EMERGING TRENDS TASK FORCE REPORT

A Profile of the Law Firm Information Governance Professional
<table>
<thead>
<tr>
<th>Section Number</th>
<th>Section Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Background</td>
</tr>
<tr>
<td>3</td>
<td>Introduction</td>
</tr>
<tr>
<td>3</td>
<td>Information Governance Professional</td>
</tr>
<tr>
<td>6</td>
<td>IG Professionals as Trainers and Advisors to Data Stewards</td>
</tr>
<tr>
<td>7</td>
<td>Practical Application to Client Engagements &amp; Revenue Generation</td>
</tr>
<tr>
<td>7</td>
<td>Information Security and Privacy</td>
</tr>
<tr>
<td>8</td>
<td>Communications with Other Stakeholders</td>
</tr>
<tr>
<td>9</td>
<td>Demonstrating Positive ROI When Working with IG in the Above Areas</td>
</tr>
<tr>
<td>10</td>
<td>Opportunities for IG Professionals</td>
</tr>
<tr>
<td>11</td>
<td>Practical Approaches to Leverage IG Applications in Both Large and Small Firms</td>
</tr>
<tr>
<td>13</td>
<td>Conclusion</td>
</tr>
<tr>
<td>14</td>
<td>References</td>
</tr>
<tr>
<td>16</td>
<td>Appendix</td>
</tr>
</tbody>
</table>
BACKGROUND

The Law Firm Information Governance Symposium (Symposium) was established in 2012 as a platform to give the legal industry a roadmap for building information governance (IG). The Symposium offers definitions, processes, and best practices for IG in the unique setting of law firms. In 2013, we created a series of task forces to work on specific, current law firm IG topics. This Emerging Trends Task Force report describes the ideal profile and knowledge base of a law firm information governance professional.

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INTRODUCTION

Gartner defines Information Governance as:

“The specification of decision rights and an accountability framework to encourage desirable behavior in the valuation, creation, storage, use, archival and deletion of information. It includes the processes, roles and policies, standards and metrics that ensure the effective and efficient use of information in enabling an organization to achieve its goals.”

This paper will focus on the emerging roles of IG professionals within law firms and the coordination and effort required to achieve the appropriate levels of information governance capability suitable for law firms. We will also reconcile the roles of various professionals and define the required levels of interaction required to achieve a successful IG initiative within a firm. Because broad definitions tend to be confusing, and projects often seem too big to undertake, we will focus on defining tangible results and talk about demonstrating practical benefits in order to make law firms more nimble through enabling the most effective use of information while minimizing risk and ensuring necessary compliance. An important point to keep in mind is that effective information governance spans the entire law firm, so when beginning an IG initiative, success relies on participation and collaboration from all areas of the organization that manages information. A task force should be representative of various departments and practice areas. Although IG may be led by an individual, it is an organizational initiative.

INFORMATION GOVERNANCE PROFESSIONAL

The proposed IG definition for law firms from the 2012 Symposium report “A Proposed Law Firm Information Governance Framework: Work Group 1 Defining an IG Framework Report” is:

“IG is an enterprise-wide approach to the management and protection of a law firm's client and business information assets. An effective IG Program enables lawyers to meet their professional responsibility regarding client information, recognizes an expanding set of regulatory and privacy requirements that apply to firm and client information, and relies upon a culture of participation and collaboration within the entire firm.”

Consider the first section of the proposed definition of information governance: “an enterprise-wide approach to the management and protection of a law firm’s client and business information assets.” We quickly see the scope of an effective IG program encompasses far more than the traditional records and information management program, it encompasses the entire firm. It goes beyond the lifecycle management of a record and seeks to harness all of an organization’s information – electronic and hardcopy, wherever it may reside – to be effectively utilized to the benefit of the firm, as a strategic tool, while meeting legal and compliance requirements.

As IG evolves and firms begin to recognize its value, opportunities for the information governance professional will increase. To be successful in the law firm information governance world, it is important to develop a greater understanding of how IT, Security, Risk, Regulatory Compliance, Privacy Management, Records & Information Management, Practice Support, and eDiscovery interrelate; their impact on an organization’s information; and the IG professional’s role in ensuring the full value of information is securely maintained and available. That being said, the degree of skill and knowledge a successful law firm IG professional requires varies depending on the firm’s size, structure, resources, and functional responsibilities assigned to various positions. For example, an IG professional in a small law firm given the task of creating an IG program based on the IG framework as outlined in the 2012 Symposium Work Group 1 report, would no doubt require a broader, more comprehensive level of knowledge due to the fact that small firms tend to be flatter organizations with limited resources. In large firms, the IG professional is able to draw upon the expertise of various fully-staffed departments as well as with members of the firm’s IG advisory board, who would have a deeper knowledge base. Firms can also gain insight from the 2012 Symposium report, “A Proposed Law Firm Information Governance Framework: Work Group 2 It Takes a Village: Managing
With that in mind, listed below are the skills and knowledge a law firm IG professional would need to be effective:

**IT**

» Technical Terminology — Understanding of terms in order to communicate effectively with the IT department (to communicate with IT and ask the right questions to ensure compatibility and support).

» System Development Concepts — Planning, analysis, and design — the ability to map and design business processes to assist in the development of software systems to support the many processes needed to carry out business functions (i.e., matter intake, expense programs, and boardroom request system).

» Software — The ability to understand and assess software systems’ functionality.

» Hardware — To understand the different types of requirements and to support needed software functionality.

» Storage Resources — To understand the various types of storage available (backup tape, enterprise storage, local storage, archive storage, mobile storage, and cloud storage), their differences, and the relationships between the various types of storage.

» Mobile Devices — How information is transmitted, stored, secured, managed, utilized, and disposed.

» Cloud Computing and Storage — Considerations and implications including security, privacy, and “bring your own cloud” (rogue clouds).

» Migration of Data — Legal, regulatory, and business issues.

**RIM**

» An understanding of best practices and guidelines for law firm information management programs.

» Knowledge of processes and business requirements for dealing with external records storage vendors, including familiarity with related contracts.

» Information retention requirements specific for law firms including all data, hardcopy, and digital.

» An understanding of various industry regulatory requirements for information retention and security (HIPAA, FINRA, etc.).

» Detailed knowledge of document management (DM) and electronic records management systems (ERMS).

> “Building Law Firm Information Governance: Prime Your Key Processes.”

**SECURITY**

» An understanding of security requirements within the firm and ability to identify touch points such as matters with restrictions, client communication, and privacy of client’s assets as well as such regulatory requirements as HIPAA/HITECH. For more information on the 2013 HIPAA Omnibus Rule see the “HIPAA Omnibus Task Force Report.”

» Overall understanding of how information is received, used, managed, stored, and disposed of in order to manage and secure it correctly.

» How security systems affect the usability of information and how it affects client communication mobile workforce and file sharing.
This is a security professional's role; but IG professional knowledge in this area is helpful when designing workflows, as there may be limitation because of security.

Types of security applications such as access controls, content controls, enterprise firewalls, ethical walls, encryption methods, and other security practices relevant to mobile content and content shared by a mobile workforce.

Best practices for moving sensitive client and firm data to and from the firm. Reference the “Matter Mobility Task Force Report.”

RISK
Ability to identify areas of risk and their implications for:

- Business continuity
- Disaster recovery
- Business intake
- Onboarding
- Matter mobility (for more information, see the “Matter Mobility Task Force Report”)
- Confidentiality issues
- Insider trading
- Copyright compliance
- Document destruction

PRIVACY & OTHER REGULATORY COMPLIANCE ISSUES
Knowledge of regulations, standards, and other requirements impacting the handling of client and firm data in law firms is critical for the IG professional. The IG professional needs to develop IG policy and processes to meet these requirements, after determining applicability based on firm obligations, practice group types, and client industry compliance requirements. Below is a list of key regulations with requirements that the IG professional should be familiar with in their role.

- KYC – Know-your-client rules (Canada)
- GLB – Gramm/Leach/Bliley Act (US)
- AML/CFT – Federal Anti-money Laundering and Counter-terrorism Financing (US)
- HIPAA/HITECH – Health Insurance Portability and Accountability Act/Health Information Technology for Economic and Clinical Health Act (US)
- HIPAA Omnibus – 2013 Health Information Portability and Accountability Act (HIPAA) Omnibus Rule (US)
- PIPEDA – Personal Information Protection and Electronic Documents Act (Canada)
- SOX – Sarbanes-Oxley Act of 2002 (US)
For more information on governance and practice support and eDiscovery, see the “eDiscovery and Information Governance Task Force Report: Applying Information Governance to Law Firm eDiscovery Data”7 and the “Emerging Trends Task Force Report: Outside Counsel Guidelines Management: An Information Governance Issue.”8

**IG PROFESSIONALS AS TRAINERS AND ADVISORS TO DATA STEWARDS**

To ensure an IG program’s success, involvement at every level within the firm is necessary; therefore, effective and timely communication and employees training are key factors. An IG professional with the required skills, experience, and ongoing training will be able to educate and build awareness among users in reference to their responsibilities surrounding the IG program. Below are the areas of knowledge and IG involvement needed to be successful:

**Fundamentals of effective training techniques:** To create and conduct effective training programs, knowledge of corporate training techniques is helpful, whether training new hires, or re-training existing employees on new policies, processes, and new IG applications.

**Change management**

**Awareness of firm culture**

**Knowledge of users:** Their roles and requirements, skill-level, attitudes, and challenges they encounter.

**Ability to create new IG strategies, processes, and procedures based on changing law firm business requirements appropriate to the business of the firm.**

**Develop and update IG best practice guidelines based on changing industry requirements.**
» Develop policy and procedures when necessary to support various IG programs in a manner that provides required security, while not needlessly negatively effecting employee productivity (i.e. email management, collaboration, e-filing, and document destruction).

» Oversight of development and implementation of training sessions via interactive intranet sessions information portals, instructional videos, lunch and learns; continuing professional development (CPD) courses and special events present opportunities to communicate and socialize programs in a fun way.

PRACTICAL APPLICATION TO CLIENT ENGAGEMENTS & REVENUE GENERATION

IG professionals need to market their skills and knowledge inside the firm. To be effective (and respected), it is crucial to be at the table contributing when projects are considered for implementation. For example, being able to offer suggestions based on industry best practices or real experience can carry a great deal of weight as well as further showcase your expertise as a key member of the IG team. This will also ensure you’re automatically consulted the next time. A key to being invited to these meetings is to be perceived as a business enabler, not as the person who always says “NO.”

Here are some ways to “market” your IG skills and successes:

» Look for client engagement opportunities to share experiences and successes within the firm.

» Regularly participate in speaking engagements and training sessions. For example, schedule education opportunities for clients or firm personnel on new privacy or security regulations, HIPAA/HITECH, or GLBA compliance issues. Discussing content policy best practices, retention/disposition, and security best practices with clients are all valuable ways of showcasing knowledge and helping to win new business for the firm.

INFORMATION SECURITY AND PRIVACY

As law firms move to further develop information governance programs, they must also examine related duties of the CIO, CISO, Data Officer, and/or Privacy Officer. Depending on the size of the firm, these roles may not yet be identified or adequately staffed in the organizational structure. Some firms, especially smaller ones, often assign these roles/responsibilities to other functional areas that may lack the knowledge or experience to be successful. In reality, organizations have a duty to define and staff these functions.

Regardless of the structure of the organization, it is expected that the IG professional may be asked to assist with or manage client audits, including auditing overall security/privacy capabilities of target systems within the firm or organization. These situations create opportunities for the IG professional to expand their knowledge bases and role within the firm. In other words, firms should focus on duties and abilities, not necessarily just titles. Aspiring to a C-level or officer position should be recognized as a viable career path for an IG executive. An eventual transition to CIO or CISO is possible, should the IG professional rise to meet the technical, business, and practical needs of the role. See sample organization chart including IG professionals in the Appendix.

The basics of protecting law firm information from unauthorized access remain the same as with other industries, and are enforced by government legislation/regulations such as HIPAA/HITECH, SOX, GLBA and Canada’s PIPEDA. Data breaches can have a lasting effect on any organization. For example, the 2013 data breach of Target (100 million records) and the 2014 eBay data breach (145 million records) will end up costing huge amounts of money to respond to and address, not to mention the lasting toxic PR generated. During a client audit firms may be asked for the following: information security and privacy strategies; current/future technology roadmaps and audit records. Firms should be prepared to complete client scorecards ranking their security and IG maturity. Firms have a duty to their clients as well as the business to take effective steps to protect client and firm data, and to defend its processes. Law firms must be able to protect sensitive information no matter where it resides: on-premise, on mobile devices, in
IG professionals and CISO routinely intersect and work together with the following processes:

» Client Audits


» Location of Data and Access – Audits

» Asset Management/Inventory of Approved Software

» Risk Classification of Assets

» Tracking of Devices Authorized to Connect to the Network (BYOD)

» Physical Environment Issues: Cameras on Server Rooms/Access Logs

» Encryption Protocols

» Information Security/Change Controls

» Incident Management

» Business Continuity

» Overall Management of Organization Information Assets

» Vulnerability Monitoring

» Access Control

IG and CISO share privacy concerns relating to data assets as they apply to firm and client work/information sharing and asset protection.

COMMUNICATIONS WITH OTHER STAKEHOLDERS

In order to accomplish items on the IG roadmap and to further move your organization along in building IG, it is essential to have C-level support and the buy-in of various audiences in your firm. In fact, “selling” the benefits of IG and convincing the organization to allocate time and resources is one of the key tasks of an IG professional. For the IG professional to be successful, it is critical to align various stakeholders in the firm and to ensure that they understand and support the initiatives. The firm should identify key operational processes where IG needs to be applied, and work with stakeholders to accomplish this.5

An effective way to both promote and successfully implement information governance is to make it as transparent and unobtrusive as possible. Further, it is equally important to focus on tangible benefits to the business and return on investment (increased productivity and increased levels of client satisfaction), rather than only risk management. Areas that directly impact business profitability will always be funded before potential risk reduction areas. If total transparency cannot be achieved, do so as much as practical. Implement practical and enforceable policies and procedures, communicate them often, creatively train employees on all new policies, procedures and technology, and monitor compliance, and lastly, adopt automation where appropriate (training and change management are addressed later in this report).
A best practice to both implement and monitor the information governance program is to form a stakeholder committee. We recommend at least involving the following areas:

» Risk/Compliance
» General Counsel
» Privacy Officer
» CIO/CISO
» Knowledge Management
» Records and Information Manager
» Storage and Infrastructure Manager
» Key Practice Managers
» Office Administration

Not every firm will have a designated individual for each of the above areas. Adjust the participants accordingly based on firm size, management structure, and culture of your organization. So for smaller firms, a particular individual may wear multiple hats and be responsible for several of the responsibilities listed. For more on developing an IG advisory program, see the 2013 Symposium report.

Unless your firm has been directly affected by an adverse situation, selling risk is always tough. It is much easier to sell return on investment (ROI) of an IG program. In other words, if a new IG program improves profit, measurably reduces costs, raises billable hours, and/or enables new product offerings of the firm, you will be heard and have an impact on the business.

DEMONSTRATING POSITIVE ROI WHEN WORKING WITH IG IN THE ABOVE AREAS

The actual ROI variables will be different for each function listed above. Below is a list of ROI variables that may be relevant, indicating how each actually applies to the ROI calculation:

**DISK SPACE SAVINGS**

There is a myth that storage is cheap; however, in reality, it is not. Even though the cost per raw gigabyte is indeed going down every year, organizational data growth continues to skyrocket. According to IDC, the digital universe will reach 40 zettabytes by 2020, meaning storage budgets will continue to rise. The other storage cost variable to consider is the “fully loaded” cost of storage, or in automotive terms, the true cost of ownership. This includes costs of additional servers and software to manage the storage, additional employee resources, the cost of backups and disaster recovery planning, and annual hardware and software support agreements. In fact, the cost of one fully-loaded GB of storage can be as much as ten times the cost of the same raw storage.

Additionally, when deciding whether to move information to cloud storage, a great savings can be achieved by preemptively disposing of ROT – redundant, outdated, and trivial information. Here you can offer a direct cost savings to your infrastructure or cloud team in IT.
SYSTEM DECOMMISSIONING (RETIREMENT)

When old systems are no longer needed, the question of decommissioning or retirement comes up. When system retirement is considered, the question of what to do with the target system’s data should also be considered. For example, your firm may own an old practice support system that has been kept up and running because an individual thought they may need information from that system. What are your options? If you can determine whether the system data retention periods have all passed, or whether the information exists elsewhere etc., then you can go forward with the decommissioning and repurposing of the equipment – directly saving infrastructure, personnel, and hardware maintenance costs. If system data must be kept “just in case,” a data migration process could allow the system retirement to go forward in the future, realizing the infrastructure and storage management personnel cost savings.

SECURITY AND PRIVACY OF INFORMATION

Your firm may indeed be protecting sensitive information and have document management, records management, and time entry systems with effective “ethical walls” and confidential matter security in place. However, the protection may not extend to the many other information assets such as email systems, file shares, cloud storage, mobile devices, employee owned devices, and employee personal clouds. A best practice would be to identify those information assets that warrant further protection, and either move them under secure management or introduce security in such a way as not to interfere with the normal mode of operation for the end users if possible; but, information security is paramount. These scenarios will be of interest to practice managers, security and privacy officers, as well as individual attorneys, and the CISO.

BIG DATA MINING

Both current and aging data can be effectively utilized for data mining and analytics for improving practice management, more accurate matter pricing, and a more powerful knowledge base to help the firm increase client satisfaction as well as gain new clients. Effective IG is integral to the success of this process. Inaccurate or outdated information requires costly culling and skews results. This scenario will be of interest to the attorneys, practice managers, marketing managers, and sales. In fact, in this case, IG can even be a billable profit center.

As firms transition to a largely electronic file, there are a number of opportunities to realize cost savings based upon a reduction of paper files. First, there can be a potential reduction in required filing space, both central filing rooms and perimeter filing space. Providing analytics on file space reduction can have a positive financial impact on a firm’s strategy during office moves or redesigns. Second, offsite storage volume and activity should reduce demonstrably over time. IG professionals can utilize analytics that show projected reduction of offsite storage costs, as paper is minimized and destruction of paper files is executed consistently. Finally, firms may realize cost savings from their IG program as staffing needs change. This fluctuation will vary from firm to firm, but in the area of paper records management, a cost savings should be realized over time. However, this potential savings must be balanced by the overall staffing requirements for an effective IG program.

OPPORTUNITIES FOR IG PROFESSIONALS

The scenarios described in the previous section are not the only ways to justify IG. However, they are presented as specific practical examples that have worked well for various firms in the past. You can get started by leveraging one of the cases that comes close to your particular situation. In reality, IG is usually a broad, long-term initiative, and is difficult to justify through tangible results if too much is attempted at once. The most effective way to get started with an IG program is to create an overall firm strategy, build a plan, and seek out specific projects and initiatives that fit with the plan, and ensure those particular projects are successfully completed while incorporating IG principles throughout. This strategy will enable you to quickly demonstrate ROI and success. Early success greases the wheels for going forward with other IG projects.
This practical approach to IG creates a real opportunity for career advancement for the IG professional. Once measurable results are demonstrated, the IG professional gains credibility, additional responsibility, and is invited to the table by other stakeholders. The most effective way to advance both IG and the professional is to make IG programs as transparent as possible, with as little overall disruption as possible. If you can help your end users accomplish the cases described above without burdening them with unneeded processes and procedures, you will achieve the greatest success. Remember when document management systems were first rolled out and everyone spent countless days, weeks, and months figuring out document types that were rarely used? Avoid change for change’s sake. Remember, perfection is often the enemy of the good. Figure out what is good enough and move forward; it will be accepted by the users. Become the enabler, not the person that always says “no,” and you will achieve success.

PRACTICAL APPROACHES TO LEVERAGE IG APPLICATIONS IN BOTH LARGE AND SMALL FIRMS

The information governance landscape is constantly evolving. New technologies, new and changing best practices, and new regulatory requirements all add to the “moving target.” Because of this, IG professionals are challenged with continuously expanding their education and skill sets, while leveraging organizational assets to accomplish IG goals without expanding budgets. The field of possibilities relating to the value add of the evolved IG professional is limited only by the individual’s ability to provide solutions, develop best practices, and become a positive change agent within the organization.

NEW SYSTEM IMPLEMENTATION

There is an opportunity for IG professionals to assist with system configuration, design and set up of new databases. For example, if a firm decides to move forward with a new docketing system and they need to convert or upgrade an existing database, the IG professional can offer a different, “fresh,” perspective at the database design, often seeing solutions to problems that others who are too close to the problem can’t see. The other benefit of having an IG perspective is the ability to recognize and plan for requirements in the future. The IG professional may also make recommendations to change or fine-tune standard database codes, security access, and the management of client-side admin access to ensure standardization across the organization.

PRACTICE GROUP ASSISTANCE

There are various opportunities to leverage and expand an IG program within an organization by training information stewards on methods to optimize applications and enhance workflows. One approach to optimizing existing workflows is to create process review teams by practice groups, or business units, and have them study the current workflows. They can start by polling end-users as to what wastes their time; users that actually use the workflows on a daily basis are experts on what works and what doesn’t. Employees are generally open to change that either adds value, or cuts work load, and almost universally oppose change that is equated to “change for change’s sake.”

A successful workflow change must meet the following criteria: make jobs easier, save time, and be a consistent, repeatable process that makes sense. For example, a practice group may have closing binders that need to be imaged, bookmarked, and saved to a document management system. Everyone in the group knows this needs to be done, but each administrative assistant does it differently. The group has a records specialist, who currently only focuses on paper records. That same records specialist could be trained on imaging the records and saving them to the DM using the appropriate metadata and document type. The records specialist for the group is then able to hold training sessions for the various secretaries on the new process and procedures, eventually saving a great deal of time in getting documents scanned and made searchable. Because of the process review group, the practice is not only able to build consensus on the new process, but also get it quickly adopted. This makes it possible to digitize more documents faster and more accurately, reducing the organization’s overall hardcopy data.
What does this example have to do with IG? It shows how a company could eliminate dozens of copies of the same document stored in various locations electronically on the firm network. This process can also be extended to many other systems/repositories such as the email system, file shares, individual work stations, etc. – with the same results. In the absence of tested standardized processes, there is little chance of consistent electronic information management.

If the IG professional can survey the landscape and find practical approaches using best practices and technology to solve on-going problems within practice groups, they will be seen as adding value to the firm. Further, with ever shrinking department sizes and budgets, it becomes more important that processes and best practices are documented, vetted, and successfully deployed. All processes should be revisited and documented as needs and issues change.

In addition, firms have struggled with the issue of departing lawyers’ electronic files stored on numerous devices. Many firms already have processes in place to deal with these files. One data repository that needs special attention is the email system. When lawyers or others in the firm depart, their email box can continue to accumulate important content. Having immediate processes to gain access to and actively manage a departed lawyer’s email box is extremely important. See the “Matter Mobility Task Force Report.”

Most firms have legacy email PST (personal storage table) files that should also be found and managed. All electronic files from departing employees should be treated as important until they have been screened. One approach many industries utilize is to process and load all employee files (emails, file shares, mobile device data, etc.) in to a Litigation Support Review (LSR) tool for analysis. In these cases, the IG professional can first identify clients/matters that a departed lawyer worked on to generate a list of key words/concepts, and client names/numbers, to build an automated search for the LSR tool. The litigation support tool could then search for sensitive content such as client/matter related information. Once the data is identified, it can then be moved to a final repository such as the DM for proper management and retention.

This process provides the IG professional the opportunity to train administrators and attorneys who are tasked to manage departing employee electronic files on new procedures and best practices for departing employees file cleanup. The overall goal of the new procedure is to quickly remove departing employee data from exchange and other repositories, reduce storage space, and securely retain necessary information required to protect the clients’ and firm’s interests. Information that is actively managed will allow the firm to apply retention/disposition schedules and mitigate risk.

When the entire practice group is responsible for the management and retrieval of information, they will more effectively work toward better overall information management and governance. Law firms must practice what they preach because clients are consistently seeking firms’ advice in this area, and it makes for a difficult discussion when the firm is not walking the walk. As well, more clients are auditing firm IG practices and failure to properly manage and secure documents can lead to the termination of a client relationship.

When the IG team is able to show cost savings, reduced risk, positive ROI, and increased end-user productivity, end-users will be less likely to oppose new IG processes and procedures, and more stringent security.

**INFORMATION SECURITY/PRIVACY**

Firms are being audited more and more by their healthcare and financial clients. These audits are concentrating on system security, information security, system access controls, and employee training. These audits can include third party security/penetration testing to measure network security levels. Third party auditors will not only send a questionnaire, they’ll visit your firm (sometimes unannounced) and ask to see proof of policies in use, self-audit records, and your plan to remedy any issues found in previous and current audits. The audit may also cover password management policies and access control policies for clients and third party contractors.
CONCLUSION

It is an exciting time for the law firm IG professional. The intent of this paper was to provide practical examples of IG in action and to emphasize those areas that should be included in an overall law firm IG program including IT, Security, Risk, Privacy, Regulatory Compliance, Records & Information Management, Practice Support, eDiscovery, etc. Our goal is to open the door to practical approaches to advancing an IG program within the law firm environment, and to provide the IG professional with the tools and a strategy for transitioning to the executive C-suite.

Appendix A lays out a Law Firm Sample Organizational Chart which outlines areas of responsibilities for the Chief Information Governance Officer (CIGO) and CIO. We hope that you find this chart useful and are also able to leverage the IG leadership profile in “Building Law Firm Information Governance: Prime Your Key Processes” to aide in your personal and organizational evolution in Information Governance.
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This organization chart outlines a Law Firm sample reporting structure and areas of responsibility for the CISO/CIGO and CIO. Positions and reporting structure may vary based on firm organization and size. Should additional executive offices exist such as CKO, CRO, CCO, etc., relevant responsibility may be distributed.
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