

Sample File Retention Policy

This file retention policy is a sample to help lawyers prepare their own file retention policy and should be adapted to meet the needs of the lawyer's individual practice. The sample policy does not cover all situations in all law practices and is not intended to replace the lawyer's professional judgment. A lawyer should consider the context of the lawyer's practice, the Texas Disciplinary Rules of Professional Conduct and relevant Ethics Opinions when establishing a file retention policy.

Effective [date], the following file retention policy will be implemented to provide procedures regarding the opening, closing, retention, and destruction of client files.

1. Opening a File. In addition to other procedures used in the opening of a client file, the following language will be included in all engagement letters or retainer agreements:

You agree that it is your responsibility to obtain your file. We will notify you when it is available but will do so only once. If your file is not picked up within sixty days after we notify you that it is available, we can assume that you do not want it. In that case, we will retain the file for [X] years and then destroy it in accordance with our file retention policy and procedures and the Texas rules of professional responsibility for lawyers. If you want us to retain your file beyond [X] years, you agree to pay the reasonable costs of storage. If you do not seek the return of your file when we notify you that it is available, you may request it at any time before its destruction. Other than the initial notification that your file is available, we will not send any further notice reminding you that it is available to be picked up or regarding when the file will be destroyed or that destruction has taken place.

If [I am/we are] temporarily or permanently unable to practice law due to unforeseen circumstances, you consent to a named custodian attorney licensed in Texas and in good standing with the State Bar of Texas reviewing your client file, including confidential information, to evaluate what steps, if any, needed to preserve rights in your case or to notify you and return your file to you or to another attorney at your direction.

2. Closing a File. In addition to other procedures used in the closing of a client file, the following procedures apply:
 - a. At the conclusion of a client matter or representation, the lawyer will:
 - i. Review the file within 10 business days to determine if it can be closed.
 - ii. Denote the date of the closing review.
 - iii. Review the file to determine when the file can be closed, allowing for all applicable deadlines and statutes of limitations for claims against the client and the lawyer, including malpractice claims.
 - iv. Cull any protected information from the client file. At the lawyer's discretion, the file may be culled of any:
 - (a) Duplicate copies of documents.

- (b) Draft copies of documents unless the history of the creation of the document may be at issue in the future.
 - (c) Any documents that can be reproduced from another source, such as pleadings.
 - v. Ensure that original documents and valuables are returned to the client within 10 business days and before closing the file.
 - vi. Denote the date that the review has been completed and state whether the file can be closed or not.
 - (a) If the case can be closed, denote the date that the file may be destroyed (“file destruction date”), which may be no earlier than [X] years after the date that the file is closed. If warranted, the attorney may denote a date for the review of the file before its destruction.
 - (b) If the case cannot be closed, denote the reason and whether it must be retained permanently. Establish periodic review dates on which the lawyer will determine whether circumstances have changed and whether the file is appropriate for destruction.
- b. Once the lawyer determines that the matter is ready to be closed, send the client a closing letter:
 - i. State that the matter has been completed.
 - ii. State that the client may now retrieve their file or that it can be delivered to them for a reasonable fee.
 - iii. State that all original documents and valuables have been returned to the client, or confirm any alternative arrangement made with the client to ensure return of those items.
 - iv. Include the following statement regarding obtaining their file, file storage, and file destruction:

Your file is ready to be picked up. If it is not picked up within sixty days, we will assume you do not want it. We will keep your file for [X] years, after which we will destroy it. If you want us to keep your file longer than [X] years, we are happy to do so, but we will need to charge you the reasonable cost for storage. If you don't want your file at this time but later decide you want it, you can request it at any time before it is destroyed.

If you choose for us to store your file and [I/we] become temporarily or permanently unable to practice law due to unforeseen circumstances during that time, you consent to a named custodian attorney licensed in Texas and in good standing with the State Bar of Texas reviewing your client file, including confidential information, to evaluate steps, if any, needed to preserve rights in your case or to notify you and return your file to you or to another attorney at your direction.

- c. At the lawyer's discretion, a copy of appropriate documents in the file may be made and stored electronically.
 - d. Once the file is closed, change the file status from open/active to closed/inactive.
 - e. No file will be closed unless:
 - i. A closing or disengagement letter has been sent to the client.
 - ii. There are no outstanding tasks or actions to be taken in the case.
 - iii. All client property has been returned to the client.
 - iv. All financial matters have been resolved, such as:
 - (a) A final invoice, if any, has been forwarded to the client.
 - (b) All outstanding fees have been paid or forgiven.
 - (c) There is a final distribution and accounting of all trust balances relating to the file.
3. Establishing the File Destruction Date. The lawyer will use professional judgment to determine if a file may be destroyed and the file destruction date. The lawyer will consider the following factors in making this decision:
- a. Whether there's a reasonable likelihood that the client's interests would be harmed by the destruction of the file documents and information.
 - b. Any client instructions regarding the file.
 - c. The nature and content of the file.
 - d. Current Texas Disciplinary Rules of Professional Conduct.
 - e. Any relevant ethics opinions and case law.

Do not ask a client for permission to destroy the file if there is a reasonable likelihood that the client's interests would be harmed by the destruction of the file documents and information, and until after:

- *The expiration of all applicable statutes of limitations for claims against the client and the lawyer, including malpractice claims.*
- *Any retention period required by rules, regulations, court orders, or laws that is longer than the applicable statutes of limitations.*
- *In criminal matters, in addition to statute of limitation issues, a convicted client's sentence and all appeals.*

All file destruction dates and file review dates must be entered into the calendaring system.

4. Storing and Retaining the File:
- a. Files will be stored in a fireproof, waterproof location that prevents an unauthorized person from having access to the contents of the file. [State where they will be stored and for how long and whether they will be moved to another site afterward. For example, if you wish to store them onsite for a period of time to ensure easy access but move them to an offsite location once it is unlikely that they will be needed.]
 - b. Files will be stored for a minimum of [X] years before destruction.

- c. If the client wants to store their file beyond the file destruction date, the lawyer will inform the client of the storage cost and bill the client for storage.

5. Destroying the File:

- a. The lawyer will timely review the file at the conclusion of the matter or representation and before the file destruction date as needed.
- b. The lawyer will verify that the file was reviewed before closing and that all original documents and valuables were returned to the client.
- c. If there is no adequate information on whether the file was properly reviewed before closing or that documents and valuables were returned, the lawyer will conduct a visual review of the file. If any original documents or valuable property remain (including excess IOLTA funds), the lawyer will return them to the client before destruction.
- d. The lawyer will confirm that destruction of the file will not prejudice the client. If destruction will prejudice the client, preserve the file or return it to the client (subject to limitations protecting the interests of other people or, in some situations, the interests of the client).
- e. Destruction must be conducted in a way that protects all confidential information.
- f. A record of destruction or disposal will be maintained for each file, which will include the name and last known address of the client, the file number, a description of the matter, the file closure date, and the name of the lawyer who authorized the file disposition.
- g. A list or database of destroyed files will be maintained.