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**LITIGATION HOLDS**

# Litigation Hold

- A “litigation hold”, “preservation order” or “hold order” is intended to ensure documents and other information that may be relevant to a law suit or that are reasonably anticipated to be relevant are preserved.
- A litigation hold is intended to prevent the destruction, alteration, or mutilation of evidence.
- Applies to both paper records, electronically stored information, and other evidence.

- ① Documents and information must be preserved when there is pending or imminent litigation, or when litigation is reasonably anticipated.
- ① Employees, officials, and others are notified of the preservation requirements.
- ① Should be issued whenever there is any information that is likely to be sought in discovery.

- ⦿ Protects against spoliation claims. A litigation hold ensures that the documents relating to the litigation are not destroyed and are available for the discovery process prior to and during litigation.
- ⦿ Failure to implement a litigation hold and preserve evidence may result in fines, reimbursement of the opponent's litigation costs, or inferences against the party failing to meet discovery obligations.
- ⦿ Between 2005 and 2013 sanctions for spoliation increased 271%

# Litigation Hold Plans

- ⦿ Should:
  - Planned in advance of trouble;
  - Contain criteria for what will trigger a legal hold
    - More than just being served with lawsuit or claim
  - Identify custodians of information/evidence
  - Do not forget third parties (Former employees/officials, vendors/consultants, etc.)
  - Clearly identify subject matter, date ranges, etc.
    - Make clear that it is an ongoing obligation and consequences for failure to comply
  - Regularly Communicate and Invite feedback on types of information, scope, and others who may possess information
  - Set forth requirements to document the implementation of the legal hold process
  - Contemplate Use of Third Parties
  - Systematic and Repeatable
- ⦿ Should not be overly complicated

# Ten Tips

(“Litigation Holds: Ten Tips in Ten Minutes, by Stephanie F. Stacy; Baylor, Evnen, Curtiss, Grimit & Witt; US District Court, District of Nebraska)

1. Watch for Triggers
2. Don't Procrastinate
3. Reply or Confirm Receipt
4. Identify scope: what is relevant
5. Put in writing and be specific
6. Think Outside the E-Mail Box
7. Follow up as appropriate
8. Don't be afraid to bring in help
9. Plan Ahead
10. Stay Current

# Conclusion

- Litigation Holds will be an exception to your normal document/information retention policies;
- Electronically stored data is a significant and changing issue
- Significant consequences for failure
- Have a plan in place