

THE LAW FIRM GUIDE TO

Document Retention

Best Practices for Client File Retention,
Management, and Destruction



WASHINGTON STATE
BAR ASSOCIATION



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Best Practices for Client File Retention, Management, and Destruction

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1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

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Introduction

FOR MOST LEGAL PROFESSIONALS working in a law firm environment, creating, revising, receiving, and producing documents is a major part of the workday.

This resource covers the common issues and risks for law firms when it comes to document retention. The goal of this guide is to help you develop a strategy for managing and retaining documents related to the client file, so that you are (1) compliant with your professional responsibilities, and (2) are aware of general best practices for legal service delivery. A sound document-retention strategy is a best practice—or may even be a business necessity—to effectively offer services in today’s legal marketplace.

Often legal practitioners will wait to evaluate their file management strategies until they go through a significant transition phase (selling a practice, retirement, etc.). Ideally, this guide will help you create policies and procedures in advance to avoid those hang-ups later. But even if you’re in the middle of a transition now and need information about dealing with your client files, this guide is a great place to start.

Learning Objectives

This resource will cover the following topics:

- Your professional obligations for document retention.
- The scope of the client file and property of the client.
- Suggested best practices for document retention.

Is This Guide for Me?



WHAT IT INVOLVES:

Document retention is the process you have in place to organize, store, and (securely) destroy files in your practice. It can include client files, trust account documents, records about property that you safeguard, and business records.

This guide focuses specifically on client files.



WHAT COULD GO WRONG:

If you do not have a system in place for document retention, you might waste time and money to store documents that you no longer need. You may also destroy files prematurely, which could make you vulnerable if you are defending disciplinary action or malpractice claims.



YOU'RE VULNERABLE IF:

- Your engagement agreement does not give clients notice of your document retention policy or the charges for copies of client records.
- You do not return the client's file at the conclusion of representation.
- You do not store or destroy files securely.
- You do not have a file closure process.



WHAT YOU CAN DO:

- Design a document retention policy and notify your clients in writing.
- Provide the client file to the client when requested.
- Create reliable backups of your information.
- Maintain an index of all client files and dates they are destroyed.

The Scope of the Client File

THIS GUIDE IS FOCUSED ON THE CLIENT FILE—the documents, correspondence, and other papers that are created, sent, received, or produced in the course of the client matter—and the lifecycle of those records. The client file includes documents and files in hard copy form, but also electronic copies and files that are in native electronic formats (such as Excel spreadsheets). The client file also includes notes, document drafts and revisions, and email communication.

This guide does not necessarily take into account other records that you should retain as part of your business operations. That includes trust account records, tax-related documents, business receipts, accounts payable, etc. You may want to seek the advice of an accounting professional for guidance with those records. ■

Who Owns the Client File?

AT THE CONCLUSION of representation, the client file that you generated in the course of representation has to be provided to the client upon the client's request¹ unless there is an express agreement to the contrary or confidentiality obligation that supersedes a client's demand.

You do not need to provide the following:

- Document drafts.
- Duplicate copies.
- Research material.
- Lawyer's personal notes containing subjective impressions.²

Note that your practice area may be subject to other rules that put a limitation on your client's access to their file. For example, Washington State Criminal Rule 4.7 may limit what materials a criminal defense attorney provides to their client. You should refer to the relevant rules or regulations for your practice area and seek legal advice if you are unclear. You should also refer to [WSBA Advisory Opinion 2211](#). ■

¹ For more information, see [WSBA Advisory Opinion 181](#); [RPC 1.5 \(LLLT RPC 1.5\)](#); and [RPC 1.16\(d\) \(LLLT RPC 1.16\(d\)\)](#). See also WASHINGTON STATE BAR ASSOCIATION, *What Files and Information Do I Give to my Former Client?* <https://www.wsba.org/for-legal-professionals/ethics/ethics-faqs#give> (Dec. 4, 2018).

² See [WSBA Advisory Opinion 181](#).

Your Professional Obligations for Document Retention

UNDER THE WASHINGTON SUPREME COURT'S Rules of Professional Conduct (RPC), WSBA members must retain trust account records and related documents for at least seven (7) years after the events they record. Records can be retained in either electronic or hardcopy form. For this rule, and the types of trust account records that must be retained, see [RPC 1.15B\(a\)](#) (or, for LLLTs, [LLLT RPC 1.15B\(a\)](#)).

The preservation obligation under RPC 1.15B goes beyond the dissolution or sale of a practice—meaning that you are required under RPC 1.15B(b) to make appropriate arrangements for the maintenance of records specified in RPC 1.15B(a) even after a practice transition.³

In addition, under [RPC 1.15A\(c\)\(3\)](#) (or, for LLLTs, [LLLT RPC 1.15A\(c\)\(3\)](#)) you have an obligation to keep records of any property you hold other than funds. The record must identify the property, who it is held for (either a client or a third party), the date you received it, and the location where you are safeguarding it. You must retain these records for seven (7) years from the date you returned the property to its owner.

These are the only explicit requirements for file retention that WSBA members have under the RPC. As far as the RPC are concerned, you are free to choose a document retention policy for other records based on whatever timeline makes sense for your practice. However, you are still responsible for ensuring that all aspects of your document retention policies (transmission, storage, and destruction) are reasonably configured to protect client confidentiality.⁴ ■

³ For example, if you had a trust account record covering the period of January 2019, you are required to make arrangements to retain that record until February 1, 2026 even if you close your practice in 2022.

⁴ For more information, see [RPC 1.6, Confidentiality of Information](#) (for LLLTs, [LLT RPC 1.6](#)).

Timelines for Document Retention

AS DISCUSSED ABOVE, the only specific timeline under the RPC that you are obligated under is with respect to trust account and property records: you are required to retain those records for at least seven (7) years.

For other records, you may retain and destroy records at your discretion. The document retention timeline that you choose for your practice should take into account (1) any responsibilities you have under the law (including court orders); (2) preservation for a defense of claims against you; and (3) special considerations for the nature of your practice and future business opportunities.

First, while the RPC include limited restrictions for document retention, you may be subject to other document retention responsibilities under local, state, and federal law.⁵

Second, any document retention timeline that you settle on should take into account the statute of limitations for legal malpractice or other potential actions. You want to make sure that you are adequately prepared to defend yourself in the case of a claim against you. You should also consider that there is no statute of limitations for anyone filing a grievance against you or the initiation of a disciplinary proceeding against you,⁶ so you can be subject to responding to a grievance and providing documentation long after a client matter has concluded.

⁵ For example, see RCW 19.215.

⁶ See rule 1.4 of the Rules for Enforcement of Lawyer Conduct (https://www.courts.wa.gov/court_rules/?fa=court_rules_display&group=ga&set=ELC&ruleid=gaelc0101.04).

Finally, you may want to consider the statute of limitations or any other deadlines that your client is subject to for their legal issue, so that you retain the client file sufficient to cover future needs of the client. For example, if you assist a client in obtaining a marital dissolution with children, you may want to retain the file until the children at least turn 18 in case you are contacted for future assistance with parenting or support adjustments.

For a suggested timeline for retaining client files, visit www.wsba.org/guides. Keep in mind that no retention guideline can address all situations—you need to evaluate each client matter on an individual basis to consider all of the circumstances and any future needs for materials within the file. ■

Best Practices for Client File Retention

THE **RPC LEAVE ROOM** for you to design a retention policy that works best for your practice and your clients. To help you manage client relationships effectively and reduce the burden on your practice, consider the following recommendations.

Have a Written Document Retention Policy

A document retention system involves policy creation (planning, description, documentation, administration, and the necessary training of all employees about the records management system) as well as implementation (capturing, organizing, indexing, retention, storage, retrieval, and destruction of the records in a client's file).

Your written retention policy should incorporate all of the various tasks associated with creating, managing, and closing a client file. You should have a written policy for staff as well as clients. For example, you might have an employment agreement or employee handbook that prescribes the practices and policy for internal use, as well as an engagement agreement that sets forth the retention policy as far as the client is concerned.

In designing and implementing a document retention policy, you need to consider the following:

- The nature of your work and any variance amongst different practice areas in your portfolio.
- The type of documents typically generated as a result of representation.
- The style and preferences of your clients.

For a checklist of possible considerations for your retention policy, visit www.wsba.org/guides.

Return Originals ASAP

Sometimes in the course of a case, you need to receive an original document from a client. When possible, a best practice is to scan the document and/or create a working copy for your file and return the original to the client immediately. When that is not possible, preserve the original and return it to the client no later than the conclusion of the case.

For original legal documents that are created in the course of the legal representation (such as a will, prenuptial agreement, etc.) the best practice is to provide the original to the client and retain a copy. Clients may ask you to store an original on their behalf once the matter is concluded, but with the passage of time you can end up stuck with important documents for a former client whom you cannot find.

Inform the Client of Your Policy and Remind Them Again

Your client should be aware of your document retention policy, including the process for requesting a copy of their file. At the very least, a best practice is to advise the client at the conclusion of representation. However, if you include a retention policy provision in your engagement agreement as well, it will provide better context for the client from the beginning and you will have peace of mind from the client's written acknowledgement.

For example agreement provision, visit www.wsba.org/guides. From a client service perspective, a good provision will include:

- The timeline for document retention (storage and destruction).
- The process for a client to request a copy of their file before that timeline concludes.
- A reminder to the client that your policy is not to keep originals after the conclusion of representation.

At the conclusion of representation, you should (1) return any originals to the client, (2) provide copies of important documents, and (3) remind the client of your document retention policy and the process for requesting a copy of their file.

You may also want to consider providing a copy of the client file proactively (not waiting for the client to request it) as a courtesy to the client so they do not have to find you and follow up later. You can easily provide the client file by creating an electronic copy of the file and copying it to a drive or sending it securely via an encrypted document-sharing application. You should provide a copy of the file as a whole even if the client received some documents already as the matter progressed. Having a complete set of everything will be more helpful to the client going forward.

Whatever method you choose, make sure that it allows the client to have access to their copy after your practice closes or in the event something unexpected happens to you. If you use a document sharing service online, make sure you understand the terms of service and the impact on sharing if you close your account. If your account closing affects your client's access, make sure clients are advised to immediately download copies for their records and that prolonged access online is subject to the terms of the service provider.

Note that even if the client requests their file, you should still retain your own copy of the file for the duration of your firm's file retention period.

Use Adequate Cybersecurity Practices

The following is a brief summary of the considerations for managing documents securely in an electronic environment. For a complete summary of cybersecurity resources available from the WSBA (including personal consultations), visit www.wsba.org/pma.

- 1. Encrypt and Backup:** Encrypt your hard drive and use an encrypted, cloud-based service for document backup. For cloud-based document storage, you should be using a service that offers encryption "in transit" and "at rest."
- 2. Access Protocols:** Restrict employees from downloading or saving client files outside of the firm's prescribed storage environment. Employees should not save files to their desktop, and they should not download firm documents or email to their personal devices (including mobile phones) without prior approval.
- 3. Two-Factor:** Implement two-factor authentication for all firm accounts (banking, web-based applications, etc.) and employee devices.

4. Better Passwords: Set password protocols for all staff which includes (1) passwords of at least 12 characters (ideally more);⁷ (2) no repetition across accounts (unique passwords for each account/device; and (3) new passwords for all accounts every three months. Any phone with access to email or other firm information should be password-protected and capable of remote wipe. For highly-sensitive documents (medical records, tax, etc.) consider applying a password restriction on the file itself to limit unauthorized access.

5. Resist Phishing: Do not accept electronic files that you are not expecting (even if they come from a known recipient). Do not open a link you receive by email without **inspecting it**, first.

Some Things You Should Keep Forever

Even after a particular file has reached the end of the document retention period, there are still some things you need to retain after the client file is securely destroyed.

You should maintain an index of the status of all client files, noting the date originals are returned to a client and the date a client file is destroyed. For a spreadsheet to help you track files as they are closed, visit www.wsba.org/guides.

You should also retain any records of providing a copy of the file to the client (for example, email correspondence, written acknowledgements from the client). ■

⁷ To see how long it takes to crack your password, check out [this interactive tool from Better Buys](#).

TL;DR⁸

THE RPC REQUIRE you maintain records about trust accounts and property that you safeguard for at least seven (7) years. Otherwise, your document retention policy is up to you (and any applicable laws). As a best practice, you should inform clients about your document retention policy, and you should not keep originals after the conclusion of a case. Documents should be stored and destroyed securely to protect confidential information. ■

⁸ A shorthand notation summarizing the content of the materials.

Additional Resources

Frequently Asked Questions

- ▶ *I'm leaving my firm and going to a new practice. Can I take client files with me?*

Generally, a client enters into an engagement agreement with the law firm—not a specific attorney. Even if an attorney is the primary person on the case, and even if he or she is the reason the client retained the firm, ultimately the client is the firm's. A client can choose to leave the firm and retain you, but they must do so in writing and they must authorize the firm to provide the client file to you in your new practice.⁹

- ▶ *If the client requests a copy of their file, do I have to cover the cost of printing?*

If a client requests their file, it is likely to be more convenient for the client if you actually provide an electronic copy of the file, unless the client requests otherwise. You can accomplish this by burning files to a compact disk, or sending the file securely via an encrypted cloud file-sharing service.

If the client prefers hard copies, you are responsible for the cost of producing the copies unless it was otherwise specified initially in the engagement agreement. For more information about the cost of producing the client file, see [WSBA Advisory Opinion 181](#).

Note that even if the client requests their file, you should still retain your own copy of the file for the duration of your retention period.

- ▶ *What if I am contacted by an attorney that now represents my client? Should I send the attorney the client file?*

You should not provide the client's file without obtaining the client's express consent.

⁹ For more discussion on this, see [WSBA Advisory Opinion 201801](#).

► *Do I have to keep hard copies when I close a client file?*

No. You should not destroy any originals (they should be returned to the client by the conclusion of representation) but as long as you have an electronic copy of the client file, it is not necessary for you to store hard copies that are duplicative. Digital copies are just as effective for retention purposes.

Destroying hard copies securely can be a cost-effective way to implement a document retention policy without incurring long-term storage costs. Electronic storage is significantly less expensive and is also more readily-accessible.

► *If a client requests their file, do I have to give them my notes, drafts, and other work product?*

Attorney-client work product is a distinct issue for litigation and discovery, and is not relevant to what kinds of documents you have a duty to provide your client at the conclusion of representation.

With that said, you are not expected to provide:

- Drafts of legal papers
- Duplicate copies
- Copies of research material
- Your personal notes containing subjective impressions

► *What if I retained an original will and can no longer find my client to return it?*

Unfortunately, this is a common occurrence for estate-planning attorneys that have practiced for many years. As discussed throughout this guide, it is always preferable to return the original to the client at the conclusion of representation. However, when that did not happen, and many years have passed, it may not be possible to contact your former client to return her or his original will.

In that case, RCW 11.12.265 allows for filing of original wills in any Washington court having jurisdiction¹⁰. A will repository is not a probate process—since there is no court action being initiated to administer property under the will—so it’s really just safe storage for original wills. Once filed, the original wills are not publicly-accessible records, but a person with a valid interest and a death certificate can get a court order to unseal the will.

¹⁰ See <https://apps.leg.wa.gov/RCW/default.aspx?cite=11.12.265>

WSBA Member Resources

For more information and assistance from the WSBA on document retention, consider these resources available to WSBA-licensed legal professionals:

- **Free Lending Library:** Borrow from a selection of 400 books. You can register immediately online and start placing holds. Titles will be shipped to you automatically. Visit www.wsba.org/library to get started.
- **Free Consultations:** You can speak with WSBA staff in the Practice Management Assistance Program for personalized advice regarding your law firm business management. Visit www.wsba.org/consult to get started.
- **Free Ethics Help:** You can speak to WSBA staff regarding questions of ethical obligations or your professional responsibility. The phone number is (800) 945-9722.
- **Discounts on Software and Services:** Through the Practice Management Discount Network, WSBA members receive discounts on a menu of software and services to help you improve your practice and client service delivery. Visit www.wsba.org/discounts to learn more.

For other WSBA resources and member benefits, visit www.wsba.org/MemberSupport.

External Resources

AMERICAN ASSOCIATION OF LAW LIBRARIANS, *Records Retention in the Private Legal Environment: Annotated Bibliography and Program Implementation Tools*, 93 Law Lib. J. 7 (2007) (available at https://www.aallnet.org/llj_article/records-retention-in-the-private-legal-environment-annotated-bibliography-and-program-implementation-tools/)

AMERICAN BAR ASSOCIATION, *The Incredibly Compelling Case to Rethink Records Retention in 2018 and Beyond* (Feb. 23, 2016) (https://www.americanbar.org/groups/business_law/publications/blt/2018/02/records/)

ALPS, *Sample Closing Letters* (<https://www.alpsinsurance.com/resources/sample-forms-and-checklists>).

ALPS, *Checklist for File Closing* (<https://www.alpsinsurance.com/resources/sample-forms-and-checklists>)

Hanna Terhaar, *File Retention: A Malpractice Insurance Company's Perspective*, MINNESOTA LAWYERS MUTUAL INSURANCE COMPANY (May 2015) (<https://www.mlmins.com/Library/File%20Retention%20Booklet.pdf>) ■

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