



INFORMATION GOVERNANCE

&

ELECTRONIC RECORDS RETENTION

By Rebecca Sattin
CIO, World Software Corporation

Much time has been devoted to discussions regarding the proverbial “paperless office.” While law firms have made great strides towards digitizing more information than ever before, there is a component that is often left out of the discussion: records retention.

The legal industry has always had records retention on its radar when it comes to paper documents. Organizational policies or other statutory or regulatory requirements dictate when documents can be moved to off-site storage or destroyed and also dictate when certain documents must be preserved permanently. Many firms include their retention policies in their client intake processes and engagement agreements.

The explosion of electronic data is a relatively recent phenomenon. Many firms are just now realizing that they have not addressed their electronic data in the same manner. They have not

yet extended their existing retention policies for paper records to their electronic records. Additionally, when they designed their document management systems, many firms did not keep in mind the same organizational rules they applied to their records systems.

There is a perception that electronic data, once saved on a system, will be around forever, but that brings up storage and security issues. Paper records are often filed away and not referenced again unless something comes up relating to the case. Electronic records are different in that, since they are stored in searchable systems, they become part of a knowledge base or forms file that can be mined and used to create new documents. This leads to resistance among attorneys to archiving or destroying these records regardless of the policies in place for paper documents.

Continued on page 6

The first step towards reconciling a paper document retention policy with your electronic data is to identify where your data is stored and how it is classified. Fortunately, for those firms that have a Document Management System (DMS), their data within the DMS is already organized and classified to some degree. Some reorganization may have to take place when it comes to identifying documents that must be treated differently. For example, documents like Trusts and Wills have very different retention requirements than letters to clients. Even outside the realm of documents that were created by lawyers, paralegals and secretaries, the Human Resources documents stored on the system may be subject to different policies as well. If Litigation Holds are present for certain documents, matters or authors, this needs to be taken into account as well.

Firms may have other data that resides outside the DMS, or they may not have a DMS. This unstructured data must also be mapped and classified.

Whether documents will be archived, sent to the client and/or destroyed, ensure that the disposition and authority governing the change in status of the files is documented. Some changes in the disposition of files may be triggered by a date or an event or both, depending on the authority governing the class of record. In other words, if the firm's policy is that documents are either destroyed or returned to the client a certain number of years after a matter is closed, it should be noted that this policy is what triggered the change in disposition of the files.

If the DMS previously had no classification for documents to be used as templates or for research, publicize the policy and time frame for implementation to all shareholders in the firm. In order to preserve any documents to be used as reference material, provide some instruction on marking documents to be stored as masters or templates.

If a document management system was installed without initially being configured with retention policies in mind, a plan for reorganizing or reclassifying some portion of the data may be necessary before implementing any changes to firm policy. Retention periods for matter-centric data can be tied to retention periods defined in the firm's system for managing paper records. These periods can also be based on dates that matters were closed or flagged as inactive. If the data is not organized by matter, applying these rules may be more challenging.

Document types can also be used to identify Trusts and Wills along with other types of documents identified for further preservation. Decisions can also be made to address some of these longer term documents with archiving rather than merely leaving them in place on production systems.

Heretofore, I have refrained from mentioning email. Email has become almost sacred. I have been in this business long enough to remember when not everyone used email. These days it is hard to imagine an attorney – or anyone – going anywhere without the ubiquitous mobile device, forever tethering them to their clients, colleagues, friends and family. Many of them shudder at the thought of the draconian mailbox size limitations put in place by cost-conscious firm management.

For many firms, attorneys were encouraged to migrate email messages into their DMS. This practice takes the problem of both storage and retention out of the email system and into

the DMS where it can be more easily managed, provided some thought was given to the classification within the DMS. Depending on the DMS, some have this functionality natively and some require additional products to accomplish this. All systems are doing more than ever to make it easier to find and properly classify email messages.

Litigation Holds must also be considered. Some document management systems have built-in capabilities to implement litigation holds. For those that do not have this capability natively, there are third party products that can be purchased for this purpose. Since the 2010 version, Microsoft Exchange has had a litigation hold feature built into it. Some third party products that filter messages also include litigation hold features as well as powerful searching capabilities that can be used for e-Discovery, a topic that would make a great subject for another article.

Now that “paperless” has become an accepted standard, it is critical to know where electronic data resides and to have a system for classifying it. Developed processes should satisfy your firm's policies as well as all applicable regulatory requirements.

Rebecca Sattin is CIO of World Software Corporation. She was formerly at Mitchell Silberberg & Knupp LLP for 18 years, where she was Director of Information Technology. She has more than 20 years of experience in the area of law firm technology. She spoke on “Talking Technology to Lawyers” at Legal Tech Los Angeles 2012 and has spoken on various topics at many of the last several International Legal Technology Association (ILTA) conferences. She spoke at the Good Exchange conference in New York in 2014 on mobile device management. She has also served on the advisory board for LA City College's Computer Technology department. Rebecca is a graduate of Washington University in St. Louis.

*Rebecca Sattin, CIO
World Software Corporation, Makers of Worldox
rsattin@worldox.com | 201-444-3228 | www.worldox.com*

Founded in 1988 and based in Glen Rock, New Jersey, World Software Corporation is an innovative leader in the Document Management Systems (DMS) category. The company's flagship product Worldox has an install base of over 6000 companies in 52 countries. www.worldox.com | sales@worldox.com

