

Converting from paper to electronic files

By James W. Martin

Is this you? You have been scanning legal documents for years. You scan pleadings, contracts, and other documents and convert them to PDF or TIFF images, then e-mail them to clients and other lawyers. Even some courts require filing documents electronically instead of in paper form.

You have been thinking about getting a faster scanner and converting all your paper files to electronic files. You see this as an answer to the continually growing room of closed files or the large monthly bill for offsite closed file storage.

If this is you, now is the time to write an electronic file policy.

Electronic Files are Ethical

The Florida Bar Professional Ethics Committee recently issued Opinion 06-1 which expressly states that lawyers may store files electronically.

There are a few exceptions, such as the need to keep originals required for evidence, the need to keep originals belonging to clients, the need to keep originals to comply with a statute or rule (six years for trust account checks), and the need to keep a paper document when destroying it would adversely affect the client's interests.

The opinion states: "Lawyers may, but are not required to, store files electronically unless a statute or rule requires retention of an original document, the original document is the property of the client, or destruction of a paper document adversely affects the client's interests. Files stored electronically must be readily reproducible and protected from inadvertent modification, degradation, or destruction."

The File Belongs to the Lawyer

The ethics opinion makes sense because files relating to client matters are assets of the lawyer and do not belong to present and former clients.

"Files prepared and maintained by an attorney for the purpose of representing a client are the attorney's personal property." *Potts v. State*, 869 So.2d 1223 (Fla. 2d DCA 2004), citing *Long v. Dillinger*, 701 So.2d 1168 (Fla. 1997.)

The Florida Supreme Court in *Long* stated: "As noted by the Fifth District Court of Appeal in *Dowda & Fields, P.A. v. Cobb*, 452 So. 2d 1140 (Fla. 5th DCA 1984), files prepared and maintained by attorneys on their clients' cases are commonly referenced by a particular client's name. In reality, however, such referral simply means that the file relates to a particular client; the file and its contents are the personal property of the attorney. *Id.* at 1142. The court reached this conclusion based on the fact that the attorney's file may or may

scanned and uploaded to the Court's server, the electronic file shall constitute the official record.

Sample Electronic File Policy

Set forth below is a sample electronic file policy for a sole practitioner or small law firm in Florida. It is only a beginning, though, because the policy should include the specifics applicable to that lawyer or firm.

Electronic File Policy

[Lawyer]

[Date]

1. Electronic Files

All files that we maintain regarding clients and their matters are stored electronically on our computer file server. All incoming and outgoing paper documents are scanned daily and added to these electronic files. After scanning, the paper documents are placed into paper file folders in chronological order for convenience, but the electronic file is this office's actual file relating to that client and that client's matter. The paper file folders are shredded from time to time (see below), but the electronic files are maintained after the paper file folders and contents are shredded.

2. Scanning

Each day all incoming and outgoing paper documents are placed by the lawyer into the sorting box in the order to be filed for that day (basically chronological). At the end of each day, the paper documents are scanned and uploaded to the office server into an electronic file designated as the general file relating to that client and the paper document is then filed in a paper file folder labeled with the client's name and the designation "general file." Once the paper document is scanned and uploaded to the office server, the electronic file shall become part of the office file. The paper file is merely for the lawyer's convenience while the case is open. Any original paper documents are copied and scanned to the electronic file and returned to the client or other person who gave them or filed with the court (see below).

3. File Backups

All electronic files that we maintain regarding clients and their matters are backed up daily by synchronizing the entire server to an external hard drive, which is then taken offsite. There are seven external hard drives that are backed up in rotation and kept offsite as follows:

- Daily A and Daily B [specify offsite location]
- Weekly A and Weekly B [specify offsite location]
- Monthly A and Monthly B [specify offsite location]

contain any original documents belonging to the client. The only exceptions to this are as follows:

- i. Original will of a decedent, which we file immediately with the clerk.
- ii. Evidence for lawsuits, which is filed with the court or returned to the client at the conclusion of the case.

6. Client Copies

Our policy is to keep our clients informed by providing them copies of documents that we receive and that we send regarding their matter at the time they are received or sent. It is the responsibility of the client to maintain their copies of documents for their own files.

7. Shredding Paper Files

Paper file shredding is performed at the lawyer's direction by an outside service provider in such a manner that the provider cannot view contents of files. Shredding is

observed by the lawyer or legal assistant. Paper file folders can be shredded at any time upon the lawyer's direction, as long as they have been scanned and uploaded to the office server, because the electronic files are the office's files regarding clients and matters. When a paper document is scanned and uploaded to the electronic file on the office server, the paper document will be filed in the paper file folder, which can be shredded upon the lawyer's direction (see exception above for original documents.)

James W. Martin is a probate, real estate, and corporate lawyer in St. Petersburg, who has written for The Florida Bar Journal & News, ALI-ABA Practical Lawyer, and West Publishing, and has more information on his Web site, www.jamesmartinpa.com.

document when destroying it would adversely affect the client's interests.

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The Federal Court Provides a Good Starting Point

Much of the work in drafting an electronic file policy for lawyers has already been done by the federal courts in adopting procedures for electronic filing.

The procedures provide sound wording to make it clear that the court file is the electronic file that resides on the court's computer server and not the paper document that was the source of the electronic file. Therefore, a starting point for drafting an electronic file policy for a lawyer or law firm should be to review the electronic filing policy of the local federal court.

For example, the U.S. District Court for the Middle District of Florida adopted the Administrative Procedures for Electronic Filing in Civil and Criminal Cases, which states:

A. Effective Date: Unless otherwise permitted by these administrative procedures, by a general order of the court, or by authorization of the judge, all documents filed in civil and criminal cases in this district on or after July 12, 2004, no matter when a case was originally filed, shall be filed electronically.

B. Official Record: The official court record is the electronic file maintained on the court's server and any physical item or document permitted to be filed in paper format. When a document filed in paper format is

the electronic files are maintained after the paper file folders and contents are shredded.

2. Scanning

Each day all incoming and outgoing paper documents are placed by the lawyer into a sorting box in the order to be filed each day (basically chronological). At the end of each day, the paper documents are scanned and uploaded to the office server. An electronic file designated as the "client's file" relating to that client and the paper file is then filed in a paper file folder labeled with the client's name and the designation "client's file." Once the paper document is scanned and uploaded to the office server, the paper file shall become part of the office's electronic file. The paper file is merely for the lawyer's convenience while the case is open. An original paper document is copied and scanned into the electronic file and returned to the person who gave them or the court (see below).

3. File Backups

All electronic files that we maintain regarding clients and their matters are backed up daily by synchronizing the entire office to an external hard drive, which is located offsite. There are seven external hard drives that are backed up in rotation and kept as follows:

- Daily A and Daily B [specify location]
- Weekly A and Weekly B [specify location]
- Monthly A and Monthly B [specify location]
- Annual [specify offsite location]

In addition, whenever paper files are shredded, the electronic files are backed up to three CDs and kept onsite and [specify locations] and are also copied to a remote online storage server by SSL and Internet transmission.

4. File Ownership

All files that we maintain regarding clients and their matters belong to the lawyer and not to the client. This includes electronic files and paper files. As noted by the Fifth District Court of Appeal in *Dowda & Fields, P.A. v. Cobb*, 452 So. 2d 1140 (Fla. 5th DCA 1984): "[F]iles prepared and maintained by attorneys on their clients' cases are commonly referenced by a particular client's name. In reality, however, such referral simply means that the file relates to a particular client; the file and its contents are the personal property of the attorney. Id. at 1142. The court reached this conclusion based on the fact that the attorney's file may or may not contain documents or other property of the client. Importantly, the court noted that, while the attorney may have an ethical duty to communicate information to successor counsel, only actual property of the client must be returned."

5. Document Originals

Our policy is that we do not keep original documents that belong to clients or others. If a client provides us an original document, we scan it to our electronic file and make a copy for our paper file folder and return the original to the client. Therefore, the contents of our files regarding clients and their matters do not

most of the three-year cycle procedural rule amendments proposed by the Juvenile Court

from conducting shelter hearings under F.S. § 39.402 and adjudicatory hearings under F.S.

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