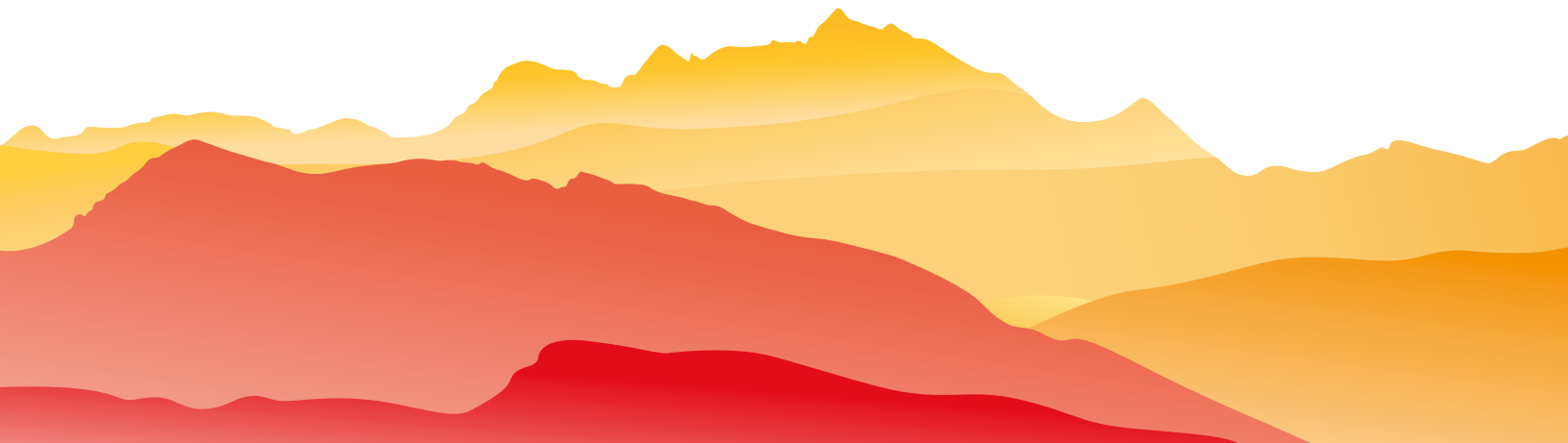




2023 Law Firm Information Governance Symposium

Matter mobility 2.0



Authors

Derick J. Arthur

Director of Records & Information Governance
King & Spalding LLP

Scott Christensen

Vice President
Qualitest

Andrew J. Corridore

Information Governance Compliance Manager
Akin

Steve Huffman, CRM, IGP

Solutions Director - Information Governance
Williams Lea

Leigh Isaacs, CIGO, CIP

Senior Director, Information Governance
DLA Piper US LLP

Madeleine La Cour, IGP

Director, Business Intake/Information Governance
Baker Botts L.L.P.

Doug Smith, CIGO, IGP

Assistant Records Director
Crowell & Moring LLP

Introduction

The purpose of this paper is to provide an update to the Matter Mobility and IG paper published in 2014. As stated in the original report:

- Administration of matter mobility requires a collaborative approach with representatives from multiple administrative and legal departments including, but not limited to, Information Governance (IG) and Records and Information Management (RIM), Information Technology, Information Security, the Office of the General Counsel, Facilities Management/Office Services, and Human Resources.
- The mission of this task force was to build a framework for a common approach to matter mobility events to be adopted by law firms. This report is intended to identify the key elements for achieving successful matter mobility, including a

thoughtful policy supported by pre-defined process workflows leveraging key technologies to facilitate a prompt and accurate release or acceptance of matter file materials.

- Finally, while the broader matter mobility process is supported by a number of functional areas and/or administrative departments, it is recommended the Director of Information Governance provide oversight for this process in consultation with the Information Governance Advisory Board.

This report revisits some of the earlier procedures to make updates related to new technologies, improved capabilities of those technologies, and the evolution of thought on the mobility of information.

General considerations

Meet and confer

As matter mobility has become a routine function within information governance, coordination between firms is essential to ensure a smooth and timely transition of files. It was noted in the original report a “meet and confer” at the outset of a transfer can help establish a good foundation and rules of the road between firms. This early meeting allows for the exchange of important information, such as what systems and in what format the data resides, metadata to be included, how the transfer of data will occur, volume of paper files involved, coordination of pick-up/delivery, index detail, and any offsite/warehouse-to-warehouse transfers. However, we now know there are tremendous benefits to continuing this dialog well beyond the initiation of the transition.

Given the volume of data and the often complex and risk-sensitive nature of most transfers, it can be beneficial to extend the interfirm coordination beyond the initial meetings to regular, ongoing meetings throughout the file transition. Most transfers occur as a result of lawyer departures, and it is not unusual for multiple

matters for multiple clients to follow along with them. Failure to provide files to the new firm can result in a failure of the lawyer to provide uninterrupted legal services to their client and put the sending firm at risk for repercussions. There can be many questions and variables even after a transfer starts. Once the flow of files begins, priorities can change and both firms must coordinate closely. Balancing the volume of files with upcoming deadlines, demands of the client, and questions from the transitioning lawyer requires open and frequent communication.

Joining a new firm can be a time of high stress and concern for a lawyer. Collaboration between firms, and teams responsible for matter mobility efforts, can go a long way to ensuring each transition happens as seamlessly as possible and minimizes time spent answering questions or calming anxieties. It instills confidence in all involved and fosters a proactive approach to all phases of the matter file transfer.

As noted in the prior report on this topic, before initiating any data transfer, it is important to reach an agreement with the parties involved regarding the scope and format of the file transfer. This can be accomplished in the 'meet and confer' session. At a minimum, the following aspects of the data transfer should be discussed, documented, and circulated in writing to all parties involved in the file transfer.

- An introduction to all individuals at both sending and receiving firms who will play a role in the transfer process. Oftentimes, this may be a mix of IG, IT, operations, or other support staff within a firm. Gain an understanding of how both electronic and paper files will be transitioned, as they may be handled by different or multiple teams. It may be more efficient to establish a matter mobility coordinator to handle the inbound and outbound processing.
- An agreement on the logistics of the transfers. For example, will electronic files be sent via secure file transfer or some other method? Will there be a set date or cadence of data releases? Will paper files be sent at regular intervals and who will arrange for pick up? Will there be the potential for vendor-to-vendor transfers? Will there be indexes provided for both electronic and paper files and what data/metadata will they include?
- Scope of data set(s) approved for transfer, e.g., client(s), matter(s), and corresponding data volumes approved for transfer.
- Repositories included, such as the DMS, extranets, Teams sites, Relativity, or other systems the firm may use. How will the data be sent? For example, will all versions or the latest version of DMS files be sent? Will extranets retain their structure? Are there any "homegrown" systems containing valuable data to be transitioned? If so, it can be helpful to have a discussion not only about how data will transfer but whether the receiving firm has a similar system for the attorney to use once they arrive.
- Don't forget the paper. Understand what records management system is used. If there are large volumes of paper files to be transferred, it may be worthwhile to discuss the format of the file index in the event the receiving firm can automate the intake into their systems.
- Address the topic of network drive files -

original client data, litigation support databases, corresponding data/images, Microsoft SharePoint® site content, etc. and how the content will be transitioned

- If there are original documents (usually kept in vaults), how will those be transitioned?
- Discuss the type of email system, PST files/email archives, and your firm's policy about releasing them. For example, many firms do not release PST files from Outlook and instead will only release documents and emails filed (and thus exported) from the DMS.
- Address how personal data will be handled. Will calendar and contacts automatically be provided? How are personal emails and documents handled?
- Identify data under the personal control of an individual, e.g., personal computer, removable media, mobile device, etc.
- Be transparent about data not included in transfer, such as matter administration and files not filed under the specific client matter(s) approved for release. This is usually a common practice from firm to firm, but it helps to address this from the outset.
- The sending firm should be prepared to discuss the format of data set(s), file format(s), field names, and character parameters for each data set in the file transfer. Most firms have standard metadata they release. Discussing up front can assist the receiving firm in preparing for the ingestion of this data. It can also allow the receiving firm to make requests for adjustments up front and the sending firm, where practical, can potentially accommodate.
- Discuss the access controls/security of data:
 - Protected Health Information (PHI)
 - Personally Identifiable Information (PII)
 - International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR)
 - Other data requiring security wall and/or special access controls
 - Method for identifying data requiring access control and/or security during file transfer process

- > Conduct a technology infrastructure review. Software, including specification of software version(s) of sending/receiving parties for each data set included in the file transfer. This helps ensure compatibility and ease of data transfer.
- > As noted earlier, establish an agreement up front regarding the file transfer protocol such as instructions for the onsite delivery/pickup of encrypted removable media and the location of the secure FTP site (URL).
- > Consider the administrative aspects of the transfer such as:
 - > The projected timeline for file transfer(s)
 - > The suggested priority of export/import by client matter
 - > Staged file transfer, or transfer entire data set(s), after all files processed and available for transfer
 - > Issues escalations
 - > Whether a regular cadence of meetings is needed throughout the duration of the transfer process
- > The contact details for individuals responsible for ensuring each data set is exported, transferred between parties, and imported.

Policy vs. procedure clarification

A policy should be in place to define the firm's position regarding the transfer of records into and out of firm repositories. Every firm will have to design the policy based on its unique culture and the maturity of its IG program. The policy would typically be published as part of the firm's risk management manual, or within the firm, or lawyer policy manual. To ensure consistent matter mobility success, procedures should be developed to ensure the process complies with the policy.

Sample policy statement

There are occasions when records and information (firm administrative or client) are transferred to or from parties outside the firm. It is firm policy these transfers are approved appropriately, attorney professional responsibilities, chain-of-custody, and security are carefully observed, and proper procedures are followed throughout the process. The General Counsel shall be

responsible for the overall supervision of this process, with the Director of Information Governance having final responsibility for the management and execution of the process.

Cultural sensitivities

As with any significant undertaking in a law firm, there are firm cultural sensitivities to consider when addressing matter mobility. Individual lawyers may have different perceptions of file ownership and custody. Those who have long-term and/or personal relationships with their clients may feel it is their responsibility to maintain stewardship of their clients' files. Others may see it as merely an extension of goodwill to store files on behalf of their clients.

Firms may approach governance with an open entrepreneurial approach, while others are more conservative relying on tightly defined processes. Each can be successful when fully understood and managed with appropriate documentation. Understanding firm leadership's attitude toward innovation should shape your policy and process development.

Even if your firm has managed to educate and train lawyers on how to respond to file transfers, including understanding the risks and ethical issues, there is no guarantee the other firm involved in a matter mobility event has equally well-developed and commonly understood processes.

Client expectations regarding the mobility process and timing for file transfers may also play a part. Some clients view their law firm as their document warehouse, with the expectation that the law firm retains extensive collections of documents for a long time. As a result, the firm may want to avoid having a conversation with a client about what they should release or accept as part of a transfer.

Finally, the firm's information governance sensibilities may not have matured to the point of understanding the risks and client service issues related to matter mobility. How much cooperation and collaboration can be mined to help define and execute standard processes may be a function of how much support and understanding are available from firm management. Increasingly, firm management at receiving firms has an interest in assigning resources for the development of matter mobility policies and procedures, to ensure the new attorney is productive as soon as possible, and all risks have been properly managed.

Release of records

The firm should not release records and information outside of the firm without proper authorization from the owner of the information (the client), even in response to a formal subpoena, or other properly authorized instrument **from an authorized source**. These instruments may be received by the General Counsel, Managing Partner, or Director of Information Governance.

When a lawyer leaves the firm, disposition of their files (physical and electronic) is managed by the Information Governance department or responsible party. Clients may instruct their files to be transferred to the lawyer's new firm or directly to the client. Client records are only

released upon receipt of written authorization (letter or email) from the client. This notification should include reference to specific matters (or to "all matters"), some acknowledgment of the client's obligation to pay bills, and release from future obligations for the firm to perform services (if all matters are being transferred). Once the client's release approval has been secured, the departing lawyer must follow the firm's established release procedures.

The firm reserves the right to determine the appropriate methods for a particular release. This determination is made on a case-by-case basis and determined by the General Counsel. Files should be transferred in accordance with existing procedures for the transfer of paper and electronic records. Any copies of client files maintained by the firm are to be marked as such and retained in accordance with firm policy.

In many cases, the client record for a matter is stored electronically in a document management system and should be released in a secure method such as secure file transfer protocol (SFTP), DMS transfer tool, or encrypted removable media if necessary. Regardless of method, this information should be encrypted and secured in an appropriate manner, leaving a documented chain of custody. Where there are client records in physical format, the material should be transferred in a careful hand-off approach with a documented chain of custody.

Documentation of the request, the authorization to release the information, and details of what information is released shall be retained by the Information Governance department or responsible party.

Lawyer and staff departure

Individuals leaving the firm may not remove, delete, or retain personal copies of any records or information without the appropriate approvals. A lawyer leaving the firm may not remove any client files—paper or electronic—without a written request from the client authorizing the file transfer along with internal firm approvals. In accordance with established procedures, individuals leaving the firm should discard convenience materials, file records and information in the appropriate firm-approved repository, and transfer custody of any records in his/her possession as directed. This duty applies to both hardcopy and electronic records.

Where a matter(s) is released, the most expedient method should be used for delivery of the record. Before delivery, the record should be checked by the compliance department or a designee, to make sure there are no internal firm business records included, such as client development or firm administrative documents. Convenience and extra copies should also be removed at this time and securely destroyed.

Personal repositories may be transferred following review, to identify and remove client or firm proprietary data.

In cases where an individual's employment concludes without advance notice, the Director of Information Governance or responsible party facilitates any requested releases and ensures the other provisions of firm policy are observed.

Information Governance personnel inspect all containers, including those containing personal information and belongings, as well as any electronic devices being removed from the firm.

Electronic matter transfers

Import

When receiving information, it is imperative to work closely with the sending firm to ensure each matter is transferred in a complete and secure manner. Understanding the storage and classification systems of the firm sending the information allows for appropriate planning to map data to the receiving firm. Differences in metadata captured, taxonomy and file format need to be identified as soon as possible. It may be easier to export in a different format than convert an exported file. It may also be useful to test transfers with a small batch of data before processing large data sets.

During the export and import processes, auditing the accuracy of the process helps to ensure the migration was completed successfully. It is also important to verify data has not been corrupted before transferring or uploading to the new firm systems.

Having a secure location to process data received prior to uploading can be very helpful. Data will need to be held pending client/matter acceptance. Data also may need to be reorganized.

It may be necessary to:

- Remove closed matters
- Separate materials to be stored in different repositories
- Convert file formats

Firms may receive data for clients authorizing transfer

who never become a client. This information should be scheduled for deletion as part of your intake process.

Closed matters

The acceptance of records pertaining to closed matters varies from firm to firm.

Potential advantages

There are a number of benefits to the acceptance of closed matter data:

- Attorneys may reference or use as template material in the course of their work and accepting data labeled as such is beneficial to them.
- Attorneys often feel the retention of closed client data may help with the client opening matters in the future or with client "stickiness."
- Closed matters may be connected to an open matter.
- In certain practice areas, reopening a closed matter may be common.

Potential issues

- Exposure to client information not screened for conflicts risks the imputation of this knowledge to the firm.
- Acceptance of closed matter data increases data storage requirements, which can drive up costs and waste storage resources.

- Closed matter data is tricky to assign a meaningful retention period. Import of this data may require retention for the life of the client.
- Acceptance of matters already past the firm retention deadline can create out-of-compliance scenarios.

Mitigation strategies

There are several strategies to mitigate risk from acceptance of closed matters:

- Preemptively receiving an index of closed matter data, including client/matter names, matter close date, and data size.
- Storing all closed matter paper records offsite. Files kept in the office or retrieved from storage must be held in secure locations to prevent conflict of interest inferences.
- Closed matter data must be secured to the incoming users to prevent the exposure discussed above.

Regardless of where the data is stored, it is critical to apply the same taxonomy to the closed information as applied to the active matters.

Technology

Importing and exporting electronic data in conjunction with matter mobility has its challenges, particularly when the file transfer involves large volumes of electronic documents, including email and attachments not previously organized by client matter. It is important to employ a standard approach when assessing and approving electronic files for import/export. This involves preparing the files for import/export to/from various firm systems designated for the management of official client files, and communicating with all parties responsible for preparing and executing the electronic file transfer. In addition to records managers and the information technology team, the lawyers and case teams who are

waiting for the data to become available for use in a client representation should be included in the communications.

A clear understanding of the technology infrastructure in place at the firms and/or other parties responsible for sending and receiving the electronic file is necessary to ensure an efficient export and subsequent import of electronic files. The parties need to complete the transfer in a manner, and at a pace, to not impede client representation. Also, it is important to understand the working practices of the lawyers and other case team members responsible for managing the files approved for import/export. This knowledge can help determine any additional change management, and other training that may be needed to ensure the electronic files are managed in accordance with firm procedure after completion of the file transfer.

- **Note: The recommendations and guidelines set forth in this section assume the necessary approvals have been granted for the files to be imported or exported into one or more firm systems designated for the management of electronic matter files.**

Transferring – General file repository considerations

Repositories

It is critical to identify the location of all information silos. The most common repositories containing electronic client matter files to be included in a file transfer are:

1. Document Management System (DMS)
2. Email box(es) and/or email archive(s) (including email attachments and metadata)
3. Network Drive File Shares
4. Records Management Systems (RMS) (serves as an index to hardcopy (paper files))

- 5. Microsoft Teams
- 6. Litigation Support Databases

Information organization

Information organization is fundamental to being able to identify all the information responsive to a client-directed transfer. Once the applicable repositories are identified, there are important organization factors to consider:

How are electronic files organized? Preferably, the files will be organized in a folder structure or tagged in a way to identify the client matter associated with each file.

- If the data is organized in a hierarchical folder structure, the folder structure should be maintained in the file export. However, exporting files in a manner retaining the folder structure may impact the metadata export. For example, a DMS may allow for lengthy folder names to be truncated upon export due to character limitations of the Windows® operating system.
- The individuals responsible for performing the data transfer need to have the access control rights necessary to identify and process all data approved for transfer. If there are security controls in place for any of the files, e.g., security walls, encryption, or file-level access controls, the individuals performing the file export/import need full access to the files in order to ensure all files have been identified, reviewed, and included in the approved data set. Determining the approximate volume of data associated with each matter to be transferred may, in some cases, modify the scope of the transfer and for this reason, needs to be done as early in the transfer process as possible.

Scope

Information organization is fundamental to being able to identify all the information responsive to a client-directed transfer. Once the applicable repositories are identified, there are important organizational factors to consider:

- Each transfer instruction should be specific in scope.
- Is the whole client transferring or only certain matters?
- Are only active matters being transferred?
- Is the transfer to the client or to a law firm?

- What information does your firm consider client vs. firm property?
- Are there particular information types or repositories outside the scope of the request?

Limitations in scope allow for export of only the information appropriate to transfer. Depending on the available tools and system configuration, it may be more expedient to export everything and eliminate the non-responsive materials from the export.

Quality assurance

Performing technical quality assurance checks on imported and exported files is imperative. Comparing file sizes and document counts is important, as is assuring the data is usable. If any information had been archived, it is important to provide unarchived versions in the transfer. Failure to coordinate with the receiving firm may result in incomplete or corrupted file transfers, and could impact client service.

Retention of transferred materials

Your firm should have a retention period for retaining a copy of the information transferred. This can be relatively short. For instance, if the purpose of retaining the copy is to ensure the receiving firm can access everything adequately. A firm may want to retain the copy longer to validate the adequacy of your response to the client request.

If the file transfer results in the permanent release of files and the retention limit for the materials has expired, it is important that the final step of file deletion takes place after the file transfer is completed.

If the retention period has not expired, continue to maintain the materials in accordance with your retention policy. If your policy requires client authorization prior to destruction, obtaining this authorization now will save time and money later.

Supporting technologies

Import/Export Tools – For file transfers, it is beneficial to employ software designed to automate the process of importing/exporting files from firm repositories. In addition to minimizing the effort and risk associated with manual processing, this may also allow for the import/export to be performed during non-peak hours in order to eliminate system performance issues that sometimes occur with large file transfers.

Also, some export utilities have been designed to support an automatic deletion of the data files no longer needed after the export has been completed and verified.

Microsoft Excel® – Excel spreadsheets are used extensively by firms to process metadata imported or exported and/or prepare it for processing. Excel files are often used by lawyers to review metadata associated with paper and electronic files in the approved data set, and indicate decisions or additional instructions regarding the transfer and/or security of the files. The export tool may create a CSV file as part of the export process. This report is important to transfer to the receiving firm, as it contains the metadata for the information. This metadata is critical for importing information to a DMS.

Secure File Transfer Protocol (FTP) – FTP is often used to securely transfer data over the Internet in place of using offline portable media, e.g., removable hard drives, CDs, and tapes. This is the preferred method, as it provides the greatest balance of security and convenience. In all instances, the information being transferred should be encrypted. Some firms opt to transfer the media on portable media. Chain of custody for such a transfer should provide documentation of shipment as well as receipt of the information.

Transferring document management system (DMS) files

Export DMS documents in flat file format into a single Windows folder containing only the data needed by the receiving party to import. A flat file format prevents the truncation of characters when a folder structure contains folder names exceeding 255 characters.

Provide a metadata report for each DMS exported data set. Include a line for each exported document with the following metadata fields:

- > Document number
- > Version
- > File name
- > Author
- > Author full name
- > Operator
- > Operator full name

- > Create date
- > Category
- > Subcategory
- > Application type
- > Class/subclass
- > Client name/number
- > Matter name/number
- > Legal Hold designation, if applicable
- > Protective order, if applicable
- > Default security

Transferring network drive files

There may be files on network file shares to include in a file transfer, e.g., litigation support databases, SharePoint sites, and documents relating to e-filing applications. Typically, it is sufficient to copy the files onto removable media, maintaining any hierarchical folder structure used to organize the files for transfer as described above.

Transferring email and email attachments

Email environments vary from firm to firm. Some firms allow the use of PST files for storage of email, while other firms prohibit the use of PSTs and instead employ the use of a centralized email archive; some firms use both. Other firms consider the email system as a temporary repository and enforce file and purge policies requiring users to move email records to a DMS within a specified time period.

- > **NOTE: As mentioned earlier regarding scope, when releasing email communications, consider if the firm will release all emails for the matter, or only emails for which the distribution includes one or more external recipients. Some firms consider internal firm emails (where all recipients are within the law firm) to not be part of the matter file materials and not included in the release.**

Email may be transferred in a number of formats, MSG or EML for instance. Emails may be collected in Personal Storage Tables (PST).

PST is a standard format for exporting email file(s) from the Microsoft Exchange® email system. PST files transferred to a receiving party should contain only data within the defined scope of the transfer, and only email needing to be imported by the receiving party. Note there may be a technical limitation if there are voluminous mail files to export. For example, a DMS correspondence folder containing more than 10,000 emails may have to be exported in stages with other DMS content, or alternatively, may be exported directly from a user's mailbox to a single PST file.

Information should be transferred in the format and manner it was maintained. If the email is stored in the DMS, it should be provided in the same manner as other DMS materials. If email is stored in Outlook or in PSTs for use in Outlook, they should be transferred in those formats.

Transferring metadata for physical media

Transferring metadata with hardcopy (paper) files is relatively straightforward compared to the transfer of email and DMS files. Standard metadata to include when exporting from a records management system contains the folder/insert title, the file owner, and any notes or comments relating to the file.

Package and transfer

It is a best practice to encrypt all electronic files prior to transfer outside of the firm when using external media or secure file transfer protocols. Also, it is important to include a transmittal letter specifying the scope of the file transfer, including instructions on what steps need to be taken in the event material not related to the matters approved for transfer was inadvertently included in the data set, and contact information in the event there are questions or technical issues encountered by the receiving party.

Receiving information

Managing the import and availability of the information is just as important and specific as exporting materials.

Repositories

It is critical to understand the nature of the materials being transferred. Information needs to be identified to place it in the appropriate repository.

Firms should establish a storage location for materials pending import to repositories. These areas should be secured to prevent the opportunity for exposure of legal team members to information not cleared by Conflicts. Quarantining the information pending clearance reduces the risk of creating a conflict of interest for the firm as a whole.

Coordination with New Business intake and Conflicts is critical to success of any transfer. Before importing data, confirm with this department that a matter has been opened.

It may also be helpful to create a conversion chart of the matter number/names used at the previous firm and your firm. It may be that matters that were previously separated may be combined after transfer.

Importing DMS files

- First, determine if the information will be imported into a DMS, saved to a network drive, or some other repository.
- Specify DMS destination folder(s).
- Import content under a valid user name in the Author/Operator field.
- Ensure document properties indicate the file was imported into the DMS.

Importing email files

- > First, determine if the email will be imported into a DMS, a new mailbox file or saved to a network drive.
- > If importing to a DMS, ensure the folder type recognizes the properties of an email.

Importing network drive and other materials

- > All other information should be stored in the appropriate client/matter coded repository.

Common pitfalls

When it comes to matter mobility, information governance, risk management, technology, and client service considerations can be overwhelming. The situation can be challenging for a law firm to balance business needs with ethical duties while at the same time, appreciating cultural sensitivities and respecting the lawyer/client relationship.

While we have seen significant improvements made by many firms, the following is a list of common pitfalls, and issues to consider when creating a formal policy and comprehensive process governing matter mobility:

- > Absence of procedures after the transfer is complete
 - > For incoming matters - return, clean, or destroy media?
 - > For outgoing matters composed of hardcopy files - should copies be maintained or deleted? If retained, how will the retention be addressed? Will the materials be scanned, making an electronic copy (and where will it be stored), or simply making another hard copy and sending it to storage?
 - > For electronic files – Will the materials be retained for the regular retention period, assign a shorter retention period, or purge completely at the time of release?
- > Excluding departments with a stake in the process - Records Management, Client Intake, Conflicts, Docket, IT, Finance, HR, etc.
- > Lack of cooperation or unresponsiveness from the involved lawyer, or other firm, due to a

- > Other materials may include litigation data, client engagement history, etc.

Communication

- > It is crucial to communicate with the parties waiting for access to the information. As information is received, cleared by Conflicts and made available to users, a method of providing status updates allows legal teams to prioritize loading of information and meeting the client's needs.

non-amicable separation.

- > Lack of pre-defined, firm-approved storage repositories (e.g., emails stored in timekeeper Inbox) result in increased risk of incomplete and delayed transfers if information cannot be collected and released.
- > Lack of a well-defined/collaborative/communicative process at the other firm can create unrealistic expectations and slow down or hinder the process.
- > Lack of standard naming conventions/profiling requirements in firm systems to help associate the information to a client/matter; difficulty identifying materials to be transferred from a non-matter-centric environment.
- > Lack of knowledge/understanding of source systems.
- > Lack of specific case law, bar opinions, or ethical rules regarding ownership of client files, and what constitutes attorney work product vs. the firm's intellectual property.
- > Lack of space and/or resources (e.g., labor) to accept and integrate a large quantity of incoming files.
- > Lack of guidelines on accepting personal matters; e.g., what is considered personal? Potential examples include:
 - > Calendars, contact lists, continuing education materials

- Personal social media communications - done as an independent lawyer vs. as a representative of the firm lawyer who serves on outside boards, etc. (potential conflict issues aren't vetted)
- Added costs if materials are stored offsite at firm expense
- Lack of a well-defined and integrated internal process includes a policy, procedures, checklist, and communication plan for matter mobility events.
- Lawyers' failure to connect their ethical responsibilities with the potential risks and task-intensive nature of the mobility process.
- Lawyers wanting to keep copies of outgoing materials without proper authorization by the client.
- Not being consistent regarding who communicates the policy/procedure to lawyers; e.g., General Counsel, practice group leaders, transition lawyer, recruiting team, risk manager, records, or IG manager. Is the policy consistently applied, and who authorizes exceptions?
- Not assigning one department or individual to own and shepherd the process; e.g., a matter mobility project manager.
- Poorly defined guidelines as to what types of information should be included/excluded in the transfer e.g., research, pleadings, forms, attorney work product, work drafted in collaboration with others, and business information (client lists, marketing materials) proprietary to the firm or client.
- Poorly defined guidelines for reviewing files and content before release e.g., who reviews matter file contents before they are released, what is the protocol for review, does the reviewer have the time to conduct the review?
- Pressure to open matters and accept files quickly so the lawyer can start billing, e.g., how to handle receipt of files before matters have cleared conflicts and been opened as new clients?
- Risk of accepting matter files not previously disclosed as part of the lateral hire conflicts checking process.
- Risks of accepting non-client files (former clients of the incoming lateral attorney but not of the acquiring

firm), or closed/inactive matters of transferring clients. Some of the risks and impacts are:

- Creates ethical record-keeping requirements
- If the firm chooses not to accept legacy materials, can the two firms reach agreement on access to files in the future?
- If the firm chooses to accept legacy materials, for which the new firm is not accepting representation, how will these materials be differentiated from active matters where the firm is accepting representation?
- Impacts storage costs
- Risk of lawyers or staff removing or transferring information prior to receipt of client authorization.
- Risk of lawyers transferring information without disclosure; e.g., flash drives, BYOD, etc.
- Risk of missing docket deadlines - especially for IP prosecution matters, but also for litigation matters. **The firm should prioritize transferring docket reports.**
- Risk of unsecured/unencrypted physical and electronic file transfer.
- Transferred matters remaining open for billing purposes at the former firm allows for additional billing as well as delays clearing potential conflicts.

Other considerations - Out of scope

Successor counsel vs. client transfers

While transferring information between law firms and clients has many similarities, there are important differences to consider. Understanding the applicable ethical obligation for maintenance of client information while designing your processes gives it greater substance.

- Successor firms may receive all versions of documents while clients only authorized final versions
- Successor firms may be provided internal communications relating to theories and strategy

Mergers of firms

This paper does not attempt to address the myriad of issues and considerations of a combination between two firms. While many issues are different only in terms of magnitude or volume, other questions would require deeper discussion:

- > Clients not moving to the new firm
- > Retention of administrative governance materials
- > Application of prior firm's retention policy
- > Transfer of materials to clients or other firms

Inbound matter mobility

Phases of inbound matter mobility

Inbound matter mobility can be best thought of as occurring in three phases: 1) intake, 2) processing, and 3) delivery. The IG department's objective in inbound matter mobility should be to make incoming client information available to the relevant timekeepers as quickly as possible, while ensuring compliance with Firm IG protocols. Critical requirements include client authorization, conflict clearance, and adherence to Firm IG protocols. Stakeholders include the attorneys and support staff working on the matters for which information is being received, the firm's IT department, Office Administrators or other relevant Human Resources personnel, as well as the sending firm, assuming the transfer is coming from another law firm.

Intake

During the intake phase, IG personnel are notified of an incoming matter mobility transfer and initiate communication with the relevant stakeholders. Notification may come from the receiving attorneys or their support staff, an Office Administrator if the transfer is associated with a lateral hire, or even the sending firm. As part of intake, IG personnel perform the actual receiving of information, which may take the form of boxes of physical files, hard drives or other external media containing electronic information, or cloud-based transfer of electronic information.

Ideally, the information comes to the firm well organized and labeled with accurate indices. Communication with the sending firm or other sending entity may be crucial in coordinating deliveries, clarifying contents and indices, and prioritizing matters in the event of large transfers. Additionally, communication with attorneys and support staff awaiting the material is critical, as they are likely

pressed for time to gain access to the information and begin working on the matter(s). IG personnel will likely have to manage expectations with the legal teams, communicating that proper IG protocols need to be followed prior to delivery of information for use. In the case of large transfers, identifying matters, which are a priority to be processed first will help support the legal teams' needs.

Processing

Once information associated with the transfer is received, IG personnel must perform the necessary procedures to ensure compliance with the firm's IG protocols. Protocols vary from firm to firm, but should, at a minimum, include 1) obtaining client authorization in writing, similar to what would be obtained in an outbound matter mobility event, and 2) conflict clearance. Just as a new matter cannot be opened until it has cleared a conflict check, so too should received information for a transferred matter not be delivered to timekeepers until the matter has been similarly cleared.

Once appropriate protocols have been followed, IG personnel should process the information just as they would newly generated information for an existing client matter. For physical records, this may include transferring material into new folders if necessary, indexing in the firm's Records Management System and applying labels. For electronic information, it may include creating or modifying matter workspaces in the Document Management System, uploading information to the DMS or practice-specific application or database, and associated metadata capture.

Delivery

Finally, once material has been processed in accordance with firm IG protocols, it is time to make the information available to the attorneys and support staff awaiting it. As referenced above, it is likely there may be certain matters

associated with a given transfer, which are identified as priority, so delivery of those matters may overlap with the processing of others. As communication with legal teams throughout this process is critical, the delivery phase should serve as a closing of the loop, ensuring nothing is left outstanding.

Outbound matter mobility

A similar phased approach divides the work involved in outbound matter mobility into four phases: 1) scoping, 2) collection, 3) review, and 4) transfer. The IG department's objective in outbound matter mobility should be to identify, collect, review, and transfer the relevant information to the external recipient in as timely a manner as possible, while adhering to the firm's IG protocols. Critical requirements include client authorization, internal review and approval of information being released, and adherence to firm IG protocols. Stakeholders include any attorneys and support staff who have worked on matters for which information is being transferred, the Firm's IT department, potentially practice group leaders, as well as the receiving firm, assuming the transfer is going to another law firm.

Scoping

When the IG department is notified of the need to transfer client material outside the firm, the first phase of the process involves determining the scope of the transfer. Depending on the client instructions, this scope may include one or more clients, more or more matters relating to the client(s), information associated with one or more particular attorneys who worked on the matter(s), specific formats of information, or even date ranges in which the material was generated. In all cases, the ultimate authority of what constitutes the scope of the transfer is the client's instructions captured in writing. In some cases, IG personnel may encounter conflicting instructions from an attorney who is either sending or receiving the information and will need to rely on the client's specific instructions, perhaps even requesting updated instructions if a conflict arises.

Collection

Once the scope is identified, the information included in the scope, both paper and electronic, must be collected. Hard copy records should be identified in the firm's Records Management System and retrieved from

file rooms, end users, or offsite storage locations as appropriate. Electronic information should be identified in the firm's Document Management System. Ideally, these two sources would contain all of the information in scope; however, it is likely there will be additional information not captured in either of these repositories. Electronic information may be saved in individual email boxes, network file shares, or practice group-specific repositories such as litigation support. Additionally, hard copy records may exist unofficially outside of the Records Management System. A best practice is to poll all timekeepers who have billed time to the matter(s) in scope and request they coordinate with the IG department and IT department as appropriate to provide any hard copy or electronic information not captured in official repositories.

Review

Information collected from these methods, in both hard copy and electronic format, should be delivered to a designated individual for purposes of reviewing the information prior to release. The reviewer should be an attorney associated with the matter, or someone (attorney or staff) whom he or she assigns for the purpose. In the event the primary attorney has departed or is departing the firm, the practice group leader should assign a reviewer. The purpose of the review is to identify and withhold any information, which is not deemed client property. The determination of what constitutes client property should be addressed by the firm's retention policy in consultation with the applicable jurisdictional regulations. Many law firms exclude administrative material such as conflicts and billing information. Additionally, most US states include attorney work product in the category of client-owned information, with the exception of a few states—including but not limited to Illinois, Texas, and Florida—which hold attorney work product is firm property, which can be withheld from a client record release.

Transfer

Once all relevant material has been scoped, collected, and reviewed, the Transfer phase serves as the final phase of the process to complete the transfer. Working in concert with the receiving firm or other entity, hard copy records should be boxed, along with any accompanying indexes,

and arrangements made for delivery, whether by courier, messenger, pickup, etc. In parallel, electronic information should be produced in the agreed-upon format, whether by secure FTP or encrypted external media. Appropriate IG procedures should be followed after the release, identifying all information as permanently released as appropriate.

Conclusion

Because of all of these considerations, the multiple moving parts, and the fact much can evolve and change throughout the course of a transfer, treating each transfer like a project can bring great benefit. It is important to have a “playbook” for each transfer, with established roles and responsibilities and supporting processes. Ideally, there should be centralized oversight and management to ensure all parties are on track to complete their tasks, handle issues as they arise, and maintain accountability throughout the entire transfer process. A project can be defined as a set of tasks that must be completed in order to arrive at a particular goal or outcome. A project typically has a beginning and an end. Transfers possess both of these criteria. It is recommended that there is a method with which to track the progress through each phase of a transfer (initiation, approval, gathering, review, export, and release). This is helpful throughout the duration of the transfer but also serves as a historical record of steps taken, by whom and when in the event questions arise after the transfer has been completed. There are solutions emerging in the market to address this need, but in-house solutions can be built using something as standard as SharePoint or Access.

While it still remains aspirational in nature, there is much discussion in the industry—particularly among larger

firms—an interfirm standard should be developed to help consistently support the efficient transition of files and information from firm to firm. There is thought these standards would address such things as: the mutual need for client authorization letters to initiate both release and intake, format in which files (such as email) will be provided, metadata provided from key systems (such as DMS), criteria for vendor-to-vendor transfers, transition of third-party data and the like. There appears to be an organic movement in this direction; however, the challenges presented by differences in firm policies, systems used, and internal supporting processes seem to point to it being unlikely a “one-size-fits-all” standard can be established. That said, there are certain aspects of our processes that can always be improved upon, and firms should continue to coordinate and communicate with one another to standardize as much as possible to introduce additional efficiencies into the process.

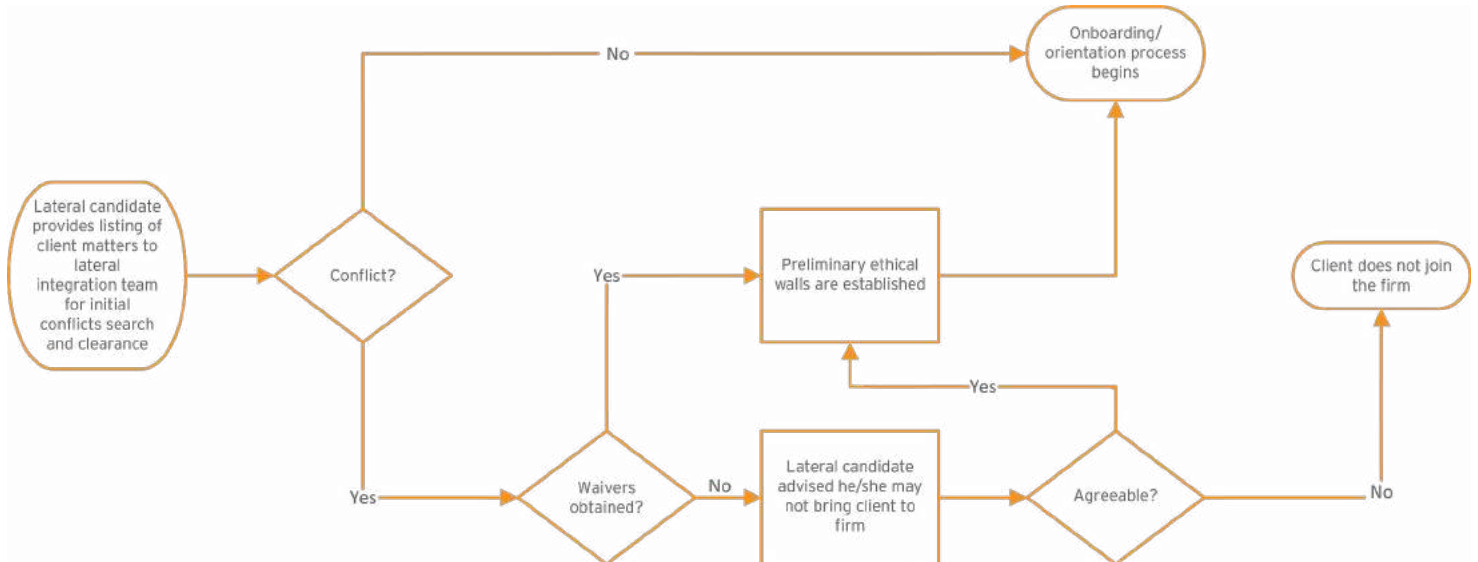
It is the hope of the Law Firm Information Governance Symposium a standard will emerge. Until then, papers like this can provide a common set of language and understanding to aid the matter mobility process.

Addendum

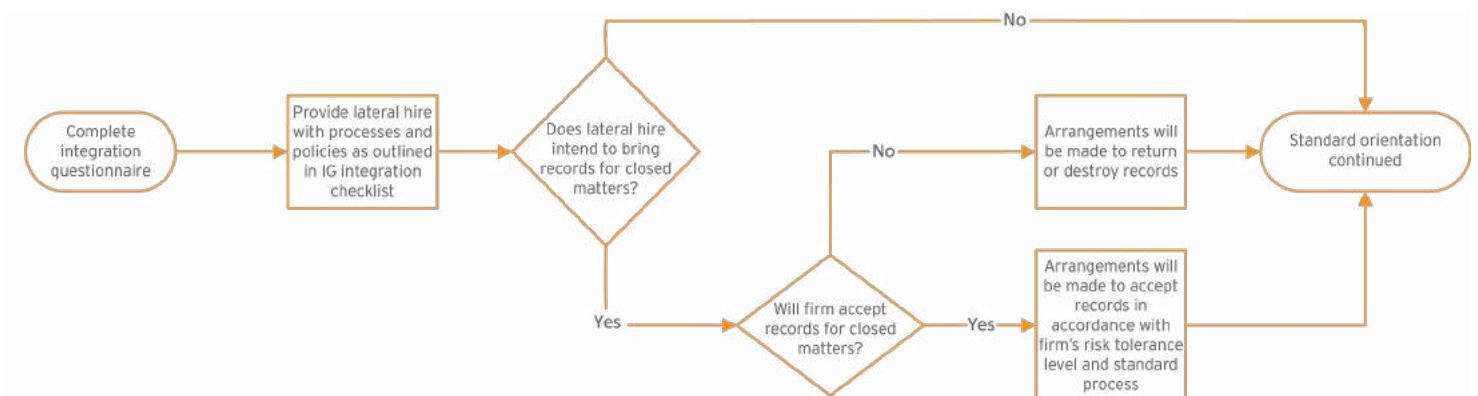
Supporting documentation

Matter mobility process
workflows and checklists

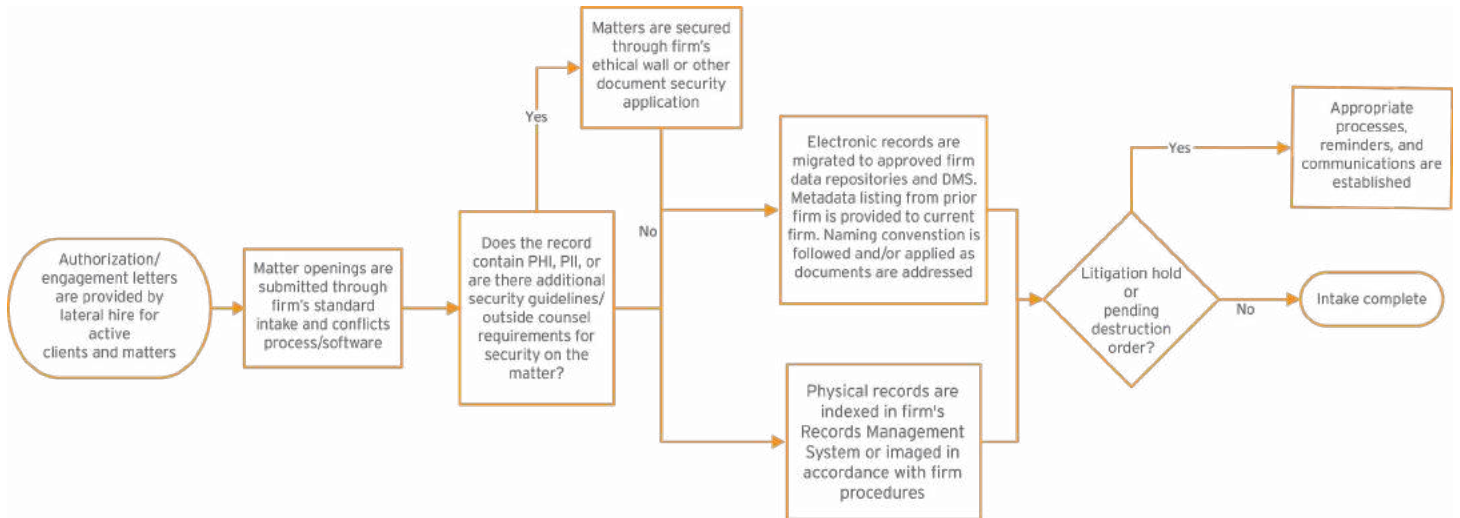
Due Diligence



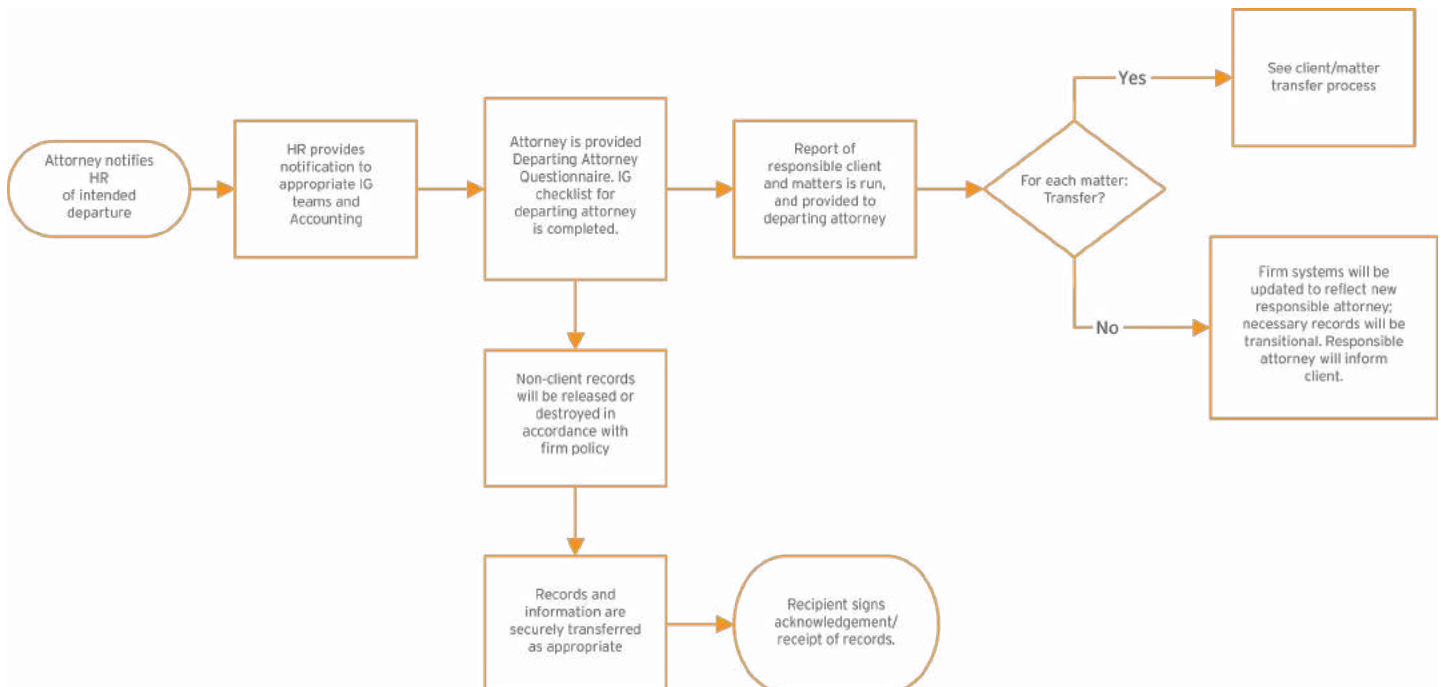
Onboarding/Orientation



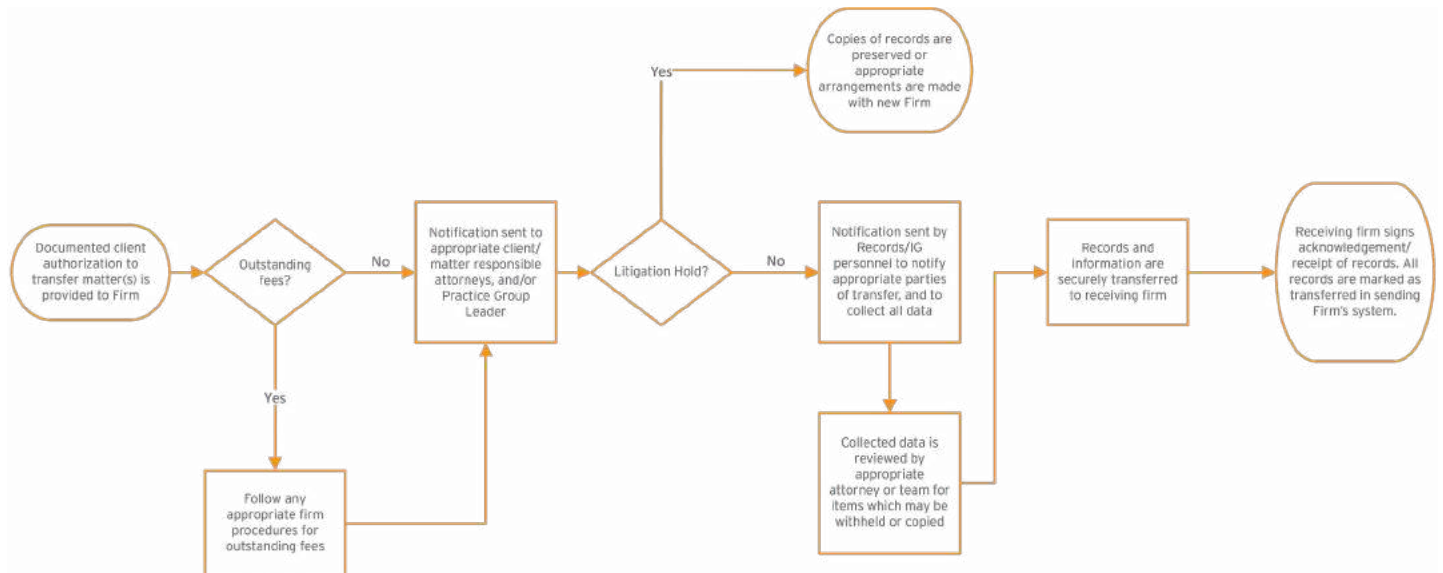
Matter Intake



Departure Process



Client/Matter Transfer



As illustrated in the 2012 Law Firm Information Governance Symposium Report, “A Proposed Law Firm Information Governance Framework” one of the principal catalysts for matter mobility is the movement of lawyers from one firm to another. While an incoming lawyer or lateral group typically triggers business growth through the influx of new clients and/or matters, it can also present potential issues concerning data management and security. Therefore, it is critical for those on the firm’s Information Governance Advisory Board to understand the incoming lawyer’s and respective clients’ expectations as it relates to IG processes, such as information security, conflicts, retention, and document preservation.

The questionnaire below serves as an example of potential questions law firms may ask in order to find out such pertinent information from the lateral hire. In an ideal situation, this questionnaire would be provided and completed prior to the lawyer’s arrival. However, in many situations, timing does not allow for such an opportunity.

In this instance, the questionnaire should instead be provided to the lawyer upon arrival, with the expectation it is completed as part of the overall “onboarding” process.

MATTER MOBILITY – INCOMING LAWYER QUESTIONNAIRE

*Specific to Matter Mobility and Information Governance – not intended to be a comprehensive checklist for lateral integration.

Name: Previous firm:

Start date: Practice group:

Question	Response
1. Clients: <ul style="list-style-type: none">Do you intend to bring any clients with you to the firm? If no, please move to question 10.	
<ul style="list-style-type: none">Have all client names been provided to the Lateral Integration team for Conflicts search?	
2. Matters: <ul style="list-style-type: none">Do you have a list of matters you plan to integrate into the firm? If yes, please attach to this list.Have you received authorizations from the clients to transfer these matters to the firm?	
3. Electronic Records: <ul style="list-style-type: none">Do you intend to bring any electronic records as they relate to these matters?Are these materials classified by client/matter?If yes, please provide detail as to any specific naming conventions/standards used.If not, our firm will segregate these materials for review to be classified by client/matter.Please also provide a contact name at your previous firm we may speak to regarding this material.	

<p>4. Physical Records:</p> <ul style="list-style-type: none"> ➤ Do you intend to bring any physical records as they relate to these matters? ➤ If so, who at your firm can we coordinate with to obtain an index of those records to be transferred to us? 	
<p>5. Closed Matters:</p> <ul style="list-style-type: none"> ➤ Do you intend to bring any electronic or physical client records for closed matters? ➤ If matters are closed, provide the actual matter closing date, which will be used to determine the retention period trigger date. 	
<p>6. Do your clients have any specific outside counsel guidelines as it relates to the handling of their data? If yes, please attach those guidelines to this form.</p>	
<p>7. Are there specific retention requirements, preservation/litigation holds, or pending destruction orders which apply to the matters you are bringing to the firm? If yes, please specify/include them here.</p>	
<p>8. Are there specific security requirements which relate to any matters you will open at the firm? If yes, please specify/include them here. Do you intend to bring any PHI or PII?</p>	
<p>9. Are there any specific software applications (e.g., litigation support databases), or third-party vendors/platforms required by the client for the handling of their matters? If so, please list.</p>	
<p>10. What personal materials will be coming to the firm (e.g., PST's, CD/DVD's, USB's, etc.)?</p>	
<p>11. Do you intend to bring any administrative materials from your previous firm? If so, please provide a list of those materials.</p>	

The 2013 Symposium report, **“Building Law Firm Information Governance: Prime Your Key Processes”**, suggests one of the primary reasons behind unsuccessful lateral integration is the lack of education provided to the incoming lawyer at the beginning of his/her tenure with the firm. Accordingly, the acquiring firm should ensure the

lateral lawyer is provided a copy of all applicable policies and procedures as it relates to the firm’s handling of client and administrative data. The below form serves as an example of what items should be provided to a lateral hire, and an example of how such a procedure may be documented.

MATTER MOBILITY – INCOMING CLIENT/MATTER CHECKLIST

Have the following policies and procedures been provided to the incoming lawyer, and has necessary training/education been conducted?

Policy/Procedures	Complete	Initials and date
Matter Intake/Conflicts Process		
Information Security Policy		
Records Management and Retention Policy		
Social Media Policy		
Email Policy		
Bring Your Own Device (BYOD) Policy		
Separation Policy		
Client/Matter Disengagement Procedures/Policy		
Firm-approved Software and Data Repositories		
Filing Guidelines including firm Document Naming Standards and Conventions		
Firm's Code of Conduct/Ethics		

I acknowledge I am in receipt of, and understand, the above information as it relates to the firm.

Name(Incoming Lawyer)

Date

It can be argued that Newton’s Laws of Motion applies in many situations of matter mobility – just as one firm is acquiring a new lateral hire or group, another firm is preparing for a lawyer departure, and subsequent client transfers. In an ideal situation, the “departing” firm is provided ample notice of the lawyer’s departure.

Unfortunately, in many situations the lawyer makes an abrupt exit, or has already begun taking data outside of the firm. Consequently, as stated previously, preemptive education is critical, even in providing such items as

policies regarding lawyer separation and client/matter disengagement.

In the event the lawyer has provided notice prior to his/her official “departure,” the following questionnaire and checklist can be used to help ensure data is collected and/or transferred in accordance with the firm’s IG procedures.

MATTER MOBILITY – DEPARTING LAWYER QUESTIONNAIRE

*Specific to Matter Mobility and Information Governance – not intended to be a comprehensive checklist for lawyer departures.

Name: New Firm/Company:

Termination Date: Practice Group:

Question	Response
1. Have all clients been notified of your upcoming departure from the firm?	
2. Do you intend to take any clients or matters with you to your new firm/company? If no, please skip to question 9. If yes, will the firm be acting as co-counsel on any of these matters?	
3. Have these clients provided a written authorization to transfer their matters to the new firm? If yes, have the corresponding lawyers been notified, and has this authorization been provided to the IG Advisory Board?	
4. Have all outstanding fees been addressed with the client? (If the firm elects to hold or delay a file transfer due to outstanding fees, they must ensure they are acting in compliance with local regulations.)	

<p>5. Are any of the matters you intend to take with you subject to litigation holds, or destruction orders? If yes, please specify.</p>	
<p>6. The firm's standard method of transfer is "X" (encrypted USB, etc.) The standard processing time is "X" upon receipt of client authorization. Are there any concerns with this process as it relates to the data or matters in question? If particular matters should take priority, please indicate.</p>	
<p>7. Do any records contain PHI or PII and have not previously been identified as such? Does your client have a business associate agreement in place with your new firm regarding this information?</p>	
<p>8. Please provide a contact name at your new firm to coordinate the transfer of materials. (physical and electronic)</p>	
<p>9. For clients and matters remaining with our firm, has a new client relationship-leader and a matter-responsible/transition lawyer been identified, and has the client been notified accordingly?</p>	
<p>10. For all remaining clients and matters, have all applicable physical records been transferred to the responsible lawyers? Have they been provided proper access to the electronic records?</p>	
<p>11. Have all remaining physical records been accounted for by a member of Records Management?</p>	
<p>12. Have all electronic client and firm administrative records been placed in the designated repositories?</p>	
<p>13. Do you intend to take any administrative records with you to the new firm? If yes, has your current Practice Group Leader provided approval?</p>	
<p>14. Do you intend to take all personal records with you from the firm? If yes, have they been moved to the designated repositories? If no, they will be destroyed within "X" days.</p>	

MATTER MOBILITY – DEPARTING LAWYER CHECKLIST

Have the following policies and procedures been provided, and has necessary training/education been conducted?

Policy/Procedures	Complete	Initials and date
Separation Policy*		
Client/Matter Disengagement Procedures/Policy*		
Forms/Templates for Client Releases, including sample Release and Acknowledgement of Receipt of Records		
List of Responsible Clients/Matters to the Departing Lawyer & Practice Group Leader to identify new responsible lawyers		
Identification of Clients/Matters to be Transferred by Departing Lawyer (While the firm should not transfer any records prior to receiving client authorization, matters intended to be taken should be identified, so proper collection procedures can be initiated.)		

**The Separation Policy and Client/Matter Disengagement Procedures/Policy should be provided at the time of onboarding, and again at the time of departure.*

List of Physical and Electronic Records “checked out” by Departing Lawyer. (While electronic records can typically be “checked in,” the intent of this list would be to confirm any document modifications have been completed.)		
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I acknowledge I have received the above items and have addressed them accordingly.

Name(Incoming Lawyer) _____
Date

While matter mobility is typically triggered by lateral movement, there are times where a client matter or matters may be transferred to new counsel without any corresponding lawyer departure. In such situations, it is still advantageous for a firm to have a checklist or

workflow in place to ensure the necessary IG processes surrounding data movement are completed. Below is an example of a checklist which could be used in such situations when a client or matter is transferring from the firm outside of lateral movement.

MATTER MOBILITY - MATTER TRANSFER CHECKLIST APART FROM LATERAL MOVEMENT

Process	Complete
1. Have affected clients provided a written authorization to transfer their matter or matters to the new firm? If so, has this been provided to the IG Department or the Advisory Board?	
2. Have all corresponding lawyers been notified to cease work on the matter?	
3. Have all outstanding fees been addressed with the client? (If the firm elects to hold or delay a file transfer due to outstanding fees, they must ensure they are acting in compliance with local regulations.)	

4. Are any of the matters subject to litigation holds, or destruction orders? Please provide a list of these matters and related information.	
5. Do any records contain PHI or PII which have not previously been identified? Please specify.	
6. Have all physical and electronic records been collected from designated firm repositories?	
7. Have all necessary security protocols, including data encryption, been implemented?	
8. Has a name been provided from new counsel as to whom data transfer may be coordinated with at the prior firm?	
9. Has an acknowledgement of receipt been provided to the new law firm?	





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