

OBLIC'S TIPS FOR EFFECTIVE FILE MANAGEMENT

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As we slog through the “dog days” of summer and look ahead to fall activities, it's a good time to reassess file management in the law office, reorganize systems where needed, and re-focus on using effective file management to improve client services and help prevent potential ethics and legal malpractice problems. Here are some steps to facilitate that process:

Reassess office file management

Let's start in the lawyer's office! If your office uses paper files or a combination of paper and electronic files:

- Are paper files kept in locked, fireproof cabinets when not in use?
- Is there a system to keep track of who has the file and what is being done on it?
- Is there a “work in progress” file drawer to which files are returned at the end of the day to protect them from theft and damage by fire or other disasters?

Even if the above measures are the “official” procedure for your law office, in reality, is the “pile” system used? This means, instead of having files to be worked on for that day or specified period of time on the lawyer's desk, there are “piles of files” on the lawyer's desk, credenza and maybe even on the floor!

If the lawyer is currently using the “pile” system, reassess the downside of doing this. Files kept this way are vulnerable to theft or damage. Often files cannot be located, necessitating a “search party” to find them. If the lawyer is absent or something

happens to the lawyer, it may not be clear what files are open and require immediate attention and what files are just lying around, waiting to be closed or closed waiting to be processed in keeping with the law office file retention plan.

Next, move to the support staff locations. Just as the lawyer should not leave files out when they are not being worked on, neither should the support staff. The tracking card for the file should reflect that the support staff has the file, on what date and what is being done on the file. At the end of the day, support staff should also lock files in a fireproof work in progress drawer.

Reorganize systems where needed

If there aren't adequate locking, fireproof file cabinets, and the lawyer intends to continue to use paper files or a combination of paper and electronic files, consider investing in these cabinets. Set up a tracking system for the files. This can be a paper “out card” system, listing the date checked out, who has the file and what is being done. Or better yet, use an electronic file checklist that everyone in the office can access via the office network that will show what is being done on the file, when and by whom. Of course, be sure your network system is encrypted and password protected.

Refocus on effective file management

Actually using a good file management system will save time and allow everyone to know the status of each file. This will make it easier for the lawyer to provide clients with monthly updates and keep them

involved with the representation. The file management system should tie in with the calendar to give reminders of upcoming deadlines, court dates (where applicable) and client meetings.

The file management procedures should be written out and followed by everyone. It has to be a workable system that everyone can agree to use. If this is done, there should be no exceptions! Even the most experienced attorney(s) and support staff must be onboard with this to have it work!

At the end of the representation, ideally the lawyer will return the original file to the client. The lawyer should first scan or copy the file. This is what the lawyer will retain for her/his records. It should contain information to reflect the representation sufficient to defend any future allegations of an ethics violation or legal malpractice. Remember that pursuant to Rule 1.15(a)(1) of the Ohio Rules of Professional Conduct, the lawyer shall maintain a copy of any fee agreement with each client for seven years after termination of the representation.

When this process of scanning or copying the file is complete, the lawyer can return the original file to the client. It should be spelled out in the initial engagement letter and fee contract that the lawyer will return the original file and all original documents to the client at the conclusion of the representation. The lawyer should have the client sign and date a receipt for receiving the original file that should then be scanned into the lawyer's scan file or placed with the paper file the lawyer



is retaining. It is a good idea to copy the photo id of the client onto the receipt so the picture of the client is on the receipt with the client's signature. Returning the file to the client at the conclusion of the representation saves the problem of trying to locate the client at the end of the firm's record retention period.

Dealing with closed client files

The ultimate file management dilemma is dealing with closed client files. The Ohio Supreme Court Board of Professional Conduct issued [Ohio Ethics Guide: Client File Retention](#) in March 2016 to provide guidance to Ohio lawyers. If the lawyer has closed client files in storage, this may be a good time to begin going through them.

These tips from The Malpractice Alert, May/June 2013 may be helpful.

WHAT IF I HAVE AN ATTIC, BASEMENT, SHED OR GARAGE FULL OF FILES? Are these files adequately stored? Are they protected from the elements? Could they be subject to flooded floors, leaking

roofs, chewing rodents? If any of these apply, the files should immediately be moved to a safe location.

Then the file review process can begin. Here are suggested steps to follow:

- Decide where and how to store the files the lawyer will retain.
- If it is decided to scan files for future storage, purchase appropriate equipment and learn how to operate it or hire competent persons to handle it.
- If using cloud storage, be certain data is adequately protected (Rule 1.6).
- Consider how to dispose of the files and purchase appropriate equipment. Files CANNOT be thrown in a dumpster or

landfill. If shredded, they must be shredded beyond any recognition, usually by cross-shredding, not just "ribbon" shredding.

- Inventory the files to know what files exist. This should include all locations and how many files at each location.
- Organize or list the files by year closed.
- Set aside a particular day of the week and make it "Closed Client File Day." Set a specific goal for what will be accomplished. For example, "We will go through one entire file box."
- Establish a review process by which:
 - extraneous materials are removed from files (paper clips, legal pads, pens).
 - original documents are set aside to return to clients (wills, deeds).
 - documents are scanned or copied to be kept in perpetuity (releases).
 - relevant file portions are copied or scanned for duration of file retention.
 - a date is determined for file destruction.

After files are checked to be sure documents to be retained in perpetuity are safe and the file to be kept is actually on the scanned disc or in the retained file, THEN AND ONLY THEN, can the discarded file be shredded.

If a lawyer is reviewing long-closed files, it may be useful to consider newspaper notice that any former clients can contact the office to arrange to pick up files. A note of caution here: the file belongs to the client and disclosure of confidential lawyer-client information must be in accordance with Rule 1.6. Questions of who owns the file of a deceased client will require careful consideration. When releasing the file, proper identification that the person is who they purport to be and a signed and dated receipt for the file is also prudent.

This article focused on paper file management or a combination of paper and

electronic files, necessitating handling of paper files. If the law office is completely electronic, the systems should be encrypted and password protected. Even electronic files may need to be reorganized with closed files being moved to another segment of cloud storage, external hard drive or other digital device. For additional technology resources, you may [click here](#) or contact Affinity Consulting at <http://www.affinityconsulting.com> or by email at info@affinityconsulting.com or by calling 877-676-5492 or CuroLegal at www.curolegal.com/osba or by email at info@curolegal.com or by calling 800-406-7336.

Systems for client file management are unique to each law office. Whatever is used, it should be agreed upon, reduced to writing and used by everyone in the law office. The goal is to have an integrated file management system that will improve effective client relationships to help grow the law practice while avoiding ethical and legal malpractice problems. This information is provided for loss prevention purposes and does not constitute legal or ethics advice. If you have questions about this topic, please contact Gretchen Mote, J.D., Director of Loss Prevention at gmote@oblic.com or 614-572-0620.