

ElectronicLegal

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Dear < >:

By this letter, you and your clients are hereby given notice not to destroy, conceal or alter any paper or electronic files and other data generated by or stored On your clients' computers and storage media (e.g., hard disks, floppy disks, back-up tapes), or any other electronic data such as voice mail. As you know, your clients' failure to comply with this notice can result in sanctions being imposed by the court for spoliation of evidence or potential evidence.

Through ongoing discovery, we expect to obtain from you a number of documents and things, including files stored on your clients' computers and your clients' computer storage media. As part of our initial discovery efforts, you are hereby served with interrogatories and additional requests for documents and things.

In order to avoid spoliation, you will need to provide the data requested on the original storage media, or on exact copies of that media (sometimes referred to as images copies or evidentiary copies). Do not reuse any media to provide this data.

Electronic documents and the storage media on which they reside contain relevant, discoverable information beyond that which may be found in printed documents. Therefore, even where a paper copy exists, we seek all documents in their electronic form, along with information about those documents contained on the media. We also seek paper print outs of only those documents that contain unique information after they were printed out (such as paper documents containing handwriting, signatures, marginalia, drawings, annotations, highlighting and redactions) along with any paper documents for which no corresponding electronic files exist.

Our discovery requests ask for certain data on the hard disks, floppy disks and back -up media used in your clients' computers, some of which data are not readily available to an ordinary computer user such as "deleted" files and "file fragments". As you may know, although user may "erase" or "delete" a file, all that is really erased is a reference to that file in a table on the hard disk. A "deleted file" can be as intact on the disk as any active file you would see in a directory listing.

I am sure you are aware that courts have made it clear that all information available on electronic storage media is discoverable, whether it is readily readable (active) or deleted but recoverable. E.g., *Santiago v. Miles* 121 F.R.D. 636, 640 (W.D. N.Y. 1988); *Gates Rubber Company v. Bando Mechanical*, 167 F.R.D. 90, 112 (D.Co1. 1996).

Accordingly, your clients are also required to preserve and not destroy all passwords, decryption procedures including software to decrypt the files, network access codes, I.D. names, manuals, tutorials, written instructions, decompression or reconstruction software, and any and all other information and things necessary to access, view and, if necessary, reconstruct the electronic data we are requesting through discovery.

In order to assure that your clients' obligations to preserve documents and things will be met, please forward a copy of this letter to all persons and entities with custodial responsibility for the items referenced in this letter.

Cordially,

Enclosures:

**Interrogatories and/or
Request for Documents and Things**