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Discoverability of Mobile Devices, New Technology and Social Media Platforms



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E-Discovery Essentials

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Mobile Device Risks

Data Leakage

It's possible confidential company data could be shared in forums outside the company's control

Data Loss

Accidental or intentional spoliation of data required to be preserved

Company trade secret information/privileged information

Loss of control over business communications that should be retained per Retention Schedule (FCPA risk)

Increased Costs of Collection

Texts

Other messaging applications

Spoliation Risk

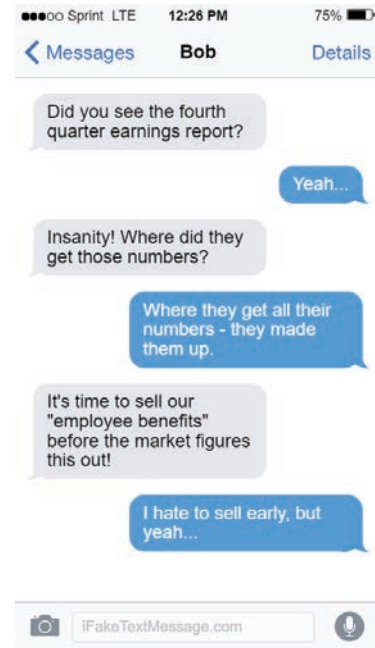
Shawe v. Elting, 157 A.3d 142, 149-51 (Del. 2017), in a corporate dispute, Defendant ordered to pay over \$7 million in attorneys' fees and expenses for a series of litigation abuses to include the deletion of relevant text messages.

In *Benefield v. MStreet Entm't, LLC*, the court imposed a spoliation instruction where defendant failed to preserve potentially relevant text messages stored on the *personal* phones of key officers and employees. No. 3:13-CV-1000, 2016 WL 374568 (M.D. Tenn. Feb. 1, 2016).

Schmalz v. Vill. of N. Riverside, No. 13 C 8012, 2018 WL 1704109 (N.D. Ill. Mar. 23, 2018), a police department failed to preserve relevant text messages about the Plaintiff. The court found gross negligence, but not intent to deprive. Still permitted Plaintiff to tell the jury about the spoliation and the likely relevance of the texts.

Mobile Device Discovery is on the Rise

- Attorneys know these days that Mobile Device preservation/collection is a huge Achilles heel (compliance is hard)
- Constantly being requested because communications are often less guarded than in email
- More business simply is being conducted on mobile devices



Mobile Device Risks

How are companies managing those risks?

- Offering enterprise solutions for messaging applications
- Limiting who can use messaging applications for business purposes
- Requiring express written agreement (at least in the US) to devices—including obtaining passwords
- Other restrictions

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Title search: Mobile Discovery Workflow Overview: Mobile Collection, Processing, and Hosting Walkthrough

Also available as part of the eCourse

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