



Office of

MICHEAL E. JIMERSON

COUNTY & DISTRICT ATTORNEY

Rusk County Courthouse
115 N. Main • Suite 302
Henderson, Texas 75652

TELEPHONE: 903-657-2265

FAX: 903-657-0329

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Legal Memorandum LEGAL MEMORAMISDEMEANOR RECORDS RETENTION POLICY

RE: Misdemeanor Case Files and Working Papers Record Retention of the Rusk County and District Attorney's Office

A. Misdemeanor Case Files

1. What is a misdemeanor?

Pursuant to the Texas Penal Code § 1.07(a) (31), a “misdemeanor” means an offense so designated by law or punishable by fine, by confinement in jail, or by both fine and confinement in jail.

2. What are case files and working papers?

Case files and working papers are all documents, papers, correspondence, reports (including jail population and medical examiner records filed with the attorney), briefs, notes, drafts, photographs, video and sound recordings, and similar records relating to criminal or civil cases, proceedings, actions, or investigations to which the attorney is a party on behalf of the county or the state. This series does not include case files associated with prosecuting juvenile offenders.

3. What is a record retention schedule?

A record retention schedule is a document issued by the Texas State Library and Archives Commission under the authority of the Government Code, § 441.158, establishing mandatory retention periods for local government codes.

4. Who is a records management officer?

According to the Texas Local Government Code § 203.001, each elected county officer is the records management officer for the records of the officer's office.

5. What is the retention period for a misdemeanor case file?

According to the retention schedule, the case file has to be in retention for as long as administratively valuable meaning the immediate purpose for which the record was created has been fulfilled and any subsequent need for the record to conduct the operations of the agency, if any, has been satisfied. As such, retention is no longer necessary after final disposition. However, prior to disposal, case and working papers shall be appraised by the records management officer for historical value, and those determined by the records management officer to merit retention for historical reasons must be retained **PERMANENTLY**.

6. What does final disposition mean?

The term “final disposition” in the retention period for this record has the following meanings:

- 1) For unadjudicated matters – Date decision made not to proceed further with the matter in question.
- 2) For any case dismissed for want of prosecution, on the motion of the plaintiff or the state, or for other reasons within the power of a court – Effective date of dismissal.
- 3) Civil cases – Date of final judgment.
- 4) Criminal case – Date of final judgment.

7. Methods of destroying case files.

Pursuant to the Texas Local Government Code § 202.003(a). A local government record may be destroyed by burning, shredding, pulping, or burial in a landfill or by sale or donation for recycling purposes.

Whereas in consideration of the forgoing legal authority and duties as well as the persistent need for space in storing files the Elected County and District Attorney for Rusk County hereby establishes a retention policy for misdemeanors only of three years from date of final disposition.

Michael E. Jimerson