

SAMPLE

RECORD RETENTION PLANS

I. Why Record Retention Plans (“RRP”) are needed

A. Profitability

1. Minimize costs of off-site storage by not keeping excess documents
2. Minimize costs of high-dollar rent by moving files to cheaper/off-site storage areas
3. More effective and efficient use of office space by freeing up non-billable space used for file storage and using for income producing activities.

B. Risk Management

1. More effective management of risk from malpractice
2. More effective management of discovery in the case of client disputes

C. “Because I Said So”

1. R-5 and R-12 require a firm to have a RRP in place to meet ethical obligations.
2. This requirement applies to all lawyers, even those working as corporate counsel, government employment, and solo practitioners.

II. What Should a Record Retention Plan Include?

A. 5 Basic Elements:

1. Instructions to lawyers and non-lawyer personnel concerning their obligations under the policy or plan
2. Information regarding the location of storage facilities
3. Methods for the eventual disposition of records and files
4. Information concerning retention periods, and the establishment of retention periods
5. A system for monitoring compliance with the plan

B. Instructions To Personnel Concerning Their Obligations Under the Policy or Plan

1. Specific instructions regarding file classification, separation and identification of types of property
2. Confidentiality obligations
3. R-19 divides file materials into 3 categories:

- a. All materials that were provided by the client belong to the client
 - b. All materials which have legal significance of their own, such as originals of wills, trusts, Power of Attorneys, and Deeds, are the property of the client
 - c. All other materials are the property of the lawyer, but the client has a right to access everything in the file.
4. Therefore, materials in categories a. and b. (client owned materials) can't be destroyed without being offered to the client.
 5. Materials in category c can be destroyed without notice to the client.
 6. If materials in category c are kept, the client has a right to access the files, even if they have been converted to another medium, such as microfilm.

C. Information Regarding the Location of Storage Facilities

1. Persons who have access to the site
2. Circumstances concerning such access
3. A system for granting authorization for access to persons other than firm members

D. Methods for the Eventual Disposition of Records and Files

1. Confidential, secret, or privileged information must be destroyed by shredding or incineration.
2. Placing them in a waste receptacle is not enough.
3. Deletion of electronic materials on hard drives or removable storage media should also be done.

E. Retention Periods and Considerations in Establishing Retention Periods

1. Client property (those in category a and b) requires a minimum retention period of 5 years
2. Other materials, (those in category c) have no minimum retention periods

F. Compliance

1. Written procedures to all lawyers and non-lawyers
2. Written records of files closed, stored, and destroyed
3. Limited physical access to closed/stored files
4. Regular interval for "auditing" files for compliance

III. Summary of Recommendations

A. Have a RRP in place

- B. Do everything possible to return client property to the client upon completion of the representation on a given matter**
- C. Include your RRP in your engagement letter, or Fee Agreement. If this is a repeat client, and you haven't previously given them a copy of your policy, do it now**
- D. Keep items belonging to the client and those of legal significance (those subject to the 5 yr. Minimum retention period) separately within the client's file.**
- E. Repeat your RRP on the final billing.**
- F. Remember, if you have not given notice of your RRP to the client, you must give notice to them before destroying the files, even if the 5 years have expired.**

IV. Additional Resources

- MRPC 1.5
- MRPC 1.15
- MRPC 1.16
- R-5
- R-19
- R-12