

# Guilty Until Proven Innocent: Claims Defense Documentation

By Jim Atkins, FAIA; September 3, 2015

The great maxim on which American law is based that the accused is presumed innocent until proven guilty does not always rise easily in the architect's defense when a claim is made. And when the contractor's project log is rolled out to display the architect's delinquency in reviewing submittals and responding to RFIs, a presumption of guilt usually follows. It is then incumbent upon the architect to produce sufficient defensive documentation to prove innocence, if such documentation exists.

Meanwhile, the digital world has taken the pen from our hands, and no one writes letters anymore; everyone sends emails. Ironically, the email provides better documentation than the written letter; as traceable as certified mail; and telephone calls and phone texts can be documented as effectively as emails. If you have doubts, just ask the NSA.

Today, for many, the smart phone is the tool of choice for managing billion dollar projects, and the immediate access and transmission of documents is demanded. The portable document format, PDF, has liberated, or perhaps it is more accurate to say unleashed, contractor submittals, and architects may be expected to review unforeseen and unacquainted VE proposals and respond within the hour to avoid the accusation of delay. All the while the sanctity of the written word is dependent upon who physically possesses a digital copy in her or his server.

Nonetheless, these supposed improvements in technology do not limit or diminish the need for the written word, be it digitized or scribed on the pulp based remnants of a tree. For now, our legal system continues to hinge on documentation, and it is the crucible by which the accused design professional's fate is tested and determined in the courts.

This paper will address the critical issue of project documentation as it applies to project communications, decisions and record keeping. When a claim is made, actions taken and decisions made by the architect will be generally unsupported unless there is a written record, and the architect will be presumed guilty unless proven otherwise by project records. This paper will provide a guideline for managing documentation with helpful suggestions for retention and retrieval and efficient claims response in the event you must prove your innocence.

## GIVE ME FIVE

To set the stage for discussion, it is beneficial to review five suggested rules to use as a guideline for documentation and five rules to remember for meetings. They are easy to remember; just count your fingers.

### *The 5 Rules for Documentation*

It can be helpful to keep these in the back of your mind as you go about your scrivener responsibilities. In the end, your documentation will be better for it.

1. *If it's not written down, it didn't happen.* The absence of documentation can give rise to allegations of failure to act unless some record can be found to rebut the allegation. The tenor of the claim can quickly become a proposition of, "guilty until proven innocent."
2. *Don't write down anything you don't want the public to see.* This should be printed on the box that computers come in. Architects are judged on their digital trail, and that trail can be accessed.
3. *Assume there is never just one copy.* Please keep in mind that information remains on the hard drive even after it is erased, and emails require the participation of at least two parties.
4. *Handwritten trumps digital.* This doesn't mean that you should send letters instead of emails. It means that the author of a handwritten document is more difficult to dispute than a digital document.
5. *Do not respond when angry.* It's interesting how emotion clouds the ability to reason. If it is an emotional topic, observe the 24 hour rule. Then read it again and reconsider before sending. \

### *The 5 Rules for Meetings*

Meetings are the primary activity where decisions are made and agreements are reached. Accordingly, meetings should be well documented in order to preserve historical accuracy in the event of a dispute. Meeting discipline and documentation can be as important as the contract documents themselves when defending a claim.

1. *Take meeting notes in all meetings.* If the meeting is worth attending, it is worth documenting. Moreover, your recollection of the meeting will likely be different than other attendees.
2. *Report all meetings within 24 hours.* The meeting report often becomes the DO LIST to prepare for the next meeting. Accordingly, it needs to go out sooner rather than later.
3. *If you conduct the meeting, you report the meeting.* Don't let others put words in your mouth. You ran the meeting, you report it.
4. *Prepare an agenda and send out in advance.* Any meeting that is worth having needs an agenda to guide it. Attendees also need to know the topics in advance in order to prepare.
5. *Rebut all meeting reports you don't create.* People with different priorities have selective memories. If you don't send corrections, the errors may stand as fact.

This paper is written from the architect's perspective, and it addresses documents the architect typically manages during the construction phase. Documents typically provided by the owner and the contractor will be examined first, followed by documents that the architect should possess and be concerned with during the construction phase. Each section concludes with a discussion summary, and a master checklist of documents is also included.

The paper also addresses documents retention and retrieval which is necessary in order to effectively use the documentation for defense once it is created and managed.

## **PROJECT DOCUMENTATION**

When accusations are made and fingers start pointing, it usually comes down to the tangible evidence; documentation. While architects should be concerned with their documentation, as also addressed in the companion white paper, *Bulletproof Contract Administration: Managing Risk during Construction*, documentation generated by the owner and contractor are equally important. Accordingly, we will first examine documentation that the architect should expect to receive from the owner as well as architect-generated documentation of owner activities.

### ***Owner Documentation***

Owner documentation is important because it provides a verifiable record of what has been agreed upon and approved, instructions that have been communicated, and owner information that has been provided during the project. The absence of documentation of key communications and records can result in disagreements and unfulfilled expectations.

Therefore it is prudent that the architect receive complete owner documentation in order to be responsive to project parameters and have knowledge and a record of all owner actions, including separate owner consultants and contractors.

*Project Program* - Projects are often begun based on incomplete or poorly developed owner project programs. As the project progresses, it is not unusual for the program to be changed to fit the owner's needs. Obtaining a written owner program before beginning services provides a base line that can be used to settle disputes and justify a change in services.

*Project Budget* - Orally conveyed budgets can take a life of their own, evolving and changing as needs and limitations are realized down the road. Obtaining a written owner budget before beginning services provides a base line that can be used to settle disputes and help establish a finite project scope.

*Owner-Contractor Agreement & General Conditions* - A copy of the Owner-Contractor Agreement is required in order for the architect to administer the construction contract, but inexplicably some owners refuse to provide a copy of the agreement to the architect. A response that can be made in such a situation is to discuss with the owner the necessity of having the agreement in order to provide services and refuse to provide those services until a copy is provided.

Should these discussions not be successful, another option is to send the owner a blank copy of an AIA agreement that conforms to the contractor's delivery method, and inform the owner and contractor in writing that the project will be administered in accordance with the terms of the blank contract until a copy of the executed contract is provided.

A similar problem can occur if the owner and contractor have agreed upon general conditions that are different from the general conditions published by the architect in the contract documents. In such a case the owner-contractor changes may be in conflict with the architect's general conditions, thus preventing the architect from performing services in accordance with its contract or the standard of care.

For example, if the owner-contractor general conditions do not require contractor submittals, the architect may not be able to determine the scope of the work and therefore may not be able to determine work conformance and substantial and final completion. When differences between the two documents are significant, a negotiated agreement of the general conditions between the owner, contractor and architect may be required in order to get everyone on the same page.

This is often best accomplished with a single meeting wherein the three parties review the document line by line and come to agreement. Once consensus is reached, a change order to the Owner-Contractor Agreement is often required. A change in the Owner-Architect Agreement may be required if the architect's services are changed, but use caution to make sure state statutes and the standard of care are being met.

The contracted structure of the project can become conflicted and confused when the owner and contractor go their own way with the general conditions, but it happens more often than one may expect. The key to keeping the situation under control is to make sure the owner and contractor fully understand the importance of a unified general conditions for the project.

*Design Phase Sign-offs* - Important documentation to obtain from the owner is its sign-off on the Schematic Design Phase and the Design Development Phase. These phases of service by their very nature can be disputed after the fact, and a signed off set of documents can mitigate a disagreement. In addition, each phase of design can usually be invoiced 100% without dispute after the sign-off is obtained.

*Owner Accepted VE Substitutions* - VE Substitutions are often administered over a short time span after the construction contract is executed with little opportunity for the architect to conduct a thorough evaluation. Moreover, it is not unusual for the accepted substitutions to consist of a cryptic list of items without benefit of an accompanying specifications or other supporting data to properly define the product quality. The architect is often required to give its quick approval based on the incomplete information and without benefit of a longer, more deliberate review. A high percentage of claims based on product failures can be traced back to a hasty and poorly documented value engineered substitution.

Accordingly, the architect should not approve a substitution unless it can reach an equally acceptable comfort level as on the originally specified product. Absent appropriate documentation, including a specification, detailed drawings if required, and documented performance history, in addition to adequate review time, the substitution should not be accepted.

When acceptance of the substitution is forced on the architect, the VE changes should not be incorporated into the contract documents to avoid increased risk to the design professionals, and the work should be listed as “owner-accepted nonconforming work” on the Certificate of Substantial Completion.

This course of action may be controversial, and it is important to discuss the VE Substitution process early in the project before the construction contract is executed. Last minute contractor-driven VE changes are typically cost reduction changes that result in decreased quality and value. The architect must document its refusal to approve unacceptable VE changes in order to avoid being held responsible.

If the owner and contractor proceed with a substitution that the architect cannot accept, the architect’s non-acceptance should be documented in writing and the substitution designated as, “owner-accepted nonconforming work.” Architects typically maintain quality-driven specifications, and quality should not be compromised as a result of inadequate review time or owner preference.

*Owner RFIs* – An owner may choose to document requested information through a formal RFI, and the AIA has provided a standard form<sup>1</sup> for that purpose. Any owner generated RFIs should be logged and tracked by the architect, and copies of the RFI and any related documents should be retained.

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<sup>1</sup> AIA Document G714-2004, Request for Information

### **Owner Documentation Discussion Summary:**

- ✓ Obtain copies of the owner's program and budget
- ✓ Obtain owner sign-offs on design phases
- ✓ Obtain copies of the Owner-Contractor Agreement
- ✓ Obtain copies of the General Conditions if changed
- ✓ Re-negotiate General Conditions if necessary
- ✓ Establish reasonable review time and supporting information for VE substitutions
- ✓ Designate unacceptable VE Substitutions as owner-accepted nonconforming work
- ✓ Send RFIs to owner if information not provided
- ✓ Document all owner approvals in writing
- ✓ Log and track RFIs independently

### ***Contractor Documentation***

The AIA documents are specific in describing documentation provided by the contractor, and the architect is wise to capture that documentation in the record files. However, much of the documentation is not always provided, either intentionally or through lack of enforcement. Accordingly, the architect should strive to retain all documentation related to the project so as to have a meaningful record in the event actions or decisions are disputed.

*Construction & Submittal Schedule* - It is important that a submittal schedule be provided in addition to and coordinated with the project construction schedule. If the submittal schedule is not provided, or if it is not coordinated with the construction schedule, the architect should notify the owner and contractor in writing that the agreed upon architect response times for submittal review will not be upheld unless and until the submittal schedule is provided. This should be followed with an RFI to the contractor requesting the contracted information, and the delinquency should be reported in the project meeting until the schedule is provided.

Some contractors may not include a submittal schedule in their Work Plan. If the contractor persists in not providing the schedule, the project will be prone for delays. The architect should be persistent in demanding the schedule while documenting the contractor's delinquency and the adverse impact that it bears on the architect's delivery of services.

A proper submittal schedule is coordinated with the project construction schedule taking into consideration the time required for fabrication and shipping. Unless the submittal schedule is prepared in conjunction with the construction schedule, it will likely not be a realistic representation of required timing and sequencing.

*Contractor Meeting Reports* - All meetings conducted by the contractor should be reported in a meeting report. If in attendance, the architect should issue clarifications and corrections to all inaccuracies in contractor meeting reports. The amount of time required to adequately review and rebut a contractor's meeting report is about the same required if issuing the report in the first place. The architect must decide if, 1) it will conduct and issue the project meeting report, 2) it will rebut the contractor's meeting report, or 3) if it will issue a separate meeting report. The architect should be aware that when two separate reports are issued, two separate rebuttal responses are usually required.

*Contractor Submittals* - Submittals by the contractor are required by AIA documents, but some contractors fail to submit all of the required submittals and they sometimes submit submittals that are not required by the contract documents. A contractor's Submittal Schedule will typically track all of the required submittals. Submittals not required by the contract documents should not be reviewed and should be returned without comments to the contractor.

Since submittals are considered necessary in order to determine work conformance, many architects will not provide CCA services unless submittal review is included.

*Contractor Mock-ups* - The contractor's mock-up review meetings should have a detailed meeting report that includes relevant images. If the mock-up is found to be unacceptable, a follow-up review meeting with appropriate documentation will be required. Mock-up review meetings should be included in the contractor's Construction Schedule even if the mock-ups are "in-place" and are a part of the finished work.

*Contractor RFIs* - Any contractor generated RFIs should be logged and tracked by the architect, and copies of the RFI and any related documents should be retained. If the contractor is utilizing a web-based documents management program that produces biased RFI reporting, the architect may consider tracking the RFIs separately. Many firms do this.

*Schedule of Values* - The contractor is required to prepare the schedule of values "in such form...as the Architect may require."<sup>2</sup> This schedule is used by the architect in reviewing the contractor's application for payment, and it should be provided by the contractor in advance of the first application for payment. If the contractor is reluctant to submit the schedule, an architect's RFI should be issued requesting the contracted information.

Submittal of the Schedule of Values can be enforced by refusing to certify payment until an acceptable Schedule of Values has been agreed upon and submitted.

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<sup>2</sup> AIA Document A201, General Conditions of the Contract for Construction, § 9.2

*Contractor Applications for Payment* - The contractor's application for payment is a certification by the contractor that, "...the Work covered by this Application for Payment has been completed in accordance with the Contract Documents."<sup>3</sup> It is given under a notarized signature because it supports the contractor's express warranty, "that the Work will conform to the requirements of the Contract Documents and will be free from defects."<sup>4</sup> The design professional is entitled to rely on this notarized warranty when reviewing the progress and quality of the work.

Review of the contractor's application for payment is typically done by the architect while visiting the site. If review and certification of the contractor's applications for payment is not required of the architect, this should be reflected in the project agreements and the general conditions. If certification by the architect is required in the contract documents and it is waived by the owner, the architect should confirm in writing to the owner and contractor of the owner's waiver of this service.

*Contractor Change Order Pricing* - The contractor's change order pricing should be timely provided to avoid delaying the project. The change order pricing status should be routinely discussed in scheduled project meetings, and should the pricing be delayed, an architect's RFI should be issued unless the owner has not already done so.

*Contractor Punch Lists* - When the contractor considers the work to be substantially complete, "the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected."<sup>5</sup> This list is required prior to the architect's inspection for substantial completion, and if the list is not prepared, a deductive change order should be written for an appropriate amount. The architect's services typically do not include preparation of punch lists.

The contractor's punch lists can be prepared much more efficiently during or soon after the work is installed, and the owner is better served if this is done. An advance review of the work can be made by the owner, architect and contractor to agree on the acceptable quality, and ideally the work can be completed accordingly, thus reducing the magnitude of the list.

Contractor punch lists are typically attached to or referenced in the architect's certificate of substantial completion, and if the contractor produces no punch lists, this should be documented accordingly.

*As a note of interest, the term punch list came about during the early part of the 20th century from the use of lists prepared by contractors for individual subcontractors that were punched with a paper punch by the contractor when each listed item was completed or corrected.*

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<sup>3</sup> Ibid, § 3.5

<sup>4</sup> Ibid, § 3.5

<sup>5</sup> Ibid. § 9.8.2



*Contractor Notice of Substantial Completion* - The contractor's transmittal of its punch list to the architect typically constitutes notice that the contractor considers the work, or a designated portion, to be substantially complete. If the contractor does not prepare a punch list, a written notice of substantial completion should be sent by the contractor to the architect and owner.

Since the architect sometimes prepares the punch list as an additional service, the written notice of substantial completion is not always sent. In this case the architect should require the contractor to give written notice or confirm the contractor's notice of substantial completion in writing or by email, noting the date, the designated portion and the fact that no punch list was prepared by the contractor.

Preparation of the punch list by the architect is not typically included in the architect's basic services, and it is thus an additional service to the architect's contract. Since the contractor's price typically includes preparation of the punch list, the amendments to each contract should be completed before the punch list is prepared.

*Contractor Notice of Final Completion & Final Application for Payment* - The General Conditions state, "Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection..."<sup>6</sup> However, a written notice of final completion is not always given by the contractor. Instead, the architect typically inspects the project to determine if all punch list items have been completed or corrected and all closeout obligations have been met, and if this is evident, the architect advises the contractor to submit the final Application for Payment.

It is helpful to have a formal written Notice of Final Completion from the contractor because it is yet another representation by the contractor that the work is complete and conforming. If no contractor Notice of Final Completion is received from the contractor, one should be requested, and if still not provided, the notice can be confirmed by the architect in an email.

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<sup>6</sup> Ibid, § 9.10.1

### **Contractor Documentation Discussion Summary:**

- ✓ Require Submittal Schedule coordinated with Construction Schedule
- ✓ Require contractor meeting reports
- ✓ Review only specified submittals
- ✓ Require mock-up reviews included in GC Submittal Schedule
- ✓ Require Schedule of Values prior to 1st GC Application for Payment
- ✓ Require notarized signature on Contractor's Application for Payment
- ✓ Require timely change order pricing
- ✓ Require contractor prepared punch lists
- ✓ Send RFIs to contractor if information not provided
- ✓ Require contractor written notice of substantial completion
- ✓ Require contractor project closeout meeting
- ✓ Require contractor written notice of final completion

### ***Architect Documentation***

The following documentation should be created and maintained by the architect during the construction phase. Some documentation may go beyond typical CCA activities, such as owner suspended services. The purpose of documenting is to create a record of all activities whether generated or controlled by the architect so that actual actions, decisions and the end results can be supported with a tangible record.

*Owner-Architect Agreement* - Retain an executed copy of the Owner-Architect Agreement in the files with all exhibits. Similar documents, such as letter agreements sent initially on the project should also be filed. If general and supplementary conditions were originally agreed upon and were subsequently changed through re-negotiation, retain both documents for reference in the event of a dispute.

*Owner Suspended Services* - If the owner requests that certain contracted services not be provided, document the suspended services in writing to the owner and contractor, and retain in the project file. If the owner should later decide that it wants the services resumed, document the date of the resumption of the services in writing.

*Site Observation Reports & Site Images* - Retain copies of all Site Observation Reports issued. They should be numbered and dated, and one should be issued with each visit to the site. Site Observation Reports are evidence that the architect has met its contracted responsibilities.

*Meeting Notes & Reports* - Meeting notes should be taken in all meetings attended whether or not the attendee issues a meeting report. All meeting notes, meeting reports, rebuttal, and clarification emails should be retained in the project file.

*Document Logs* - Document logs should contain complete information on the timing and actions of the owner, architect and contractor. However, contractors often control web-based logging systems, and they only track the owner's and architect's delinquent actions. If the log cannot be maintained in a non-biased format, the architect should maintain the logs independently for claims defense.

Logs are typically maintained for submittals, RFIs, change orders, CCDs and ASIs. All document logs and copies of logs should be retained in the project files.

*Architect RFIs* - Any architect generated RFIs should be logged and tracked, and copies of the RFI and any related documents should be retained. Architect, owner and contractor RFIs should be differentiated by control numbers.

*Change Documents* - All change documents, including change orders, construction change directives, architect's supplemental instructions, contractor change pricing, owner approvals, change order review meeting minutes, emails and any other change related correspondence should be retained in the files.

*Applications and Certificates for Payment* - All fully executed Applications and Certificates for Payment documents should be retained in the files along with related transmittal letters. In the event separate certificates for payment were issued due to separate contractors or consultants, it is important to have documentation to show that separate certifications were made.

*Certificate(s) of Substantial Completion* - All Certificates of Substantial Completion with attached or referenced punch lists should be retained in the project files. The date of substantial completion is usually the start of the legal statutes of limitation and repose that affect the architect since it is the date the owner can begin using the project for the purpose intended. If certificates are not required on a project, the architect should document the date in writing and retain in the project files.

*Owner Accepted Nonconforming Work* - A Certificate of Substantial Completion contains a space wherein the, "PROJECT OR PORTION OF THE PROJECT DESIGNATED FOR PARTIAL OCCUPANCY OR USE..."<sup>7</sup> is described. The document is typically interpreted to mean that the described *project or portion of the project* is substantially in conformance with the contract documents or will be in conformance when the work is completed.

The General Conditions state, "If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction..."<sup>8</sup> and owner accepted nonconforming work exists on most projects. If an architect issues a Certificate of Substantial Completion without listing or referencing owner accepted nonconforming

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<sup>7</sup> AIA Document G704-2000, Certificate of Substantial Completion

<sup>8</sup> AIA Document A201, General Conditions of the Contract for Construction, § 12.3

work, the certificate will be interpreted as representing that the project contained no nonconforming work. In the event work conformance is called into question, the architect could be accused of certifying work to be conforming when it is not.

Accordingly, each Certificate of Substantial Completion issued by an architect should include a listing of owner accepted nonconforming work. The list can be compiled as the project progresses, and any changes made to the work scope that are not reflected in the contract documents would be considered owner accepted nonconforming work.

*Other Project Documents* - The architect's project files should include all documents relevant to the project, including the construction drawings. Should a claim be made, it can be helpful to have multiple versions of the drawings, including the bid drawings, the "contract set" on which the construction contract is based, and the drawings as they existed when the project was completed. The files should also include a project cost accounting if it is not maintained in another filing system. The objective is to be able to retrieve all needed project documents in the event of a claim.

Should issues arise during construction that are disputed or controversial, it can be helpful to assemble copies of relevant documents in an, "Issues File," Such issues often become the basis of claims, and the Issues File can be helpful for early resolution.

#### **Architect Documentation Discussion Summary:**

- ✓ Keep contracts and conditions available for quick reference
- ✓ Document all services suspended by owner
- ✓ Issue Site Observation Report with every site visit
- ✓ Take meeting notes in all meetings
- ✓ Issue meeting reports on all conducted meetings
- ✓ Rebut meeting minutes prepared by others
- ✓ Maintain list of all Owner-Accepted Nonconforming Work
- ✓ Issue certificates of substantial completion on all portions of the project
- ✓ DO NOT CERTIFY FINAL COMPLETION OR ACKNOWLEDGE FINAL COMPLETION IN WRITING

Documentation can be time consuming and expensive, and the architect often ponders the question as to how much documentation to create and maintain. Most beneficial documentation can be created during the course of usual and customary CCA services. Bear in mind that claims damages are seldom if ever incurred due to too much documentation.

## DOCUMENTS RETENTION AND RETRIEVAL

Retaining good documentation for a claims defense is only effective if the needed documents can be located and retrieved efficiently.

Architects provide services, and the products of these services are documents. Accordingly, the architect's ability to keep its documents sorted out and navigate them is almost as important as design and drafting skills; or at least the AIA has always thought so. The 1st edition of the architect's handbook in 1920, then called *The Handbook of Architectural Practice*, had a lot to say about how the architect's documents should be filed, suggesting a coding system to avoid misplacing or overlooking a document. Today, aia.org provides extensive information on filing and documents management, including suggested ways to enter the "paperless" realm. A filing protocol is essential if documents are to be accessed and retrieved at a later date.

### *Archival Management System*

#### *Purpose of Archive Management*

There are many valid reasons to implement an archival management system. These include:

- ✓ Data harvesting for marketing purposes
- ✓ Efficiency in team member transition
- ✓ Responding to owner project record requests
- ✓ Future use on multi-phase projects
- ✓ Data harvesting for quality management
- ✓ Defense of claims and lawsuits

The sophistication of an archival management system can range from a manual index to elaborate management software. A firm's hard copy archives can be outsourced to a company that will catalog, store and retrieve files. For the small firm, if there is a central filing protocol and all projects are filed accordingly, procurement may consist of merely finding the box or data file where the project documents are located.

Most of the architect's work these days is digital, but some, at least through project completion, may be on hard copy simply because of our love for the artist's brush stroke. The decision that must be made is to archive 100% digital or maintain separate hard copy storage. Because of technical advancements, everyone will eventually be 100% digital, so it is wise to start moving in that direction now.

### *Central Filing Protocol*

An efficient archival management system requires a central filing protocol. It should be logical, simple, and adaptable. It should be reviewed periodically to determine if it is optimally functional, and it should be a strictly enforced firm policy.

There are many prototypical filing systems available when developing a firm's internal protocol, however, attention should be given to unique uses and needs of the firm, and the prototype should be modified accordingly. An example of a project filing system can be found in *The Architect's Handbook of Professional Practice*.<sup>9</sup> A firm may already have developed "pieces" of the system, such as project number assignments or project names prefixed on project type, and these should be incorporated into the final system.

### *Digital Media*

Since digital technology is now cost effective for any size office, it is advantageous that all files be stored in digital form. It is easy to become distracted with the next "new project" after the old one completes, so digitizing hard copy documents should become just another typical step in the firm's internal project closeout process.

### *The Project Record File*

When a lawsuit is served, an answer must be filed within a certain time. After notice is given to the insurance carrier and a lawyer is retained, certain information is needed from the project files to perform a claim assessment and assist the attorney in preparing an answer. If this information has been collected in one location, much of the initial review and response time can be minimized.

A useful approach is to collect this information in a Project Record File so that only the information from the file need be retrieved in order to prepare the answer to the claim. The file should contain all base information relevant to the project, but it should also contain any other information that is felt necessary for issues that may arise after the project has completed.

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<sup>9</sup> The Architect's Handbook of Professional Practice, 15th Edition, Page 596-597

A typical Project Record File can include:

- ✓ Owner-Architect Agreement and all amendments
- ✓ List of Atypical Conditions (non-AIA conditions)
- ✓ Architect-Consultant Agreements
- ✓ Owner-Contractor Agreements
- ✓ General Conditions (if other than AIA)
- ✓ Supplementary Conditions
- ✓ Project Team Directory (AIA Document G807)
- ✓ Project Abstract (AIA Document G809)
- ✓ Certificate(s) of Substantial Completion (AIA Document G704)
- ✓ Final Change Order (AIA Document G701)
- ✓ Final Application and Certificate for Payment (AIA Documents G702 & G703)
- ✓ Project Cost Summary and/or Job Cost Printout
- ✓ Project Closeout Checklist
- ✓ List of drawings at end of project
- ✓ Project Issues File

When the file is retrieved, the attorney typically meets with the key team members assigned to the project, and the answer is drafted. This meeting also affords an opportunity to assess basic requirements for claim defense such as, magnitude of claim cost, consultant involvement, required expert witnesses, and staff time required for claim management.

## **CONCLUSION**

Actions taken and decisions made by the architect on a project will be judged by the existence and adequacy of documentation created and maintained. When a claim is made, a presumption of guilt usually accompanies the allegations, and unless and until a documented defense can be made, the architect can be held responsible. Documents created and managed during the project, however mundane and unimportant they may appear, are the corroborating crucible that often serves as the only tangible evidence available for a claim defense. Accordingly, the more thoroughly an architect documents, the greater the chance of substantiating activities that have been called into question.

While the digital aspects associated with IPD and the “paperless” project may help expedite and make documentation more flexible and portable, the documentation itself will always be a necessary defense element until lawsuits and claims are no longer made. Therefore, records of key discussions, instructions, approvals and required documents should be maintained although IPD and a “paperless” project delivery may make it more inconvenient to keep records. Claims against design professionals cannot usually be defended without adequate documentation. Don’t let new delivery processes rob you of necessary documents.

Meanwhile, the practitioner is best served to approach project documentation with the same effort and intensity as he or she does documents preparation. A structured process with established project procedures can be applied by the architect to all projects with no appreciable increase in required time and effort when planned for and executed consistently.

Get your documentation in order and be prepared to prove yourself innocent when a claim of guilt is made. And as you organize your approach to documenting your project and decide on your filing protocol, don't forget to be careful out there.





**For More Information:**

*The Architect's Handbook of Professional Practice*

(Wiley, 2013) by The American Institute of Architects,

Article 10.1 – Managing Architectural Projects

Article 10.9 – Construction Phase Services

Article 10.10 – Project Completion and Post-Construction

Article 12.4 – Quality Management in Construction Procurement, Construction Contract Administration, and Post-Construction

Article 16.1 – Risk Management Strategies

*AIA Emerging Professional's Companion* ([www.epcompanion.org](http://www.epcompanion.org))

Article 3B - Construction Administration

Article 3C - Construction Phase: Observation

*Managing Project Risk: Best Practices for Architects and Related Professionals*

(Wiley 2008) by James B. Atkins and Grant A. Simpson

To Document or Not to Document: Basic Documentation Requirements

Zen and the Art of Construction Administration – Parts 1 and 2

## Project Documentation Checklist

### Owner Documentation:

- Project Program
- Project Budget
- Owner-Contractor Agreement & General Conditions
- Design Phase Sign-Offs
- Owner Accepted VE Substitutions
- Owner's Separate Consultants
- Owner's RFIs
- Other Owner Written Approvals

### Contractor Documentation:

- Construction & Submittal Schedule
- Contractor Meeting Reports
- Contractor Submittals
- Contractor Mock-ups
- Contractor RFIs
- Schedule of Values (Prior to 1st GC Application for Payment)
- Contractor Applications for Payment (notarized)
- Contractor Change Order Pricing
- Contractor Prepared Punch Lists
- Contractor Notices of Substantial Completion
- Contractor Closeout Documents
- Contractor Notice of Final Completion & Final Application for Payment

### Architect Documentation:

- Owner-Architect Agreements & General Conditions
- Owner Suspended Services
- Site Observation Reports & Site Images
- Meeting Notes & Reports
- Document Logs (Submittal, RFIs, Change Orders, CCDs, ASIs)
- Architect RFIs
- Change Documents
- Application & Certificate for Payment
- Certificate(s) of Substantial Completion
- Owner-Accepted Nonconforming Work
- Other Relevant Project Documents