

Practice Advisory

(Approved at June 6, 2003 Benchers' Convocation)

Concerning File Closure, Retention and Destruction

Introduction

This Practice Advisory is prepared in response to members' frequent requests for guidance about client file closure, retention and destruction. The Advisory provides general guidelines.

Every lawyer and law firm is better served when a file closure, retention and destruction policy informs office management procedures. Such a policy should be established from the inception of a file, and include proper file organization and management. The policy will take into consideration a number of factors, including statutory requirements, the subject matter of individual files, and the lawyer's understanding of the potential future needs of the lawyer and the client.

File Closure and Retention

Before closing a file, the lawyer should return all original documents and property belonging to the client, and notify the client the file is being closed. If the client requests the file, then members are referred to the text, Cordery on Solicitors FT Horne, Butterworths, (1988) (pp 89-90) and Aggio v. Rosenberg (1981), 24 C.P.C. 7 and AWhose File is it Anyway? (1994) The Advocate, 52. Copies may be obtained from The Law Society. In those instances where a file is returned to the client, a copy should be retained and made subject to the closure, retention and destruction procedures.

Retained files should be assigned a destruction review date, at least 10 years from the date closed. When assigning the date, the lawyer should consider each individual file that is being closed and, where appropriate, assign a destruction review date at least 10 years from the date closed. When assigning the date, the lawyer should consider each file and, where appropriate, assign a date longer than 10 years.

The nature of the file, the relationship with the client, and professional liability concerns, are some of the factors that can indicate a destruction review date longer than 10 years from closure.

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File Retrieval

A closed file must be easily retrievable. For the purpose of this Advisory, a file is easily retrievable if normally available to the client within 72 hours from request. To assist retrieval, there should be a file index or other record clearly indicating where the file is located.

File Destruction

When the assigned destruction review date arrives, the file should be pulled and specifically reviewed to determine whether it is appropriate to proceed with destruction. If destruction proceeds, then the file must be shredded, deleted electronically, or similarly destroyed.

Permanent Record of Destroyed Files

The lawyer or firm should retain a permanent record of all destroyed files. This information must include the client name, a brief descriptive title of the file matter, date file was closed, and name of lawyer primarily responsible for handling the file.

Firm Files and Accounting Records

Some guidelines to inform decisions about closure, retention and destruction of law office files and accounting records are set out next.

Closure: A file can be closed when it is no longer current, by fiscal year or term of contract.

Retention: A file should be retained a minimum 10 years to cover income tax requirements, and for consistency with this client file retention Advisory. As with client files, individual decisions may be required for some law office files and accounting records.

Destruction: When the assigned destruction review date arrives, and there is no reason to justify further retention, a file must be shredded, deleted electronically, or similarly destroyed.