The Matter Mobility Challenge

By Andrew Keller, Director of Information Governance – eSentio Technologies

As the lateral movement of lawyers continues to increase at unprecedented rates, the information management challenges of moving and managing attorney and client files are mounting. One of the top issues we hear from Firms is their ability to efficiently, securely, and compliantly handle the ever-growing volume of transfers. According to NALP lateral hiring was up by 22% in 2018 and held basically steady for 2019 and 2020. With some Firm's embracing the new remote working paradigm, more lateral movement is predicted for 2021 as geographic limitations become less critical.

The Challenge is not just the volume.

The matter file is dispersed. Querying the many data silos to compile the COMPLETE eligible record set is challenging. With the myriad of systems potentially housing relevant files, after the records are identified, finding IT resources available to facilitate the request and respond with the urgency required is challenging.   It is increasingly common to see a departing attorney leave on a Friday and start with another firm the following Monday. This time pressure exacerbates an already hectic process.

The risks associated with not moving the complete set of related files or transferring files that should not leave the firm are high. Security and privacy concerns are justified as information is in-flight often out of the direct control of the originating system or moving outside the firewall. Although access controls and ethical walls are in place for the primary systems, they are less likely to be applied as files are collected and managed outside of the primary systems.

Once the identification process is completed, actually extracting, vetting and packaging the data into a consumable, actionable format for the necessary reviewers and approvers poses an even greater challenge. Materials must be reviewed in order to determine what should go, what should not go, what should be copied before it goes, and what needs further approvals. Appropriate signoffs, from management, from clients, from the responsible attorney, sometimes from the General Counsel, must all be obtained and documented.

Finally, processing the transfer, the actual exporting (and destroying) of the correct and fully eligible and approved files, folders, boxes, docs, emails, etc. must be accomplished with an efficient, repeatable, and auditable procedure. Format, transmission, handoff protocols, and communications are all factors which require consideration.

The Art of Matter Mobility

Blending usability and risk - It would be nice if we had a single repository for all things matter related, but that's not yet reality. Although many firms have moved to a more matter centric DMS environment, the fact remains, there are multiple systems involved in storing, managing, searching, and accessing matter related content.   In order to successfully manage matter mobility there needs to be visibility to all repositories with matter related information. Comprehensive information governance policies should cover the notion of "authorized repositories" and a process for authorization. Multiple authorized repositories can then be linked or registered in a collection tool in order to apply matter mobility management controls.

Ease the review process - Once all of the matter related files are assembled into a collection there must be a review and approval process. The key is to make this process as simple and effective as possible. Provide guidance, through information governance policies, to standardize general decisions about; what types of materials are eligible for transfer; what types of materials are generally not released; what information to retain and for how long. That way, transfer decisions are reduced to identifying only the exceptions. Where more thorough review is required, efficiencies are gained by presenting the reviewer with a single console to view the inventory of files regardless of system origin and select appropriate actions on the complete set of matter related records.

Automate the collection process – With multiple system owners and administrators, various formats and protocols, differing transport mechanisms, and potential security and ethical walling issues, it makes sense to apply automation to the transfer collection process. Cost and risk reduction is accomplished by reducing the involvement of IG, IT and Records resources, reducing the collection error rates, and minimizing the number of touch points.   Additional efficiency is gained by automating the transferred matter file lifecycle to incorporate an archiving period and, ultimately, destruction of the eligible records.

The Future of Matter Mobility

As firms realize that clients, and increasingly lawyers, are much more transient, there will be more and more adoption of strong information governance practices. Supporting technologies

to manage disparate information platforms in a centralized model will continue to evolve allowing the continued use of best of breed functional solutions.   The ability for firms to efficiently move client or matter information sets to other parties (specialty counsel, service providers, merged or partner firms, etc.) will become a strategic advantage. The speed at which a firm can ingest incoming matter information and release matter files upon request are key requirements for effective client representation.   Powerful new technologies are available today that were unheard of a few years ago. Automating the notification, review, approval, and collection processes not only help mitigate the information risks involved with matter transfers but also reduces the burden on records and IT staff.