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Personal Injury Medical Malpractice

40 attorneys with offices in New York, Long Island and New Jersey

Spoliation: Sanctions Imposed for Unintentional Conduct, cont ...

by Frank V. Floriani, Esq.

In another recent matter, the defendant failed to stop the automatic delete cycle for the corporation's emails. Even though there was no evidence of intentional destruction, the defendant's failure to turn off the automatic delete function when litigation should reasonably have been anticipated resulted in spoliation sanctions. The court utilized a very common sanction for the destruction of evidence, the adverse inference charge, which permits the jury to presume that the destroyed electronic data was relevant and permits the jury to draw an adverse inference that the destroyed evidence would have supported the requesting party's claim.

The moral of the story is twofold: (1) As a matter of routine, as soon as you believe there is an issue or that litigation may ensue with another party, take immediate steps to preserve any and all relevant electronically stored information; and (2) If you think the other party you are having an issue with has important or key documents or information, be sure to advise your attorney immediately so he or she can serve notices to preserve and produce the key documents and information.

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Our Offices

Manhattan Office

120 Broadway
New York, NY 10271
P: 212-732-9000
F: 212-266-4141
SPBMC-NY@triallaw1.com

Garden City Office

1140 Franklin Avenue, Suite 200
Garden City, NY 11530
P: 516-742-0707
F: 516-742-7350
SPBMC-LI@triallaw1.com

Cutchogue Office

33105 Main Road
Cutchogue, NY 11935
P: 631-734-2500
F: 631-734-2502
SPBMC-LI@triallaw1.com

New Jersey Office

126 State Street
Hackensack, NJ 07601
P: 201-342-0037
F: 201-342-6461
SPBMC-NJ@triallaw1.com

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