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:: Moving Records Initiatives Forward

By Going Back to the Basics

Without a doubt, the biggest challenge that law firms are struggling with related to records management is how to handle electronic records. All organizations — law firms included — have underestimated the impact that e-mail would have on transforming the way business is communicated and conducted.

As e-mail usage and volume of messages stored in servers increased, IT reacted to quickly implement policies and technology to ensure e-mail servers were stable and secure. While those efforts were intended to provide some assurance that information would be accessible when needed, they were often met with resistance by firm attorneys because they did not take into consideration the way attorneys were using e-mail in their daily lives.

Sheer volume has made it difficult for attorneys to find time to organize and manage important matter-related e-mail messages consistently. Attorneys report that nearly 90 percent of client communication occurs via e-mail, and the majority of those same attorneys receive an estimated average of 200 to 300 e-mail messages per day. As a result, matter information that constitutes a record is left unclassified and sometimes unread in an attorney's inbox. Consequently, the struggle to keep up with e-mail messages is also creating issues related to records management, risk management, attorney productivity and client service.

It is not just an IT problem to solve, but one that impacts and must be addressed by the firm as a whole. A surprising majority of firms, regardless of size, find themselves at a standstill. They recognize that there are “problems” but are unsure how best to move forward. The real challenge is identifying and understanding the origin of how attorneys have adopted and modified a system intended to manage messages to

their own personal document management system. Any proposed solutions will undoubtedly require management to accept that user behavior will need to change and stakeholders will need to conform in order to manage information according to firm policies and procedures.

Because IT personnel were initially called to task to tackle electronic records from a technology perspective, they were often expected to be able to solve or help with other change management issues as well. The logic employed suggests that because e-mail technology is IT's domain, then they can solve e-mail related records management challenges. Firms that operate under this assumption will continue to struggle with e-mail because there is no simple way to resolve all of the issues.

There is no one technology available today that a firm can implement to suddenly simplify the management of electronic records. There are vendor solutions that can help with classifying, storing and retrieving electronic records, and many firms have implemented these technologies. However, the “best” repository to manage electronic matter content should be a secondary consideration to a solid information management strategy.

The biggest mistake firms can make is relying on technology selection and implementation as a primary remedy without a clear understanding of the overriding business issues, historical perspectives and resulting work habits that have been developed by attorneys to manage information.

For IT professionals, success is dependent on the ability to reach beyond their primary domain expertise and recognize the factors in their respective firms that will ultimately support or impede the implementation or redeployment of an electronic records and information management solution. IT can gain greater insight if they

take the time to learn why existing document and records management deployments have not been fully embraced and accepted by the stakeholders (attorneys) in their firm.

Historically, law firm IT departments have painstakingly rolled out document management, e-mail archiving and sometimes records management systems with the hope that all electronic matter content would be moved from e-mail servers to a more secure and stable repository. Some IT professionals realized early on the importance of gaining initial support from the attorneys and reached out to end users in advance of major document and records management implementations to solicit their input on profile information.

Most early deployments of document management systems resulted in upwards of 100 document types to acquiesce to the varied wishes of attorneys and practice areas. Unfortunately, many of these initiatives were not fully embraced because they did not fulfill the expectations of the attorneys in the firm. These end users struggled to find the time to complete the numerous steps required to classify e-mail and other electronic matter content. The behavioral leap was too big.

To move forward in addressing electronic records management issues, firms need to go back to the basics and take the time to fully appreciate the numerous factors that ultimately contribute to the success or failure of these initiatives.

Identify the Motivators

From the beginning, a cross section of key personnel in addition to IT should be involved in developing the firm's information management strategy, including general counsel/risk partner, managing partner, executive director, records director and shareholders representing various practice areas. Regardless of who is driving the process, be sure that these individuals are involved.

Before any decisions are made, the first step should be to recognize the underlying business drivers in play. Why is the firm considering a change in the way electronic information is handled? While firms may prioritize motivators differently, the "whys" behind the need to tackle this issue are somewhat universal and typically include:

Support Firm Business Goals. The information strategy should be aligned to support the firm's overall business goals. For example, is there merger activity on the horizon? Is regional, national or global expansion a top priority? Are there specific revenue requirements or cost reductions being considered? What compliance and risk management concerns need to be addressed? Is the firm struggling with how to leverage and market its expertise and protect intellectual capital?

Mitigate Risk Issues. There are countless ways electronic information can expose firms to malpractice and other legal risks. Firms need to consider their ability to protect confidential client information, ensure critical dates important to the matter are docketed, have systems and procedures in place to respond to discovery requests, and comply with court imposed orders and audit responses. The implications of firm mergers and incoming/outgoing attorneys also pose potential risk management concerns.

Improve Client Service. Technology has changed the way people work. Clients expect their attorneys to be immediately accessible and reactive to their needs. Industry surveys have shown that a firm's ability to respond to client demands is a key reason for the decision to change counsel. However, unstructured data (*i.e.*, e-mail) residing in personal inboxes makes it difficult for attorneys to locate relevant information as well as collaborate with their peers as needed to meet clients' growing expectations.

Enhance Productivity. The increased volume of e-mail is significantly impacting billable hours. Countless hours are spent searching for information. Profiling e-mail records for retention and retrieval cuts into valuable billable time, causing attorneys' reluctance to do so. Making classification of and access to electronic information both consistent and easy reduces time spent on non-billable work, increases client responsiveness and can help the firm leverage its collective talent and expertise.

Records and information management deployments must support strategic firm initiatives in order to gain the needed support of firm management, who can then enforce compliance with requisite policy and process changes.

Acknowledge and Understand Attorney Perspectives

Now that the business goals have been identified, the next step is to consider them *vis á vis* your constituents' motivations as well as your own perspective. Recognize the historical perspective of how attorneys in your firm work and their point of reference.

For example, IT may assume that attorneys search for precedent documents in the firm's document management system based on "document type" choices available in the document profile. However, further investigation may reveal that many attorneys prefer to construct searches based on "document name."

Some systems are set up in such a way that e-mail messages are no longer accessible on PDAs when moved or copied to a designated document management or records management archive repository. Attorneys often express that is easier for them to identify "final versions" of important client-matter documents when managed in individual e-mail stores.

In client engagements with several mid- and large-sized firms that advocate storage of client-matter e-mail in the firm's document management system, we surveyed attorneys so that we could better understand their specific reasons for not using firm-designated systems to manage e-mail and electronic matter information. Here are some of the questions posed to attorneys and the eye-opening responses shared:

Do you utilize the firm's document management system to save client matter e-mail messages and attachments?

Of the more than 500 attorney respondents, 74 percent indicated that they do not save matter e-mail messages to the firm's document management system even though the document management system is the prescribed repository for managing electronic matter content.

Respondents that answered “no” were asked:

What prevents you from profiling and saving e-mail messages to firm’s document management system?

Respondents were allowed to choose multiple responses. 44 percent of respondents indicated that it was “too time consuming.” 65 percent indicated that they “prefer to reference e-mail messages in Outlook.” 40 percent said that “they prefer to reference printed copies of e-mail messages in physical files.”

Many of the attorneys indicated they prefer to search based on e-mail titles, and, since there is no consistency in naming e-mail messages, it’s difficult to locate needed information in the document management system. Attorneys also stated the folder structures in e-mail programs are more intuitive to the way they work because they display information in chronological order.

If an electronic document (including e-mail) is important to a matter, how is it saved?

Respondents were allowed multiple selections. 80 percent indicated they prefer to “print and include in physical matter file,” 60 percent “save in their personal Outlook folder,” 48 percent “profile and save to DMS,” and 30 percent “forward to secretary to handle.”

Most attorneys are unwilling to take the time necessary to fill out detailed profile information to store e-mail messages in the firm’s document management system.

In summarizing these results in more detail, we found the following to be of particular interest:

Ninety percent of the firm partners responded that they “print and include in physical matter file” while only 80 percent of the associates responded that they “print and include in physical matter file.”

Thirty-five percent of the partners indicated they also “profile and save in the firm’s document management system.” Conversely, 73 percent of the associates indicated they save to the firm’s document management system.

The disproportionate percentages are subject to interpretation but seem to indicate the partners have grown accustomed to reviewing and storing matter information in a folder view, and they are comfortable working in systems that closely resemble this view. Many attorneys may not fully understand how to use the firm’s document management/ records management system and may not trust that they will be able to locate needed information easily.

As the results of surveys conducted indicate, attorneys, by default, have become the primary records custodians responsible for managing

client-matter information. However, they are not adequately trained to assume this role, and, as such, they have created their own work habits to manage matter information. The processes they have developed often fulfill their specific needs but may be contradictory to the firm’s information, knowledge and risk management strategies.

Firm IT departments and records managers need to acknowledge how the stakeholders in their firms are using available technology. They must recognize that attorneys may be reluctant to forego their own individual methods for managing electronic matter content without proof that the change will benefit them.

E-mail is a vital communication tool, and any mandates made by a firm as to what repository should retain e-mail information should incorporate a solution that will be convenient and easy to use. To increase the likelihood of compliance, IT should focus on understanding how the timekeepers in their firms accomplish tasks and their specific information management challenges.

What help do attorneys need to better organize electronic matter content?

If the firm has a document or records management solution to manage e-mail, what policies and procedures need to be put in place to ensure compliance?

What additional training is needed for attorneys? Do they understand how to use the document management and/or records management systems?

What resources can be provided to help attorneys manage the backlog of unstructured, unclassified matter content?

Is it intuitive to attorneys where electronic matter content should reside? How many systems are they being asked to reference?

Most attorneys are unwilling to take the time necessary to fill out detailed profile information to store e-mail messages in the firm’s document management system. But they are receptive to alternative methods of storing e-mail information in the firm’s document management system if the process can be made easier and more efficient. In a recent law firm consulting engagement, we asked 50 attorneys, “Would you be receptive to a standard practice-based set of electronic folders to easily classify electronic documents and e-mail messages for each matter, without having to complete traditional profile information?” A resounding 98 percent of the respondents answered yes!

Understand Potential Records Pitfalls

Consider attorney perspectives and how they impact e-mail usage, along with the following specific records management issues:

Identifying Final Versions and “Record” Documents

Many attorneys have difficulty identifying final versions of documents in their firm’s document management system. This is often because attorneys use and identify final versions of documents differently. Some will save a final version as a different document while others actually name a document in such a way to note it is the final version. At

times, the final version of an important client document may only reside as an attachment to a message in an e-mail folder. Many times, the e-mail recipient does not take the time to save a final electronic version to the firm's document management or records management system.

Many Attorneys Do Not Understand the Importance of Preserving Electronic Content

It is always surprising to learn that many attorneys do not understand the importance of managing electronic records in a way that preserves the integrity of the electronic record. Historically, firms employed policies and procedures to control physical records, but these same protocols are not necessarily adequate when dealing with electronic records.

More often than not, this information exists in an unstructured format across multiple repositories and information stores. Attorneys mistakenly believe that unclassified and deleted e-mail messages can be retrieved easily by IT from backups. Attorneys need to realize that backups are intended for disaster recovery purposes and are not suited for records retention. Many attorneys routinely delete e-mail messages once they are reviewed and printed for incorporation into the physical client-matter file. IT professionals should work with a firm's general counsel and or risk management partner, as well as records management, to assess how attorneys comply with policies for managing electronic record content.

Putting Your Expertise into Play

Armed with a clear understanding of your firm's business goals as well as stakeholder needs and behavior patterns, you should be well-positioned to leverage your expertise in developing technology recommendations that will best support the firm's information management strategy.

While it may seem time-consuming to perform the legwork detailed above, know that the success or failure of your initiatives is dependent on adoption by key stakeholders, primarily attorneys. Attorneys are now records managers by default. Equip them so they can manage information in a way that works for them yet still supports firm risk and information management goals. By educating yourself and other firm personnel working on electronic records initiatives, you should have a clear idea of next steps, and the internal sponsorship to make it happen.

