

ITEM 9.04 | FLORIDA'S "SAFE HARBOR" PROVISION

Many organizations have standard policies and procedures by which outdated and unnecessary electronically stored information is routinely deleted for purposes of economy, efficiency, security, or other valid business or organizational purposes. Florida followed the lead of the federal rules⁶⁴ by adopting a safe harbor provision to clarify that a party should not be sanctioned for the loss of electronic evidence due to the routine, good-faith operation of an electronic information system.⁶⁵ The existence of a "good faith" component prevents a party from exploiting the routine operation of an information system to thwart discovery obligations by allowing that operation to destroy information that party is required to preserve or produce. In determining good faith, the court may consider any steps taken by the party to comply with court orders, party agreements, or requests to preserve such information.⁶⁶

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Conference of Circuit Court Judges
Conference of County Court Judges*

Footnotes

⁶⁴ Fed. R. Civ. P. 37(e) (2006). The federal rule has been amended, effective December 1, 2015.

⁶⁵ Fla. R. Civ. P. 1.380(e).

⁶⁶ Fla. R. Civ. P. 1.380 Committee Notes, 2012 Amendment.

