



MATTER MOBILITY TASK FORCE REPORT

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BACKGROUND

The Law Firm Information Governance Symposium was established in 2012 as a platform for the legal industry to create a roadmap for information governance (IG) in the unique setting of law firms. The Symposium offers definitions, processes and best practices for building law firm IG. Firms can leverage the Symposium content to tailor an approach that works for their culture and goals. In 2013, we created a series of task forces to work on specific, current law firm IG topics. This Matter Mobility Task Force report summarizes and analyzes key information governance considerations in the process of moving client matter information into and out of law firms. This report also offers proposed matter mobility process considerations, checklists and protocols for an efficient process—one that manages risks and professional responsibilities to clients, as well as the new firm's desire to quickly integrate the new client and attorney.

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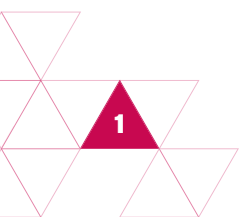
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INTRODUCTION

Some large firms report that nearly 10 percent of their partnership may leave the firm for another firm in a given year.¹ This increasing lateral movement triggers massive information transfers between law firms, creating a need for streamlined information transfer processes. The Symposium defines matter mobility as “the process of moving matters and their associated information into or out of a law firm, as triggered by client directives or lateral lawyer mobility.”² Both the firm that had been representing the client, and the firm to which the client matter is moving must account for a number of professional responsibility requirements during the transfer. Throughout the transition, firms must be mindful of the client’s right to competent and unimpeded representation, ensuring that matter transfer does not have any adverse impact on the client’s representation by counsel.

This report focuses on matter mobility as it relates to the transfer of a matter file – regardless of media format or the business reasons behind the transfer. While we acknowledge that matter mobility includes the movement of information at the direction of the client from the law firm back to the client, from one law firm to another, or from the law firm to another third-party, this report primarily focuses on matter mobility as it relates to the transfer of a matter file due to lateral movement.

A lateral transferring lawyer often thinks in terms of “taking his/her clients,” when in fact, each matter should be given consideration in the context of the move and what is in the best interest of the client. Keeping the focus on the mobility of matters, rather than on the transfer of the lawyers into or out of a firm, allows firms on both sides to view the event objectively from an information governance perspective. Creating a firm policy, and standardizing the processes involved in executing matter mobility will reduce risk and lessen or eliminate the uncertainty that can accompany what has become a fairly routine process. Finally, it is important to keep in mind that in some instances, when a lawyer transfers to a new law firm, it may better serve the client’s interest and the needs of the departing lawyer to leave some matter files with the original firm.

Administration of matter mobility does require a collaborative approach with representatives from multiple administrative and legal departments including, but not limited to, Information Governance and Records Management, 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 that can 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 that leverage 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 that the Director of Information Governance provide oversight for this process in consultation with the Information Governance Advisory Board.³

CULTURAL SENSITIVITIES

As with any significant undertaking in a law firm, there will be firm cultural sensitivities to consider when addressing matter mobility. Individual lawyers may have different perceptions on file ownership and custody. Those who have long-term and/or personal relationships with their clients may feel that 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.

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 that the other firm involved in a matter mobility event will have 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 will retain extensive collections of documents for a long period of 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 you can get from firm management. Increasingly, firm management at the new firm 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 that all risks have been properly managed.

COMMON PITFALLS

When it comes to matter mobility, information governance, risk management, technology, and client service considerations it 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.

The following is a list of common pitfalls encountered, and issues to consider when creating a formal policy and comprehensive process governing matter mobility:

- » **Lack of a well-defined and integrated internal process that includes a policy, procedures, checklist, and communication plan for matter mobility events.**
- » **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?**
- » **Excluding departments with a stake in the process - Records Management, Client Intake, Conflicts, Docket, IT, Finance, HR, etc.**
- » **Not assigning one department or individual to own and shepherd the process; e.g., a matter mobility project manager.**
- » **Lawyers' failure to connect their ethical responsibilities with the potential risks and task-intensive nature of the mobility process.**
- » **Lack of well-defined/collaborative/communicative process at the other firm that can create unrealistic expectations and slow down or hinder the process.**

- » Lack of cooperation from the lawyer, or other firm, due to a non-amicable separation.
- » Lack of pre-defined, firm-approved storage repositories result in increased risk of an incomplete transfer if information cannot be collected and released.
- » 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) that is 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?
- » Risk of unsecured/unencrypted physical and electronic file transfer.
- » Risk of lawyers transferring information without disclosure; e.g., flash drives, BYOD, etc.
- » Risk of lawyers or staff removing or transferring information prior to receipt of client authorization.
- » Lawyers wanting to keep copies of outgoing materials without proper authorization by the client.
- » Lack of standard naming conventions/profiling requirements in firm systems that 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.
- » Pressure to open matters and accept files quickly so the lawyer can start billing, e.g., how do you handle receipt of files before matters have cleared conflicts and been opened as new clients?
- » Lack of space and/or resources (e.g., labor) to accept and integrate a large quantity of incoming files.
- » 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:
 - Impacts storage costs
 - 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 that the firm is accepting representation?
- » Risk of accepting matter files that were not previously disclosed as part of the lateral hire conflicts checking process.
- » Risk of missing docket deadlines - especially for IP prosecution matters, but also for litigation matters. The firm should prioritize transferring docket reports.

» **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 that aren't vetted)
- Added costs if materials are stored offsite at firm expense

» **Absence of procedures after the transfer is completed:**

- For incoming matters - return, clean, or destroy media?
- For outgoing matters that are comprised of hardcopy files - allow or prohibit retaining copies. If retain, how do you manage into the future and how do you address retention for these matters?
- For electronic files – you must deal with electronic originals remaining on firm systems after release; do you retain for the regular retention period, assign a shorter retention period, or purge completely at the time of release?

POLICY

To ensure consistent matter mobility procedures, 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.

SAMPLE POLICY STATEMENT

There are occasions where records and information (firm administrative or client) are transferred to or from parties outside the firm. It is firm policy that these transfers are approved appropriately, that attorney professional responsibilities, chain-of-custody and security are carefully observed, and that 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.

ACCEPTANCE OF RECORDS

The firm will only accept records if the firm is assuming representation of the client, and the information is associated with a matter that will be opened in the firm systems. Lateral lawyers coming to the firm should have all conflict of interest issues addressed prior to arrival. The lawyer should be prepared to open matters prior to records and information being accepted during the transfer. Records associated with closed matters or for a lawyer's former clients will not be accepted in any format unless approved by the General Counsel.

Incoming client/matter records shall be profiled with a firm-assigned client/matter number and indexed by the Information Governance Department in the appropriate firm-approved repositories.

If the firm is not to be retained by the client, or if the records relate to closed matters for a client that is retaining the firm, the client/matter records will not be accepted without prior approval of the General Counsel. It is the ethical duty of incoming lateral lawyers to ensure that form files (templates) and other documents transferred as part of an incoming lawyer's personal cache are properly redacted to protect client and former client confidentiality.



General Counsel should approve the acceptance of client/matter records that relate to closed matters, or for matters for which the firm is not to be retained by the client, it should be made clear to the client that while the firm may have custody of such materials, they are not representing them (the client) in said matters. Additionally, those materials should be indexed in a separate number associated with the client. For example, some firms may elect to assign a number completely separate from the client (e.g., a lawyer personal cost matter number) and index such materials accordingly.

RELEASE OF RECORDS

The firm will not release records and information outside of the firm without proper authorization from the owner of the information (the client), 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) will be managed by the Information Governance Department. In some cases, clients may instruct their files be transferred to the lawyer's new firm or directly to the client. Client records are only released upon receipt of a letter or e-mail from the client. Notification from the client should include reference to specific files (or to "all matters"), some acknowledgement 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 keep copies of released records and, when copies are not retained, to stipulate that the receiving party agrees to inspection should it be necessary in the future. This determination is on a case-by-case basis and determined by the General Counsel. Files should be transferred in accordance with existing procedures for transfer of paper and electronic records. Any copies of client files maintained by the firm will be marked as such and retained in accordance with this Policy.

The firm reserves the right to determine the media appropriate for a particular release. In most cases, the client record for a matter will be stored in digital format and should be released in electronic format via a CD, DVD, or thumb drive. This information should be encrypted and secured in an appropriate manner.

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.

LAWYER AND STAFF DEPARTURE

Individuals leaving the firm may not remove 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. 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, to make sure that there are no client development or firm administrative documents included. Convenience and extra copies should also be removed at this time and destroyed.

In cases where an individual's employment concludes without advance notice, the Director of Information Governance will facilitate any requested releases and ensure the other provisions of this policy are observed.

The Director of Information Governance, or their designee, will inspect all containers including those containing personal information and belongings, as well as any electronic devices that are being removed from the firm.



MATTER MOBILITY PROCESS WORKFLOWS AND CHECKLISTS

As illustrated in the 2012 Law Firm Information Governance Symposium Report, "[A Proposed Law Firm Information Governance Framework](#),"⁴ 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 that 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. Do you intend to bring any clients with you to the firm? If no, please move to question 11.	
2. Have all names been provided to the Lateral Integration team for Conflicts search?	
3. Do you have a list of matters you plan to integrate into the firm? If yes, please attach to this form. Have you received authorizations from the clients to transfer these matters to the firm?	
4. 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 that we may speak to regarding this material. (Please refer to Technologies, Metadata and Electronic Transfer section of this report.)	



5. 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 that will be transferred to us?

6. 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.

7. 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.

8. Are there specific retention requirements, preservation/litigation holds, or pending destruction orders which apply to the matters you are bringing to the firm?

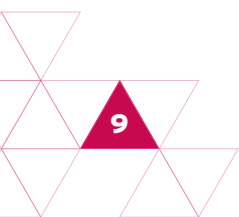
9. Are there specific security requirements which relate to any matters you will open at the firm? Do you intend to bring any PHI or PII?

10. 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.

11. What materials do you have under your personal control (e.g., PST's, CD/DVD's, USB's, etc.) that will be coming to the firm?

12. Do you intend to bring any administrative materials from your previous firm? If so, do you have a list of those materials?

The 2013 Symposium report, "[Building Law Firm Information Governance: Prime Your Key Processes](#),"² suggests that 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 that 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		

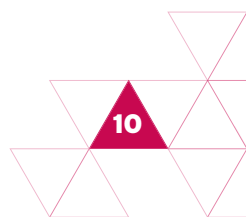
I acknowledge that I am in receipt of, and understand, the above policies as they relate to the firm.

NAME (Incoming Lawyer)

DATE

It can be argued that Newton's Laws of Motion apply 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 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 a member of 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.)

5. Are any of the matters you intend to take with you subject to litigation holds, or destruction orders?

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? Do you have a list of matters which will need to take priority?

7. Do any records contain PHI or PII that have not previously been identified? Does your client have a business associate agreement in place with your firm regarding this information?

<p>8. Do you have a contact name at your new firm to coordinate the transfer of physical material? If so, please provide. Do you have a contact name at your new firm to coordinate the transfer of electronic material?⁴ If so, please provide.</p>	
<p>9. For all remaining clients and matters, has a new client relationship-leader and a matter-responsible/transition lawyer been identified, and has the client been notified accordingly?</p>	
<p>10. Have all applicable physical records been transferred to the responsible lawyers, and 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 no, they will be destroyed within "X" days.</p>	



MATTER MOBILITY – DEPARTING LAWYER CHECKLIST

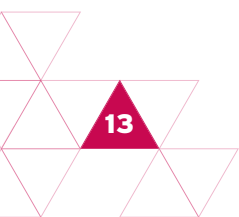
Have the following policies and procedures been provided, and has necessary training/education been conducted?

POLICY/PROCEDURES	COMPLETE	INITIALS AND DATE
Separation Policy (While both the Separation Policy and Client/Matter Disengagement Procedures/Policy should be provided at the time of onboarding it should also be provided again at the time of departure.)		
Client/Matter Disengagement Procedures/Policy		
Forms/Templates for Client Releases including sample Acknowledgement of Receipt of Records		
List of Responsible Clients/Matters to the Departing Lawyer to identify 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, he/she should identify matters that he/she intends to take, so proper collection procedures can be initiated.)		
List of Physical and Electronic Records “checked out” by Departing Lawyer. (While electronic records can typically be “checked in” by the IT Department, the intent of this list would be to confirm any document modifications have been completed.)		

I acknowledge that I have received the above items and have addressed them accordingly.

NAME (Incoming Lawyer)

DATE



MATTER MOBILITY – DEPARTING CLIENT/MATTER CHECKLIST

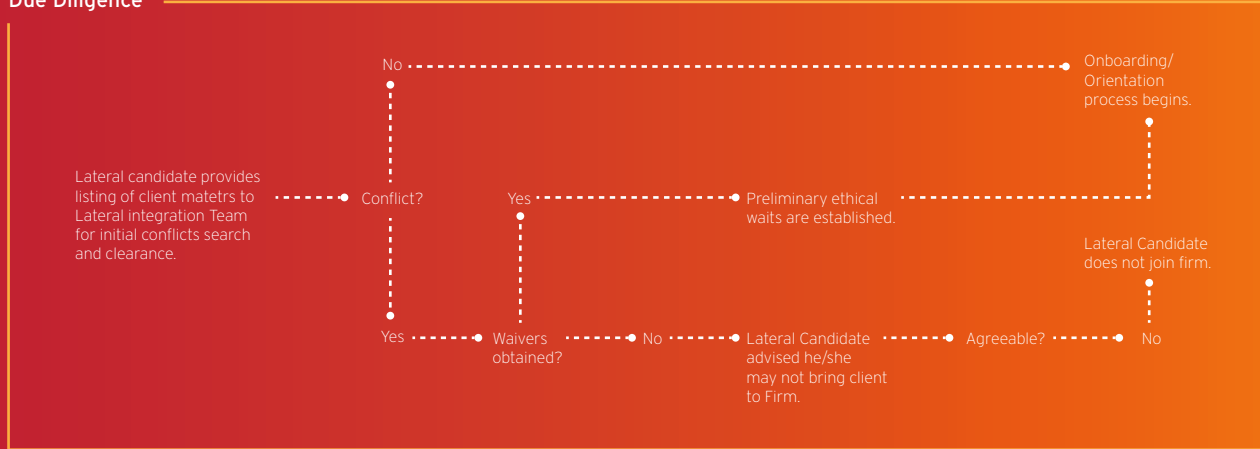
While matter mobility is typically triggered by lateral movement, there are times where a client matter or matters, may be transferred to new counsel without any corresponding lawyer departure. In such situations, it is still advantageous for a firm to have a checklist or workflow in place to ensure the necessary IG processes surrounding data movement are completed. Below is an example of such a checklist which could be used in such situations when a client or matter is transferring from the firm outside of 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?	
6. Have all physical and electronic records been collected from designated firm repositories?	
7. Has 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 of been provided to the new law firm?	

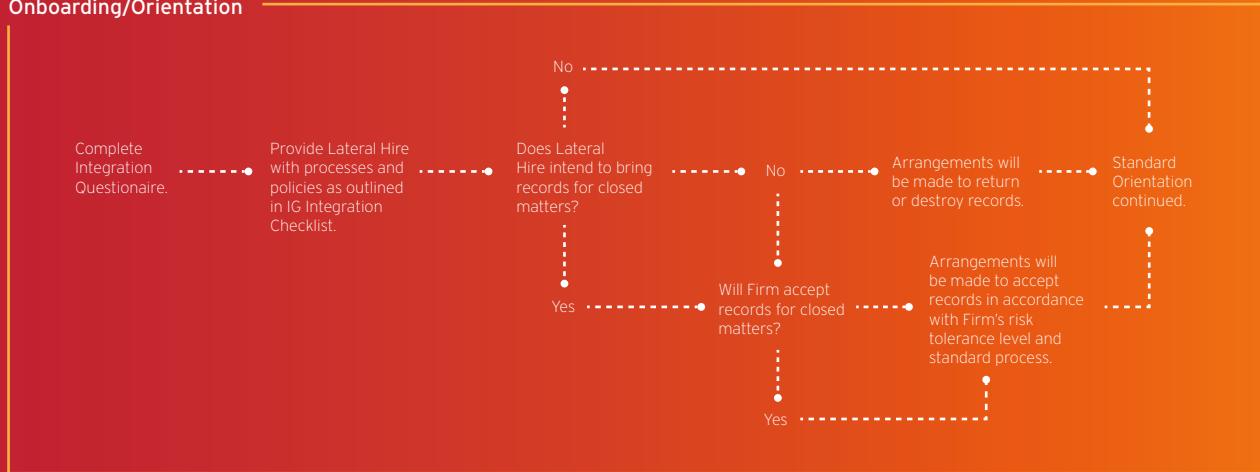
LATERAL HIRE WORKFLOWS

Matter Mobility IG Flowchart – Lateral Intake

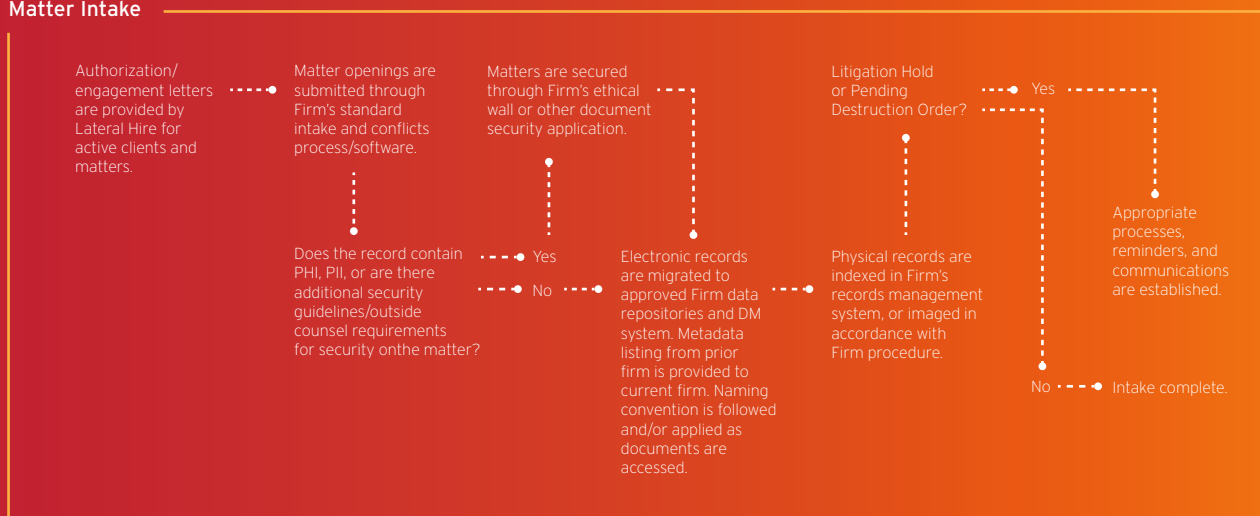
Due Diligence



Onboarding/Orientation

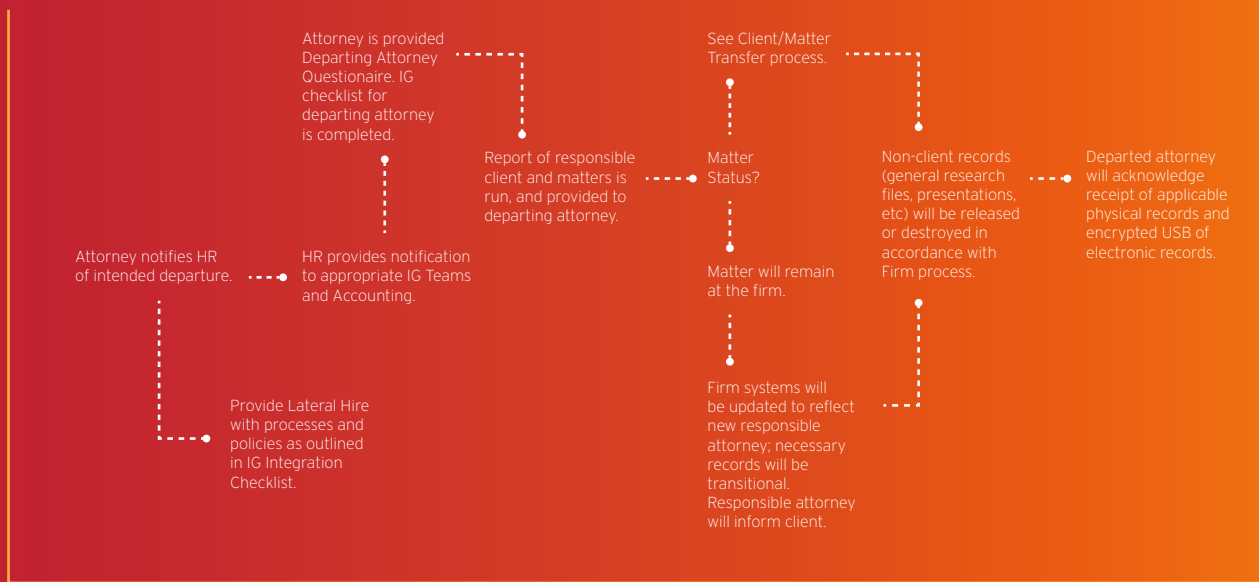


Matter Intake

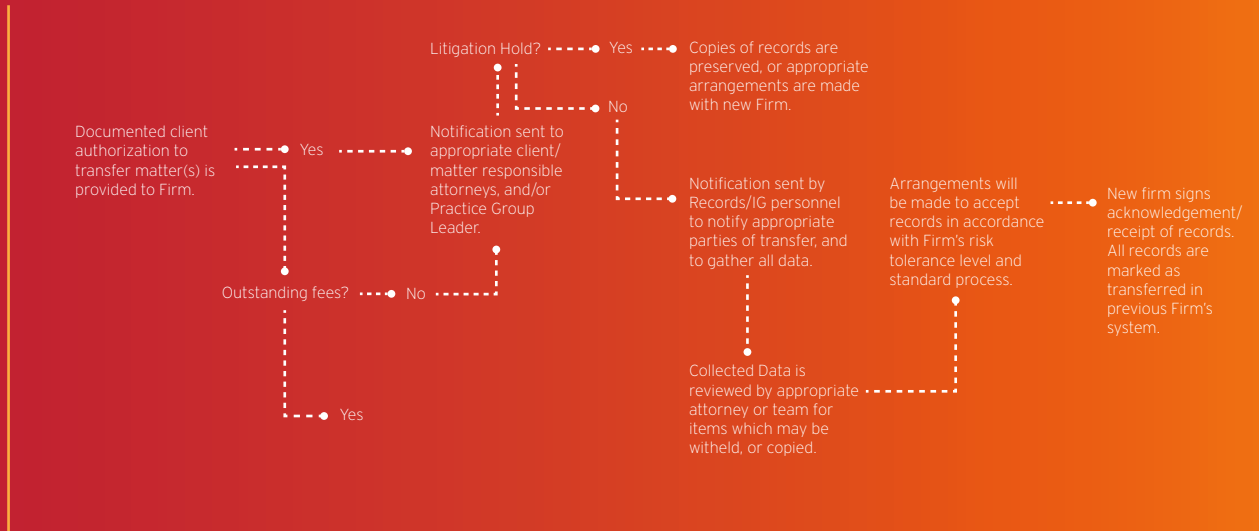


Matter Mobility IG Flowchart – Departing Attorney; Client/Matter Disengagements*

Departure Process



Client/Matter Transfer



*As client and/or matter disengagements may occur even when an attorney is not leaving the Firm, the "Client/Matter Transfer process may occur as a separate procedure.

TECHNOLOGIES, METADATA, AND ELECTRONIC TRANSFER

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 that have not been 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 that are patiently 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 conduct these procedures in a manner, and at a pace, that does 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 that are approved for import/export. This knowledge can help determine any additional change management, and other training that may be needed to ensure that the electronic files are managed in accordance with firm procedure after completion of the file transfer.

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.

GENERAL FILE REPOSITORY CONSIDERATIONS

The four 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. **Shared network drive files (share drives)**
4. **Records Management Systems (RMS) (serves as an index to hardcopy (paper files))**

Regardless of the source repository, it will be necessary to obtain the following basic information:

- » **How the electronic files are organized. Preferably, the files will be organized in a folder structure or tagged in a way that identifies the client matter associated with each file.**
- » **If the data is organized in a hierarchical folder structure, should the folder structure be maintained in the file export? Exporting files in a manner that retains the folder structure may impact the metadata export. For example, a DMS may allow for lengthy folder names that will 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 that has been 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 may need full access to the files in order to ensure that 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.**

For example, a senior partner leaving to join a client that will remain a client of the firm may reconsider a request to transfer all files once he/she learns that the volume of data is over a million documents! It may make more sense for the client to revise their approval to state that only the latest versions of all DMS files relating to the matter(s), or the client may prefer to continue to have the law firm maintain the files after the partner's departure. Performing quality assurance checks on imported and exported files is imperative. Comparing file sizes and document counts is important, that's why each firm should ensure the exported data can be processed by the receiving firm. Failure to take this important step may result in incomplete or corrupted file transfers, and could impact client service.

If the file transfer results in the permanent release of files, it is important that the final step of file deletion take place after the file transfer is completed. It is a best practice to maintain the deleted files in a "soft delete" state for a minimum of 30 days in the event that the receiving party encounters issues when importing the files.

Finally, a firm may choose to indefinitely retain released files in order to protect the interest of the firm. While the focus on the file export and subsequent import is primarily on the data to be transferred, you shouldn't lose sight of the need to notify and train the user(s) when the files become available for their use. For example, if a lawyer is moving to a new law firm, it is not sufficient to simply inform him/her that the file import is complete. Personalized coaching or at a minimum, written instructions should be provided on how to access the files and the firm's policy regarding the management of client files. Large file transfers often take place in stages, and it is important to keep the lawyer and case team informed as new files become available for their use.

SUPPORTING TECHNOLOGIES

Import/Export Tools – For large 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 that are no longer needed after the export has been completed and verified. As noted previously, it is a best practice to initially perform a 'soft delete' in the event that the file transfer is not successful and the file export needs to be repeated.

MS Excel® – Excel documents (spreadsheets) are used extensively by firms to process metadata that has been 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.

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 to transfer data between parties. In place of secure FTP capability, some firms opt to transfer the media unencrypted, and require the receiving party to pick-up (in person) and assume custodianship of the media in the sending party's office.

DATA TRANSFER "MEET AND CONFER"

Prior to the initiation of data transfers, it is important to reach agreement with the parties involved regarding the scope and format of the file transfer. This can be accomplished in a '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.

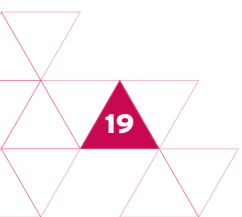
» **Scope of data set(s) approved for transfer; e.g., client(s), matter(s), and corresponding data volumes approved for transfer**

» **The DMS system used - all versions/latest version to be included**

- » Network drive files - original client data, litigation support databases, and corresponding data/images, SharePoint® site content, etc.
- » The type of email system, PST files/email archives
- » Data under the personal control of an individual, e.g., personal computer, removable media, mobile device, etc.
- » Data that will not be included in transfer; e.g., matter administration and files not filed under the specific client matter(s) approved for release
- » Format of data set(s) - file format(s), field names, and character parameters for each data set in the file transfer
- » 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
- » Technology infrastructure review:
 - Software, including specification of software version(s) of sending/receiving parties for each data set included in the file transfer
- » File transfer protocol:
 - Instructions for the onsite pickup/delivery of encrypted removable media
 - The location of the secure FTP site (URL)
- » Administrative considerations:
 - 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
- » The contact details for individuals responsible for ensuring that each data set is exported, transferred between parties, and imported.

TRANSFERRING DOCUMENT MANAGEMENT SYSTEM (DMS) FILES

- » Export DMS documents in flat file format into a single Windows® folder that contains only the data that needs to be imported by the receiving party. A flat file format prevents the truncation of characters when a folder structure contains folder names that exceed 255 characters.



» Follow a standard naming convention for all exported files. For example, <docnum>_<version>.<app extension> (e.g., 3787653_3.doc).

» 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

IMPORTING DMS FILES

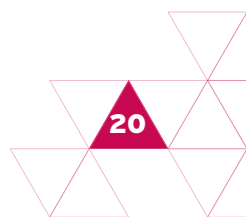
» Confirm with new business that matter has been opened.

» Specify DMS destination folder(s).

» Import content under a valid user name in the Author/Operator field.

» Ensure document properties indicate that the file was imported into the DMS.

» Import any lawyer personal files to DMS matter specified for lawyer personal use, or network drive folder with the relevant individual designated as the Author/Operator, and access control set so that only the lawyer has access.



TRANSFERRING NETWORK DRIVE FILES

There may be files on network file shares that should be included 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 that has been 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, keeping in mind some firms use both. Other firms consider the email system as a temporary repository and enforce file and purge policies that require users to move email records to a DMS within a specified time period. *Note: 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) as not part of the matter file materials that are to be released.*

The file transfer process can often be an opportunity to educate a lawyer on how to move email to a designated records repository for official client records. If the file transfer includes a PST file, but the official repository for email of the receiving party is a DMS, then it will be necessary to 1) instruct the lawyer and/or other case team members where in the DMS the emails contained in the PST will be stored, 2) how to access and take action on any email that is imported to the DMS, and 3) how to properly move email records into the official repository going forward in the new email environment, as well as any limitations or system thresholds that have been set in the new email system.

PST is a standard format for use in importing email file(s) into the Microsoft Exchange® email system. PST files transferred to a receiving party should contain only data that is within the defined scope of the transfer, and only email that needs to be imported by the receiving party. Note that there may be a technical limitation if you have voluminous mail files to export. For example, a DMS correspondence folder that contains 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.

Here are some guidelines for these email situations:

- » **First, determine if the email will be imported into a DMS, a new mailbox file or saved to a network drive.**
- » **Import calendar, tasks, and contacts to the lawyer's email file.**
- » **Specify the DMS destination matter folder specified for any email to be imported to a DMS Correspondence folder (or its equivalent).**

TRANSFERRING HARD COPY (PAPER) FILE METADATA

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 that relate 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 that specifies the scope of the file transfer, including instructions on what steps need to be taken in the event that material that is not related to the matters approved for transfer was inadvertently included in the data set, and contact information in the event that there are questions or technical issues encountered by the receiving party.

REFERENCES

1. *Is Reliance on Lateral Hiring Destabilizing Firms?* Zorn, *The American Lawyer*, February 3 2014, William Henderson and Christopher.
<http://www.americanlawyer.com/id=1202639515457/Is-Reliance-on-Lateral-Hiring-Destabilizing-Firms?sreturn=20140614114724>
2. *Building Law Firm Information Governance: Prime Your Key Processes*; July 2013, Iron Mountain Law Firm Information Governance Symposium.
<http://www.ironmountain.com/Knowledge-Center/Reference-Library/View-by-Document-Type/White-Papers-Briefs/B/Building-Law-Firm-Information-Governance.aspx>
3. *Emerging Trends Task Force: A Profile of the Law Firm Information Governance Professional*; July 2014, Iron Mountain Law Firm Information Governance Symposium.
<http://www.ironmountain.com/Knowledge-Center/Reference-Library/View-by-Document-Type/White-Papers-Briefs/e/Emerging%20Trends%20Task%20Force%20Report%20A%20Profile%20of%20the%20Law%20Firm%20Information%20Governance%20Professional>
4. *A Proposed Law Firm Information Governance Framework*; August 2012, Iron Mountain Law Firm Information Governance Symposium.
<http://www.ironmountain.com/Knowledge-Center/Reference-Library/View-by-Document-Type/White-Papers-Briefs/A/A-Proposed-Law-Firm-Information-Governance-Framework.aspx>

BIBLIOGRAPHY

This bibliography contains a sampling of relevant bar association rules, opinions, court rulings, and other publications that firms may want to consider as they develop matter mobility processes and practices.

BAR ASSOCIATION GUIDANCE AND RULES

American Bar Association Model Rules of Professional Conduct: Rules 1.1, 1.3, 1.4, 1.6, 1.7, 1.9, 1.10. Florida is governed by Rule 4-5.8

American Bar Association Standing Committee on Ethics & Professional Responsibility, Eth. Op. 99,414, 2009

Illinois Attorney Registration & Disciplinary Commission. Leaving a Law Firm: A Guide to the Ethical Obligations in Law Firm Departure. April 2011

<https://www.google.com/#q=Leaving+a+Law+Firm%3A+A+Guide+to+the+Ethical+Obligations+in+Law+Firm+Departure> >.

New York City Association of the Bar Committee on Professional & Judicial Ethics, Eth. Op. 2008-1, 2008

North Carolina Bar – Valuing Effect of Lawyers' Departure in Firm Agreement, Eth. Op 6, 2007 WL 5768459, (N.C. State Bar), April 20, 2007

Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility, PA Eth. Op. 2007-300, 2007 WL 5162473, (Pa. Bar Assn. Comm. Leg. Eth. Prof. Resp.), June 2007

Texas Supreme Court of Texas Professional Ethics Committee, TX Eth. Op. 607, 2011 WL 5831795, Tex. Prof. Ethics Comm., July 2011

CASE LAW AND RULINGS

In re Howrey LLP, Slip Copy, 2014 WL 507511, Bkrtcy. ND Cal., February 07, 2014 (NO. BR 11-31376DM, AP 13-3095DM)

In re Thelen LLP, 736 F.3d 213, 2013 WL 6037232, 58 Bankr. Ct. Dec. 198, C.A.2 (N.Y.), November 15, 2013 (NO. 12-4138-BK)

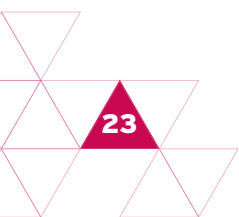
In re CMH Homes, Inc., Not Reported in S.W.3d, 2013 WL 2446724, Tex. App.-San Antonio, June 05, 2013 (NO. 04-13-00050-CV)

Roosevelt Irr. Dist. v. Salt River Project Agr. Imp and Power Dist., 810 F.Supp.2d 929, 2011 WL 3799100, D. Ariz., August 26, 2011 (NO. CV 10-00290 DAE-MHB)

Silicon Graphics, Inc. v. ATI Technologies, Inc., 741 F.Supp.2d 970, 2010 WL 3860374, 99 U.S.P.Q. 2d 1508, W.D. Wis., October 05, 2010 (NO. 06-CV-611-BBC)

Kirk v. First American Title Ins. Co., 183 Cal.App.4th 776, 108 Cal.Rptr.3d 620, 2010 WL 1346403, 10 Cal. Daily Op. Serv. 4356, 2010 Daily Journal D.A.R. 5212, Cal.App. 2nd Dist., April 07, 2010 (NO. B218956)

Buckingham, Doolittle & Burroughs, LLP v. Bonasera, 157 Ohio Misc.2d 1, 926 N.E.2d 375, 2010 WL 1507950, 2010 -Ohio- 1677, Ohio Com.Pl., March 08, 2010 (NO. 09 CVH-01-553)



ARTICLES, PUBLICATIONS AND BLOGS

The Ethics of Lateral Moves, July 8, 2014 Goldberg Segalla
<http://professionalliabilitymatters.com/2014/07/08/the-ethics-of-lateral-moves/>

Chiaiese, Beth and Lee Nemcheck. *Information Governance in the Legal Environment: Lawyer and Matter Mobility*. ARMA International, 2014

Feldman, Edward W. "Be Careful What You Reveal, Model Rule of Professional Conduct Litigation:" *The Journal of the ABA Sec. of Litigation*, Vol. 38 No. 4, 2012.

Hillman, Robert H. *Hillman on Lawyer Mobility: The Law and Ethics of Partner Withdrawals and Law Firm Breakups, 2nd Edition*. Law Practice Management, 2014

Isaacs, Leigh and Pat Sievers. "The Laterals are Coming, the Laterals are Coming - Emails, Documents and Files - Oh My!" *ILTA Peer to Peer Magazine*, 2014

Rice, Marion. "Lateral Movement." *American Bar Association, Law Practice Magazine*, Volume 38 Number 6, 2012

http://www.americanbar.org/publications/law_practice_magazine/2012/november-december/ethics.html.

<http://blogs.ironmountain.com/2013/service-lines/records-management-and-storage/amped-up-for-arma-managing-mobility-of-matter-files-with-terrence-coan>.

Tremblay, Paul R. *Migrating Lawyers and the Ethics of Conflict Checking*. Digital Commons @ Boston College Law School, 9/2005

INSURANCE CARRIER GUIDANCE

Creamer, Robert. "Issues in Lawyer Mobility." *Attorneys' Liability Assurance Society, a Risk Retention Group*, 2011
<http://apps.americanbar.org/buslaw/committees/CL290000pub/newsletter/201207/creamer.pdf>.



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