

# A CHECKLIST FOR IMAGING CLIENT FILES AND DISPOSING OF ORIGINAL DOCUMENTS

## Imaging Client Files for Digital Storage

Before implementing a program to scan and digitally store client files, ask yourself: what kind of documents do you wish to store electronically and why? Do you want to scan closed client files with the intention of shredding the paper afterwards or is the goal to go paperless from the start and eliminate or drastically reduce the need to maintain a physical file? In either case, consider the following:

1. If files are to be scanned after they are closed, are notes and memoranda included? By default, the client is entitled to attorney notes and memoranda unless exceptions apply. See OSB Formal Ethics Opinion No. 2005-125 available at [www.osbplf.org](http://www.osbplf.org). Click on Practice Aids and Forms and follow the link to File Management.
2. If the goal is to go paperless from the inception, are *electronic* notes and memoranda preserved? See OSB Formal Ethics Opinion No. 2005-125 available at [www.osbplf.org](http://www.osbplf.org). Click on Practice Aids and Forms and follow the link to File Management.
3. Unsigned word processing documents are usually saved in their native format and stored in a subfolder for each client. How will you retain these documents once they are signed? There are several options:
  - Create a PDF from your word processing document and apply an authenticated digital signature. Retain the word processing document and the authenticated, signed PDF.
  - Create a PDF from your word processing document and use Adobe Acrobat's custom stamp tool to insert a scanned image of your signature. Retain the word processing document and the PDF with your scanned signature.
  - Create a jpeg of your scanned signature and insert it directly into your word processing document. Print the signed document to PDF.
  - Keeping your word processing document intact, print a hard copy, sign it, scan it, and store it as a PDF.

Note: See item 7 below for a discussion on saving documents in their native format. Also note that you may elect to append the signed page to your original document when creating a PDF to store in your client file. See Adobe Acrobat Help for more information on creating and using authenticated digital signatures and custom stamps. If you intend to scan your signature and insert it into word processing or PDF documents, you will need image editing software to crop the scanned signature and make the background transparent. For more information on this process, See *How to Scan Your Signature and Insert it Into a Document* available at [www.osbplf.org](http://www.osbplf.org). Click on Practice Aids and Forms and follow the link to Technology.

4. If imaged files are to be joined with documents that are electronic in origin, are all electronic document and database sources considered in the capture process? (Documents and databases residing on network servers, Web servers, Extranets, Intranets, the Internet, local hard drives of firm PCs, laptops, home computers, zip drives, disks, portable memory sticks and flash drives, PDAs and Smartphones, or other media.)

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5. Are documents being scanned at the lowest acceptable resolution and optimized afterwards to reduce file size? The resolution on most scanners is easily adjusted. Adobe Acrobat, version 8 and later, has an optimization feature which helps further reduce file size after scanning. (In Acrobat, click on Document, Reduce File Size...)
6. Are scanned documents reviewed for quality and completeness of electronic capture?
7. Is the shelf life of the chosen electronic format acceptable? Saving digital file content using Adobe's archival standard (PDF/A) assures that *files created in earlier versions of Acrobat are guaranteed to be readable in future versions of PDF*. This is not a given if you attempt to keep files in their native application (Microsoft® Word and WordPerfect® come to mind.)
8. Is your storage media up to the task? Storing scanned files on a hard drive or server that is properly backed up (see item 14 below) is preferable to using CDs or DVDs. Compact or digital video discs are made from layers of materials which can delaminate or oxidize over time. Environmental exposure, improper storage, or improper handling all present opportunities for this kind of media to degrade. To read more about this phenomena, see the article, "Protect Your CDs and DVDs," from the State Library and Archives of Florida, available at <http://dliis.dos.state.fl.us/archives/preservation/dvds/index.cfm>.
9. Are imaged files electronically Bates-stamped or indexed? Organized in subfiles? Bates-stamping, indexing, and organization of documents into subfiles will make it much easier to access needed information. Case management or document management software can make this process easier.
10. Scanners are usually sold with OCR (optical character reader) software. Without this technology, scanned documents are static images that cannot be searched. Is OCR software used as part of the scanning process to ensure that documents are searchable? If OCR software did not come packaged with your scanner, Adobe Acrobat, version 8 and later, has built-in text recognition capability. To OCR through Acrobat while scanning, click on Document, Scan to PDF..., select a scanner, and check the Option "Make Searchable" (Run OCR). To OCR a document in Acrobat after it has been scanned, click on Document, OCR Text Recognition, and Recognize Text using OCR... WordPerfect X4 also has built-in OCR capability. See *Building the Paperless Office* by Joe Kissell for an in-depth discussion of software, scanner settings, use of OCR technology, and more. Available at [http://www.pcworld.com/businesscenter/article/138254/article.html?tk=nl\\_ptxnws](http://www.pcworld.com/businesscenter/article/138254/article.html?tk=nl_ptxnws).
11. Are privileged litigation documents clearly marked in the electronic file?
12. Are documents not subject to client disclosure clearly marked in the electronic file? See *Client Files Revisited*, available at [www.osbplf.org](http://www.osbplf.org). Click on [Practice Aids and Forms](#) and follow the link to [File Management](#).
13. Are electronic files stored securely with password protection and other precautions as necessary? If you possess electronic data containing "consumer personal information" within the meaning of the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 to 646A.628) you are required to develop, implement, and maintain safeguards to protect the

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security and disposal of the data. Failure to do so can result in civil penalties. For more information, see *2007 Legislation Alerts*, PLF *In Brief*, Issue 102, November 2007, Business Law/Consumer Protection (Identity Theft) and *Protect Client Information from Identity Theft*, PLF *In Brief*, Issue 105, August 2008.

14. Are electronic files backed up daily (or more frequently)? Are backups stored on *and* off-site? Are the backups tested periodically? For a thorough discussion on backing up computer data and applications, see *How to Backup Your Computer*, available at [www.osbplf.org](http://www.osbplf.org). Click on Practice Aids and Forms and follow the link to Technology.
15. Is an electronic file retention policy in place and enforced? Regardless of how files are retained, the PLF recommends that all client files be kept a minimum of 10 years. Some files may need to be kept longer. For more information, see the PLF practice aid, *File Retention and Destruction*, available at [www.osbplf.org](http://www.osbplf.org). Click on Practice Aids and Forms and follow the link to File Management.
16. The lawyer responsible for a given matter should sign-off before electronic data is destroyed. Permanent destruction of electronic data requires special expertise. For more information, see the PLF practice aid, *File Retention and Destruction*, available at [www.osbplf.org](http://www.osbplf.org). Click on Practice Aids and Forms and follow the link to File Management.
17. Scanning files can be expensive and time-consuming. Any odd-sized paper (legal size documents, phone message slips, post-it notes, fragile carbon copies, etc.) will require special handling. All paper clips and staples must be removed. Folded and hole-punched documents may jam the scanner. Be prepared to outsource or devote adequate staff time to major scanning projects. If you truly want to go paperless, or simply have less paper, start with active files rather than closed files. Form good paper-processing habits, such as retaining client e-mails electronically rather than printing hard copies. For more information on retaining client e-mails, see the PLF practice aid, *Managing Client E-Mail*, available at [www.osbplf.org](http://www.osbplf.org). Click on Practice Aids and Forms and follow the link to Technology. The latest version of Adobe Acrobat makes e-mail archiving even easier. See *Technology Tips – Using Acrobat 9 in the Law Office*, PLF *In Brief*, Issue 105, August 2008.
18. Is the firm aware of ethical considerations in going paperless? See Helen Hierschbiel, "Going Paperless," *Oregon State Bar Bulletin*, April 2009. <http://www.osbar.org/publications/bulletin/09apr/barcounsel.html>.

### Disposition of Original Documents

1. Satisfy yourself that the imaging process has integrity.
2. Communicate file retention policies to clients. Ideally, the issue of record retention should be addressed in the initial client fee agreement or engagement letter and again at the time of file closing. The PLF has several sample fee agreement and engagement letters, as well as a sample closing letter, which incorporate file retention language. These practice aids are located at [www.osbplf.org](http://www.osbplf.org). Click on Practice Aids and Forms and follow the link to Engagement Letters and Disengagement Letters.

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3. Review each file *individually*. Wholesale rules cannot apply due to discrepancies in file content. (See discussion below.)
4. Does the imaged file contain any client property? Documents, photographs, receipts, cancelled checks, or other materials provided by the client are generally considered *property* of the client and cannot be destroyed. However, this is an area that requires judgment. It may be difficult to distinguish between one-of-a-kind original documents versus copies of documents provided by the client.

Do your files contain client photographs? While it may be possible to scan and store a photograph as a high-quality digital image which can be printed at any time, the original nevertheless belongs to the client, is his/her property, and may be of special sentimental value.

The PLF recommends that lawyers avoid accepting original client property, or at a minimum, return client property at the time of file closing. For more information, see "Closing Files," a chapter in *A Guide to Setting Up and Running Your Law Office*, published by the PLF and available at [www.osbplf.org](http://www.osbplf.org). Click on [Books from the PLF](#). The PLF also offers a File Closing Checklist. From the PLF Web site, click on [Practice Aids and Forms](#), and follow the link to [File Management](#).

5. Does the file contain any original documents whose authenticity could be disputed? Does the file contain any original documents that have particular legal importance? If you keep original wills, 40 years must elapse before the will can be disposed of. ORS 112.815 provides:

"An attorney who has custody of a will may dispose of the will in accordance with ORS 112.820 if: (1) The attorney is licensed to practice law in the state of Oregon; (2) At least 40 years has elapsed since execution of the will; (3) The attorney does not know and after diligent inquiry cannot ascertain the address of the testator; and (4) The will is not subject to a contract to make a will or devise or not to revoke a will or devise."

6. File disposition must comply with applicable laws and the Oregon Rules of Professional Conduct. The Fair and Accurate Credit Transaction Act (FACTA) Disposal Rule (the Rule) requires any person who maintains or possesses "consumer information" for a business purpose to properly dispose of such information by taking "reasonable measures" to protect against unauthorized access to or use of the information in connection with its disposal. The Rule defines "consumer information" as any information about an individual that is in or derived from a consumer report. Although the Rule doesn't specifically refer to lawyers, it may be interpreted to apply to lawyers, and **the practices specified in the Rule would safeguard clients' confidential information.**

"Reasonable measures" for disposal under the Rule are (1) burning, pulverizing, or shredding physical documents; (2) erasing or physically destroying electronic media; and

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(3) entering into a contract with a document disposal service. FACTA took effect June 1, 2005. Also see Oregon State Bar Legal Ethics Op 2005-141.

7. The lawyer responsible for a given matter should sign-off before the client's paper file is destroyed.

### Resources

#### Professional Liability Fund

- Review the other technology practice aids available on the PLF Web site at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids & Forms, then Technology.
- Download the CLE handout and order the free DVD from *Practical Law Office Solutions and Technology Fair for Sole and Small Firms* at [www.osbplf.org](http://www.osbplf.org). Select Programs on Video.

#### American Bar Association

- The ABA offers many print and online resources with an ongoing focus on technology, including the paperless office. These include [Law Practice magazine](#), [Law Practice Today](#), and the [Legal Technology Resource Center](#). For an overview of resources, visit the [ABA Law Practice Management Section](#).