

A law office depends on its filing system to function efficiently.

Files need to be organized and easy to find. They can either be in paper or electronic format. Paralegals and legal assistants are typically responsible for maintaining client files. They are often the ones who have the most day-to-day interaction with files. They are the first point of contact.

From the opening to the closing of the file, having set standards for procedure ensures everyone in the office handle files in the same manner. This makes finding files, or documents within files, easier when they are needed.

How to Use this Guide

This Lawyers Mutual Practice Guide will help you manage your case files. It is designed as a tool for firms that currently have active files, are looking to convert to electronic files, or new firms looking for file system information.

Here are some suggested uses:

- To instruct staff on legal ethics and risk management.
- To create job descriptions for paralegals and legal assistants.
- To develop staff hiring criteria.
- To help with staff orientation.
- To help with staff training.
- To use as a topic at a firm meeting or retreat.
- To use as curriculum for in-house continuing education.

This Guide offers general information that should benefit most practices. It is not intended as legal advice or opinion, nor does it purport to establish a specific standard of care for your practice. Every law office is different. Your filing system needs are unique. This Guide suggests ways to increase the efficiency in your file management system.

For more information – or if you have additional questions – please contact Lawyers Mutual's Client Services Team.

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DISCLAIMER: This document is written for general information only. It presents some considerations that might be helpful in your practice. It is not intended as legal advice or opinion. It is not intended to establish a standard of care for the practice of law. There is no guarantee that following these guidelines will eliminate mistakes. Law offices have different needs and requirements. Individual cases demand individual treatment. Due diligence, reasonableness and discretion are always necessary. Sound risk management is encouraged in all aspects of practice.

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INTRODUCTION

Two ever-present elements in any legal practice are documents and time constraints. Adopting a firm-wide policy for file management and retention can save time and money and reduce the risk of malpractice claims. An organized system helps to:

- Prevent the loss of essential documents such as pleadings, correspondence, work product, or other materials;
- Save time and conserve resources;
- Allow for the smooth transfer of the case in the event the representation needs to be reassigned to another lawyer;
- Protect client confidentiality by preventing those without a legitimate interest from accessing the file; and
- Reduce the risk of missed deadlines (one of the most frequent causes of legal malpractice).

Adopting a firm-wide policy for file management and retention can save time and money and reduce the risk of malpractice claims.

FILE SET-UP

File Set-Up – Physical Files

File management systems will vary significantly between law firms based on firm size, area of practice, resources, and other considerations. However, consistency should be the key to every system. Consideration should be given to the demands and requirements of different practice areas or departments, but the overall structure of the file management plan should be uniform throughout the firm. Files should be named consistently using client name, an assigned number, or a combination of both. The interior of the file should contain logical subdivisions such as:

- client information
- correspondence
- medical records (if applicable)
- discovery
- pleadings
- invoices
- research
- attorney notes

Different practice areas may use other subdivisions as needed for their specific practice. Attorney notes and other work product documents that belong to the firm and will not be turned over to the client at the end of the representation should be filed in a separate section or folder. This allows materials belonging to the firm to be easily removed if the file needs to be turned over immediately. Other considerations when establishing a physical file management system include: storage, check-out procedures, control, and access. Detailed instructions and policies should be created to ensure that everyone in the firm is using the system properly and uniformly. All staff members should be trained upon adoption of a new file management system, and new hires should receive training as a part of their orientation.

Every new matter, even those involving existing clients, should receive a new file. It is also important to open a file for potential clients that never retain the firm's services in order to create a complete record for conflict checks. Any time the firm is consulted in a professional capacity, pertinent information must be entered into the database and a non-engagement letter should be sent.

File Set-Up – Electronic Records

When creating an electronic file management system, the first step is to consider what materials are covered by the term "electronic records." Most documents today are electronic at some point in their lives. Unless you created it with a typewriter, it is probably electronic. When you scanned, faxed, or emailed the document, it became electronic. If you received it in an email, as an attachment, or on a CD, it is electronic.

PRACTICE TIP

What materials are covered by the term "electronic records?"

- Documents, including admin documents and trial documents
- Voicemails
- Videos
- Emails
- Time, billing and accounting records

Electronic records can include the following:

Documents. This would include anything that you would store in your "electronic client file" (from administrative documents to trial documents and everything in between) and also includes items like voicemails, videos, and any other type of "document" that may be part of your document management system.

Email. Email is a convenient way to communicate with clients. Some attorneys move their client emails to their practice management system, but many store their email in folders by client name in Microsoft Outlook. When considering an "electronic client file," email is an essential part of the puzzle.

Time, billing and accounting records. Typically, these types of records are stored in an accounting system and should be included in your procedure for closing client files.

As with paper files, consistency is the key to any electronic document management system. The firm should develop a standard protocol for naming documents that are saved within the system so they can be quickly accessed by all users.

A good starting point for organizing electronic files is to use the same organizational structure and logical subdivisions created for paper files. For example, the interior folder structure for electronic files could include subfolders such as illustrated in the graphic "Sample Active Client File."

Again, different practice areas may use different subfolders in their electronic folder structure. However, it is critical that all users understand the protocol and name (save) their documents accordingly. The firm should establish a formal, written policy for folder structure and document naming protocol.

SAMPLE FORM. ELECTRONIC RECORDS

y (Q:) ▶ Client ▶ Smith, John ▶			
vith 🔻 🛛 Burn 🛛 New folder			
Name	Date modified	Туре	
퉬 Attorney Notes	8/13/2015 2:49 PM	File folder	
퉬 Client Information	8/13/2015 2:48 PM	File folder	
Correspondence	8/13/2015 2:48 PM	File folder	
퉬 Discovery	8/13/2015 2:48 PM	File folder	
퉬 Invoices	8/13/2015 2:49 PM	File folder	
퉬 Medical Records	8/13/2015 2:49 PM	File folder	
🐌 Pleadings	8/13/2015 2:48 PM	File folder	
📔 Research	8/13/2015 2:49 PM	File folder	

Many practice and case management software programs on the market offer electronic file management and storage. In addition to electronic file management, features and functions of these software programs may include: time tracking, document assembly, contact management, calendaring and docketing, and billing. These program packages may be local to your computer or server, or they may be cloud-based programs that allow access at any time.

NC Ethics Opinion 2011 FEO 6 addresses ethical issues related to the use of software as a service for case and practice management programs. The opinion also includes a list of measures that should be considered to protect client confidentiality when using software as a service.

When implementing a cloud-based practice management system, be sure to carefully review the provider's Terms of Service. Questions such as who owns the data, who can access the data, and where servers are physically located can have significant practical and ethical implications. The answers can vary widely.

Converting Files from Paper to Electronic

When transitioning from paper to electronic files, it is generally best to start the process with your active files. Most active cases today are a combination of electronic documents and paper documents.

There are three rules for active cases that will help you in your future records management:

- Scan anything paper related to the case to PDF. Have a procedure in place to make sure this happens in an organized and complete manner.
- Shred the paper. Once the document is electronic, you can print it again if it becomes necessary. NC Ethics Opinion RPC 234 comments directly on electronic storage, confirming that, with the exception of original documents that have legal significance, a file can be stored exclusively in electronic

PRACTICE TIP

Ethics Opinion RPC 234 comments directly on electronic storage, confirming that, with the exception of original documents that have legal significance, a file can be stored exclusively in electronic format.

format. There are companies available for shredding and recycling. They will even provide bins for you to dispose of your paper. Depending on your office size and the amount of paper you generate, you may want to purchase an industrial shredder.

3. Make sure the documents are searchable. You will want to be able to find documents later, so you need to make sure they are searchable today. Contact your copier vendor or IT vendor to be sure that any documents that you are scanning on a multifunctional copier are automatically made searchable.

After scanning active files, you can move on to the closed files that remain onsite in your office. Consider implementing the following strategies for closed files:

- Scan anything in the paper file to a searchable PDF. You can hire a scanning company, a file clerk or a law clerk to scan the documents.
- **Export the email**. To maintain all relevant information in one place, export the case-related email. If it is sitting in MS Outlook, the email is separated from the rest of the client file. Export it from Outlook, and save it with the rest of the electronic files.
- Shred the paper.
- Make sure the existing electronic files are searchable. MS Office files are already searchable, but your older PDF files might not be. Invest

in Adobe Acrobat Professional to convert multiple PDF documents to searchable text at one time using the "Recognize Text in Multiple Documents" feature.

Client Confidentiality

An important objective of any records management system should be to protect the confidentiality of client records by preventing unauthorized or unnecessary access. When files and documents cover every available counter and desktop space, this is not only inefficient and chaotic, it also risks compromising client confidentiality.

The following steps should be taken to protect confidential client information:

- Filing should be performed daily.
- Paper files that are not being worked on should be housed in filing cabinets.
- Client files or documents should never be left in public areas or conference rooms.
- Persons not associated with the firm should not be allowed to use attorney offices or firm conference rooms until those areas have been purged of all client documents and files.
- Client information should not be released without obtaining the client's written consent and the responsible attorney's authorization.
- Extreme care should be taken with nonpublic personal information (NPPI), such as social security numbers, account

numbers, addresses, and phone numbers.

- All computers and devices used to access client files should be password-protected. This includes smartphones used to access client or case-related emails.
- Remember that your office copier and scan-

PRACTICE TIP

RPC 209 provides general guidelines for file retention. Closed files must be kept a minimum of six (6) years after the conclusion of representation.

ner are actually computers that may be storing confidential client information. When disposing of equipment, be sure that all confidential information is deleted from the machine's hard drive.

Closing the File

Every case eventually comes to an end. When this occurs, a closing letter should be sent to advise the client that the representation has concluded and the file is being closed. This letter can align expectations by:

- advising that the file is currently available;
- soliciting the client's wishes with regard to documents and client property;
- warning that the files will be destroyed at the end of a specified period of time unless alternative arrangements are made; and
- specifying how long a paper file will remain in the office before being moved to offsite storage and an approximate cost of retrieval thereafter.

Information regarding file retention and destruction can also be included in the firm's engagement letter or fee agreement. The file should be prepared for closing, which may entail:

- Ensuring that original documents are returned to the client (or recorded/filed if appropriate)
- Pruning all duplicate materials
- Checking to see if any documents should be

added to a form or research file

- Confirming that a final invoice and file closing letter have been sent
- Calendaring a destruction date
- Assigning a closed file number that incorporates the year of closing so the age of the file can be easily determined.

File Retention Periods

The most common question we receive on the topic of file management is "How long do I need to keep this file?" General guidelines for file retention are set forth in NC Ethics Opinion RPC 209. This ethics opinion establishes the following rules:

- With the consent of the client, a closed file may be destroyed at any time.
- Absent the client's consent to disposal of a file, a closed file must be retained for a <u>minimum of six</u>
 (6) years after the conclusion of the representation.

If you wish to destroy a file that has been closed for fewer than six years, the client should be contacted and advised that the lawyer intends to destroy the file unless it is retrieved within a reasonable period of time. Ideally, the client will provide clear instructions about her wishes (i.e., she consents to destruction, plans to retrieve it, or requests transfer to a new attorney). A more difficult situation is presented if the client fails to respond. In our opinion, the safest course of action is to retain the file unless you receive affirmative consent to dispose of it or the applicable retention period has passed.

After six years, a lawyer is not required to notify the client that the file will be destroyed. However, even after six years, the lawyer must review the file before destruction and retain:

- Property that actually belongs to the client,
- Original documents with legal significance (such as original wills or stock certificates), and
- Information useful in the assertion or defense of the client's position in a matter for which the statute of limitations has not expired.

These items must be returned to the client or retained indefinitely in a secure place.

While a hard and fast rule is appealing, it is important

to remember that the six-year retention period may not be applicable for all matters. **Attorney discretion must be used to determine if a longer period is necessary**. NC Ethics Opinion RPC 209 explains that "six years is the <u>minimum</u> period for retaining a closed client file." The opinion further states that "the statute of limitations may require the retention of a closed file for more than six years."

When evaluating exceptions to the six-year retention period, special consideration should be given to the following files:

- **Estate matters**. Give original wills to the client at the time they are executed. Retain original documents with legal significance indefinitely
- **Incompetents**. Retain files at least six years after the removal of incompetency
- **Minors**. Retain files at least six years after the minor acquires status as a legal adult
- **Criminal matters**. Consider the applicable statute of limitations for post-conviction motions and appeals
- **Continuing payments**. Consider the applicable statute of limitations
- Any special circumstance in which destruction of the file could potentially prejudice the client's rights

Another consideration is the possibility of a legal malpractice claim. Section 1-15(c) of the North Carolina General Statutes provides that an action against an attorney must be brought within three years of the date of the last negligent act that gave rise to the claim. This period may be extended by up to an additional year for claims not discovered within the first two years after the last negligent act, but under any circumstance, all claims must be brought within four years. A six-year retention period will generally be sufficient to ensure that the file is available to defend against a potential malpractice claim. However, if the matter involved a "problem" case or client and you have reason to believe a claim might be asserted (even after four years), it may be wise to retain the file.

File Storage – Physical Files

The firm's document retention policy should address where closed paper files will be stored in the office, how they will be secured to protect confidentiality, how long files will remain onsite, and when they will be transferred to offsite storage.

When physical files are transferred offsite, a record with a detailed description of the contents of each box should be created to allow for easier retrieval.

Offsite storage of paper documents can be extraordinarily expensive and will be an ongoing expense for many years. Typically, there are two strategies for offsite paper documents:

 Firms retrieve paper files that have been sent offsite and scan and destroy

> the files in accordance with their electronic data destruction policy. This can significantly reduce the expense of offsite storage.

 Firms find that the cost of retrieving, scanning and destroying paper files is too great and continue to store files until the destruction dates. Then, the storage facility will destroy the existing files, and offsite storage is no longer necessary.

Both of these strategies work, so your decision should be based on how long you have been storing documents offsite, how much storage your firm uses, and the level of organization of your offsite records.

Storage – Electronic Files

Closed electronic files should be organized and moved to a folder designated as a Closed File repository. We recommend the following steps:

PRACTICE TIP

A lawyer may never retain records to secure a fee.

Create a new electronic folder called Closed Client Files and store all closed client electronic files in this folder. These documents should be organized by year, or month and year, of closing depending on the volume of cases and your firm's destruction policy. If your policy is to destroy them once a year, plan on January 1st for destruction. If it is on a monthly basis, use the end of the month. See "Sample Closed Client File" below.

By creating this secondary area of storage for closed

files, they can be separated from your existing active cases, but still available. If they need to be relocated to cloud-based storage or some type of alternative storage, all of the files will be in one area with a destruction date set.

Backup, Backup, Backup.

Your data backup for your active files and your closed files

should be the same. A good rule of thumb is that your data should be stored in three different locations.

Turning Over the File to the Client

NC Rules of Professional Conduct require that, upon termination of representation, a lawyer must "take steps to the extent reasonably practicable to protect a client's interest, such as . . . surrendering papers and property to which the client is entitled. . ." Rule 1.16(d). Comment [10] to this Rule further explains:

The lawyer may never retain papers to secure

a fee. Generally, anything in the file that would be helpful to successor counsel should be turned over. This includes papers and other things delivered to the discharged lawyer by the client such as original instruments, correspondence, and canceled checks. Copies of all correspondence received and generated by the withdrawing or discharged lawyer should be released as well as legal instruments, pleadings, and briefs submitted by either side or prepared and ready for submission. The lawyer's personal notes and incomplete work product need not be released.

To comply with this obligation, your firm's file retention policy should address client file requests. Specific policies and procedures might include:

- Client files should be turned over promptly at the client's request.
- The client's file should be organized so that documentation or notes that belong to the firm can be easily removed in the event that the file must be turned over immediately.
- <u>A copy of the client file should be made prior</u> to turning it over to the client. This copy is for the firm's records. It may be needed later to defend against a grievance or malpractice claim. (Rule 1.6(b)(6) of the NC Rules of Professional Conduct and NC Ethics Opinion RPC 62.) It could also be helpful in responding to follow-up questions or handling similar matters in the future.
- Original documents and unique items (photos and personal property) should be returned to the client.
- <u>A receipt acknowledging that the file was</u> returned to the client or transferred to a new attorney should be signed by the client and retained by the firm. We suggest using the form "Acknowledgement of Receipt of File" and "Authorization for Transfer of Client File" included in this Guide.

File Destruction

There is no general duty to preserve client files permanently (ABA Informal Opinion 1384), and once the applicable retention period has passed (or the client has given consent), the file may be destroyed.

At the appropriate time, follow these steps to ethically and efficiently carry out the destruction of client files (both paper and electronic):

- Calendar your destruction dates. Create a recurring appointment for you or your staff to destroy the paper and electronic documents. If it is on the calendar, it is more likely to be done on a regular basis
- Destruction must be handled in a way that preserves client confidentiality. No particular method of destroying files is prescribed by the NC Rules of Professional Conduct. However, NC Ethics Opinion RPC 209 states that precautions should be taken to "minimize the risk that confidential information might be disclosed" during the destruction process.
- Maintain destruction records. For both paper and electronic files, records of destruction should be maintained <u>indefinitely</u> and should include the file name and destruction date.

SAMPLE FORM. CLOSED CLIENT FILES

Organize Include in library Share with	Burn New folder			
SRecycle.Bin	Name	Date modified	Туре	1
Config.Msi Documents and Settings Games]] March 2015 → Destroy in March 2021	7/28/2015 2:52 PM	File folder	
Intel				

NC ETHICS OPINIONS REGARDING FILE MANAGEMENT

CPR 3

A discharged lawyer or a lawyer otherwise withdrawing from representation of a client is not obligated to turn over his entire file to his client or to his client's new lawyer. Work product, such as preliminary drafts, may be retained. Generally, anything in the file which would be helpful to the new lawyer and not necessary for the protection of the discharged lawyer should be turned over.

RPC 16: FILES OF A DECEASED LAWYER

A lawyer appointed conservator of a deceased lawyer's files should comply with the instructions of the court and seek to preserve valuable documents and confidential information.

RPC 62: DISCLOSURE OF CLIENT CONFIDENCES IN DEFENSE OF LEGAL MALPRACTICE

An attorney may disclose client confidences necessary to protect her reputation where a claim alleging malpractice is brought by a former client against the insurance company which employed the attorney to represent the former client.

RPC 79: SURRENDER OF MEDICAL RECORDS

A lawyer who advances the cost of obtaining medical records before deciding whether to accept a case may not condition the release of the records to the client upon reimbursement of the cost.

RPC 153: TERMINATION OF JOINT REPRESENTATION

In cases of multiple representation a lawyer who has been discharged by one client must deliver to that client as part of that client's file information entrusted to the lawyer by the other client.

RPC 169: PROVIDING CLIENT WITH COPIES OF DOCUMENTS FROM THE FILE

In cases of multiple representation a lawyer who has been discharged by one client must deliver to that client as part of that client's file information entrusted to the lawyer by the other client.

RPC 178: RELEASE OF CLIENT'S FILE

The opinion examines a lawyer's obligation to deliver the file to the client upon the termination of the representation when the lawyer represents multiple clients in a single matter.

RPC 209: DISPOSING OF CLOSED CLIENT FILES

The opinion provides guidelines for the disposal of closed client files.

RPC 234: ELECTRONIC STORAGE OF CLIENT'S FILE

An inactive client file may be stored in an electronic format provided original documents with legal significance are preserved and the documents in the electronic file can be reproduced on paper.

RPC 245: RELEASE OF FILE TO FORMER CO-PARTY

A lawyer in possession of the legal file relating to the prior representation of co-parties in an action must provide the co-party the lawyer does not represent with access to the file and a reasonable opportunity to copy the contents of the file.

98 FEO 9: CHARGING FOR THE COST OF RETRIEVING A CLOSED CLIENT FILES

A lawyer may charge a client the actual cost of retrieving a closed client file from storage, subject to certain conditions, provided the lawyer does not withhold the file to extract payment.

2002 FEO 5: RETENTION OF EMAIL IN A CLIENT'S FILE

Whether electronic mail should be retained as a part of a client's file is a legal decision to be made by the lawyer.

2006 FEO 18. SURRENDER OF DEPOSITION TRANSCRIPT

When representation is terminated by a client, a lawyer who advances the cost of a deposition and transcript may not condition release of the transcript to the client upon reimbursement of the cost.

2008 FEO 5. WEB-BASED MANAGEMENT OF CLIENT RECORDS

Client files may be stored on a website accessible by clients via the internet provided the confidentiality of all client information on the website is protected.

2011 FEO 6: SUBSCRIBING TO SOFTWARE AS A SERVICE

A lawyer may contract with a vendor of software as a service provided the lawyer uses reasonable care to safeguard confidential client information.

2011 FEO 16: RESPONDING TO INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM

A criminal defense lawyer accused of ineffective assistance of counsel by a former client may share confidential client information with prosecutors to help establish a defense to the claim so long as the lawyer reasonably believes a response is necessary and the response is narrowly tailored to respond to the allegations.

2012 FEO 13. DUTY TO SAFEKEEP CLIENT FILES UPON SUSPENSION, DISBARMENT, DISAPPEARANCE, OR DEATH OF FIRM LAWYER

The partners and managerial lawyers remaining in a firm are responsible for the safekeeping and proper disposition of both the active and closed files of a suspended, disbarred, missing, or deceased member of the firm.

2013 FEO 15. RETURN OF CLIENT RECORDS UPON TERMINATION OF REPRESENTATION

Records relative to a client's matter that would be helpful to a subsequent legal counsel must be provided to the client upon the termination of the representation, and may be provided in an electronic format if readily accessible to the client without undue expense.

CASE FILE CLOSING FORM

Client Name: File Title: Responsible Attorney(s): Attorney Responsible for		_/ view:	Cla Date:	osing Date:
Materials Returned to Cl		,	of Return:	_
Materials to be Retained	:			
Materials to be Destroye	d:			
Date File Closing Letter	Sent to Client:		Ву	:
Date Signed Acknowledg	D	g Returned Ma	terials Received	d from Client:
Comments/Notes:				
FINANCIAL			TICKLER INFO	DRMATION
Outstanding Fees Outstanding Costs Funds Remaining in Tre	☐ Yes ☐ Yes ust Account ☐ Yes	NoNoNo	Location:	Yes 🗖 No dates (30 days, 6 mos, 1 yr):

File Destruction date: _____

CLOSED FILE ARCHIVE AND DESTRUCTION NOTICE

[Date]

[Client Name] Street City State Zip

Dear [Client Name]:

Thank you again for the opportunity to represent you in the [X] matter. Our records indicate this representation is concluded and we have not provided you any representation in the matter within the last six months. I am writing to inform you that the firm is now in the process of moving the closed case file, for your matter of [XX v. XX], into archival storage.

The file may include copies of records you want or need, such as documents we created for you. Please let us know within thirty (30) days of this letter's date whether you would like to obtain a copy of this file, by returning the attached form to us in the enclosed self-addressed envelope.

At the completion of the 30-day period, the file will be moved into off-site archival storage, and will then be subject to destruction according to the firm's record retention policy, without further notice to you.

I wish to thank you for your confidence in our firm and I look forward to speaking with you again. Thank you.

Sincerely,

[Name of Firm] By: [Name of Lawyer]

Signature

encl as

Enclosure (To be Returned by the Client)

INSTRUCTIONS TO [NAME OF THE FIRM] RE: CLOSED FILE [CLIENT MATTER NAME]

FROM:

CLIENT NAME

ADDRESS

ADDRESS

ADDRESS

Please copy and send me the appropriate portions of the referenced case file.

Thank you,

Client Signature

Date

LETTER NOTIFYING CLIENT OF DESTRUCTION OF FILE

[Date]

[Client Name] [Street] [City State Zip]

RE: [Name of Case]

Dear: [Name]

Please be advised that the Firm is purging its files of records pertaining to matters that have been closed for more than six (6) years. Our policy is to contact our clients and notify them of our intention to destroy the records unless they wish them returned.

Since these files pertain to matters that were concluded over six (6) years ago, you may not wish for their return. However, we will make these files available to you upon your written request. Please indicate your preference for destruction or return of the files on the attached listing and return it in the enclosed, self-addressed stamped envelope.

If you select destruction, the files will be physically destroyed by a method that will preserve client confidentiality. You will not be charged for this service.

If we are notified that you have received this letter, but we receive no response within six (6) weeks of your receipt, we will assume that you wish the file(s) to be destroyed.

If you wish the records returned, please contact us to arrange transfer of the file.

If you have questions, please address them to _____

As always, we greatly appreciate your business and hope to continue working with you. Thank you for your assistance. You may receive additional correspondence regarding closed files for other work we have done on your behalf.

Sincerely,

Attorney] [Firm]

ACKNOWLEDGMENT OF RECEIPT OF FILE

I hereby acknowledge that I have received a copy of my file from the law office of [Firm/Attorney Name]. I also acknowledge that no further action will be taken by [Firm/Attorney Name] on my legal matter.

[Client]

[Date]

AUTHORIZATION FOR TRANSFER OF CLIENT FILE

I hereby authorize the law office of [Firm/Attorney Name] to deliver a copy of my file to my new attorney at the following address:

I also hereby acknowledge that no further action will be taken by [Firm/Attorney Name] on my legal matter.

[Client]

[Date]

FILE CLOSING CHECKLIST

Client_____

File No._____

Matter:_____

Date:_____Atty:_____

DATE	INITIALS	ACTION
		Remove file from active status and assign closed file number.
		Mark the file closed and enter date and closed file number in closed file register and/or on index card.
		Make sure notices of lis pendens or lien abstracts have been discharged.
		Make sure all original judgments, orders, decrees, cost bills, deeds, con- tracts, etc. are filed or recorded.
		If unsatisfied judgment is involved, diary the file for 3, 6, and 9 years to review for assets and renewal of judgment prior to expiration of 10 years.
		Make sure any UCC or security interest has been perfected and filed. Diary appropriate renewal date and reminders.
		Check for unbilled activities or balance remaining in trust and send final bill or accounting to client.
		Review file for documents to be included in office form file.
		Review file for additional names to be included in conflict system.
		Remove duplicate documents, unused note pads, and other unneeded items from file. (DO NOT remove draft work product, memos, phone mes- sages, or research notes.)
		Check for loose, unfiled documents and place in the file.
		If the file involves a lease or option to buy, diary the file for 6 months prior to expiration.
		If the file involves a criminal matter, check to see if expungement is possible and diary the file for 3 years.
		If litigation or tribunal matter, withdraw as attorney of record.
		Review the file for any further work to be done and send closing letter to cli- ent with return of any original documents.
		Assign destruction date and enter date into calendar system and/or mark in closed file register or on index card.
		Send client questionnaire, if appropriate.

SAMPLE FILE RETENTION POLICY

The following sample policy was adapted from The Law Society of Upper Canada's "Guide to Retention and Destruction of Closed Client Files, For Lawyers – Appendix 1: Sample File Retention Policy." The Law Society of Upper Canada owns copyright in this publication. Lawyers Mutual gratefully acknowledges the work of the Law Society of Upper Canada in preparing the original material and its generous permission to use the publication as the basis for this form.

Sample File Retention Policy

This file retention policy is a sample only to assist lawyers in preparing a file retention policy. This sample policy should be adapted to suit the individual law practice. No one policy can cover all situations relating to all law practices. This policy is not intended to replace the lawyer's professional judgment. When establishing a file retention policy, the lawyer should consider both the circumstances of the lawyer's practice as well as the North Carolina Rules of Professional Conduct.

1. Purpose

The purpose of this policy is to provide procedures for the closing, retention and disposition of client files.

2. Definitions

"disposition" means the final action taken with respect to the contents of client files and includes destruction, transfer to the firm's form bank and permanent retention.

"client file" means the physical paper folder containing the physical documents related to the matter and/ or the electronic folder or directory containing the electronic files, documents, data or information related to the matter (hereinafter referred to as "file").¹

"file destruction date" is the date on or after which a file may be destroyed.

3. Closing the File

- 3.1 When a matter has been completed, the lawyer shall review the file to determine if the file may be closed.
- 3.2 No file shall be closed unless:
 - a file closing or disengagement letter has been sent to the client;
 - a final invoice, if any, has been forwarded to the client;
 - all outstanding fees have been paid or forgiven;
 - there is a final distribution and accounting of all trust balances relating to the file;
 - client property has been returned to the client;
 - there are no outstanding tasks or undertakings.
- 3.3 Prior to closing the file, unless otherwise agreed, client documents shall be returned to the client.
- 3.4 At the lawyer's discretion, copies of client documents may be retained in the file.

- 3.5 At the lawyer's discretion, the file may be culled of the following:
 - duplicate copies of documents;
 - draft copies of documents unless the history of creation of the document might be an issue in the future;
 - any documents that can be reproduced from another source such as pleadings, copies of registered deeds or mortgages, copies of published opinions or other publicly available published material.
- 3.6 Prior to closing the file, at the lawyer's discretion, copies shall be made of any documents that may be used as forms and placed in the firm's form file for future use. The lawyer will ensure that such form documents are stripped of all personal information and that client confidentiality, in accordance with the Rules of Professional Conduct, is maintained with respect to any other information that identifies the client.
- 3.7 No file shall be closed unless the lawyer reviews the file and determines whether the file is appropriate for destruction at a future date or whether the file should be retained permanently.
- 3.8 If the file is appropriate for destruction, the lawyer shall establish a date for the destruction of the file ("file destruction date").
- 3.9 No file shall be closed unless a letter has been forwarded to the client by mail or other customary delivery method advising the client that:
 - the matter has been completed;
 - all documents and property belonging to the client have been returned to the client, or alternatively, confirming any arrangement between the lawyer and the client regarding the storage of the client's property;
 - the law firm may store the file off-site, and if the client requires copies of documents from a file stored off-site, an administrative fee will be charged to retrieve the file;
 - in accordance with the law firm's policy, a file destruction date has been established and the file will be destroyed on or after the file destruction date without further notice to the client.
- 3.10 If documents from the file are returned to the client, copies shall be made of all documents that cannot be readily obtained from other sources or that in the lawyer's judgment the firm may require in the future.
- 3.11 When the file is closed, the file shall be moved from an active status to an inactive status.
- 3.12 The firm shall maintain a list of closed files including the date that the file was closed.

4. Establishing the File Destruction Date

- 4.1 If the lawyer determines that the file is appropriate for destruction at a future date, the lawyer shall establish:
 - a file destruction date no earlier than six years after the date that the file is closed; and
 - a date for the review of the file no earlier than 90 days prior to the file destruction date ("file review date").
- 4.2 If the lawyer determines that the file is to be retained permanently, the lawyer shall establish periodic review dates in order that the lawyer may review the file to determine whether circumstances have changed and whether the file is appropriate for destruction.

- 4.3 The lawyer will exercise professional judgment in determining whether a file is appropriate for destruction and in establishing a file destruction date. In making these decisions, the lawyer shall consider:
 - the length of time that the lawyer is required to retain documents pursuant to specific laws or regulatory provisions;
 - the client's age and capacity;
 - the likelihood that the lawyer or law firm will require the file for the future representation of the client;
 - the length of time that the lawyer or law firm may be liable for claims involving professional negligence; and
 - the likelihood that the lawyer or law firm will require the file because of the nature of the matter, the outcome of the matter or the fact that the file involved a difficult client.
- 4.4 All file destruction dates and file review dates shall be entered into the firm's calendaring system.

5. Retention of Closed Files

- 5.1 Closed files will be stored:
 - on-site for the first two (2) years after closing, and
 - off-site after the file has been closed for more than two (2) years
- 5.2 Closed files shall be stored in facilities that are physically secure so as to maintain client confidentiality and to protect against damage or loss.

6. File Destruction

- 6.1 The lawyer shall review the file on or after the file review date and prior to the file destruction date to determine whether circumstances have changed since the establishment of the file destruction date and whether the destruction should proceed.
- 6.2 All destruction of files shall be conducted in a manner that ensures the maintenance of client confidentiality.
- 6.3 A list or database of destroyed files shall be maintained.
- 6.4 A record of destruction or disposal shall be maintained. The record shall include the following information: the name and address of the client, the file number, a brief description of the matter, the file closure date, the file disposition date, and the name of the lawyer who authorized the file disposition.