CIO
Legal CIO Roundtable

2011 CIO Roundtable Retreat

Architecting Our Future

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eSentio Technologies

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New Business Intake - Good News Can Be A Challenge

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eSentio Technologies

New Business Intake Challenges

- Risk Tolerance
- Attorney Mobility
- Timeliness to open new client/matter balanced with thorough research and analysis
- Client Service Delivery

Conflicts – Some Yellow Flags

- Changing lawyers
- Potential criminal representation
- Civilly liable or financial malfeasance
- Other peoples money
  - Fees paid by third parties
  - Start-ups…public or private offerings
- Dubious deals
  - Promise of high returns, low risk and little or no taxes
  - Exotic investments such as; gold bullion, liquor futures, offshore investments, or foreign currencies

Top 10 NBI-Conflicts Mistakes

1. Staff responsible for searching does not understand importance of search, thus may not take those extra steps necessary for precision...client name = John Smith, does not notice J Smith has same address. Does not consider Chase Trust could be Chase Bank. Positions must filled with intelligent searchers.
2. Searches must be on firm-wide databases. Only searching accounting records is inadequate. Failure to include former clients in search is inadequate. Database must contain information of nature of former representations, or further research would be required.
3. Intake staff inadequately trained in definition of conflicts and how far they extend. For example, every beneficiary of a trust or will should be treated as a client. Very rarely are these individuals captured as clients. Family trees for corporations; what are related entities and are the relationships close enough to warrant a conflict? Partners in partnerships; what if there are 150 limited partners...are they all clients?
4. Failure to have check reviewed by disinterested member of firm. An attorney's natural zeal for client and wanting to protect the client can override judgment of what is best for the firm leading to the acceptance of a matter detrimental to another client. The process must include an overview by someone who does not have a relationship with a current client.
5. Inadequacies of waivers. A firm must understand that clients' waivers are limited. For example, a trustee cannot waive the rights for all beneficiaries. Representing both sides to a transaction can lead to accusations of overreaching even though waivers exist.

Top 10 NBI-Conflicts Mistakes

6. Failure to search al available data sources (Google…..)
7. Failure to **Know Your Client** adequately research the background of an incoming client.
   - Litigation that they have been involved in
   - Financials
   - Background on Board members
8. Inadequate documentation of procedures. Searching should have clear instructions, training of staff recorded, policies regarding research of incoming clients, procedures for lateral hires, procedures for ensuring review by disinterested firm member.
9. Inadequacy of procedures to update conflicts database. If new parties, witnesses, etc, are added to a matter, these facts often do not find their way into the database.
10. Failure to track "soft" conflicts. These types of conflicts are based on personal relationships, expert witness testimony, non-attorney staff involvement.
11. Failure to adequately assess the financial aspects of the representation - AFAs

What Should a Conflicts Database Include?

- Current and former clients
- Current adversaries
- Affiliates of clients and adversaries
- Outside positions held by firm lawyers
- Lawyer & firm investments
- Declined clients
- Firm vendors
- Marketing targets
- Elected officials/judges
- "Bad actors" aka known corporations and/or individuals that the firm does not want to do business with

Sources to Include in a Conflicts Search

- Dun & Bradstreet
- SEC “EDGAR”
- Lexis
- West Monitor
- PACER
- Corporate Affiliations
- Hoovers
- Factiva
- Secretary of State Office
- OneSource
- Company website

Potential Global Conflicts Compliance Issues

- Privacy issues
- Appropriate Licensing
- Understanding local rules

ALAS - Summary of Key NBI Tasks

1. Conflict Search and Resolution – Every intake process should begin with a
   - thorough conflict search, not just for possible adverse parties, but for possible
     - Lessons Learned
     - adverse positions the firm may have taken in prior cases. Patent firms need an
     - additional conflict check into adverse or competing technologies.

ALAS - Summary of Key NBI Tasks

2. Creditworthiness Review – Telling a prospective client that you want permission
   - to conduct a credit check is probably not going to win any points with the client.
   - There is a wealth of information available on the internet through a wide range of sources. The obvious starting points might be Dunn & Bradstreet and Moodys.
   - Other on-line sources of company and individual credit information include CRIBIS, Experian, Thomson West and Equifax, Inc.

ALAS - Summary of Key NBI Tasks

3. Independent Review of Client/Matter Intake Decisions - In handling client intake,
   - perhaps the most effective procedure is to require a separate review by an independent and disinterested party. That person could be the Managing Partner, the firm's Loss Prevention Partner, or any other partner not immediately involved with the originating partner's practice. This review should include a thorough an dispassionate review of all information gathered through the conflict and creditworthiness checks. All of this counts for nothing, however, if the independent reviewer lacks the authority or courage to turn down the client.

ALAS - Summary of Key NBI Tasks

4. Further Due Diligence – If the initial credit check turns up anything questionable and the firm still wants to pursue the matter, the next step should be a personal background check on the individual client or, in the case of a company, on owners, officer, directors and key shareholders.

Trends

- Staffing (hire staff attorneys)
- More focus on Know Your Client
- More focus on Technology ---Process – Workflow
- Professionalizing of the Conflicts Analyst position. I.e. hiring more educated, experienced people such as paralegals

Trends

- *From* Clients

  Alternate Fee Engagements

  Outside Counsel Guidelines

Trends

- Subject matter conflicts research
- Meaningful matter descriptions
- Meaningful related party information
- Educating and training lawyers and secretaries

Vendor Landscape

- Autonomy
  - ‘Conflicts Manager’ leverages IDOL search engine for conflict searches of both internal and external sources
  - Is not a conflicts database
  - Workflow Manager used to develop New Business Intake workflow
- Frayman Group
  - ‘Compliguard Analyze’ used for conflicts
  - ‘Compliguard Analylze2’ used for New Business Intake workflow
  - Former developers of ‘LegalKey’
- Elite
  - ‘Conflicts’ is a module of Elite’s time and billing system
  - Uses 3rd party workflow solutions for New Business Intake

Vendor Landscape

- Aderant
  - ‘Expert Conflicts’ is a module of Aderant’s time and billing system
  - ‘Expert Framework’ is used for New Business Intake workflow and leverages MS Windows Workflow Foundation
- LegalKey
  - Former market leader for Conflicts and New Business Intake
  - Since Open Text acquisition the application has been undeveloped with little to no service
- SharePoint
  - Several vendors have developed New Business Intake workflow systems leveraging a combination of SharePoint and InfoPath
  - Low cost and works well for firms already using SharePoint

Vendor Landscape

- MetaStorm
  - Robust Business Process Management (BPM)
  - Several law firms use MetaStorm for NBI
  - High costs for development and maintenance
- K2
  - BPM solutions built on SharePoint and Visual Studio
  - Robust BPM
  - K2 has NBI installations at several law firms

Resources

- Attorneys' Liability Assurance Society, Inc (great info for members) http://www.alas.com/
- Model Rules of Professional Conduct - Rule 1.7 Conflict Of Interest: Current Clients
- Model Rules of Professional Conduct - Rule 1.8 Conflict Of Interest: Current Clients: Specific Rules
- Model Rules of Professional Conduct - Rule 1.9 Duties to Former Clients
- All three of above from http://www.abanet.org/cpr/mrpc/mrpc_toc.html

Resources

- ABA/BNA Lawyers' Manual on Professional Conduct subscription

Discussion