

# Closed FILES

## How Long Should I Keep Them For?

In our previous issue, we discussed file closure in “*Case Closed: What Do I Do With the File Now?*”. We now move on to consider file retention, an important aspect of file management that should go hand in hand with any operating procedures your law firm already has (or intend to implement).

### FILE RETENTION

Most lawyers generally elect to keep their client files forever (or at least for the duration of their practice/s). Whilst this would seem prudent, the reality however is that your firm becomes a permanent repository for client files, with its associated recurring costs that will increase every year.

Accordingly, you need to develop a file retention policy that suits your practice. Aside from the ethical, professional and legal issues, consider economic and practical aspects of retaining such a large number of files, when developing your policy. The type of clientele you have; the budget available and feedback from your firm’s lawyers and staff should also be considered.

### Retention Period

Chapter 19, *Rules and Rulings of the Bar Council Malaysia* provides a **general guide** to determine the retention period for files as follows:

*There is no hard and fast rule governing the period for retention of files by Solicitors before destruction. However, the Bar Council recommends the following guidelines. See Table I.*

	FILES	RETENTION PERIOD (YEARS)
a.	Conveyancing	12
b.	General Litigation	6
c.	Litigation: Unenforced judgment	12 (from date of judgment)
d.	Probate and administration	12
e.	Family matters	6
f.	General matters	6

Table I

Notwithstanding guidelines, **personal judgment** by the lawyer, on a file by file basis is very important. Lawyers who work on a matter would understand the client better, know the case’s nuances and is in the best position to decide on a file’s retention period. See ‘File Retention Essentials’ on page 11 for main considerations when deciding how long to retain a file.

### STORING CLOSED FILES

With the advent of technology, file retention has become relatively easier. Various cost-effective solutions that will greatly help law firms with file retention issues have emerged. See Table II on page 10.



1	<p><b>Traditional Storage.</b> Whilst storage is the simplest solution available, as the years go by, it will usually create a logistical and space/cost burden.</p> <p>Firms might want to consider storing files with document management companies. These companies generally barcodes files, which assists with tracking storage locations of the files and facilitates easy retrieval.</p>	<p><b>Do:</b></p> <p>(a) Ensure that your closed files' storage space (and accordingly your clients' privileged and confidential documents) is secure.</p> <p>(b) Purchase relevant insurance eg fire and flood for the space if it's stored offsite.</p> <p>(c) Use a system where files are numbered and filed in numerical order. Doing so will make it immediately apparent if a file is missing and, enables easy retrieval when a file is needed. <b>NB:</b> If you include the year of closing as a prefix to the closed file number, files can be easily brought forward for review.</p>	
2	<p><b>Scanning</b> is a feasible, affordable option for most firms nowadays.</p> <p>Files can be scanned and stored in almost any desired format eg CD-ROM, external hard drives, online document management systems, etc.</p>	<p><b>PROS:</b></p> <p>(a) Preserves the entire file.</p> <p>(b) Back-ups can be maintained off-site.</p> <p>(c) Documents can be accessed remotely.</p> <p>(d) Data can be indexed and searched easily.</p>	<p><b>CONS:</b></p> <p>(a) Technology may become obsolete and information stored becomes irretrievable.</p> <p>(b) Costs to sort, strip and scan the contents of a large accumulated store of files will be prohibitive! <b>Tip:</b> In such cases, simply pick a cut-off date to start scanning eg January 2012.</p> <p>(c) Scanned records are only as good as the individual/service tasked with scanning the files – should an important document be missed out and the file destroyed – the document cannot be reconstructed.</p>
3	<p><b>Microfilm.</b> A good alternative to scanning.</p>	<p>(a) Records can be read without computer equipment.</p> <p>(b) Software/hardware upgrades are not necessary.</p> <p>(c) Reduces space storage requirements by up to 95%.</p> <p>(c) If stored properly, microfilm has a shelf life of about 500 years.</p>	<p>(a) No "index" or "search" function. Users have to manually wind and rewind until they find the data they require.</p> <p>(b) Microfilming can be costly and is susceptible to fungus in tropical climates.</p> <p>(c) Easily misfiled or misplaced!</p>
4	<p><b>File Destruction.</b> A low-cost way to reduce the amount of space used to retain files.</p> <p>It is crucial however that</p> <p>(a) no less than 12 years should elapse between the time of closure and the date of destruction.</p> <p>(b) closed files are destroyed according to a predetermined policy.</p> <p>(c) your law firm preserves, for an extended time, an accurate index or identification of the files that has been destroyed/disposed.</p>	<p>A file destruction policy should include, <i>inter alia</i>, these points:</p> <p>(a) Notify and obtain client permission prior to destruction.</p> <p>(b) Conduct one final (thorough) screening of client files; <i>At a minimum, the list of files to be destroyed should be examined by the designated partner/senior lawyer to ascertain if any file should be preserved. Something may have occurred (since the original decision to destroy) to justify further retention.</i></p> <p>(c) Protect client confidences; <i>Destruction should be secure and complete eg do not recycle client files with your newspapers.</i></p> <p>If you use commercial services for this purpose, ensure that they understand the importance of maintaining client confidentiality and take steps to preserve it during the file destruction process.</p> <p>(d) Document the file destruction for review/audit purposes, etc.</p>	<p><i>* The list above is merely examples and not exhaustive.</i></p>

Table II





## FILE RETENTION ESSENTIALS

1. Maintain
  - o a separate diary for subsequent closed files review or destruction (if applicable); and
  - o diligently update an index of your closed files which should indicate when files were stored and where they are located.
2. Assign one partner/lawyer and a staff to take charge of your closed files. They would be responsible for
  - o making sure that everyone in your firm is trained and understands your file retention policy.
  - o introducing new hires to the file retention policy as part of their orientation.
  - o addressing any deviations by lawyers/staff from the policy.
3. Your file retention policy should, *inter alia*, provide direction to lawyers and staff alike on
  - o areas of law and their relevant statutory requirements;
  - o the standard file retention period;
  - o identifying files that should be kept for a longer period of time eg if there were any peculiarities in that matter or where contractual obligations stretch over an extended period;
  - o respecting client's protocols and expectations;
  - o retrieval procedures;
  - o review periods;
  - o potential litigation and its consequences for the firm, etc.

This will ensure consistency and direction in the management of your closed files. Where there is doubt, all lawyers must consult the partner/lawyer in charge of closed files.

**The advice and guidelines provided in this article are merely a guide and not meant to be exhaustive, the information does not create the standard of care for lawyers. Lawyers are advised to adapt accordingly to suit your own circumstances and to consider all other legal, professional and ethical obligations.**

## CONCLUSION

A well-planned and designed file retention policy can make all the difference in organising/locating closed files and keeping storage costs to a minimum. More importantly, it allows you to securely preserve information which could assist in the defence of a law suit against your firm should it ever arise.



## Sources:

- 'How Long Should You Keep Your Closed Files?', Dan Pinnington, LawPRO, Volume 9, Issue 4, December 2010  
 <[http://www.practicepro.ca/LAWPROMag/file\\_retention.pdf](http://www.practicepro.ca/LAWPROMag/file_retention.pdf)>
- 'Practice Advisors: Guidelines to Assist in Obligations Regarding Closure, Storage and Destruction of Client File',  
 <[http://www.lawsociety.ab.ca/lawyers/practice\\_advisors/practice\\_ethics/practice\\_advice\\_file\\_storage\\_and\\_destruction.aspx](http://www.lawsociety.ab.ca/lawyers/practice_advisors/practice_ethics/practice_advice_file_storage_and_destruction.aspx)>
- 'Managing The Mountain Of Paper: Records Management In The Law Firm', Ellen Freedman, CLM  
 <[http://www.pa-lawfirmconsulting.com/pdfs/records\\_management/MANAGING\\_THE\\_MOUNTAIN\\_OF\\_PAPER.pdf](http://www.pa-lawfirmconsulting.com/pdfs/records_management/MANAGING_THE_MOUNTAIN_OF_PAPER.pdf)>
- 'File Management: Retention and Destruction. Risk Management Handouts of Lawyers Mutual'  
 <[http://www.lawyersmutualinc.com/\\_public/documents/resources/File\\_Management\\_Retention\\_and\\_Destruction.pdf](http://www.lawyersmutualinc.com/_public/documents/resources/File_Management_Retention_and_Destruction.pdf)>
- 'Destroy Your Client Files Under a Records Retention Program... and Protect Their Interests, Too', Donald S. Skupsky,  
 <<http://www.cobar.org/docs/ACF4BB.pdf?ID=298>>
- 'Preserving the Record', J. Nelson Thomas, GP Solo Magazine, Oct/Nov 2003  
 <[http://www.americanbar.org/newsletter/publications/gp\\_solo\\_magazine\\_home/gp\\_solo\\_magazine\\_index/preservingtherecord.html](http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/preservingtherecord.html)>  
 <[http://www.lawsociety-barreau.nb.ca/assets/other\\_documents/Checklist\\_Closing\\_Law\\_Practice.pdf](http://www.lawsociety-barreau.nb.ca/assets/other_documents/Checklist_Closing_Law_Practice.pdf)>  
 <<http://ascrivenerslament.blogspot.com/2004/07/todays-lesson-advantages-of-microfilm.html>>  
 <<http://en.wikipedia.org/wiki/Microform>>  
 <[http://www.ehow.com/list\\_7251218\\_advantages-microfilm.html](http://www.ehow.com/list_7251218_advantages-microfilm.html)>  
 <[http://www.microfilm.com/pdf/future\\_of\\_microfilm\\_presentation.pdf](http://www.microfilm.com/pdf/future_of_microfilm_presentation.pdf)>