

## Document Retention

### ➤ Length of time that closed files should be retained

1. There is not a universal rule. ORPC 1.15 requires account records and other client property be kept for (5) years after termination of the representation. A good general policy is seven (7) years, assuming other law does not apply, and there are not special circumstances. But, there are often in fact those considerations, e.g. unexpired statutes of limitations, an adoption, a minor, estate planning, an appeal etc. Therefore, there should be a file-by-file consideration.
2. Consult your malpractice carrier for any document retention policies it may have.
3. Remember some clients, for example insurance defense or corporate clients, may have their own file preservation requirements, and they may extend beyond 5 years.

### ➤ Communication of policy to client

4. Include a document retention policy in your fee agreement, or as an attachment.
5. Inform the client that their file will only be maintained for a certain period of time (e.g. seven years after the representation is terminated) and that it will be destroyed thereafter unless the client elects to retrieve it prior to that time.
6. Return all original documents to the client immediately upon the conclusion of representation (when you can still find the client) and remind them of your document destruction policy and the destruction date a second time in your closing letter. Encourage them to request copies or elect to retrieve the file immediately as it will otherwise be sent to off-site storage.

### ➤ Destruction of documents

7. Upon expiration of the designated time period, the documents may be destroyed by incineration or shredding. You may not simply put the documents in a trash bin or dumpster given confidentially concerns.

8. Keep your fee agreement, document retention policy, closing letter and an index of all your closed and destroyed files for future reference, as well as copies of any documents you may want to use in the future (e.g. to defend a potential malpractice, or to explain a particular decision).

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