

Litigation Holds and Establishing the Duty to Preserve ESI

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Agenda

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

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The Duty to Preserve

- Common Law
- FRCP
- State Law
- Other Sources

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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.

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Potential Consequences for Failure to Preserve

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

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