

## Document Retention and Destruction:

### General Document Retention Policy:

Barbara Weil Gall, *Document Retention Policies: Legal Reasons to Keep E-mail, Web Pages and Other Records*, <http://www.gigalaw.com/articles/2000-all/gall-2000-09-all.html>?

Paul French, *Electronic Document Retention Policies (And Why Your Clients Need Them)*, <http://www.abanet.org/lpm/lpt/articles/ftr01045.html>

### Law Firm Document Retention:

Terri Olson, *Developing a File Retention Policy for Your Firm*, [http://www.gabar.org/programs/law\\_practice\\_management/law\\_practice\\_management\\_program\\_articles/developing\\_a\\_file\\_retention\\_policy\\_for\\_your\\_firm/](http://www.gabar.org/programs/law_practice_management/law_practice_management_program_articles/developing_a_file_retention_policy_for_your_firm/)

Sharon D. Nelson, Esq. and John W. Simek, *Law Firm Document Retention Policies*, <http://www.abanet.org/lpm/lpt/articles/ftr07046.html>

David W. O'Brien, *Discovery of Draft Patent Applications: Considerations in Establishing a Draft Retention Policy*, 2 Tex. Intell. Prop. L.J. 237 (1994).

Jeffrey S. Boone, *A Document Retention Policy for Patent Attorneys*, 26 IDEA: 49-56 (1985).

Donald S. Skupsky, JD, CRM, FAI, MIT, *Destroy Your Client Files Under a Records Retention Program . . . and Protect Their Interests, too!*, White paper at [www.ironmountain.com/File\\_Uploads/Resource\\_Items/USA/603\\_0\\_DestroyAndProtect.pdf](http://www.ironmountain.com/File_Uploads/Resource_Items/USA/603_0_DestroyAndProtect.pdf)

Stephanie Francis Ward, *Tossed With The Trash: Dissolved Firm Didn't Protect Some Client Files of Closed Cases*, ABA e-Journal, November 14, 2003.

### Other Information:

#### Rules of Professional Conduct 1.16(d) provides:

The lawyer must provide, upon request, the client's file to the client. The lawyer may reproduce and retain copies of the client file at the lawyer's expense.

#### **Comment**

Upon termination of representation, a lawyer shall provide, upon request, the client's file to the client notwithstanding any other law, including attorney lien laws. It is impossible to set forth one all encompassing definition of what constitutes the client file. However, the client file generally would include the following: all papers and property the client provides to the lawyer; litigation materials such as pleadings, motions, discovery, and legal memoranda; all correspondence; depositions; expert opinions; business records; exhibits or potential evidence; and witness statements. The client file generally would not include the following: the lawyer's work product such as recorded mental impressions; research notes; legal theories; internal memoranda; and unfiled pleadings. The Utah rule differs from the ABA Model Rule in requiring that papers and property considered to be part of the client's file be returned to the client notwithstanding any other laws or fees or expenses owing to the lawyer.

#### ABA Model Rules of Professional Conduct 1.16(d):

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

#### Michigan Bar Opinion RI-109 December 12, 1991

Where client files in a lawyer's custody are damaged by fire, flood, or other circumstance beyond the control of the lawyer, and the retention period communicated to the client has not yet expired, or where the lawyer has failed to establish a record retention plan or has failed to communicate the plan to the client, the lawyer should make reasonable efforts to notify those clients affected.

Prolegia Insurance has many resources listed at <http://www.mlmins.com/PracticeManagement/InformationMatrix.aspx> , including a sample retention policy at <http://www.mlmins.com/Documents/SiteContent/dad4670c-47b6-4df5-bd4a-5e18827f59ee.pdf> and file closing procedures and file destruction authorization.

Jean Barr, CRM; Beth Chiaiese, CRM; and Lee R. Nemchek, CRM, *Records Management in the Legal Environment: A Handbook of Practice and Procedure*, (2003). ISBN: 1-931786-09-7, available at <http://www.arma.org/bookstore/productdetail.cfm?ProductID=1389>

#### Best Practices for client relations:

Have a written policy. Vary retention based on types of documents and cases. Follow the policy.

Give the policy to your client or state it in an agreement.

Do not take originals. Take a copy and note on the back that the client retained the original.

If originals must be kept, keep them in a vault subject to a log.

Tell the client that the client will receive copies as the case proceeds and that additional copies will be provided at the client's expense.

Your documentation should not make you a repository.

Updated July 19, 2005 from Presentation at Utah State Bar, Sun Valley, Idaho, July 16, 2005.