Blog series:
Evidence spoliation

As originally published at *Inside Counsel*

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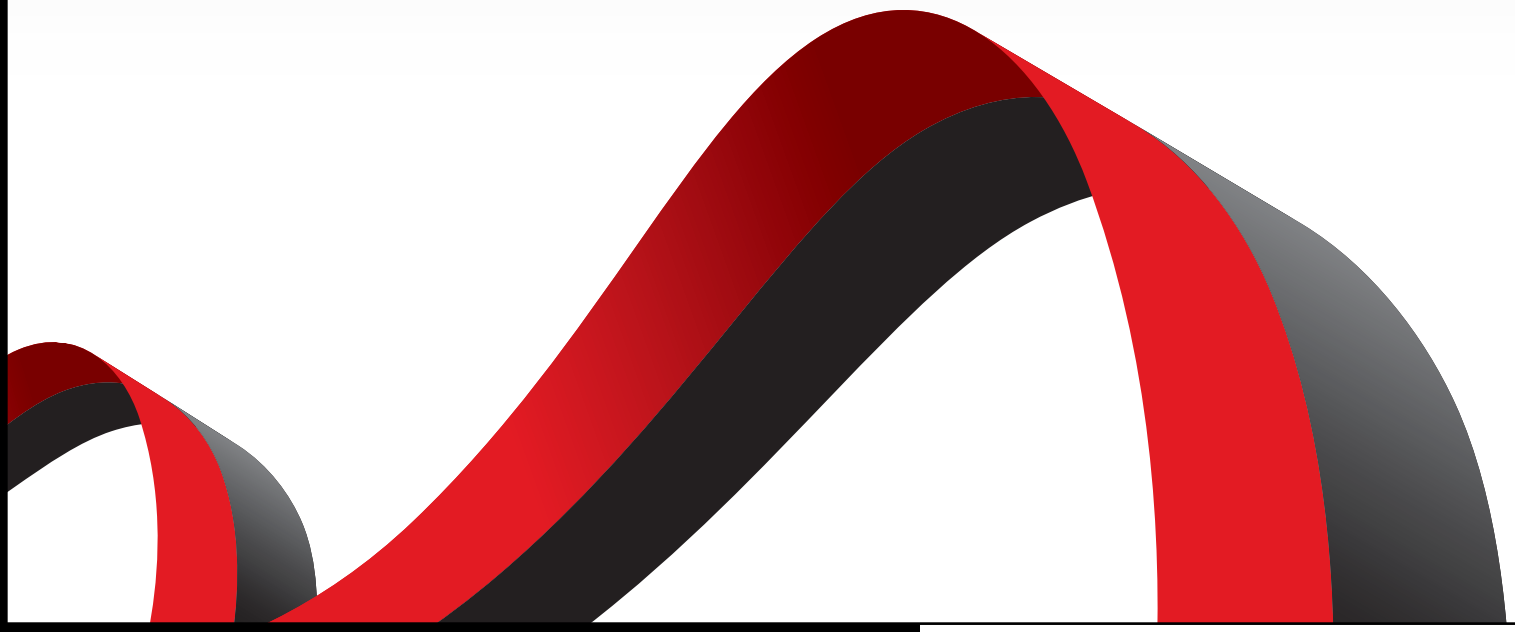

A relationship of a different stripe.

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When Does a Company Have a Duty to Preserve Evidence?

May 9, 2013 | Margaret Koesel, Tracey Turnbull

This article was originally published by Inside Counsel *on May 9, 2013*

There is no consensus among state or federal courts on the standards that govern preservation and spoliation issues. Yet, whether and when a company has a duty to preserve evidence is among the first questions that come to mind for inside counsel considering spoliation issues. Generally, a company has no duty to preserve evidence before litigation is filed, threatened or reasonably foreseeable unless there is a statutory or regulatory mandate, a contractual obligation, some special circumstance, or an organization has voluntarily assumed an obligation to retain some document, data or thing. That means, unless a company has notice of a probable or pending litigation or a government investigation, it generally has the right to dispose of its own property, including documents, electronically stored information or tangible things, without liability.

So, when does a company have a duty to preserve documents, data or things that may be relevant to a government investigation or a lawsuit? There are several subtle variations in standards for establishing when a pre-litigation duty to preserve evidence may be triggered. In large part because plaintiffs control when litigation is commenced, a plaintiff's duty to preserve is often triggered before litigation is commenced. However, it does not matter if a company initiates or is the target of litigation; most courts find that the common law duty to preserve evidence arises the moment litigation is "reasonably anticipated." (e.g., *Micron Tech., Inc. v. Rambus Inc*.)

Some courts find that a duty to preserve evidence is triggered for potential litigation if a reasonable person in the party's position should have foreseen that specific documents, data or things were material to a lawsuit. Other courts have held that a duty to preserve such evidence arises once a party knows that information may be relevant to a reasonably foreseeable claim. For instance, in the oft-cited *Zubalake* decision, the court found that a company employer had a duty to preserve electronic records destroyed before an employee filed the charge of discrimination that triggered a government investigation because almost everyone with whom that employee worked anticipated she might bring a lawsuit. That is, the court held that duty to preserve attached at the time that litigation was "reasonably anticipated," and that key company employees anticipated litigation months before the employee filed a charge of discrimination. Still other courts look at whether a party has some notice that the data, documents or things are relevant to litigation, or that the party should have known that the data, documents, or things may be relevant to some future litigation.

One circuit court suggested that a party has a duty to preserve evidence only if it

knew, or should have known, "that litigation was imminent." *Burlington Northern & Santa Fe Ry. v. Grant*. But the Federal Circuit in *Micron Tech., Inc*. rejected this standard, refusing to "sully the flexible reasonably foreseeable standard with [a] restrictive gloss" that would require a showing that a person reasonably foresee that "litigation was imminent." Rather, the court found that the "reasonably foreseeable" standard is sufficiently flexible and fact-specific to allow a court to exercise the discretion necessary to consider the many factual situations inherent in a spoliation inquiry. The trick is to determine what facts the court will consider when determining that litigation was reasonably foreseeable or reasonably anticipated; a topic we will address next.

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Events courts consider when deciding if duty to preserve evidence has been triggered

May 23, 2013 | Margaret Koesel, Tracey Turnbull

This article was originally published by Inside Counsel *on May 23, 2013*

We know there is no general duty to preserve evidence before litigation is reasonably anticipated, so the trick is to determine what facts the court will consider when determining when that duty attaches. For an individual or company that initiates litigation, the obligation to preserve relevant evidence may be triggered before a lawsuit is commenced. Triggering events may include seeking advice of counsel, sending a cease and desist letter, or taking specific steps to initiate specific legal action. See, e.g., *Hynix Semiconductor Inc. v. Rambus Inc.* (sanctioning company that destroyed documents while strategically planning to bring a specific lawsuit).

As for a potential defendant, the receipt of a prelitigation preservation request, a request to inspect, a demand letter, a cease and desist letter, a cure notice, or even a discussion with an opposing party or its counsel may trigger a company's obligation to preserve information relevant to potential litigation. Likewise, if a company learns an employee or former employee is seriously contemplating a lawsuit, if an event or other circumstance would reasonably put an organization on notice that a lawsuit is likely to be filed, or if a company has a history of litigation arising out of similar events or circumstances, the duty to preserve may be triggered. These events or circumstances must be examined in the context of an organization's history or experience with particular types of litigation. For instance, in *Stevenson v. Union Pacific R.R. Co*., the court upheld sanctions against a railroad because it destroyed voice tapes immediately after an accident despite knowing that voice tapes had been used in earlier lawsuits to its advantage. That is, the railroad's experience in prior litigation should have caused it to conclude that the accident would lead to litigation where the voice tapes would be relevant.

Sometimes a party will receive its first notice that it must preserve particular documents or things upon receipt of a complaint or a document request from an opposing party. A party is generally not obliged to retain evidence before it has any particular knowledge of a potential complaint. Of course, receipt of a complaint, a discovery request, a subpoena or some other formal notice that a company is the subject of a lawsuit or a governmental investigation triggers the duty to preserve information relevant to that request, lawsuit, subpoena or investigation.

In any event, the preservation obligation is triggered only when, based on credible facts, a company determines or should have determined that litigation or a government investigation is probable. One way to help understand when that duty is triggered, it is to consider when it does not arise. For example, the duty is not triggered by a vague rumor or indefinite threat of

litigation. Likewise, a threat to file suit that is not credible or one not made in good faith will not trigger a preservation obligation. A company may decide that the threat of litigation lacks credibility based on the threat itself, its past experience regarding the type of threat, the source of the threat, the legal bases for the threat, or similar facts. *Id.*

Don't ignore credible triggers. If your organization learns or receives credible information that litigation against it is probable from these or similar events, a court may determine from these facts that the duty to preserve was triggered when that information came to the company's attention. Once that happens, the key is to take steps to preserve appropriate documents, data and things. We will talk about the scope of that obligation in our next post.

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Preservation obligations after a duty to preserve has been triggered

June 6, 2013 | Margaret Koesel, Tracey Turnbull

This article was originally published by Inside Counsel *on June 6, 2013*

Once the duty to preserve evidence has been triggered, the scope of the preservation obligation is the next issue for an organization to consider. Although there are guidelines from case law discussing the scope of the preservation duty, the cases are not consistent across the states, the federal circuits or even in individual district courts. As a result, organizations vulnerable to litigation in more than one jurisdiction, "cannot look to any single standard to measure the appropriateness of their preservation activities, or their exposure or potential liability for failure to fulfill their preservation duties," according to the decision in *Victor Stanley, Inc. v. Creative Pipe, Inc.*

Since a national organization cannot effectively operate with a different preservation policy for each state and federal circuit, how does an organization respond to a preservation trigger? The only "safe" way to respond is to design a policy or response protocol that will satisfy the most demanding requirements of courts that have addressed the issue, even though that may impose burdens and expenses that exceed what is required in other jurisdictions in which they conduct business activities.

Once the duty to preserve is triggered, a company should err on the side of caution when deciding what to safeguard since "relevance" is very broad under the state and federal rules of civil procedure. Not only must an organization with notice of actual or potential litigation preserve potentially relevant evidence in its possession, it also must safeguard potentially relevant evidence under its control. Ordinarily, a document is under a litigant's control when it has the "right, authority, or practical ability to obtain the documents from a non-party to the action." *Id.* But in some jurisdictions, courts also require a litigant to notify an opponent if potentially relevant evidence is in the hands of a third party.

When deciding what to preserve, an organization should identify the relevant time period, subject matter and location of potentially relevant information. Beyond that, determining the scope of the duty requires nuance because a court will determine what was reasonable under the specific circumstances and will consider whether there were "reasonable and good faith efforts to retain information that may be relevant to pending or threatened litigation." The Sedona Conference, The Sedona Principles: Best Practices Recommendations & Principles for Addressing Electronic Document Production. Therefore, when determining what information to preserve, an organization should preserve the documents, data and things necessary to prosecute or to defend its case. Beyond that, an organization must consider a potential opponent's theory of the case because the duty to preserve extends to the data and documents that may be

helpful and relevant to the case of the company's opponent.

Some courts have suggested that the scope of the duty to preserve discovery material should be proportional to the amount in controversy and the costs and burdens of preserving the information based on the scope of discovery provided in Rule 26 of the Federal Rules of Civil Procedure. But other courts have indicated that this standard may be "too amorphous" to be of much guidance to a party deciding what files or data it may delete or which backup tapes it may recycle because proportionality is a "highly elastic concept." *One Comm's, Inc. v. Numerex Corp.* As a result, several courts have rejected that standard as imprudent and indicated that unless operating under a court-imposed preservation order, an organization cannot rely on the proportionality standard to create a safe harbor. So, until there is a more precise definition created by rule or case law, prudence favors issuing a broad legal hold notice and preserving all relevant materials in the organization's possession, custody or control. Alternatively or in addition, once litigation is commenced an organization may want to consider promptly obtaining a specific preservation order. We will discuss the appropriate components of a legal hold notice in our next post.

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Be careful what you say

June 20, 2013 | Margaret Koesel, Tracey Turnbull

This article was originally published by Inside Counsel *on June 20, 2013*

In its simplest terms, a legal hold (also known as a litigation hold, preservation order, suspension order, freeze notice, hold notice or hold order) is a process that an organization uses to preserve all forms of relevant information when litigation is reasonably anticipated, according to Shira A. Scheindlin and Daniel J. Capra, who wrote The Sedona Conference, Electronic Discovery and Digital Evidence. Legal holds can take many forms and may be initiated by individuals within and/or outside an organization. For example, a hold can be oral, written or electronic and may be implemented by company executives, in-house counsel, representatives from the human resources or information technology department or outside counsel.

No matter who or how a hold is implemented—issuing a proper hold is essential. The purpose of a legal hold is to inform all relevant personnel of their obligation to locate and preserve all information that may be pertinent to actual or threatened litigation. To accomplish this task, a legal hold must provide some type of description of the actual or anticipated proceeding, identify the scope and type of information to preserve, and specify the locations of the information to be preserved. The hold must also confirm that any applicable document destruction procedures or policies of an organization must be appropriately suspended. A legal hold communication should also explain the ramifications of failure to comply with its directives.

While many legal hold notices begin with a template or form, each must be crafted to address the unique and distinct factual allegations anticipated to be at issue. The amount of information provided in a legal hold notice will depend on several factors—including, the number of recipients of the legal hold, the complexity of the issues in the legal proceeding, the type and format of the information to preserved and the likelihood that the information communicated in a legal hold will be discoverable.

In many situations issuing a single legal hold notice will not suffice. Instead, supplemental legal hold notices must be issued to fully comply with all preservation obligations. Courts have repeatedly held that counsel must oversee compliance with a legal hold, monitoring a party's efforts to retain and produce relevant documents. See *Zubulake v. UBS Warburg, LLC*. Supplemental legal hold notices also ensure continued compliance with the legal preservation obligations. These supplemental notices may identify and include developments in the underlying proceeding, often identify additional or different custodians, and add to the type and source of information that should be preserved.

Generally, legal hold communications are not discoverable. Courts addressing the discoverability of legal hold notices have

found that in most instances they are protected from discovery by the attorney-client privilege and/or work product doctrine. These protections apply because legal holds are typically issued by an attorney or at the direction of an attorney. While the entire legal hold notice will not be discoverable, courts often allow discovery on the issuance date of the legal hold, the hold recipients and the actions taken by recipients to preserve and collect information relevant to the underlying claims and defenses.

A party is usually entitled to know the categories of information covered by the legal hold for purposes of preservation and collection and how recipients were instructed to accomplish this task. As one district court explained, to the extent a party seeks to foreclose any inquiry into the contents of legal hold notices at deposition or through other means, such a position is not tenable. Specifically, a party may not be entitled to probe into what custodians are doing with respect to collecting and preserving ESI, but it is appropriate to allow discovery into what the employees are supposed to be doing. See *In re eBay Seller Antitrust Litig*.

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Out of sight, out of mind

July 4, 2013 | Margaret Koesel, Tracey Turnbull

This article was originally published by Inside Counsel *on July 4, 2013*

We previously addressed the scope of the duty to preserve. Once you determine when the duty to preserve commenced, you need to identify what needs to be preserved. While the scope of this duty has not changed dramatically over the years, the location, type and amount of information included within that duty has exploded in the past decade due to the advancement of technology and growth of social media outlets. This expansion of available outlets and the ease of creating information has substantially increased the complexity of issues associated with complying with the duty to preserve.

One of the most significant developments involves the use of third party data storage providers or "cloud providers." Storage of information in the cloud affords companies numerous advantages, most significantly, the cost savings associated with data storage. Placing data in the cloud allows companies to replace portions of their existing technology infrastructure with third party data storage providers. But the convenience and related cost savings are not without risks. The most serious risks include preservation of confidentiality and security of the data as well as the ability to comply fully with preservation obligations on a timely basis.

Rule 34(a)(1) requires the preservation and production of documents within a party's possession, custody or control. Information in the cloud typically is not within a party's possession or custody. Yet, courts generally hold that information stored in the cloud falls within a party's control. Extending the duty to preserve to third parties is not new. Indeed, prior to electronically stored information becoming predominant, companies often stored paper files in warehouses operated by third parties. Now the cloud presents a new type of third party and a new location that companies must consider in complying with their duty to preserve. Given that this type of obligation is not new, courts generally are not sympathetic to parties who fail to appropriately preserve information stored in the cloud.

If you have not yet entered into an agreement to store information with a cloud service provider, there are several key issues to consider before selecting a vendor. A summary of all the legal issues associated with selecting a provider is beyond the scope of this piece, however certain key considerations must be made with regard to preservation of data. After ensuring that confidentiality and data security issues will be adequately addressed, companies should consider whether a legal hold can be properly effectuated and whether it can be established for specific types of information to be stored. For example, can information pertaining to a single custodian for a three-year period be located and made subject to a hold. To the extent that this is not possible or easy to implement, a company may determine that certain information should not be stored with a cloud service provider. While software applications exist that enable cloud users to implement their

own litigation hold for information stored in the cloud, not all cloud service providers use these applications. After confirming this ability, the process for effectuating a legal hold (*i.e.*, type of notice, who receives notice, method of confirmation of compliance) should also be confirmed.

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Sanctions for spoliation of evidence

July 18, 2013 | Margaret Koesel, Tracey Turnbull

This article was originally published by Inside Counsel *on July 18, 2013*

Spoliation of evidence occurs when an individual or entity violates its duty to preserve relevant evidence. A finding of spoliation will often result in the imposition of sanctions and can significantly impact a litigation. Understanding how courts determine the appropriate spoliation sanction to impose is essential when this issue arises.

Courts have two sources of authority for sanctioning spoliation of evidence. Under the rules of civil procedure, courts have broad discretion to impose a variety of sanctions against a party that fails to produce evidence in violation of the civil rules. The primary limitation on this authority is that the discovery rules apply only to acts of spoliation that occur during the pendency of a lawsuit or following a court order. Courts also rely upon their inherent power to control the administration of justice to sanction pre-litigation spoliation. This authority allows courts to preserve their independence and integrity, since the destruction of evidence inhibits a court's ability to hear evidence and accurately determine the facts.

Courts have significant latitude in deciding the appropriate discovery sanction. While there is no rigid test for this determination, the choice of sanctions will usually be guided by the "concept of proportionality" between the offense and the sanction. So, courts generally balance several factors to ascertain the appropriate sanction, including: the culpability of the spoliating party; the prejudice to the nonoffending party; the degree of interference with the judicial process; whether lesser sanctions will remedy the harm and deter future spoliation; whether evidence has been irretrievably lost; whether there was an obligation to preserve the evidence; the practical relevance or importance of the evidence; the potential for abuse; and whether sanctions will unfairly punish a party for attorney misconduct. Courts generally select the least onerous sanction corresponding to the willfulness of the destruction and the resulting prejudice.

While courts may consider many factors, the two most important factors in assessing spoliation sanctions are the culpability of the offender and the degree of resulting prejudice from the conduct. Considering culpability, courts assess the mental state of the actor along a continuum of fault ranging from accidental or inadvertent, to considerably more blameworthy, to knowing and purposeful. Generally, a dispositive sanction may be imposed only when the spoliation results from willfulness or bad faith. Where there is intentional conduct, the court can assume that the evidence would have damaged the spoliator's case and impose sanctions accordingly. But in certain circumstances cases involving repeated unintentional conduct (*i.e.*, gross negligence) may be met with a more severe sanction than a single act of bad faith.

The selection of an appropriate sanction must be balanced with the degree of resulting prejudice caused by the spoliation. As with culpability, prejudice can range from serious to modest to nonexistent. Therefore, a court must consider the materiality of the destroyed

evidence and the victim's ability to fully prepare its case.

Once a court decides to award sanctions, a variety of potential sanctions exist. First, courts have long employed the adverse inference jury instruction or "spoliation inference," to sanction spoliation of evidence. Under this inference, the jury is instructed that it may assume that the lost evidence, if available, would have been unfavorable to the spoliator. Courts are divided on the level of culpability required for an adverse inference. Some courts require a showing of intent because the inference presupposes that a consciousness of wrongdoing motivated the spoliation. Consequently, giving the instruction only makes sense if there was an intent to destroy evidence. Other courts find negligence sufficient, reasoning that the need to deter and punish spoliation is a sufficient basis for giving an adverse instruction. These courts consider it inappropriate to require the aggrieved party to bear the onerous burden of proving the spoliator's fraudulent intent.

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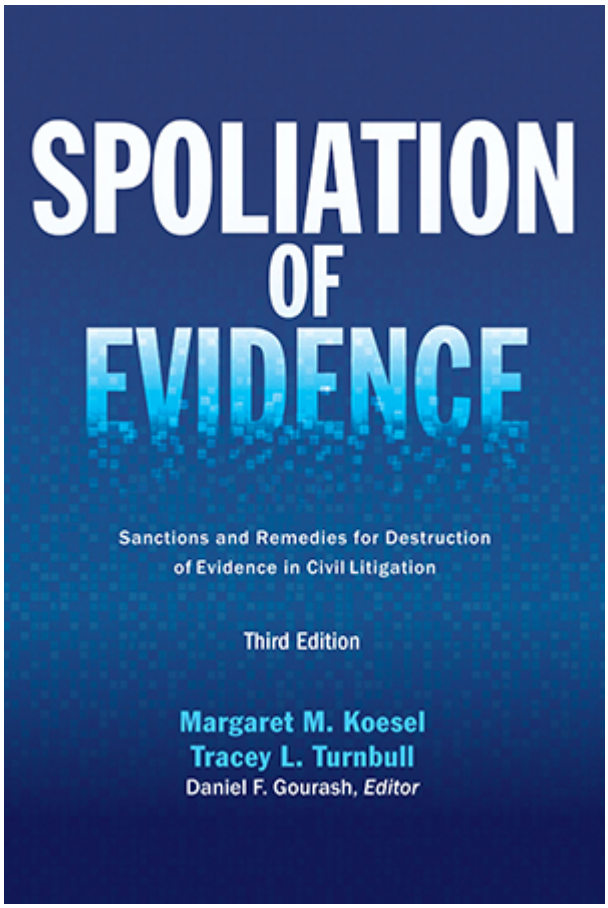
Spoliation of Evidence: Sanctions and Remedies for Destruction of Evidence in Civil Litigation

By: Margaret Koesel, Tracey Turnbull

Further insight into these topics can be found in *Spoliation of Evidence: Sanctions and Remedies for Destruction of Evidence in Civil Litigation*. The Third Edition of this book is available through the American Bar Association's web store.



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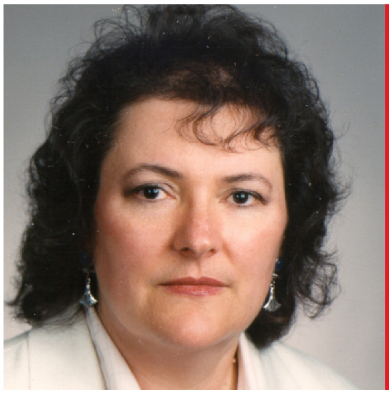

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Peggy has more than 20 years experience in the areas of employment, business, and commercial litigation, devoting a substantial portion of her practice to defending companies in employment discrimination and wrongful discharge litigation, and representing clients in ERISA pension and welfare benefit disputes, trade secret, and non-compete disputes. She has significant trial experience and has argued appeals in the Sixth Circuit Court of Appeals, various Ohio courts of appeals and the Supreme Court of Ohio.

Peggy also has substantial experience as a neutral mediating and arbitrating employment and ERISA cases. She serves as a *pro bono* mediator for the U.S. Equal Employment Opportunity Commission, on the Panel of Alternative Dispute Neutrals for the United States District Court for the Northern District of Ohio, and on the panel of employment mediators and arbitrators for the American Arbitration Association.

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- State of Ohio
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Presentations/Publications/CLE

- Speaker, *Staying Out of the Hot Seat: The Duties of Competence and Fairness*, Association of Corporate Counsel America, Northern Ohio Chapter, Cleveland, Ohio, November 2012
- Speaker, *Ethical Obligations of the Advocate: Fairness to the Opposing Party and Counsel,* Association of Corporate Counsel America, Northern Ohio Chapter, Cleveland, Ohio, November 2011
- Speaker, *Ethical Issues in Settlement Negotiations,* Association of Corporate Counsel America, Northern Ohio Chapter, Cleveland, Ohio, November 2010
- Speaker, *Strategies for Effective Mediation of Disputes,* Lake County Bar Association, August 2010
- Speaker, *Strategies for Mediating Employment Cases,* Great Lakes Higher Education Law Symposium, February 2010
- Speaker, Ohio State Bar Association, "Employment-At-Will: Does It Still Exist?" August 2009

- Speaker, *The Impact of FMLA Regulations on the Workplace and Family Military Leave*, Family and Medical Leave Act Master Class, The Advanced Interactive Workshop for Employers, March 2008, February 2009, November 2010, November 2011, November 2012
- Speaker, *Enforcement and Litigation Issues*, Wage and Hour Masters Class, The Advanced Interactive Workshop for Employers, October 2007
- Speaker, *Confronting Workplace Violence*, Ohio Employment Law Summit, April 2007
- Speaker, *Document Preservation and Destruction Issues in Federal Court,* Association of Corporate Counsel America, Northern Ohio Chapter, Cleveland, Ohio March 2006
- Coauthor, *Spoliation of Evidence: Remedies and Sanctions for Destruction of Evidence in Civil Litigation*, American Bar Association, (2000), (2nd Edition 2006), (3rd Edition 2013)

ADR Panels

- American Arbitration Association – Roster of Neutrals
- U.S. Equal Employment Opportunity Commission, *Pro Bono* Mediator
- Federal Court Panel of Alternative Dispute Neutrals, Northern District of Ohio

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Workplace privacy

Professional Associations

American Bar Association
Cleveland Metropolitan Bar Association, Women in Law Section, Chair, 2009-2010; Justice for All Committee, Chair, 2005-2007
Defense Research Institute, Young Lawyers Steering Committee, 2005-2008; Electronic Discovery Steering Committee, 2009-2011; Commercial Litigation Committee
Ohio Women's Bar Association, Eleventh District Trustee, 2007-2009
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Tracey focuses her practice on commercial and employment litigation matters. She has represented corporations and individuals in cases involving contracts, covenants not to compete, trade secret, intellectual property, and product liability claims. In the area of employment litigation, she has represented clients in cases alleging discrimination, harassment, retaliation, and FMLA violations. Tracey has significant experience litigating and resolving complex discovery issues and has successfully tried commercial disputes and employment cases before juries in both state and federal courts.

Tracey also has been recognized by *Ohio Super Lawyers®* — Rising Stars Edition and in *Crain's Cleveland* "Forty Under 40." She has also been listed in *The Best Lawyers in America®* in the area of Commercial Litigation

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- Obtained temporary restraining order and injunction for an equity research firm in state court and FINRA proceedings that required group of former employees in a competing firm to return trade secret and confidential information and prohibited them from soliciting top customers.
- Defeated imposition of preliminary injunction against retail mail order pharmacy company in action involving trademark infringement and violations of the Ohio Deceptive Trade Practices Act claims.
- Secured preliminary injunction for an aerospace company precluding use of trade secrets and intellectual property.
- Received directed verdict for global insurance company on claims of securities law violation, vicarious liability, fraud, and negligence in a case involving a viatical investment.
- Obtained unanimous defense verdict for a telecommunications company in action involving claims of sexual harassment and retaliation.
- Obtained summary judgment and successfully argued appeal for manufacturer in employment action involving claims of discrimination and negligent retention.
- Obtained summary judgment and successfully argued appeal for recreational vehicle manufacturer in a product liability action.

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Presentations/Publications/CLE

- Speaker, Lorman Education Services, "Advanced Topics in Family and Medical Leave Act in Ohio," 2004-2006, 2008
- Speaker, Association of Corporate Counsel America, Northern Ohio Chapter, "Document Preservation and Destruction Issues in Federal Court," Cleveland, Ohio, March 2006
- Speaker, Association of Corporate Counsel America, Central Ohio Chapter, "Litigation, Spoliation of Evidence, & E-Discovery," Columbus, Ohio, January 2006
- Speaker, Federal Bar Association Annual Convention, "Spoliation of Evidence: What It Is and What To Do About It In Civil Litigation," September 2000
- Speaker, General Counsel Forum, "Spoliation of Evidence: How to Protect Your Company Against Claims for Spoliation of Documents and Physical Evidence, July 1999
- Coauthor, *Spoliation of Evidence: Remedies and Sanctions for Destruction of Evidence in Civil Litigation*, American Bar Association, (2000), (2nd Edition 2006), (3rd Edition 2013)
- Coauthor, "Will the Real Legislature Please Stand Up? A Response to *Kulch v. Structural Fibers, Inc.*: Clarifying the Public Policy Exception," 46 *Clev. St. L. Rev.* 19, 1998
- Coauthor, "An Update on the Law of Spoliation of Evidence for Illinois Practitioners," *Illinois State Bar Journal*, 1997
- Coauthor, "Let's Level the Playing Field: A New Proposal for Analysis of Spoliation of Evidence Claims in Pending Litigation," 29 *Ariz. St. L.J.*, 1997

Community/Civic/Volunteer Work

- Towards Employment, Board Member
- Learning Disabilities Association of Northeast Ohio, Board Member, 2008-2012
- Cleveland Bridge Builders, Class of 2006
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- Speaker, Association of Corporate Counsel America, Northern Ohio Chapter, "Document Preservation and Destruction Issues in Federal Court," Cleveland, Ohio, March 2006
- Speaker, Association of Corporate Counsel America, Central Ohio Chapter, "Litigation, Spoliation of Evidence, & E-Discovery," Columbus, Ohio, January 2006
- Speaker, Federal Bar Association Annual Convention, "Spoliation of Evidence: What It Is and What To Do About It In Civil Litigation," September 2000
- Speaker, General Counsel Forum, "Spoliation of Evidence: How to Protect Your Company Against Claims for Spoliation of Documents and Physical Evidence, July 1999
- Coauthor, *Spoliation of Evidence: Remedies and Sanctions for Destruction of Evidence in Civil Litigation*, American Bar Association, (2000), (2nd Edition 2006), (3rd Edition 2013)
- Coauthor, "Will the Real Legislature Please Stand Up? A Response to *Kulch v. Structural Fibers, Inc.*: Clarifying the Public Policy Exception," 46 *Clev. St. L. Rev.* 19, 1998
- Coauthor, "An Update on the Law of Spoliation of Evidence for Illinois Practitioners," *Illinois State Bar Journal*, 1997
- Coauthor, "Let's Level the Playing Field: A New Proposal for Analysis of Spoliation of Evidence Claims in Pending Litigation," 29 *Ariz. St. L.J.*, 1997

Community/Civic/Volunteer Work

- Towards Employment, Board Member
- Learning Disabilities Association of Northeast Ohio, Board Member, 2008-2012
- Cleveland Bridge Builders, Class of 2006
- National Conference for Community and Justice, Lead Diversity Class of 2005
- Adjunct Faculty, Cleveland Marshall School of Law, Discovery and Motion Practice, Spring 2001