E-DISCOVERY SANCTIONS
5 Practice Tips for Protecting Your Clients & Your Reputation

Kilpatrick Townsend Senior E-Discovery Attorney Katie King recently participated in an *E-Discovery Sanctions* webinar, where she shared the following tips to protect your clients and your reputation:

1 Sanctions and their implementation can vary greatly by jurisdiction and judge — despite specific spoliation standards defined in the Federal Rules of Civil Procedure — so practitioners need to understand all applicable jurisdictional law and be ready to educate the judge and/or opposing counsel.

2 Potential penalties/consequences of losing or destroying evidence in litigation applies to attorneys, law firms, or clients, and can include monetary sanctions, evidentiary sanctions, disciplinary actions, and reputational consequences. Monetary sanctions of "reasonable costs and fees" include compensation for all additional discovery efforts required to investigate and address apparent discovery misconduct, and do not need to be commensurate with actual damages.

3 All stages of e-discovery — information governance, discovery planning, preservation (collection and transfer), processing and ingestion, review, and production — lend themselves to standardization. States and courts have begun to impose an ethical duty of competence in electronic discovery. Some case management orders and standard ESI protocols now recognize the expertise of an "e-discovery liaison" in streamlining the discovery process and in ensuring cooperation.

4 In 2018, 60 percent of surveyed judges cited "poor cooperation" as the greatest cause of e-discovery mistakes — far more than a "lack of defensible policies" or a "lack of e-discovery education" — yet "poor cooperation" often results from "lack of established policies" or "lack of e-discovery knowledge."

5 Best practices to avoid discovery sanctions involve developing and implementing standard processes, such as comprehensive litigation readiness protocols or more specific e-discovery protocols. By creating repeatable and transferrable standard operating procedures, these protocols not only streamline data streams and workflows, but also minimize the financial and reputational risks associated with not following generally-accepted discovery standards.

For more information, please contact Katie King at kaking@kilpatricktownsend.com.