

UNIFORM SUPERIOR COURT RULES

[PROPOSED]

Rule 6.8. Failure to Preserve Electronically Stored Information

If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery:

(A) The court, upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(B) The court, only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation, may:

- (1) Presume that the lost information was unfavorable to the party;
- (2) Instruct the jury that it may or must presume the information was unfavorable to the party; or
- (3) Dismiss the action or enter a default judgment.

(C) A party may request or the court may order a hearing. Upon the request of a party, the court shall make findings of fact and conclusions of law.