

Harvard Law School

Case File Retention Policy - Civil and Criminal Matters

Updated August 1, 2022

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 regarding 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 and case management vendor shall support related data management reporting in case management systems. The clinical liaisons shall manage off-site storage contracts for their own files. The Office of Clinical and Pro Bono Programs manages contracts with the shredding services.

Related Policies and Procedures

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) and at case closing 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 Legal Server report) for recording the location and disposition of all closed files.
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 shall 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 upon request prior to the expiration of the file retention period.

Destruction of Files

1. So long as clients are notified of the file retention policy, the file may be destroyed after the retention period has expired. 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 files beyond the file retention period only if needs require such as: case information related to a structured settlement or other matters creating long-term obligations to or by the client; information and belief the client or related party will return as a client; or destruction of the file would harm the client's interests.

To maintain a case file for teaching purposes, a new teaching case study should be created with identifying information removed. If case information could be useful as precedent, remove or copy it and store elsewhere.

3. Files involved in a lawsuit, a criminal, disciplinary or governmental investigation, or pending legal claim shall not be destroyed in accordance with [Mass. R. Prof. C. 1.15A \(e\)](#).
4. Paper files shall be destroyed via a secure shredding or pulping method.
5. Digital client case records (in Legal Server or other case 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.
6. Client contact information and other necessary information will be retained for conflict-checking indefinitely, including the following data fields: client name, adverse party name, other related parties (witness, spouse), phone number, mailing address, email address, date of birth, brief

description of the case, status of representation, name of all lawyers and students who worked on the case, matter number, open and close dates. For businesses: business name, officers and directors, partners, trade names, place of incorporation.

7. A record of the disposition of destroyed files shall be maintained indefinitely in some format such as an Excel spreadsheet.

Additional References

See the [Harvard General Records Schedule](https://grs.harvard.edu/home) for retention policies for other non-case file types of records.
<https://grs.harvard.edu/home>

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>

Office of Clinical and Pro Bono Programs (HLS) Records Schedule (2020-01) – for a copy of the schedule, see Lee Mestre

(previous policy versions dated November 25, 2020 and August 29, 2011)