



GETTING STARTED – IMPLEMENTING A RECORDS MANAGEMENT POLICY

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Recently, I assisted a regular hotline caller with his implementation of a new records management policy. So many firms are grappling with this issue. I thought it made sense to share the information on a wider scale.

Does your firm have an alarming number of closed files in storage? Is the cost of maintaining them rising steadily? Are people at the firm retiring and leaving more files behind with fewer people left to deal with them? Or are you a solo or very small firm that is nearing conclusion and facing the reality of dealing with all those files? Thousands of law firms in PA are in this situation.

Start with a thorough review of Opinion 2007-100, which addresses a lawyer's obligations with regard to client files and offers suggested retention periods by area of practice. After grappling with that and seeing how exceptions are carved out that lengthen retention periods, it becomes relatively easy to create a retention guideline for the types of client files at your firm.

Next comes the closing of the file. There should be checklists so that everything is done consistently. For example, purging of the file would include removing uncashed checks to return to bookkeeping, removal of spare legal pads, binder clips and so forth. Extra copies of documents might be shredded. Scanning of documents not created by the firm might be done. Issuance of a matter closing or end of engagement letter is essential in most cases. An exception might be ongoing general corporate work for a client.

Best practices for most matter types would be to return any remaining original documents with the closing letter, which should state that the file will be automatically destroyed by a specific month/year in the future, and the client can request return of the file before that.

And last, a reminder should be put into the computer to retrieve and destroy the file at the appropriate time. Or in the alternative, if originals (like wills, codicils, deeds, minute books) are retained, a reminder should be put into the computer to contact the client in a year to remind them of the possible need to

update what you have of his. Remove the originals from the remaining file and store separately.

Ongoing contact is vital to preventing the nightmare many firms experience when they have originals but can no longer find the client. Remember, originals may not be destroyed without the written permission of the client. Making contact annually insures that if they moved without letting you know, you can get the new address. You can probably also find out if they have gone out of business or if an individual has died.

Implementation sometimes falters when firms think about cleaning up the 10, 25, 50 or 100+ years of accumulated files. Don't let that derail you. Start today going forward, so that the madness does not continue to perpetuate. Then you can deal with the old stuff.

Thus far we've covered the steps almost in entirety to get your new records management policy under way.

- Create an agreed upon retention schedule based on areas of practice and list any likely exceptions which would extend the retention period. Don't try to think of every possibility. When future files are closed, your exception list can be updated if warranted.
- Put a couple of sentences regarding having a retention policy in your engagement agreement(s).
- Create your file closing checklist and end of engagement letter.
- Put someone in charge of oversight to make sure that the firm is consistently following the policy and that reminders are being put into the computer for future recall and destruction of files.
- Close files annually. Don't wait until there is no filing cabinet space available and then haphazardly close 50 files that were really "ended" years ago. Do it while familiarity with the particulars of the file are clear. Remember that the end of engagement letter starts the toll on both malpractice and retention. It also ends the billing arrangement, so that if the client returns, he or she can't mistakenly believe they "already paid" for additional work or are guaranteed the same rate.



I almost always have to remind firms to include all their own back office documents as well. Your policy should be expanded to include all your own financial records, personnel records, insurance policies, project files, timesheets and so forth. You want to protect the firm from running afoul of local, state and federal requirements for retention and protect yourself from spoliation charges and other risks.

I suggest the firm ask its outside experts to provide guidance. Your CPA can give you a comprehensive guide for everything financial. Your firm's lawyer (or an employment lawyer) can give you guidance on anything related to HR and payroll. Your insurance broker can give you guidelines on policies, applications and the like. And the rest is just what you agree is reasonable.

Ok, so now to the backlog. I won't lie; it takes time. There may be files that aren't "yours" and you know nothing about. There may be files which are a complete mess. Someone qualified, such as a paralegal or well-trained law clerk, must go through each file to determine the following:

1. What area of law applies?
2. Are there any "exceptions" in that area that are found in this file?
3. Is the file closed long enough to be destroyed?
4. Are there originals in the file?
5. Locate items to purge such as checks, legal pads etc.
6. Determine the most recent contact information for the client.

If there are originals in the file, the goal is to return them to the client or get permission to destroy them. So, a letter needs to be sent. If you get no response or the letter is returned, make an attempt to locate the client using one of the readily available internet services. (Subscription fees usually apply for the best services.)

If you locate the client, send them a simple form where they can check to have originals sent to them or authorize you to destroy the file and remaining originals. Make sure there is a place for them to sign and date.

If you can't locate the client and the file is well past the retention period, you can destroy all but the originals. What will remain will be small and manageable.



And eventually, even any remaining originals will get to an age where possible risk from destruction becomes negligible.

Set realistic goals for how many old files you will try to eliminate per month. Depending on how many files your firm has accumulated, and how tight space is, you might consider hiring an additional part-time person just for this project. Without other duties to distract that person, progress will be faster than you anticipate.

Lastly, keep in mind that shredding or burning are the only two acceptable methods of destruction to properly maintain confidentiality.

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