

A large iceberg floats in a dark blue ocean under a cloudy sky. The top of the iceberg is visible above the water, while the much larger, jagged base is submerged below the surface. The water is dark and textured, and the sky is filled with soft, grey clouds.

Navigate complexity with

epiq guidance

ALA Legal Marketplace Webcast

Retention Fundamentals and Execution

March 27, 2019

People. Partnership. Performance.

introduction

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- 20+ years experience in the legal environment
- 6 years providing strategic consulting to law firms
 - Formerly with WVenture LLC (now Revolution Software)
 - RMS Migrations, Retention Software development/implementation, custom workflow solutions
- Formerly @ Schottenstein, Zox & Dunn (now Ice Miller) and Benesch
 - Business Process Workflow development
 - Records Management
- Passion for process development and improvement

agenda

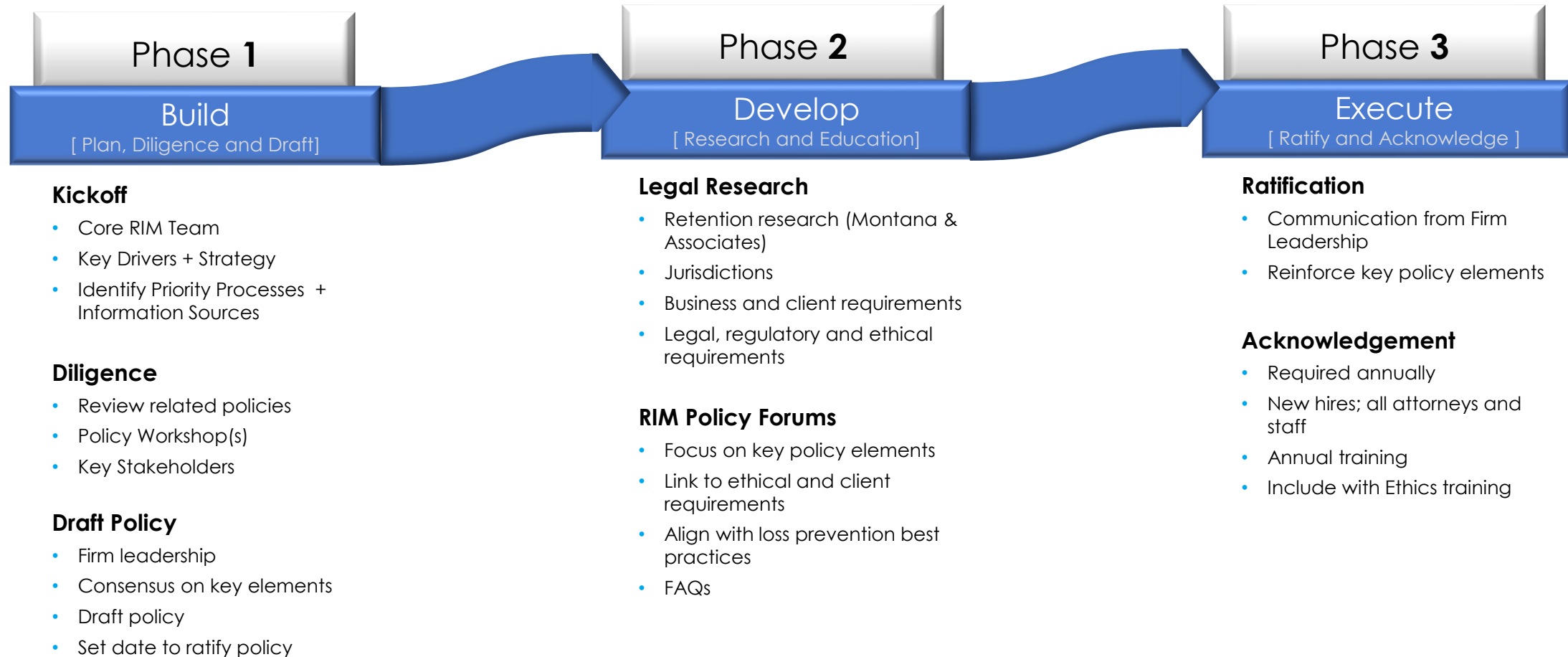
- Policy Elements that support actionable retention execution
- Defensible disposition strategies – all content is not equal!
- How to leverage technology to execute against your policy

Policy elements that support actionable retention execution

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methodology – RIM/IG policy development



Communication and Change Management: Align with Information Technology Initiatives

objectives

- Provide guidance to the firm's lawyers and staff on the management of records and information
- Comply with federal and state laws, regulations and ethics rules
- Ensure the policy is actionable
- Focus on policy, not process
- Reduce risks and costs associated with managing records and information while improving service to clients

key policy components

- Applies to all Firm records regardless of format
- Covers all Firm offices, practice groups, and administrative departments
- Specifies expectation of format and organization of official files
- Specifies appropriate Firm repository(ies)
- Distinguishes between what belongs to the Firm, the Client and the individual
- Specifies when matters will be eligible to be closed and how long records and information will be retained
- Specifies what materials incoming and departing lawyers can bring into the firm or take with them

sample | RIM/IG Policy Table of Contents



Records and Information Management Policy

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Records and Information Management Policy

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questions?

Defensible disposition strategy

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Sedona Conference Commentary

“The effective, timely, and consistent disposal of physical and electronic information that no longer needs to be retained should be a core component of any Information Governance program.”

Sedona Conference Commentary

PRINCIPLE 1. Absent a legal retention or preservation obligation, organizations may dispose of their information.

PRINCIPLE 2. When designing and implementing an information disposition program, organizations should identify and manage the risks of over-retention.

PRINCIPLE 3. Disposition should be based on Information Governance policies that reflect and harmonize with an organization's information, technological capabilities, and objectives.



day forward approach

- Include your Retention Policy in your engagement letters
- Send a matter closure letter at the conclusion of each matter that restates your record retention practices
- Return original documents immediately after imaging
- Arrange all files based on your firm's ownership distinctions
- Post your policy in plain sight and continuously train your firm on what it means
- Execute your retention policy – consistently
- Operationalize and automate wherever possible



ABA Rule 1.16(d)

“Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.”

legacy approach

- Reasonably practicable
- Client permission
- Value of information as it ages



collection categories

- 25+ years old – Marginal review, least resources applied
- 11 - 24 years old – Targeted review, moderate resources applied
- Current - 10 years old – Full review, most resources applied



25+ years

- Difficult to identify content without manual review
- Cost of full review is prohibitive
- Difficult to locate most clients
- Review 1% to establish level of risk
- Notify only current clients



11 - 24 years

- Records tracking likely to be electronic
- Box metadata likely more accurate
- Review 2 – 3% to establish level of risk
- Clients more likely to be located
- Be consistent with approach to notification

current – 10
years

- Highest potential for content of value
- Full review of content required
- Offer return of content to client in lieu of destruction
- Leverage vendor review rooms

questions?

Supporting technology and how to leverage

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technology considerations

- Electronic content disposition
- Client notification letters
- Destruction approval workflow
- Big bucket analysis
- Box content analysis



electronic content disposition

- Data in DMS
 - Can be manually destroyed or programmatically based on retention rules and authorization
- Structured data outside of DMS
 - Identifiable by client-matter
 - Requires manual destruction or migration to DMS

client notification letters

- Compilation of last known addresses from source systems
- Form letter / mail merge



destruction approval workflow

- Identification of eligible matter content
- Automated attorney authorization reports
- Electronic authorization
- Authorization status tracking



big bucket analysis

- Analysis of Records Systems
 - Eligible matters – with existing files
- Analysis of Financial Systems
 - Open matters unbilled for predetermined time period
- Analysis of storage vendor reports
 - Determine date of original archive
 - Determine date most recently recalled

box content analysis

- What percentage of box content is eligible and authorized?
 - 100% eligible content boxes destroyed by vendor
 - Target higher percentage content first to maximize throughput



final thoughts

- Legacy retention efforts are entirely doable
- Technology can ease the burden
- Know-how on the analysis side is priceless
- Once the legacy mess is cleaned up, your day forward approach will practically run itself



questions?