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An attorney departure creates a client data governance decision

Preserve the departing attorney's data before routine account closure, then identify what requires continued governance before disposition.

CHALLENGE

The account may be ready for closure from an operations perspective, while the information within it is not yet ready for disposition.

Much of the client and matter record may already be held in the firm's document management system (DMS) or another governed repository. But substantive communications, attachments, working documents, and client instructions may still be embedded in email, individual cloud storage, collaboration workspaces, or other locations outside the DMS.

Information that never reached the DMS is not governed by the DMS policies and may not be adequately preserved.

Client and matter information can remain outside the DMS

During active legal work, information may not always move cleanly into the system intended to govern it. A departing attorney's data may contain:

- Client communications or instructions that were never added to the repository of record
- Matter-related attachments, notes and communications received, sent and/or created shortly before departure
- Drafts, working documents or substantive correspondence outside the DMS
- Older records created before current filing practices were established

Those materials may sit alongside duplicates, personal information, administrative content, and transitory data. Authorized firm personnel must determine which information should remain with the firm, where it belongs, and what can proceed through the approved disposition process.

The unresolved governance decision

When client information cannot readily be distinguished from the rest of the attorney's account, two incomplete responses become tempting.

DELETE TOO SOON

Client or matter information that never reached a governed repository may disappear with the account.

KEEP EVERYTHING

Unnecessary, sensitive and duplicative information remains retained without a clear continuing purpose or governed future state.

Neither response establishes what belongs in the governed client record. One may remove information too soon; the other postpones the decision while increasing the volume and sensitivity of data that must continue to be governed.

Different information may require different treatment

A departing attorney may have worked for clients remaining with the firm, clients following the attorney, closed matters, active matters, matters subject to legal hold and matters governed by different client requirements.

The appropriate treatment of information can therefore vary within the same account.

Attorney transition is a governance decision, not simply an operational account-deletion event. To ensure defensibility, sufficient visibility is needed to apply client directions, firm policies, professional obligations, and legal judgment before an irreversible disposition decision is made.

Questions to answer before routine disposition

- **Outside the DMS:** What client and matter information exists only in the departing attorney's data?
- **Already governed:** Which information is already held in the DMS or another approved repository?
- **Continuing requirements:** What remains subject to legal hold, client requirements, retention requirements, or other governance obligations?
- **Governed destination:** What should move into the DMS, a records platform, or another approved repository?
- **Disposition:** What can proceed through the firm's approved retention and disposition process?

A controlled interval between departure and disposition

Preservation can separate account closure from governance review

Deleting the account too soon and retaining it indefinitely are not the only available options. Preserving a defined departing-attorney data population in an independent environment can allow routine account closure to proceed while authorized personnel identify and validate information that may require continued governance.

The preserved population can remain searchable using client, matter, participant, date, file, folder, and other available source information. Selected content can then move into the DMS or another approved repository, with the transfer confirmed and continuing preservation requirements accounted for before the remaining population proceeds through the firm's retention and disposition process.

The firm should establish a reasonable repeatable protocol that enhances defensibility and documents the analysis, retention and disposition processes.

NEXT READ

Managing Departing Attorney Data: A Practical Governance Guide for Law Firms

Practical guidance for preserving departing-attorney data, identifying client and matter information, validating what should remain, transferring selected content, and governing disposition across the firm.

Request the guide →