

# LEGAL PRACTICE MANAGEMENT: ATP 106

## LECTURE 8

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# FILING AND RECORDS MANAGEMENT

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## Records Management Definitions:

*"...the creation, management, storage and destruction of records."*

Kinani M., (2019); Legal Practice Management, Nairobi, Kenya, LawAfrica Publishing (K) Ltd. at page 77

*"...field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records, including processes for capturing, and maintaining evidence of and information about business activities and transactions in the form of records"*

Svärd, P., (2017); Enterprise Content Management, Records Management and Information Culture Amidst e-Government Development; Chandos Publishing

*"...the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records."*

The United Nations archives and Records Management Section

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## Purpose of Maintaining Records:

- For future reference
- Legal evidence
- Planning and budgeting
- Evaluating performance
- Legal requirement
- Settlement of disputes
- General reference
- Comparison purposes
- Cross reference
- Policy and decision making

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## Advantages of a good record management system:

- Improved accessibility of information
- Increased productivity as time is saved when retrieving records
- Improved accountability
- Proper preservation of information thus enhanced viability of the information
- Observance of legal obligations due to proper compliance

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### Principles of Good Records Management:

- The Association of Records Management and Administrators (ARMA) International came up with principles that can be utilized to ensure proper maintenance of records. The standard is divided into two sections i.e.: -
  - ISO 15489 Part 1; General
  - ISO 15489 Part 2; Guidelines

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The principles of good records management include: -

- Principle of accountability
- Principle of integrity
- Principle of retention
- Principle of protection
- Principle of disposition
- Principle of transparency
- Principle of compliance
- Principle of availability

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### Factors to consider in Retention of Records:

- Importance / Effectiveness of a record
- Need for future reference
- Need for legal reference
- Cost of storage
- Legal requirements
- Volume of records
- Frequency of reference
- Nature of documents
- Existence of duplicate records
- Company policy

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### Methods of Records Disposal:

- The method utilized for destruction of a record is dependent on its sensitivity.
- Destruction of paper records:
  - Recycling
  - Shredding
  - Pulping
  - Incinerating
- Destruction of electronic records:
  - Deleting
  - Overwriting
  - Degaussing (magnetic media)
  - Physical destruction

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### FILING

- Process of classifying, arranging and sharing records so that they can be retrieved as quickly as possible.
- Documents are stored in files or folders.
- Importance of filing: -
  - Promotes the safety and protection of documents.
  - Ensures that records are available for future reference.
  - Promotes neatness in record keeping.
  - Enhances security of the information.
  - Ensures that records are quickly accessible when required.

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### General Rules for Filing:

- All records should be authorized for filing
- File daily
- File neatly
- Properly punch the documents
- Avoid using bulky files
- Avoid removing records from a file but if necessary use an outguide
- If a whole file is removed from the shelf, there should be an "absent marked" to indicate where the file has been taken
- Label all the files clearly
- File correctly

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### Steps to be Followed in Planning for a Filing System:

- Determine the period of storage
- Consider the cost effectiveness of the system
- Acquire storage space
- Plan the storage arrangement
- Decide on the appropriate location.
- Consider the equipment necessary for filing
- Consider the safety of the documents
- Establish the classification system
- Train staff
- Ensure security of documents

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### Measures to Put in Place to Ensure Proper Control and Handling of Filed Documents:

- Use of charge out system
- Limit access to cabinets and files to authorised personnel only
- Indicate the time limit for staying with a particular file
- Keep a resume to be utilized incase a file is misplaced
- Have a follow-up system
- Transfer inactive records and maintain only the active ones
- Record incoming mail
- Indicate the document folio number
- Use lockable cabinets

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### FILING METHODS

- **Horizontal Method:** Documents are kept in a flat position on top of each other mostly using shelves.
- **Vertical Filing Method:** This is a system where files are kept in an upright position lying on their spines. The labels appear on the top edge of the file for easy identification.
- **Suspension Filing:** Similar to vertical filing, however, the filing cabinets have "packets" into which the files are suspended so that the spine of the file does not touch the bottom of the cabinet and this helps to preserve the files.
- **Lateral Filing Method:** Files are placed side by side with their spines facing out. Uses lateral filing cabinets or shelves.

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### Principles/Characteristics of a Good Filing System:

- Economy
- Compactness
- Simplicity
- Accessibility
- Flexibility
- Classification
- Suitability
- Up-to-date
- Safety and security
- Cross referencing system
- Out guides

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## FILING CLASSIFICATION SYSTEMS

- This is where records are grouped according to different titles or sections. These include: -
  - Alphabetical classification
  - Numerical classification
  - Alpha – numerical classification
  - Geographical classification
  - Subject classification
  - Chronological classification

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## Alphabetical Classification

- Files are arranged according to the letters of the alphabet i.e. A-Z order.
- Advantages: -
  - Simple to understand
  - No separate index is required
  - Enables direct filing
  - Flexible
  - Has a wider application
- Disadvantages: -
  - Some letters are more widely used thus some files are bulkier than others
  - Has limited usage / capacity
  - Difficult to estimate space requirements for different letters of the alphabet
  - Person filing must have a thorough knowledge of filing rules

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## Rules for Alphabetical Filing

- Individual's names are filed according to their surnames. If the surname and the first name are the same, the middle name or initials are utilized
- File short names / fewer names before long names / many names
- Titles, decorations and degrees are ignored and are put at the end in brackets
- A surname prefix is considered as part of the surname
- A Hyphenated name has the hyphen ignored and the name treated as one
- The prefix st. is considered as saint and filed as though written in full and is always considered first
- Articles, conjunctions and prepositions are ignored when filing. When "the" is the first word in the name, it is usually written at the end
  - Companies with personal names are filed under the surname
  - If a company has several names, the name listed first as the surname is considered first
- Numbers in a company or in associations name are treated as though written in full
- Government departments and Ministries are filed under the key words

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## Numerical Classification

- This is a system where filing is done according to numbers or a numerical code as illustrated below.
  - 001: Accounts
  - 002: Human Resources
  - 003: Production
- Advantages: -
  - Flexible for future expansion
  - Suitable for large companies that have many customers and employees
  - Easy to locate and identify records
  - Possible to add new records
  - Suitable and convenient for filing documents that have serial numbers
  - File number can be quoted as the file reference when writing official mail

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- Disadvantages: -
  - Expensive as requires a separate index
  - Time consuming to prepare a separate index
  - Delays when filing or retrieving records as one has to refer to the index
  - Requires training on how to use the index
  - Transposition errors can lead to misfiling

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### Alpha-Numerical Classifications

- Alphabets and numerals are combined so that each class has an alphabetic title and a number.
- Suitable for large organisations where neither the alphabet nor numerical classification is adequate.
- Advantages:
  - Accommodates more records
  - Allows for better reference
  - Reduces confusion found in alphabetical and numerical methods
- Disadvantages:
  - Complicated
  - Requires qualified personnel.
  - Forces the organization to adopt a centralized filing system even when the organization is small

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### Geographical Classification

- This is where files are classified according to geographical location.
- Also known as geographical by alphabet.
- Advantages:
  - Easy to use as long
  - Direct filing is possible
  - Possible to group records under a geographical location
  - Each location can have a backup in case of a disaster
  - Facilitates easy identification and location of documents
- Disadvantages:
  - Possibility of errors if the clerk has poor geographical knowledge
  - Misfiling if the origin is not indicated
  - Expensive as it may require an index

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### Subject Classification

- Records are classified according to a particular subject or based on origin.
- Records may also be sorted alphabetically.
- Advantages:
  - Ease of reference
  - Easy to operate
  - Allows direct filing
  - Flexibility of expansion
- Disadvantages:
  - Unsuitable for filing miscellaneous records
  - Expensive as a separate index has to be prepared
  - Misfiling can occur if the subject is not well known
  - Unsuitable for companies with a huge number of files

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### Chronological Filing

- Records are classified according to dates received with the most recent record appearing at the top.
- Advantages:
  - Easy to operate
  - Direct filing is possible
  - Easy to use
  - The system can be applied in other filing systems
  - Allows grouping of records under specific dates
  - Convenient method for opening and closing files
- Disadvantages:
  - Misfiling if the date is not indicated
  - Inconvenient for organizations that have a large number of files
  - Causes delays and inconveniences when retrieving old files

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### Factors to be Considered When Making a Decision on an Appropriate System Of Classifying Office Documents:

- Cost
- Accessibility and ease of reference
- Availability of space
- Flexibility
- Volume of records
- Ease of use
- Nature of records

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**Factors cont.....**

- Availability of skilled labour to operate the system
- Training required to operate the system
- Suitability of the filing system depending on the filing equipment available
- Safety / security of records
- Level of technology available in the office

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**INDEXING OF RECORDS**

- An index is a separate list of records under different classifications utilized for ease of reference and retrieval.
- Importance of indices: -
  - Guides the user on where to get a record
  - Allows fast and easy access to records
  - Avoids misfiling of records
  - Acts as a guide to the filing clerks and provides training to new clerks/users

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**Types of Indices:**

**Page Index**

- Booklet containing a list of records e.g. in textbooks
- Advantages:
  - Cheap to prepare
  - Time saving
  - Pages are not easily lost because they are clipped or stapled together
- Disadvantages:
  - Difficult to add new records to the index
  - Untidy to remove unwanted records
  - Unsuitable for large companies

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**Loose Vertical Card Index**

- Loose cards are kept vertically inside a box or drawer.
- Advantages:
  - Cheap to operate
  - Time saving to operate
  - Easy to add new records
  - Easy to remove unwanted records
  - Flexible for future expansion
- Disadvantages:
  - System is "blind"
  - Cards are subject to wear and tear
  - Cards may get lost
  - Time consuming to flip through the cards

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**Visible Card Index**

- Index cards are filed in a binder so that they overlap in such a way that the labels are visible
- Advantages:
  - Easy to identify cards
  - Easy to add a new card or remove an unwanted ones
  - Corrections can be made on a card without removing it from the binder
  - Cards do not easily get lost
- Disadvantages:
  - Limited space for expansion
  - Cards are subject to wear and tear

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### Strip Index

- Records are typed on a strip of adhesive paper which is then stuck onto the page of a book or file.
- Advantages:
  - Unlimited space for expansion
  - Easy to add new records and remove unwanted ones
  - Easy to read the labels on the strip of paper
  - Records are not easily lost
- Disadvantage:
  - Extra cost of adhesive paper

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### Rotary Index

- This is a type of cylinder or drum onto which cards are inserted vertically.
- Advantages:
  - Space saving
  - Has the capacity to fit many cards
  - Easy to add new cards and remove unwanted ones
  - Easy identification and quick reference
- Disadvantages:
  - Equipment is expensive
  - Cards are subject to wear and tear
  - Cards can easily be lost

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### Punched card Index / Computerized Index

- A punched card index has a series of holes which are punched and each hole represents some information. It is used on the computer.
- Advantages:
  - Unlimited space for expansion
  - Accuracy of information
  - Space saving
  - Easy to add and remove records
  - Quick access and identification of records
- Disadvantages:
  - High cost of purchasing and maintaining equipment
  - High training cost
  - Requires skilled operators
  - Subject to the problem of power failure and equipment breakdown

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### Micro-Filming

- A document is photographed and reduced to a micro-size which cannot be read with the naked eye.
- The film is stored using a cartridge or roll of film or plastic envelopes.
- Micro film records can only be read using a micro-film reader.
- The system is commonly used in libraries, museums and archives etc. where important data is stored in large volumes.
- Advantages:
  - Space saving
  - Economy in the use of filing cabinets
  - More permanent than paper
  - Less bulky and therefore cheaper to transport
  - Reduces paperwork and economises on stationery

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### Advantages cont....

- Security of information
- Quick access and identification of records
- Promotes the safety and protection of valuable documents
- Documents can be enlarged and a hard copy produced
- System is compatible with other equipment
- Disadvantages:
  - Equipment is expensive with a high maintenance cost
  - Documents cannot be read with the naked eye
  - Requires skilled operators
  - Subject to power failure and equipment breakdown
  - Delays in retrieving records
  - Film is sensitive to light, dust and humidity

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- Disadvantages cont....
  - Loss of the film can cause the company a great loss of documents
  - Impossible to correct mistakes
  - Films can become illegible due to poor processing
  - Process of developing films takes a long time
  - High cost of processing as well as complimentary equipment

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**APPLICATION OF MODERN TECHNOLOGY IN RECORDS MANAGEMENT**

**Electronic Record Management**

*"...consists of information or data files that are created and stored in digitized form through the use of computers and applications software."*

Kimari M., (2019), Legal Practice Management, Nairobi, Kenya, LawAfrica Publishing (K) Ltd. at page 85

- Electronic records include numeric, graphic, audio, video and textual information.
- Electronic records systems require partnerships with information technology and records management fields to support requirements for data control and access.
- Modern technology aids in electronic record management.

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**Access Criteria:**

- Policies stipulating who has access records and on restricted records
- Assurance that access and retrieval are timely
- Assurance that records are retrievable by authorized users only
- Relevant metadata applicable to the captured record is maintained for the lifecycle of the record or until otherwise designated
- Recognition on privacy issues

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**Controls on Records:**

- Measures to monitor who has access to records
- Safeguard the records from unauthorized access
- Has an audit trail
- Demonstrates that migration, system malfunctions, upgrades, and regular maintenance of records systems will not infringe upon the integrity of the records
- Has methodologies to protect the confidentiality, privacy, and security of records
- Has validation / verification techniques
- Ensures records protection and preservation
- Records system has the ability to preserve records and their associated metadata
- Able to archive data

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**Advantages of Electronic Record Management:**

- Strengthens corporate governance
- Reduces human recourse costs
- Increases efficiency
- Risk mitigation
- Better accountability
- Reliable back-up
- Less deterioration of records
- Increased internal and external collaboration
- Lower archiving costs
- Improved version control
- Consistent content
- Improved task management

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### Challenges and Concerns Over Electronic Records:

- Some storage formats are not stable
- Documents created are dependent upon technology to interpret them
- Harder to authenticate thus giving room to corruption and fraud
- Requires institutional policies and guidelines addressing the management of electronic records
- Due to low cost of electronic storage, organizations are tempted to retain records who's lives have expired
- Greater risk for potential security breaches and damage via virus attacks and hacking
- Requires hiring of highly trained staff

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### LEGAL FRAMEWORK FOR RECORDS MANAGEMENT

#### The Constitution of Kenya, 2010:

- Article 31: Privacy
- Article 33: Freedom of expression
- Article 227: Procurement of public goods and services

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#### Acts of Parliament:

- *Records Disposal Act*: Gives provision for the disposal of court records. The Chief Justice must decide on which records to dispose of. This is done in consultation with the Chief Archivist (subject to the provisions of the Public Archives and Documentation Services Act).
- *Public Archives and Documentation Services Act*: provides for archiving of public records. it also provides for management and destruction of national documents (see section 5A, 6 and 7)
- *The Public Procurement and Disposal Act*: section 127 gives provision to be utilized by public organizations for the disposal of unusable equipment.
- *Kenya Information Communication Act (as read together with the Revision of Laws Act)*: this Act provides the legal basis for electronic publication of laws (section 27A & 102 A of the Kenya Information Communication Act).

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#### International Laws and Standards:

- ILO Code of Practice on Protection of a Worker, 1997
- International Financial Reporting Standards
- International Standard ISO 15489 & 9001

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