



CLIENT FILES: *RETENTION AND DESTRUCTION GUIDELINES FOR PARALEGALS*

LORMAN[®]

Published on www.lorman.com - September 2017

Client Files: Retention and Destruction Guidelines for Paralegals, ©2017 Lorman Education Services. All Rights Reserved.

INTRODUCING

Lorman's New Approach to Continuing Education

ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ☑ Unlimited Live Webinars - 120 live webinars added every month
- ☑ Unlimited OnDemand and MP3 Downloads - Over 1,500 courses available
- ☑ Videos - More than 700 available
- ☑ Slide Decks - More than 1700 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



Get Your All-Access Pass Today!

SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.

Paralegals are often charged with the task of maintaining client files, recording updates and collecting important information. Some of the most important aspects of a paralegal's work entail the retention and destruction of client files. Accidentally destroying a client file that is required for a case may cause an attorney to lose the case. Failing to adequately preserve client files may result in a violation of the Rules of Professional Conduct and cause an attorney to face sanctions by a state bar association.

Paralegals must be familiar with the national Model rules of Professional Conduct and also the Rules of Professional Conduct for their particular state. State bar associations also put forth advisory opinions that can assist paralegals in interpreting rules governing the retention and destruction of client files.

Retention and Destruction of Client Case Files

Model Rule 1.16(d) is clear in stating that a lawyer must take steps to reasonably protect a client's interests after the termination of representation. These steps may include providing notice to the client, giving the client time to appoint a different lawyer, refunding advance payments and also "surrendering papers and property to which the client is entitled." A paralegal may need to work with the attorney to understand which documents must be returned to a client. A client may not have the legal right to certain documents, such as items that were the attorney's own notes or work product throughout the case. State Supreme Court rulings, advisory opinions and state Rules of Professional Conduct may be helpful in shedding light on the documents that must be returned to a client after the termination of a case. The Ohio Supreme Court has specifically stated that a client may be entitled to correspondence, pleadings, deposition transcripts, evidence, exhibits and expert reports. The Ohio Supreme Court has also stated that a client may be entitled to the return of any document that was "reasonably necessary to the client's representation." The attorney may have the responsibility and discretion to determine which documents were "reasonably necessary" for the client's representation.

Properly Storing Case Files

Many states have their own specific rules that govern the retention of client files. States like Illinois, Nevada and Mississippi require that attorneys retain client files for a period of seven years after the representation. Florida, Colorado, Georgia, North Dakota, Alaska, Alabama and South Carolina require that client files be stored for six years after representation has ended.

Each state may have its own rules governing the “start date” in which attorneys may begin tracking the required retention period. While many states maintain that the retention period begins on the date that representation ends, New Hampshire rules state that the retention period begins on the date of the final distribution. New Jersey rules state that the retention period begins on the date in which the last event is recorded instead of the date that representation ends.

In addition to the retention periods, an attorney may need to assess the statute of limitations for a claim. If an individual could conceivably bring a claim in connection with an attorney’s case, such as legal malpractice, then the attorney may have a duty to maintain the client’s files.

Security Measures for Retention of Files

In an age where pleadings and evidence are transmitted through electronic means, paralegals need to be extra cautious about the security measures that they utilize to retain files. Paralegals may have an obligation to work with IT experts to figure out safe ways to preserve sensitive client information. Certain files, such as patient files protected by HIPAA, may require extra encryption security measures. If an intruder or hacker gains access to client files and destroys them, a paralegal or attorney could be liable for the destruction of the files. Issues of liability may be raised if the files are required for a future lawsuit, and a court may hold the paralegal or attorney responsible for the destruction of the files. A court may also hold the power to impose sanctions and fees for the destruction of records that results from a virus or hacker.

Preserving a Client's Property

A paralegal should exert extra caution in handling original copies of documents, such as a will, trust, power of attorney, deed, promissory note or mortgage agreement. A client may require these documents at a future date to prove ownership of property or for tax reasons.

If these documents must be stored in physical form, paralegals may want to consider scanning them and saving an electronic copy. Physical documents should be stored in a safety deposit box or a locked file cabinet. If paralegals store data on a cloud or other type of network, they should remain aware of data storage capacity. Documents may be lost if a cloud exceeds its capacity.

Another important aspect of a client's case may entail the proper handling of client funds. State bar associations are clear in maintaining that attorneys must place client funds in separate trust accounts. A lawyer has a duty not to commingle his or her personal funds with client funds. The paralegal should ensure that client funds are properly maintained in a separate account that is labeled as a "trust account." Depending on one's state laws, the attorney may also have a duty to pay interest amounts to a client. A paralegal may be charged with the task of overseeing trust accounts and accounting for the proper disbursement of interest payments for clients.

Guidelines for Closing a Client's File

When a case is closed, the client should be notified of a law firm's records management policy. The client should be given the opportunity to consent to it. When files are set to be removed or destroyed from an office, a paralegal may wish to send another notice to clients. This can give the client the opportunity to retrieve any documents that he or she may need for future litigation.

Properly Disposing of Contents in Client Files

If a paralegal is destroying documents on a firm's computer systems, extra care should be taken to protect the confidentiality of the documents. The paralegal may need to work with an IT professional to clean a computer and ensure that no future parties can have access to the client's files. The paralegal may also need to conduct due diligence on a document destruction contractor to ensure that he or she is reputable and complies with data retention regulations. An IT professional or disposal company should be accredited by the appropriate trade organization. A paralegal may be liable in the event that a document disposal company is not accredited or utilizes unsafe practices in destroying client files.

If a client wishes to obtain copies of documents before they are destroyed, the paralegal may have a duty to provide the documents. The attorney should make sure that he or she includes a provision in a retainer agreement that states whether a client will be required to pay for copying costs. State bar associations are clear in maintaining that clients may have the right to receive copies of documents even if he or she has not signed an express agreement. The attorney must bear the cost of producing the documents for the client. Just because a client has not signed a prepayment agreement does not prevent the client from receiving all documents "reasonably related" to his or her representation.

If an attorney refuses to provide documents to a client, the client may request that the judge order the attorney to provide the documents. The judge has the ultimate authority to order that an attorney provide copies of documents to a client. If the attorney fails to abide by the order of the judge, he or she could face serious sanctions.

Attorneys should create guidebooks that are readily accessible to paralegals and articulate the retention policy of a firm. Every paralegal should also be properly trained in handling client files before he or she is assigned to the responsibility of managing a case. The paralegal also has a duty to ask an attorney about any questions that he or she has about document retention and destruction. If guidebooks are not readily available at the paralegal's firm, he or she should read through all available online retention guidebooks produced by a state's bar association. The Model Rules of Professional Conduct are also a guiding light for paralegals who are dealing with issues in regards to client file retention and destruction.

Questions of law can continuously arise as a paralegal deals with client file retention and destruction. A paralegal may not know whether client files could be used for future probate matters, personal injury litigation, tax audits or other legal matters. The paralegal ultimately must closely work with the attorney to maintain all client files. An attorney must also be ready to use his or her legal reasoning skills to determine whether any information in a client file could be logically related to a future claim.

The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.