

Sample File Retention Procedure

Effective ____ (date) _____, this firm will begin implementation of a file retention policy and associated procedures for the standardization of retention and final disposition of our clients' case files. Documents and other materials obtained or created in connection with a matter will be returned to the client, whenever possible, at the conclusion of the matter in conformance with the following general steps.

The file will be closed following the Initial Closing Steps set forth in the File Closing & Destruction Checklist (Exhibit A). The original file will be offered to the client and, if the client takes it, a copy of the file will be held by the firm for a specific retention period, based on the type of the matter (Exhibit B). If the client declines the file, or fails to pick it up within sixty days after having initially indicated that he or she would, the original file will be held for the retention period. When the retention period has expired, the contents of the file will be destroyed in accordance with the File Destruction Steps set forth in the File Closing/Destruction Checklist.

In order to implement this policy, the language set forth in the (Law Firm Name) File Retention Policy (Exhibit C) will be added to our standard retainer letters and fee contracts.

When a matter is finished, the responsible attorney will check the file for completion of all work and send a final bill, if necessary. Then he or she will put the file in line to be closed, and a notice to pick up the file (Exhibit D) will be sent to the client. Depending on the response, the original file will either be copied and prepared for client pickup, or sent to storage. All files sent to storage (originals or copies) will be diaried for destruction in accordance with the retention times set out in Exhibit B.

Before sending a file to staff for close-out processing, the responsible attorney must review the file, grouping and marking all items within the file as either Category 1 Property (originals or copies of documents which should not be destroyed, even at the end of the retention period), Category 2 Property (documents which may be destroyed at the end of the retention period) or Category 3 Property (property which does not fall into either Category 1 or 2). Examples of what constitutes each type of property can be found in Formal Opinion 2010-02 (Exhibit E). The responsible attorney shall also designate any research materials to be preserved separate from the file and shall indicate the names of any expert witnesses, etc. to be added to the firm database.

He or she shall also review all digital documents related to the matter and designate any which can be used as forms in future matters. Each such file and the file's metadata shall be scrubbed of identifying client information, and the resulting form documents shall be saved with new, descriptive names in a folder on the server

containing forms. All electronic documents relating to a matter shall then be transferred to an inactive folder on the server or moved to media such as a CD-ROM or DVD-ROM. Either the media or a reminder to delete the electronic files, including their location on the server, shall be placed in the paper file, so that they may be destroyed at the same time the paper file is destroyed. If electronic documents are to be retained for a very long period of time, it may be beneficial to "archive" them to a format, such as PDF, which may be useful beyond the life of the format in which they were created.

When these tasks are completed, the attorney should mark the file "to be closed," and indicate the matter type so that the proper retention schedule can be determined and applied.

The staff member will strip the file of all pads, pens, staples and paper clips, and place all items marked "Category 1" in the front of the file. Re-usable research materials will be filed as directed by the responsible attorney. The staff member will also send out the notice to pick up the file and, if applicable, the Client Satisfaction Questionnaire (Exhibit F). The file will then be diaried for sixty (60) days pending payment of the final bill, release of all trust funds, and records pickup. Once the sixty days have passed, if the file has not been claimed, the staff member will again pull the file and check to see if the final bill has been paid in full and all trust funds disbursed. If all balances are at zero or if the responsible attorney has indicated that the file may be released prior to complete payment, the staff member will assign a closed file number, make all necessary database entries to indicate that the file is closed, stamp the file "CLOSED" and transfer it to closed file storage. All files placed into closed file storage shall be diaried, based on the matter type indicated by the responsible attorney, for a date certain on which they will be pulled for final review and destruction.

Under most circumstances, documents will not be released to a client or a file transferred to closed file storage unless the bill has been paid in full and the trust account balance for the matter is at zero. For that reason, whenever you are contacted by a client in response to the notice to arrange release of documents, you must first verify that the final bill has been paid in full and that all trust funds have been released. If these things have not been done, the file must be returned to the responsible attorney for resolution. He or she must verify in writing that document release is permissible and why he or she determined to release the materials without first resolving these matters.

Whenever a file is released, a receipt containing a list of all documents and other things released shall be signed by the client or his agent. (Exhibit G.)

When the file comes up on diary at the end of the retention period, it shall be pulled by a staff member, who will then check the firm database for all matters currently open for the client. The staff member will make a note of all open matters

and forward the note and file to the responsible attorney for final review. The attorney will review the open matter note and the file, including any materials previously marked "Category 1," to determine if there are any reasons to continue to maintain the file or the designated materials. The attorney will then transfer the file to a staff member, who will prepare an index of all materials in the file. All materials marked "Category 1" will be transferred to Permanent Storage at this time. All materials not so marked will be shredded.

Once the file has been destroyed, it's status in the database shall be changed to "destroyed" and the File Closing/Destruction Checklist, the Receipt for Released Files and the Index of Documents, indicating which documents were transferred to Permanent Storage and which documents were destroyed shall be placed in the Destroyed File Notebook.

EXHIBIT A

FILE CLOSING AND DESTRUCTION CHECKLIST

Client _____ **Case No.** _____

Matter _____ **Attorney** _____

INITIAL CLOSING STEPS

<u>Responsible</u>	<u>Initials</u>	<u>Date</u>	<u>Action</u>
Attorney	_____	_____	Check file for unfinished business and send final bill.
Attorney	_____	_____	Mark all items Category 1, Category 2 or Category 3.
Attorney	_____	_____	Determine if there are any related items held outside the file, and indicate it in the file.
Attorney	_____	_____	Designate any research materials to be saved and any forms to be added to general forms file.
Attorney	_____	_____	Designate any electronic files to be saved as forms or archived with the matter.
Attorney	_____	_____	Mark file "TO BE CLOSED," indicate matter type for appropriate retention schedule, and transfer to Staff.
Staff	_____	_____	Send notice to pick up file and Client Satisfaction Questionnaire if appropriate.
Staff	_____	_____	Add expert witnesses, etc. to data base.
Staff	_____	_____	Strip file: move all Category 1 items to the front, remove all legal pads, paper clips, staples, Diary 60 days for client response, final payment and trust disbursement.
Staff	_____	_____	Check for unpaid bills or trust balance, unclaimed records. Resolve before proceeding.
Staff	_____	_____	Create electronic forms and archive electronic portion of file to server or media.
Staff	_____	_____	Assign closed file number, diary for destruction in accordance with matter type, stamp file "CLOSED" and transfer to closed file storage.

FILE DESTRUCTION STEPS

Staff	_____	_____	Check open files for other matters for this client, forward open list and this file to attorney for final review.
Attorney	_____	_____	Review for any matters that would require file to be held for additional time - review "Category 1" items - transfer for scanning, permanent storage, and destruction.
Staff	_____	_____	Index all items to be transferred and all items to be destroyed.
Staff	_____	_____	Transfer "Category 1" items to Permanent Records Storage
Staff	_____	_____	Destroy remaining file contents. Change file status in database to "DESTROYED."
Staff	_____	_____	Place this sheet and document indices in Destroyed File Notebook.

EXHIBIT B

[Law Firm Name] File Retention Schedule

[Comment: The retention periods below are suggested minimums based on review of information contained in *Records Management in the Legal Environment* by Jean Barr, CRM; Beth Chiaiese, CRM; and Lee R. Nemchek, CRM ©2003 ARMA International. You should determine your own retention schedule based on the particular nature of your practice, keeping in mind that the minimum file retention period in Alabama is at least six years, that files in matters relating to minors should be retained for a minimum of six years after the minor reaches majority, and that in some instances files or client property contained therein should be maintained indefinitely. Remove this comment and information for areas of the law your firm does not handle before giving this schedule to clients.]

Area of Law	Retention Period
Antitrust	
Litigation	Close of matter plus 10 years
Counseling	Close of matter plus 10 years
Banking	Close of matter plus 10 years
Commercial Finance	Close of matter plus 10 years
Bankruptcy	Close of matter plus 7 years
Collections	Close of matter plus 6 years
Commercial	Close of matter plus 10 years
Commodities	Close of matter plus 10 years
Communications	Close of matter plus 6 years
Contract Actions	Close of matter plus 10 years
Corporate	Close of matter plus 10 years
Criminal	Review Annually and destroy 10 years after release from incarceration
Employee Benefits	Close of matter plus 10 years
Estate Planning and Administration	Close of matter plus 100 years
Family Law	

EXHIBIT B

Adoption	Close of matter plus 75 years
Dissolution	Later of close of matter plus 25 years or 6 years after youngest child reaches majority
Pre-nuptial	Close of matter plus 75 years
Food and Drug	Close of matter plus 25 years
Government	
Regulations and Legislation	Close of matter plus 10 years
Health Care	Close of matter plus 10 years
Intellectual Property	
Patents	Close of matter plus 10 years
Trademarks	Review yearly – retain indefinitely
Copyright	Close of matter plus 10 years
Joint Ventures	Close of matter plus 10 years
Juvenile	Minor reaches majority plus 15 years
Labor	Close of matter plus 20 years
Litigation	
General	Close of matter plus 10 years
Environmental	Close of matter plus 10 years
Appellate	Close of matter plus 10 years
Merger and Acquisition	Close of matter plus 10 years
Municipal	Close of matter plus 10 years
Personal Injury	
Adults	Close of matter plus 15 years
Minors	Minor reaches majority plus 15 years
Products Liability	Close of matter plus 25 years
Real Estate	Close of matter plus 50 years
Regulatory	Close of matter plus 10 years
Securities	Close of matter plus 10 years

EXHIBIT B

Tax	Close of matter plus 10 years Retain estate tax returns 75 years
Transportation	Close of matter plus 10 years
Utilities	Close of matter plus 10 years

EXHIBIT C

(Law Firm Name)
Client File Retention Policy

During the time that we represent you, we will create a file containing the documents that we draft for you, or that we receive from the opposing parties and the court. You will probably also bring us documents, such as tax records, expense records, bank records, deeds or other documents, and we may also obtain documents from other sources, such as medical records, for use in your case.

We will hold all of these records, and any additional objects that we come into possession of in connection with your legal matter, for you during the time that your case is going on. When your case is over, we will write to you to tell you that it is time for you to pick up the contents of your file.

It is your responsibility to make sure that you get your file if you want it. We encourage you to pick your file up when we notify you that it is ready, and to keep it for a reasonable period of time after your matter is over, in case you should need any of the information contained in it.

After we send you the notice that your file is ready for pickup, we will keep it in our offices for sixty (60) days to give you the opportunity to get it at your convenience. If you want your file, we will provide you with the original file and we will keep a copy of it. If you fail to pick your file up during the pickup period, or to provide us with instructions and a cost deposit for delivery of the file according to your instructions, we will assume that you do not want the file. We will place the file in storage for an appropriate length of time based on this agreement, our file retention procedures, our file retention period for matters of this type (see attached retention schedule) and the requirements of the Alabama Rules of Professional Conduct or any other ethical standards in effect. At the end of the retention period your original file, if you have not claimed it, or our retained copy, if you have previously claimed the original, will be destroyed in accordance with our file destruction policies. You will not receive any notice that the retention period has run or that the original file or our retained copy, as applicable, has been destroyed.

I hereby acknowledge that I have received, read, understand and agree to the file retention policy set forth above.

Client Name

Date: _____

EXHIBIT D

Notice to Pickup File Letter
(Send by Certified or Registered Mail)

Re: Matter Description
File No.:

Dear (Client Name)

Your case is now over. We are notifying you that the file is being closed and it is time for you to pick it up. Your file contains all documents that we created or received in connection with your case, whether from you, the opposing party or the court, and any other objects that we acquired while handling the matter. We recommend that you pick up your file and keep it for a reasonable period of time in case you need any of the information or other items that may be contained in it at a later date.

Please indicate below whether you would like to receive the file, sign, and return this letter to us in the enclosed, self-addressed, stamped envelope. If you indicate that you would like to receive your file, we will make a copy for our records and then let you know when you may pick up the original.

It is your responsibility to make sure you get your file. If you fail to return this letter, or if you return it saying you would like your file but you do not pick the file up within sixty days after we notify you that it is available for pickup, we will assume that you do not want it. We will retain the file based on our file retention policy and procedures and then destroy it in accordance with them and the requirements of the Alabama Rules of Professional Conduct or such other ethical standards in effect at the time the records are destroyed. If you do not seek the return of your file now, you may still request it at any time prior to its destruction, but you will not receive any additional notices to pick up the file or to let you know the date on which it will be destroyed or that destruction has taken place.

We appreciate having had the opportunity to represent you. If you need an attorney for any reason in the future, we hope that you will call us.

Yours very truly,

(Responsible Attorney Name)

_____ I DO want to pick up my file.
_____ I DO NOT want to pick up my file.

_____ (Date)

Client Signature

EXHIBIT F

CLIENT SATISFACTION SURVEY

1. How did you find out about our firm:
____ Knew attorney personally
____ Referred by someone
____ Advertisement in
____ Other _____

2. Why did you select our firm?
____ Convenient location
____ Firm/lawyer reputation
____ Personal/business relationship with lawyer/staff member
____ Other _____

3. What is your opinion about the following?

	Very Satisfied	Somewhat Satisfied	Very Dissatisfied
Convenience of office location	X	X	X
Getting through to lawyer on the telephone	X	X	X
Telephone calls returned promptly	X	X	X
Lawyer explained things clearly	X	X	X
Staff Courtesy	X	X	X
Lawyer Courtesy	X	X	X
Keeping you informed about your case	X	X	X
Amount of settlement	X	X	X
Amount of attorneys fees	X	X	X
Lawyer met with me when I wanted	X	X	X
Lawyer concerned about me as a person	X	X	X
Lawyer believed in my case	X	X	X
Overall satisfaction with our services	X	X	X

4. Do you feel you could have handled your case as well without an attorney?
Yes No

5. Would you ask our firm to handle another case for you?
Yes No

6. Would you refer a friend to our firm?
Yes No

EXHIBIT G

(Law Firm Name) File Receipt

Client Name: _____

File Number: _____

I acknowledge that I have received the entire file, a copy of the index for which is attached hereto, in the matter referenced above from **[attorney or law firm name]** on this the _____ day of _____.

Signature

Print or Type Client's Name