

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.

**ilta09**

leading technology | optimizing value

leading technology | optimizing value

# 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

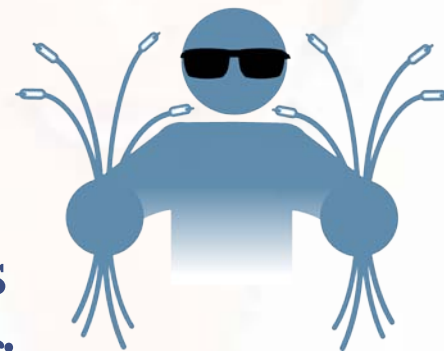
- Process high-priority conflicts first
  - Assign client/matter numbers (format)
  - Begin file transfer process immediately
- Gain involvement of other specialists such as docketing paralegals to manage calendar items
- Move on with remaining conflict checks

# 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

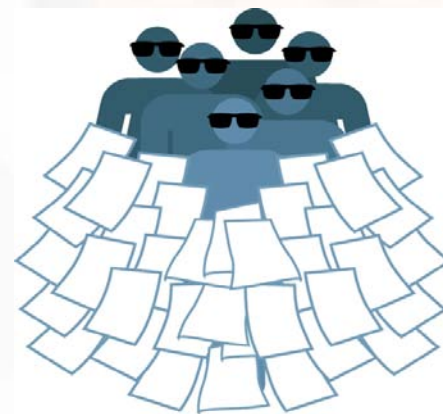


# Records Management

- 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 16<sup>th</sup> 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????



**Stacey Fiorillo**  
**Baker Robbins & Company**  
**[sfiorillo@brco.com](mailto:sfiorillo@brco.com)**