

## Risk Management

# Get Me the File

Firms that put off creating an efficient records management policy run bigger risks than they realize.

**T**hinking about setting up a records management policy to govern how client information is managed throughout its lifecycle? If so, be prepared for pushback from attorneys and staff.

Most communications between clients and attorneys now take place via e-mail. Much of the technology used by attorneys today, like e-mail, was implemented before firms had written policies on content management. Out of necessity, attorneys developed their own strategies for communicating with clients and managing electronic matter information. As a result, individual attorney work habits often are out of sync with firm goals for risk management, loss prevention, and collaboration. Attorneys have an ethical duty to protect valuable client information and preserve client confidentiality. To achieve full compliance with firm records management policies, law firm management often has to wrestle with some rather complex issues.

Avoiding the issue is really not an option. Law firms have been sanctioned when, after certifying in court that they had disclosed all relevant information, they subsequently found additional information that should have been produced in discovery. Besides, firms that have mandated where content is allowed to reside, as well as how it should be named and identified, are simply in a much better position to control content if they need to respond to a subpoena or other court-imposed action. Courts are less lenient with organizations that do not have an infrastructure to locate and protect information.

The increase in lateral hiring in recent years also underscores the importance of proper records management policies. Information that arrives with an incoming lateral attorney needs to be vetted through

the firm's client intake and conflicts systems. Firms should only accept custodial responsibility for those materials that relate to future clients of the firm. Additionally, there must be processes in place to ensure that the client has authorized in writing that matters being worked on by the lateral attorney at a prior firm can be transferred with the attorney to the new firm.

Conversely, when an attorney leaves the firm, another senior attorney should be made responsible for reviewing and authorizing files to be released to the custody of the departing attorney. More importantly, the firm needs to make sure the attorney cleans up and organizes unstructured e-mail content by client matter. The records department should review materials in offsite storage to determine if they contain personal files that should be released to the attorney. Firm IT staff may need to be reminded of firm policies regarding lateral attorneys and release of information. Under no circumstances should IT provide any copies of e-mail without the appropriate authorization from the client and/or senior attorney.

Firms that do not have a centralized calendaring system need to ensure that important client matter deadlines are known before an attorney leaves the firm. Malpractice claims are frequently the result of missed deadlines. And firms that store legal briefs written by experienced partners as a model for new associates need to remove confidential client information before doing so. ■



**NANCY BEAUCHEMIN**, president of InOutsource, is a certified records manager (CRM).