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## Court deletes lawsuit as sanction for deletions on company laptop

In mid-September, the U.S. District Court for the Northern District of Illinois ruled that a former employee's federal discrimination and retaliation claims against his old employer should be dismissed as a sanction for the employee's spoliation of evidence where the court found that the employee willfully deleted potential evidence from his work-issued laptop.

Triano Williams filed suit against his former employer, American College of Education Inc., claiming that he was discriminated against and ultimately terminated due to his race and in retaliation for his complaints about discrimination, in violation of Title VII of the Civil Rights Act of 1964, among other laws.

As the litigation proceeded, the old employer sought dismissal of the case as a sanction against Williams pursuant to Federal Rule of Civil Procedure 37 and the court's inherent authority on the basis that Williams intentionally destroyed electronically stored information on his work-issued laptop.

Rule 37(e) permits sanctions "[i]f 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."

If the court finds that a party acted with intent to deprive the other party of information, the rule authorizes the court to presume that the lost information is unfavorable to the party or to dismiss or default the action, among other sanctions.

The court also has "the inherent ability to fashion an appropriate sanction for conduct which abuses the judicial



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process." *Chambers v. NASCO Inc.*, 501 U.S. 32, 44-45 (1991).

As relevant here, when Williams returned his laptop to American College following his termination, the company discovered that a new operating system had been installed and that the computer did not have any of Williams' old files on it.

Forensic imaging of Williams' laptop demonstrated that someone had, in fact, reinstalled the operating system on the laptop, which rendered unrecoverable numerous files that had been deleted from the laptop before the reinstallation. American College argued that Williams — an IT systems administrator — had purposefully performed the reinstallation as a covert way of permanently deleting relevant evidence.

Williams conceded that he had a duty to preserve the files on the laptop, but denied that he had reinstalled the operating system. Williams proposed two theories in support of his denials:

- The laptop on which the forensic imaging was performed was different from the laptop he returned to American College.

- Someone else remotely reinstalled the operating system on the forensically imaged laptop and tried to frame Williams for the resulting spoliation.

After a lengthy review of the record, the court determined that the record "overwhelmingly supports ACE's version of events" and that Williams' theories amounted to "convoluted conspiracies that the record does not support."

Summarizing its review of the record, the court found "Williams intentionally reinstalled the operating system on his ACE-issued laptop, resulting in the wiping and destruction of potentially relevant information (the files he deleted before the reinstallation) 'that should have been preserved in the anticipation or conduct of litigation.' Fed. R. Civ. P. 37(e)."

The court went on to find that Williams' spoliation of evidence was willful because he not only intentionally reinstalled the operating system, but he also knew that the reinstallation would destroy relevant data, particularly given his experience as an IT professional.

In light of this evidence, the court further found that Williams' repeated denials of having reinstalled the operating system amounted to perjury.

In considering the appropriate sanction, the court noted that outright dismissal is a "particularly severe" sanction, which must be "proportionate to the gravity of the offense." Despite the severity of the sanction, the court determined that it was appropriate in the present case for three reasons.

First, because the record demonstrated that "Williams intentionally destroyed evidence and then repeatedly lied about it under oath," the court

determined that Williams acted “with a degree of culpability that exceeds simple inadvertence or mistake.”

Second, the court determined that lesser sanctions would not suffice because alternative sanctions such as adverse jury instructions or presumptions that the deleted information was unfavorable to Williams “cannot cure the prejudice to ACE because it is impossible to determine the full extent

of the spoliation.”

Third, and finally, the court reasoned that even if a sanction short of dismissal could cure the prejudice to American College, dismissal was still the most appropriate sanction because it was the most proportional to Williams’ wrongdoing: “Taken as a whole, Williams’ misconduct was extraordinarily serious and warrant[ed] an equally serious response. Dismissing his claims enables

the court to remedy prejudice to ACE, to reprimand Williams and to deter future parties from trampling upon the integrity of the court.”

Ultimately, the court’s opinion serves as a thorough and well-reasoned reminder to all litigants of the potentially dire consequences that can result when discovery preservation obligations are not given their due consideration.