

Harvard Law School

Case File Retention Policy - Civil and Criminal Matters

Purpose

Maintaining client case files properly serves several purposes. Client case files have legal value while the case is active and for the length of any subsequent appeals periods. Administratively closing cases once the legal service for which the clinic has been retained is completed is an important part of sound office management and is essential in maintaining an accurate record of the current case load. Some files contain high risk confidential information and HLS must maintain this information securely and only as long as useful to limit risk according to the [Harvard Information Security Policy](#) and [Massachusetts Data Privacy Law](#).

Persons Affected

Clinical and pro bono students, volunteers, clinical instructors, and staff in the individual HLS clinics; staff in the Office of Clinical and Pro Bono Programs; clients; off-site storage and shredding vendors.

Policy Statement

Client files for civil and/or criminal matters will be administratively closed as soon as practicable once a case has been completed. Client files will be retained by the clinic for the minimum period specified in [Mass. R. Prof. C. 1.15A](#) and shall be destroyed thereafter. Although the Rule specifies the minimum retention period, it does allow clinics to keep files for a longer period if appropriate for the practice area, or required by the circumstances enumerated in [Mass. R. Prof. C. 1.15A \(e\)](#). Clients shall be notified in the retainer of the retention policy that allows their file to be destroyed after the minimum period in the Rule. All files shall be securely maintained until they are disposed.

Retention Period

Civil Case/Matter Files: Retain 6 years after completion of the case/matter or termination of the representation, unless a longer period is specified by Mass. R. Prof. C. 1.15A, then dispose securely.

Criminal Defense/Delinquency Matters Files: Retain 10 years after completion of representation, conclusion of all direct appeals or an incarcerated defendant's maximum period of incarceration, whichever is latest, unless a longer period is specified by Mass. R. Prof. C. 1.15A, then dispose securely.

Definitions and Abbreviations

Termination of representation is when the legal services for which the clinic was retained are completed, the clinic withdraws from representation, the client no longer wishes to go forward, cannot be located after numerous attempts, or releases the clinic as legal representative. In cases where an appearance has been entered in court, the permission of the court may be required to withdraw before representation is terminated.

Mass. R. Prof. C. 1.15A is the Massachusetts Rule of Professional Conduct governing attorney obligations with regard to file retention.

Roles and Responsibilities

Clinical liaisons, under the guidance of the Clinic Director or the SPO Supervising Attorney, shall manage the implementation of the policy in each clinic. Students and the supervising attorney are responsible for notifying the clients of the file retention policy at the commencement of representation and for properly maintaining the case file, including properly closing the file. The Information Technology Services department shall support the deletion of electronic records. The clinical liaisons shall manage off-site storage contracts for their own files. The Office of Clinical and Pro Bono Programs will manage contracts with the shredding services.

Related Policies and Procedures

From November 15, 2020 forward (previous policy was dated August 29, 2011)

Opening and Closing Files

1. Individual clinic letterhead shall be used for all correspondence.
2. All new clients must be notified in writing upon commencement of representation (usually in Retainer Agreement) that their file will be retained for the minimum period specified in Mass. R. Prof. C. 1.15A.
3. Before a client case file is closed, all outstanding fees must be paid or discharged. A file cannot be closed until there is a final distribution and accounting of all trust account balances relating to the file (if applicable).
4. The client case file should be culled of unnecessary and/or duplicate material at case closing.
5. No confidential or proprietary information shall remain in a student's possession, either physically or electronically. Students should transfer any files from removable media (flash drives, CDs, smartphones), personal computers, shared drives and email accounts to official case files. Anything not transferred must be destroyed.
6. All vital records and original documents provided by the client (including tax records, expense records, bank records, deeds, and corporate documents) should be returned to the client at case closing and documentation should be made regarding transfer and receipt of valuable property. Copies may be made for the clinic file.
7. Each closed file should be assigned a destruction date that is in accordance with the Rule, and with the needs of the clinic. Every effort should be made to choose the earliest possible date for destruction.

Storing Files

1. Original material created by the attorney and students may be kept in the clinic file and a copy may be, but need not be, made for the client. See [Mass. R. Prof. C. 1.15A\(a\)](#) for a complete description of what a client's file consists of.
2. Documents may be scanned to a digital file and kept in the clinic's electronic database. Original

vital documents must be kept.

3. The clinic will maintain a system (such as an Excel spreadsheet or a Time Matters report) for recording the location and disposition of all closed files. Client contact information and other necessary information will be retained for conflict-checking.
4. Clinic electronic and paper client case files will be labeled to ease future identification and retrieval with client name(s), close of representation date, and destruction dates.
5. Clinic paper client case files kept on-site must be in locked filing cabinets.
6. If clinic client case files are sent to off-site storage, there should be a scheduled system for sending and retrieving files. Destruction dates shall be indicated and recorded on the facility's inventory at time sent.
7. Current and former clients may retrieve their files or a copy of their files in person upon request prior to the expiration of the file retention period.

Destruction of Files

1. File materials that must be retained indefinitely or turned over to the state pursuant to applicable unclaimed property laws, even when the client cannot be located, include stocks, bonds, original wills, notes and deeds, and other similar original documents.
2. The clinic reserves the right to retain copies of files retrieved by clients beyond the file retention period only if needs require.
3. Paper files shall be destroyed via a secure shredding or pulping method.
4. Digital client case records (in Time Matters or other client management software, email, desktop computers, shared drives, smart phones and any other location) shall be erased at the expiration of the designated file retention period on an annual schedule, unless the clinic needs to retain the file for a longer period as discussed above.
5. A record of the disposition of destroyed files shall be maintained indefinitely in some format such as an Excel spreadsheet.
6. Files involved in a lawsuit, a criminal, disciplinary or governmental investigation, or pending lawsuit shall not be destroyed in accordance with [Mass. R. Prof. C. 1.15A \(e\)](#).

Please see the [Harvard General Records Schedule](#) for retention policies for other types of records.

Additional References

Massachusetts Rules of Professional Conduct Rule 1.15 Safekeeping Property

<https://www.mass.gov/supreme-judicial-court-rules/rules-of-professional-conduct-rule-115-safekeeping-property>

Massachusetts Rules of Professional Conduct Rule 1.16 Declining or Terminating Representation
<https://www.mass.gov/supreme-judicial-court-rules/rules-of-professional-conduct-rule-116-declining-or-terminating>