

FILE RETENTION AND DESTRUCTION GUIDELINES

General Recommendation

The PLF generally recommends that lawyers store client files for at least 10 years from the date you cease work on a client's matter. This practice helps ensure that the file is available for defense against a legal malpractice claim. Legal malpractice claims are subject to a statute of ultimate repose that bars claims not filed "within 10 years of the act or omission complained of." ORS 12.115(1).

Reasons to Store Files Longer than 10 Years

There may be reasons to store client files for longer than 10 years. Some of these reasons include:

1. Case Type

The types of cases you handle may provide reasons to store the file for more than 10 years, particularly if the case involves:

- Adoption;
- Contracts or agreements requiring payments for more than 10 years;
- Estate planning for clients who are still alive after 10 years;
- Family law matters that are ongoing and subject to modification (i.e., custody, parenting time, support);
- Intellectual property;
- Judgments that may need to be renewed;
- A minor who is still under the age of 18 after 10 years;¹
- A tax basis in property;
- A situation in which a professional instinct or personal intuition urges you to keep the file longer.

2. Specific Documents and Originals

Depending on the contents of the file, you may have an obligation to keep specific documents and originals for a specified period of time or refrain from destroying them. To prevent problems, we generally recommend that you keep a copy of original documents and return the originals to the clients. Be mindful about storing and destroying documents if the file contains:

- Affidavits or verified statements of a client entering into a settlement agreement on behalf of a minor;
- Corporate books and records;
- Intrinsically significant or valuable original paper documents (e.g., securities, negotiable instruments, deeds);²

¹ If you represent a person entering into a settlement agreement on behalf of a minor, you are required to maintain that person's affidavit for two years after the minor reaches age 21. See ORS 126.725(2). See also Brooks F. Cooper, "[Settlements for Minors- 2009 Legislative Changes](#)," *In Brief* (November 2010).

² See [OSB Formal Ethics Opinion 2016-191](#).

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- Oregon eCourt filings with an image of a document containing another person's original signature, in which case you must retain the original paper document for 30 days;³
- Original client documents (see footnote 3);
- Original wills, which may require retention of at least 20 years before disposal;⁴
- U.S. Bankruptcy Court documents filed electronically.⁵

3. Relationship with Client

Your relationship with your client may provide reasons to store the file for more than 10 years, particularly in situations involving:

- Ongoing relationships with clients;
- Problem clients, especially when you are concerned about a lawsuit or bar complaint;
- A professional instinct or personal intuition that urges you to keep the file longer.

4. Utility

Certain files may have utility to you or your client even after 10 years. Before destroying a file, consider whether it:

- Contains research, motions, notes, or other materials that are not saved in a separate location and that you may wish to build upon, refer to, or reuse; or
- Could be useful to your client or future counsel because of ongoing matters like appeal, retrial, post-conviction relief, or habeas proceedings.

This is by no means an exhaustive list of factors to consider in determining how long to store files. We encourage you to conduct your own research, consider additional factors particular to your cases and clients, and adopt a file storage approach based on your independent reasoning.

Closing, Storing, and Destroying Files

Once you cease work on a client's matter, you are ready to:

Close the file – The process of closing a file requires that you ensure that the file is complete.⁶ This means you may need to gather documents in both physical and electronic formats stored in different locations (e.g., server, cloud storage provider, email, computer hard drive, mobile device, or other media) and save them to the client file. Go through the file to identify original documents, remove multiple copies of the same documents, and tie up loose ends (e.g., additional work, conflict system update, final billing, withdrawal motion or notice of termination).⁷

³ See UTCR 21.090.

⁴ See ORS 112.815.

⁵ See [Oregon LBR 5005-4\(e\)- Retention of Original Document](#).

⁶ See [OSB Formal Ethics Opinion No. 2017-192](#) (defining what constitutes the "client file").

⁷ See *File Closing Checklist*, available on the PLF website, www.osbplf.org. Click on the Services tab > CLEs & Resources > Practice Aids > Office Systems and Procedures.

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Store the File – You have a duty to store files in a manner that safeguards client property and maintains confidentiality. These considerations underlie your duty to evaluate a third party if you plan to store files on its server (i.e., in “the cloud”).⁸ Storing paper files can be costly in the long run. Consider scanning your files as you close them and storing only the electronic version.⁹ Whatever format you choose to store your closed files, organize them by the year in which they are closed. Store the files in a place and manner that protect client confidentiality. Beware that files containing health information may subject you to HIPAA¹⁰ and files containing consumer information may subject you to the Oregon Consumer Identity Theft Protection Act (OCITPA).¹¹ Review the applicable laws and determine a storage method that satisfies those legal obligations.

Destroy the File – Make sure your fee agreement or engagement letter notifies the client that you will be destroying the file and the timeframe when that will occur. The client’s signature on the fee agreement or engagement letter will provide consent to destroy the file. Your duty to maintain confidentiality also applies at the disposal process. Like the file storage process, file destruction may implicate laws requiring specific disposal methods. Review the applicable laws and determine the appropriate method. Typically, physical documents may be securely disposed of by shredding, pulverizing, or burning. Digital or electronic documents need to be permanently erased or the media physically destroyed.¹² Keep a permanent inventory of files you destroy and the destruction dates.

IMPORTANT NOTICES

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⁸ See [OSB Formal Ethics Opinion No. 2011-188](#).

⁹ See *Checklist for Scanning Client Files*, available at www.osbplf.org. Click on the Services tab > CLEs & Resources > Practice Aids > Paperless Office and Cloud Computing.

¹⁰ See Kelly T. Hagan, “[Business Associate, Esq.: HIPAA’s New Normal](#),” *In Brief* (September 2013), and Kelly T. Hagan, “[The HIPAA Compliance Process](#),” *In Brief* (May 2014).

¹¹ See ORS 646A.622 to 646A.628 and Kimi Nam, “[Protect Client Information From Identity Theft](#),” *In Brief* (August 2008).

¹² See Hong Dao, “[Unwanted Data: How to Properly Destroy Data in Hardware](#),” *In Brief* (April 2017).