

Now That You Know, You Can't Unknow

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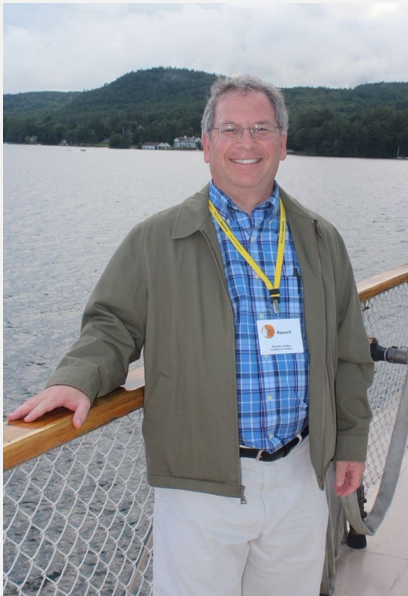


RMAI's Receivables Management Certification Program

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Earn the **Certified Receivables Compliance Professional (CRCP)** designation by obtaining 24 continuing education credits—like these—in subjects related to the receivables management industry.

Earn the **Certified Receivables Business (CRB)** or **Certified Receivables Vendor (CRV)** by complying with uniform and rigorous industry standards of best practices (including account documentation, consumer complaint and dispute resolution, vendor management, resale, and other operational procedures) and passing a background check.



Testimonial

I've been an RMAI member since 2001, and this year I earned the RMAI Certified Receivables Compliance Professional (CRCP) designation. The educational webinars I took to earn the CRCP designation were excellent and very informative. The presenters were all dynamic individuals and leaders in the collection industry. I was impressed with how they addressed timely topics affecting our legal collection workspace. **If you want to advance yourself or your business in the receivables management industry, I highly recommend the RMAI Receivables Management Certification Program.**

Russell L. London, Esq., LONDON & LONDON





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This information is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case.

Every effort has been made to assure this information is up-to-date. It is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel.

Any opinions expressed are the opinions of the speaker and not their organization or RMAI.



Today's Agenda

➤ **Navigating your duties to disclose.**

- Duties to your company (highest governing body + senior leaders), duties to regulators, duties to the public....

➤ **Sources of discovery (and events following discovery).**

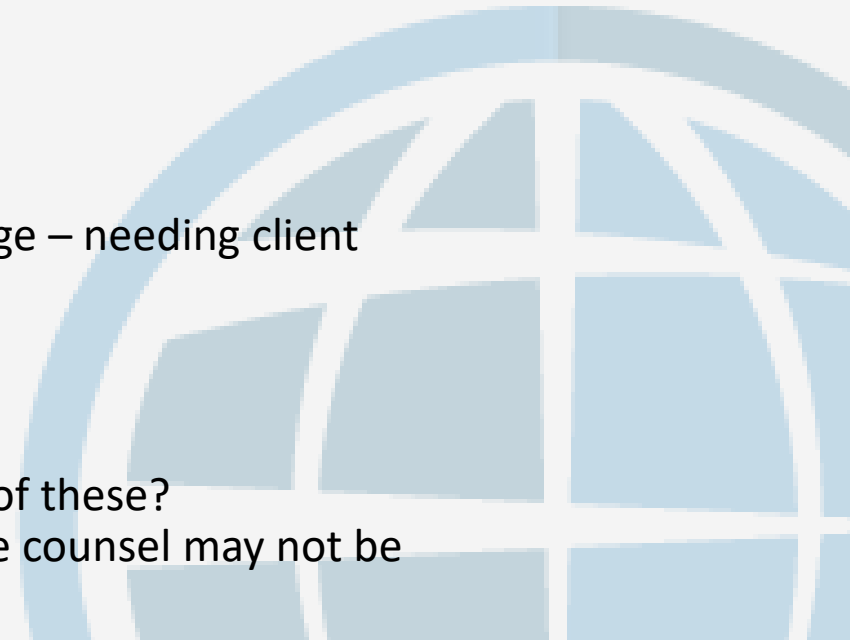
- Internal compliance person preparing resources for outside regulatory or legal review and discovers either voice analytics or eOscar or correspondence handling nonconformities
- Sequence of internal communications before involvement

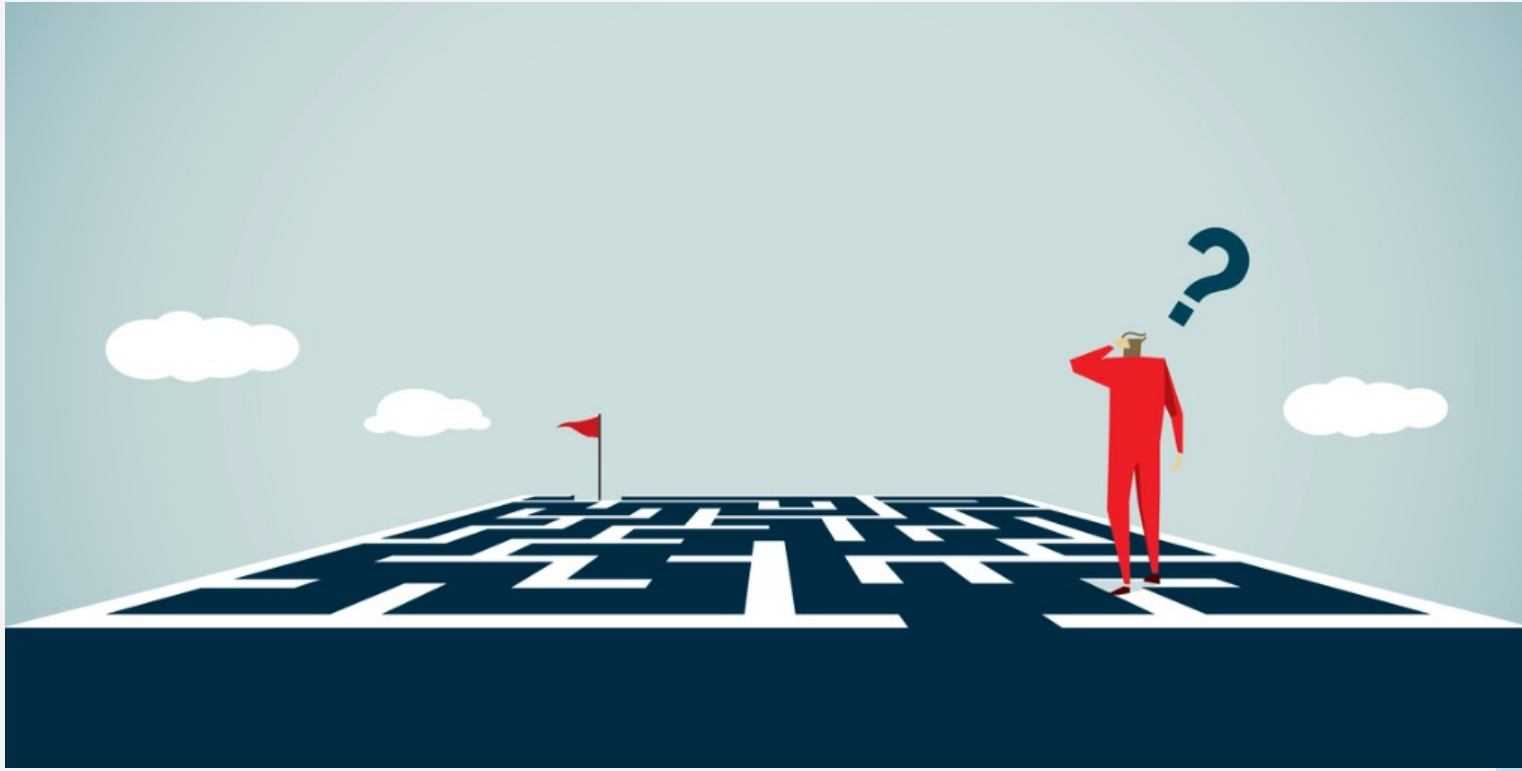
➤ **Pros and cons of communication strategies.**

- External counsel retained to defend a legal or regulatory – client turns over voice analytics, eOscar or correspondence handling nonconformities

➤ **Practical Issues to consider.**

- When to have/seek attorney client privilege
- Disclosure to regulator or opposing counsel – impact of atty client privilege – needing client permission to disclose
- Do you self-repair and then disclose with solution in place?
- Lawyer discovers, client doesn't want disclosed
- Yates memo – when does the atty/client privilege afford no cloak at all
- Any difference between in-house counsel versus external counsel in any of these?
- Team meetings, internal communications, all communications to in house counsel may not be privileged – some bright lines to consider – including cc's and bcc's





Navigating your duties to Disclose

What the CFPB has to say about your compliance management system and duties to self- identify and disclose

- Key to any effective compliance management system: board and management oversight
- Factors the CFPB will consider:
 - Oversight of and commitment to the institution's CMS
 - Effectiveness of the institutions change management processes, including responding timely and satisfactorily to any variety of change, internal or external, to the institution
 - Comprehension, identification, and management of risks arising from the institution's products, services, or activities; and
 - Self-identification of consumer compliance issues and corrective action undertaken as such issues are identified.
- <https://www.consumerfinance.gov/compliance/supervision-examinations/compliance-management-review-examination-procedures/>

Sources of Discovery



Formal

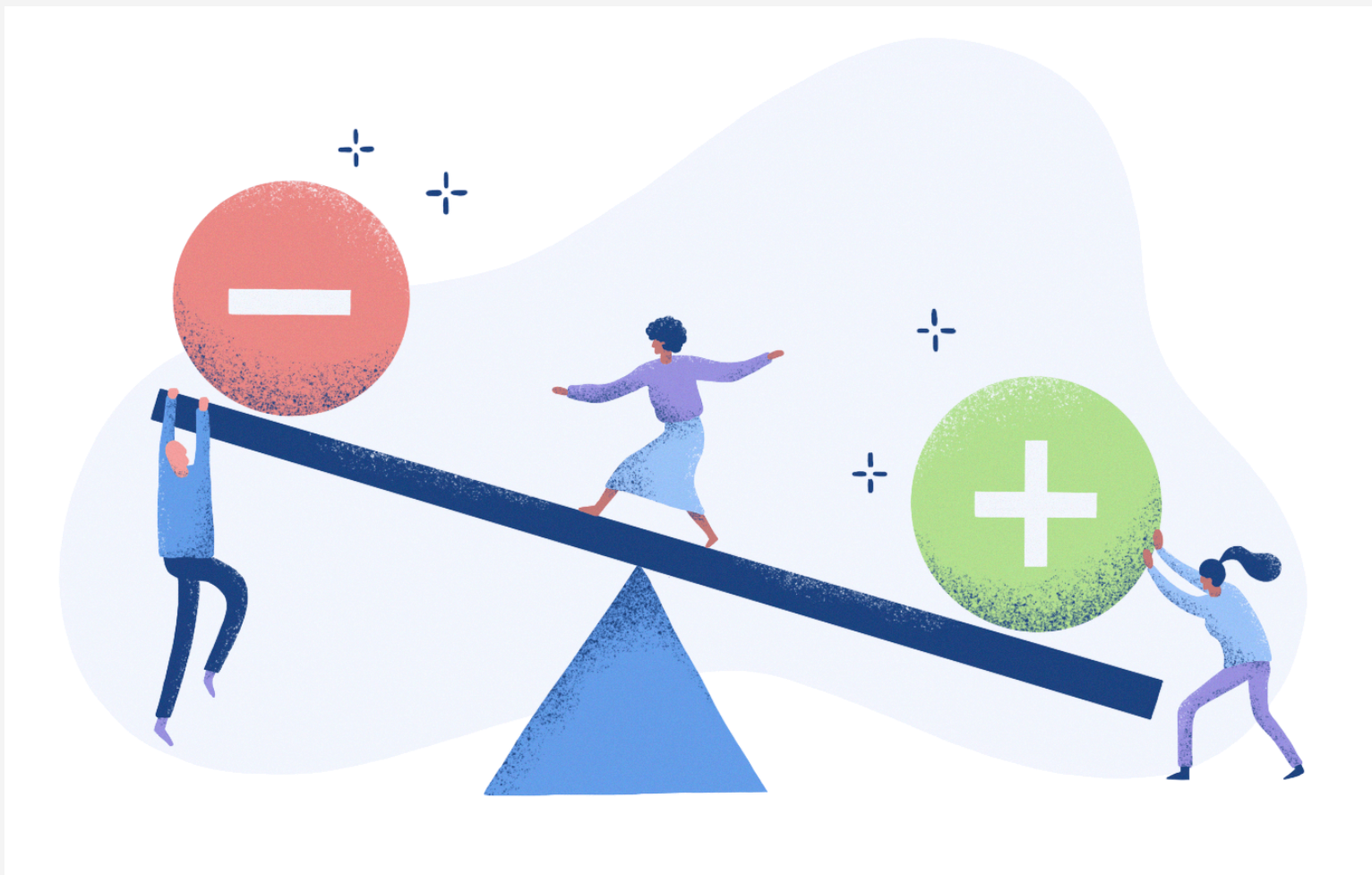
Lawsuits
Regulatory or Consumer Protection
communications
Complaints
Disputes



Informal

Call recordings
Correspondence
Vendor
Client

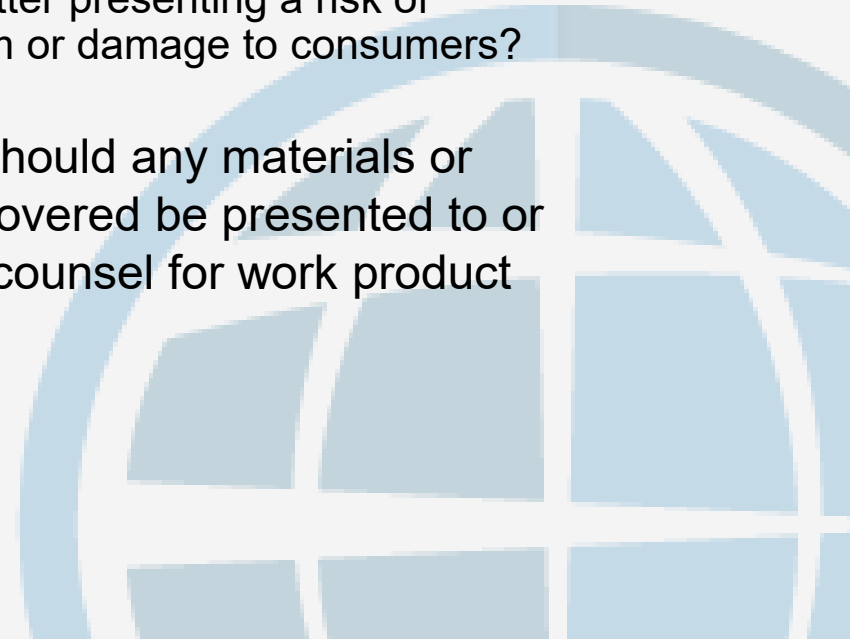




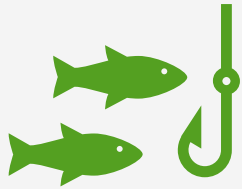
Pros and Cons of Various Communication Strategies

Internal versus external counsel: where or where has privilege gone?

- Questions to ponder:
 - What if there are extensive internal communications before any counsel is involved?
 - What if communications to counsel include
 - Lots of information that is not presented to seek legal advice?
 - Subject matter presenting a risk of further harm or damage to consumers?
 - At what point should any materials or resources discovered be presented to or developed for counsel for work product privilege?



Assessing requests for information from others



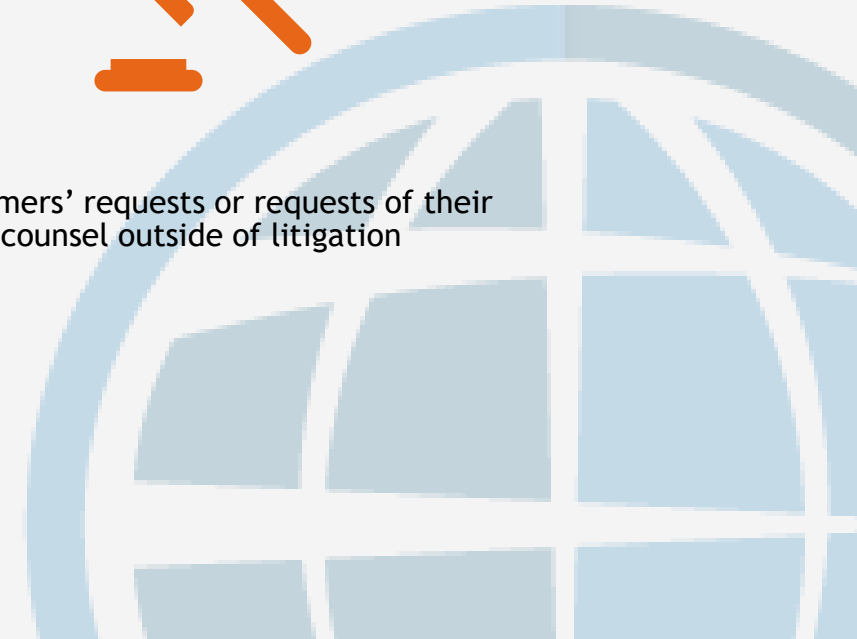
Discovery requests that are fishing expeditions well beyond the subject matter of the suit

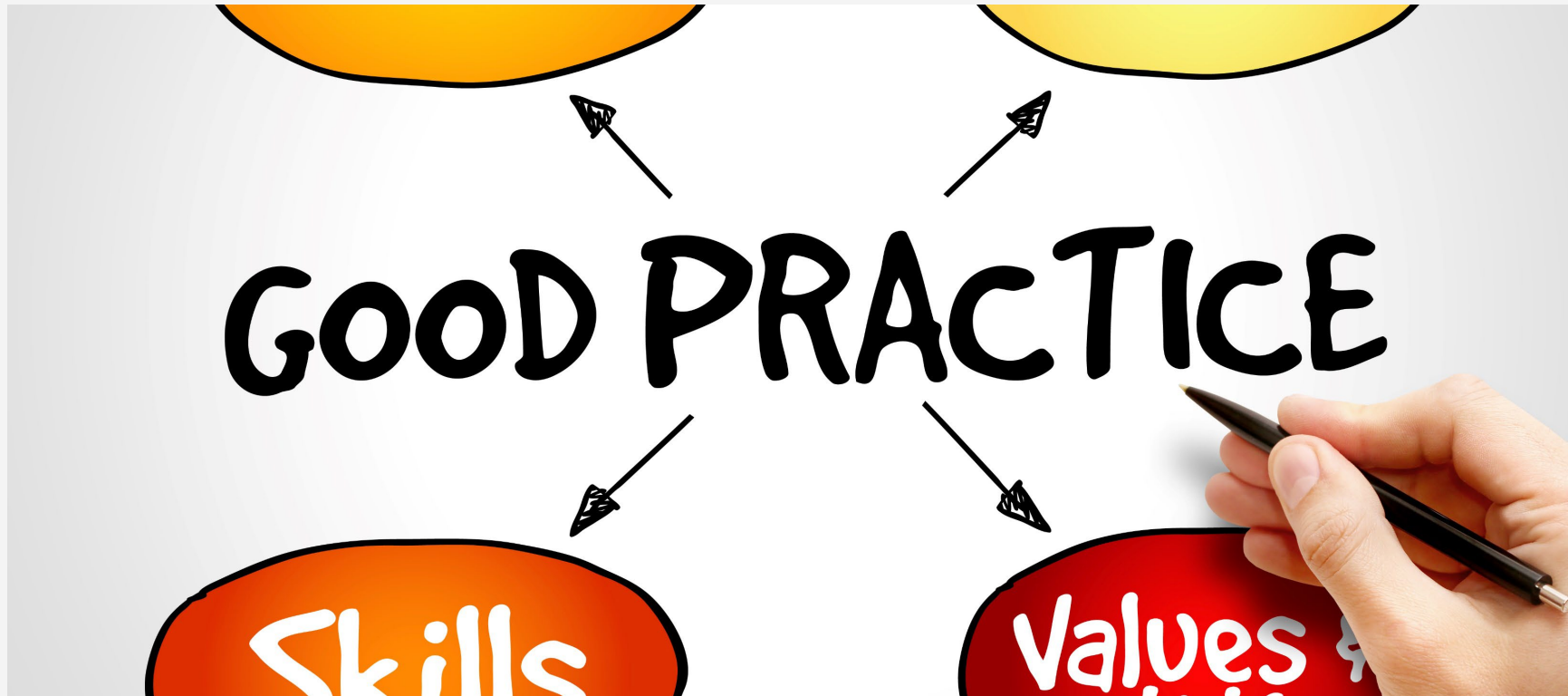


Subpoenas, civil investigative demands, examination requests or other regulatory requests for you to self-audit and share results with regulators



Consumers' requests or requests of their counsel outside of litigation





Practical Guidance

Hypothetical Example

- Imagine that your client has discovered an unauthorized party is attempting to collect debts you own but is not in the chain of title.
- You have conducted an extensive internal investigation and determined you have had no security incident or breach.
- What are your next steps?
 - Who should be on your list of parties to whom you must disclose and in what order of priority?
 - How do you script a conversation with your 'seller'?
- What if there is a whistleblower who has brought this to your attention?
 - How can or should you create a 'safe place' for people to blow the whistle?



Round Up of Issues to Consider

- Issues to consider with each way you may handle that which you now know:
 - When to have/seek attorney client privilege
 - Disclosure to regulator or opposing counsel – impact of atty client privilege – needing client permission to disclose
 - Do you self-repair and then disclose with solution in place?
 - Lawyer discovers, client doesn't want disclosed
 - Yates memo – when does the atty/client privilege afford no cloak at all
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Thank you!



Coming Soon

Thank you for attending today's webinar
Education programs are listed at rmaintl.org/education

Be sure to join us for the next RMAI webinar:

The Contemporary Collector

Wednesday, August 25, 2021, at 9:00am PT/12:00pm ET

