



**CREATING A RECORD RETENTION
& DESTRUCTION POLICY:**
A CNA PROFESSIONAL COUNSEL GUIDE
FOR LAWYERS AND LAW FIRMS

EXECUTIVE SUMMARY

- Law practice has always been document and data intensive. The advent of digital technology has drastically increased the volume and complexity of records handled by lawyers in practice, making it impossible to adequately deal with them on an ad hoc basis. In this day and age, it is critical for lawyers and firms to develop and follow a Records Management Plan (RMP), a cohesive set of formal procedures for managing and maintaining records used in their practice.
- A comprehensive RMP sets forth policies and procedures addressing the entire lifecycle of all information and data handled by a lawyer or firm. While all aspects of the RMP are important, this Guide focuses on perhaps the most critical component of such a plan, the Record Retention and Destruction Policy (RRD Policy).
- This Guide is intended to steer lawyers and firms through the numerous steps involved in creating an RRD Policy for the safe maintenance and disposition of client matter files. Future publications will examine other components of the RMP, including policies and procedures for active file creation and maintenance and use of technology for communication and data security.
- To establish an effective RRD Policy, it is important to distinguish among the various types of records within the firm, including firm records and client matter and work product records. Each record has a distinct significance to a firm or client and may be subject to different rules and regulations regarding retention, making it necessary to maintain some records longer than others. When making these distinctions, it is important to consider the content over the format of the material or information in question.
- An effective RRD Policy will call for file preparation and archiving at the close of each client matter. All retention periods should begin with a standardized initial retention period followed by further file review to determine whether longer retention is required. Factors to consider when setting initial retention periods include jurisdictional rules and regulations, malpractice statutes of limitation, ethics rules, and the firm's financial, technological and physical resources. There is no value in keeping all records forever, and law firms should aim to dispose of records that are no longer active or subject to regulatory or legal retention requirements.
- Developing an effective RRD Policy takes time and effort. RRD Policies should be committed to writing in every firm, including solo practices. Comprehensive training, including consideration of how to communicate with the client about the policy, is essential.

CREATING A RECORD RETENTION & DESTRUCTION POLICY: A CNA PROFESSIONAL COUNSEL GUIDE FOR LAWYERS & LAW FIRMS

Law practice has always been document intensive. But now, for many lawyers, the explosive growth of digital technology has virtually revolutionized their practice. Lawyers and firms must manage an increasing amount of documents and data, both physical and digital, over a vast array of constantly evolving devices and media. Recent sanctions and adverse rulings rendered against clients and their counsel for destroying potentially relevant records have put lawyers on notice of an enhanced duty to prevent the spoliation of records, both paper and electronic. In the wake of the collapse of Enron and Arthur Anderson, numerous legislative enactments, including amendments to federal discovery rules, have greatly enhanced the accounting, legal and ethical obligations of corporate officers and their counsel to preserve and produce records.

In light of this, lawyers and law firms can no longer rely on ad hoc record-keeping methods as sufficient, if they ever could at all. It is critical for lawyers and law firms to develop and follow a cohesive set of procedures for managing and maintaining the records used in their practice – both their own internal records and the records of their clients with which they are entrusted – and to apply these procedures over their entire lifecycle, from creation to final disposition.

Although it can be called many things, such a set of procedures will be referred to in this Guide as a **Records Management Plan**.

Records Management Plans Help Manage Professional Liability Risk

A **Records Management Plan (RMP)** is a comprehensive set of procedures to manage a law firm's information and data. The scope of a RMP must be all-encompassing, applying to all information or data handled within the organization and governing the conduct of every attorney and employee.

Formal RMPs provide guidance to firm personnel about their responsibilities and help manage risk in a number of ways:

- They help lawyers fulfill their ethical obligations to protect client confidences and preserve client property by instituting checks and review procedures before information is stored, shared, disseminated, or destroyed, making it less likely that the information will be inadvertently released to unauthorized recipients.
- A rational and consistent RMP helps reduce misunderstandings with clients about responsibility for maintaining records and allows lawyers to inform clients of the time frames and procedures for destruction of firm records relating to their matters.
- Well-organized files facilitate responses to client inquiries about the progress of matters, billings and other issues, often allowing disputes to be resolved before claims develop.
- Formal file closing and storage procedures help delineate the end of work on a matter. This helps support the position that file closing marks the beginning of limitations periods for bringing professional liability claims and assists in distinguishing between current and former clients, a key issue when considering conflicts of interest.
- When professional liability claims do occur, the ability to easily access case file documentation is valuable to their defense. Documentary evidence of the terms of representation and the respective duties and obligations of the parties can limit open-ended fiduciary obligations. Evidence of instructions given, advice rendered, and client understanding is often the key to an effective defense. Conversely, cases have been lost when lawyers cannot produce documentary evidence to counter client allegations of negligence or other professional failures.

- Scheduled file preservation and destruction pursuant to a formal RMP is reasonable and can help demonstrate compliance with ABA Model Rule 1.16(d) regarding lawyers' obligations to clients upon termination of representation, as well as ABA Comm. On Ethics & Prof'l Responsibility Informal Opinion 1384 (1977) (*Disposition of a Lawyer's Closed or Dormant Files Relating to Representation of or Services to Clients*). Additionally, formalized destruction cycles can provide the impetus many lawyers need to clear their files, purge unneeded information and more efficiently manage the historical knowledge in their firm.
- Implementation and enforcement of a formal RMP can avail lawyers of "safe harbors" under the Federal Rules of Civil Procedure regarding discovery of electronically stored information, protecting the interests of the lawyer and law firm if documents are no longer available for discovery should malpractice litigation arise.

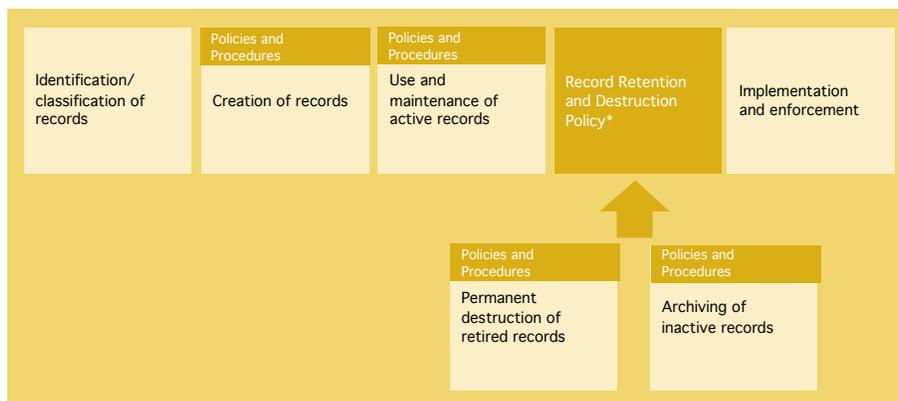
For these reasons, lawyers and law firms, like other business organizations, must act responsibly and consistently in handling the information and records they create, use and exchange on a daily basis. A formal, written RMP provides clear direction to law firm staff about how records should be created and maintained, how long they should be kept, how they should be destroyed, and who should oversee the process. It also provides guidance about implementation, enforcement, and communication with clients about document handling. While preparing a written policy requires an initial investment of time and effort, it establishes a consistent approach to records management that becomes an integral part of the firm's quality control program and facilitates training of new employees.

RECORD RETENTION AND DESTRUCTION POLICY: A KEY COMPONENT OF A RECORDS MANAGEMENT PLAN

Best practices suggest that lawyers and law firms should develop a RMP to govern all of their law practice records. While a comprehensive RMP will address all aspects of the handling of records at every stage of their lifecycle including, for example, file creation, communication with clients, and data privacy and security, this Guide focuses on perhaps the most critical component of the RMP, a policy governing the handling of records at the close of a representation, commonly referred to here as a **Record Retention and Destruction Policy**.

A **Record Retention and Destruction Policy (RRD Policy)** is a component of an overall RMP that establishes which records are retained, in what manner, and for how long, as well as procedures for their release or destruction by the firm. A truly effective RRD Policy will be rigid enough to apply consistently to all records handled by the firm and flexible enough to effectively address changes in technology, laws or ethics rules that affect record handling.

Components of a Records Management Plan



ESTABLISHING AN EFFECTIVE RECORD RETENTION AND DESTRUCTION POLICY

This document is intended to guide lawyers and law firms through the various steps of creating and implementing an effective RRD Policy as part of a comprehensive RMP, focusing on client/matter records from specific representations. It is designed to follow the process from beginning to end, offering suggestions for review, research and analysis when called for, and offering particular suggestions for policy choices when appropriate. While it presents a prototype policy, it is not intended to suggest a specific set of policies or procedures, as these should be customized for each firm and its areas of practice specialization. It is designed to help individual organizations and lawyers make informed decisions as they undertake this important process.

PRELIMINARY STEPS PRIOR TO DEVELOPING A RECORD RETENTION AND DESTRUCTION POLICY

Developing a RRD Policy takes time and effort. It requires coordination of people, processes and technology to minimize the risks and optimize the benefits of implementing a program for dealing with vast amounts of data and records, both paper and electronic. In larger firms the records management infrastructure could include a records custodian and designated lawyers responsible for oversight of the entire process. In smaller firms, there may be no dedicated infrastructure, but simply an investment of time dedicated to studying these issues and developing written policies and procedures.

Firms of all sizes – including solos – should aim to create a written policy that can be referred to by anyone else in the firm, by those responsible for the conduct of business in the event of a lawyer’s disability or death or other firm dissolution, and (at least in part) by clients. Committing the policy to writing facilitates compliance and self-auditing for all lawyers and employees.

Begin by identifying and classifying records to be covered by the policy. Before developing rules regarding the handling of records, it is important to define what constitutes a “record” and what does not. Not all information or data produced or used by lawyers is an actual record. While records need to be maintained by a lawyer or firm beyond the termination of a representation, non-records need not be.

Non-records v. records. Some information or data produced or used by lawyers does not rise to the level of a record at all. These “non-records” include routine administrative data or communications, transient memoranda or notes, and unused or insignificant drafts or copies having such limited and short-term value or usefulness that they need not be maintained. Appropriately classifying records and non-records according to their content and importance rather than by format alone is essential when developing the RRD Policy.¹ Non-records can be destroyed at any time, before or after termination of the engagement, unless subject to a discovery hold, discussed below. The most efficient approach is to encourage immediate disposal of non-records once they are no longer needed, to avoid cluttering the file with unnecessary data and to make file review upon closing a matter less time-consuming. At a minimum, as discussed below, non-records should be purged from the file before initial archiving.

Next, classify the records to be covered by the policy. Law practice records can be classified into two basic categories: **firm records** and **client records**. An effective RRD Policy should address both types to effectively manage all types of records.

¹ For example, consider the manner in which lawyers commonly use e-mail. Increasingly, lawyers transmit critical files and documents to colleagues, clients, or opposing counsel by attaching them to e-mails. While these e-mails often serve as mere “cover letters” for such transmissions, the documents transmitted can be critical client or firm records. Thus, it is not appropriate to classify all e-mails as non-records and all e-mail attachments as critical client records, nor should either the e-mails or attachments be classified based solely upon their format.

Firm records are the internal documents and data a lawyer or firm generates or uses to manage the law practice that are unrelated to any specific client or matter. They include items like the firm’s charter and by-laws, organizational or administrative directives and communications, general accounting and tax records, employee compensation and payroll records, and internal time-keeping records. They are essential to the firm’s management and on-going existence. While not typically shared outside of the firm, firm records can be important to the defense of a malpractice or disciplinary action.

Client records correspond to each engagement or representation undertaken by the lawyer or firm. They consist of documents generated by or exchanged between lawyer and client to facilitate the legal services being rendered and documents generated as a result of research or discovery performed on the client’s behalf. This category of records can be broken down further into two subcategories, **case matter records** and **work product records**:

Case matter records relate to the specific matter or engagement. These include records or documents received from the client for the attorney’s review and reference, or other client property delivered to the attorney in the course of the representation. Engagement letters and/or fee agreements for specific matters and records of communications between the lawyer and client relating to the engagement such as written and e-mail correspondence and billing records are also included. Examples of other **case matter records** include the end products of any legal advice or services provided by the attorney to the client during the engagement, such as communications and documents filed or made public in furtherance of the client’s interests, and any legal documents or instruments produced, such as fully-executed contracts, wills, deeds or other documents that have legal significance to the specific matter. They may also include summaries of research requested by the client, or the fruits of discovery generated as part of the representation.

Work product records are records and documents produced by the lawyer or firm relating to the client or engagement intended only for internal firm reference. Examples include the firm’s internal correspondence, drafts of documents created for review or use within the firm, and attorney notes reflecting the internal impressions of the client or the client’s matter. They also include the fruits of any general legal research or investigation not undertaken for a specific client.

A RRD Policy should include policies and procedures on treatment of both firm records and client records. Firm records are often retained longer than client records, usually because they have relevance to more than one matter or concern (examples include conflicts checking memos, which may be significant for matters relating to more than one client, or docketing system procedure manuals). Some firm records should be kept indefinitely, as in the case of a firm’s corporate charter or partnership agreement. Also, some states set mandatory retention periods for certain firm records and/or client records. For example, almost every state has established a specific retention period for records relating to law firm fee trust accounts or other records reflecting lawyers’ handling of client funds.²

Next, identify who will be responsible for development of the RRD Policy. Larger firms should begin the process by forming a committee that includes lawyers from each firm practice area, firm management, administration, information technology (IT), and competent legal counsel with experience in defending professional malpractice claims. Such expertise may come from inside or outside the firm, as available. Solos and small firms may need to consult with outside vendors regarding IT issues.³

² For a chart summarizing the specific retention periods set by various states, see **Appendix A**.

³ In recent years, the market has seen a sharp increase in the number of vendors specializing in records management and data storage for law firms. In general, these vendors tend to focus on the end of the record retention and destruction process – archival storage or disaster back-up and recovery. While both are important components of a **RRD Policy**, they are not the only aspects to address. Firms consulting with such vendors should ensure that the full range of records management issues is considered when developing a policy.

Next, audit current RRD procedures to gain an understanding of how files are currently handled. Sample both individual and group practices and procedures, whether formalized or not. This allows insight into the consistency or lack thereof in firm record handling and will raise good ideas for inclusion in the formal policy. Document the findings for later reference.

Then, identify and articulate any technological or financial constraints that may affect the planning process. Planners need to have an understanding of their financial and technological limitations to make prudent and practicable suggestions for a RRD Policy. Develop a preliminary budget that considers these limitations and specifies the parameters of acceptable and achievable technological change.

Once these preliminary steps are completed, it is time to develop and implement the various planks of the substantive policy. When the policy has been decided upon, the firm should commit it to writing and distribute it to all firm personnel. The policy also should be condensed into summary form and distributed to clients. (The client document should summarize only the firm's approach to the retention and destruction of case matter records, as the maintenance of firm records and work product records is an internal firm management policy that need not be disclosed to clients.)

DEVELOPING AND IMPLEMENTING THE RRD POLICY

The RRD Policy should provide step-by-step guidance on when and how to retain and destroy designated firm records and client records. It should include processes to test the effectiveness of these procedures to achieve desired goals and to measure implementation of and compliance with the procedures. It should address document review processes, backup and archival procedures, online storage repositories, the designation and responsibilities of record custodians, and the creation and maintenance of a destroyed documents log. The importance of effective and regular training about the RRD Policy should also be addressed. Firms should plan for formal training of all firm personnel prior to implementation, and this instruction should also be included in the training curriculum for every new employee.

While a RRD Policy for firm records is important and should be articulated, client records (including both case matter records and work product records) are handled more frequently by a broader range of law firm employees. The rest of this Guide is intended to provide a prototype method for developing that portion of the policy.

CASE MATTER/WORK PRODUCT RECORD RETENTION AND DESTRUCTION: STEP-BY-STEP

The first issue to address is where in the lifecycle of a matter the RRD Policy should be applied. When talking about client matter records generally, the short answer is **when the matter ends**. For the purpose of applying a RRD Policy, files relating to specific matters should be treated as closed files when the lawyer and firm have completed all services promised relating to that matter, whether for on-going clients or for single-matter clients. This helps delineate the beginning of any applicable limitations period for filing professional liability lawsuits regarding the particular matter.⁴ If the work was done for an on-going client and some of the data or documents may be needed for future reference in later matters, it should be specifically moved at the close of the matter from the case matter file to a firm-wide active knowledge management system where it can be accessed as necessary.

Once it has been established that the matter has ended, the step-by-step process should begin.

STEP 1. Gather relevant file materials from all personnel to create one “official” file.

Even in solo practices or firms with only a few attorneys, records may be scattered in several places and exist in several formats. Electronic data is regularly duplicated in the ordinary course of its creation and distribution. Copies may reside in central servers, home computers and desktop hard drives, back-up disks and e-mail folders. All legal assistants, secretaries and attorneys who worked on the matter will likely possess relevant material in either electronic or paper formats. An individual most familiar with the work done and the staffing of the matter (often a legal assistant or paralegal) should be designated to gather this material for review and preparation for retention or destruction. E-data should be catalogued and identified to facilitate retrieval in the later stages of the process.

The process should encompass both paper documents and records maintained electronically on other storage media. This includes, for example, microfilm, microfiche, electronic data on tape, computer hard drives and servers, personal digital assistants, and portable data storage devices such as flash drives, hard drives and disks. Electronic data includes, but is not limited to, e-mail and other electronic communications, word processing documents, spreadsheets, databases, calendars, telephone logs and voice mail, Internet and computer usage files, network access information, and all associated metadata.⁵

STEP 2. Prepare the retained file for archiving.

Although it is relatively easy to maintain large volumes of data electronically, there is no need to keep everything in the file when archiving at the close of a matter, nor is this prudent. Storing records is costly and time-consuming. Expenses include physical storage space and storage media costs, from filing cabinets and warehouse space to digital record storage devices. Additionally, storing all records increases the cost of researching and retrieving records when needed, and needlessly complicates responses to discovery requests for records, especially electronically stored information. In light of this, the RRD Policy should provide guidance for paring of files prior to long-term storage.

⁴ In some jurisdictions, the limitations period for filing suit based on attorney malpractice does not begin to run until the attorney-client relationship has concluded, at least with respect to the matter that is the subject of the suit. This approach is based on a public policy argument that clients should not be compelled to sue their attorneys while the attorneys are still obliged to act as their agents and fiduciaries. In such jurisdictions delineating the end of the representation through file closing at the conclusion of the matter can help avoid the unintended extension of the limitations period.

⁵ Metadata is vital information hidden within an electronic file about the file data. Some examples of metadata include the file's name, location, format, size and type, as well as information describing how, when, and by whom the file was created, accessed, and modified, and the dates and times of each modification. Each time a document is opened, even if it is being done only to save a copy, new metadata is created. Duplicates of existing electronic documents contain different metadata than the original document. Under discovery rules, such documents would likely be considered to be unique. In most circumstances this suggests that unless the RRD Policy requires duplicates of electronic files to be maintained in different locations for business reasons, duplicate files should be destroyed upon closing of a client matter file. For more information about metadata, see “Understanding Metadata,” at <https://w3.lawyersinsurance.com/lawyersinsurance/lawyersinsurance/html/rmanagement.html>

First, confirm that non-records have been removed from the file. This could include exact duplicates of records, copies of cases or other published material used for research or study purposes, junk mail, internal or personal notes, and extraneous or misfiled materials.

Next, remove any firm records from the file. As a matter of efficiency and good records management, firm records generated in connection with specific engagements should be stored centrally with other like firm records at the time they are created rather than being maintained in the active client matter file. Nevertheless, there may be some firm records stored in the file, including billing records, conflicts searches or memos, or trust account information. These should be removed and filed with other like records, keeping duplicates in the archived file or an index of what was removed. Research memos that are appropriate for deposit in the firm's central knowledge management archives can be removed to other storage and indexed, or duplicated and filed in both places. Create an index of memo topics and case names, noting the new location of research memos or other documents, and destroy "hard copies" of documents that are no longer needed or will be archived electronically.⁶

Remove and index reproducible records. To save on expenses and space, firms can create an index of materials that can be retrieved from libraries, on-line services or court files, rather than maintaining copies in the archived file. The cost savings should be balanced against the risk that these service providers may fail or lose the items, the ease of retrieval, and how long those places will likely keep the materials.

Lawyers and firms should retain in the archived file any evidence of communication with the client regarding the representation, including engagement letters, bills, update letters, transmittal letters and the like. Likewise, they should keep single copies of all final work product, including final contracts, judgments, briefs, settlement agreements, or other final original work created as part of the representation.⁷ These documents can be critical in resolving client disputes that could arise at a later date, in pursuing unpaid fees, and in defending attorney malpractice claims.

Whether or not to save drafts of final contracts is subject to debate: Some commentators recommend it because the drafts provide insight into the thought process of the client and the lawyer, which can be helpful in resolving disputes between the parties to the contract or between lawyer and client. This suggests that the RRD Policy could include a requirement to archive drafts of negotiated documents. However, there is little to support an argument to retain drafts of litigation documents. If capacity allows, it is acceptable to keep litigation drafts, but it is unlikely they will be needed in connection with the closed matter in the future. Drafts of settlement agreements that show the course of negotiation, however, arguably ought to be treated like drafts of contracts, and the RRD Policy should address the applicable retention period.

Responsibility for preparing files for long-term storage can be delegated to paralegals or other non-lawyer staff if the RRD Policy is clear and straightforward, but the lawyers that handled each matter should remain responsible for oversight of the process. The RRD Policy should instruct the closing attorney to consider during his or her review whether the file contains information that should be added to the firm's conflicts database, such as names of adverse witnesses, expert witnesses, additional adverse parties, shareholders, or insurers that were not added during the course of the representation.

STEP 3. Identify materials originating from the client and any other materials to which the client is entitled.

Clients are generally entitled to files and records – often even work product records – that related to the client or to the attorney's representation of the client. This includes original documents or objects delivered to the attorney by the client for use in pursuing the matter. This also includes working copies that the attorney may have made of the original material.

⁶ For a sample index of items removed from archived files, see **Appendix B**.

⁷ In determining whether a document is unique as opposed to an exact copy of another, the RRD Policy should address metadata and how it is to be handled and managed by the organization.

Records belonging to the client must be given to the client upon request unless jurisdictional rules provide for an applicable exception. But the question of which records belong to the client and which belong to the lawyer is not always easy to answer. In many cases, the determination of what constitutes the client's file is a mixed question of law and ethics that can vary significantly depending upon the state or jurisdiction of practice. Therefore, it is important for lawyers developing a RRD Policy to consult the controlling law and ethics rules in their jurisdiction of practice and any jurisdictions in which out-of-state clients reside or are domiciled.

STEP 4. Prepare and send a file disposition letter to the client offering return of client-provided originals and other portions of the file the client has a right to receive.

Firms can decide whether they want to offer to store client-generated originals or other records for the client. Considerations affecting this decision would include an assessment of the risks and responsibilities associated with the activity, including the responsibility for safeguarding the records from disaster; protecting client confidentiality or other tangible rights such as trade secrets from inadvertent disclosure, theft or destruction; and the potential responsibility of helping the client comply with their own document retention rules or those imposed by government regulation or law. No matter what approach the firm takes, there is much to suggest that the firm should not offer such a service for free.

If the client requests return of the materials, or the firm requires their return as part of its RRD Policy, firms should be sure to turn over only such material and records to which the client is entitled, taking the time to go through the files before delivery and avoid gratuitously delivering non-records or firm records to the client. Index all returned materials and keep a copy of everything to the extent allowed. Most jurisdictions have adopted the rule that the lawyer or firm may retain copies of the client's records, if they do so at their own expense. While not all states specify whether permission must be obtained from the client, it is always a good idea to advise the client of the firm's intent to retain a copy of the file (and to seek permission before retaining working copies or making new copies of original client material, especially sensitive or protected information).

The RRD Policy ought to call for sending a letter or e-mail to the client offering to return these materials and requiring their written response and instructions. The letter should provide details on the length of time the firm will retain its copy of the file for the matter. Firms that hold files on behalf of clients should obtain contact information to enable notice of the pending final destruction of the files at the designated time, and should inform them in the closing letter that it is the client's responsibility to notify the firm of any subsequent changes in this information and that there will be no further notice provided prior to destruction of the material at the scheduled date.⁸

STEP 5. Determine storage location and format.

Firms should develop general policies regarding where and in what format archived files will be maintained. Paper records can be converted to electronic formats through use of digital scanners, allowing these records to be stored electronically. This saves space and allows for integration of the electronic and paper portions of a client file. Prior to doing so, investigate the costs to convert, store and retrieve the records. This will require an investment of time to identify and evaluate both available scanning technologies and electronic storage and retrieval products and services. Available products include standalone scanners, computer software designed to help lawyers manage the storage, retrieval and destruction of electronic documents on existing computers, servers, backup storage devices and systems that include both software and hardware to scan, store, retrieve and destroy documents.

⁸ See **Appendix F** for sample language.

Storage methods for firm records and archived client records can differ based on firm needs. For example, records that may be needed for firm reference or to demonstrate regulatory compliance should be kept in easily accessible locations and formats. Other records can be relegated to storage or maintenance at an off-site facility. But, whatever the location and format chosen for the archived files, firms must retain control of the records to the extent necessary to ensure their safety, security, confidentiality and overall integrity. Firms should adopt reasonable procedures and controls to maintain the confidentiality of client information contained in both paper and electronic documents. Maintaining control is also important to help:

- prevent unauthorized access or alteration after a record is stored,
- preserve the history of each document (*i.e.*, when and by whom it was created, changed or reviewed),
- protect the integrity of the information contained within, and
- restrict access to the records to authorized parties.

Off-site storage of both paper and duplicate electronic records must be considered to allow records to be quickly recovered and to prevent client service disruptions in the event of disasters such as fires, floods, hurricanes, or computer hacking attacks. In evaluating off-site storage methods and service providers, in addition to availability and cost firms will need to consider factors such as physical and technological protection of data stored on servers, computers, or other media storage devices; dependability and accessibility of the facility and/or device; and protection against loss due to theft, fire or water damage.

Another issue not to be overlooked is the need to retain legacy hardware and software – or conversion of records to updated technology – in response to technological upgrades or advances that will occur during document storage periods that could threaten to render the existing records obsolete. Fortunately for lawyers and law firms, a growing number of vendors have entered the market in the last few years specializing in providing off-site document storage, retrieval and destruction services based on client need and instructions. While the initial investment to establish an electronic document management system to archive and retrieve electronic copies of files can be substantial depending on the technology used, over time storing records electronically is generally easier and less expensive than maintaining paper records, and can make record retrieval easier as well if good file naming and filing conventions are instituted.

STEP 6. Designate the initial retention period.

The RRD Policy should establish set periods for the initial retention of various identified classes of records. Establish separate retention schedules for firm records and client matter records, as these records are separated early in the retention process and the information they contain is of varying importance to the firm. The policy should require final approval by an attorney responsible for the client matter prior to record destruction at the conclusion of the retention period. Retention schedules should allow necessary flexibility and exercise of discretion within clearly defined retention periods. While attorneys need to have the ability to retain records pertaining to a specific client matter longer than the designated initial retention period, this should occur on an exception basis only. The RRD Policy should include guidance on acceptable reasons for exceptions and require that documentation be attached to the records explaining the reason for the exception and identifying the retention period to be applied.

The policy should require that an attorney responsible for the client matter examine the archived file using several factors (described below) before any records can be destroyed. In no event should records be destroyed automatically at the end of the initial retention period.

How long should records be kept?

Choosing to keep everything forever is neither practical nor appropriate. When setting retention schedules, consider ethical and legal recordkeeping requirements, the need for records to defend professional liability claims, and the financial, technological and human resources and skills that exist within the law firm. Also consider that some records may have historical value to the firm or be useful in assisting future clients. In setting retention periods, lawyers need to be realistic about the time and costs associated with implementing and maintaining multiple record retention periods. In most cases the costs of reviewing a closed client matter file several times due to the existence of differing retention periods for various types of records far outweigh the costs associated with retaining some records longer than actually needed.

Generally speaking, records should be kept long enough to preserve evidence in the event it is needed in defense of a professional liability claim. The initial retention period therefore should be long enough to cover most professional liability limitations periods, including statutes of repose, in the states the law firm practices in. While it is impossible to predict with certainty the applicable limitations period for each and every client matter handled by the firm, a good rule of thumb for an initial retention period for most files is 10 years, since that span exceeds the statutes of limitations and repose applicable to most professional liability claims in most states.

Nevertheless, as significant differences exist among law firms with respect to both the nature of their practice and the jurisdictions they practice in, each firm must analyze this issue and decide for itself an appropriate initial retention period, taking into account such factors as the jurisdictions in which they practice and their clients live, and the specific practice areas the matters address. For example, for some matters and clients, it makes sense to set longer initial retention periods. For estate planning matters, for instance, the policy might call for an initial retention period that takes into account the expected lifespan of the client (based upon the then-current CSO Standard Ordinary Mortality table approved by the NAIC, for instance), as limitations periods for such representations will likely not begin to run until after the client's death. Likewise, for matters involving minor clients, initial retention periods should be set relative to the minor's 18th birthday.⁹

Other Factors:

Rules and regulations. Every state has rules and regulations directing the retention of certain law practice records. In most states, these rules apply almost exclusively to firm records, such as financial information, trust account records, and other records relating to financial transactions between client and attorney. Other regulations apply to records such as articles of firm incorporation, partnership or limited liability agreements, employee records, and tax records. A handful of states also have instituted rules or regulations directing retention of specific client matter records.¹⁰

The RRD Policy should include an overriding record retention schedule identifying initial retention periods as required by law or regulation. To prepare this schedule, the firm should first survey its staff to determine which jurisdictions must be included in the schedule. The schedule should include reference to relevant statutes or regulations to allow the file reviewer to consider how they apply to both firm and client records. It should note that the reviewer must consider where the relevant services were rendered, who rendered the services, and state licensing rules in determining which state's rules should be applied. This may be a function of the office location, the client's location, the lawyer's license location, or a combination of all three. Note that the safest approach if more than one jurisdiction is involved is to pick the longest applicable retention period.

Negotiated changes. Retention periods also may be set by contract with the client. If the firm has agreed to retain files on the client's behalf, the retention period should be based on the parameters of that agreement.

⁹ For sample policies listing suggested initial retention periods for records arising out of a variety of specific areas of practice, see **Appendices C & D**.

¹⁰ See **Appendix A**, *ibid*.

Indefinite storage. Some records should be retained indefinitely, separate from archived closed matter files. These include firm records related to firm management; record destruction logs (described below); and client communications about records retention, management and destruction, including those concerning the RMP and RRD Policy. Documents to be saved for future reference can be stored in an active knowledge archive available to all staff. Copies of these documents can also be archived with the client matter file and destroyed at the designated time in accordance with the guidelines contained in the RRD Policy.

The attorney responsible for archiving the file should choose an initial retention period based upon these guidelines. His or her reasoning should be documented and kept with the file. **The period chosen should be noted and entered into a tickler system** to allow for file review prior to final destruction, as described in Step 7 below.¹¹

STEP 7. Review file at end of initial retention period for continued retention or final destruction.

An initial retention period should allow lawyers to continue to safely and consistently retain records without the need for constant review or re-assessment during their period in archive. At the end of the initial retention period, however, all archived records must be reviewed and their status re-examined before any records can be safely approved for destruction. The purpose of re-examining records at the end of the initial retention period is to create an added safeguard against the inadvertent, or even unlawful, destruction of critical or relevant records. Having such a safeguard in place could mean the difference between compliance and potentially harmful sanctions or penalties. The review of records at this stage should be conducted by the lawyer originally responsible for the matter or, if that is not possible, by another attorney. During this review, the designated reviewer should confirm that the records are accurately marked for destruction and that there is no overriding reason to suspend the destruction process at that time.

The most common basis for suspending the process is the existence of a litigation hold. A litigation hold may be necessary due to a dispute between the client and another party about the underlying matter, or an actual or potential malpractice claim against the lawyer or firm. In such circumstances, the firm should follow established procedures to preserve the records according to applicable jurisdictional rules. In most cases, the litigation hold will require that the *status quo* of the records subject to the hold be maintained and undisturbed. Because the failure to initiate, enforce or comply with the terms of a litigation hold can result in the destruction of records that could have continued importance to the firm or to third parties, it is critical for lawyers to be able to suspend their retention or destruction schedules when necessary to avoid disturbing or destroying such records. Having a procedure in place for suspending or modifying regular record retention or destruction processes pursuant to a litigation hold or some other order or request is critical. It will allow lawyers to avoid allegations of spoliation and the severe consequences that could follow, and avail themselves of the safe harbor provisions under amendments to the Federal Rules of Civil Procedure.¹²

Suspension of the destruction process may also be called for when an applicable limitations or repose period has been tolled for some reason. This may happen by agreement or because of the status of a client or party in the underlying representation. The period also might be extended if during a portion of the period or at the time of file review the client was temporarily incapacitated, for example by illness or serving overseas in the military. Continued file retention also may be appropriate due to attorney departures, firm merger or firm reorganization. If the archived files are relevant to new matters for the same client, continued retention may also be desirable.

¹¹ The RRD policy should include a requirement that the scheduled review and destruction dates be entered into the firm's central calendaring system. This is essential to ensure that the archived files are reviewed, tracked, and destroyed according to the policy at the appropriate time. Whether a firm uses electronic or paper ticklers, dual calendaring is important to ensure consistent implementation of the policy and procedures. The attorney responsible for the file can enter review dates into his or her personal calendar, but the firm should also maintain a master calendar which includes those dates for each archived file. While the original of this master calendar can be maintained in a central location in the firm office, up-to-date copies of the calendar also should be maintained in a secure location off-site. These calendars, which are firm records, should be maintained permanently to serve as evidence of the implementation and maintenance of the RRD Policy.

Whenever purchasing new or upgrading existing electronic calendaring software, evaluate its effectiveness for this purpose specifically, conferring with the software developer directly if needed. Consult with an IT professional regarding the best method to ensure that file review and destruction dates are backed up and protected in the event of system failure and how installation of new systems might affect existing data.

¹² See FRCP 37(f), effective December 1, 2006. For a summary of amendments to the rules relating to discovery of electronic data, see the CNA article located at: <https://www.lawyersinsurance.com/lawyersinsurance/lawyersinsurance/html/rmanagement.html>.

The RRD Policy should provide guidance to the file reviewer about proceeding with destruction while allowing for reasoned discretion on continuing to maintain the file. If records must be retained due to a special circumstance, the reason and approval for this exception should be documented in the archived file. The scheduled date for subsequent file review should be noted in the file and recorded in the firm's calendaring system. The policy should include a set schedule (e.g., every two years) to re-evaluate the need for continued retention of files beyond the initial retention period specified in the RRD Policy. Additionally, the policy should designate a time limit for performing the file review prior to the scheduled time for destruction.

STEP 8. If necessary, contact the client before undertaking permanent destruction of files.

Contacting the client before permanent destruction of the file is not necessary if prior to or at the conclusion of the representation the client was informed of the destruction schedule and given an opportunity to receive copies of case matter records in the file. However, if the file has been maintained at their request, send them a notice of the impending destruction at their last known address and provide a reasonable time for response (e.g., 60 days) before proceeding with final destruction.

STEP 9. Create a destruction log in anticipation of final destruction.

Before any records are destroyed, a written file destruction log should be prepared, and it should be retained as a permanent record of the firm. Include the client name, a brief description of the content of files destroyed, the person who authorized destruction, the date of destruction, and, if an outside vendor was used, the vendor that performed the service.¹³ The description of file materials destroyed should be sufficiently detailed to be easily understandable to any reviewer.¹⁴ While a staff person can prepare the index, an attorney should be required to sign off prior to document destruction, preferably the original responsible attorney.

STEP 10. Destroy the records completely.

An essential part of any RRD Policy is the steps to be followed by the firm in carrying out the final destruction of records at the indicated time. The methods used to destroy records should be specified in the RRD Policy. Methods for all record types (e.g., paper, electronic files, microfiche, CDs and other data storage devices) should be described. The firm has an obligation to maintain client confidentiality, and destruction methods should reflect that obligation. Paper files should be shredded or incinerated. Data storage devices specific to a file such as tapes, CDs and floppy disks should be physically destroyed rather than overwritten with other data to ensure that the data is irretrievable. Destruction of electronic files requires careful attention, and will likely require the use of special software to ensure that files are permanently erased. In destroying electronic files, it is important to identify and eliminate all duplicate files, which may exist on network servers, personal computers and data storage devices such as tapes, hard drives, flash drives and personal digital assistants.¹⁵

Commercial software is available that is designed to overwrite selected computer data files and e-mails to render them unrecoverable even through the use of forensic methods. These products are generally marketed over the Internet. Investigate the background, experience and reputation of the software developer and obtain information on how the software works before obtaining it. Test the software on different types of files before using it to comply with the RRD Policy.

¹³ If an outside vendor is used, investigate their security methods for transporting and destroying documents. If they have their own system for recording the destruction of documents, obtain a written explanation of it and ask to see a sample.

¹⁴ For an example of a File Destruction Log, see **Appendix D**.

¹⁵ Extra caution must be exercised whenever computer hardware is being retired from service, as confidential client data is stored on these devices. Never sell, contribute or dispose of computers, personal digital assistants or cell phones, including those that have been damaged or dismantled, without first consulting with an IT specialist with expertise in ensuring that all data stored on the devices has been overwritten and rendered unreadable. There have been numerous media reports of confidential client data being accessed by subsequent users when businesses have lost or disposed of computer hardware without first considering this issue. By the same token, if storage media is being retired or discarded, these items must be physically destroyed or processed to render all data irretrievable.

ADDITIONAL CONSIDERATIONS IN INTRODUCING A NEW RRD POLICY

Implementation, Monitoring and Enforcement

Once a RRD Policy is prepared, the next step is putting the policy in place. Generally, the firm administrator is responsible for carrying out the policy under the direction of firm management. For sole practitioners and smaller firms, this responsibility will rest with the lawyers themselves.

An effective plan for implementation, monitoring and enforcement will address training, client communication, periodic review of the policy and procedures, and incentives for compliance, including:

- Preparation of written introductory materials for lawyers, professional and administrative staff, summarizing key elements of the RRD Policy and how it will apply to their day to day practice. These materials should be distributed in advance of the initial training session.
- Preparation of RRD Policy reference materials to be used in day to day practice by lawyers and staff. These materials should be distributed in the initial training session. Due to the significant differences in the record handling responsibilities of lawyers and staff, consider drafting separate reference materials for each audience.
- An initial live training session for both lawyers and staff. While this can be conducted by telephone or via the Internet if necessary, live training is essential to effective implementation. Provide each audience with examples on how to apply the policy in practice and encourage questions. Distribute the RRD Policy reference materials and review them during the meeting. Remember that this is typically a significant change in firm policy, and implementing the policy in practice will be complex in some circumstances, even for experienced lawyers.
- Follow-up training sessions. Consider scheduling additional training sessions each quarter during the initial year of implementation.

Effective implementation requires that the RRD Policy be understood and supported by all concerned. This includes all lawyers, professional staff and administrative staff who have access to client records. At a minimum, the written policy should be distributed to staff with an explanatory memo and questions should be solicited. Firm management should indicate its expectation that everyone will support and cooperate with those charged with implementing the policy. It is important for all firm principals or partners to set an appropriate example by complying with the policy themselves.

As part of its quality control program, a firm should establish steps to monitor compliance with its approved RRD Policy. If the policy is not applied consistently and records are destroyed too soon or not at all, the firm will be hard-pressed to defend its actions if the records later become the subject of a malpractice claim or professional inquiry. Monitoring will be most effective if it is incorporated into an annual internal inspection process. Consider creating a checklist to be used as part of a formal process to select and inspect files for compliance with the policy. Enforcement of the policy should be reinforced by including monitoring results in annual performance evaluations. Recognition and incentive programs can also be helpful in ensuring that the policy is applied consistently across the firm.

Client Communication

In addition to addressing the process for record retention and destruction, the RRD Policy should include guidance about how and when to communicate with clients regarding the various stages of file retention and destruction, and any training should specifically emphasize these procedures.

A first step in communicating with clients is to create a written communication that can be provided to all clients explaining the general parameters of the firm's policy on record retention and destruction. This can be done in the form of an e-mail, as part of a firm newsletter, or as part of another client communication explaining activities of the firm. This is intended to be a general communication alerting clients to the existence of the new policy, and should not be used to explain how the policy will be used in application.

Additionally, consider drafting a document summarizing the manner in which the firm classifies records and the firm's policy regarding the types of records the firm will retain and the length of time they are generally maintained. This document should clearly explain the clients' responsibility to retain their own records, but should be drafted broadly enough to provide lawyers with the flexibility to make their own decisions about the distinctions between case matter records and work product records as it pertains to a specific client matter. Consider posting this policy in firm offices and distributing it to clients at the initiation of the client relationship or the beginning of a particular engagement, and again at the time the matter is closed. This provides clients with an opportunity to exercise their rights regarding the files relating to their representation, while protecting the firm by preserving written evidence that the policy was communicated to the client who was then provided with an opportunity to respond.¹⁶

Dealing with Past Records

Principals of firms that have never had a RRD Policy often are concerned about how to deal with existing records that have accumulated over an extended period. While reviewing old files for retention and destruction in accordance with the new policy is the preferred method, this may not always be practical due to the volume of existing records.

The simplest method for dealing with this problem is to select an implementation date for the new policy and to draft a letter to current and former clients that both informs them of the details of the policy and provides them with a grace period to contact the firm and request copies of records that qualify for destruction under the policy. Such a letter evidences that each client was furnished a copy of the policy as of a specific date, was informed of the implementation date of the policy, and was given the opportunity to request copies of records prior to the implementation date and destruction of old records.¹⁷

The duty to communicate the new policy to clients requires the firm to identify and keep records that should be retained under the new policy, and to plan for the destruction of all other records after expiration of the grace period for clients to request copies. If this approach is used, the firm should maintain a spreadsheet listing the name and address (e-mail or regular mail are equally acceptable) of each party to whom the letter is sent, and both the spreadsheet and a copy of the letter should be retained permanently as evidence that this communication was completed. This approach should only be followed after appropriate consultation with legal counsel.

For firms with a large volume of records, completing this review can be a significant undertaking. However, rather than allowing lawyers and staff to complete this on their own schedules, the firm should instead consider the length of time needed to complete the task across the entire firm. In some cases this may take several months to complete without interfering with ongoing work. Set a schedule to complete the task and provide instructions on how to best accomplish this. This schedule should be for internal use only. Clients should be provided with a single common implementation date and grace period to contact the firm. A monitoring process is recommended to ensure compliance with the procedure.

¹⁶ For sample engagement letter language advising clients of a RRD Policy, *see* **Appendix E**.

¹⁷ For an example of language to use for this type of letter, *see* **Appendix F**.

Conclusion

Handling law firm records is a significant and important aspect of firm practice management. While implementing and managing a record retention and destruction policy can be a daunting task for firms that have handled records on an ad hoc basis, the policy will provide long-term benefits in the form of reduced storage costs, improvement in the ease of researching existing records and retrieving research previously performed within the firm, responding to and resolving client questions and disputes, and producing records when required in litigation or civil, criminal, regulatory or licensing investigations.

This guide is the first in an ongoing series of CNA publications for law firms providing guidance on drafting procedures to incorporate into an overall **Records Management Plan**. As the state of the law with respect to the obligations of lawyers in handling client records varies by state and federal jurisdiction and is constantly evolving, lawyers should regularly consult with local rules, regulations and resources for current guidance in this area.

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APPENDIX A

SELECTED JURISDICTIONAL RETENTION RULES AND REGULATIONS PREPARED: JUNE 2007

The information contained herein was believed to be accurate at the time it was written. Laws change frequently and must be checked for updates.

State	Regulated Retention Period	Summary of Rule or Records Category	Rule or Regulation Cite
AL	6 yrs after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for six (6) years after termination of the representation.	ARPC Rule 1.15(a)
AK	6 yrs after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for six (6) years after termination of the representation.	AK Rules of Court, RPC 1.15(a)
AR	5 yrs after termination of representation	Complete records of trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the termination of the representation or the last contact with a prospective client.	Rules of Prof.Conduct, Rule 1.15(3)
AZ	5 yrs after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	17A A.R.S. Sup.Ct.Rules, Rule 42, Rules of Prof. Conduct, ER 1.15(a)
CA	No less than 5 yrs after final appropriate distribution of funds or properties	Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them; preserve such records for a period of no less than five years after final appropriate distribution of such funds or properties; and comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar.	Prof.Conduct, Rule 4-100(3)
CO	7 yrs after termination of representation	Complete records of such account funds and other property shall be kept by the attorney and shall be preserved for a period of seven years after termination of the representation.	Rules of Prof. Cond., Rule 1.15(a)
CT	7 years after final distribution of such funds or any portion thereof	Each lawyer or law firm maintaining one or more trust accounts as defined in Section 2-28 (b) shall keep records of the maintenance and disposition of all funds of clients or of third persons held by the lawyer or firm in a fiduciary capacity from the time of receipt to the time of final distribution.	CT R. Super. Ct. Gen. Sec. 2-27(b)
DC	5 years after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	DC RPC Rule 1.15(a)
DE	5 yrs after completion of the events they record	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the completion of the events that they record.	Rules of Prof.Conduct, Rule 1.15(a)

State	Regulated Retention Period	Summary of Rule or Records Category	Rule or Regulation Cite
FL	6 yrs subsequent to the final conclusion of each representation in which the funds or property were received	A lawyer or law firm that receives and disburses client or third party funds or property shall maintain the records required by this chapter for 6 years subsequent to the final conclusion of each representation in which the trust funds or property were received.	Bar Rule 5-1.2(d)
GA	6 yrs after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.	State Bar Rules and Regulations, Rule 4-102, RPC Rule 1.15(l)(a)
HI	At least 6 yrs after completion of the employment to which they relate	Maintain complete computerized or manual records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and promptly render appropriate accounts to the client or third person regarding them. The books and records shall be preserved for at least six years after completion of the employment to which they relate.	HI ST S CT EX A RPC Rule 1.15 (3)
IA Entry 1	6 years after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.	I.C.A. Rule 32:1.15(a)
IA Entry 2	6 years after completion of the employment to which they relate	A lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the lawyer's possession and regularly account to the client for them. Books and records relating to funds or property of clients shall be preserved for at least six years after completion of the employment to which they relate.	I.C.A. Rule 45.2(2)
ID	5 yrs after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	Rules of Prof.Conduct, RULE 1.15(a)
IL Entry 1	Not less than 7 years	All financial records related to the attorney's practice, for a period of not less than seven years, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns and tax reports.	ILCS S. Ct. Rule 769(2)
IL Entry 2	7 yrs after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.	ILCS S Ct Rules of Prof. Conduct 1.15(a)
IN	5 yrs after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	Rules of Prof.Conduct, Rule 1.15(a)
KS	5 years after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	RPC 1.15(a)
KY	5 years after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	KY ST S CT RULE 3.130 RPC Rule 1.15 (a)

State	Regulated Retention Period	Summary of Rule or Records Category	Rule or Regulation Cite
LA	5 years after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	Rules of Prof. Conduct, Rule 1.15(a), LSA-R.S. foll. 37:222
MA	6 years after termination of the representation and after distribution of the property held	Every lawyer who is engaged in the practice of law in this Commonwealth and who holds trust property in connection with a representation shall maintain complete records of the receipt, maintenance, and disposition of that trust property, including all records required by this subsection. Records shall be preserved for a period of six years after termination of the representation and after distribution of the property. Records may be maintained by computer subject to the requirements of subparagraph 1G of this paragraph (f) or they may be prepared manually.	MA R S CT RULE 3:07 Rule 1.15(f)
MD	5 yrs after termination of representation	Complete records of such account funds and of other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	MD Rules, Rule 16-812, MRPC 1.15(a)
ME Entry 1	At least 8 years or as agreed in writing or by virtue of life span of document	Upon termination of representation, a lawyer, or a lawyer's successor, shall return to the client or retain and safeguard in a retrievable format all information and data in the lawyer's possession to which the client is entitled. Unless information and data is returned to the client or as otherwise ordered by a court, the lawyer shall retain and safeguard such information and data for a minimum of eight (8) years, except for client records in the lawyer's possession that have intrinsic value in the particular version, such as original signed documents, which must be retained and safeguarded until such time as they are out of date and no longer of consequence. A lawyer may enter into a voluntary written agreement with the client for a different period. In retaining and disposing of files, a lawyer shall employ means consistent with all other duties under these rules, including the duty to preserve confidential client information.	Code of Prof. Responsibility Rule 3.4(4)
ME Entry 2	6 years after final distribution of subject of records	Complete records of the handling, maintenance and disposition of all funds, securities and other properties of a client at any time in the attorney's possession, from the time of receipt to the time of final distribution.	Bar Rule 7.3(n)
MI	5 yrs after termination of representation	Preserve complete records of such account funds and other property for a period of five years after termination of the representation.	MRPC 1.15(2)

State	Regulated Retention Period	Summary of Rule or Records Category	Rule or Regulation Cite
MN	6 years after completion of the employment to which they relate	Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis books and records sufficient to demonstrate income derived from, and expenses related to, the lawyer's private practice of law, and to establish compliance with paragraphs (a) through (f). Equivalent books and records demonstrating the same information in an easily accessible manner and in substantially the same detail are acceptable. The books and records shall be preserved for at least six years following the end of the taxable year to which they relate or, as to books and records relating to funds or property of clients or third persons, for at least six years after completion of the employment to which they relate.	52 M.S.A., Rules of Prof. Conduct, Rule 1.15(h)
MO Entry 1	5 years after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	Supreme Court Rules of Prof. Conduct Rule 4-1.15(a)
MO Entry 2	10 years unless litigation hold requires longer	<p>A lawyer shall securely store a client's file for 10 years after completion or termination of the representation absent other arrangements between the lawyer and client. If the client does not request the file within 10 years after completion or termination of the representation, the file shall be deemed abandoned by the client and may be destroyed.</p> <p>A lawyer shall not destroy a file pursuant to Rule 4-1.15(h) if the lawyer knows or reasonably should know that:</p> <p>(1) A legal malpractice claim is pending related to the representation; (2) A criminal or other governmental investigation is pending related to the representation; (3) A complaint is pending under Rule 5 related to the representation; or (4) Other litigation is pending related to the representation. Items in the file with intrinsic value shall never be destroyed.</p> <p>A lawyer destroying a file pursuant to Rule 4-1.15(h) shall securely store items of intrinsic value or deliver such items to the state unclaimed property agency. The file shall be destroyed in a manner that preserves client confidentiality.</p>	Supreme Court Rules of Prof. Conduct Rule 4-1.15(h)
MS	7 years after termination of representation	Complete records of such trust account funds and other property shall be kept and preserved by the lawyer for a period of seven years after termination of the representation.	Rules of Prof. Conduct, Rule 1.15(a)
MT	5 yrs after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	Rules of Professional Conduct 1.15(a)

State	Regulated Retention Period	Summary of Rule or Records Category	Rule or Regulation Cite
NH	6 yrs after final distribution of funds or property or any portion thereof	Records shall be maintained by the lawyer of the handling, maintenance and disposition of all funds and other property of the client at any time in the lawyer's possession from the time of receipt to the time of final distribution and shall be preserved for a period of six years after final distribution of such funds or other property or any portion thereof.	NH ST RPC Rule 1.15(2)
NJ	Maintain in current status for 7 years after event they record	Records re: firm monetary accounts; firm trust accounts; copies of all retainer and compensation agreements; statements showing disbursements to clients or on their behalf; bills rendered to clients; records showing payments to other attorneys, investigators or other persons not in their regular employ; checks; portions of case files reasonably necessary for a complete understanding of the financial transactions related thereto.	Rules of Court, Rules of General Application 1:21-6(c)(1)
NM	5 yrs after termination of the rep of the client in the matter or the termination of the fiduciary or trust relationship	Complete records of such account funds and other property shall be kept by the lawyer in a manner that conforms to the requirements of Rule 17-204 of the Rules Governing Discipline and shall be preserved for a period of five (5) years after termination of the representation of the client in the matter or the termination of the fiduciary or trust relationship.	NMRA, Rule 16-115A
NV	7 yrs after termination of the representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.	Rules of Prof. Conduct, Rule 1.15(a)
NY	7 years after the events which they record	Including records re: activity in practice-related bank accounts or special accounts (like escrow accounts); Copies of all retainer and compensation agreements with clients; Copies of all statements to clients or other persons showing the disbursement of funds to them or on their behalf; Copies of all bills rendered to clients; Copies of all records showing payments to lawyers, investigators or other persons, not in the lawyer's regular employ, for services rendered or performed; Copies of all retainer and closing statements filed with the Office of Court Administration; All checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicated deposit slips with respect to the special accounts specified in DR 9-102(B) and any other bank account which records the operations of the lawyer's practice of law. For purposes of DR 9-102 [1200.46] (D), a lawyer may satisfy the requirements of maintaining "copies" by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, and any other medium that preserves an image of the document that cannot be altered without detection. See statute for further details of specific requirements.	Code of Prof. Resp., DR 9-102, (22 NYCRR § 1200.46) McK.Consol.Laws, Book 29 App.

State	Regulated Retention Period	Summary of Rule or Records Category	Rule or Regulation Cite
NC	At least 6 years from the last transaction to which they pertain	Trust account records and other financial records. Rules 1.15-1 and 1.15-3 supply definitions and parameters of "minimum records."	State Bar Rules, Ch. 2, Rule 1.15-3(b)
ND	At least 6 years after termination of the representation	Records sufficient to demonstrate compliance with the provisions of this Rule. See RPC 1.19 for definition of client files and property included.	RPC 1.15(h)
OH	7 years after termination of the representation or disbursement, whichever comes first	Records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation or the appropriate disbursement of such funds or property, whichever comes first. For other property, the lawyer shall maintain a record that identifies the property, the date received, the person on whose behalf the property was held, and the date of distribution.	Rule of Prof. Conduct 1.15(a)
OK	5 yrs after termination of the representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	Title 5, Ch. 1, App. 3-A, RPC 1.15(a)
OR	5 yrs after termination of the representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	Rules of Prof. Conduct, Rule 1.15-1(a)
PA	Later of 5 years after termination of the client-lawyer relationship or after distribution of property	Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.	Rules of Prof. Conduct, Rule 1.15(a), 42 Pa.C.S.A.
RI	7 years after termination of the representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven (7) years after termination of the representation as provided under Rule 1.16.	Sup.Ct.Rules, Art. V, Rules of Prof.Conduct, Rule 1.15(a)
SC	6 yrs after termination of representation	A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.	Rule 407, SCACR, Rules of Prof.Conduct, Rule 1.15(a)
SD	5 yrs after termination of the representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	SDCL Rules of Professional Conduct, Appendix, Ch. 16-18 Rule 1.15(a)
TN	No specified time period	Complete records of account funds and other property.	Sup. Ct. Rule 8, RPC 1.15
TX	5 years after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	V.T.C.A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9, Rule 1.14(a)

State	Regulated Retention Period	Summary of Rule or Records Category	Rule or Regulation Cite
UT	5 years after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	Rules of Prof.Conduct, Rule 1.15(a)
VA	At least 5 years after termination of the representation	The records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.	Rules of Prof.Conduct Rule 1.15(e)(1)(v)
VT	6 years after termination of the representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.	Vermont Rules of Professional Conduct, Rule 1.15(a)
WA Entry 1	7 yrs after the return of the property	A lawyer must identify, label and appropriately safeguard any property of clients or third persons other than funds. The lawyer must keep records of such property that identify the property, the client or third person, the date of receipt and the location of safekeeping. The lawyer must preserve the records for seven years after return of the property.	RPC 1.15A(c)(2)
WA Entry 2	7 yrs after the events they record.	Copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them, including bills, fee agreements and others as listed.	RPC 1.15B(a)
WI	At least 6 years	Records pertaining to client funds or assets.	W.S.A. 757.293
WV	5 yrs after termination of representation	Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	Rule of Professional Conduct 1.15(a)
WY	5 years after termination of representation	Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property. Complete records of such accounting shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.	WY ST RPC Rule 1.15(e)

APPENDIX B

SAMPLE INDEX OF ITEMS REMOVED IN PREPARATION FOR ARCHIVING

Client/Matter Name and Number: ABC Corp./ Elmhurst Litigation, ABC 876123

Billing Attorney/Handling Attorney: MJV/MCE

File/Matter Closing Date: 2/12/07

Description of Data/Document/Record Removed	Disposition and Date	New/Other Location (If applicable) (Include file name if applicable)	Initials
Photocopy of 125 SE2d 43	Destroyed 3/31/07	n/a	EJE
Photocopy of 254 SE2d 357	Destroyed 3/31/07	n/a	EJE
Lexis printout of Smith v. Jones, 125 SE2d 57	Destroyed 3/31/07	n/a	EJE
Conflicts run print out	Destroyed 3/31/07	E-version in central conflicts archive	EJE
Working copy of original architectural drawings	Destroyed 4/5/07	original returned to client	MJV
Maps of central Elm City	Destroyed 4/5/07	available from county	MJV
Copies of billing letters	refiled 4/5/07	central accounting records	JFW

APPENDIX C

SAMPLE RETENTION SCHEDULE FOR SELECTED UNIQUE ADMINISTRATIVE RECORDS CREATED BY LAWYERS

Note: This is a sample only. It should not be considered a “model” retention schedule, as the retention periods given may not be appropriate in all jurisdictions or for all legal environments.

Records Series No.	Description	Office Retention	Off-site Retention	Total	Comments
001	Audit letters	2 Y	3 Y	5 Y	One copy to client; one copy maintained in client/matter file
002	Bar exam/bar review reimbursements	2 Y	—	2 Y	Includes request for reimbursement, exam results and approvals; may be part of the personnel file
003	Billing files	5 Y	5 Y	10 Y	Documentation as to how much was billed for each matter; includes write-downs and write-offs
004	Chronologic files	1 Y	4 Y	5 Y	One copy of every piece of correspondence generated by a timekeeper, in date order
005	Committee minutes	5 Y	I	I	May have historic value
006	Conflicts reports	2 M	25 Y	25 Y 2 M	Firm property; not released to client
007	Confidentiality statements	1 Y	4 Y	5 Y	Signed statements by firm personnel
008	Desk diaries	3 Y	5 Y	8 Y	Print or electronic format
009	Disbursement records	5 Y	5 Y	10 Y	Photocopy, telephone, facsimile, postage, and other similar client charges
010	Docket – daily	1 W	—	1 W	Replaced by weekly docket

APPENDIX C CONTINUED

Records Series No.	Description	Office Retention	Off-site Retention	Total	Comments
011	Docket – weekly	1 M	—	1 M	Replaced by monthly docket
012	Docket – monthly	12 M	—	12 M	Shows all court dates for the past year; may be electronic
013	Ethical wall memos	50 Y	—	50 Y	Identifies screened/restricted individuals
014	Fee reports	3 Y	—	3 Y	Used for planning and budgeting purposes
015	File access records	25 Y	—	25 Y	Records of individuals requesting review of restricted/screened files
016	File destruction records	100 Y + R	—	100 Y + R	Documentation on records destroyed; includes authorizations/approvals
017	File release records	100 Y + R	—	100 Y + R	Authorization letters from clients and reviewing lawyers, transmittals, signed receipts
018	File storage indices	100 Y + R	—	100 Y + R	May be in print or electronic format
019	Malpractice insurance agreement	C	Expiration + 10 Y	Expiration + 10 Y	Agreement with malpractice insurance carrier
020	Malpractice insurance information	C	—	C	General policy information from various carriers
021	Opinion files	2 Y	3 Y	5 Y	One copy to client; one copy maintained in client/matter file
022	Partnership agreements	C	—	C	Partners should maintain until 10 years after firm dissolution

Records Series No.	Description	Office Retention	Off-site Retention	Total	Comments
023	Publications – internal	1 Y	I	I	2 copies of all firm publications stored by RM department; includes internal memos, general announcements, etc.; all other copies can be destroyed after 1Y
024	Publications – external	2 Y	I	I	2 copies of all external publications retained by marketing department; other copies can be destroyed after 1Y
025	Summer associate work product	2 Y	—	2 Y	Originals and copies of work product generated by summer associates
026	Timesheets – manual input	6 M	—	6 M	Filled out by timekeepers and used by secretaries to input time into billing system
027	Unbilled time reports	5 Y	—	5 Y	Reports showing time not billed by timekeepers
028	Word processing diskettes	5 Y	—	5 Y	Maintained by client/ matter number

Retention Schedule Codes

- | | |
|-----------------------|-----------------------|
| A = Active | M = Month/Monthly |
| AR = Annual review | MC = Matter Close |
| AT = After tax review | P = Permanent |
| AU = Audit | Q = Quarter/Quarterly |
| C = Current | R = Review |
| CY = Current year | S = Semi-annually |
| D = Daily | T = Terminated |
| FD = Firm dissolution | W = Week/Weekly |
| I = Indefinite | Y = Year/Yearly |

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APPENDIX D

SAMPLE CLIENT FILE RETENTION SCHEDULE BY AREA OF LAW

Note: This is a sample only. It should not be considered a “model” retention schedule, as the retention periods given may not be appropriate in all jurisdictions or for all legal environments.

Area of Law	Retention Period	Comments
Antitrust – litigation and counseling	MC + 10 Y	
Banking and commercial finance	MC + 10 Y	For long-term debt agreements, MC + 10 Y after expiration
Bankruptcy	MC + 7 Y	
Collections	MC + 5 Y	
Commercial	MC + 10 Y	
Commodities	MC + 10 Y	
Communications	MC + 5 Y	
Contract actions	MC + 7 Y	
Corporate	Off-site + 10 Y	Review annually matters that remain open and send files not referenced in the past year off-site; use the “sent off-site” date as the retention period trigger
Criminal	MC + AR	Review annually; may be destroyed 10 Y after release from incarceration
Employee benefits	MC + 10 Y	
Estate planning and administration	MC + 100 Y	
Family law – adoption	MC + 75 Y	
Family law – dissolution	MC + 25 Y	If alimony involved, 5 Y after youngest child reaches majority
Family law – prenuptial	MC + 75 Y	
Food and drug	MC + 25 Y	
Government regulations and legislation	MC + 10 Y	
Health care	MC + 10 Y	
IP – patents	MC + 25 Y	
IP – trademarks	MC + review every 10 Y	10 Y renewal period; can last indefinitely
IP – copyright	MC + 10 Y	

APPENDIX D CONTINUED

Area of Law	Retention Period	Comments
Joint ventures	MC + 10 Y	
Labor	MC + 20 Y	Includes arbitration, mediation, employment disputes, etc.
Litigation – general	MC + 10 Y	
Litigation – environmental	MC + 10 Y	
Litigation – Supreme Court and appellate courts	MC + 10 Y	May be historically significant
Merger and acquisition	MC + 10 Y	
Municipal	MC + 10 Y	
Nonbillable	MC + 10 Y	
Nonchargeable	MC + 5 Y	
Personal injury	MC + 15 Y	
Products liability	MC + 25 Y	
Real estate	MC + 5 Y	
Regulatory	MC + 10 Y	
Securities	MC + 10 Y	
Tax	MC + 10 Y	Retain estate tax returns 75 Y
Transportation	MC + 10 Y	
Utilities	MC + 10 Y	

Retention Schedule Codes

A = Active	M = Month/Monthly
AR = Annual review	MC = Matter Close
AT = After tax review	P = Permanent
AU = Audit	Q = Quarter/Quarterly
C = Current	R = Review
CY = Current year	S = Semi-annually
D = Daily	T = Terminated
FD = Firm dissolution	W = Week/Weekly
I = Indefinite	Y = Year/Yearly

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APPENDIX E

SAMPLE DESTRUCTION LOG

(This log should be retained permanently as a Firm Record)

Client Name	Case/Matter # Title and Description	Initial File Storage Date	Destruction Review Date	Litigation Hold Cleared?	Client Contacted As Necessary? (Detail)	Initials of Attorney Authorizing Final Destruction	File Destruction Completed (initials of certifier)
Jane Q. Adams	12345 Adams v. Strange Probate Action	1/6/1990	2/10/2000	Y	Y (file copy delivered 1/5/1990; file destruction log delivered 1/10/2000)	EJE	2/17/2000 PDQ
Smithson, Inc.	79860 XYT Corp. Supply Contract	11/7/1995	8/7/2006	Y (3rd party claim settled 6/2006)	Y (during 3rd party claim)	MJV	9/7/2006 JFW

APPENDIX F

SAMPLE NOTICE TO CLIENT OF FIRM RECORD RETENTION & DESTRUCTION POLICY

At all times, all records and documents in our possession relating to your representation (including but not limited to those that exist in paper and electronic formats) are subject to the firm's Record Retention and Destruction Policy. Strict compliance with this policy is necessary to fulfill the firm's legal and ethical duties and obligations, and to ensure that information and data relating to you and the legal services we provide are maintained in strict confidence at all times during and after the engagement. The firm's Record Retention and Destruction Policy is contained in the firm's policies and procedures regarding the handling of all records. All client matter files are subject to these policies and procedures.

At your request, at any time during the representation you may access or receive copies of any records or documents in our possession relating to the legal services being provided to you, excluding certain firm business or accounting records. We reserve the right, however, to retain originals or copies of any such records or documents as needed during the course of the representation.

Upon completion of your legal matter, no further work will be performed on your behalf and your file will be closed. At that time, all original records or documents you provided to us will be returned to you. You will be notified of the remaining contents of your file and given an opportunity to identify any such items relating to the representation you would like to have sent to you or someone else designated by you. You will have 45 days from the date of our notification letter to you to advise us of any items you would like to receive. All items will be shipped via overnight or messenger service, and you will be billed for this expense. We reserve the right to retain copies of any such items as necessary for our use. Should you elect to have the firm maintain records or documents on your behalf beyond the close of the representation, you will be charged for storage costs and administration expenses. Of course, any non-public information, records or documents retained by the firm and its employees will be kept confidential in accordance with applicable rules of professional responsibility. Any items not requested within 45 days will become subject to final disposition by the firm at its discretion.

All remaining file records and documents will become subject to the terms of the firm's Record Retention and Destruction Policy. A summary of that policy is attached. Pursuant to the terms of this policy, all unnecessary or extraneous items, records or documents will be removed from the file and destroyed. The remainder of the file will be prepared for and placed in storage. It will be retained in accordance with the guidance contained in the Policy, after which it will be completely destroyed. This includes all records and documents, regardless of format.

While we will apply our best efforts to maintain confidentiality and security over all file records and documents placed in storage, please be advised that our firm specifically disclaims any responsibility for claimed damages or liability arising from damage or destruction to such records and documents, whether caused by accident, natural disasters such as flood, fire, or wind damage, terrorist attacks, or the negligence of third-party providers engaged by our firm to store and retrieve records, to the extent allowed by law.

APPENDIX G

SAMPLE LETTER COVERING REVISED RECORD RETENTION AND DESTRUCTION POLICY AND CLOSED FILES

ABC Law Firm
123 Any Street
Anytown, USA

June 1, 200X

XYZ Client
456 Any Street
Anytown, USA
Re: Revised Record Retention Policy

Dear _____:

Our firm recently revised our existing record retention and destruction policy covering files, records and data related to all engagements, including past representations. I have enclosed a summary of this policy for your information. This policy became effective on June 1, 200X and applies to all current pending client matters as well as all future matters.

Additionally, on July 1, 200x, we will begin reviewing closed files for destruction in accordance with our revised policy. Those files that are older than the retention period specified in the revised policy will be destroyed on or after September 1, 200x. This will result in the destruction of our files for most matters that closed on or before May 31, 199Y.

As you know, for some time it has been our policy to return all of your original records to you at the conclusion of each engagement. You are responsible for maintaining these records for your business or personal needs.

If you would like to obtain copies of file records from closed matters, please provide our office with a letter or e-mail no later than August 1, 200x, listing the specific records you would like researched and copied. We will bill you at our regular hourly rates to research and retrieve these records, as well as for all expenses incurred in connection with such requests. If we do not hear from you by that date, we will begin the destruction of all records contained in closed files per the policy as indicated in the summary.

Sincerely,