LEGAL MANAGEMENT

THE MAGAZINE OF THE ASSOCIATION OF LEGAL ADMINISTRATORS

OM Feature

OPERATIONS MANAGEMENT

Overcoming the Top Four Record Management Challenges

Is your firm's document storage and deletion system stuck on pause?

Law firms generally amass a large amount of paperwork, so file management efforts can often feel like a challenge — or a catastrophe.

ERIN BRERETON
Owner, Chicago Journalist Media

Many firms use software to label and initially file documents. When it comes to record storage and deletion, however, 21 percent of firms say they have no policy in place.

In fact, 35 percent of firms say their attorneys' collective reluctance to destroy client files is the biggest obstacle to maintaining a document management program, according to *Iron Mountain's Law Firm Information Management Benchmark Report*.

"Part of the issue is, just from the standpoint of practicing law, you don't want to keep everything — but that's been the mentality," says Matt Hobbs, Managing Director at Duff & Phelps, who is part of the consulting firm's legal management consulting practice.

Firms may be aware that getting rid of outdated files makes sense; however, many still aren't removing the documents from their system. "[In the past few years,] more firms have been talking about it, but unfortunately, very few actually take record retention schedules and systematically apply them to their processes," Hobbs says.

With fewer files to house and search through, law firms can potentially increase productivity, reduce storage-related expenses and provide clients with greater assurance that their information is being handled securely.

So why are some firms struggling to hit the delete key? In many cases, their hesitancy is due to one or more of the following retention program roadblocks.

QUICK HIT 1

With fewer files to house and search through, law firms can potentially increase productivity, reduce storage-related expenses and provide clients with greater assurance that their information is being handled securely.

"There's really no way to completely remove the human element, and that's largely the biggest challenge in any kind of document record management system."

RICHARD KOTWA
Director of Client Information and Records Compliance, Sutherland Asbill & Brennan LLP
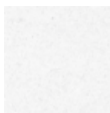
1. PILES OF FILES

One of firms' biggest challenges, according to Richard Kotwa, Director of Client Information and Records Compliance at global law firm Sutherland Asbill & Brennan LLP, is the diverse number of file formats attorneys produce.

"Theoretically, a text message could be a record, an IM could be a record, emails are a record — even notes on a sticky pad," Kotwa says. "There are so many different physical and electronic mediums that a record can be created on now. Classifying, tagging and storing all that is the next challenge."

2. PERSONAL RESPONSIBILITY

Although it's likely rare — and probably not a good idea — for a firm to rely on attorneys to do all the file naming and filing, even with software to help, user responsibility plays a part.

At Kotwa's firm, when an engagement starts, the responsible partner, attorney or legal secretary initiates a file request, prompting the accounting department to assign a number to the matter. The file retains that number, which is also used to generate billing, as it moves throughout the system — a fairly common law firm routine, Kotwa says.

Sutherland has added some aids over the years to help automate the process. For example, after an attorney puts several related emails into the appropriate workspace, the system will begin to ask if the lawyer wants to file similar items in the same place.

"There are tools that can be bolted onto the system that we've used, but there's really no way to completely remove the human element, and that's largely the biggest challenge in any kind of document record management system," Kotwa says.

To reduce human error, firms may want to consider putting processes in place like Sutherland's, designed to ensure users fully understand the system. The firm trains all new employees, and when it introduces a new system, the entire firm undergoes training.

QUICK HIT 2

Firms rarely completely automate the file deletion process. More frequently, they establish a system in which a lifecycle management report alerts key firm members that certain files are scheduled for removal, according to Matt Hobbs, Managing Director at consulting firm Duff & Phelps.

"Theoretically, a text message could be a record, an IM could be a record, emails are a record — even notes on a sticky pad. … Classifying, tagging and storing all that is the next challenge."

RICHARD KOTWA
Director of Client Information and Records Compliance, Sutherland Asbill & Brennan LLP

3. CHANGING SECURITY NEEDS

Although a number of firms have chosen to go completely paperless in recent years — 28 percent had or planned to in the following five years, according to a *2012 Iron Mountain survey* — some still retain physical copies of all or some files.

Attorneys often insist on having a paper trail, even on digitally created documents, because they don't trust the longevity of digital documents.

"The idea of someone hacking into a law firm and having all those confidential documents exposed is a total nightmare," says Arthur Gingrande, Attorney and Founding Partner at IMERGE Consulting, which specializes in business process optimization, legal compliance and records management.

Data security has become a more pressing (and public) concern, thanks to highly publicized incidences like the 2013 Target breach, in which approximately 40 million credit and debit card accounts may have been affected, according to the retailer. Now, clients in many industries — including the legal space — have shown an increased interest in how their information is being stored.

To address client concerns, firms can outsource some security needs to a professional — a trend Huron Consulting Group Senior Director Bret Baccus says is becoming more prevalent.

"You see law firms that have been migrating, instead of hosting data on their own server, to data that's hosted outside by a server facility so that encryption, security and redundancy is all with a third-party provider, and the law firm can focus more on core competency," he says.

However, even if they've addressed all major in-house security concerns, firms need to be careful about storing items in too many places.

"Lots of lawyers take their work home on flash drives, and it ends up on their home computer," Gingrande says. "Without an official system, you could get in trouble. If you've destroyed all other copies and there's one digital copy left, you haven't completed your task — and that could haunt you down the road."

"Without an official system, you could get in trouble. If you've destroyed all other copies [of a file]

4. SETTING AN EXPIRATION DATE

Attorneys are required to carefully maintain work-related records. The ABA Model Rule of Professional Conduct 1.15 (2004) requires lawyers to safeguard the property of clients and keep records of client property. Similarly, the ABA Model Rule 1.16(d) provides that, upon termination of representation, "a lawyer shall take steps … to protect a client's interests."

and there's one digital copy left, you haven't completed your task — and that could haunt you down the road."

ARTHUR GINGRANDE
Attorney and Founding Partner, IMERGE Consulting

Other state and federal laws and regulations may also require information retention for a specified period of time. Firms may also have their own policy.

Years ago, when paper files stored off-site were the norm, firms didn't always bother to pull up and destroy old files because it was expensive and took effort, Baccus says. Today, that's changing.

"What we're seeing is [some] firms evolving to have that records retention system in place to allow them to begin handling documents more systematically," he says. "One reason is cost. One is security and risk management."

To save on physical and electronic storage fees — instead of letting documents linger and take up space on a server or in a rented warehouse — law firms need to establish a system with clearly defined preservation periods. (Filling a 50-square-foot area with 100 or so boxes from an attorney, at rental rates of $35 a square foot, costs a firm $131,250 per attorney per year, according to *Law Technology Today*.)

Software, Hobbs says, can help. "After a matter closes, record management software can kick in and take all the content the DMS has been managing for that matter, put on a control so that no one else can edit it, and manage those documents through that lifecycle," he says.

Attorneys can still locate the information, but the clock has begun ticking as the file moves to being archived and, ultimately, prepared for deletion.

"We've never seen that on a date, boom, all content is automatically deleted," Hobbs says. "Typically, firms implement a vetting process. Maybe every quarter, a lifecycle management report that says certain matters are ready to delete often goes to the originating attorney or another firm member to give the thumbs-up."

If the file needs to be saved, it can be retrieved. But if it's that file's time to go, the document can be permanently deleted, instantly eliminating an outdated file, erasing potentially sensitive client information from your system—and providing more server space for new, potentially profitable work.

ABOUT THE AUTHOR

Erin Brereton is a Chicago-based freelance writer, editor and marketing consultant who has written about the legal industry, finance, business and other topics for the *Chicago Tribune, Legal Management, Commercial Law World* and other publications.

Email
Website