

The background of the slide features a blurred photograph of a group of business professionals, including men and women in suits, gathered around a table in what appears to be a meeting or conference setting. The image is semi-transparent, allowing the text to be clearly visible.

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Lateral Lawyers are Playing Musical Law Firms!

Stacey Fiorillo

Agenda

- **Lateral Hires – General**
- **Major Risk Areas**
- **Planning**
- **Conflicts Management**
- **Records Management**
- **ABA Rule 1.10 Amendment**

Lateral Hires - General

- Firms are reducing overhead
 - Cutting Staff and Lawyers
 - Presents a solution to immediate problem
 - Negatively impacts firm knowledge and expertise
- Industry anticipates a spike in specialized areas
 - May contribute to a required quick staff up
 - Experienced hires versus new associate hires

Lateral Hires - General

- Historically lawyers stayed at one firm throughout their career
- Due to today's environment, lateral movement has become the norm, not the exception
- Issue growing out of migrating lawyers is the problem regarding client conflict and professional ethics

Major Risk Areas

- **Conflict Clearance**
 - Ethics requirements
 - Ensuring that process is followed
 - Proper waivers, documentation of process
- **Records and Information Transfer**
 - Paper
 - Electronic

Planning

- How to ensure successful transition and mitigate risk
 - Define Project Team
 - IT, Records, Conflicts, Accounting, Risk, Project Area Subject Matter Experts
 - Project execution
 - Monitor as a formal project
 - Document steps/communicate with entire team
 - Identify liaisons at originating firm
 - Establish quality assurance program

Planning

- **Project Team**
 - Designate a project manager for overall success
 - Each team member has a separate role
 - **MUST** comply with project requirements
 - **MUST** communicate and document all steps
 - Ultimate goals – smooth transition and risk avoidance

Planning

- Pre-planning
 - Make sure your team has sufficient staffing to meet deadlines
 - Create tracking document of NBI process and file transfer
 - Consider tracking database for complex mergers

Conflict Management

- Phase 1 – Conflict Checking
 - Same ethical requirements as bringing on new clients and matters
 - Must “clear” conflicts FIRST; obtain appropriate waivers
 - Obtain lateral hire list of potential client/matters
 - Prioritize “hot” matters with sensitive deadlines



Conflict Management

- Phase 1 – Conflict Checking
 - Run conflicts on high priority client/matters first
 - Responsible Partner/General Counsel review of conflict results – track centrally
 - Accept client and matters
 - Waiver letter required
 - Results of conflict must flow through project manager before file transfer process

Conflict Management

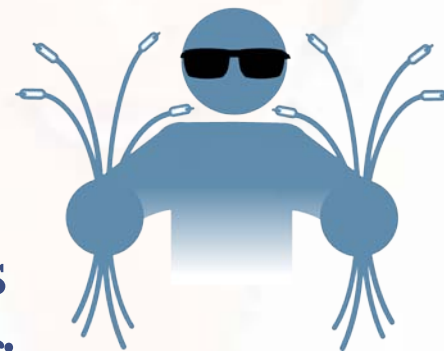
- Process high-priority conflicts first
 - Assign client/matter numbers (format)
 - Begin file transfer process immediately
- Gain involvement of other specialists such as docketing paralegals to manage calendar items
- Move on with remaining conflict checks

Conflict Management

- For complicated mergers or acquisition of lawyer group
 - Keep process flowing with conflicts and file transfer
 - As conflict approval/waivers are received begin file transfer process
 - Engagement letter
 - Work closely with liaisons at originating firm for file transfer – IT and Records

Records Management

- File Transfer process
 - Create engagement letter for each C/M
 - Receive files and index
 - Hard-copy – active material
 - Hard-copy – archived material
 - Electronic material – CDs or DVDs
 - Docket data – extracts from prior firm
 - Secure received files
 - Inventory acquired material

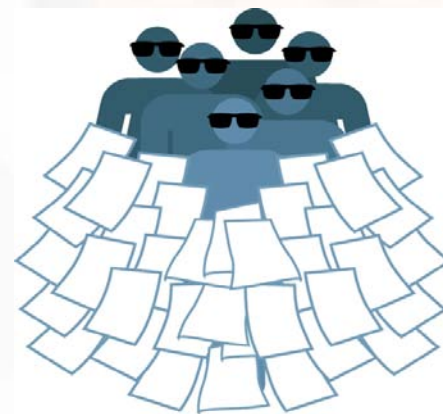


Records Management

- File Transfer process
 - Create centralized tracking system for all transfers
 - Inventory paper and electronic material
 - Track in database
 - Prioritize Active material
 - Secure Inactive material for secondary processing

Records Management

- Active Paper material
 - Index active material in RMS
 - Relabel
 - Track in database
- Electronic material
 - IT will add to system
 - Assign client/matter #
 - Matter-centric? – create folder workspaces
 - Track in workbook



Records Management

- Inactive Hard-copy material
 - Consider offsite storage vendor
 - If same as your firm
 - Inventory and do internal transfer to your account
 - If different vendor, assess volume
 - Consider transfer to your offsite storage vendor
 - Relabeling considerations
 - Track decisions in workbook

ABA Rule 1.10 Amendment

- **Ethics and Compliance**
 - **Model Rules of Professional Conduct 1.10**
 - Stated that a lawyer's conflicts of interest, which have arisen from involvement in a matter handled at one firm, follow the attorney to a new firm and are imputed to the lawyers at the new firm



ABA Rule 1.10 Amendment

- **Ethics and Compliance**
 - February 16th 2009 with a vote of 226-191 the ABA House of Delegates ruled in favor of amending rule 1.10 with revision 109 in favor of the Standing Committee's 'screening process'
 - Opponents argue that it cuts client choice and control and further raises problems with conflict of interest and client consent

ABA Rule 1.10 Amendment

- **Screening Process - How it works**
 - If a conflict is identified, lateral must not participate in the conflicting matter (s) and will not discuss matter with the new firm
 - The new firm should advise personnel (lawyers and staff) of the new hire, the screening and that they should not discuss the matter with the new hire
 - State adoption required

ABA Rule 1.10 Amendment

- **Screening Process (cont)**
 - Implement file and document restriction measures in an effort to prevent the transfer of confidential information to that particular lawyer
 - The new firm must certify that screening was followed
 - Written notice is provided to the former client certifying compliance with Rule

ABA Rule 1.10 Amendment

- **Screening Process**
 - The screening must be maintained for the duration of the matter
 - The former client could request additional certification from both the lateral lawyer and the new firm that the screen was maintained

Summary

- Manage the lateral hire process – small or large - with formal procedures
- Track each step to protect your firm
 - Conflict and NBI process
 - Acquisition of Client Files
- Consider ethical requirements

Questions????



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