

**ELECTRONIC DISCOVERY:  
LITIGATION HOLD AND THE DUTY TO PRESERVE  
ELECTRONICALLY STORED INFORMATION (ESI)**

**Team Comstock  
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## ELECTRONIC DISCOVERY: LITIGATION HOLD AND THE DUTY TO PRESERVE ELECTRONICALLY STORED INFORMATION (ESI)

The proliferation of electronically stored information in the business and legal world has exploded as each of you see daily by the numbers of email messages you find in your (or your assistant's) in box. The creation of imaged storage of documents has turned the traditional concept of a "document" on its head, in that, an electronically stored document has much more information that may be useful and expensive to learn in the litigation discovery process.

The presentation for this Inn tutorial is an attempt to address an effective and initial way to make sure that the information is available and the potential repercussions if steps are not taken at the outset for planning and obtaining control over the discovery process.

We attempt to make the lessons learned in several federal courts and cases available, and rely on an accomplished author and lawyer to assist the members of the Inn in this area of litigation that will only become more and more important.

What follows are the written materials the team has found helpful for an understanding of the complex subject of the discovery of ESI.

Team Comstock  
Mark Comstock  
Honorable Susan Tripp  
Honorable Gail Rieder  
Michael Martinis  
James Nelson  
R. Grant Cook  
Kathryn Jackson  
Samuel Sears  
Matthew Roy  
Viva Foley  
Professor Warren Binford

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Written Materials:

1. Litigation Hold letter.
2. Litigation Hold letter (alternative form).
3. *Zubalake v. UBS Warburg, LLC*, 229 FRD 422 (SDNY 2004).
4. *In Re Napster Litigation, UMG Recordings, Inc. v. Hummer Winblad Venture Partners, et al.*, 462 F. Supp. 2d 1060 (ND Cal. 2006)
5. “What You Can Do to Implement and Improve the Litigation Hold Process” Kathryn Mary Pratt, 2007.
6. Summary of Changes Relating to Electronically Stored Information in Federal Rules of Civil Procedure effective December 1, 2007. Kathryn Mary Pratt.
7. Suggested Protocol For Discovery of Electronically Stored Information. United States District Court for District of Maryland
8. Managing Discovery of Electronic Information: A Pocket Guide for Judges. Federal Judicial Center 2007.