

Get Attorneys on Board to Manage Records

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An attorney's duties in representing clients extend beyond the practice of law. While we have come to expect that attorneys also function as business and marketing advisers, supervisors of junior staff and risk management authorities, they are frequently asked to be knowledgeable in records management as well.

Records management and technology are at a crossroads where many of the practices that attorneys developed for paper-based files do not seem relevant for the electronic world. Even disregarding new forms of communication like Twitter posts, blogs and social network information, attorneys are contending with an ever-increasing amount of data to track and new ways to create content. Law firms are rushing to adapt procedures -- originally developed for paper files -- to deal with this increasing digital content, but frequently fail to engage lawyers in participating in these records management programs consistently.

Just as customers expect their financial institution and health care provider to maintain detailed records and make them readily available, many clients expect their counsel to be a long-term custodian of records and information. This role has had a real impact on attorney reactions to records management developments within law firms. Being asked to locate information at a moment's notice means attorneys may not want to put information into a massive document or records management system for fear of losing quick access. Whether due to the complexity of the software or a lack of training, many users are not comfortable with search-and-retrieval techniques for finding filed documents in these systems. A lack of practice-based standards for file organization means that attorneys may not trust someone else to maintain a complete version of the file and encourages the hoarding of information. Many firms have not adopted an official file concept, so no central repository of information regarding a specific client or matter exists. Of those firms that create and retain official paper files, many have not moved to create official electronic files.

Though the legal profession has a reputation for tradition, attorneys have been quick to embrace technology at the request of clients and courts. Internal change within law firms has not always been as swift, as many practitioners are resistant when firms ask them to change the strategies they have developed to be efficient and responsive. We'll look at three areas in which many firms are trying to bring about changes in the way information is maintained. Though attorneys may be resistant for the reasons outlined above, we will look at ways to overcome these obstacles.

SENDING PHYSICAL FILES TO OFF-SITE STORAGE

Most sizable law firms realized the efficiencies years ago of storing inactive and closed matter material in off-site storage facilities. The costs were very low in comparison to on-site office space and this solution provided an easy way to continue storing paper files indefinitely in case the need to reference them arose. Unfortunately, many law firms did not plan for two items: the effort that would be required to relocate information in these off-site storage centers in

the future; and the information required to evaluate whether these documents still had value and should be retained. Even in the most organized firms, some attorneys still were not comfortable with the fact that high-value documents would leave the firm and not be immediately accessible.

Records departments that have demonstrated clear procedures for tracking information, usually through an automated records management software system, have gained attorney and staff trust that specific files could be located in these remote repositories at a moment's notice. Attorneys should be made aware of these processes that ideally capture file information at the point of creation and track a file throughout its entire life cycle. Attorneys also have become more willing to relinquish the physical file as a greater percentage of information is stored electronically. There will always remain signed originals and other sensitive documents that must be maintained in physical format. Firms that have implemented imaging operations to digitize these high-value documents are also more likely to convince the attorney to relocate inactive physical files. While the physical document may be needed, the immediate need is usually for reference purposes, which can be obtained from a scanned version of that document. Attorneys also frequently worry that relocating a physical file to off-site storage is just the first step to destruction of the file. Being able to demonstrate a clear retention processing workflow where the responsible attorney will be given an opportunity to review materials that are candidates for destruction is a great way to reassure attorneys and staff.

AUTHORIZING DESTRUCTION OF CLIENT FILES

Many law firms have no clear policy that dictates how records will be managed throughout their life cycle. Though law firms have been interested in retention policies for years, very few have been able to effectively implement them. When you look at the number of firms that effectively follow these procedures for paper and electronic files, this figure must drop even lower. Records managers often don't fully appreciate the reasons behind attorney reluctance to destroy files after an applicable retention period. As previously mentioned, the attorney role as custodian of this documentation is not taken lightly. Being the keeper of information regarding previous matters for a client is a great marketing tool and reinforces the attorney's role as an advocate for the client. At the same time, maintaining information on closed, inactive matters constitutes a great risk for firms and can be prime physical evidence of a conflict of interest that makes it impossible to take on a specific new matter. While attorneys do not like to hear the word "destruction," it is the inevitable end for the majority of client files.

Again, transparency is a major factor in gaining attorney compliance once you have a policy for when client material will be destroyed. A policy vetted by the firm's risk management authorities should make an attorney comfortable that the applicable laws and opinions will be respected; that there are clear escalation procedures to notify attorneys when the retention time has expired, and that processes are in place to suspend destruction in the event of litigation. Attorneys should be given access to details of the material that the firm expects to destroy, with ample time to raise questions, suggest delay of destruction or sort through the content for reusable work-product.

Review of this material also can be time-consuming, and this is another big factor in the reason why many attorneys are not quick to participate in requests to review and destroy files. For a closed matter where time cannot be billed it is very difficult to dedicate resources. On the other hand, if a matter has been properly maintained according to firm guidelines, it will be much easier to authorize any retention action, including destruction. If individual physical and electronic files are maintained in an organized fashion, with consistent file-naming procedures, there is little work to be done to review a closed matter file. Firms that can produce a complete report of physical and electronic material related to an inactive matter have done considerable work to consolidate repositories of information and limit individual record-keeping strategies. Everyone benefits from this effort over time, and attorneys that are aware of how their files are maintained from start to finish are much more likely to authorize destruction or other disposition of client files when the time is right. The responsible attorney is the best resource to know whether a file can be destroyed, might become relevant in the near future or should be returned to the client, but can only be expected to make this decision when given complete information.

MATTERCENTRIC E-MAIL FILING

E-mail constitutes the greatest volume of information that most attorneys are expected to maintain on their own behalf. For many individuals the inbox has become a detailed filing location combining unread communication with intricate folder listings, tasks and calendar items. With little guidance, most attorneys and staff have developed techniques to manage this huge influx of information (and created content) that ranges from keeping everything in the inbox to filing in the "Deleted Items" folder. It is no surprise that efforts to get attorneys to follow firm guidelines on managing e-mail have not always been easily adopted. E-mails and their attachments cannot live indefinitely on the e-mail server and must be migrated to firm-approved repositories for managing information consistently with the rest of the client file.

Software offerings from both records management and document management vendors are improving regularly. These offerings integrate

seamlessly into e-mail platforms to allow users to "declare" messages relevant to a client matter and add them to the official file. To gain attorney and staff adoption, the process must be simple and intuitive. Vendors that offer a variety of techniques for declaring e-mail seem to be well-received. Options include drag-and-drop to special mattercentric folders, profiling of existing inbox folders to be declared message locations and traditional profile-based declaration. Users need to have multiple options to be able to take advantage of what works best for them. The declaration process also must not keep the user locked up for any significant period of time, even when declaring a large number of messages.

Users should be trained not only in the usage of the software that supports declaring e-mails as records, but also in the policies and procedures that have been developed to guide users in how information should be managed. Practice-based standards for electronic file organization, document naming and communication within the working team should all be well-established before users are given tools for managing electronic documents.

Firms can also adopt general strategies to encourage the adoption of these new records management techniques. Encourage attorneys and support staff to share electronic document management techniques with each other. A technique that one user may have developed to keep organized could be beneficial to the entire firm. Soliciting this information and working to disseminate it gives a firm's records department and training staff assistance in developing standards for electronic records management. These standards must continually evolve as you respond to user feedback, vendor offerings and evolving records management best practices.

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Eric provides project management expertise to assist clients in every aspect of records management. Specifically, he conducts comprehensive analyses of records operations; develops policies and procedures; assists with technology requirements and system selection; provides software development, implementation and testing; and oversees staffing solutions and vendor relationships. Eric works in partnership with clients and is often called upon to train and mentor firm employees.

Eric's records management and project management experience stems from a variety of positions held almost exclusively within the legal industry. He has served firms as a records manager organizing complex litigation material, as manager of facilities management operations, and as a project manager instituting records management and conflicts checking software. Prior to joining InOutsource, Eric managed a number of Philadelphia accounts for Uniscribe Professional Services, where he gained extensive experience designing and implementing document imaging operations for large law firms. His hands-on experience also includes client intake and records data entry and retrieval for Novum Pharmaceutical Company. Eric is a CRM and a member of ARMA International. He graduated *magna cum laude* with a B.A. in English from Temple University. Eric frequently lectures and contributes articles to industry publications on records management topics.

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