



FEENEY & DIXON, L.L.C.
COUNSELLORS AT LAW

April 6, 2025

Re: FILE RETENTION, FILE CLOSING & FILE DESTRUCTION POLICY

Date: April 6, 2025

I. Definitions

Retention Period: The period of time following the closing of the matter (active to inactive status) until its final disposition.

Disposition: The final action taken during the life cycle of the record within this office including:

1. Destruction;
2. Transfer to vital record status;
3. Transfer to the client;
4. Transfer to third-party (such as another lawyer or law firm);
5. Permanent retention.

Vital Record: Any record that must receive the highest level of protection because of its necessity to protect the interests of the lawyer or the firm and essential to the resumption of business. These records must be secured in a destruction proof environment such as a fireproof safe or vault. Vital records shall not include documents maintained in electronic form, such as email, electronic attachments to email, or any other document maintained in electronic form (i.e *.doc, *.pdf, etc.)

II. Retention Guidelines

1) File Closing: A client file shall be reviewed by the lawyer before being closed and prepared for storage. Closing of a file should be in accordance with a prescribed written policy which should consider the following factors:

a) No file shall be closed and scheduled for destruction under a retention schedule until all matters relating to the resolution of all matters relating to the representation as follows:

- i) All Matters: Discharge by client or withdrawal from representation by firm.
- ii) Litigation: (a) Satisfaction of judgment; or (b) Final dismissal of action because of settlement, exhaustion, or abandonment, with client consent, of

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all appellate options (i.e. 45 days following entry of final judgment).

- iii) Bankruptcy claims and filings: Discharge or debtor payment of claim or discharge of trustee or receiver.
- iv) Dissolution of marriage: Final judgment or dismissal of action, or date upon which marital settlement agreement is no longer effective, except when minor child custody is involved in which event the date of the last minor child's reaching majority.
- v) Probate claims and estate administration: (a) Acceptance of final accounting; (b) filing of refunding bonds & releases; and/or (c) discharge of fidelity bond.
- vi) Tort claims: Final judgment or dismissal of action except when minor involved, in which event the date of such minor reaching majority.
- vii) Real estate transactions: (a) Settlement date, judgment or foreclosure; (b) satisfaction of escrow agreement conditions; or (c) other completion of matter.
- viii) Leases. Termination of lease.

b) A file cannot be closed until all outstanding fees are paid or discharged.

c) A file cannot be closed until there is a final distribution and accounting of all trust account balances relating to the file.

d) A file cannot be closed until the responsible attorney examines the file to identify all client property and that client property has been returned to the client or is stored as a vital record, if necessary. Included in this category are such personal documents as tax records, insurance policies, expense records, bank records, deeds, corporate documents etc.

e) At the discretion of the lawyer, the file can be culled of unnecessary material:

- i) Legal memoranda, briefs, pleadings, and other documents that can be reproduced from other sources.
- ii) Drafts of documents otherwise preserved in final form unless the process of creating the final document might later be an issue. Marked-up copies are often useful in the event questions later arise
- iii) Notes and memoranda recording nonpublic information regarding a client, or its adversary can be destroyed.
- iv) Copies of published opinions and other available published material.
- v) Duplicate documents.
- vi) Depositions may be culled particularly if electronic transcriptions are available.
- vii) Extraneous material such as scratch pads, legal pads, and paper clips.
- viii) Copies of recorded documents

2) Except in the case of permanent retirement from the practice of law, All files shall be maintained in storage for a minimum of six (6) years beyond the closing date of the file, or seven (7) years beyond the conclusion of the matter involved, whichever shall first occur..

a) Closed files will be placed in storage after the first six (6) months after closing.

b) Storage facilities:

- i) Must be physically secure to protect client confidences.
- ii) Must be reasonably safe from environmental factors such as wetness.

c) Storage site is 28 Sunset Road, Pompton Plains, NJ

3) Electronic documents shall be maintained for up to twelve (12) months following closing of a file, after which time they will be held in an electronic archive for up to thirty-six (36) months following closing of the file. Electronic mail, and any attachments to electronic mail, shall be maintained for up to twelve (12) months from the date of creation/sending/receipt, after which time they may be deleted and purged from the system.

III. Destruction Guidelines

1) After the passage of the file maintenance period (pp. II.2)) files may be reviewed by an attorney for possible destruction¹.

2) No file may be destroyed until it has been reviewed individually by an attorney and found suitable for destruction.

a) Any client property found in the file must be returned to the client

b) The attorney shall exercise professional judgment in determining whether a particular file is suitable for destruction erring on the side of retaining the file if there is any reason why the file may be needed in the future. Those reasons include, but are not limited to:

- i) The statute of limitation for malpractice claims has been tolled or has not yet run.
- ii) The underlying case involved a minor who has not yet reached the age of majority.
- iii) The file involved a troublesome client or outcome.
- iv) The file involved an area of law or cause of action where either for substantive reasons or client relations reasons, information in the file may be needed in the future. These include, but are not limited to:

(1) Unsatisfied Judgments: File must be retained until judgment is satisfied or can no longer be renewed allowing time for the malpractice statute of limitation to pass after judgment can no longer be renewed (Note: judgements represent a lien for period of twenty (20) years and can be renewed.)

(2) Minor children: Files involving minor children must be retained until the youngest child involved becomes of age plus additional time for the

¹ As of the date of this memorandum (August 13, 2024), file destruction has been undertaken of files which had been closed up to and including calendar year 2016.

statute of limitations to run

(3) Divorce files: Should be permanently retained when alimony or spousal maintenance is involved, or until the spousal obligation terminates, or until the death of the payor/payee. When minor children are involved, the file must be retained at least until the youngest minor child involved reaches the age of majority, allowing additional time for the statute of limitations to run.

(4) Structured settlements: Should be retained until that settlement is final.

(5) Collection files should be retained until paid or if judgment is outstanding, see guidelines for “Unsatisfied Judgments.”

(6) Chapter 11 Bankruptcy: Files should be retained permanently.

(7) Criminal cases: Files involving incarceration should be retained for the length of the incarceration and parole.

(8) Estate planning: Files should be turned over to the client, or retained permanently, including wills and trusts; pension and profit-sharing plans; and tax files; all of which should be treated as vital documents.²

(9) Certain documents need to be retained permanently, if not returned to the client:

- (a) recorded deeds;
- (b) accountants' audit reports;
- (c) tax returns (including all related documents and worksheets);
- (d) year end financial statements and depreciation schedules;
- (e) accounting journals;
- (f) bills of sale (for important purchases);
- (g) minute books, bylaws, and certificates of incorporation;
- (h) capital stock and bond records dealing with capital structure;
- (i) insurance policies and records;
- (j) property records and property appraisals;
- (k) copyright and trademark registrations;
- (l) patents and all related documents and correspondence;
- (m) major contracts and leases;
- (n) actuarial reports.

(10) Attorney Personal, Business, or Family-related files: Files which are the personal, family, or business-related files of individual attorneys in the firm, must be retained indefinitely, or turned over the attorney when they leave the firm, or to their estate upon their death.

3) Before any file is destroyed, the client is to be informed of the pending destruction and given opportunity to object and/or personally retain the file:

a) A letter will be sent to the client stating that:

i) The firm is happy to have been of service to the client in the past.

² Effective January 1, 2021, a policy was adopted NOT to retain original Wills, Powers of Attorney, Living Wills, and Trust Agreements, and all original documents are delivered to the client at the time of execution. The client is required to sign an acknowledgement that they have retained the original.

- ii) The length of time the file has been held.
 - iii) In accordance with firm policy, files held longer than seven (7) years will be destroyed.
 - iv) The client may obtain the file if desired. File may be either retrieved, in person, or delivered to the client by regular mail or overnight delivery, with the client pre-paying for all costs of delivery.
 - v) The file is scheduled for destruction sixty (60) days after the date the letter is mailed.
 - vi) If the firm has not heard back from the client, the firm will assume that the client has no objections to destruction of the file.
 - vii) If the client has any further legal issues, the firm would be happy to be of further service.
- b) The letter need only be sent by first-class mail.
- c) Disposition of files by response to letter:
- i) If letter returns undelivered – send second notification, and defer destruction for an additional six (6) months, after which time, having received no reply, the file may be destroyed.
 - ii) If client consents, or there is no response within 60-days, - file may be destroyed.
 - iii) If client desires the file, arrangements shall be made for the client to personally retrieve the file and sign a receipt.
 - iv) If client desires the file be mailed to them, client must pre-pay of the cost of delivery
- 4) The responsible lawyer must affirmatively give final approval for destruction of a client file or related documents.
- 5) A permanent list or database of destroyed files must be kept by the responsible lawyer.
- 6) Destruction must be accomplished in a manner that preserves client confidences. These would include shredding, pulping, or any other method that destroys media beyond reconstruction in an environmentally sound manner. The person or service performing the destruction should certify, on the authorization form, the date, location, and method used and do so under a formal non-disclosure agreement binding the company and its employees.
- 7) Permanent retirement or withdrawal from the practice of law. In the event the responsible attorney is retiring or otherwise permanently withdrawing from the practice of law, all files which have been held for the maintenance period, shall be returned to the client, at their expense, or shall be destroyed. Files which have not yet been held for the maintenance period, or which are required to be held permanently, shall, in the discretion of the responsible attorney, be either destroyed, turned over to the client, at their expense, or turned over to another law firm for requisite retention, on notice to client.