

Litigation Hold Notices: Preservation of Potentially Relevant Evidence in Anticipation of Litigation - Interim

Version 1

 Print

Policy	REG08.05.07
Title	Litigation Hold Notices: Preservation of Potentially Relevant Evidence in Anticipation of Litigation
Category	Information Technology
Sub-category	Security and Compliance
Authority	Chancellor
History	Interim version first approved March 31, 2015.
Contact	Office of University Counsel, 252-328-6940; Information Technology and Computing Services Manager, 252-328-9075.
Related Policies	Records Disposition and Retention Schedule (https://www.ecu.edu/cs-lib/archives/uncgsintro.cfm)
Additional References	Preparing For E-Discovery, Revisited: Five Years Later, NACUANOTE, April 23, 2013, David Kessler, Esq., Caroline Mew, Esq. (http://counsel.cua.edu/fedlaw/nacuanotesediscovery.cfm) Federal Rule of Civil Procedure 26 (http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/38th_conf_session10rule26b_of_the_federal_rules_of_civil_procedure.authcheckdam.pdf) North Carolina Rule of Civil Procedure 26 (http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_1A/GS_1A-1,_Rule_26.html)

1. Introduction and Definitions

1.1. East Carolina University ("ECU" or the "University") has a legal obligation to preserve all Potentially Relevant Evidence whenever the University "reasonably anticipates" litigation. This regulation describes how the University will discharge this legal obligation with regard to employees who have access to evidence. For purposes of this regulation, "Potentially Relevant Evidence" ("PRE") is defined as "all evidence, documents and records, in whatever form, including, but not limited to, 'hard-copy' documents and all types of electronically stored information, that are under the custody or control of one or more University employees, and that are relevant to any pending or potential litigation."

1.2. The University may be deemed to "reasonably anticipate" litigation in a number of circumstances, including, without limitation, through the receipt of a written or oral threat to file a lawsuit, the receipt of suit papers, the commencement of an internal or external administrative complaint procedure, (e.g., EEOC complaint) or receipt of other information identifying the possibility of a lawsuit. A party that is itself actively planning the initiation of litigation is also typically deemed to be in "reasonable anticipation" of litigation.

1.3. For purposes of this regulation, PRE is "under the custody or control" of any University employee who has access to the PRE, including, without limitation, PRE located on or in University-managed storage devices, data bases and files and PRE located on or in employee personal storage devices, data bases and files that have been used in the course or scope of the employee's duties for the University, regardless of whether the storage devices, data bases or files were acquired with personal funds.

2. Litigation Hold Memorandum

2.1. When the University reasonably anticipates litigation, a written "Litigation Hold Memorandum" shall be sent by the Office of

the University Counsel to those University employees who are believed to have PRE under their custody or control.

2.2. A Litigation Hold Memorandum will name the attorney(s) within the Office of the University Counsel, staff members in Information Technology and Computing Services ("ITCS"), and other ECU employees or agents who may be tasked with managing efforts to protect and preserve the PRE. The Litigation Hold Memorandum will describe the types of PRE that must be preserved. Additionally, the Memo may attach a "Potentially Relevant Evidence Questionnaire" to facilitate the identification, location and preservation of PRE.

2.3. The issuance of a Litigation Hold Memorandum immediately overrides and suspends authority to destroy any and all of the identified PRE pursuant to any University, Divisional, Departmental or Unit document retention and/or destruction policy whatsoever, including, without limitation, the University Records Retention and Disposition Schedule, until such time as any litigation has been fully resolved, including the running of all appeal deadlines, or until any applicable statutes of limitations have expired, all as determined by the Office of University Counsel.

3. Duties Upon Receipt of Litigation Hold Memorandum

3.1. Each University employee who receives a Litigation Hold Memorandum ("Memo") addressed to him or her shall do all of the following:

3.1.1. Forward a copy of the Memo and the attached "Potentially Relevant Evidence Questionnaire" to all those additional University employees supervised by the recipient that the recipient believes may have PRE under his or her custody or control, and provide the Office of University Counsel with a list of those to whom the Memo has been forwarded;

3.1.2. Suspend all deletion, overriding (altering or changing), or any other destruction of PRE;

3.1.3. Identify, preserve and segregate all existing PRE, in whatever location it might be, so it may be retrieved later if needed;

3.1.4. Identify, preserve and segregate any new PRE that is received or generated after receipt of the Memo, in whatever location it might be, so it may be retrieved later if needed;

3.1.5. Unless contrary directions are received from the Office of University Counsel, complete the "Potentially Relevant Evidence Questionnaire" and return it to the person(s) indicated on the form, with a copy to the employee's supervisor; and

3.1.6. If a foreseeable future event (including but not limited to separation from employment, acquisition of new IT equipment, etc.) will cause a custodian of PRE to lose custody or control of some or all of the PRE, then the custodian shall timely coordinate with his/her supervisor to take measures to continue preservation and segregation of the PRE, with notice to the Office of University Counsel. If the custodian is either unable or unwilling to take those protective actions, then the custodian's supervisor, in consultation with ITCS, should take responsibility to see that the PRE continues to be preserved and segregated, with notice to the Office of University Counsel.

4. Duties Upon Notice that Litigation has Commenced

4.1. If litigation commences, the University employees with custody of the requested PRE will cooperate with the Office of University Counsel and/or the State Attorney General's Office to retrieve the PRE as it may be needed in defense or prosecution of the litigation.

East Carolina University

E 5th Street | Greenville, NC 27858 (<https://www.google.com/maps/place/East+Carolina+University>) | 252-328-6131 (tel:+12523286131)

©2025 | Terms of Use (<https://www.ecu.edu/terms>) | Accessibility (<https://accessibility.ecu.edu/>) | Report a Barrier (<https://accessibility.ecu.edu/report-an-accessibility-barrier/?referrer=https%3A%2F%2Fpolicydev.ecu.edu%2Farchive%2F08%2F05%2F07%2F1>)