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Trusted Learning on E-Discovery

Risks Map
FOUN 121

Failures in E-Discovery

Failure to Execute Discovery Plan or Discovery Orders

- Interference in Forensic Review
  - Denial of access to designated systems
  - Denial of access to designated machines
  - Denial of access to designated files
  - Refusal to provide appropriate technical support
- Failure to Retain Forensic Experts when Needed
- Misrepresenting Personnel Availability
- Failure to Document Due Diligence pursuant to Court Order

Failure to Make Truthful Representations

- Failure to Accurately Report to Court
- Failure to Accurately Disclose ESI
- Misrepresenting Status of ESI Discovery
- Failure to Base Objections to ESI Discovery on Substantiated Facts

Failure to Properly Plan and Conduct a "Reasonable Inquiry"

- Failure to Communicate ESI Preservation Instructions
- Failure to Investigate all Potential Custodians
  - Key Players
  - Third Party Custodians
- Failure to understand the client's document retention policies and data architecture
- Failure to further investigate missing or destroyed ESI reports
- Failure to consult with IT personnel when needed to develop discovery plan
- Failure to assure client is implementing a discovery plan correctly

Failure to Properly Address ESI in Discovery Process

- Failure to Properly Make Required Initial Disclosures
  - Proper Descriptions of ESI
  - Failure to identify ESI custodians
- Failure to Effectively Address ESI in "Meet and Confer"
  - Failure to discuss the discovery of ESI
  - Failure to identify possible ESI sources
- Failure to Properly Supplement Prior Disclosures
  - Failure to include all new information
  - Failure to timely deliver

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