

## Litigation Holds and Establishing the Duty to Preserve ESI

*2021 E-Discovery Essentials*  
*April 20, 2021*

1

## Litigation Holds and Establishing the Duty to Preserve ESI

### **Moderator:**

Farrah Pepper, Marsh McLennan, New York, NY

### **Panelists:**

Robert Keeling, Sidley Austin LLP, Washington D.C.

Cheryl Joseph LaFond, Scott Douglass & McConnico LLP, Austin, TX

Jeff Rickard, Walmart Inc., Centerton, AR

2

2

# Agenda

- Ethical Obligations
- The Duty to Preserve
- Legal Hold Triggers
- Preservation Demand Letters
- Legal Hold Process
- Current Trends
- Takeaways
- Questions

3

3

## The Duty to Preserve

- Common Law
- FRCP
- State Law
- Other Sources

4

4

## Duty of Preservation (Generally)

While the duty of preservation is jurisdiction and case specific, here is a good rule of thumb:

A party must take reasonable steps to preserve relevant information for active and reasonably anticipated litigation.

5

5

## Potential Consequences for Failure to Preserve

- Monetary awards
- Impact on defense
- Impact on corporate reputation

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Litigation Holds and Establishing the Duty to Preserve ESI

Also available as part of the eCourse  
[2021 e-Discovery Essentials eConference](#)

First appeared as part of the conference materials for the  
2021 E-Discovery Essentials session

**"Litigation Holds and Establishing the Duty to Preserve ESI"**