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Southern District Heightens Lawyers' Duties in Preventing Spoliation of Evidence by Clients

2 Feb 2018

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In *Industrial Quick Search, Inc. et al. v. Miller, Rosado & Algois, LLP et al.*, January 2, 2018, the Southern District of New York issued a decision underscoring the importance of lawyers paying early attention to the need for imposing "litigation holds," being proactive in ensuring compliance with such holds, and making a clear record of steps taken with the client to preserve discoverable records. After a client had its defenses stricken under Rule 37 when the court found it had "intentionally destroyed the documents at issue" that were sought by the opposing party in discovery, the client sued its law firm for malpractice, claiming that the firm failed to adequately put the client on notice that the documents needed to be preserved. Citing *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 76 (S.D.N.Y. 2004), the court denied cross motions for summary judgment and held that a lawyer's failure to meet her ethical obligations to preserve evidence can constitute a violation of the lawyer's duty of care and potentially serve as grounds for a legal malpractice suit. The court stated: "This is not to say that counsel is always responsible for their client's destruction of documents, but that counsel has an obligation to take reasonable steps to ensure the preservation of relevant information." The lesson here is that a lawyer may be held to a standard in discovery to take and document affirmative steps to ensure that a client takes adequate measures to comply with a litigation hold and preserves potentially relevant documents.

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