

Office of the State Public Defender Administrative Policies

Subject: Client File Retention	Policy No.: 107
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1.0 POLICY

- 1.1 All Office of the State Public Defender (OPD) client files are the property of the State of Montana and disposition of files must follow the rules established by the Montana Secretary of State.
- 1.2 OPD has established the following procedures for disposition of client files. This policy applies to all client files, whether maintained by OPD offices or by contract attorneys.
- 1.3 This retention schedule applies to investigative files that are maintained separately from the case file.
- 1.4 This retention schedule applies to mental health consultation files that are maintained separately from the case file.

2.0 PROCEDURE

- 2.1 All client files will be retained by calendar year for the appropriate retention period by case type and disposition as described below.
- 2.2 Destruction will occur in January or February for all client files that fulfilled the retention period as of December of the prior year. The Central Office will notify all offices when the destruction request for that year has been approved by the Secretary of State.
- 2.3 Paper files will be shredded. Duplicate electronic files will be deleted.

3.0 CRIMINAL CASES

3.1 FELONY CASE FILES

3.1.1 DEFERRED SENTENCES

Destroy eight years after judgment.

3.1.2 SUSPENDED SENTENCES

Destroy after completion of the sentence including any suspended portion. If the sentence is for a period of commitment followed by a suspended sentence, the file will be destroyed after completion of the suspended portion of the sentence.

3.1.3 COMMITMENT SENTENCES

If the sentence is one of commitment *with no suspended portion*, destroy five years after the entry of judgment, or upon completion of sentence if earlier.

- 3.1.4** Individual offices will retain the file, within their discretion, when:
 - 3.1.4.1** The file is that of a client whom the office believes will be a client again; or
 - 3.1.4.2** The file contains briefs or pleadings that may be of use in new cases but have not yet been entered into a brief bank.

3.1.5 If the client dies before sentencing, the file will be retained for three years.

3.2 MISDEMEANOR CASE FILES

Destroy three years following judgment unless there is a pending Order to Show Cause, Petition to Revoke or warrant relating to the case.

3.3 JUVENILE CASE FILES

Destroy when the youth reaches the age of 21, unless the Court has extended jurisdiction to the age of 25 years.

3.4 EXTRADITION CASE FILES

Destroy three years following the date of decision.

4.0 POST-JUDGMENT

4.1 APPELLATE CASES

Destroy ten years after the Supreme Court opinion is issued.

4.2 POSTCONVICTION RELIEF

Destroy three years following the date of decision, after notification to the client that the file will be destroyed.

4.3 SENTENCE REVIEW

Destroy three years following the date of decision.

4.4 PETITIONS FOR RELIEF OF DUTY TO REGISTER AS A VIOLENT OR SEX OFFENDER

Destroy three years following the date of decision.

5.0 CIVIL CASES

5.1 DEPENDENT/NEGLECT CASE FILES

Destroy when:

- 5.1.1** The case has been closed for five years; or
- 5.1.2** The concerned children have reached the age of 18; or
- 5.1.3** The children have been adopted.

5.2 INVOLUNTARY COMMITMENT OR GUARDIANSHIP CASE FILES

Destroy five years after the date of commitment.

6.0 OTHER

6.1 INDIGENCY DETERMINATION AND APPOINTMENT FILES

Destroy three years following the appointment.

6.2 RESCINDED APPOINTMENT

Destroy one year following rescission.

6.3 SUBSTITUTION OF COUNSEL
Destroy three years following the substitution.

6.4 DISMISSED CASE FILES
Destroy three years following dismissal.

6.5 ACQUITTED CASE FILES
Destroy one year after judgment.

7.0 DECEASED CLIENTS

7.1 If a client dies prior to sentencing, the file will be destroyed three years after the case is closed.

7.2 If a client dies after sentencing, the retention period is equal to the defined retention period based on case type and disposition.

8.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

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