

# **SAMPLE LAW OFFICE FILE RETENTION/DESTRUCTION POLICY**

## **General Caution to Attorneys**

This *Sample Law Office File Retention/Destruction Policy* is intended only for general informational purposes. No one formation of policy can cover all situations for all law firms, and there is no intent that this sample policy represents such an effort.

This sample policy represents minimum standards. It is not intended to usurp the lawyer's responsibility for maintaining a complete and thorough record of the representation nor is it intended substitute for the judgment of the lawyer. However, retention policies less stringent than these guidelines are generally considered unacceptable and should be pursued with caution.

The lawyers or law firms must evaluate the legal and ethical rules of its jurisdiction as well as the practicalities of its own and its client's situations. The lawyers or firms must use their own professional judgment as to the final formation of any such file retention/destruction policy.

## **Definitions**

***Retention Period:*** The period of time following the closing of the matter (active to inactive status) until its final disposition.

***Disposition:*** The final action taken during the life cycle of the record within this office including:

1. Destruction;
2. Transfer to vital record status;
3. Transfer to the client;

4. Transfer to third-party (such as another lawyer or law firm);
5. Permanent retention.

**Vital Record:** Any record that must receive the highest level of protection because of its necessity to protect the interests of the lawyer or the firm and essential to the resumption of business. These records must be secured in a destruction proof environment such as a fire proof safe or vault.

### **Retention Guidelines**

- 1) **File Closing:** A client file shall be reviewed by the lawyer before being closed and prepared for storage. Closing of a file should be in accordance with a prescribed written policy which should consider the following factors:
  - a) No file shall be closed and scheduled for destruction under a retention schedule until all matters relating to the resolution of all matters relating to the representation as follows:
    - i) **All Matters:** Discharge by client or withdrawal from representation by firm.
    - ii) **Litigation:** Satisfaction of judgment. Final dismissal of action because of settlement or exhaustion or abandonment, with client consent, of all appellate options.
    - iii) **Bankruptcy claims and filings:** Discharge or debtor payment of claim or discharge of trustee or receiver.
    - iv) **Dissolution of marriage:** Final judgment or dismissal of action, or date upon which marital settlement agreement is no longer effective, except when minor child custody is involved in which event the date of the last minor child's reaching majority.
    - v) **Probate claims and estate administration:** Acceptance of final accounting.
    - vi) **Tort claims:** Final judgment or dismissal of action except when minor involved, in which event the date of such minor reaching majority.

- vii) **Real estate transactions:** Settlement date, judgment or foreclosure, or other completion of matter.
- viii) **Leases.** Termination of lease.
- b) A file cannot be closed until all outstanding fees are paid or discharged.
- c) A file cannot be closed until there is a final distribution and accounting of all trust account balances relating to the file.
- d) A file cannot be closed until the responsible attorney examines the file to identify all client property and that client property has been returned to the client or is stored as a vital record, if necessary. Included in this category are such personal documents as tax records, expense records, bank records, deeds, corporate documents etc.
- e) At the discretion of the lawyer, the file can be culled of unnecessary material:
  - i) Legal memoranda, briefs, pleadings, and other documents that can be reproduced from other sources.
  - ii) Drafts of documents otherwise preserved in final form unless the process of creating the final document might later be an issue. Marked-up copies are often useful in the event questions later arise
  - iii) Notes and memoranda recording nonpublic information regarding a client or its adversary can be destroyed.
  - iv) Copies of published opinions and other available published material.
  - v) Duplicate documents.
  - vi) Depositions may be culled particularly if electronic transcriptions are available.
  - vii) Extraneous material such as scratch pads, legal pads, and paper clips.

- 2) All files shall be maintained in storage for a minimum of ten (10) years beyond the closing date of the file.
  - a) Closed files will be stored:
    - i) On-site for the first two (2) years after closing.
    - ii) Off-site after the first two (2) years after closing.
  - b) Storage facilities:
    - i) Must be physically secure to protect client confidences.
    - ii) Must be reasonably safe from environmental factors such as wetness.
  - c) Off-site storage is [Name & Address of storage facility]

### **Destruction Guidelines**

- 1) After a minimum of ten (10) years files may be reviewed by an attorney for possible destruction..
- 2) No file may be destroyed until it has been reviewed individually by an attorney and found suitable for destruction.
  - a) Any client property found in the file must be returned to the client
  - b) The attorney shall exercise professional judgment in determining whether a particular file is suitable for destruction erring on the side of retaining the file if there is any reason why the file may be needed in the future. Those reasons include, but are not limited to:
    - i) The statute of limitation for malpractice claims has been tolled or has not yet run.
    - ii) The underlying case involved a minor who has not yet reached the age of majority.
    - iii) The file involved a troublesome client or outcome.
    - iv) The file involved an area of law or cause of action where either for substantive reasons or client relations reasons, information in the file may be

needed in the future. These include, but are not limited to:

- (1) **Unsatisfied Judgments:** File must be retained until judgment is satisfied or can no longer be renewed allowing time for the malpractice statute of limitation to pass after judgment can no longer be renewed.
- (2) **Minor children:** Files involving minor children must be retained until the youngest child involved becomes of age plus additional time for the statute of limitations to run
- (3) **Divorce files:** Should be permanently retained when alimony or spousal maintenance is involved. When minor children are involved, the file must be retained at least until the youngest minor child involved reaches the age of majority, allowing additional time for the statute of limitations to run.
- (4) **Structured settlements:** Should be retained until that settlement is final.
- (5) **Collection** files should be retained until paid or if judgment is outstanding, see guidelines for "Unsatisfied Judgments."
- (6) **Chapter 11 Bankruptcy:** Files should be retained permanently.
- (7) **Criminal cases:** Files involving incarceration should be retained for the length of the incarceration.
- (8) **Estate planning:** Files should be retained permanently, including: wills and trusts; pension and profit sharing plans; and tax files; all of which should be treated as vital documents.
- (9) **Certain documents** need to be retained permanently if not returned to the client:
  - (a) recorded deeds;
  - (b) accountants' audit reports;
  - (c) tax returns (including all related documents and worksheets);
  - (d) year end financial statements and depreciation schedules;
  - (e) accounting journals;
  - (f) bills of sale (for important purchases)

- (g) minute books, bylaws, and certificates of incorporation;
- (h) capital stock and bond records dealing with capital structure;
- (i) insurance policies and records;
- (j) property records and property appraisals;
- (k) copyright and trademark registrations;
- (l) patents and all related documents and correspondence;
- (m) major contracts and leases;
- (n) actuarial reports.

3) Before any file is destroyed, the client is to be informed of the pending destruction and given opportunity to object and personally retain the file:

- a) A letter will be sent to the client stating that:
  - i) The firm is happy to have been of service to the client in the past.
  - ii) The length of time the file has been held.
  - iii) In accordance with firm policy, files held longer than ten (10) years will be destroyed.
  - iv) The client may obtain the file if desired.
  - v) The file is schedule for destruction 90-days after the date the letter is mailed.
  - vi) If the firm has not heard back from the client, the firm will assume that the client has no objections to destruction of the file.
  - vii) If the client has any further legal issues, the firm would be happy to be of further service.
- b) The letter need only be sent by first-class mail.
- c) Disposition of files by response to letter:
  - i) If letter returns undelivered – retain file permanently.
  - ii) If client consents for there is no response within 90-days, - file may be destroyed.
  - iii) If client desires the file.
    - (1) A copy of file should be made and retained.

- (2) The original file must be sent to the client.
- 4) The responsible lawyer must affirmatively give final approval for destruction of a client file or related documents. The lawyer should sign an appropriate destruction authorization form that should be retained as a permanent record.
  - 5) A permanent list or database of destroyed files must be kept.
  - 6) Destruction must be accomplished in a manner that preserves client confidences. These would include shredding, pulping, or any other method that destroys media beyond reconstruction in an environmentally sound manner. The person or service performing the destruction should certify, on the authorization form, the date, location, and method used and do so under a formal non-disclosure agreement binding the company and its employees.