



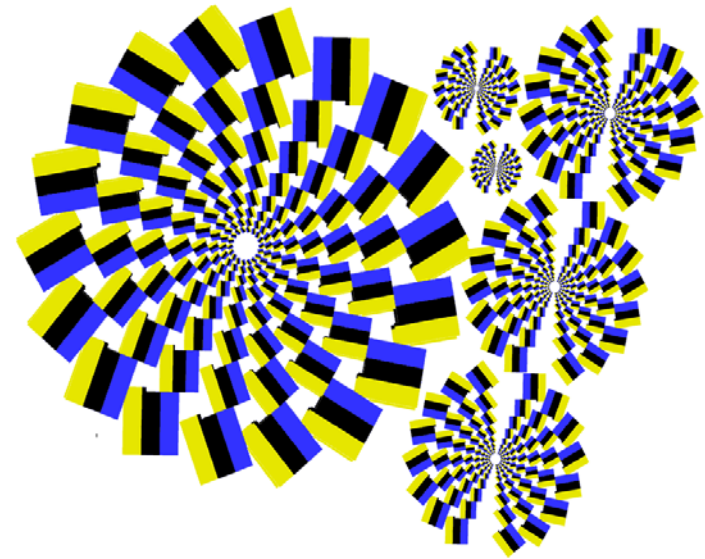
Best Practices for On- and Off-Boarding Lateral Attorneys

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Focus of Today's Talk

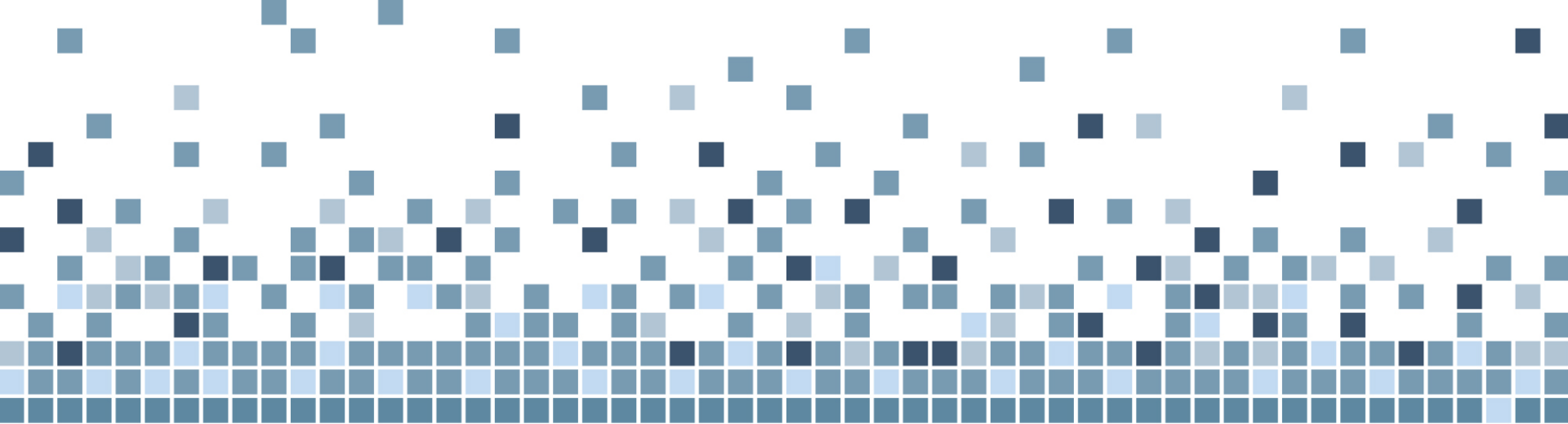
- There are lots of moving parts related to onboarding and off-boarding attorneys in a law firm
- This talk focuses on IG issues related to:
 - The mobility of lawyers
 - The mobility of legal matters



Outline

- **What is Mobility?**
 - Lawyer Mobility
 - Matter Mobility
 - Information Mobility
- **Risks**
 - Ethical, Business, Operational
- **WIIFM?**
 - Competing Interests
- **Best Practices For:**
 - Incoming Lawyers (and Clients)
 - Departing Lawyers (and Clients)

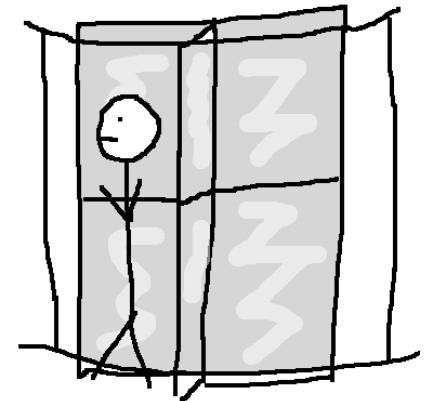
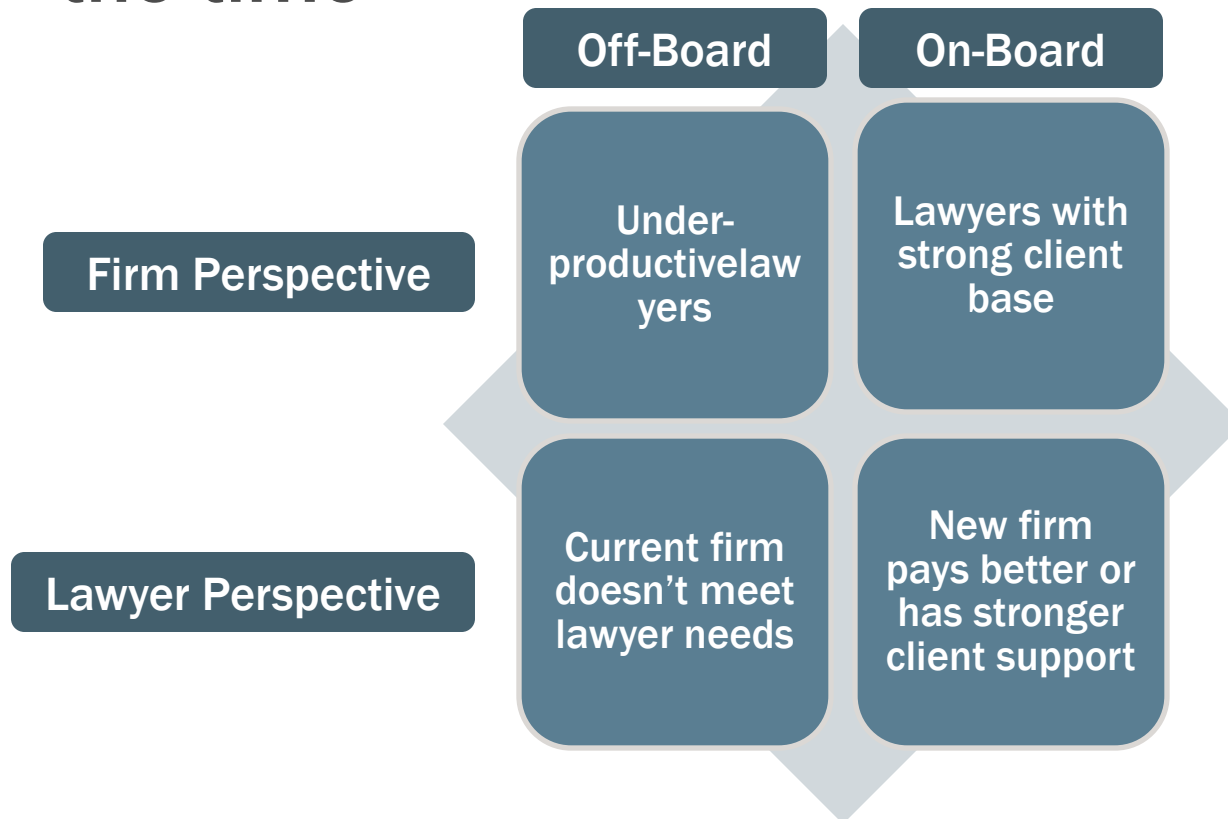




What Is Mobility?


Lawyer Mobility

- Lawyers are moving to and from law firms all the time



Matter Mobility

- The movement of client relationships and legal matters from firm to firm
- Sometimes this happens because of a moving lawyer
- But sometimes it happens because a client decides to move



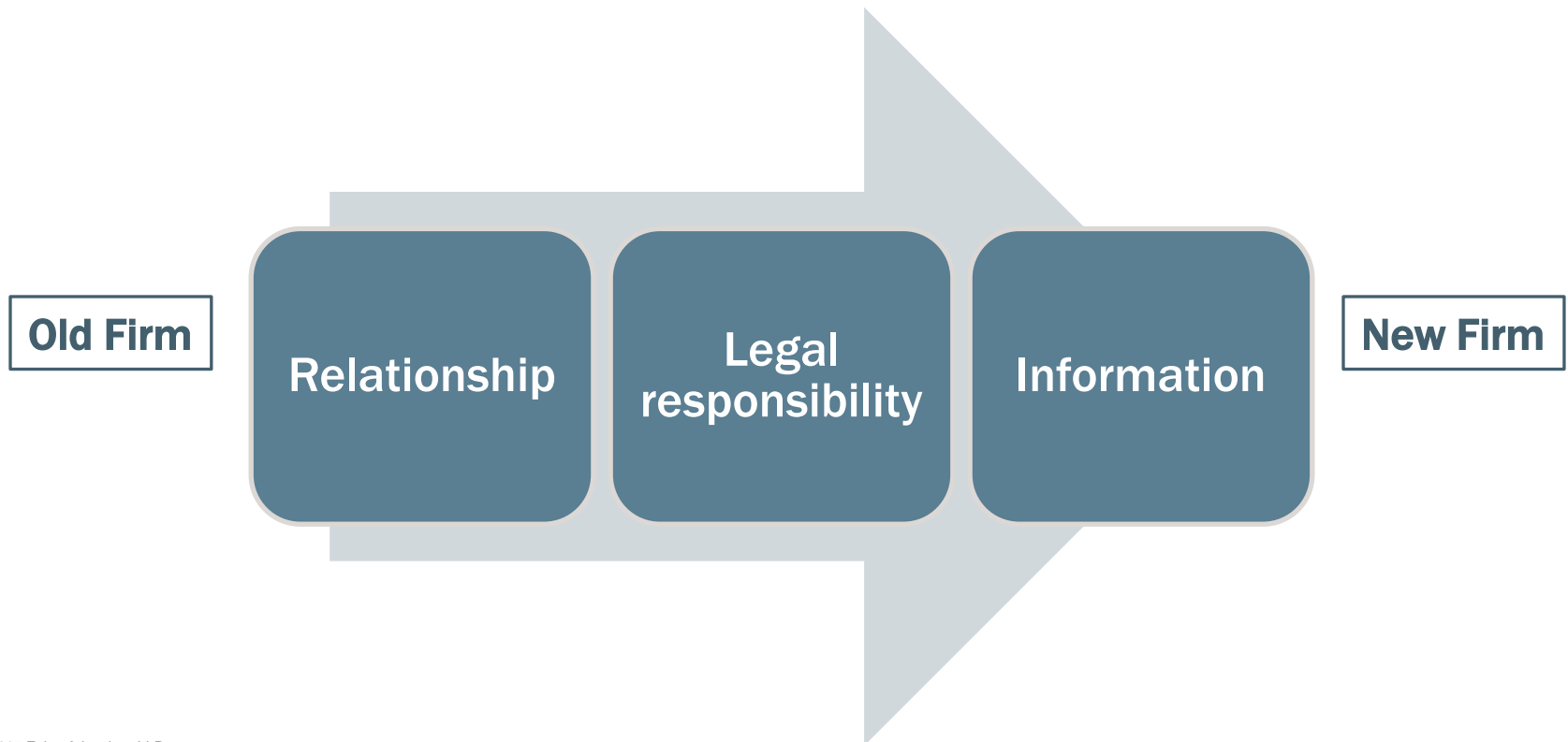
We call this
“disengaging”



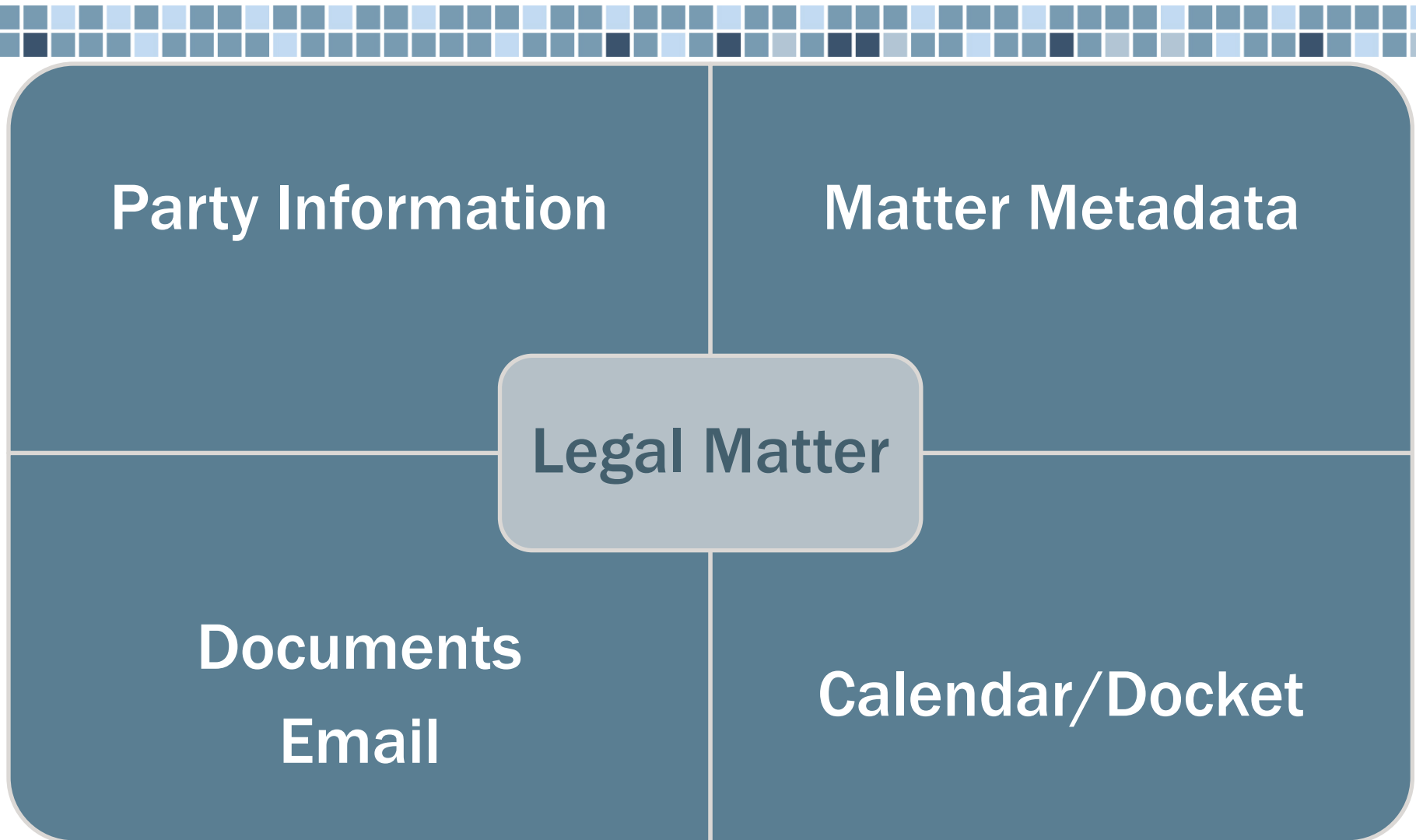
FIRED!

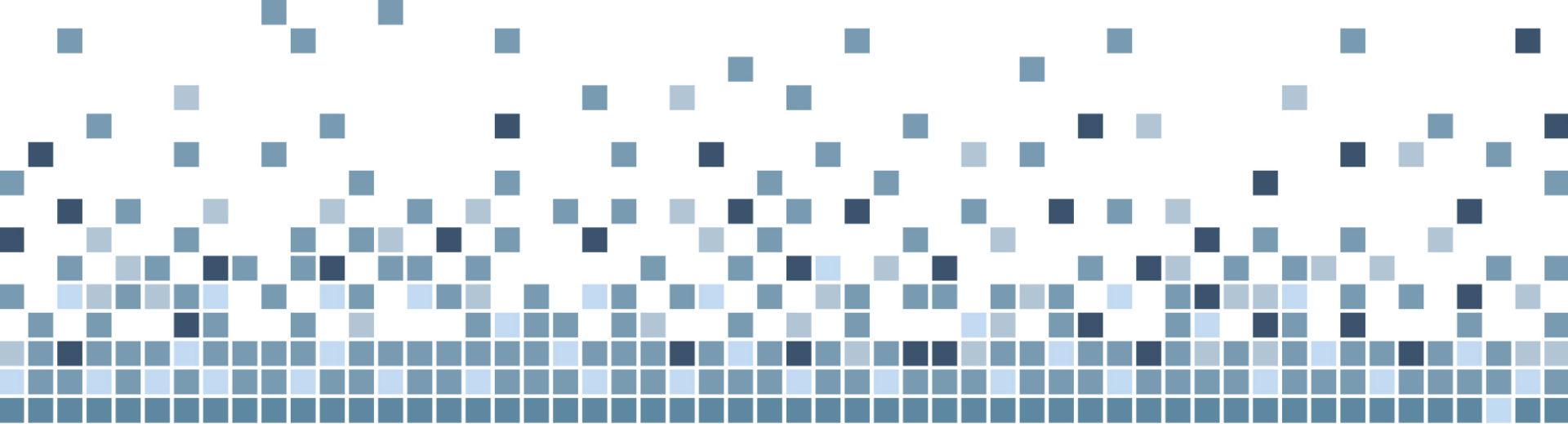
Relationship to IG

- When legal matters move, so do lots of other things



Information Mobility





Risks

Ethical Risks

Lawyer Professional Responsibilities

Avoid Conflicts

- Undetected conflicts during mobility can harm the client and lead to possible disqualification of the new firm

Obtain Informed Consent

- In many states, information belongs to the client
- The client has the right to choose its counsel and to release its information

Protect Client Interests

- Who is protecting the client's interests during the transition?
- If something goes wrong, is the old firm or the new firm responsible?

Business Risks

Impact of Lawyer Mobility on the Firm

Lost Business

- Losing lawyers means losing clients
- Losing clients means losing revenue

Poor Due Diligence

- Law firms sometimes overestimate the value of the lateral's portable clients
- The lateral's disclosure of information is incomplete

Transition Issues

- A bad transition (in or out) impacts client services and makes the firm look bad
 - Lateral: "And why did I join this firm?"
 - Departing Lawyer: "My old firm was terrible."

Operational Risk

Impact of Process on Client Interests

Lack of Coordination

- No one “owns” the process, leading to lack of coordination and confusion

Poor Execution

- Lack of defined methodology and process causes mistakes

Timing & Communication

- Firms fail to communicate to departments about arrival and departure dates



Competing Interests (Or: WIIFM?)

The Moving Lawyer Has Competing Interests

- The moving lawyer is simultaneously:
 - A departing lawyer
 - A lateral lawyer
- The moving lawyer has:
 - Ethical obligations to his/her clients
 - Fiduciary obligations to his/her current firm
 - Promises to keep to the new firm
 - Obligations to his/her career





Best Practices for On-Boarding Attorneys (Or Clients)


Overview

- **Due Diligence – Conflicts of Interest**
 - Data Collection
 - Analysis and Resolution
- **Hire Date**
- **Pre-Arrival Planning**
- **New Business Intake**
- **Information Transfer**




Conflicts Data Collection

Best Practice – Lateral Questionnaire

- 
- **Consistent data for each lateral**
 - **Background information**
 - Work and practice history
 - Billings
 - Loss Prevention
 - **Conflicts information:**
 - Clients/matters/parties (former, current and prospective)
 - Confidential information
 - Doing business with/investing in clients
 - Outside positions
 - **“Look Back” period – how far back does the lateral need to go re former clients?**

Conflicts Analysis

Best Practice – Experienced Conflicts Attorney

- 
- An experienced conflicts attorney should review the results and identify conflicts
 - Possible conflicts
 - Discuss internally and with candidate
 - Actual conflicts
 - Will clients waive?
 - If so, obtain waivers before start date
 - If ethics walls are needed, implement them timely

Setting A Hire Date

Best Practice: No Start Date Until Conflicts are Complete



- The offer can be made and accepted, but no start date should be set until:
 - The conflicts department indicates conflicts have been:
 - Searched
 - Analyzed
 - Cleared/Resolved

Pre-Arrival Planning


Best Practice: Pre-Arrival Call



- Arrange a call once the start date is established
- Include stakeholders from various areas
- Review the transition process
 - NBI processes
 - Engagement letter requirements
 - Information transfer processes
 - How much is coming?
 - Requirement to organize information by client/matter

New Business Intake

Best Practice: Follow Normal Procedures

- 
- **Treat the lateral's clients like any other client:**
 - Collect all required data
 - Execute engagement letters
 - Obtain normal business approvals



Information Transfer

Various Best Practices

BEST PRACTICE	Comment
The engagement letter provides consent to have the information	The engagement letter documents the client's intent to hire the firm
Get a copy of the transfer letter from the old firm	You need to see what the client instructed the firm to release
Don't load electronic records into networked systems without review	Create a review site Review for viruses, malware Review against Lateral Questionnaire and copy of transfer letter
Adopt a policy for dealing with records for clients not listed on the Lateral Questionnaire	Have these been checked for conflicts? Is the firm going to represent this client? If not, do you keep the records or send them back?
Don't load entire email inbox	Have lateral organize email by client and matter before arrival If not, use an local install of Outlook



Best Practices for Off-Boarding Attorneys (or Clients)

Overview

- Client consent
- Records collection and review
- Electronic records
- Transmittal letter
- Attorney certification
- Monitoring matters during transition
- Retention of transferred electronic records
- Housekeeping



Client Consent

Best Practice: Written Client Consent

- A consent letter should go to every client
 - That you reasonably expect the lateral to take
 - That the lateral spent “substantial” time on
 - This is an ethical requirement
- Ideally, the letter is jointly signed by the firm and the departing attorney
- The letter should ask the client to sign and return indicating:
 - Transfer or don’t transfer:
 - All matters
 - Active matters only
 - Certain matters only
- No letter, no transfer

Records Collection and Review

Best Practice: Risk-Based Approach



- Advise departing attorney to:
 - File all physical and electronic documents
 - File email (in Outlook or DMS) by matter
- Records Dept. gathers all physical and electronic records
- Apply risk-based approach to reviewing records:
 - High risk requires detailed review
 - Low risk requires high level or no review

Risk Approach to Records Review

Going To?	Likelihood of Claim?	Review?	Keep Copies?
Former Firm Attorney	No	Little or no review	No
Former Firm Attorney	Yes	Detailed Review	Yes
New Attorney	No	Remove internal correspondence	No (except for correspondence)
New Attorney	Yes	Detailed Review	Yes

Who Does the Review?



- **If a firm attorney is departing**
 - Review done by a lawyer familiar with the client or area of practice
- **If the client is departing**
 - The supervising partner or designee does the review

Electronic Records

Various Best Practices

BEST PRACTICE	Comment
Copy all e-records being transferred to a single review location on the network	E-records might exist in multiple repositories. Bring them together to make the review and quality assurance processes easier A folder for each transferred client and matter
Generate a review report	A listing of each record, that the reviewer can mark “Release” or “Retain”
Delete all “retained” from the review site	Remember – these are copies, so they aren’t really deleted from original repositories
Scrub metadata from “released” records	If records being released to non-former firm attorney
Download “released” to portable media	Encrypt to protect confidentiality

Transmittal Letter

Best Practice: Be Specific

- **The transmittal letter should contain:**
 - A detailed index of the physical file
 - A description of the media used to send electronic records
 - Instructions to load and test
 - Deadline
 - Firm will return any records that were inadvertently transferred
 - Misfiled
 - Other language
 - Firm's ongoing legal responsibility for matter
 - Other included data (i.e., IP Docket)
 - Cost for transfer
 - Counter signature required?

Departing Attorney Certification

Best Practice: Obtain in Writing



- **Departing attorney should certify in writing:**
 - Hasn't taken anything on his/her own
 - Has client consent for all removed records
 - Has filed all e-records (including email) by correct client/matter number
 - Has complied with all document hold requirements
 - Has provided access to e-records during transition

Monitoring Matters During Transition

Best Practice: Protect Client Interests



- A lawyer familiar with the client or the practice area should monitor matters during the transition period:
 - The firm is responsible until the matter is fully transferred
 - Watch for upcoming due dates
 - Be sure client questions are appropriately routed

Retention of Transferred E-Records

Best Practice: Be Consistent



- Even after you transfer e-records, they still exist in your system
- Decide:
 - How long to keep them if there is no need to retain copies
 - If there is a need to retain (i.e., a potential claim), retention will be based on specific facts
 - What to do with the departed attorney's mailbox
- As with any retention process, follow your policies consistently

Housekeeping

Best Practice: Don't Forget the Details

- **Close all transferred clients and matters in all systems**
 - Note: date of transfer, where transferred, reason for transfer
- **If matters are staying with the firm, update attorney information**
- **Recordkeeping**
 - Image and file all client consent letters
 - Retain any review lists
- **Close the e-records review site**

Questions?



■ Resources:

- Lawyer and Matter Mobility (Chiaiese), ARMA 2013
- Matter Mobility and IG (Iron Mountain Law Firm Information Governance Symposium, 2014), <http://www.ironmountain.com/Knowledge-Center/Reference-Library/View-by-Document-Type/White-Papers-Briefs/L/Law-Firm-Information-Governance-Symposium-2014-Task-Force-Reports-Executive-Summary.aspx>

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