



10 TIPS FOR DRAFTING A DOCUMENT RETENTION POLICY

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If you are in business as a professional attorney, then you are in business as a document retention professional as well. Possession is 9/10 of the law, and proper documentation is 9/10 of possession. People come to you in order to organize their own documents, so you must make sure that you have the best document retention policy in place that you possibly can.

Document retention policy is not standardized in any way; it is the "art form" of the legal profession. The attorney that has the best document retention policy will be the attorney that supplies the best service for his clients. If you are looking to become the best attorney for your clients that you possibly can be, then you should strive to improve your document retention policy based on models of past success. Although there are no set rules, there are tried-and-true tropes that will help you create the absolute best policy that you can.

Below are 10 rules for creating your own document retention policy so that your clients can trust you and you will have your documents in order for the courts should they ask for them.

First, your document management policies must be in order. Make sure that you properly define what a "document" is so that you may include new forms of digital documentation that are used in many industries. For instance, medical doctors are being required to switch to digital record keeping - if you are an attorney to physicians, being able to protect them means the ability to include the digital documentation that they are keeping for their clients on record for yourself.

This leads directly into the first reason that you must have document management policies in general. For many of your clients, you must be able to clearly state the reasons that document retention is necessary. There will often be government regulations such as HIPAA or Sarbanes-Oxley involved in your document retention management policies. Make sure that you can explain this reasoning to your clients. You should be the one informing them about regulations that oversee their industries, not the other way around. This is especially important if you're looking to attract corporate or enterprise-level business on a long-term basis.

Although you must keep up with digital documentation, you should not mix digital documents in storage. Keep documents separate that must be stored for different numbers of years. Even in digital storage, you will reduce the cost of long-term storage and avoid many legal risks. Although it is much easier to organize documents in this way when it comes to digital storage, do not rely on automated systems. If you can afford it, you should have a human being overseeing the process so that computers that you have at your disposal do not miss categorize a document based on faulty input criteria. There are many automated programs that can help you with the retention of your document; however, the technology is hardly foolproof. Businesses that are in the legal field must be especially careful about the flaws in such programs; ignorance of these flaws can definitely come back to bite both you and your clients.

If you are at the head of a large legal organization, you should give each individual division the authority to set policies for their own documents of operation. Because each division will be focused on a particular client set, localizing document management policy will allow your operation to run most effectively.

You must also create an effective policy for assessing your document management policies on a continual basis. Because these policies will need to be updated as government regulations and clients require, you should be able to change your own policies to match the needs of the people that you are serving.

Second, when you are drafting a document retention policy, make sure that you balance the interests of all of your stakeholders. You will likely have clients as well as investors to pay attention to – none of these constituencies should be forgotten as you craft your document retention policy.

In order to properly balance the needs of the people who are doing business with you, you must first detail what those constituencies are in most need of. Clients will want to maximize the storage capability as well as the safety measures that you incorporate in your retention policy. Stakeholders in your organization will want to minimize costs while avoiding legal ramifications. One of the most effective ways to balance these two constituencies is to introduce policies for different aspects of your client base with different storage and safety capabilities. In effect, you are tiering your services. This also creates a better opportunity for you to profit off of your document retention capabilities by charging more for safer and bigger data loads.

This is also a great strategy because of the trend towards digital documentation, which is much easier to tier than documents that must be physically held in order to be retained. If you have a server that is big enough, your space is, for all intents and purposes, unlimited. You are then able to section off space as needed for each individual client, charging them for that space without letting them know exactly how much space you have left. In effect, they are not able to compare rates with other clients, nor are they able to get a handle on your actual use of resources. This will help your stakeholders and your partners in the business feel as though they are creating profit for their efforts in the administration of these documents.

Third, any document retention policy that is effective will need to be in place for the long term. As an attorney, you do not know exactly when any particular document will be needed for a particular client. Systems should be able to be upgraded in order to keep up with the ever changing formats of documentation. With this long term policy comes a need for transition. Your policy should include the ability to easily switch to new technologies as they are implemented.

The longer that you keep documents, the more protection you give yourself from a legal perspective. Also, the longer the documents are kept in your possession, the more likely that your client base is to trust you over extended periods of time. For an attorney, this type of client is absolutely necessary to be longevity of a firm. With digital documentation, it is easy to keep documents as long as a firm is in business. Your document retention policy should include backing up your archives to the cloud or to a disassociated hard drive so that a historical record of all documentation that you receive can be easily retained.

Although documents should only be retained for the duration of their useful life, there is no actual formula that can help a law firm determine exactly what this is. Some digital documents are only good when they are sent and no longer; others must be retained for a long time. Each law firm will have to draw upon its experience in determining the types of documents that are relevant for being held for longer periods of time. However, if a law firm is able to properly negotiate the use of its space with its clients and its investors, it can simply purchase more server space so that it may retain more documents. It is always best to retain all documentation no matter how unimportant it may look at the time.

Fourth, your document retention policy should also include the ability to pay for itself. This will definitely improve your chances of the policy being accepted by shareholders and business partners. As stated before, server space can be sold at a premium, especially for long-term clients. However, this is hardly the only way that a law firm can create a completely separate revenue stream from a document retention policy.

The cost of document retention can also be offset by the negation of crippling discovery costs. There are many ways to incorporate this into the accounting of a law firm to make it more attractive for investment. There are also many programs that can help a law firm get rid of duplicate documents in order to save space and organize records. The use of these programs should be written directly into the retention policy in order to reference these programs for later use. Another use for naming programs like this specifically is to encourage uniformity between divisions when formulating a process for retaining records, a need that will be discussed later.

Fifth, make sure to keep documentation that pertains to tax records separate from other documentation. It can be quite difficult in determining which documents are more relevant to taxes than others; however, the time that is spent in this process in the beginning stages of document retention will save a great amount of time on the backend. Identifying documents that will be more susceptible to scrutiny from tax organizations will also save a great deal of time if the firm undergoes any sort of audit. The organization will improve the chances of the firm working with tax organizations to keep tax bills low. This is also a step that is crucial to setting a law firm up for investment opportunities in the future. Being on good terms with government organizations is essential for any law practice. Digital documentation makes this organization process much easier; make sure that you look into the specialized programs that help law firms organize documents according to tax liabilities.

Most of the time, a law firm will be expected to hold documents beyond the point of governmentally defined minimums. Any document retention system that your law firm sets up should take this into account. These retention periods should be stated explicitly so that employees will never have to guess at when a certain document should be set aside, re-organized into archives or destroyed completely.

Sixth, the physical security of the filing as well as the storage systems must be specifically addressed as a piece of the policy. When it comes to digital documentation, it is not enough to protect the documents in the digital realm. The physical server that the data is held on is just as important - all of the digital antivirus and malware software will not mean anything if the server itself is physically compromised.

One of the best ways to create a viable physical security policy for your law firm is to plan out the worst case scenario: How would the law firm retain its documents if a fire were to burn down the entire office? In many cases, this exact scenario is actually placed into the language of the document retention policy along with other worst case scenarios so that employees will know exactly what to do in all cases, no matter how outlandish and improbable they may seem.

A law firm will usually have to take full responsibility for the safety of its servers if documentation is kept on a hard drive. In contrast, most law firms have two backup procedures - one to a cloud service and another to a disassociated hard drive, mirror server or disconnected offline hard drive. As a part of the policy, employees should be well versed in destruction directives as well as in their role in organizing the documents that will be kept over a long period of time.

Seventh, there must be a uniform method of categorization that is upheld between divisions and overseen by a central authority. Although individual divisions will have control of the day to day operations of documents that are under their control, having a centralized system is paramount to being able to find documents on the fly. Communication between divisions is another benefit of placing a centralized system into the language of the document retention policy itself.

Ideally, there should be no individual employee discretion when it comes to the handling of documents. The categorization of documents should be a language that is uniformly spoken around the entire company as well.

Eighth, a law firm would do well to remember that a document retention policy is first and foremost a guide in how to get rid of documents, not keep them. Although the need to discard documents is becoming quickly antiquated with the rise of virtual memory and the switch of many government accounting procedures to digital documentation, there are still many reasons that a law firm should have a document destruction policy in place in its retention policy. A few of these reasons will be named below.

One - A law firm still does business with clients who have not switched to digital documentation.

It is quite possible that the clients who do business with you still document themselves on paper. In this case, it is necessary for you to have a document destruction policy in place so that the entire law firm will be able to organize its procedures no matter who is actually doing the discarding. Ideally, your destruction policy should resemble the assembly line policy at a McDonalds: People know that no matter which McDonalds they attend, the burgers and the fries will taste the same because of the uniform policy of manufacturing the food. Similarly, your employees should be able to quickly refer to your policy in order to determine the rules for getting rid of any type of document.

Two - Certain clients, including the government and enterprise level clients, may actually require that a law firm destroy all records of a document or a transaction after a specified period of time as a condition of doing business or as a condition of law.

There are actually still many instances in which documents are required to be destroyed. If you have government clients, this is definitely a part of the policy that you cannot put to the side. As a matter of fact, as a condition of getting certain government clients, you may have to produce this policy beforehand.

Businesses in certain industries that are less regulated by the government may also require that you destroy documents as a condition of doing business with you. In many of these cases, these businesses retain the right to audit your books in order to see that you have complied with the conditions of your agreement under penalty of law. These are usually higher paying clients; therefore, if you are looking to obtain corporate and enterprise-level business, you must have your document destruction policy in place.

Three – Your law firm may not be able to afford unlimited space in the digital medium.

Although the cost of storing a digital document is much less than that of a physical document, it still costs cold hard cash in order to be able to store documents indefinitely. It is quite possible that your law firm does not have the resources necessary to maintain a virtual server that scales to the needs of your clients. If this is the case, then you definitely need to have a policy for destroying documents in place. At the very least, you can backup documents in a cloud-based system so that you do not have to store all of your records in hard drives, which can become quite physically debilitating to a law firm with limited financial resources.

If your law firm falls under any of the above three conditions, then you owe it to yourself and to your client base to have a document destruction policy in place. Your employees will also benefit greatly from this type of a policy. They will not have to come to you for every document that needs to be moved out of the way in order to create space for new documentation. This will free up their time for the more in-depth aspects of their job.

Ninth, make sure that you leave room for your policy to be updated as conditions warrant. There is no telling when you will have to update your policies due to a law change or a change in clientele. You must be able to grow with your clients if you are going to serve them long term. The best policies have room for technological updates and updates to litigation so that there is no transition period where clients feel underserved.

Most importantly, employees should not have to wonder about what the document retention policy is at any given time. If the policy is due to be updated at regular intervals, they will know to look for those changes rather than simply becoming lax about policies that have changed. The time period for changes within the document retention policy should also be explicitly stated. Large changes should be expressed to all employees at once.

Last but not least, your document retention policy should be tailored to the needs of your individual law firm. Although it is perfectly all right to pick up tips from successful document retention policies, there is no such thing as a uniform policy that will perform the same for each and every law firm. You should take into account the client base that you serve and the clients that you are trying to serve in the future when you put together your policy.

Keep in mind that your clients will likely ask for your document retention policy before trusting you with large amounts of business. Because this is the case, you should endeavor to tailor your policies to the clients that you are looking to obtain.

In all cases keep in mind the laws that regulate all document retention policies. Although there is no set, uniform code for retaining documents, there are certain laws for the practice that must be adhered to under all circumstances. Your clients trust you to be abreast of all of the laws that may pertain to them. Keep in mind that any legal mistakes on your part may translate into legal trouble for your clients as well as your law firm.

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