

Getting to Zero

An Implementable Blueprint to Drive Offsite Storage Costs to Zero

By Rob Mattern

Of all the areas that Mattern works with law firms, the question of how to manage paper records — both onsite and off — is probably the greatest hurdle faced by many of our clients. For most areas of back-office operations not running optimally, firms can outsource or hire a new manager and typically solve the problem. This is not the case for paper records.

The drafting of a firmwide, long-term strategic plan for your records is much more difficult, especially in the offsite records contract area. Having contracts in place that will allow you to destroy stored files and overcome previously, poorly negotiated contracts in a cost-effective manner is a challenge to say the least. This issue, coupled with the cultural hurdle to reduce on-site paper files and migrate to a digital world, are substantial to overcome. Add in the industry-wide fear held by attorneys to destroy paper documents, and the hurdles become even more considerable.

Three facets must be in place to drive your offsite storage costs to zero:

- Offsite storage contract(s) that will allow you to destroy records in a cost-effective manner;
- A process that allows you to digitize your onsite records; and
- A Records Retention Policy that is adhered to and lays out the retention guidelines for paper and electronic records.

Can it be done? Absolutely. Can it be done cost-effectively? Absolutely, as long as you have a plan, the management and the contracts to support it.

The Plan

As with any plan, the first question is always, “where do you start?”

While a records retention plan should be in place to destroy documents, it is not necessary for putting the pieces in place to make this plan happen. What is nice about this process is that all three facets can be worked on simultaneously. However, in order to make it cost-effective, your offsite contracts must be structured properly.

Offsite Records Storage Contracts

A few years ago I wrote an article on offsite records storage contracts that created a little stir in the industry. It began as follows:

It is widely believed that the oldest legal document known to mankind is the Code of Ur-Nammu, created in 2050 BC by King Hammurabi. This is not entirely accurate. In truth, the oldest legal document known to mankind is the off-site records storage contract that was created in order to store the code off-site from King Hammurabi's palace. Rumor has it the Sumerians are still negotiating re-boxing fees.

Obviously a little humor there, but supposedly some offsite storage vendors were upset. In the subsequent years, many of the issues highlighted in that article (re-boxing fees for example) have been dropped by vendors (legal industry, you can thank me later). However, the basic nature of these agreements unfortunately still prohibit you from doing what you want to do: destroy old, antiquated records. The key to a records

storage contract is getting cost-effective terms.

How does an eight-year ROI sound? This is the number of years the average firm has to wait to start saving money if it pays the permanent withdrawal fee, retrieves the box, deletes the records electronically and shreds the documents inside the box.

There are firms who want to start to destroy records that can't. It is not because they don't have a records retention policy or the originals are not in digital format to be retrieved at a click of a button. The sole reason is that it is too expensive to destroy them.

Some firms unfortunately have gotten themselves into agreements that contain the following:

- Prohibitive permanent withdrawal fees;
- Mandatory upfront payments of all permanent withdrawal fees prior to any boxes being relocated or destroyed, making it nearly impossible for vendor consolidation; and
- Restrictive clauses on the relocation of boxes to another vendor, making it difficult to consolidate vendors.

In order to put a long-term strategy in place, these clauses have to be addressed.

Get Competitive

First, get a request for a proposal. Getting great pricing and terms never happen when you deal one-on-one with a single vendor — whether that single vendor is new or you

are negotiating a new contract with your current vendor. You may get better terms and pricing than you have currently (which only means your current pricing and terms are weak), but not great pricing. The only way you will get the most competitive pricing and terms the market has to offer is to create a competitive situation, and the only way to do this intelligently is to solicit competitive proposals through a request for proposal process.

Know the Market And the Vendor

Even when you complete a request for proposal, most vendors will not put forth their most competitive terms unless the vendor is explicitly asked or you are asking the decision maker.

For example, certain vendors will waive permanent withdrawal fees if they consistently fail to meet the performance standards outlined in their contracts — but these details are only revealed upon request.

Contract Negotiations: Just Say No

Off-site records storage is an extremely competitive market and the vendors will back-down on terms only if they are pressed — and only if they know their competitors are involved. Prior to selecting your short list, create a list of deal killers and inform the business partners that they will not be allowed to participate in the final round unless they address them in writing. After this exercise, you will have a pretty good idea of the vendors who will be willing to negotiate a competitive contract.

The key components that must be in this new agreement are:

- No new permanent withdrawal fees on any new boxes being sent offsite;
- A timeline when the permanent withdrawal fees on any transfer or currently held boxes will be eliminated;
- A guaranteed number of boxes that can be destroyed or transferred on a weekly/monthly basis; and payment terms on permanent withdrawal fees.

Digitizing On-site Records

Having a process in place to convert paper-based records, whether incoming mail or existing on-site records, to digital images is more than just the key to developing a strategic long term digital solution, it's the roadmap going forward. Since 50% of existing paper documents are in electronic format already, how do you handle the balance?

There are a number of software workflow solutions that can provide a comprehensive front-end portal to your document management solution (DMS). Some of the more popular ones are Accuroute, eCopy, Docsolid, and the basic functionality in your cost-recovery system. In some cases, the native scan function of the multi-functional devices is sufficient. All these workflow products, in way or another, allow you to take paper documents, scan them into digital format, profile them for your DMS, and either transfer them into your Records Management System or delete them at the appropriate time.

The advantages of digitalization are

worth mentioning again — instant access of documents, ease of disposal, and freedom from autocratic offsite records vendors and disaster recovery. Decisions must be made:

- Where to start? Firms that opt to begin scanning newly opened files take the approach that the system for scanning client documents will be administered on the front end — that is, scanning the documents for the open client files as the documents arrive, one-by-one, in the mail. This allows the building of digital files from the front end and allows the firm to ease into the scanning process.
- What do you do with your current offsite files? Depending on what happens with your offsite contracts, you may want to scan them or leave them in paper format until you can destroy them under the guidelines of your records retention policy.
- Do you do it in-house or bring in an outside vendor to oversee the operation? We have had clients handle it both ways and it depends on the availability of your in-house staff, their expertise and the desired timeline.
- What about the cost recovery aspect? Many firms recover the cost of scanning; will this fall under the guidelines or not?

Records Retention: ‘When?’

A firm’s record retention policy answers the “when” question for law firms; that is, when can I safely destroy a document?

Some basic guidelines for your firm’s retention policy are:

- Client involvement. This can happen on the front-end through the engagement letter or on the back-end when the matter is completed. Clarify how the disposition of the files should be handled, and if the client does not respond, outline the firm’s preferred option.
- All matters will not have the same retention time, as the statute of limitations is not the same for all types of representation. A bankruptcy matter has a different requirement than an estate.
- If the client gave it to the firm, then return it to the client. It is best to duplicate (scan) any client information and return the original to the client. As time-consuming as it is, the screening of all records before disposition is recommended.
- Keep an index of all disposed files that lays out what was disposed of, how it was disposed of and when. The firm may have to prove at some point that these

records were disposed of according to your retention schedule.

Conclusion

Getting out of the offsite records storage business and becoming “paperless” will not happen overnight, but the longest journey begins with the first step. There is absolutely no reason why your firm cannot be installing a front-end workflow solution to start the transition to digital records, positioning your offsite contracts to reduce your current costs and ending permanent withdrawal fees while your firm is defining their retention schedule. The whole point is to put a plan in place and get started.

Rob Mattern, a member of this newsletter’s Board of Editors, is President and Founder of Mattern & Associates, LLC. Mattern & Associates assists law firms in developing an unbiased strategic direction for their business processes while improving both the cost-effectiveness and the recovery of expenses for these services. For more information on Mattern & Associates, visit www.matternassoc.com, check out their blog, www.matternoffact.com, or follow them on Twitter @MatternOfFact.