

e-Discovery Update: Avoid Sanctions by Appropriately Preserving Electronically Stored Information

A 2013 ruling from the Rhode Island Superior Court illustrates the necessity of preserving potentially relevant information in the face of pending or threatened litigation, and the harsh consequences that can result from a party's failure to comply with its preservation obligations. In *Berrios v. Jevic Transportation, Inc.*, No. PC-2004-2390, 2013 WL 300889 (R.I. Super. Jan. 18, 2013), Presiding Justice Gibney considered multiple motions seeking sanctions against two of the defendants in that case for alleged "spoliation" (i.e. loss or destruction) of evidence, concluded that spoliation had in fact occurred, and imposed sanctions on both defendants that had been accused of spoliation.

The *Berrios* decision thus illustrates that severe consequences can befall litigants who fail to take steps to preserve materials potentially relevant to litigation. To avoid sanctions, it is critical for potential litigants to take affirmative steps — including implementing litigation holds — to ensure that preservation occurs in a timely fashion, that the preservation protocols are communicated to employees and agents, and that potential custodians understand and comply with those protocols.

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