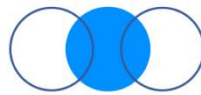


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<b>Prepared by</b>	<b>Stuart Hanson</b>
<b>Approved by</b>	<b>Andrew Buckingham</b>
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## FILE MANAGEMENT PROCEDURE

### 1.1. Introduction

Effective file management provides the basis or infrastructure for timely, effective client service and appropriate management of client matters. The *File Management Guideline* sets out essential features of systems to manage client matters to ensure compliance with regulatory requirements relating to matters such as the preservation of client confidentiality and avoiding conflicts.

It offers practical suggestions for effective file opening and closing procedures, conflicts checking and storage systems and considerations relating to the retention and disposal of closed client files.

### 1.2. Terminology

The *File Management Guideline* uses the phrase “file management” in its broad sense to denote the general management of a client matter.

A component of client matter management is the handling or management of “files”. Historically, the term “file” referred to the physical paper folders which house the physical documents related to the matter.

Computer technologies enable some or all client information to be stored in electronic form.

In the electronic or computer environment, the equivalent of the physical paper folder, the “file”, is referred to as a “folder “ or “directory” and the corollary of a single paper document, is referred to as a “file” or “document”.

The principles in this *Guideline* are meant to be adaptable and flexible enough to support most law practices, regardless of the level of computerisation.

Accordingly, unless specified otherwise, references to:

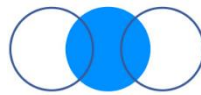
- “files” or “sub files” include both physical or electronic repositories of client information
- “documents” include documents in electronic form
- “systems” includes electronic and manual systems.

### 1.3. Essential Requirements

It is important that mediators have and employ systems to:

- store and easily retrieve key information regarding all firm clients
- open and maintain active client files
- check for conflicts
- check for limitation periods
- close, retain, and dispose of closed files

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- review and if necessary change management systems to ensure they meet changing standards, techniques, or practices
- identify clients' property and place in safekeeping.

#### **1.4. Optional Requirements**

Mediators may also consider employing systems to:

- manage documents
- ensure undertakings are satisfied
- manage experts or other third party service providers.

#### **1.5. Systems to Store and Retrieve Key Client Information**

Mediators should consider maintaining:

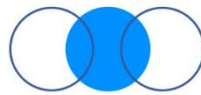
- databanks of key information regarding current and former clients including
- client's names, aliases, former names
- date the file was opened and closed
- subject matter of the file
- information regarding conflicting or adverse parties including
- names of persons related, or associated with a client, former client or the names of persons relevant to client or former client matters
- cross references to the client or former client file name, file number, and matter reference
- information regarding accounting and billing
- information regarding key dates, or time management system.

#### **1.6. Opening and Maintaining Active Client Files**

Opening and maintaining active client files requires the mediator to:

- follow appropriate file opening procedures
- organise file contents
- properly store files.

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### 1.6.1. File Opening Procedures

#### a) Determining When to Open a File

Mediators should open a file when retained to provide legal services for any new matter for:

- new clients
- current clients
- former clients.

At the initial contact, whether or not the case is accepted, mediators should consider immediately noting a limitation period.

#### b) Naming and Coding Active Client Files

Mediators should obtain information about the client and the other party, usually at the booking stage of a MIAM. A file opening checklist is recommended.

Mediators should assign a distinct file name and number to each file. The file name should include

- name of the client(s)
- reference number – this is usually the date the file is opened i.e. YYYYMMDD, 20171109.

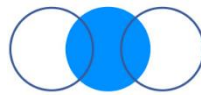
### 1.6.2. Organisation of File Contents

To enable efficient retrieval of file contents or information, mediators should maintain organised file contents.

Organisation of client files may include placing contents into sub-files according to class or type of documents. Each client file may contain sub-files for:

- communications, including: correspondence; memorandums to file or notes of conversations; meetings; or telephone calls arranged chronologically
- MIAM forms
- Session records
- Memorandums
- Financial documents
- Copy of documents relating to Legal Aid funding
- others, as appropriate to the file.

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### 1.6.3. Storage Of Active Client Files

Mediators should consider storing active client files (including electronic files), when not in use

- in a location separate from where closed files are stored
- in a secure or locked cabinet or location, filed in an orderly fashion for easy retrieval.

Mediators should store all documentation related to the client matter in the client file.

Electronic files should be organised with cross references to paper documents or files and vice versa.

### 1.7. Preservation of Client's Property

Direct Mediation Services requires that a mediator shall care for a client's property as a careful and prudent owner would when dealing with like property.

A mediator shall clearly label and identify the client's property and place it in safekeeping distinguishable from the mediator's own property.

### 1.8. Conflicts Checking Systems

Direct Mediation Services require that mediators manage potential and actual conflicts of interest. Lawyers should implement a system that allows the mediator to check for conflicts:

- at the initial contact when the potential client first contacts the firm
- after the MIAM with the client or when additional information is available
- any time a new party or person is added to the matter
- when a mediator is considered for employment by the firm.

The mediator should also determine:

- identity of any other persons involved in or associated with the mediation
- identity of any other person relevant to the mediation.

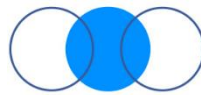
The mediator should consider preparing a list of potential business conflicts which, while not amounting to actual conflicts, should be considered before accepting the case.

When a potential client contacts the firm, the mediator (or firm staff) should check the potential client's name, and any other conflict against the names in the firm data banks (data banks that contain the names of clients; former clients; related and associated persons).

If there is a match, the mediator shall review the information and shall determine whether or not there is or is likely to be a conflict of interest.

If the mediator determines that there is or is likely to be a conflict of interest the mediator shall:

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- advise the client forthwith of the mediator's inability to take on or continue with the mediation, and
- confirm the non-engagement in writing.

## 1.9. Closing, Retention and Destruction of Client Files

### 1.9.1. File Retention Policy

Mediators should ensure that

- ensures the file is reviewed before closing
- provides for the storage of closed client files separate are apart from active client files
- ensures that client file contents are distributed, retained, and disposed of properly
- assigns a new closed client file code to the file
- provides for the destruction of the closed client file at the appropriate time.

### 1.9.2. When to Close Files

Prior to closing a file, the mediator should ensure that

- all the work that the mediator was to complete has been completed or the mediator has been discharged or withdrawn
- the mediator has reported to the client
- the client has paid the final account or the firm has written off any balance owing on the final account.

### 1.9.3. Distributing File Contents

A mediator has an ethical obligation to care for a client's property as a careful and prudent owner would when dealing with like property and must observe all relevant rules and law about the preservation of a client's property entrusted to the mediator.

The mediator may consider having the client sign an acknowledgment indicating receipt of the documents.

When a mediator transfers a file upon discharge or withdrawal from the service additional considerations apply. In such cases, the mediator must deliver to the client all papers and property to which the client is entitled and must give the client all information that may be required in connection with the case. In addition, the mediator must cooperate with the successor mediator.

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#### 1.9.4. Retaining Client Files

Before returning documents to the client, the mediator should determine whether to retain copies of the closed file documents. In making this determination, the mediator may consider such factors as

- any legal requirement to retain the document
- the likelihood of the mediator requiring the document in future
- the client's wishes.

The mediator should keep in closed client files

- case documents
- correspondence, including e-mail, memos or notes relating to communications
- documents prepared by the lawyer for the client
- drafts of documents prepared by the mediator for the client if the document confirms client instructions and if the mediator reasonably believes that this might be an issue in the future
- time entries/dockets
- firm's accounting records relating to the client matter
- records of client property.

The mediator should review the firm's file retention policy to determine whether to keep a copy of the following in the closed client file:

- client documents existing prior to the retainer
- court documents
- documents from the opposing party
- discovery and trial transcripts
- expert's reports
- corporate minute books and seal

The lawyer should consider retaining documents to serve as precedents.

The lawyer should assign a closed client file code to the closed client file.

lawyer should send the closed paper files to a storage location.

#### 1.9.5. Storage

Mediators should store closed files in secure cabinets or locations

- separate or apart from active files
- to protect the files from destruction or damage
- to maintain client confidentiality

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- filed in an orderly fashion for easy retrieval.

If the mediator stores closed client files in an off-site storage location, the mediator shall ensure that client confidentiality is protected and maintained.

#### **1.9.6. Retrieval of Closed Files**

In the event the file is transferred to the client or another mediator or firm, the mediator should discuss with the client

- whether or not the client will be charged for
- time and effort in preparing the file for transfer
- additional photocopies of file documents
- if closed and in storage, retrieval of the file
- restrictions on file transfer if accounts remain unpaid at the time of transfer.

#### **1.9.7. Retrieval of Electronic Files**

The mediator should ensure that closed electronic files are stored or saved in a form or format that will be retrievable in the future.

#### **1.9.8. Destroying Client Files**

Mediators should consider whether the client file should be retained indefinitely or whether it will eventually be destroyed.

If the client file is to be destroyed, the mediator should determine

- date the file is to be destroyed taking into consideration
- any legal or regulatory requirements to maintain certain file contents
- limitation periods relating to the lawyer's potential liability for malpractice, or misconduct
- manner of file destruction to preserve confidentiality.

Mediators shall maintain client confidentiality when client files are destroyed.

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