

# CHECKLIST FOR SCANNING CLIENT FILES

## 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 you are scanning closed files, 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. 2017-192](#). The Professional Liability Fund (PLF) encourages lawyers to keep complete copies of their files.
2. If the goal is to go paperless from the outset, are *electronic* notes and memoranda preserved? See [OSB Formal Ethics Opinion No. 2017-192](#).
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. (Use File, Print to PDF so your signature is [flattened](#).)
  - 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.

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, cloud servers, local hard drives, flash drives, disks, smartphones, or other media.)
5. Are documents being scanned at the lowest acceptable resolution and optimized afterwards to reduce file size? The resolution on most scanners can be adjusted quite easily. Adobe Acrobat has an [optimization feature](#) which helps further reduce file size after scanning.
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*

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*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.) To learn more about the PDF/A format, see Reagan DeWitt-Henderson, "[PDF/A – PDF for Archiving](#)," *In Brief* (June 2011). Also, see the posts at [The Acrolaw Blog](#), Acrobat for Legal Professionals. PDF /A is the preferred format for documents filed electronically with the courts.

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 that 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 & Archives of Florida.
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. Bates stamping can also be done in Adobe Acrobat.
10. Scanners are usually sold with OCR (optical character recognition) 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 has built-in text recognition capability. Search Help in Acrobat for step-by-step instructions on applying OCR during or after the scanning process. WordPerfect X6 and later also has built-in OCR capability. See Joe Kissell, "[Building the Paperless Office](#)" for an in-depth discussion of software, scanner settings, use of OCR technology, and more. The Acrolaw Blog also has helpful posts on [using Acrobat for optical character recognition](#).
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 Helen Hirschbiel, "[Client Files, Revisited](#)," *Oregon State Bar Bulletin* (June 2006), and [OSB Formal Ethics Opinion No. 2017-192](#).
13. Are electronic files stored securely with password protection, encryption, or other security as needed? 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 Kimi Nam, "[Protect Client Information from Identity Theft](#)," *In Brief*, (August 2008).
14. Are electronic files backed up daily (or more frequently)? Are backups stored on *and* off-site? Are the backups tested periodically? Are backups secured (password-protected, encrypted)? For a thorough discussion on backing up computer data and applications, see the PLF practice aid, [How to Backup Your Computer](#).
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 Guidelines](#).
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 Guidelines](#).

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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 or begin scanning files as you close them. Form good paper-processing habits, such as retaining client emails electronically rather than printing hard copies.

For more information on retaining client emails, see the PLF practice aid, [Documenting Email as Part of the Client File](#). Email archiving is easy with Adobe Acrobat 9 or later. See Beverly Michaelis, "[Technology Tips – Using Acrobat 9 in the Law Office](#)," *In Brief* (August 2008) and these posts at [The Acrolaw Blog](#).

18. Is the firm aware of ethical considerations in going paperless? See Helen Hirschbiel, "[Going Paperless](#)," *Oregon State Bar Bulletin*, April 2009, and Amber Hollister, "[Floating in the Cloud: The Ethics of Electronic Client Files](#)," *Oregon State Bar Bulletin*, May 2017.
19. Is the firm aware of restrictions imposed by statute or rule that require retention of certain documents in original paper form? For more information, see the PLF practice aid, [File Retention and Destruction Guidelines](#).

### Disposition of Original Documents

1. Satisfy yourself that the imaging process has integrity (no missing or incomplete documents).
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 sample fee agreement and engagement letters, as well as a sample closing letter, which incorporate file retention language. These practice aids are available at [www.osbplf.org](http://www.osbplf.org).
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 area 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 refrain from 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. The PLF also offers a File Closing Checklist. The book and the checklist are available at [www.osbplf.org](http://www.osbplf.org).

5. Does the file contain any original documents whose authenticity could be disputed? Documents that have particular legal importance? Documents that are enforceable or have value only in paper form? Examples include:

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- Original Wills
- Original Powers of Attorney
- Original Directives to Physicians
- Deeds
- Car Titles
- Promissory Notes
- Contracts
- Fee Agreements (to pursue collection or defend yourself in a fee dispute)

Does your practice area require that you retain certain original documents? For example:

- Affidavit of Custodian – ORS 126.725(2).
- Original signed petitions, lists, schedules, statements, amendments, or electronic filing declarations in US Bankruptcy Court – Oregon LBR 5005-4(e).
- Documents that contain the original signature of a person other than the “filer” in Oregon eCourt must be retained for 30 days. UTCR 21.120 amended September 29, 2014 pursuant to Chief Justice Order 14-049.

This is not an exhaustive list. Conduct your own appropriate legal research and review files carefully. Know the rules and statutory requirements that apply to your practice area.

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 (3) entering into a contract with a document disposal service. FACTA took effect June 1, 2005. Also, see [OSB Formal Ethics Opinion No. 2005-141](#).

7. If your files contain personal health information, you must also comply with the Health Insurance Portability and Accountability Act (HIPAA) rules and regulations. For more information, See Kelly T. Hagan, “[Business Associate, Esq.: HIPAA’s New Normal](#),” *In Brief* (September 2013), and Kelly T. Hagan, “[The HIPAA Compliance Process](#),” *In Brief* (May 2014). Note: HIPAA rules also apply to PHI stored electronically.
8. When choosing a document or media disposal service, select a company certified by the [National Association for Information Destruction](#) (NAID). [NAID](#) members securely destroy materials in compliance with [FACTA](#), [HIPAA](#), and the [Gramm-Leach-Bliley](#) Acts. Casually discarded information is a risk and a liability.
9. The lawyer responsible for a given matter should sign off before the client’s paper file is destroyed.

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### Resources

#### Professional Liability Fund

Review technology forms and *In Brief* articles available from the PLF, as well as CLE offerings. Visit the [www.osbplf.org](http://www.osbplf.org) for more information.

#### 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](#), and the [Legal Technology Resource Center](#). For an overview of resources, visit the [ABA Law Practice Division](#).

#### Association for Records Management

[ARMA International](#) is a not-for-profit professional association and the authority on governing information as a strategic asset. ARMA International offers invaluable resources such as: legislative and regulatory updates; standards and best practices; technology trends and applications; live and web-based education; marketplace news and analysis; books & videos on managing records and information; and a global network of members.

#### National Association for Information Destruction

[NAID](#) is the international trade association for companies providing information destruction services. Suppliers of products, equipment, and services to destruction companies are also eligible for membership. NAID's mission is to promote the information destruction industry and the standards and ethics of its member companies. Locate a secure data destruction provider on the [NAID](#) website.

#### Acrobat for Legal Professionals

[The Acrobat for Legal Professionals Blog](#) is a resource for lawyers, law firms, paralegals, legal IT pros and anyone interested in the use of Acrobat in the legal community. Search the blog for helpful tips or videos on many topics, including scanning, OCR, and PDF/A for archiving.

## IMPORTANT NOTICES

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