

Risk Management Tip - March 2009
Thinking about destroying old files?

While most states have rules prescribing the length of time a lawyer or law firm must retain records of its handling of client funds or other property, they generally do not specify a time period for which client files must be retained after the conclusion of the representation. Some states do have such rules. For example, North Carolina Rule 10.2(b) requires that a closed file be maintained for a minimum of six years. Be sure to check the rules of your jurisdiction to determine whether a time period for file retention is prescribed.

Absent a rule, the period of time that client files should be retained depends upon the particular circumstances surrounding the records in possession of the firm. Keep in mind that your file is the most valuable weapon you will have available with which to defend yourself against any civil claim or Bar grievance.

As a general rule, law firms should keep the files at least for the period of limitations applicable to legal malpractice actions, taking into account any applicable discovery rule. Non-litigated files should be retained for a period of time commensurate with the nature of the representation provided by the firm and sought by the client. The firm should consider the length of time within which a malpractice claim may be made and the period during which the records may affect the client or his intended beneficiary's duties and rights.

Some guidance can be found in the American Bar Association's Informal Opinion 1384 regarding the storage of documents. The opinion discusses several points that are important for formulating an appropriate policy for retention of closed matters, including obtaining the client's consent before destroying a file, keeping all documents that might still be needed by the client, and keeping records of the receipt and disbursement of trust funds for the period of time required by the rules of your jurisdiction. A usable index of the content of the files that have been destroyed or discarded should be preserved.

The lawyers' risk management web site, <http://www.lawyerlaw.com>, provided to you by Westport as a value added service, contains articles related to the topic of maintaining and destroying client files, such as "How to Decide What to Throw Out When 'Spring Cleaning' Clients' Files."