eSentio

Email Management: a Records Management Perspective

ILTA Webinar: August 10, 2009

Agenda

- Introductions
- Email management challenges and drivers
- A Records Management perspective
- Tools and approaches that can help
- Conclusions and next steps
- Questions and discussion

Email Management Objectives

- Client File Management
- Risk Management
- Technology Management
- Firm Business Requirements

Which objectives are most important to your firm?

Email Management:
Challenges and Drivers

Email Management Challenges

- Electronic correspondence (email, IM etc) use continues to grow as other methods (such as fax) decline
- Attorneys tend to keep everything in email, including documents
- Firms must decide where they want attorneys to store email correspondence
- Requires a shift in thinking: correspondence no matter what the media – emails, IM, voicemail, phone, fax, letters, documents – have parity
- Technology now at a point where this parity can be recognized
- The solution may be different for active vs. closed matters
- Client file responsibility must be taken into consideration
- Policies must be consistent and actionable

Email Management Challenges (continued)

- A significant percentage of all email that hits a mailbox (post perimeter filtering) has no business retention value
- Emails are uncategorized and unregulated
  - Difficult to find emails - *Though Exchange/Outlook 2007 is better and will continue to get better*
  - Larger mailboxes make searching more important
  - Lack of matter designation makes disposition difficult
  - Personal email collections mean legal teams may not have the complete picture in the "file"
- PST files are difficult to contain
  - Proliferation with CD's, USB Thumb Drives, USB Hard Drives & Home PC
  - Network Shares (not supported by Microsoft KB207019)
  - Microsoft no longer allows PST files in their own organization

Email Management Drivers

- Increased focus on maintaining the entire client file
  - Law firms being audited by clients
  - Client engagement letters contain information about disposition of client records
  - Voluntary waiver of privilege
- Litigation hold requirements becoming more critical
  - No longer enough to instruct users to not delete / submit
  - Collection / review costs are increasingly prohibitive
  - Not deleting is not preserving
- Federal Rules of Civil Procedure changes
  - Increased focus on responsibility to manage Client File
  - Corporations are undertaking data mapping exercises which extend to all areas where they have data – including law firms

Email Management Drivers (continued)

- Sarbanes-Oxley Act
  - Executives of publicly traded companies certify the validity of the company's financial statements
  - Financial control and risk mitigation processes be documented and verified by independent auditors
  - Companies implement extensive policies, procedures, and tools to prevent fraudulent activities
- SEC Rule 17A-4
  - Original copies of all communications must be preserved for no less than three years, the first two in an easily accessible location
  - Records that are maintained must be preserved and be available to be produced or reproduced using either micrographic media (such as microfilm or microfiche) or electronic storage media (any digital storage medium or system)

Email Management Drivers (continued)

- HIPAA
  - Security standards be adopted that do the following:
    - Control who may access health information
    - Provide audit trails for computerized record systems
    - Meet the needs and capabilities of small and rural healthcare providers
  - Health data be isolated and inaccessible to unauthorized access
  - Transmission of health information is physically, electronically, and administratively safeguarded to ensure confidentiality

- Red Flag Rule
  - Based on the Fair and Accurate Credit Transactions Act of 2003, sections 114 and 315
  - Objective is to mitigate identify theft of personal, financial information
  - Requires professional service firms (including law firms), who invoice their clients for services already performed, consider themselves creditors and therefore must comply
  - These rules define how firms should:
    - Identify relevant red flags
    - Detect red flags
    - Prevent and mitigate identify theft
    - Update their program

Records Management Perspective

Legacy Email Bloat

- Why do firms have this problem?
  - Lack of email management strategy
  - Keep it all indefinitely mentality
- What to do with the legacy email collections
  - Moving all legacy email to a proper client/matter folder is unrealistic
  - Email archive tools provide a “line in the sand” solution
  - Provide a firm with a place to put the legacy email collection, while introducing a new go-forward plan to improve the management of email as a record within the matter file lifecycle

Email Records:

- Document a decision (related to firm business or in the context of client representation)
- Provide evidence of a business transaction
- Are the format through which an attorney:
  - Provides legal advise
  - Gives evidence of fact, legal thoughts and mental impressions

The record "value" can be contained in the email message itself or as an attachment

Lifecycle Management Approach Ensures:

Create/ Receipt → Use/ Circulation → Maintenance/ Storage → Disposition

- Proper categorization (by client/matter or administrative function) is applied at a firm-wide level
- Access to the email by all matter team or administrative function members
- Email storage cost reductions are realized when duplication is reduced as email messages are centralized into an official system

When to File

- At creation or receipt
  - Provides access to the full matter team
  - Ensures faster access during discovery requests, or for the release of records, while a matter is still active
- At close of matter
  - Limits access to the author or recipient
  - Requires mass filing of email

Where to File

- Document Management System
  - Most common repository
  - Improved email filing and viewing, allows users to retain the Outlook “experience”
  - DMS lacks retention/disposition rule capabilities
- Records Management System
  - Depends on firm adoption of the RMS; usually this option is for firm’s who have not gone matter-centric in the DMS
  - Retention/disposition rules are native in the RMS
- Email Archive
  - Good solution to move large legacy email collections out of messaging store
  - Does not currently provide matter-based classification
  - Shifts the email “problem” from the one repository to another

Tools and Approaches That Can Help

Email Management Solutions (DMS)

- Products
  - Autonomy iManage : WorkSite 8.5 w/ FileSite and/or DeskSite
  - OpenText : DM5
  - NetDocuments : Email Management Service
  - Microsoft : Office SharePoint Server 2007
- Benefits
  - Drag & Drop allows for simple profiling
  - Outlook “Filing Folders” (WorkSite 8.5) can auto-profile email
  - It becomes easier to give someone a view into the complete matter file
  - Knowledge Management
- Drawbacks
  - Adds complexity when it comes to mobility
  - Retention rules can not be managed with native functionality
  - Adoption rate for email has been sporadic

Email Management Solutions (RMS)

- Products
  - Accutrac
  - Autonomy iManage RM
  - CARM (formerly MDY FileSurf)
  - Elite / Aderant RM Modules
  - LegalKEY (OpenText)

- Benefits
  - Email is part of the records repository
  - Retention rules are managed with native functionality
  - Supports the practice of separating records from work in process

- Drawbacks
  - Requires a significant shift in behavior by attorneys to interact with RMS
  - Email content is separated from other electronic matter content stored in the DMS

Email Management Solutions (Archiving)

- Products
  - VERITAS : KVS
  - Autonomy ZANTAZ's : EAS
  - EMC : EmailXtender
- Benefits
  - Improves Exchange Performance
  - Support litigation holds
  - Less expensive disk storage (i.e. Tiered Storage)
- Drawbacks
  - Limited categorization of information
  - Integration points to other systems (e.g.; DMS / RMS) lags

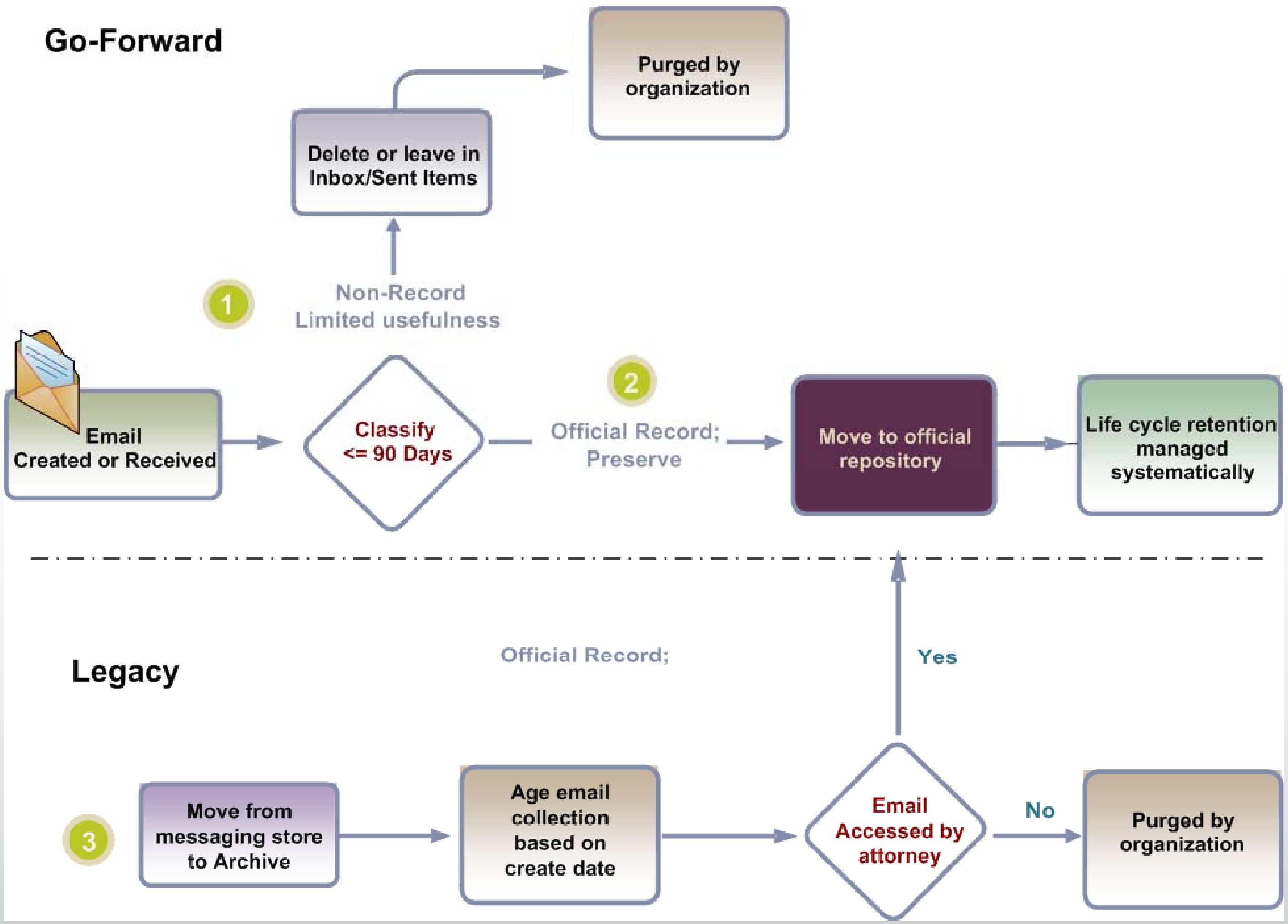
Email Management Solutions (Auto-classification)

- Products
  - Recommind Decisiv

- Benefits
  - Focused on categorization of information
  - Allow for required categorization (Send / Receive)
  - Increased storage optimization
  - Social nature of classification promotes use

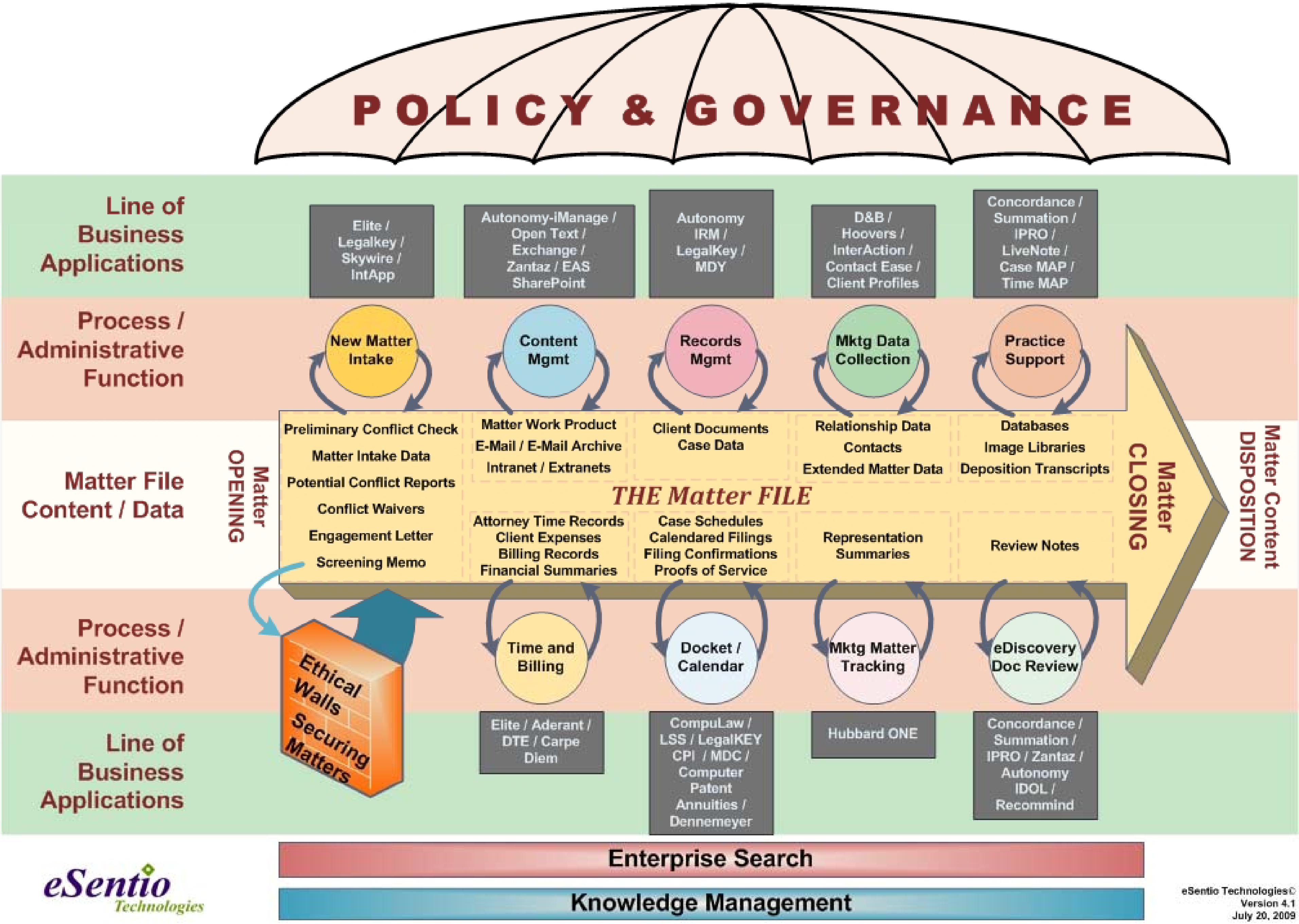
- Drawbacks
  - Chances of classification decrease if not imposed at time of send/receive
  - Users do not like to be required to classify every message

Potential Email Management Workflow



Conclusions and Next Steps

Matter Life Cycle: Matter File Composition and Management



Trends and Market Focus

- Email management is becoming integral part of Information Management / Matter Lifecycle Management
- Focus on matter designation of information
- Improved information governance through policy development, implementation, and enforcement
- Automatic / suggestive / predictive classification of information
- Federated records management vs. centralized client file
- Renewed interest in enterprise search

Email Management

- Establish firm governance and approach
  - RM program leadership
  - Articulate policy/guidelines
  - Define retention requirements
- Develop processes and standards for the handling the entire client/matter “file” including email
- Publish process and standards guidelines to the firm
- Increase focus on training efforts around email management
- Firms should develop a 3-5 year storage strategy based on projected data volume, taking into account the firm’s retention strategy and business continuity/disaster recovery plans

Email Questions: What's Your Plan?

- What strategy has your Firm adopted to deal with the issue of managing email? (e.g.: Matter/Centric email filing, email Archiving, etc.)
- What type of governance or policy enforcement have you implemented in your firm to help deal with the management of email?
- What are you doing to manage legacy email collections in your firm? (e.g.: large mailbox collections, PST files, transitioning attorneys, etc.)
- What type of processes have you developed to support firm resources used to manage the matter specific email content for your firm? (e.g.: Sr. Paralegal, copy email communication to a firm email domain address, secretarial "inbox clean-up", etc..)
- What metrics are you using to measure the firm's success in managing email?

Questions & Discussion

Thank you for your time!

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