

Best Practices for a Paperless Office



Beverly Michaelis
Practice Management Advisor
Professional Liability Fund

Best Practices for a Paperless Office



Beverly Michaelis
Practice Management Advisor
Professional Liability Fund

Topics

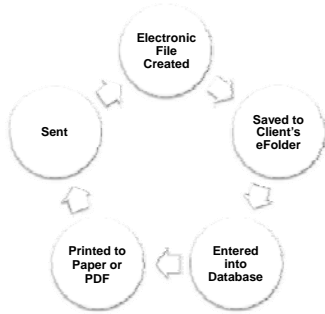
1. Processing Documents
2. Redundancy: Too Much of a Good Thing?
3. Leveraging Efficiency
4. Protecting Your Investment
5. Caring for Special Documents

Processing Documents

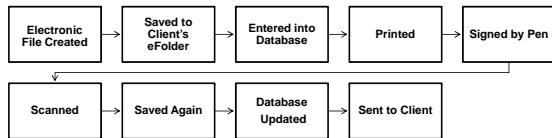
- Outbound Documents
- Inbound Documents



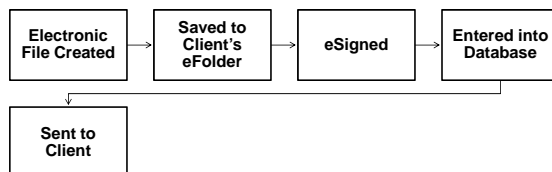
Outbound – No Signature



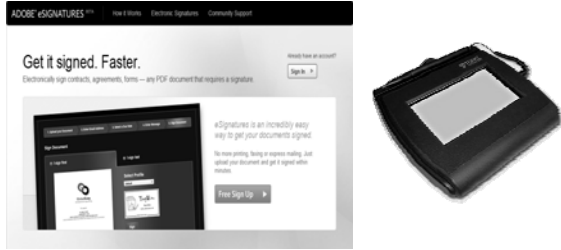
Outbound – Signed Traditionally



Outbound - eSigned



Electronic Signatures The Cloud v. The Machine

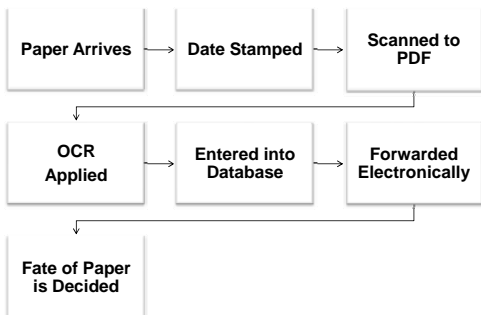




Digital Signature IDs

1. Issued by a Certificate Authority (CA)
2. CA Provides Public Key
3. Public Key Validates Private Key
4. Recipients Can Rely on Authenticity
5. Can Expire or Be Revoked

Inbound Documents



Redundancy:
Too Much of a Good Thing?



**Does It Make Sense to
Keep Paper?**

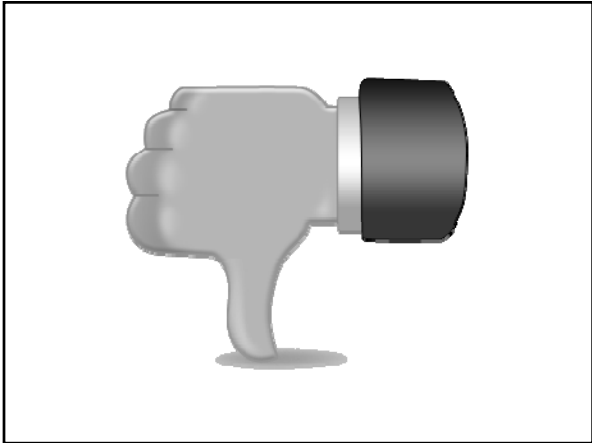


And eFiles?


- [-] Clients
 - [-] Smith
 - Billings
 - Correspondence and Emails
 - Legal Research
 - Pleadings

And Case Management or Document Management Data?






Use Case or Document Management Software!

Organized 

- Matter-Centric
- Multiple Ways to Classify and Describe
- Automatic Indexing

Easy

- Drag and Drop Files
- Cross reference multiple matters/contacts

Reliable 

- Version Control
- History Tracking – Check in/Check Out

Instantly Accessible

- Search for Text or Metadata
- No More Lost or Misplaced Paper Files
- Information at Your Fingertips

Consistent 

- eFiling Structure Provided
- Users Must Comply

All File Types Supported

- Audio, Video, Images, Other
- Easily file Email from Outlook



And Secure!

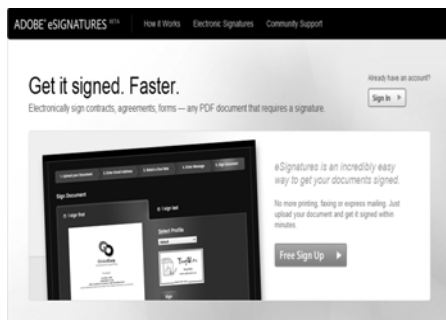
- Matter-Level
- Individual Documents
- Document Types
- Legacy Protection
- Secure Web Portal

Leveraging Efficiency

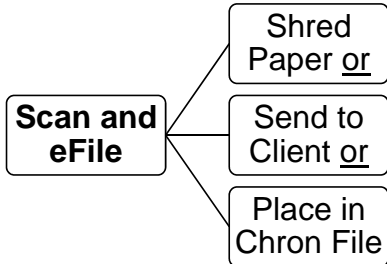
1. eSign
2. Do Not Maintain Equivalent Paper Files
3. Use Acrobat Batch Processing
4. Use Software!



eSign



Do Not Maintain Equivalent Paper Files



Acrobat Batch Processing

1. Apply OCR and ClearScan
2. Embed Index
3. Redact
4. Bates Number
5. Optimize File Size and More...

<http://blogs.adobe.com/acrolaw/category/batch-processing/>

Learn and Use Software!



Protecting Your Investment

- Proper Security
- UPS Battery Protection
- Backups
 - Daily Routine
 - Test Integrity
 - On and Off Site Storage



www.osbplf.org > Practice Aids and Forms > Technology >
How to Backup Your Computer

Caring for Special Documents



1. Client Property
2. Legally Significant
3. Authenticity at Issue

Return All Client Property

1. Photographs
2. Tax Returns
3. Bills
4. Receipts
5. Diaries



If the Source is the Client: Return it!

Legally Significant

1. Last Will and Testament
2. Promissory Note
3. Contract
4. Fee Agreement
5. Required by Rule

Example - Local Rules of Bankruptcy Procedure, 9037-1 (a)(1)
Statement of Social Security Numbers, <http://bit.ly/h5nFpB>

Authenticity at Issue?

CASES INVOLVING:

Anonymous notes
Embezzlement
Altered records (Med/Dental/Legal)
Internal crimes

CLIENTS WHO ARE VICTIMS OF:

Handwriting disputes
Threatening notes
Embezzlement
Altered records (medical/dental or legal)

SITUATIONS INVOLVING:

Fraudulent handwriting
False or denied signatures
Graffiti
Suspicious documents (altered wills/contracts)
Forgery detection
Save time and money with our investigations

Source: Jacqueline A. Joseph, CDE - <http://jjhandwriting.com/index.php>

Thank You!

Is It Time to Go Paper-Less?

Motivated by environmental concerns, improvements in technology, and the ever-increasing cost of storage, many law firms are exploring the option of going paper-less. Implementing a program to scan and digitally store client files can be daunting. Investing in appropriate hardware and software is just the beginning. The process itself requires organization, protocols, and commitment to training. Once a program is in place, you may find that you or your staff are devoting more time than expected to the conversion. So is it worth it to go digital? Consider the following:

- How much do you spend each year on storage and maintenance of your paper filing system? Include the cost of folders, binders, paper, labels, notebook dividers, related office supplies, photocopies, filing cabinets, desk storage, shelving, boxes, annual storage fees, on-demand delivery and retrieval fees, and destruction fees.
- How much non-billable time is consumed by maintaining or overseeing off-site storage? Include time spent preparing files for storage, delivering files to storage, retrieving files from storage, reviewing files prior to destruction, contacting clients, and updating your file inventory.
- Are you frequently on the hunt for misplaced files or papers? A lawyer who spends 15 minutes a day looking for documents that are not properly filed will lose \$12,300.75 in billable time by year-end. (“Unearthing Your Hidden File Management Costs,” by David Bilinsky and Laura Calloway, *Law Practice Magazine*, American Bar Association, March 2007. The cost calculation is based on average

workdays, billable hours, and rates. See *Oregon State Bar 2007 Economic Survey*, www.osbar.org/_docs/resources/07EconSurvey.pdf.)

- How much office space do you devote to your paper filing system that could be used for other purposes? In some firms, the estimate is as high as 150 linear feet per lawyer, if closets, workrooms, conference rooms, lawyer offices, and secretarial space are included. If you have never sent closed files off-site, as much as 30% to 40% of your available space may be devoted to storing paper records. For smaller offices in urban areas of Oregon, as much as \$150 to \$300 of your monthly rent payment may be attributed to keeping paper. (*The Lawyer’s Guide to Records Management and Retention*, by George C. Cunningham and John C. Montaña, American Bar Association, 2006.)

Converting to a digital filing system can help you recoup these costs and recapture your billable time. Beyond the immediate savings to your pocketbook, going paper-less has other benefits:

- Records are maintained on-site, accessible to everyone.
- The entire file is in one place.
- Client requests can be met almost instantaneously. Clients will no longer have to wait until the file is retrieved from storage.
- Internal requests can be met quickly. You will no longer have to wait to retrieve a file to rule out a conflict of interest.
- You will be better prepared for electronic filing (e-filing) as it expands to state court, administrative agencies, and other ven-

Continued on page 2

DISCLAIMER

IN BRIEF includes claim prevention information that helps you to minimize the likelihood of being sued for legal malpractice. The material presented does not establish, report, or create the standard of care for attorneys. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate research.

ues. If you are a federal practitioner, you are already well-schooled in the tips and traps of e-filing. If you are not an experienced e-filer, you may be in for a bumpy ride. In August 2008, the Oregon Supreme Court began accepting voluntary e-filing of all documents. The goal is to expand e-filing throughout all Oregon courts over a five-year period, provided funding is obtained. (“Oregon eCourt Implementation,” *In Brief*, Issue 105, August 2008.)

- The paper won’t disappear. If you want a hard copy of any document, just hit “print.”

So what are the drawbacks? Starting from scratch, hardware, software, and technology support (including training) can easily run \$2,000 to \$5,000 for a small office. Expect complete implementation of a full-scale paper-less system to take several years, not months. For those brave enough to take the plunge, read about one firm’s journey in *Our Paperless World*, available on the PLF Web site. (See Additional Resources on page 5.) Here are some practical tips:

Staff

Involve staff throughout the process: selecting technology, establishing policies and protocols, and implementing security measures. As the end users, staff can offer valuable insight into the flow of information and paper within the firm. Staff will also be more accepting of the transition to digital files if their concerns and input are considered along the way.

Implementation will not succeed unless you invest in training for *everyone*. This means a commitment up-front and on an ongoing basis as you experience turnover. Be prepared to meet this need internally, or find a qualified technology consultant who can help.

Technology

Buy the best scanner you can afford. Fujitsu (www.fujitsu.com), Visioneer (www.visioneer.com), and Xerox (www.xeroxscanners.com) are all good sources for scanners. Purchase separate flatbed and sheet-fed scanners, or buy a scanner with both features. A sheet-fed scanner will help you scan large quantities of standard-sized documents quickly. A flatbed scanner allows you to place and scan small or delicate items that should not be run through an automatic document feeder.

Instead of printing to paper, “print” to Portable Document Format (PDF). PDF captures documents as they appear on-screen with fonts and formatting intact. Although there are other PDF writers, Adobe Acrobat is the gold standard. Saving digital file content using Adobe’s archival standard

(PDF/A) ensures 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 (e.g., Microsoft Word® and WordPerfect®). In addition, PDF files are accessible to anyone who downloads the free Adobe Reader software. Firms using Acrobat 9 Pro or Pro Extended can take advantage of the many tools specific to the legal profession. (See “Technology Tips – Using Acrobat 9 in the Law Office,” Beverly Michaelis, *In Brief*, Issue 105, August 2008.)

Purchase practice or document management software to facilitate organization of data and capture of digital file material (scanned documents as well as e-mail, Web pages, graphics, video files, audio files, photos, word processing documents, and spreadsheets). Options for practice management software include Amicus (www.amicusattorney.com), Practice Master (www.tabs3.com), ProLaw (www.prolaw.com), and Time Matters (www.timematters.com). Some of the more popular document management programs are Worldox (www.worldox.com), Interwoven Worksite (formerly iManage) (www.interwoven.com), Open Text eDocs (formerly Hummingbird) (www.opentext.com), and NetDocuments from LexisNexis® (<http://law.lexisnexis.com/net-documents>). If you are unsure how to proceed, hire a computer consultant to assist in the selection, installation, and customization of both hardware and software.

Learn and use desktop search engines built into your computer’s operating system to find documents (Windows Desktop Search or Mac’s Searchlight).

Policies and Protocols

Develop file naming and organizing protocols. Using a standardized filing system for paper allows us to find what we want when we need it. The same applies to your digital filing cabinet.

Scan all *incoming* documents to PDF. Set your scanner’s resolution to 150 – 300 dots per inch (dpi), sufficient to produce good, clean copies of your original. (Although lower resolutions produce smaller PDF files, the trade-off may not be worth it. When in doubt, try a test scan before saving a document permanently to your system.)

Print all *outgoing* work product to PDF, including e-mails.

Segregate PDFs from native application files. Create two folders for each client matter: one to contain all the PDFs and one to contain native application files (word processing documents, spreadsheets, presentations, jpegs, html files, etc.). The PDF folder becomes the client’s official digital file. The native application folder contains working documents that

you can continue to use and manipulate.

Use case or document management software as an interface to help you organize, access, sort, and view your PDF files.

Establish a retention policy for your digital files. Regardless of how files are kept, the PLF recommends that all client files be kept for a minimum of 10 years. (See the PLF practice aid, File Retention and Destruction, available at www.osbplf.org. Click on Practice Aids and Forms and follow the link to File Management.)

Review the PLF practice aid, Checklist for Imaging Client Files and Disposing of Original Documents, for additional steps, including what to do with your paper once it has been scanned. (See Additional Resources below.)

Clients

Inform clients of your digital storage practices. Consider providing clients with the original paper file after it has been scanned. This will save destruction fees and give existing clients a complete copy of their file to date. Explain how you will provide documents to clients in the future, both in the regular course of business and in the event the client requests his or her file. Update your fee agreement or engagement letters to reflect these policies and procedures.

When clients leave your firm, be prepared to provide them with a complete copy of their digital file in a format they can access. This may mean printing the file. With few exceptions, the client is entitled to the entire file. (See Client Files Revisited, available at www.osbplf.org. Click on Practice Aids and Forms and follow the link to File Management. See also, “You Have to Share – The format of documents doesn’t change a lawyer’s duty to release them to a client,” by Kathryn A. Thompson, *ABA Journal*, September 2008. www.abajournal.com/magazine/you_have_to_share/.)

Security

Use commonly recommended security measures such as routers, firewalls, anti-virus software, password-protected access, and the like. If you are not well-versed in security issues, take advantage of the ABA’s free Legal Technology Resource Center, open to members and nonmembers: www.abanet.org/tech/ltrc. Useful articles and books can also be found through the Law Practice Management Section: www.abanet.org/lpm/home.shtml. If you are still uncertain how to proceed, hire an expert.

Take steps to ensure that documents stored electronically cannot be inadvertently modified or destroyed. This can be

done through file property settings in Adobe Acrobat or at the network level by controlling access to folders.

Once your system is up and running, consider enabling remote access for lawyers – and possibly clients to their own files.

Back up, back up, back up!

Beyond Client Files

Once a successful system is in place for client files, consider converting administrative and accounting records to paper-less record-keeping (such as scanning bank deposits rather than copying them and e-mailing billing statements to clients with e-mail accounts).

Is It Paperless or Paper-Less?

Going digital does not mean that all paper will go away. Many practitioners will still prefer to hold paper in their hands, especially in the drafting or review stage. Many clients lack digital access and will continue to need paper copies. A national survey conducted in 2008 found that 33% of U.S. heads of household had never used a computer to create a document, 18% of households are without Internet access, and 20% of all heads of household have never sent an e-mail. (Survey: One-Fifth of Americans Have Never Used E-Mail, by Steven Musil. [CNETnews.com, May 18, 2008.] http://news.cnet.com/8301-10784_3-9946706-7.html?tag=mncol.)

BEVERLY MICHAELIS
PLF PRACTICE MANAGEMENT ADVISOR

Continued on page 4

Additional Resources

The following are available on the PLF Web site, www.osbplf.org, as a resource to those who are ready to go paper-less:

Practice Aids

- Checklist for Imaging Client Files and Disposing of Original Documents (Technology)
- Digital Signatures (Technology)
- Mail Handling – Paperless Filing System (Mail Handling)
- Our Paperless World (Technology)
- Retention of Electronic Records (Technology)

***In Brief* Articles**

- Document Destruction – June 2005
- Four Simple Ways to Save Client E-Mail – November 2006
- How to Back Up Your Computer (and Application Service Providers) – February 2006
- Resources for Backing Up Your Computer – February 2006
- Technology Tips: Using Acrobat 9 in the Law Office – August 2008

MANAGING CLIENT E-MAIL

Are you struggling with how to manage client e-mail? Would you like a hassle-free way to select, print, or save messages relating to particular clients or matters? Here are four simple approaches to keep your e-mail inbox lean and mean:

- The built-in capabilities of Outlook 2007;
- Outlook Add-ins: electronic filing assistants/organizer;
- Adobe Acrobat; and
- Case or document management software.

These approaches will help to ensure that you are incorporating client e-mail into the appropriate digital or paper file for your client.

If you are using Google, Yahoo!, Hotmail, Mozilla Thunderbird, Microsoft Windows Live Mail, or Outlook Express, see “You’ve Got Mail! – *And Lots of it*,” from the American Bar Association, available at <http://www.abanet.org/media/youraba/200807/article12.html>.

BUILT-IN CAPABILITIES OF OUTLOOK 2007

Organizing E-mail Using Folders

Client e-mails in Outlook 2007 (Outlook) can easily be saved to a text file that can be viewed (and searched) in Word or WordPerfect. First, create a folder on your computer for each client. If a client has multiple case matters, use subfolders. Each matter may have a subfolder for correspondence, pleadings, and other documents, as needed. Then set up e-mail folders and subfolders for each of your clients and client matters in your Outlook inbox that mirror the folders and subfolders in the client’s computer files. Drag the messages from the inbox into the appropriate client e-mail folder.

Saving Multiple E-Mail Messages as Text Files

To save client e-mails en masse using Outlook, navigate to the e-mail folder containing the messages you want to save, choose “Select All,” or select the individual messages you want to place in a text file. With the messages highlighted, choose “File, Save As,” and navigate to the folder on your computer where you want to save the messages. Give the file a name, such as “Jones e-mail messages.” “Jones e-mail messages” will be saved as a text file that can be opened in Notepad, WordPad, Word, or WordPerfect. If you save multiple messages in one batch, they will automatically be consolidated into one text document. The document can be searched, if necessary; stored with client Jones’ other electronic documents; and printed for the client’s paper file, if desired. The original e-mail messages can then be deleted from Outlook, freeing up valuable space.

Capturing Attachments

If you want to save the attachments or graphics along with the original e-mail, when you select the “File, Save As” option, change the message type at the bottom of the dialog box from the default (which may be plain text, HTML, or rich text) to Outlook Message Format (.msg). Note that messages saved in the .msg format will have an envelope icon and are opened using Outlook.

Using Earlier Versions of Outlook

The techniques described above should work in earlier versions of Outlook. If the “File, Save As” option is not available, select the messages you want to save, right click, choose “Print,” and check the “Print to File” checkbox before clicking OK. Because you are “printing” to a file (a text file on your computer) and not physically printing the messages, this is equivalent to the “Save As” approach.

Best Practices

You can save e-mails one at a time – as you receive them – or all at once at the end of a client matter. Depending on the duration of the matter, save e-mails frequently enough to protect your client's information from loss.

OUTLOOK ADD-INS: ELECTRONIC FILING ASSISTANTS AND ORGANIZER

Electronic Filing Assistants

The following electronic filing assistants can greatly speed-up the process of filing your e-mail. All three offer free product evaluations. Visit the company Web sites for more information:

QuickFile4Outlook

QuickFile 4Outlook – Lawyers Edition is an add-in to Outlook that doesn't require users to learn a separate software program. After installing it, two new buttons appear on your Outlook toolbar. You can easily create a filing system for your e-mail that corresponds to the client's paper file and that moves e-mail out of your inbox and sent items to the correct client/case folder. If you prefer to print e-mail and save hard copies to the client file, QuickFile can speed up the sorting, printing, and filing process. (Folder names and other key information, such as case number and description, can be printed on each e-mail message to ensure more accurate filing.) Electronic archives can be created in Word or HTML by case or client, with e-mail attachments stored in a separate folder and accessible from the archived document. <http://www.outlook4lawyers.com>.

SimplyFile

As the name implies, SimplyFile simplifies the process of filing e-mails in Outlook folders. The program applies an advanced algorithm to learn and adapt to the user's e-mail filing habits. After you "train" SimplyFile for a time, filing e-mail to the right folder takes only one click. Whether you want to file a newly sent e-mail or a reply to an existing message, the program will "guess" which Outlook folder the message belongs in. (The accuracy rate is purported to be 80-90%.) There are no configuration wizards, no set-up, and no rules to maintain. www.techhit.com/SimplyFile/

SpeedFiler

If you send and receive lots of e-mail, like to keep it filed, and have many folders in a hierarchical structure, SpeedFiler promises to save you time.

There are two versions of SpeedFiler – Personal and Professional. Both versions offer accelerated filing of incoming and outgoing messages, prompts for a folder when sending a message, and improved navigation to Outlook folders. The Professional version includes one-click filing, intelligent folder suggestions (comparable to SimplyFile), ability to file the original message automatically when replying (comparable to SimplyFile), support for Microsoft Exchange, ability to redefine the Sent items folder, and background folder scanning to avoid start-up delays. <http://www.claritude.com/>.

Electronic Inbox Organizer

If you find your Outlook Inbox difficult to work with, you may benefit from using an Inbox organizer like Xobni, voted a "must-have" by www.pcworld.com:

Xobni

Xobni completely reorganizes the look, feel, and function of your Outlook Inbox. E-mail exchanges between you and a contact are displayed as a list of e-mail conversations, threaded together by subject, and shown in the order in which they occurred. Clicking on a conversation reveals all the e-mails contained within the thread. You can instantly see who said what and when. In addition, all the

files exchanged between participants to a conversation are listed for your convenience.

If you are a Facebook or LinkedIn user, Xobni integrates seamlessly with those products to pull in profile data. It boasts “lightning fast” search capabilities for finding e-mail, attachments, contacts, and companies as well as “e-mail analytics” which help you identify the best time of day to e-mail an important client or contact. Xobni is Open Source and completely free. Visit <http://www.xobni.com/> for more information.

ADOBE ACROBAT 9

If your office already owns Adobe Acrobat 9 (Acrobat), you may want to take advantage of this program’s powerful e-mail archiving capabilities. When Acrobat is installed, two new buttons appear on the Outlook (or Lotus Notes) toolbar: “Create Adobe PDF from selected messages” and “Create Adobe PDF from folders.” These buttons are used to capture messages and attachments together, converting your e-mail into a single PDF with a fully searchable/sortable index. Messages can be archived individually, one folder at a time, or you can set archiving to occur automatically.

To convert selected messages from Outlook to PDF, follow these steps:

1. In Outlook, select the inbox folder with the e-mail message you want to save.
2. Click the button “Create Adobe PDF from selected messages.”
3. In the “Save Adobe PDF File As” box, specify a folder on your computer (e.g., client/matter) in which to save the PDF file, type a file name, and click “Save.”

To convert a folder of e-mail messages from Outlook to a PDF, do the following:

1. In Outlook, select the relevant inbox folder.
2. Click the button “Create Adobe PDF from folders.”
3. Click OK.
4. In the “Save Adobe PDF File As” box, specify a folder on your computer (e.g., client/matter) in which to save the PDF file, type a file name, and click “Save.”

To set up automatic e-mail archiving in Outlook:

1. On the Menu bar in (File, Edit, View, Go, Tools, Action, Help, Adobe PDF), click on Adobe PDF, and choose Setup Automatic Archival...
2. On the Automatic Archival tab of the Acrobat PDFMaker dialog box, select Enable Automatic Archival. Then select options for Frequency and the time of day at which automatic archiving occurs.
3. Select other options, according to your needs:
 - a. Maintain Log Of Archival Creates a record of each archiving session.
 - b. Choose File Specifies the name and location of the archiving log.
 - c. Embed Index For Faster Search Creates an index that you can search to find specific words or characters instead of having to search each individual document.
4. Click Add, and select the e-mail folders and subfolders. Then select or deselect the Convert This Folder And All Sub Folders option, as preferred, and click OK.
5. In the Save PDF Archive File As dialog box, select a name and location for the archived e-mail PDF. Then click Open.
6. Review the settings and the archive folder names listed in the Acrobat PDFMaker dialog box, and do any of the following:
 - a. To add other e-mail folders to the list, click Add and select the folder.
 - b. To remove folders from the list, select the folders and click Delete.
 - c. To change an archive file, select any folder name from the list, click Change Archive File, and specify the name and location.

7. To start archiving e-mail immediately, click Run Archival Now.

Acrobat also supports automatic e-mail archiving in Lotus Notes. The steps are essentially the same. Once a PDF e-mail archive has been created, future messages can be easily appended to an existing PDF.

Using Earlier Versions of Acrobat

These basic techniques also work with the Professional versions of Adobe Acrobat 7 and 8.

CASE OR DOCUMENT MANAGEMENT SOFTWARE

For those who are looking for solutions beyond mere e-mail management, purchasing case or document management software may make the most sense.

Case management software centralizes all client and matter data into one software program – from calendaring, docketing, conflicts, and billing to e-mail, documents, research, and more. With case management software, e-mail and attachments are stored in the appropriate case or contact file when received or sent. Mail does not remain in the Outlook inbox. Options for case management software include Amicus (www.amicusattorney.com), Practice Master (www.tabs3.com), ProLaw (www.prolaw.com), and Time Matters (www.timematters.com).

Document management software brings together *all* of an organization's sources of knowledge, including e-mail communications, scanned paper documents, word processing documents, and spreadsheets – anything that can be stored as a file. Some of the more popular document management programs are Worldox (www.worldox.com), Interwoven Worksite (formerly imange) (www.interwoven.com), Open Text eDocs (formerly Hummingbird) (www.opentext.com), and NetDocuments from LexisNexis® (<http://law.lexisnexis.com/net-documents>). For more options, Google “document management software.”

Conclusion

Once a matter is concluded, the client's computer folder or subfolder (including e-mail messages) can be digitally stored. You can then delete the original computer file to free up space on your computer hard drive.

As e-mail communication becomes more prevalent, finding a reliable means of filing client messages is critical. Whether you use one of the approaches described above or simply print all client e-mails, be consistent. Capture all messages, sent and received, as well as attachments, and retain them (electronically or in paper form) just as you would correspondence, pleadings, or other client documents. For help with e-mail management; file opening, organizing, or retention issues; or other office organizational issues, contact the practice management advisors of the PLF. Remember, your inbox is not your filing system.

Beverly Michaelis
PLF Practice Management Advisor

[Our thanks to Ellen Freedman, CLM, Law Practice Management Coordinator, Pennsylvania Bar Association; and Jay Solomon, a contributor to Technolawyer, an online technology forum for lawyers, for their contributions to this article which originally appeared in the November 2006 issue of the PLF newsletter, In Brief. Updated by Beverly Michaelis June 2009.]

MAIL HANDLING PAPERLESS FILING SYSTEM

In a paperless filing system, each client or matter has a distinct electronic file where mail is kept with other client/matter information. Paper records may be minimal or non-existent. Mail is scanned with other paper, then distributed and saved in Portable Document Format (PDF). Optical Character Reader (OCR) software is used to render the scanned PDFs searchable. [For more information about scanning and use of OCR software, see the PLF practice aid, *Checklist for Imaging Client Files and Disposing of Original Documents*, in the **Resources** section below.]

Establish a protocol for the proper disposition of paper after scanning. As a general rule, keep original documents whose authenticity may be disputed, or those with particular legal importance (original signed contracts, original executed wills, etc.) Paper not meeting these criteria (or other criteria identified by the firm) can be shredded or forwarded to the client after scanning. [See *Checklist for Imaging Client Files and Disposing of Original Documents* in the **Resources** section below for more information.]

One person should be responsible for opening all incoming mail, sorting it, and date stamping it. In a paperless filing system, date stamping can also be accomplished after the mail is scanned by applying a date and time stamp in Adobe Acrobat. Click on Tools, Comment & Markup, and select Stamps. Under “Dynamic” choose the “Received” stamp or follow the steps to create a custom date and time stamp.

If the person opening the mail is also in charge of a central calendar or the docket system, this person should review the mail and pick out any dates or time limits set forth. These dates should be entered immediately into the system(s) and an appropriate notation made on the piece of mail. This can be accomplished before or after scanning. To make the notation beforehand, place a checkmark next to the docket date, initial it, and then scan the document. To make the notation afterward, use Adobe Acrobat to create a custom “Docketed” stamp to apply to the mail after it is scanned in as a PDF.

If the person opening the mail is not in charge of the calendar or docket system, a docketing request should be completed for each date or time limit and e-mailed to the person in charge of the central calendar or docket.

At this stage, scanned mail can be forwarded electronically to the assigned attorney and his or her secretary. The secretary should review the mail and note dates and items of importance. If possible, the secretary should also meet with their attorney(s) to review incoming mail and tickled files each day. This meeting is an excellent time for questions to be answered, schedules coordinated, and items delegated to the secretary for completion. Document or case management software can greatly facilitate this process. These programs store scanned, unread mail directly in the client/matter electronic file, not the attorney’s e-mail inbox. Once in the program, unread mail can be protected from deletion, backed up with the remainder of the client/matter file, and easily flagged for follow-up, forwarded to another person, or sorted by any number of criteria (date received, client, matter, description, or status: reviewed, not reviewed, or on hold).

Keep in mind that the mail handling procedures described above apply to **all** incoming documents and transmissions, including faxes, hand-deliveries, and items received by messenger. E-mail messages may be scanned, following the procedures described above, or saved directly in

electronic form. For more information on electronic retention of e-mail, see the PLF practice aid, *Managing Client E-mail*, in the **Resources** section below.

Resources available on the PLF Web Site, www.osbplf.org

ARTICLES	PLF WEB SITE LINK
<i>Document Destruction</i>	<i>In Brief</i> , June 2005 issue
<i>Our Paperless World</i>	Practice Aids and Forms , then Technology
<i>Retention of Electronic Records</i>	Practice Aids and Forms , then Technology
<i>Technology Tips: Using Acrobat 9 in the Law Office</i>	<i>In Brief</i> , August 2008 issue
<i>The Paperless Office</i>	<i>In Brief</i> , February 2009 issue
PRACTICE AIDS	PLF WEB SITE LINK
Checklist for Imaging Client Files and Disposing of Original Documents	Practice Aids and Forms , then Technology
Digital Signatures	Practice Aids and Forms , then Technology
File Retention	Practice Aids and Forms , then File Management
How to Back Up Your Computer (and Application Service Providers)	Practice Aids and Forms , then Technology
Managing Client E-Mail	Practice Aids and Forms , then Technology

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. 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. 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. 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.)

A CHECKLIST FOR IMAGING CLIENT FILES AND DISPOSING OF ORIGINAL DOCUMENTS

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.
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. 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

A CHECKLIST FOR IMAGING CLIENT FILES AND DISPOSING OF ORIGINAL DOCUMENTS

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. 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. 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. 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. 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. Click on Practice Aids and Forms and follow the link to Engagement Letters and Disengagement Letters.

A CHECKLIST FOR IMAGING CLIENT FILES AND DISPOSING OF ORIGINAL DOCUMENTS

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. 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

A CHECKLIST FOR IMAGING CLIENT FILES AND DISPOSING OF ORIGINAL DOCUMENTS

(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. 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. Select Programs on CD/DVD.

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](#).

FILE CLOSING CHECKLIST

Client _____

File/Matter No. _____

Matter: _____

Date: _____

Atty: _____

DATE	INITIALS	ACTION FOR ALL FILES – PAPER AND ELECTRONIC
		1. Make sure notices of <i>lis pendens</i> or lien abstracts have been discharged.
		2. Make sure all original judgments, orders, decrees, cost bills, deeds, contracts, <i>etc.</i> are filed or recorded.
		3. If an unsatisfied judgment is involved, diary the file for 3, 6, and 9 years. Review for assets and file certificate of extension before expiration of 10 years.
		4. Make sure any UCC or security interest has been perfected and filed. Track appropriate renewal dates in your own system to prevent security interests from lapsing. (The Oregon Secretary of State's office no longer issues individual renewal notices.) Renewals can also be verified online against the UCC Renewal Report at http://www.filinginoregon.com/ucc/renewal.htm . Individual renewals are easily identified by the lien number.
		5. If the file involves a lease or option to buy, diary the file for 6 months prior to expiration.
		6. If the file involves a criminal matter, check to see if expungement is possible and diary the file for 3 years.
		7. Check for unbilled activities or balance remaining in trust and send final bill or accounting to client.
		8. Review the file for any further work to be done.
		9. Review file for additional names to be included in conflict system.
		10. Review file for documents to be included in the firm's form or template directory.
		11. If litigation or tribunal matter, withdraw as attorney of record.
		12. Assign destruction date. Regardless of how files are kept, the PLF recommends that all files be kept for a minimum of 10 years. See the PLF practice aid, <i>File Retention and Destruction</i> , available at www.osbplf.org . Select Practice Aids and Forms, then File Management.
		13. Send closing letter to client. Advise client of file destruction date and firm policy on retrieval and provision of closed file materials. Return client's original documents and include client questionnaire, if appropriate.
		14. Remove file from active status and enter destruction date into calendar, case management system, or closed file inventory.
DATE	INITIALS	ACTION FOR PAPER FILES ONLY
		15. Assign closed file number.
		16. Mark the file closed and enter closed file number in case management system or closed file inventory.
		17. Remove duplicate documents, unused note pads, and other unneeded items from file. (DO NOT remove draft work product, memos, phone messages, research, or attorney notes relating to the merits of the case.)
		18. Check for loose, unfiled documents and place in the file.
		19. Check network servers, local hard drives, laptops, zip drives, disks, flash drives, PDAs, <i>etc.</i> for electronic material not in file. Print hard copies, file, and purge electronic data or move electronic data onto appropriate storage media according to the firm's policy for retention of electronic records. Also see step 25 below.
		20. Move file to storage.

FILE CLOSING CHECKLIST

Client _____

File/Matter No. _____

Matter: _____

Date: _____

Atty: _____

DATE	INITIALS	ACTION FOR ELECTRONIC FILES
		21. Review the PLF practice aid, <i>Checklist for Imaging Client Files and Disposing of Original Documents</i> , available at www.osbplf.org . Select Practice Aids and Forms, then Technology.
		22. Does the matter involve original documents whose authenticity could be disputed? Or documents that have particular legal importance, such as an original Will? These documents cannot be discarded after scanning. Provide them to the client or make other arrangements to protect and store valuable originals. The Professional Liability Fund recommends against storing client's original wills. See "Why Did We EVER Want to Keep Original Wills?" <i>In Brief</i> (March 2007). Available at www.osbplf.org . Select <i>In Brief</i> , then March 2007.
		23. Does the firm possess original documents or property belonging to the client? Documents, photographs, receipts, cancelled checks, or other materials provided by the client are generally considered <i>property</i> of the client and cannot be destroyed. Keep scanned copies of these items for <u>your</u> records. Return the client's original property <u>to the client</u> .
		24. Verify completeness of client's electronic file. Check for loose, unscanned documents, e-mails, or other records. Scan, save, or move items to client's electronic file as needed. If you are scanning a paper file in its entirety, consider providing the client with the paper version once you are assured the file has been accurately scanned. This will save destruction fees and give the client a complete copy of their file.
		25. 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 security and disposal of the data. Failure to do so can result in civil penalties. See "2007 Legislation Alerts - Business Law/Consumer Protection (Identity Theft)," <i>In Brief</i> (November 2007) and "Protect Client Information from Identity Theft," <i>In Brief</i> (August 2008.) Go to www.osbplf.org , select <i>In Brief</i> , then choose the month and year of the issue you wish to access.
		26. Be prepared to meet future requests for file material. Clients are entitled to file information in a format they can access. This may mean printing all or part of a file. Inform clients of the firm's policy on retrieval and provision of closed files at the time of file closing. See step 13 above.
		27. Enter closed file information into case management system or closed file inventory.
		28. Properly archive electronic file for duration of firm's retention period. Establish access rights to ensure that documents cannot be inadvertently modified, destroyed, or altered. Retain file material for 10 or more years. See step 12 above.
		29. Establish, test, and maintain on and off-site backups. See the PLF practice aid, <i>How to Back Up Your Computer</i> , available at www.osbplf.org . Select Practice Aids and Forms, then Technology.

FILE RETENTION AND DESTRUCTION

Most client files (whether paper or electronic) should be kept for a minimum of 10 years to ensure the file will be available to defend you against malpractice claims. Files that should be kept for *more* than 10 years include:

1. Cases involving a minor who is still a minor at the end of 10 years;
2. Estate plans for a client who is still alive 10 years after the work is performed;
3. Contracts or other agreements that are still being paid off at the end of 10 years;
4. Cases in which a judgment should be renewed;
5. Files establishing a tax basis in property;
6. Criminal law – keep for one year after the client is released from custody¹
7. Support and custody files in which the children are minors or the support obligation continues;
8. Corporate books and records;
9. Adoption files;
10. Intellectual property files; and
11. Files of problem clients.

Whenever possible, do not keep original papers (including estate plans or wills) of clients. 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.”

When closing your file, return original documents to clients or transfer them to their new attorneys. Be sure to get a receipt for the property and keep the receipt in your paper or electronic file.

The first step in the file retention process begins ***when you are retained by the client***. Your ***fee agreement*** should notify the client that you will be destroying the file and should specify when that will occur. The client’s signature on the fee agreement will provide consent to destroy the file. In addition, your ***engagement letter*** should remind clients that you will be destroying the file after certain conditions are met.

The second step in the file retention process is ***when the file is closed***. When closing the file, establish a destruction date and calendar that date. If you have not already obtained the client’s permission to destroy the file (in the fee agreement and engagement letter), you can get written permission when you close the file or you can make sure that the client has a complete copy of the file. This includes all pleadings, correspondence, and other papers and documents necessary for the client to construct a file for personal use. If you choose the latter alternative, be sure to document that the client has a complete file. This means that the paper or electronic file you have in your office is *yours* (and can be destroyed without permission) and the file the client has is the *client’s* copy. File closing is also a good time to advise clients of your firm’s policy on retrieving and providing file material once a matter is closed.

The final step in the file retention process involves reviewing the firm's electronic records for client-related material. Electronic data may reside 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. Examples include e-mail communications, instant messages, electronic faxes, digitized evidence, word processing, or other documents generated during the course of the case. Review these sources to ensure that the client file is complete. If these documents exist only in electronic form, you may choose to store them electronically or print them out and place them in the appropriate location in the client's file.

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

The retention policy for electronic data should be consistent with the retention policy for paper files. Regardless of how files are retained, the PLF recommends that all client files be kept a minimum of 10 years. If you intend to scan client files and dispose of the original documents, review the PLF practice aid, "A Checklist for Imaging Files and Disposing of Original Documents," available at www.osbplf.org. Click on Practice Aids and Forms and follow the link to Technology.

Organization and Destruction of Closed Files

Closed paper files should be organized by years or organized into two groups: files that are 10 years and older and files that are less than 10 years old. If possible, however, separate closed client files into groups according to the year the work was completed so that each year you know which files to review for destruction. Electronically retained files should be organized in a similar fashion, or identified in a manner that allows you to easily determine when the file was closed.

Keep a permanent inventory of files you destroy and the destruction dates. Before destroying any client file, review it carefully. Some files need to be kept longer than 10 years, as noted above. Others may contain conflict information that needs to be added to your conflict database or original documents of the client, which should never be destroyed. Always retain proof of the client's consent to destroy the file. This is easily done by including the client's consent in your fee agreement or engagement letter and retaining the letters with your inventory of destroyed files. Follow the same guidelines when evaluating whether to destroy electronic records. For additional guidance on closing client files, See the PLF practice aid "File Closing Checklist," available at www.osbplf.org. Click on Practice Aids and Forms and follow the link to File Management.

On June 1, 2005, a new law took effect that regulates the disposal of consumer information. 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 (3) entering into a contract with a document disposal service. Also see Oregon State Bar Legal Ethics Op 2005-141. Permanent destruction of electronic data requires special expertise.²

¹ In criminal law cases, an action for legal malpractice may not accrue, for statute of limitation purposes, until the date on which the conviction is set aside and the client is released. *Stevens v. Bispham*, 316 Or 221 (1993).

² With proper technique, deleted documents can be retrieved and restored. Consult with a computer expert to determine what steps must be taken to ensure that client documents have been *completely* purged from your system, including backups, if applicable. For recommendations on how to store data for long-term archival needs, contact the Association for Records Management Professionals at www.arma.org.
