

ISO Engagement Letter Language Re File Retention & Destruction

I am looking for sample language regarding file retention & destruction for an engagement letter. This is what I'm thinking, without benefit of your comments:

"It is our practice, as is possible, to scan and return original documents. We provide copies of all correspondence as it is received or sent. At the conclusion of our representation we return any original documents we might possess. We do not retain paper copies of your file."

At the end of our representation we rarely have anything to return other than death certificates or Certificates of Qualification because we have been providing them all along.

Here is what I have in mine . . .

Records

The Client should retain all originals and copies of documents the Client desires for future reference, and at the conclusion of a matter the Client should advise us of which, if any, documents the Client wishes we return. We maintain client files electronically in Portable Document Format (.pdf). We will send you the originals of important papers and will retain electronic copies. We will send you copies of all other documents either on paper or as .pdf files. We retain most of our file for a certain period of time, but ultimately our file will be destroyed in accordance with our record retention schedule then applicable. We do not contact our clients prior to such destruction.

Hope it helps . . .

Walter D. James III, Texas

Here is the language we use.

F. Retention of Files. The Counsel agrees to scan all documents to a server and to make available to Client a digital copy of the entire file at the conclusion of the matter. Otherwise, the Counsel will destroy the entire file except for original documents referenced in Paragraph G below.

G. Original Documents. The Counsel agrees to deliver to the Client at least one executed original counterpart of all original documents executed by the Client during the course of the Counsel's engagement relative to this Matter. Counsel agrees to return all original documents given to us by Client at the conclusion of the case.

Robert "Robby" W. Hughes, Jr., Georgia

Thank you, Robby.

Here's some additional sample language:

Document Retention. It is the general practice of this firm that we will not retain any of your original documents. We will have only electronic scans of your original estate planning documents and we may also have copies of documents supplied by you. We have your permission to use our judgment to determine when to destroy any such copies in our file.

Deb Matthews, Virginia

Personally, I prefer to state that all original documents were returned to client at the time they were provided by the client or signed by the client. Essentially my approach is to never have the originals. I make a limited exception for trial exhibits if I have to, and application to some clients may be problematic, but I try hard to never have originals. I agree more with Deborah's approach than your suggested language, but part of it ties into how your firm chooses to practice.

Darrell G. Stewart, Texas

Here is the language in my Representation Agreement, in case it's helpful:

"FILE MAINTENANCE, FILE DESTRUCTION NOTICE AND ACCESS TO FILE The firm maintains its files primarily in electronic format. The firm may store electronic files on a variety of platforms including third-party cloud-based servers. You agree to our use of these services for document storage and management.

Firm policy is to retain copies of client files for seven (7) years after the matter is no longer active. It is your responsibility to request any records from the file prior to the expiration of the seven (7) year period. During the period prior to destruction, the file will be made available to you upon reasonable prior notice and at reasonable times."

Your language about original documents triggered a thought for me. The rules of procedure in PA allow for electronic filing and recording. The rules require the filer (which is me, not my client) to maintain the hard copy with the original signatures for three years (as I recall, anyway, without looking it up). If Virginia has a similar rule, and you do electronic filing / recording, you may actually be required to retain the original beyond the conclusion of representation.

Caroline A. Edwards, Pennsylvania
