

GUIDELINES FOR PURGING CIVIL CASE FILES

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The purpose of this project is to purge records which are no longer required and retain records which are permanent - as defined in the *Records Retention and Disposition Schedule for Civil Records of the Supreme and County Courts*. **It is anticipated that this purge process will allow the County Clerks' Offices to dispose of up to 50% of their case files for years eligible for destruction - resulting in more efficient files management, recaptured space, recyclable filing systems, and reduced costs for microimaging the records that remain.**

There are several factors which make purging civil case files difficult:

- there are 23 *different* types of civil actions identified in the Records Schedule,
- The Schedule is set up by case type, the filing system by Index Number; generally, the Index Numbers do not distinguish type of action.
- These case types have one of four different retention designations: six years, twenty-five years, seventy-five years or Permanent.
- the case files are not marked in a way that makes the case type easily identifiable.

This guideline describes a process for identifying and purging civil records currently stored in the offices of the County Clerks. Discussion for setting up a filing system that will address and resolve these problems proactively will appear separately.

The steps for implementing this process include:

1. ASSIGN PERSONNEL

- Identify as many people as possible to participate in the *initial stages* of this project. They will be able to learn the process together and provide insights and constructive advice to each other by working as a group. If, however, you start with a small number, designate someone who will be responsible for training the others as they become available at a later date.
- Make sure at least one staff person is familiar with court records. The others should have the capacity to learn easily and work cooperatively with the rest of the group.
- Designate someone with the ability to move heavy boxes.

2. CREATE A WORKSPACE

Select a ventilated area which will accommodate a large table, enough chairs for everyone to be seated, and a space near the table for placing boxes/records as they are brought for evaluation. It is also important to have a separate staging area for placing records after they have been evaluated, separating those which will be destroyed from those which will be returned to the files. It is recommended that you place these records in boxes while they are in the staging area, keeping the cases being returned to the files in numbered sequence order.

3. GATHER SUPPLIES

IT IS HELPFUL TO HAVE ALL YOUR SUPPLIES READILY AVAILABLE BEFORE YOU BEGIN THE PROJECT. We recommend that these include:

- Aprons and gloves. This is dirty, dusty work. Staff should dress down. If conditions warrant, masks may also be necessary.
- Empty boxes which will be used to hold files in the staging area.
- Library cart or some other form of transport that will enable you to move records back and forth from their original storage place to the table, to the staging area, etc.

- Several sets of different colored markers for each person, to be used to identify the various case types. This might include highlighters if you want to color right over the index number, or magic markers or colored pencils if you will be placing colored marks in a corner of the file jacket.

You should also have available the following items, to be supplied by the Office of Reference Services:

- The Records Retention and Disposition Schedule for Civil Records of the Supreme and County Courts;
- Unified Court System Records Management Guidelines, which will include Records Disposition Request Forms and Destruction Guidelines, and
- *County Clerk's Civil Records Disposal Project Forms* (sample attached).

4. IMPLEMENT THE PROJECT

A. REVIEW THE RECORDS RETENTION SCHEDULE:

This will enable you to familiarize yourself with the different types of actions and to identify the *four* case types that are eligible for purging: **TORTS, CONTRACTS, TAX CERTIORARI, and SMALL CLAIMS ASSESSMENT REVIEW (SCAR)**. Select the year(s) to be purged and identify the records' location.

- **TORTS:** YOU may dispose of all post -1950 Tort Cases provided
 - at least twenty-five years have passed since case disposition
 - were not initiated in years ending in "0", and
 - did not result in a structured settlement

Years ending in "0" are to be kept as a permanent research sample. Torts resulting in a structured settlement have a seventy-five year retention.

- **CONTRACTS:** You may dispose of all post-1950 Contract case files provided
 - at least 25 years have passed since case disposition, and
 - were not initiated in years ending in " 0". (Sample year.)

- **TAX CERTIORARI:** You may dispose of all post-1950 tax cert cases provided
 - at least twenty-five years have passed since case disposition. There is no sample requirement.

- **SMALL CLAIMS ASSESSMENT REVIEW:** You may dispose of all SCAR cases provided
 - at least twenty-five years have passed since case disposition if a judgment has been entered, or

 - at least six years have passed since case disposition if a judgment has NOT been entered. There is no sample requirement.

- **CONTRACTS, TORTS, TAX CERTS and SCAR:** The Rules of the Chief Administrator permit destruction of these cases when there is no disposition "where a continuous period of thirty years has elapsed during which...file is totally inactive..." (22 NYCRR104.3(e))

There are several ways to identify these case types:

- If there is a Note of Issue in the case file it may have the case type (Tort, Contract Tax Certiorari) checked off. This is the simplest technique for identifying types of actions; unfortunately, it almost never happens.

- If you have computerized records which include fields for Index Number (including year) and for case type, you can generate a purge report which will list eligible records by Index Number.

- For older cases, you will most probably have to read every file to determine case type. While it may seem complicated at first, after a while you will quickly identify key words and begin to work at a good pace. The best place to begin your appraisal is by reading the COMPLAINT. If you cannot identify the case type from the Complaint, you should next try MOTION PAPERS and then any other papers in the file. Occasionally, you might find a stamp on the case jacket which helps identify the type of action.

You should look for the following key words to help you identify case type:

CONTRACTS.... often include words like “lease”, “agreements”, “contract”.

TORTS....often include words like “negligence”, “carelessness”, “accident”, “defamation of character”, “fraud”, “damage”, “injury”.

NOTE: You will sometimes find an “Appointment of Guardianship” notice in a Torts file if the case affects a minor. This file is still a Tort and should not be confused with Guardianship case files which are permanent. If the Notice is the only thing in the file, it is a Guardianship case and cannot be destroyed.

TAX CERTIORARI.... often includes words like “real estate assessment”, tax commissioner”, “tax in the amount of ...”, “value of property”, “property has been assessed at...”.

SMALL CLAIMS ASSESSMENT REVIEW...includes a “Decision of Hearing Officer” form (RPTL730).

B. REVIEW THE FILES.

It is suggested that everyone doing the evaluation review the first 10-20 files together, discuss their findings and make sure they all agree on identification criteria.

C. FILL OUT THE FORM

Sample form and Instructions attached.

D. MARK FOLDERS

At the same time you are filling out the form for each case file, you should be placing an identifying color mark on the case jacket of all records EXCEPT those which you have earmarked for destruction. There are a number of scenarios that you can follow - depending on how your filing system is set up. The following system describes the process used by some of the courts that have already initiated a purge project;

- SEPARATE THE CASES TO BE DESTROYED AS SOON AS THEY ARE IDENTIFIED; place them in separate piles or in boxes in an area where they will not be confused with the records which will be returned to the files. It is not necessary to mark these with a color identifier since they will be segregated from the other records.

- USE DIFFERENT COLORS FOR EACH OF THE FOUR REMAINING CATEGORIES. The categories are:
 - a. Permanent records - color #1
 - b. Records eligible for destruction at a later date - color #2
 - c. Records where case type cannot be determined - color #3
 - d. Criminal records which have been interfiled with the civil records - color #4. (You can either refile the criminal record with the civil and then go back and pull these after they have reached their fifty year retention; or you can choose to place them in a separate filing system for easier disposal at a future date.)

How you mark your jackets depends on what kind of files you use and how your files are arranged. For instance if your folders have TABS where the Index Number is the most visible part of the file, then use a highlighter pen to color right over the number. If the Index number is further down on the jacket, you may choose to place a colored mark in whichever upper corner is the one most readily seen when you replace the files back in their filing system. For these marks, we recommend magic markers, crayons or colored pencils. **DO NOT USE LABELS AS THESE ARE LIKELY TO PEEL OFF EVENTUALLY.**

5. **FILL OUT A RECORDS DISPOSITION REQUEST FORM AND SUBMIT IT TO THE OFFICE OF REFERENCE SERVICES.** Before submitting the request, records which are being considered for disposition should be reviewed by someone who has significant experience with court records, e.g. the Records Room Supervisor. When you have accumulated a significant volume of records eligible for disposition, submit a form to:

New York State Office of Court Administration
Office of Records Management
25 Beaver Street
Room 883
New York, New York 10004

Phone: 212-428-2875; FAX: 212-428-2880.

DO NOT SEND COPIES OF THE COUNTY CLERKS CIVIL RECORDS DISPOSAL PROJECT FORMS. Your office should keep these forms permanently as a record of what you have destroyed. The back part of the form should also be reviewed yearly to see if any of these cases have become eligible for disposition.

6. **DESTROY RECORDS** when the Disposition Request form is returned to you, following the OCA Guideline: *Records Management Policy 5.0 - Destruction of Records*.