Law Firm Confidentiality and Screening Practices Assessment

Is your firm doing everything necessary to meet its confidentiality management obligations? Today, many firms are adopting more stringent confidentiality enforcement, monitoring and reporting practices in response to evolving industry ethical screening rules\(^1\), new case law\(^2\), and more rigorous client outside counsel guidelines. These external drivers mandate the use of internal controls, including software enforcement tools, and processes such as attorney acknowledgment tracking and detailed client notification.

As firms embrace more thorough approaches to compliance, they’re creating stricter de-facto industry standards. In short, the bar is rising — and court, client and insurance expectations for law firms are rising in response.

Is Addressing Confidentiality Risk and Compliance Worth the Investment?

The implications of falling short of these professional responsibilities are significant. In the case of ethical screens associated with lateral hires, jurisdictional rules and case law define specific compliance requirements. Failing to satisfy these may result in disqualification, damaged firm reputation and other penalties. For client-driven confidential matters, falling short may translate into the inability to win new or retain existing business (and associated revenue). In some instances, clients have insisted on commissioning third-party audits of firm information management practices.

How Should My Firm Respond?

In this atmosphere, prudent organizations should carefully review their current approach to confidentiality to make sure that firm policies are in line with external requirements, that internal practices truly follow defined policies, and that processes and tools used to manage compliance are truly effective. In cases where shortcomings are identified, firms should invest in training and technology to minimize the risk of non-compliance or accidental error.

Modernizing your firm’s confidentiality practices can be challenging. Given the current economic environment, many organizations are reluctant to undertake initiatives which may require new investments. But the costs and implications of failing to understand these risks and address these new compliance rules are too significant to disregard. In response, risk professionals can educate firm management regarding the specific business, legal and technology issues affecting their organization and how present firm confidentiality management capabilities compare to peer and industry best practices. With this information, management can make more informed decisions about firm priorities. IntApp can help.

The IntApp Approach — Assess, Analyze and Respond

IntApp specializes in helping law firms address risk management and compliance issues. Through its confidentiality assessment program, IntApp works with firms to review current practices, identify areas for improvement and design a response plan. This program also enables risk stakeholders to educate firm management and present them with a clear business case justification for investing the time and resources necessary to mitigate identified confidentiality risks.

The IntApp Confidentiality Assessment Program has been developed in consultation with leading industry insurance providers, several of which will directly sponsor and bear the complete costs of firm participation.

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**Specific Issues Driving Confidentiality Enforcement and Tracking Initiatives**

IntApp has worked with a large number of firms to improve their confidentiality management capabilities in response to a wide variety of external and internal business drivers. A partial list of issues frequently prompting firm focus on confidentiality includes:

- Expressed concerns from clients regarding confidentiality controls
- Lateral hiring / adverse party representation (ethical screens)
- Exploration or pursuit of a firm merger
- Addition of former government lawyers or staff
- Use of contract attorneys
- International expansion
- Intellectual property litigation (protective order management)
- Handling matters relating to capital markets and price-sensitive issues
- Desire to differentiate versus competition in a business development context

**IntApp Confidentiality Assessment Program in Greater Detail**

By delivering a comprehensive analysis of existing policies, practices and risks, this program enables law firms to prioritize and respond to the specific confidentiality challenges they face. It also expands visibility across the organization – risk stakeholders gain a better understanding of how new technology impacts the firm, and IT stakeholders are educated regarding how various rules of professional responsibility, case law and regulations affect their responsibilities.

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**Confidentiality Policy Management**

The program begins by surveying policy administration practices. It includes a review of frequent drivers mandating confidentiality and identifies key risk priorities and concerns gathered from relevant internal stakeholders. Expert consultants also examine specific policy definitions (e.g. review of outside counsel guidelines mandating access limitations) and evaluate policy issuance, notification, acknowledgement, and reporting practices.

**Technology: Information Accessibility & Access Controls**

The assessment program investigates and reports on the critical role technology plays in confidentiality management. This includes identification of software systems where sensitive information is stored in the firm and the extent to which client information is internally accessible and accessed. It also evaluates the measures presently taken by the firm to control and limit access to client data in response to confidentiality policies.

**Firm Analysis & Response Planning**

The process concludes with the design and presentation of potential response plans. Where judged prudent, suggested firm options may include implementing new, or refining existing confidentiality practices, modifying firm processes, adopting technology tools, expanding training, or other measures. Based on firm resources and priorities, response plans can set out an iterative, phased approach and timeline.

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For more information: www.intapp.com

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