

Law Practice Pointers



Published by the Law Practice Section

View From the Chair

David Grove

Grove Law Office
DeForest

We all recognize how the world has changed since September 11th. However, what I think we might miss is how we, as lawyers, can help. State Bar President Mowris has started an initiative to assist our armed forces by providing pro bono legal services. These are the men and women who are defending our liberty and our justice system, so that we can continue to do the same for our clients. To me, it seems to be a simple matter of graciousness on our parts to participate in making sure that these men and women get the legal services they might need. So, I join President Mowris in challenging our members to take the time to assist where we can, as lawyers, in this time of need. In doing so, we will be defending the liberty and justice that makes this nation great.

In regard to the new year which is upon us, it is going to be an exciting year. The Law Practice Section has joined with the General Practice Section and the Solo and Small Practice Committee in co-sponsoring the Presidential Showcase at this year's State Bar Annual Convention. The featured speaker will be the nationally renowned Jay Foonberg. We provide more information about Mr. Foonberg's presentation on page 4

of this issue. We will also get you more specific information on the content of his talks in the future, so please be on the lookout for updates on this exciting opportunity to hear what Mr. Foonberg will have to say to Wisconsin practitioners.

In addition, the Law Practice Section Board has voted to make last fall's presentation in Minocqua an annual event. This truly is exciting. For those who may not have attended this year's seminar called, "Work Smarter, Not Harder, and Get Paid Quicker," all I can say is that you missed a wonderful, down-to-earth, program. The feedback from the participants, as well as from the State Bar leadership that were present, was overwhelmingly positive. (In addition, we were happy to notify attendees that the program was approved for 7.5 CLE credits, including 4 ethics credits!) Those who attended called for this program, to be held in the Minocqua area in the fall, to become an annual event, and that is what we plan to do, so mark your calendars now for the last Friday in September. I am sure that this year's event will be of even more practical value to those who attend.

Although you will not read this until

the new year has already begun, the Law Practice Section Board and I would like to take this time to thank you for all of your support during the past year, and to wish you a safe and happy New Year!

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Law Practice Pointers

Telemarketing Revenge

Michael A. Loduha

Michael A. Loduha Law Office
Manitowoc

I just heard again the little “schtick” my assistant, Rose Ann, has come up with to deal with telemarketers. Those of us old enough to remember Bob Newhart’s one-sided telephone routine will be able to visualize the following conversation in our minds . . .

“Hello, Mr. Loduha’s office . . .”
xxx

“Do you have an appointment to speak to Mr. Loduha this morning?”
xxx
“Did Mr. Loduha ask you to call?”
xxx
“May I have the correct spelling of your name?”
xxx
“May I have your address for billing

purposes?”
xxx
“Mr. Loduha is an attorney; of course he charges for his time.”
xxx
“Hello? . . .Hello? . . .Hello?”

The neat thing about this is that the telemarketers tend not to call back as well!

Law Practice Pointers

Excerpts from the “Work Smarter, Not Harder and Get Paid Quicker” Seminar

Attorney Eric Stutz of Eric F. Stutz, S.C., in Black River Falls suggests “mining” your old client files as a means to generate new business. For example, he had recently reviewed about 100 old will/estate planning files. He wrote letters to sixty of those clients, indicating that he felt changes or updates were required. He received positive responses from forty of those contacted. He mentioned this is also a way to encourage former clients to contact you as new issues arise.

Mr. Stutz also explained that he bills the time of his staff out to clients. This is provided for in his representation agreements, and is explained to clients at the outset. This idea was of great interest to the conference attendees, who asked many questions and expressed incredulity at this being

accepted by their clients. Mr. Stutz assured them that, in the time since he began billing staff time, he has had “zero” client complaints in regard to this practice.

Attorney Rex Ewald of Voegeli & Ewald Law Offices, S.C., in Monroe had many computer-usage tips to achieve greater efficiency. One of the most interesting was the way in which his firm organizes its word-processing forms. Instead of having a forms directory/folder, with subcategories/folders for real estate, divorce, personal injury, etc., his firm organizes forms by applicable statute section. For example, most divorce forms would be found under a 767 designation. Benefits of doing this are multiple, including the fact that each attorney has a printed forms index at

his fingertips in the form of the index of statutes, and that it requires the attorneys to be, and to stay, familiar with the statutes.

As space allows, future editions of this newsletter will contain additional “practice pointers” from the “Work Smarter, Not Harder” speakers.

Here Now!: Law Practice Discussion Groups

Tom Heyn

Sole Practitioner
Cottage Grove

Do you subscribe to any listservs? A listserv is a group of people that give advice to one another in response to questions asked by the members of the group. You subscribe to the group by e-mail. (Subscribing does not generally cost anything; it usually just means "signing up" in this context.) Once you have subscribed, the questions and responses are e-mailed to every member of the group. It's a great way to get your questions answered. And, if you have an answer for someone's question, it's an opportunity for you to return the favor.

The Law Practice Section has prepared a spot on its pages of the Wisbar website that will list various listservs which deal with law practice management issues. Listservs which section members have found helpful

will be recommended. The listing will include a summary of each listserv's content, and will contain a link where you can subscribe if you are interested in being a part of the listserv described.

Here are a few of the listservs you will find:

- Technolawyer, a moderated discussion list dealing with specific topics on the use of technology in the law office
- MacLaw, a list that discusses the use of Macintosh computers in the law office and how to integrate them into a Windows environment
- MacLawFmPro, a sublist of the above group that discusses how to

use a database program to make your practice more efficient (although Filemaker Pro — Windows or Macintosh — is the program discussed, many of the principles could be applied to other database programs as well)

Check the following URL for details: <http://www.wisbar.org/sections/offman/>. Once you are there, click on the link under "Section Resources" entitled, "Listservs of interest to members". Also, if you are a part of any listservs involving law practice management, organization, economics, or technology, which you find useful and which you feel may be of interest to other attorneys, please email Board Member Tom Heyn at taheyn@mail.chorus.net.



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"Practicing Law Practically" at the 2002 Annual Convention

Ross L. Kodner

MicroLaw, Inc.
Milwaukee

Convention Program to Feature Foonberg.

The Law Practice Section has arranged a series of blockbuster practice management and technology CLE offerings for the 2002 Annual State Bar Convention. Beginning at 7:30 A.M. on May 17, 2002, at the Monona Terrace Convention Center in Madison, the Section is pleased and privileged to co-sponsor, along with the General Practice Section and the Solo & Small Firm Practice Committee, acclaimed practice development author and nationally-acknowledged guru Jay Foonberg in a Presidential Showcase series of programs. Attorney Foonberg is the best-selling author of "How to Start & Build a Law Practice", as well as "How to Get and Keep Good Clients", and "The ABA Guide to Lawyer Trust Accounts". His books, along with his many awards and accolades, make it clear that, if there are any presentations at the Annual Convention you don't want to miss, they will be Jay Foonberg's!

Breakfast Symposium.

In addition, the Law Practice Section will be presenting three very useful and practical programs — something for all lawyers and law office professionals to take back to their practices and put to use. The day will start with a perennial favorite: the Law Practice Breakfast Symposium. Because the breakfast will address the practice management topics most important to all Wisconsin lawyers and their staff, it's worth rising early.

Technology: Case and Document Management Systems.

After Mr. Foonberg's presentation, there will be a one-hour technology program called: "Turning Chaos into Cases with Case and Document Management Systems: Essential Tools for All Firms!" This information-packed hour will focus on the most significant legal technology tools of the last decade: low-cost, high-function case and document management systems.

These products may be the "killer apps" lawyers and their staff have been seeking for decades. Combining calendaring, docketing, tickler systems, case information tracking, document management and work product retrieval, address books that actually work the way you've always wanted them to, conflict-of-interest checking, the ability to assemble Word and WordPerfect documents and more, case and document managers are the "kitchen sinks" of the legal techno.world: there's not much they DON'T do, and there are few programs with which they will not integrate.

TimeMatters (www.timematters.com), Amicus Attorney (www.amicusattorney.com), ProLaw (www.prolaw.com) and CaseMaster (www.stilegal.com) are some of the leading case managers. Worldox (www.worldox.com) is the top document manager for smaller and mid-sized firms. The panel of speakers will walk you through the capabilities of these systems to show your litigation, transactional or general practice how to make more

money, reduce your malpractice risk, find case information instantly, cut the stress and aggravation of law practice, and "turn chaos into cases!"

An experienced panel of presenters includes: Ross Kodner (MicroLaw, Inc., Milwaukee), Sheryn Bruehl (LexMagic and LegalTech, Milwaukee & New York), William Hess (Hess, Dexter, Reinertson & Brunner, Wausau) and Jeffrey Krause (Godfrey, Leibsle, Conover, Blackburn & Howarth, Elkhorn).

Non-PC Office Technology: Other Office Systems.

The next hour of programming will focus more on practice management issues with a program entitled, "Other Technology Beyond PCs: Intelligently Outfitting Your Office With Phone, Copier, Fax and Other Systems." This session, led by an esteemed panel of presenters drawn from the ranks of the Wisconsin Association of Legal Administrators (our partners in the practice of law), will examine the fact that managing a law practice today involves decision-making on many office "systems." Aside from your computers, a dizzying array of equipment issues affect your firm's ability to serve your clients . . . but are rarely talked about.

The panel of law office administration experts will impart their experience on how to select, purchase, pay for, and of course, best use telephone and voicemail systems, fax capabilities, photocopying technology and even videoconferencing tools to help bridge the communications gap between your

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"Practicing Law Practically" at the 2002 Annual Convention

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offices and also between you and your clients. SPECIAL BONUS: Panelists who are members of the Wisconsin Association of Legal Administrators (WALA) will tell you about the

resources their local and national organizations can offer in helping you manage your law practice. Our team of presenters includes WALA members: Debra Hix-Sykes (formerly of Beck, Chaet, Molony & Bamberger, Milwaukee), Pat Cameron (Brennan, Steil, Basting & MacDougall, Janesville), Monica Hansen (Solheim, Billing & Grimmer, Madison), Charles Peters (Kravit, Gass, Hovel & Leitner, Milwaukee) and lawyer Gwendolyn Connolly (Law Offices of Gwendolyn Connolly, Milwaukee).

For a strong dose of practice information to help you guide your practice, these CLE programs at the Annual State Bar Convention in Madison on May 17, 2002, are "must sees"!

How do you measure up?

The State Bar of Wisconsin's *Economics of Law Practice in Wisconsin – 2001 Survey Report*

is designed to assist you in measuring your ability to provide cost-effective legal services. Use this credible reference to compare yourself and your firm against "norms" established by the aggregation of survey data.

The report includes up-to-date information on:

- Attorney income
- Billing rates and practices
- Overhead expenses
- Support staff salaries

Presented in an easy-to-understand format, charts and tables display data broken out by relevant influences such as primary position, field of law, years in practice, firm size, gender, and office location.

The special member price includes assistance with interpreting the information presented and access to additional tabulations specific to your individual practice setting, upon request.

For more information, or to order your copy of the report, contact the State Bar at (800) 728-7788. To view the report's introduction, visit: www.wisbar.org/bar/reports/2001/econpr.html.

Member price: \$19.95

Nonmember price: \$59.95

G549C

The Client File Conundrum

Sally E. Anderson, Claims Counsel

Wisconsin Mutual Lawyers Insurance Company
Madison

As lawyers, we generally love our client files, at least until we figure out they come with heavy added baggage. We need to keep, safeguard and pay to store rooms-full of old files, presumably forever. Is there any way around this charge? Although we wish for a bright line rule that would allow us to toss the files and our responsibilities along with them after some specific holding period, it shouldn't surprise anyone to learn it's just not that easy. Here are some things to consider, which will guide you to arrive at a law firm file retention/destruction policy, allowing for your responsibilities to your clients, yourself, and the rules of ethics.

1. Where to keep client files?

It is our obligation to keep files "warm, safe, and dry." Confidentiality must be maintained and protected. Client property, which may be included in files, must be held in trust, separate from the lawyer's property (See SCR 20:1.15(a)). This means that problems can arise not only in the storage warehouse, but also with the files you are temporarily "storing" in your car parked on a public street or the files left open on your desk overnight. (Don't think the cleaning people aren't interested in finding out more about what you do, and for whom.) A thoughtful, common sense approach is required at all times. Who has access to your files? If the soft drink deliverer, the plant watering service or the IRS auditor using your office can get to your files, you need to give your procedures some more thought.

2. Why keep files:

Some of your clients think you are a great organizer and the best keeper of their important papers. There may be clients for whom you are willing to undertake that responsibility, but I doubt that includes everyone. Another reason to keep files (or copies of them) is that your file should be your best defense in a legal malpractice claim.

3. So how long should you keep files?

The statute of limitations for legal malpractice is six years, but the discovery rule applies. That six years runs from the date the client discovered or should reasonably have discovered the error or omission. So the thoughtful common sense factor must be applied. There are different "safe holding periods" for different areas of practice and different kinds of clients. Estate planning files, for example, should be kept at least until the death of the testator plus six years. Files regarding minors need to be kept at least six years after the period during which the minor could have made the original claim. Real estate matters generally need to be held longer, while most of the material found in litigation files can probably be destroyed six or seven years after the end of the litigation. Knowing your client has something to do with this as well. You may need to keep your file longer for more difficult or demanding clients.

4. What to Keep?

While some lawyers (and their professional liability insurers) say to keep everything, the reality today is that this may be impossible. Once again, a thoughtful approach will

yield some guidelines. Keeping drafts of contracts or other documents is often important, especially if your drafts contain notes about what you considered, changed and why. Remember that if you keep the files in computer form, you may need to keep old software and old computers to access your stored files as you continue to upgrade your systems. It may be very important to keep your handwritten notes in some files, but less important to do so in others. Your correspondence is probably most easily maintained in computer formate, but should be "filed" so you can locate it easily if you need to do so. (And be sure you can access computer stored material in the exact form you originally used it; for example, some programs automatically change the date to the present date of printing.) Unless you scan all incoming mail, you need to keep incoming correspondence in a paper file. Be sure to keep copies of settlement documents (your client should have the original, along with your cover letter transmitting the document).

Make it a rule in your office to not keep original client documents. Copy those as soon as possible and return them with a cover letter for receipt in your file. This makes cleaning out the files at the end of the representation easier and protects you against claims for lost documents. Also remember that if you have practiced with different law firms, both you and the firm have an interest in the file in the event of a malpractice claim. Consider a reciprocal agreement for access in the event of later ethics or

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The Client File Conundrum

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legal malpractice issues and consider a mutual agreement on file destruction policies as well.

5. So what can you really do to cut down your need for storage space?

First, review ethics opinions E-98-1 and E-84-5. These opinions make it clear that age alone is not an appropriate reason to destroy a client file. Each file needs to be reviewed for any client property, original documents or documents of continuing value which can't be replicated through other sources. Watch for things such as wills, settlement documents, correspondence, surveys, all things which can be copied and returned to clients at the end of a representation.

In fact, because it is such a big job to review old files, send old clients letters giving them a reasonable time to claim their old files before destruction. (It would be smart to review anything you give to anyone outside your office, to be sure the file does not contain any information relating to any other client, misfiled papers or anything that would be an internal law firm document.) After considering all these responsibilities, it seems the best course may be to adopt a good file destruction policy today and implement it on an ongoing basis.

This means you can spell out how long you will be keeping files in your retainer letter to clients and you can remind them of the policy in your closing letter, inviting them to pick up anything they may wish to have for the long term. For example:

“Enclosed are documents

from your file which are being returned to you. We suggest you keep these materials in a safe place where you can easily find them. Consistent with our firm's standard practice, we will be destroying your file in seven years. Should you wish to review your file and copy any additional material, please let me know as soon as possible. We will be happy to make your file available for you.”

Whenever you close a file, review it while it is still fresh in your mind, noting what should be kept indefinitely and what materials can be destroyed in seven years. Get rid of duplicates and extraneous papers right away. Each file should include a record of what has been destroyed and the date.

Remember your confidentiality responsibilities even in the destruction process. Materials should be shredded, computer files erased or made

unreadable and action should be taken to ensure that no unauthorized person will have access to the information contained in your client's files.

Scanning may be appropriate, but this is an area where it may take the legal system some time to catch up with the advances in technology. Judges in at least one county in the state have told lawyers that scanned documents will not be accepted as original documents in any litigation in that county.

A sample document retention-destruction policy from a litigation firm appears on page 10 of the newsletter. Common sense and consideration of the needs of your clients should help you modify these ideas to your practice. A little discipline will go a long way in assisting you to contain the paper tiger.

***The Law Practice Section wants to thank attorney Michael L. Eckert of Eckert, Kost & Vocke of Rhinelander for requesting an article on file retention.*

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Work Less . . . Earn More! (Part II)

David Grove

Grove Law Office
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In the first part of this article, I discussed that it may be necessary to re-think the standard legal business plan. The standard plan typically envisions the attorney or attorneys working with some number or combination of staff so as to allow the attorney to maximize his or her billable time; with little consideration for how the increased cost of production really hinges the net revenue per attorney. The article went on to discuss how, as a solo-practitioner, I have rethought this standard business plan with an eye towards lowering the cost of production into the 22% to 27% range. However, in order to accomplish this goal, I had to figure a way to completely eliminate staff. In order to eliminate staff, and still maximize the amount of billable time, I had to constantly look at how each tool in my office (i.e., software, hardware and standard old business equipment) assists or hinders this goal. The purpose of Part II of this article is to explore three of my most productive time saving tools and some of the problems associated with having no staff in a small office.

Tools to use in a Staff-less Office

Early on, I realized that most of my in-office time was spent on the phone. Much of this time was not very productive because I was either stuck on hold or was sent through endless voice mail option menus. I have found that being stuck to my desk is the number one roadblock to being truly productive. My solution was a 900 MHz radio wireless-headset. Now I can answer the phone wherever I am in my office, remotely, by simply lowering the boom. It is not cheap,

but it is easy to set-up, it doesn't take a technological wizard to use, and it provides all of the benefits of a regular headset (i.e., hands free operation), plus a ton more. There are a couple manufacturers of these phone out there, but Hello Direct (www.HelloDirect.com) is where I obtained mine. Now when I am on hold or talking to a client, not only can I be typing away, but I can also make copies, send faxes or even get that file that is in the other room.

Another area where I believe office productivity gets bogged down is the photocopier. All too many times I see small firms with copiers that are appropriate for the number of copies they make on an annual basis, but which do not address the types of copying they do. I found that by purchasing a copier that not only has a document feed and collates, but also staples, and allows for different size of documents, I am able to simply stick the documents in the machine, determine what I want, hit "start", and walk away (usually when I am on the phone). In a minute or two, the documents are done, and I did not need a staff person to do this for me. Obviously, this type of machine is much more expensive than what I needed based upon the number of copies I make annually, but its cost savings comes when it allows me to continue operating without staff.

Additional tools come in the form of computer software. A lot has been written and lectured on this topic. However, some points have been missed. First, it is important that the practitioner understands why s/he chose particular hardware or software. Second, there has to be a full-blown

commitment to use that hardware or software to its maximum capabilities. All too many times, people do not understand the majority of a particular software program's features or functions. This is not very cost effective, and most likely induces the owner to purchase another software programs, with its associated costs, etc.

This concept of not understanding the features of the firm's software I believe is best illustrated by the number of firms which do not utilize the database already provided by many software suites. The databases provided are "raw" software (the engine), and an application needs to be built for the specific purpose for which the database is to be used (the body). However, once this is accomplished, the productivity gains are exceptional due to the integration of the programs within the suite. For example, I have used the MS Office Professional Suite, which includes the Access database. It does take some time to understand what a database can do for you, but once understood, it is not beyond the average person to build a fully functional database; here are just some of the features it offers:

- Easy merging of information into word processing applications;
- Easy billing entry and bill assembly;
- One stop check for conflicts;
- Billing information on which referrals, legal practice areas, or zip codes have generated the most revenues, which marketing programs have worked the best, which attorneys have

Work Less . . . Earn More! (Part II)

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billed the most;

- Easy, central storage for memos to files, file notes, letters and e-mails.

How to create such a database is well beyond the scope of this presentation, but it is very possible to design a fully functioning relational database by using readily available training manuals from the library.

Problems with Model

The main problem with this type of business plan is that it is really easy to actually increase the cost of production. You must avoid implementing technological changes, with the

associated costs for hardware, software, training and implementation (which costs are extremely difficult to determine), at the same time keeping the “old” business plan. In other words, simply placing the costs associated with technology over the old business model (i.e. one or two lawyers to a one or two staff ratio) with the hopes that the productivity gains will offset the costs does not appear to work. Instead, it is necessary to implement technology and get rid of the old model. Only then will the costs fall into line.

Additional problems do exist. It is difficult to implement this change quickly. Everyone involved has a vested interest in maintaining the current situation. It is easier, and surely the removal of staff is equally problematic. It means the attorney has to do work they were not necessarily trained to do, sometimes very mundane work like sending out billing

statements and paying bills.

Moreover, some clients, especially the older or non-technologically advanced clients, have a hard time believing that a “successful” attorney does not have staff. Instead, it is very possible that these clients will have a negative reaction (i.e., that the attorney is doing so poorly that s/he can’t even afford staff). The solution to this is to turn it into a marketing strategy. Use the lack of staff as a way to set yourself apart from the other attorneys. Talk about how it allows you to keep your rates lower than the competition, or that it allows you to personally answer their calls. After all, when our clients call our offices, they call to speak to us and not staff. If your client knows that you do not have an assistant to screen your calls, and that if you are available you will answer their call directly, I believe it makes them feel a lot better about you, and the services you provide.



Don't get behind it.

Wisconsin's Rules of Professional Conduct for Attorneys may be set forth in black and white ... but our day-to-day world is a palette of grays. As a result, we often face difficult questions of application and interpretation.

As a member of the State Bar, you have an exclusive resource to help you navigate this maze: **the Ethics Hotline.**

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The Client File Conundrum

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Document Retention/ Destruction Policy

Note: This should be tailored to your practice

Purpose: This policy is adopted to:

Assure the client's right to possess file documents, if desired by the client.

Assure document retention for a reasonable time period.

Assure destruction

The documents in the client files of the law firm will be purged and discarded or destroyed in accordance with the following:

1. Initial File Purge

- A. Thirty days after final bill is paid, before file is sent to storage.
- B. The following documents will be destroyed:

- 1. Any duplicates
- 2. Certified medical records (keep only the certificates)
- 3. Pleadings, except the summons and complaint, the release, the stipulation and order for dismissal and discovery responses (keep list of other pleadings destroyed)
- 4. Documents produced by the client or by other parties at the discretion of the handling attorney

- 5. Copies of depositions except one condensed copy of each deposition, and any disks
 - C. Things that unnecessarily take up space in storage, or which can be reused, are to be removed from the file: e.g., unused legal pads, correspondence backers, pleadings backers, binders and clips.
 - D. The handling attorney is responsible for accomplishing this purge.
2. Final Purge
- A. Seven years after the file has been closed.
 - B. Everything is destroyed except the following items:
 - 6. Correspondence
 - 7. Notes
 - 8. Complaint
 - 9. Closing documents (Stipulation and Order of Dismissal, Release, Verdict, etc.)
 - 10. File Opening Sheet
 - 11. File Closing Sheet

3. Exceptions

- A. Real estate files (no purge).
- B. Wills (no purge).
- C. Corporate (no purge).
- D. Family law cases (purger only after last child reaches 19 years of age)
- E. Worker's compensation cases (purge 12 years from date of injury or last payment, whichever is later, unless

there is a full and final compromise, in which case first purge will occur 14 months after file is closed, and second and third purges per normal purging schedule).

- F. Every lawyer has the right to have a file completely or partially preserved for a longer period of time.

4. Client Notification

When a case is final billed, a standard letter goes to the client concerning the client's right to have the file sent to the client, at their cost, or to have copies of the file, at their cost. The letter will also advise that unless instructed otherwise we will retain/destroy the file in accord with our normal documentation retention policy. This letter may be modified to address file-specific documents that we will destroy unless the client wants them.

As to files that are in storage as of January 2, 2000, and as to which we have not advised the client of a document retention policy, notify clients of intent to purge or destroy forty-five days before the scheduled purger date, offering, at the client's cost, to forward the file or to forward copies.

5. Confidential Documents.

Client documents, including confidential documents which must be shredded pursuant to the laws of Wisconsin, will be shredded. The handling attorney may specify other documents that are to be shredded.

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