

RETHINKING YOUR DOCUMENT RETENTION HABITS WHILE SPRING CLEANING?

Springtime can be a good excuse to “clean house.” If you are evaluating your document retention practices this season, consider these points as you determine what to keep and what to toss:

- If you are involved in litigation or reasonably anticipate litigation, you are required to keep all documents related to the case by implementing what is referred to as a “litigation hold.” This includes suspending automatic deletion features on servers or email systems. Courts can issue monetary sanctions or even enter an adverse judgment for failure to take reasonable steps to preserve documents related to litigation.
- Know and comply with all regulatory document-keeping requirements that may apply to you or your business. As just one example, lenders are currently subject to record retention requirements under federal lending laws that include keeping closing disclosures for five years. See 12 C.F.R. § 1026.25. If you are unsure of the governing requirements, consult an attorney.
- Weigh the costs and benefits of keeping documents. On one hand, it can be valuable to be able to dig out old documents when an unexpected problem or opportunity arises. Quickly finding key correspondence to defeat a threatened lawsuit can save money and headaches. On the other hand, storing documents—whether paper or electronic—has real costs. Paper documents take up space that may be used for more productive purposes. The storage of electronic documents and emails has costs, as well, including hardware, software, maintenance, and tech support. A good document retention policy aims to balance these competing interests.
- Documents are only useful if you know where and how to find them. Just like a storage room full of unlabeled paper files, electronic records that are haphazardly stored, poorly named, or unsearchable are of limited value.
- Consistency is key. A formal document retention policy that is reliably implemented is best. In the event of a future lawsuit or dispute, a document retention policy that was consistently followed could minimize discovery disputes over destroyed documents.

If you are unsure of the legal implications of keeping or disposing of certain documents, contact an attorney. For more information, contact [Christa Wittenberg](#) at 414-276-5000, Christa.Wittenberg@wilaw.com, or any of the other attorneys at OCHDL.

CHRISTA WITTENBERG PUBLISHED AN ARTICLE IN WISCONSIN LAWYER MAGAZINE

Christa Wittenberg authored an article entitled “Testamentary Capacity: A Sliding-Scale Approach,” which appeared in the September issue of *Wisconsin Lawyer* magazine. The article discusses the complex estate planning issues and disputes that can arise in families with loved ones affected by dementia or diminished mental capacity. Given increasing life expectancies and the relative frequency with which these issues can arise, this is a situation that many people either have faced or will face in their lifetimes. When these issues arise, it is important to seek good legal advice promptly.

For more information you can contact Christa at 414-276-5000 or Christa.Wittenberg@wilaw.com

WHETHER WEBSITE PRESENCE EXPOSES PUBLISHER TO LAWSUITS IN WISCONSIN ANALYZED IN RECENT CASE

Most people would probably assume that simply maintaining a website would not expose the creator to being sued wherever the website can be viewed. Courts in this country have generally agreed, and have ruled that the mere act of operating a website that can be read within a certain state does not, by itself, give the courts of that state jurisdiction over the entity running the website.

In a recent opinion, the Wisconsin Court of Appeals affirmed this principle. In *Salfinger v. Fairfax Media Limited*, the court concluded that the mere fact that an Australian company published an article on a website, which could be accessed in Wisconsin, did not give the court jurisdiction over that company. This was true even though the plaintiff’s claim was for defamation based on the content in that article. Rather, to be consistent with the Due Process Clause of the United States Constitution, there must have been some purposeful conduct within Wisconsin by the company that would make facing suit in Wisconsin foreseeable.

Even more importantly, the court also considered whether the targeted advertising on the website changed the result. Like many companies, Fairfax Media Limited used online advertising programs, such as through Google or Double Click, that placed advertisements on

its website targeted to the reader based on his or her geographic location—for example, placing ads for a Wisconsin business on its website next to the article if the reader was located in Wisconsin. Ultimately, the court concluded that this still was not enough Wisconsin-related conduct to give the court jurisdiction over the publisher and expose it to being sued in Wisconsin.

The Court did note that the question of jurisdiction depends on the facts in each particular case, so it is unclear whether even one change in the circumstances, such as a company mentioning Wisconsin in a website article, could change the result and open the company to lawsuits in Wisconsin. These questions will ultimately have to be resolved in future cases.

O'NEIL, CANNON, HOLLMAN, DEJONG AND LAING S.C. HOSTS CONTINUING LEGAL EDUCATION SEMINAR FOR SMALL FIRMS AND SOLO PRACTITIONERS

On October 7, 2015, O'Neil, Cannon, Hollman, DeJong and Laing S.C. hosted a Continuing Legal Education seminar entitled "Hot Legal Topics for Small Firms and Solo Practitioners" focusing on legal issues of interest to Wisconsin small firm and solo practice attorneys. Over 50 attorneys attended the event.

The firm's Managing Shareholder, Dean Laing, presided over the event.

Chad Baruch of Dallas, Texas was the keynote speaker for the seminar. Attorney Baruch spoke on effective legal writing. He also spoke on constitutional law issues.

A number of O'Neil, Cannon, Hollman, DeJong and Laing S.C. attorneys also spoke at the event:

- Patrick McBride, Joe Newbold, Melissa Blair, and Christa Wittenberg participated in a panel discussion on the role of judicial clerks and court staff in state and federal court proceedings.
- Tim Van de Kamp presented on commercial lease issues.
- Greg Mager presented on asset protection in divorce and family transfers.
- Seth Dizard presented on recent developments in receivership law.
- Grant Killoran and Greg Lyons presented on legal and practical issues related to commercial arbitration in the United States and abroad.

O'Neil, Cannon, Hollman, DeJong and Laing S.C. will hold this seminar again in the Fall of 2016.

If you would like any additional information regarding the seminar, including copies of the seminar materials, or if you would like to attend the 2016 seminar, please contact Grant Killoran at grant.killoran@wilaw.com or at 414.276.5000.

ATTORNEYS WITTENBERG AND KILLORAN CONTRIBUTE TO THE AMERICAN BAR ASSOCIATION SECTION OF LITIGATION HEALTH LAW LITIGATION NEWSLETTER

O'Neil, Cannon, Hollman, DeJong and Laing S.C. attorneys Christa Wittenberg and Grant Killoran recently contributed articles to the Spring 2015 Edition of the *Health Law Litigation Newsletter* published by the American Bar Association Section of Litigation.

Attorney Wittenberg, an associate in the firm's Litigation Practice Group, authored an article entitled "The Constitutional Framework for Public Health Responses to Disease Outbreaks," analyzing the role of federal and state government in responding to contagious disease outbreaks, such as the recent Ebola virus crisis.

Attorney Killoran, the Chair of the firm's Litigation Practice Group and one of the State Bar of Wisconsin's Delegates to the ABA House of Delegates, authored an article entitled "American Bar Association House of Delegates Update" discussing a number of resolutions passed by the ABA House of Delegates at the ABA Mid-Year Meeting in Houston in February.

A complete copy of the Spring 2015 Edition of the ABA Section of Litigation *Health Law Litigation Newsletter* can be found at americanbar.org.