
Schedule No. **16**

County Attorney Records Schedule

Adopted by the Local Government
Records Committee, April 19, 2007

MONTANA LOCAL GOVERNMENT RETENTION SCHEDULE

DEPARTMENT - COUNTY ATTORNEY

| ITEM | RECORD TITLE AND DESCRIPTION | RETENTION TIME | COMMENTS |
|-------------|-------------------------------------|-----------------------|-----------------|
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COUNTY ATTORNEY'S RECORD RETENTION SCHEDULE

The main objective of a record retention schedule is to set out which records and documents to keep that are essential in your office and then to be able to dispose of the non-essential records and documents. It is not the intention of this retention schedule to make each office dispose of their paper records and files. If your office has the space and you want to keep all the original paper records and documents, you may certainly do so.

The basic fundamental necessity of records management is that you can find a record, retrieve it, and be able to access the information. It is important for any office keep a good index, cross-reference and retrieval system.

All retention periods are set assuming a completed financial audit. The custodian of the records is ultimately responsible for compliance with any and all regulations restricting access to certain records.

The County Attorney's office performs a multitude of legal services for county government. The office of the county attorney, for the purpose of record retention, has many duplicate records which would not be considered official copies. These duplicate records do not need to be permanently retained. Examples would be documents filed in District Court and Justice Court cases. The court file is the official record, and the original documents that the county attorney's office has filed in either of the courts is part of the official court file and governed by that court's retention schedule. Rather than keep a permanent duplicate file in the county attorney's office, what the office of the county attorney would want to know is where a record is located. So it may not be important for the county attorney's office to keep all the documents on a felony theft from 1986 on John Q. Public, but your office needs to know that a felony criminal charge was filed, and the official record is at the Clerk of District Court's office.

The County Attorney's office may want to retain some files or records permanently if they have historical significance or if you feel a case sets a precedent.

This would be a decision to be made by each county attorney office. Records should be evaluated by the following criteria: Administrative, Legal, Fiscal or Historical.

In the course of the county attorneys' plan for record retention, it would be beneficial to review the Introduction to Local Records and the General schedule and the schedules for the County Coroner/Medical Examiner; the Clerk of District Court; the Courts of Limited Jurisdiction and the County Sheriff schedules and others. These are listed on the Secretary of State's website under the records management section, local records. This website also lists the procedures for applying to the committee for the disposal of your records.

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The Local Government Records Committee is always willing to assist with questions and information. The Committee also is willing to review and consider any proposed changes in the schedule or suggestions for improvement.

Please be aware that the requirements set forth by the statutes and administrative rules dealing with records management are a separate issue than disaster preparedness. Disaster preparedness is a separate yet related subject.

GENERAL INFORMATION

Montana Code Annotated

Title 2, Chapter 6, Public Records

Part 1, Public Records

Part 2, Public Records Management

Part 3, Records of Elected Executive Branch Officer

Part 4, Local Government Records

Title 3, Chapter 1

Part 1, Courts- Definitions and General Powers

3-1-114 - Definitions of "document", "Electronic Filings" and Electronic Storage of Documents"

3-1-115 - Electronic Filing and storage of documents – rules Title 7, Chapter 4
Part 2, County Officers in General

7-4-2221 - Manner of keeping records and storing documents

7-4-2222 - Substitution of reproduction for original document

7-4-2223 - Duplicate records - safe storage of one copy

ADMINISTRATIVE RULES OF MONTANA

Record Management Bureau - Sub Chapter 1

Local Government Records Retention

44.14.201 Use of Electronic Records Storage Systems for Local Government Documents.

44.14.202 Storage Requirement for electronically stored documents with greater than 10 year record retention schedule.

44.14.203 Storage Requirement for electronically stored documents with less than 10 year record retention schedule.

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| 1. | CASE INDEX Indexes in various formats used to reference individual cases. Each county attorney office should have a master index that lists names, offenses, dates, etc. The master index should reference any case or type of cases the county attorney office is working on or has worked on, including subject matter of county attorney opinions. | Minimum Retention: Permanent | Disposition: Archive |
| 2. | CASE FILES: APPEALED CASES Comments: Each county attorney may determine if a case has historical significance, or if it sets a precedent. These cases may be retained permanently, or as long as the county attorney feels they are of value. | Minimum Retention: Five years after all appeals are exhausted | Disposition: Destroy by shredding or security destruction |
| 3. | CASE FILES: CHILD SUPPORT ENFORCEMENT CASES | Minimum Retention: Until child turns 18 years of age, emancipated, or older if additional child support is specified in the court order. | Disposition: Destroy by shredding or security destruction |
| 4. | CASE FILES: CIVIL LITIGATION Comments: Each county attorney may determine if a case has historical significance, or if it sets a precedent. These cases may be retained permanently, or as long as the county attorney feels they are of value. | Minimum Retention: Five years past final adjudication | Disposition: Destroy by shredding or security destruction |
| 5. | CASE FILES: COMMITMENTS (Mental Health/Insanity) | Minimum Retention: Five years past final adjudication | CONFIDENTIAL FILES Disposition: Destroy by shredding or security destruction |
| 6. | CASE FILES: CRIMINAL CASE FILES Comments: Each county attorney may determine if a case has historical significance, or if it sets a precedent. These cases may be retained permanently, or as long as the county attorney feels they are of value. | Minimum Retention: 5 years past final judgment | Disposition: Destroy by shredding or security destruction |
| 7. | CASE FILES : CRIMINAL CASE - REQUESTS FOR PROSECUTION Comments: The actual request for prosecution is considered an important record. | Minimum Retention: 10 years or until criminal case is concluded | Disposition: Destroy by shredding or security destruction |

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| 8. | CASE FILES: DELINQUENT YOUTH: YOUTH IN NEED OF SUPERVISION | Minimum Retention: Until youth turns 28, 10 years after 18th birthday | Disposition: Destroy by shredding or security destruction |
| 9. | CASE FILES: DEPENDENT AND NEGLECT /CHILD ABUSE | Minimum Retention: Until youth turns 18 years of age | CONFIDENTIAL Disposition: Destroy by shredding or security destruction Comments: |
| 10. | CASE FILES: FELONIES Comments: Each county attorney may determine if a case has historical significance, or if it sets a precedent. These cases may be retained permanently, or as long as the county attorney feels they are of value. | Minimum Retention: Five years past final adjudication | Disposition: Destroy by shredding or security destruction |
| 11. | CASE FILES: GRAND JURY REPORTS Comments: Each county attorney may determine if a case has historical significance, or if it sets a precedent. These cases may be retained permanently, or as long as the county attorney feels they are of value. | Minimum Retention: Five years | Disposition: Destroy by shredding or security destruction |
| 12. | CASE FILES: MISDEMEANORS/JUSTICE COURT FILES Comments: Each county attorney may determine if a case has historical significance, or if it sets a precedent. These cases may be retained permanently, or as long as the county attorney feels they are of value. | Minimum Retention: Three years past final adjudication | Disposition: Destroy by shredding or security destruction |
| 13. | CASE FILES: PUBLIC ADMINISTRATOR/PROBATE RECORDS | Minimum Retention: Five years past completion of matter. | Disposition: Destroy by shredding or security destruction |
| 14. | CORRESPONDENCE | See General Schedule #1 | Disposition: Destroy by shredding or security destruction |
| 15. | COUNTY CORONER'S/MEDICAL EXAMINER OFFICE Autopsy Reports, Coroner's Inquests Comment: Coroner's Inquests are permanent records if filed with the Clerk of District Court Office (Schedule 12). Check the record retention schedule of the County Coroner/Medical examiner (schedule 13); also see Title 46, Chapter 4, Part 2, Inquests | Minimum Retention: Five years past closure of file | Disposition: Destroy by shredding or security destruction |

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| 16. | DISCOVERY MATERIAL Comments: Each county attorney may determine if the discovery has historical significance, or if it sets a precedent. This discovery may be retained permanently, or as long as the county attorney feels it has value. | Minimum Retention: Until case is closed and all appeal times have run | Disposition: Destroy by shredding or security destruction or return to original owner |
| 17. | EXHIBIT RECORDS Disposition: Each county attorney may determine if the exhibit has historical significance, or if it sets a precedent. This exhibit may be retained permanently, or as long as the county attorney feels it has value. | Minimum Retention: Exhibits entered into evidence in a court case are governed by that Court's schedule, and Title 25 Chapter 19, Rule 12 -Montana Uniform District Court Rule #12. All exhibits not entered into evidence can be disposed of after the appeal time has run, or at the discretion of the County Attorney | |
| 18. | FISCAL RECORDS Comments: This may include restitution and repayments handled through the County Attorney's Trust Fund | Minimum Retention: Original records: Audit plus 7 years Duplicates of records filed in other offices. 1 year or when superseded. | Disposition: Destroy by shredding or security destruction |
| 19. | LOCAL GOVERNMENT SERVICES Comments: This category may include documentation, advice or guidance given to any local government agency, including Clerk and Recorder, Commissioners, Superintendent of Schools, Treasurer | Minimum Retention: Five years past completion | Disposition: Destroy by shredding or security destruction |
| 20. | INVESTIGATIVE FILES Comments: This is for Investigative case files that do not result in prosecution of a case | Minimum Retention: Dispose of 3 years after last activity or after statute of limitations has run, which ever is sooner. | Disposition: Destroy by shredding or security destruction |
| 21. | MISCELLANEOUS RECORDS Comments: Paperwork such as Educational/Training Records, Personnel Matters/Records, Policy Recommendations. Printed Materials/published materials, Telephone records & notes, Travel Records | Minimum Retention: Until no longer needed | Disposition: Destroy |
| 22. | OPINIONS- includes copies of the county attorney's opinions to various county officials showing date of opinion, advice or opinion, and office of department to which directed | Minimum Retention: Permanent. Requests for opinions should be kept a minimum of 2 years | Disposition: Archive |

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| 23. | <p>WORK PRODUCT</p> <p>For the purpose of these regulations, the phrase work product shall include all documents representing work done by the County Attorney and their agents in his/her professional capacity, and will be disposed of in conjunction with the case file to which it pertains.</p> <p>Work product does not include:</p> <p>(1) Investigative and intelligence information concerning the crime the subject of the criminal information or other allegations of criminal conduct not specified in the criminal information.</p> <p>(2) Interviews conducted by the prosecuting attorney or another on his/her behalf.</p> <p>(3) Comments and evaluations of witnesses and evidence by the prosecuting attorney or another on his/her behalf.</p> <p>(4) Comments and evaluations relating to any settlement of the case without trial through an adjustment in the charges filed.</p> <p>(5) All other notes, reports and documents not filed with the Court.</p> | <p>Minimum Retention: dispose of in conjunction with the case file to which it pertains.</p> <p>Exceptions 1-5 as listed, dispose of when no longer needed at the discretion of the prosecuting attorney.</p> | |

The County Attorney's office may have duplicate records with the following offices:
There may be many other types of cases or documents that are not listed.

COMMISSIONERS/CLERK & RECORDER

- Contracts
- Subdivisions
- Tax Deeds

COUNTY CORONER'S/MEDICAL EXAMINER OFFICE

- Autopsy Reports
- Coroner's Inquests

DISTRICT COURT

- Appeals to State Supreme Court
- Child Support Enforcement (URES)
- Civil
- Coroner's Inquest
- Criminal
- Dependent and Neglect/ Child Abuse
- Guardianship
- Insanity/Mental Health
- Juvenile/delinquent/youth in need of supervision
- Probate (Public Administration)

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JUSTICE COURT

- Appeals to District Court
- Criminal
- Civil and Small Claims
- Fish and Game Violations
- Juvenile Offenses
- Traffic Offenses

SHERIFF'S OFFICE

- Investigative records and files
- Criminal background checks

SCHOOL SUPERINTENDENT'S OFFICE

- Land Transfers
- School Closures

TREASURER'S OFFICE

- Tax Deeds
- Tax Appeals

Other records in the County Attorney office may include

FINANCIAL RECORDS

- Audit Reports
- Budgets
- Claims
- Expenditure Reports
- Fiscal Records/

MISCELLANEOUS RECORDS

- County Attorney Opinions
- Educational/Training Records
- Personnel Matter/Records
- Policy Recommendations
- Printed Materials/published materials
- Telephone records & notes
- Travel Records