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**Notice of Meeting and Agenda for Loss Control Committee of  
Nevada Public Agency Insurance Pool and Public Agency Compensation Trust**  
**Date: Friday, July 22, 2011**  
**Time: 10:00 AM**  
**Place: Winnemucca City Hall Meeting Room**  
**90 West Fourth Street Winnemucca, NV**

*NOTICE: Items on the agenda may be taken out of order. The committee may combine two or more agenda items for consideration. The committee may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.*

**AGENDA**

1. **Roll**
2. **Public Comment**
3. **For Possible Action: Approval of Minutes of Committee Meeting of June 21, 2011**
4. **For Possible Action: Staff Reports:**
  - a. **E-Discovery/Information Risk Management Workshops**
  - b. **Loss Control Excellence Program**
5. **For Possible Action: Consideration and Approval of Sponsorship for Nevada PRIMA Conference January 19-20, 2012.**
6. **For Possible Action: Consideration and Approval of Funding for ADA Webinars**
7. **Public Comment**
8. **For Possible Action: Adjournment**

**This Agenda was posted at the following locations:**

**NPAIP/PACT**  
201 S. Roop Street, Suite 102  
Carson City, NV 89701

**Carson City Courthouse**  
885 E. Musser Street  
Carson City, NV 89701

**Eureka County Courthouse**  
10 S. Main Street  
Eureka, NV 89316

**Churchill County Admin Complex**  
155 North Taylor Street  
Fallon, NV 89406

**NOTICE TO PERSONS WITH DISABILITIES**

**Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Nevada Public Agency Insurance Pool or Public Agency Compensation Trust in writing at 201 S. Roop Street, Suite 102, Carson City, NV 89701-4779, or by calling (775) 885-7475 at least three working days prior to the meeting**

# POOLING PROVISIONS

## A Guide to E-Discovery Process



*A publication of:  
Nevada Public Agency Insurance Pool*



*A Guide to Preserving Data for E-Discovery*

***The e-discovery process—the search of electronic records for use as legal evidence—can cost thousands of dollars and hours. The increased use of electronic communication means that public entities need to be prepared in the event that e-discovery becomes part of a lawsuit.***

***This reference guide, developed by AdamsGrayson, an e-discovery consulting firm, and the Nevada Public Agency Insurance Pool, is designed to guide member entities through the e-discovery process. The kit includes:***

**1. Guide to Preserving Data for E-Discovery**

Public entities must preserve relevant documents, emails, and records upon receiving notice of a lawsuit or events that are likely to trigger litigation. This guide provides a roadmap for:

- Deciding when document preservation is necessary
- Determining the scope of preservation
- Implementing preservation
- Defining ongoing responsibilities during litigation

**2. Sample Preservation Directive**

This template may be used to issue a preservation directive and can be tailored to fit an entity's structure and the nature of the triggering event. In most situations, legal counsel for your entity should review preservation directives before they are issued.

**3. Script and Checklist for Data Custodian Interviews**

"Data custodians" are individuals who may possess records or documents that need to be preserved. This sample script and checklist provides guidance for information technology (IT) professionals who interview data custodians to locate records within the scope of a preservation directive.

**4. Sample Data Collection Tracking Charts**

Entities collecting data in response to an e-discovery preservation directive need a way to track the data as it is searched and culled by attorneys and e-discovery vendors. These tracking charts document the "chain of custody" and ensure data is not lost in the review process.



## **1. GUIDE TO PRESERVING DATA FOR E-DISCOVERY**

Upon notification of a lawsuit or at the time you reasonably anticipate potential involvement in a legal matter, you must decide whether it is necessary to preserve documents and data.

This toolkit resource explains how to decide what to preserve and how to ensure compliance.

### **DECIDING WHETHER TO PRESERVE**

Your entity should designate a team of key personnel (commonly called the “eTeam”) to make preservation decisions when an actual or potential legal matter arises. The first step is to determine the initial scope of the pending legal matter and decide whether there is an obligation to preserve potentially relevant evidence. The following is a list of potential triggers of a preservation obligation:

- An actual or potential legal filing: The filing of a complaint against the entity or any of its employees, the serving of a summons, or the filing of an administrative notice automatically triggers a preservation obligation.
- Notice of a credible threat of a legal filing or litigation event: “Credible threats” could include a letter from an attorney indicating that legal action is imminent, notice that an official administrative filing is forthcoming, or any other communication that formally discusses the possibility of a specific legal filing or litigation event.
- Internal events: These events include but are not limited to grievances or complaints alleging harassment or discrimination, allegations of professional misconduct, or administrative hearings.

By weighing the costs of potential litigation against the cost of electronic discovery, the entity may decide to preserve all relevant data, to preserve reasonably accessible relevant data, or to forgo preservation altogether. In making this decision, keep in mind that failure to preserve



potentially relevant data and documents could severely compromise your entity's legal position and result in court-issued sanctions and penalties.

### **IDENTIFYING RELEVANT DATA**

If it is determined that data relating to a certain matter should be preserved, it is then necessary to identify the departments, employees, and other sources of data that are—or could be—affected. Since there are risks in failing to preserve and collect all potentially relevant data at the outset of a legal matter, it is advisable to make the preservation list overly inclusive. The preservation order can always be pared down to exclude people and sources who are not necessary to the investigation. To decide the proper scope of the preservation effort, use the following lists to closely examine anything that could be potentially relevant.

#### **Where are the relevant people?**

- In specific departments
- In administrative offices
- On staff
- Among independent contractors, consultants, and temporary or contracted employees
- Among the board members
- Among former employees or board members

### Where are the relevant sources?

- Paper files
- Desk drawers
- Shared file cabinets
- Personal file cabinets
- Department file cabinets
- Off-site storage
- Files from home office
- Electronic files
- Hard drives
- Shared network drives
- Backup tapes/drives/servers
- External storage media (diskettes, CDs, DVDs, thumb drives)
- Email servers
- Personal computers
- PDAs, Blackberries
- Voicemail/instant messaging
- Audio/video tapes
- Photographs/digital images
- Internal, external websites including social networking sites

*The eTeam, possibly with assistance from outside counsel, should work with administration, IT, and management personnel to build a complete list of all people and data locations that fall within the preservation obligation.*

## **ISSUING A PRESERVATION DIRECTIVE**

Legal counsel or a member of the eTeam should issue a preservation directive (sometimes called a litigation hold notice) to all identified individuals who may hold records relevant to the legal matter. The "Sample Preservation Directive" included in this toolkit can serve as a good starting point. At a minimum, the directive should:

- Inform the recipients of the entity's preservation obligations
- Identify, at the entity's discretion, the specific matter raising the duty
- Instruct recipients to think carefully about the manner in which their documents and data are created, maintained, stored, and accessed
- Require recipients to retain all potentially relevant records that are reasonably accessible
- Warn that noncompliance or lack of cooperation with individuals implementing the preservation directive is a serious offense that could lead to discipline up to termination
- Provide information on whom to contact if the recipient has questions or needs assistance

The preservation directive should be sent by hard copy and email with a request that each recipient sign and return it to the party issuing it. When senders deliver the directives by email, they should activate the tool that automatically confirms an email was delivered or read. In addition, a copy of each preservation directive should also be sent to the designated staff member in IT who will be assisting with the implementation of the directive.

## **IT RESPONSIBILITIES**

Upon receipt of a preservation directive, IT should stop its normal backup tape rotation, protect all backup tapes, and secure specific shared drives and data archives. In addition, IT should turn off any automatic deletions of emails and voice mails that may destroy or delete relevant information.

IT personnel must interview each preservation directive recipient to gain additional information about potentially relevant data and to arrange for data collection. The "Script and Checklist for Data Custodian Interviews" on page 9 of this reference guide can be very helpful to IT personnel in performing this task.



## ONGOING MONITORING AND ADJUSTMENTS

During the course of litigation, recipients of the directive must preserve data created after the order was issued. If the litigation changes in scope, the entity might need to expand the reach of the directive or the number of people to whom the directive applies. In all cases, the entity should periodically issue a new or updated preservation directive to remind individuals of their obligations. In addition, legal counsel and IT should continue monitoring to ensure compliance.

After a lawsuit or legal matter has been resolved, counsel should notify the parties under the preservation directive, including IT and records management personnel, that the directive has been lifted, and they can resume their normal data management procedures.

## DOCUMENTING COMPLIANCE

The entity should create and maintain a log of all preservation directives (P.D.) issued. The log should contain the following information about all outstanding directives:

- Subject of the matter
- Issuing officer
- Issue date
- Names and locations of recipients
- Date each recipient acknowledged receipt or opened directive

In addition, the entity should keep a file on each recipient of the preservation directive, and that file should be kept with the master file for the legal matter. The recipient's file should contain the information in the chart below and be maintained on a regular basis.

	Date P.D. Sent	Date P.D. Acknowledged	Date(s) P.D. Resent	Date Interviewed	Date P.D. Lifted
Custodian					

## 2. SAMPLE PRESERVATION DIRECTIVE

[Letterhead of Issuing Officer]

To: [Distribution list, in the collective] OR [Each recipient listed individually]

From:[Issuing Officer]

[Date]

Subject: Preservation Directive—[Entity's] Duty to Preserve Data and Documents Relating to [Name of legal/investigative/etc.] Matter

PRIVILEGED AND CONFIDENTIAL  
ATTORNEY-CLIENT COMMUNICATION  
ATTORNEY WORK PRODUCT

The entity recently [received notice of/instituted] a [lawsuit/claim/dispute] regarding [insert brief description of the litigation/claim/dispute as understood by or known to employees]. The entity has a legal duty to preserve all data and documents in its possession that would be potentially relevant to this matter. The data and documents contained in the entity's files and computer systems will also be critical to our investigation into this matter and may be important sources of evidence. For these reasons, we require your assistance in preserving all data and documents in your files—or in those files you can access—that relate to this matter, as described below.

### Directive Regarding Preservation of Data

Effective immediately, please preserve from deletion all data and documents—hard-copy documents and electronic documents—that pertain or relate in any way to [description of subject matter, key personnel, relevant time periods, etc.]. This includes:

- All communications by email and any other electronic means involving [subject matter, key players, witnesses, etc.]
- All information regarding [subject matter, opposing parties, products, key players]
- [Any additional categories of information likely to be relevant]

Destruction, alteration, deletion, and modification of such documents and data are strictly prohibited.

*Failure to preserve relevant documents and data could result in significant penalties against [the entity].*

This Preservation Directive applies to paper documents as well as any electronic or magnetically stored data. When you are identifying and preserving electronic data, please keep in mind that "electronic data" includes, but is not limited to, the following:

1. All text files (including word processing documents, spreadsheets, and presentations)
2. Email
3. Files on shared servers
4. Files on email servers
5. Databases
6. Calendar entries
7. Computer system activity logs
8. Internet usage files
9. Backup tapes (if used for purposes other than disaster recovery)
10. Intranet or other internal network applications

At your individual work station, this directive requires you to preserve and retain all potentially relevant files stored on your hard drive and any system drives to which you have access. You must also preserve and retain all potentially relevant data on any laptop, home computer, handheld device, diskette, CD, DVD, "thumb" drive, voice mail, backup tape, videotape, or any other data storage medium.

To comply with this directive, you must immediately disable any functions that automatically delete or overwrite emails or other electronic data. Until further notice, the entity is suspending the sections of its regular record retention policy that require deletion or destruction of data. [Entity may want to provide specific instructions on email retention, i.e., creation of a litigation folder.]

You will be advised when this preservation directive is no longer in effect.

Please contact [name] if you need assistance or have any questions or concerns.

Thank you for your prompt and full compliance with this preservation directive.

### 3. SCRIPT AND CHECKLIST FOR DATA CUSTODIAN INTERVIEWS

“Data custodians” are individuals who may possess records or documents that fall within the scope of an e-discovery preservation directive. IT professionals need to interview all data custodians to ensure they do not miss any information within the scope of a preservation directive. This sample script and checklist provides guidance for IT professionals conducting these interviews.

#### Sample Greeting

Hello, my name is [name] and I am from [department] following up on the recent preservation directive concerning the [description of litigation/claim/dispute/investigation]. The purpose of this call is to find out if you have any relevant documents and ask a few questions about your document collection efforts.

#### Checklist

Questions	Response
1. Did you receive the preservation directive?	
2. Do you have any questions about the preservation directive?	
3. Have you located any hard copy documents covered by the preservation directive?  a. If yes, can you describe those documents?  b. How many? c. Are they separated from your other files?	

<p>d. Do you continue to receive similar documents?</p> <p>e. Where do you look for documents?</p> <ul style="list-style-type: none"><li>• Desk drawers</li><li>• Onsite files</li><li>• Other shared files</li><li>• Stored files</li></ul>	
<p>4. Have you located any electronic or computer files?</p> <p>a. Email?</p> <ul style="list-style-type: none"><li>• Inbox</li><li>• Calendar</li><li>• Sent items</li><li>• Deleted items</li><li>• Personal folders</li><li>• Journal</li><li>• Archive folders</li><li>• Public folders</li></ul> <p>b. Hand-held devices (Blackberry, Palm Pilot, etc.)</p> <p>c. MS Office?</p> <ul style="list-style-type: none"><li>• Word files</li><li>• Excel spreadsheets</li><li>• PowerPoint presentations</li></ul> <p>d. Other applications?</p> <p>e. Hard drive (including network and local hard drives)</p> <p>f. Diskettes, CD-ROM, DVD, or other external storage device</p>	
<p>5. Do you save files to the entity's network?</p>	

6. Do you create backups of your electronic records or files?  a. Diskettes? b. CDs or DVDs? c. Any other location?	
7. Can you think of any other location to look for documents responsive to the preservation directive?	
8. Do you know anyone else who may have relevant documents but did not receive the preservation directive?	
9. Do you have any questions?	
10. As a final reminder, it is your responsibility to ensure that your relevant data and documents are not deleted. You will be advised by [the issuing officer] with further instructions.	

**Sample Closing**

Thank you for your time, and if you have any further comments or questions, please contact me at [phone number] or [email address].

## 4. Sample Data Collection Tracking Charts

Public entities that collect data in response to an e-discovery preservation directive or litigation hold need a way to track the data as it is searched and culled by attorneys and e-discovery vendors. Attorneys call this tracking the “chain of custody” and use it to ensure data is not lost in the sifting process. Chart 1 can be used to track all data identified as part of a preservation directive; the second chart only needs to be completed if a vendor is used to help the entity with e-discovery.

### CHART 1

*Privileged and Confidential Attorney Work Product*

Name of Custodian	
Title/Position	
Office Location	
Date of Collection	
Name of Technician Collecting Data	
Description of Data (email, paper documents, electronic documents, other)	
Volume of Data (megabytes, gigabytes, etc.)	
Location of Data Collected (e.g., office file cabinet, email server, drive/file path)	
Notes	
Date Copied to Drive/Pulled	

**CHART 2**

*Privileged and Confidential Attorney Work Product*

Name of Custodian	
Date Delivered to Vendor	
Name of Vendor Recipient	
Date Uploaded/Imaged by Vendor	
Name of Technician Uploading/Imaging	
Date of Return to Custodian	
Name of Delivery Personnel	
Custodian Signature	
Other changes in custody not noted above?	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>If "Yes," describe in table below</i>

**Record of Additional Changes in Custody**

From (name, company, title)	To (name, company, title)	Date	Reason

The material appearing in this publication is presented in summary form and should not be considered legal advice. The use of any material appearing in this publication does not establish that relevant legal requirements or best practices have been met.

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**SAVE THE DATE!**

**The Nevada PRIMA Chapter will hold its annual conference on January 19<sup>th</sup>-20<sup>th</sup> at the Henderson Convention Center.**

**Nevada PRIMA is currently soliciting Exhibitors and Sponsors.**

**Exhibitor space is available at \$250.00 a table and Sponsorships at the following levels are appreciated:**

**Silver - \$1000.00**

**Gold - \$2500.00**

**Platinum - \$5,000**

**The Nevada PRIMA Chapter is also seeking sponsors for the opening luncheon and evening reception.**

**For more information, contact the following:**

**Ann Wiswell –POOL/PACT 775- 885-7475**

**Bob Osip – City of Henderson 702-267-1914**



TO: Ann Wiswell  
Risk Manager  
Nevada Public Agency Insurance Pool

FROM: Irene Bowen  
President  
ADA One, LLC

RE: Proposal for consulting services

DATE: April 6, 2011

Thank you for contacting us about assisting your members in understanding the requirements of the Americans with Disabilities Act.

As we discussed, both ADA One, LLC, and LCM Architects have extensive experience with the Americans with Disabilities Act (ADA) and its application to state and local governments. As President of ADA One, LLC, I have presented extensively on the 1991 and 2010 regulations under title II of the ADA and assisted colleges and universities, as well as state and local governments, in compliance. As deputy chief of the Disability Rights Section at the Department of Justice until 2008, I played a significant role in drafting the 1991 regulations, 1991 ADAAG, and the regulations proposed in 2008. I oversaw numerous investigations, settlement, and litigation concerning state and local governments as well as public accommodations under the ADA and section 504 of the Rehabilitation Act. My resume is attached, and you can find out more about my experience with state and local governments at this page on my web site: <http://ada-one.com/focus/state-and-local-governments/> .

John H. Catlin, FAIA, is a founding partner of LCM Architects. Since 1975 he has focused his career on accessibility of the built environment. This experience has led to his involvement in the development of accessibility codes and standards for state and local building codes. For the City of Chicago, Jack co-chaired the committee that developed Chicago's first comprehensive accessibility code as part of the revisions to the Chicago Building Code.

Recognizing Jack's work with accessibility codes and standards, he was appointed to the U.S. Access Board in 1994 by President Clinton. The Access Board is the federal agency responsible for developing guidelines under the Americans with Disabilities Act (ADA). He was the first practicing architect to serve as the Chairman of the Board. In addition Jack chaired the Board committee that proposed revisions to the 1991 ADA Standards.

He is very involved in providing training on the subject of universal design and accessible design for professional groups, corporations, universities and government agencies. Presently, he is one of two technical trainers for the US Department of Housing and

Urban Development Fair Housing Accessibility FIRST Program. His resume is attached. The LCM website (currently under construction) can be found at [www.lcmarchitects.com](http://www.lcmarchitects.com).

Based on our conversation with you, the following is our cost proposal for a webinar and conference participation.

### Webinar

We understand that you contemplate two one-hour webinars. One would be an overview of the 2010 DOJ regulations, particularly as they apply to facilities, and the other one would address specific areas of concern to your members (based on areas that you would indicate).

ADA One would be lead for the first webinar, and LCM lead for the second one, but both firms would participate in both sessions.

The fee for ADA One, which would include preparation, presentation, and answering follow-up questions by email for a period of two weeks, would be \$1500.

The fee for LCM would be \$1,300.

### Conference

We understand that you would like for us to present at a conference in Henderson, Nevada, in November. The two firms would be jointly responsible for two one-hour presentations, including 15 minutes of questions and answers: one, for all municipalities, would cover recreation facilities and the other, in the law enforcement track, would cover correction facilities such as jails. We would anticipate preparing power points and handouts.

Assuming that the presentations are held during one day in Henderson, the presentation fee for ADA One, including preparation and presentation time, would be \$2400. The fee for LCM would be \$1600. (If the presentations occur during just one half day, the fees would be \$1200 and \$800.)

Travel expenses would include our time at half our hourly rate, from home to hotel and hotel to home, plus air fare and cabs, with hotel accommodations for two nights. Please let us know if you have a per diem for meals; the standard rate would be fine with us.

For ADA One, we would anticipate that travel time would be approximately 9 hours for the travel time to Las Vegas, based on a flight of 5 ½ hours from BWI, leaving my home 2 ½ hours before the flight, and an hour to retrieve bags and get to the hotel. On the return, it would be approximately 8 hours, leaving the hotel two hours before the flight,

a 4 ½ hour flight, and 1 ½ hours to retrieve bags and return home. That would total approximately 17 hours at a rate of \$125 (half the hourly rate), or \$2125. For LCM, travel time would be \$1100.

The total for ADA One and LCM for the conference and the webinars would be about \$10,025. If the presentations in Henderson required only a half day, the total would be about \$8025.

We appreciate this opportunity, and look forward to answering any questions you may have.

a 4 ½ hour flight, and 1 ½ hours to retrieve bags and return home. That would total approximately 17 hours at a rate of \$125 (half the hourly rate), or \$2125. For LCM, travel time would be \$1100.

The total for ADA One and LCM for the conference and the webinars would be about \$10,025. If the presentations in Henderson required only a half day, the total would be about \$8025.

We appreciate this opportunity, and look forward to answering any questions you may have.