**Sample Record Retention Policy**

**Retention Guidelines**

If you have malpractice insurance, it is recommended that you contact your carrier for additional information and advice when drafting the firm’s record retention policy. Many have sample policies, guidelines, and resources beyond what is contained herein.

1. **Closing the File:**
	1. The lead lawyer assigned to the file prepares a closing letter including a final distribution and accounting of all trust account balances relating to the file and an inventory of all client property returned to the client with the letter. All personal documents must be returned to the client and electronic copies maintained in the firm’s file; these include:
* corporate documents;
* bank records;
* recorded deeds;
* accountants' audit reports;
* expense records;
* tax records and tax returns (including all related documents and worksheets);
* year-end financial statements and depreciation schedules;
* accounting journals;
* bills of sale (for important purchases);
* minute books, bylaws, and certificates of incorporation;
* capital stock and bond records dealing with capital structure;
* insurance policies and records;
* property records and property appraisals;
* copyright and trademark registrations;
* patents and all related documents and correspondence;
* major contracts and leases; and
* actuarial reports.
	1. The lead lawyer reviews the file and removes all extraneous materials, including:
		1. Legal memoranda, briefs, pleadings, and other documents that can be reproduced from other sources.
		2. Draft documents otherwise preserved in final form unless the process of creating the final document might later be an issue. Marked-up copies are often useful in the event questions later arise.
		3. Notes and memoranda recording nonpublic information regarding a client or its adversary can be destroyed.
		4. Copies of published opinions and other available published material.
		5. Duplicate documents.
		6. Depositions may be culled particularly if electronic transcriptions are available.
		7. Extraneous material such as scratch pads, legal pads, and paper clips.
	2. Remaining file documents are scanned in a way that preserves the integrity of the documents. The physical file [is destroyed/is maintained for \_\_\_ years]. No additional notice will be provided in advance of the destruction of the file.
	3. A schedule for destruction of the electronic file is prepared. The destruction date should take into consideration the following:[[1]](#footnote-1)
		1. All matters: Withdrawal or discharge date, applicable statutes, whether the notice of claims period has expired, and other regulations.
		2. Litigation: Satisfaction of judgment or final dismissal of all claims and/or exhaustion or abandonment of all appellate options.
		3. Bankruptcy: Discharge, debtor payment of claim, or discharge of trustee or receiver.
		4. Divorce: Final judgment or dismissal or date upon which marital settlement agreement is no longer effective, except when minor child custody is involved, in which event the date of the last minor child's reaching majority.
		5. Probate claims and estate administration: Acceptance of final accounting.
		6. Tort claims: Final judgment or dismissal of action except when a minor is involved, in which event the date of such minor’s reaching majority.
		7. Real estate transactions: Settlement date, judgment or foreclosure, or other completion of matter.
		8. Leases: Termination of lease.
		9. Estate Planning: When documents completed, unless concerns regarding competency.
		10. Business Incorporation: When incorporation occurs with consideration of any foreseeable disagreements over incorporation matters.
1. All files shall be maintained in storage for a minimum of \_\_\_ years beyond the closing date of the file.
	1. Electronic files will be stored on a server with appropriate security to ensure there is no unauthorized access and with offsite backups in place.
	2. Physical closed files will be stored:
		1. On-site for the first two (2) years after closing.
		2. Off-site after the first two (2) years after closing.
		3. The storage facility must be physically secure to protect client confidences and reasonably safe from environmental factors such as wetness.
		4. Off-site storage is [Name & Address of storage location]

**Destruction Guidelines**

1. After a minimum of\_\_\_\_ years, files may be reviewed by an attorney for destruction.
2. No file may be destroyed until it has been reviewed individually by an attorney and it is determined that the file may be destroyed.
	1. Any client property in the file must be returned to the client before destruction.
	2. The reviewing attorney will exercise professional judgment in determining whether the file is suitable for destruction, erring on the side of retaining the file if the file may be needed in the future. Those reasons include, but are not limited to:
		1. The statute of limitation for malpractice claims has been tolled or has not yet run.
		2. The underlying case involved a minor who has not yet reached the age of majority.
		3. The file involved a troublesome client or outcome.
		4. The file involved an area of law or cause of action where either for substantive reasons or client relations reasons, information in the file may be needed in the future.
3. A permanent list or database of destroyed files must be kept.
4. Destruction must be accomplished in a manner that preserves client confidences, including shredding, burning, or any other method that destroys media beyond reconstruction in an environmentally sound manner. The person or service performing the destruction should certify, in writing, the date, location, and method used and do so under a formal non-disclosure agreement binding the company and its employees.

\*Note: This document does not constitute legal advice and is not an ethics opinion.

1. This is not an exhaustive list and does not encompass all considerations based on the type of matter. [↑](#footnote-ref-1)