MANAGING LAW FIRM RECORDS

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InfoCompass Business Solutions
Here’s What You Will Learn Today

✓ How to **Design** a Records Retention Program
✓ How to **Build** a Records Retention Schedule
✓ How to **Implement** a Records Retention Schedule
Certified Records Manager

Founder and Principal Consultant of InfoCompass Business Solutions

President, Greater Sacramento Capitol Chapter of ARMA

Expert in iManage Govern Records Manager Software

Not a lawyer

Nitza Medina-Garcia, CRM
Current Situation?
Designing a Records Retention Program
Records Program Outlines

- Lifecycle of records
- Proper handling of records
- Orderly disposition of records
Lifecycle of Records

- Destroyed
- Active
- Offsite - Archived
- Inactive
- Transferred
- Returned to Client
Proper Handling of Records

✓ Location of matter records when active?
✓ How should the records be organized?
✓ When should matter records be sent offsite? At matter close? When there is no more room in the office?
✓ Who can have access to the records?
✓ What about electronic documents, emails and records?
✓ Can electronic records be shared via file sharing sites?
✓ Are any of these procedures written down?
Orderly Disposition of Records

- Process defined for destruction, return or transfer
- Retention periods defined
- Processes are systematic and not determined on an ad hoc basis
Records Program Components

- Records Policy Statement
- Records Retention Schedule
- Procedures for executing and enforcing the Records Policy and Schedule
Records Policy Statement

- Defines what are matter records, client records and firm administrative records
- Applies to all firm information and records regardless of medium (paper, electronic, duplicates, microfilm, etc.)
- Include in employee policy and procedures manual
- Discuss during employee onboarding/training
1. POLICY STATEMENT

ABC Law Firm is committed to firm-wide compliance with records management policies and procedures. In keeping with this commitment, it is important that all partners and employees understand and support the Firm’s commitment.

2. SCOPE

This policy applies to all partners and employees, including associates, support staff, legal assistants, and summer, temporary and contract employees at all locations.

3. DEFINITION

Records Management is defined as the management of Firm information from active use through secure inactive maintenance to its ultimate disposition according to established policy and procedures.

4. PROCEDURE

A. Ownership of Records - All records created, received or maintained by ABC Law Firm personnel in the performance of their duties are the property of the Firm. Partners and staff may not make copies in any medium for persons or entities outside of the routine performance of their duties, or create and maintain copies of Firm records at locations other than those approved by the Firm.

B. Storage Procedures - Inactive records management shall be governed by procedures set forth in the most current version of the Records Services Manual.

C. Records Retention and Disposition - The Firm’s official policies on records retention, scheduling and disposition procedures, controls and exceptions management are set forth in the Records Retention Schedule and supporting Records Services Manual.

5. ADMINISTRATIVE RESPONSIBILITY

It is the responsibility of all personnel to uphold the Firm’s records management policy. Questions regarding the content or changes to records retention policy, interpretation of a Records Retention Schedule (RRS) or procedures supporting the schedule should be directed to the Records Manager.

From The Lawyer’s Guide to Records Management and Retention
Story

Mark Duffy, Director of Archives
Episcopal Church Headquarters
New York City
Challenge: Up to date retention policy and procedures
Building a Records Retention Schedule
Create Retention Schedule

✓ Compile the list of records
✓ Partner with general counsel or managing committee to determine retention periods
✓ Do not want to rely on ad hoc retention decisions of individual lawyers
Legal Compliance Considerations

- **Ethics**: Lawyers subject to ethical rules, ethical opinions and case law that apply to professional conduct
- **Rules of Evidence**: Court regulations that govern use of evidence
- **Security**: Federal, state and local data security, privacy and identity theft regulations that apply to all businesses
- **Business law**: Federal, state and local recordkeeping regulations that apply to all businesses
California Bar Rules of Professional Conduct

✔ Rule 3-700 (D)(1) Termination of Employment

✔ Rule 4-100 (B)(3) Preserving Identity of Funds and Property of Client

Is there a Five Year rule?
Rules do not specifically direct how long a lawyer is to keep a client’s files, but rule 4-100(B)(3) requires records regarding entrusted client property and funds to be maintained five years after the last funds and property have been disbursed to the client.
California Criminal and Probate Law

- Los Angeles Bar Association Form. Opn. 475 (1994), 420 Criminal files must be maintained for the life of the client
- California Probate Code Section 700 to 735. Describes responsibilities for returning Estate Planning client files
Building a Schedule

BOTH AN ART & A SCIENCE
# Retention Schedule Example

## Records Retention Schedule

### Client Files by Area of Law

<table>
<thead>
<tr>
<th>Area of Law</th>
<th>Retention Period</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antitrust – litigation and counseling</td>
<td>Matter Close + 10 Years</td>
<td></td>
</tr>
<tr>
<td>Banking and commercial finance</td>
<td>Matter Close + 10 Years</td>
<td></td>
</tr>
<tr>
<td>Bankruptcy</td>
<td>Matter Close + 7 Years</td>
<td></td>
</tr>
<tr>
<td>Collections</td>
<td>Matter Close + 5 Years</td>
<td></td>
</tr>
<tr>
<td>Commercial</td>
<td>Matter Close + 10 Years</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>Matter Close + 10 Years</td>
<td></td>
</tr>
<tr>
<td>Estate Planning and administration</td>
<td>Matter Close + 100 Years</td>
<td></td>
</tr>
<tr>
<td>Family Law - Dissolution</td>
<td>Matter Close + 25 Years</td>
<td>If alimony involved, 5 Years after youngest child reaches majority</td>
</tr>
<tr>
<td>Family Law - Prenuptial</td>
<td>Matter Close + 75 Years</td>
<td></td>
</tr>
</tbody>
</table>
Organize Retention Schedule

☑ By Area of Law
☑ Broadly by matter type: Transactional vs Litigation
☑ Administrative
Calculate Retention

- Use Matter Close Date to trigger retention
- Is there an alternative date to use (Estates and Trusts, Family Law)
- Calendar/Fiscal Year End (Administrative)
- Event Date (Administrative)
OVER RETAINING & UNDER RETAINING
Helpful Hints

Barbara Dalton, Information Governance Manager
McDermott Will & Emery LLP
Chicago
Challenge: Creating a law Firm Retention Schedule
Implementing a Records Retention Schedule
Procedure Considerations

✓ Define image scanning and filing process
✓ Create rules for when records go offsite
✓ Define matter close process
✓ Define record destruction process
✓ Define matter transfer process
✓ Legal holds
✓ Acceptable file sharing methods (DropBox? Box.com?)
✓ Define the records management training process
✓ Document how and when process audits will be conducted
Client Engagement Letter

☑ Notify client of the firm’s retention policy
☑ Whether the firm will notify the client while files are up for destruction
☑ Policy regarding handling and returning of client documents
DEFINE WHEN A MATTER IS CONSIDERED CLOSED
Matter Close Procedure

- Close matter in time and billing system
- Return client documents?
- Any other matter file clean up? Destroy drafts?
- Prepare files to be shipped offsite?
- What happens to the electronic matter file? Do the electronic files get moved to an inactive database or network location?
Matter File Destruction

✓ Confirm no legal holds

✓ If Client notification, document efforts to contact via certified mail to last known address

✓ Do not let there be exceptions to retention schedule retention periods without documented justification

✓ Gather and/or identify all records to be destroyed

✓ Firm personnel perform destruction or 3rd party vendor completes destruction

✓ Destruction means destruction (paper or electronic)

✓ Document destruction approvals, inventory numbers, certificate of destruction
DO NOT DESTROY IF ON LEGAL HOLD OR LITIGATION IS FORESEEABLE
Helpful Hints

Derick Arthur, Director of Records and Information Governance
King & Spalding
New York City

Challenge: Implementing procedures for day forward and for old legacy records
Document your policy, procedures and schedule

Be systematic, not ad hoc

Partner with general counsel and/or management committee

Policy should encompass both physical and electronic records and information
How can you take action quickly?

☑ Discuss with your General Counsel and/or Managing Committee the importance of a formal Records Policy
☑ Raise general awareness of records management importance with end-users, key players and management
☑ Begin writing your Records Policy statement
☑ Begin listing the types of records at your law firm
Questions?
Please contact me if you have any questions
Appendix
Further Information

California State Bar Rules of Professional Conduct

American Bar Association Model Rules of Professional Conduct
http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html

Society for Human Resource Management
https://www.shrm.org/

Electronic Code of Federal Regulations
https://www.ecfr.gov/cgi-bin/ECFR?page=browse
Books Recommended

Information Governance in the Legal Environment Series (available from ARMA)

The Lawyer’s Guide to Records Management and Retention (available from the ABA)