

THE NEW YORK CITY BAR ASSOCIATION PROVIDES THIS SAMPLE PRESERVATION LETTER FOR USE BY PRACTITIONERS BASED UPON NEW YORK LAW AT THE DATE OF PUBLICATION.¹ USERS ARE ENCOURAGED TO ADAPT THE FORM TO THE FACTS OF A PARTICULAR CASE, AND ARE CAUTIONED TO UPDATE THE FORM BASED UPON CHANGES IN THE LAW AND TECHNOLOGY

Name

Writer's Direct Dial: (212)

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E-mail:

DATE

BY EMAIL AND U.S. MAIL

CLIENT NAME AND ADDRESS

Re: Preservation of Documents and Electronic Records
CASE NAME., CASE INDEX NUMBER

Dear NAME:

You have retained us to defend CLIENT in the lawsuit captioned *Client v. Opponent*. As part of this representation, I am writing this letter to amplify our conversation of this morning concerning CLIENT's obligation pursuant to the requirements of New York state law to identify and preserve materials that may relate to this case.

As we discussed, preservation of materials (and especially electronic files and electronically-stored information ("ESI")) for litigation is extremely important, and courts have, on many occasions, imposed penalties against parties who have not met their preservation obligations, which could have a significant adverse impact on your rights in the case. Our efforts at this time are necessary to make sure that CLIENT faces no such exposure.

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In general terms, CLIENT, together with its employees (including you), officers, members, agents, etc. have a legal duty to **preserve all relevant materials**; that is, materials that relate, directly or indirectly, to the underlying dispute between or among the parties.

The “**materials**” I am referring to include traditional paper documents, electronic data or other ESI (including but not limited to audio, video, email, email attachments, memos, notes, spreadsheets, and discs) and all information preserved in any other tangible form. Lawyers refer to these materials as “**documents, data, and tangible things**.” “Documents, data, and tangible things” needs to be interpreted in the broadest possible sense.

CLIENT should be preserving, among other things, documents, data, and tangible things concerning:

- i) DESCRIBE;
- ii) DESCRIBE;
- iii) all communications between or among any of the parties to this case (CLIENT, OPPONENT), or their principals, agents, or employees; and
- iv) CLIENT’s damages.

“**Preservation**” is also to be interpreted in the broadest possible sense to accomplish the goal of maintaining the integrity of all documents, data, and tangible things reasonably anticipated to be subject to discovery in this case. The duty to preserve means taking steps to prevent the destruction or alteration of materials defined above.

If you need to continue to access any ESI that is subject to the preservation obligations, please contact me first so that we can consider the best way to proceed. This is important because if you open, move, copy or archive relevant ESI, or forward or compact relevant emails, etc., these actions may automatically alter metadata that may be important, or lead to the accidental deletion of ESI.

If CLIENT engages in routine policies or processes of destruction, recycling, alteration, or relocation of any documents, data, or tangible things (for example, the automatic deletion of old emails), it is essential to do the following:

- i) immediately halt such policies or processes;
- ii) sequester or remove such material from the policies or processes; and/or
- iii) arrange for the preservation of complete and accurate duplicates or copies of such material, suitable for later retrieval if necessary.

If CLIENT has a manager of information systems or information technologies, I recommend that you communicate directly with him or her to ensure that all electronic files on CLIENT's servers are regularly backed up, and that all backup files and any offsite or cloud storage will be maintained and not destroyed during the duration of this litigation. In addition, we recommend that a meeting promptly be set up with your manager and our firm, to review and document preservation efforts and to otherwise facilitate the process.

Please note that the duty to preserve extends to materials in CLIENT'S possession, custody, or control. If you are aware of any relevant material that resides with an agent or third-party such as (such as NAME), please contact me so we can assess whether such materials would likely be considered within CLIENT'S possession, custody or control. CLIENT has an obligation to exercise reasonable efforts to identify and preserve such materials. That being said, please also be advised that relevant ESI may exist on employees' home computers, tablets, on flash drives or Blackberries, iPhones, Android Phones, or other smartphone devices, in a cloud computing infrastructure, or off-site on a remote server or back-up tapes. We urge you to take all actions necessary to preserve any and all ESI which may be located on such devices. If any relevant ESI exists on social media sites (such as LinkedIn, Facebook and Twitter), please leave those postings intact and do not deactivate those accounts.

To aid you in this endeavor, we can discuss whether you would like me to prepare a memorandum for you to send to all persons affiliated with CLIENT, together with its employees, officers, members, agents, etc. who may have potentially relevant materials to advise them of their obligations.

Please contact me if you have any questions about the foregoing and to begin coordinating the preservation and search processes.

Very truly yours,

ATTORNEY NAME