

**SUBJECT: E-DISCOVERY POLICY**

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**I. PURPOSE:**

Douglas County establishes this policy to comply with Court decisions and rules which place a substantial obligation on Douglas County to: (1) preserve all electronic materials that could be relevant to pending or anticipated lawsuits; and (2) retrieve and produce such materials in the course of such litigation. Failure to fulfill these requirements exposes Douglas County to liability and sanctions.

This policy is for purposes of litigation or potential litigation only. It will not be implemented as the routine policy of document retention by Douglas County.

**II. INFORMATION:**

A. Information which must be preserved for e-discovery purposes include, by are not limited to, the following:

- i. E-mail;
- ii. Word processing;
- iii. Calendars;
- iv. Voice messages;
- v. Videos;
- vi. Photographs;
- vii. And other digital information.

B. Potentially relevant information stored on an employee's private cell phones, computers, or other equipment is not exempt from e-discovery and must be retained.

C. Hard copies of records are still required to be retained for litigation purposes.

D. This policy does not change the general retention rules of Douglas County, kept in accordance with the retention schedules provided by the Nevada State Library and Archives at <http://nsla.nevadaculture.org/>.

**III. PRESERVATION OF INFORMATION:**

A. When a lawsuit is filed, or reasonably anticipated, Douglas County must take special precautions to prevent the loss of potentially relevant information.

B. When a lawsuit is commenced, or information is received that a lawsuit is imminent, the District Attorney's Office, shall be notified immediately.

- C. If an individual knows or should know that future litigation is “reasonably likely”, the District Attorney’s Office shall be notified immediately. To determine if litigation is reasonably likely factors to be considered include:
- i. Historical experience based upon similar situations which have lead to litigation in the past;
  - ii. Significant incidents, which result in known and significant injury;
  - iii. Employee statements regarding potential litigation;
  - iv. Public records requests which suggest the likelihood of litigation; and
  - v. Events reported in the press which suggests litigation.
- D. The District Attorney’s Office will work with the applicable information systems and department to:
- i. Identify the operating unit and individuals who might possess potentially relevant electronic data;
  - ii. Send a litigation hold to the individuals identified (*see* exhibit 1); and
  - iii. Designate a specific person to coordinate efforts to preserve the information.
- E. The following actions will occur to preserve information:
- i. Suspend any Douglas County or department policies and procedures that might call for the routine destruction of electronic records under the recipients control;
  - ii. Discontinue personal practices regarding the deletion of electronic records. For example the deletion of possibly relevant e-mails, voicemails, or drafts of documents;
  - iii. Disable any “janitorial” functions, such as automatic deletion of e-mails or other electronic records. Information systems personnel shall be immediately contacted if assistance is required to disable these functions;
  - iv. Protect and preserve all potentially relevant electronic records in their original electronic form so that all information within it, whether visible or not is available for inspection;
  - v. Protect and preserve any hard-copies of electronic records;
  - vi. Protect and preserve any new documents that are generated or received that may be relevant to the litigation;
  - vii. Advise the designated information systems department as well as the District Attorney’s Office of any personal information or personal property that may be affected by the litigation hold;
  - viii. Follow all other specific instructions in the litigation hold;
  - ix. Consult with the District Attorney’s Office regarding any questions involving electronic records.
- F. The Information Systems Manger shall work with the District Attorney’s Office regarding the retrieval of the potentially relevant information.

- G. The retention of information by employees shall continue until further noticed by the District Attorney's Office.
- H. When the litigation or the threat of litigation has ended, the District Attorney's Office will inform the individuals involved that they are no longer under any special obligations to preserve information. At that point regular retention policies and procedures shall be applied.

**IV. RESPONSIBILITY FOR REVIEW:**

The District Attorney shall review this policy as needed or at least once every 5 years.

**Exhibit 1****Sample Litigation Hold Notification**

[Description or reference to description of Matter]

To prepare for the defense of the actual or potential litigation described, the Douglas County will need access to a complete copy of all documents that could reasonably relate to this matter. These documents may reside in your office, your home, may be held in the Douglas County Records Management, or may exist in other places.

**“DOCUMENT” INCLUDES A WIDE VARIETY OF RECORDS AND MATERIALS.**

Be aware that “document” typically is broadly defined by courts to include, among other things:

- ☐ writings
- ☐ e-mails
- ☐ drawings
- ☐ graphics
- ☐ charts
- ☐ photographs
- ☐ phone records
- ☐ images
- ☐ all electronically-stored information, and
- ☐ any other data compilations from which information can be obtained.

**DO NOT DESTROY, DELETE OR DAMAGE ANY DOCUMENTS THAT MAY RELATE IN ANY WAY TO THIS MATTER.**

It is important that potentially relevant documents that can be reasonably identified be retained, preserving as well the original format, if feasible. In addition, if you are aware of other documents that may be relevant but which you do not currently have access to, please so inform \_\_\_\_\_. In addition, please suspend any scheduled destruction, archiving, or deletion of documents related to this matter until you specifically have been advised that you are authorized to do so. Failure to comply with any of the above could result in penalties imposed upon the Douglas County by the Court.

**INCLUDE EVERYTHING REASONABLY RELATING TO THIS MATTER.**

Since it is early in this matter, it is difficult to determine what information may or may not be relevant. However, at a minimum, you should retain the originals and copies of documents that can be reasonably identified as being potentially relevant (including emails and electronically stored documents) that you may have in your possession that: (1) were sent to or from \_\_\_\_\_, (2) refer to \_\_\_\_\_ by name, title, or implication, (3) relate to any employees in \_\_\_\_\_’s work group and managers and/or discuss their duties and performance, (4) relate in any manner to \_\_\_\_\_’s performance or (termination), including to

any event in which \_\_\_\_\_ was investigated, disciplined or counseled, (add other matters pertinent to case).

If you have any doubt as to whether a document might be relevant, retain it. Do not delete or dispose of it. You should retain the documents in a place where they can be easily located upon request. Please do not hesitate to communicate with \_\_\_\_\_ if you have any questions. Since "documents" include existing documents, as well as documents that may be created in the future, you also should provide this office with documents created since your receipt of this letter.

**IF YOU HAVE QUESTIONS ABOUT THESE INSTRUCTIONS, CONTACT ONE OF  
THE FOLLOWING INDIVIDUALS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_