CUNY E-Discovery Litigation Hold – Workflow – Roles and Detail

See Also

See the “Shared Documents” folder at the https://Legalaffairs.cuny.edu/eDiscovery SharePoint site for:

- The current release of this description of CUNY’s litigation hold process (see CUNY E-Disc Lit Hold – Workflow – Roles and Detail)
- A diagram of CUNY’s litigation hold process (see CUNY E-Disc Lit Hold – Workflow – CUNY Diagram)
- All forms, instructions and diagrams related to CUNY’s litigation hold process

Litigation Hold Process Roles

The following roles (in alphabetic order) apply to CUNY’s electronic discovery litigation hold process (note that role names are capitalized in the table below and in all documents related to the litigation hold process):

<table>
<thead>
<tr>
<th>Role</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>CUNY Counsel</td>
<td>An outside attorney representing CUNY’s interests in a case. Depending on the case, CUNY Counsel may be the NYC Law Department or NYS Office of the Attorney General.</td>
</tr>
<tr>
<td>Custodian</td>
<td>A member of CUNY (faculty or staff) who has information that may be relevant to a case.</td>
</tr>
<tr>
<td>E-Discovery IT Designee (ITD)</td>
<td>A member of a CUNY institution who is responsible for the technical components of the litigation hold process including the collection, preservation and transfer of electronically stored information (ESI).</td>
</tr>
<tr>
<td>IT Steering Committee Representative (ITSC)</td>
<td>The member of each CUNY institution who is assigned by the institution’s president to represent the institution on CUNY’s IT Steering Committee.</td>
</tr>
<tr>
<td>Legal Affairs Designee (LAD)</td>
<td>A member of a CUNY institution who is responsible for the legal and hardcopy components of the litigation hold process.</td>
</tr>
<tr>
<td>OGC Case Attorney (OGC)</td>
<td>A member of CUNY’s Office of General Counsel who is responsible for a case.</td>
</tr>
</tbody>
</table>

Litigation Hold Process Detail

The litigation hold process begins when the University has determined that it reasonably anticipates litigation. The documentation of the process, including this workflow, focuses on the roles of the Legal Affairs Designee and IT Designee. This process is iterative—some steps may be performed multiple times. This process contains steps that occur in parallel (see CUNY E-Disc
### CUNY E-Discovery Litigation Hold – Workflow – Roles and Detail

*Lit Hold – Workflow – CUNY Diagram*. Parenthetical notes below to “see instructions” refer to instructions available on the SharePoint site. To execute CUNY’s litigation hold process, some or all of the following steps are performed:

<table>
<thead>
<tr>
<th>Step</th>
<th>Role(s)</th>
<th>Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Identification Phase</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>OGC/LAD</td>
<td>Conduct an initial evaluation of the matter</td>
</tr>
<tr>
<td>2</td>
<td>OGC/LAD</td>
<td>Identify Custodians with information that may be relevant</td>
</tr>
<tr>
<td>3</td>
<td>OGC</td>
<td>Notify CUNY’s CIO that a litigation hold is commencing and the names of the case’s Custodians</td>
</tr>
<tr>
<td>4</td>
<td>OGC</td>
<td>Send out Litigation Hold letter to each Custodian (cc: LAD, IT Steering Committee Representative, and Primary IT Designee) and, to each letter, attach a <em>Custodian Certification Form</em> for signature</td>
</tr>
</tbody>
</table>
| 5 | LAD | Prepare for the case:  
- Identify secure location at which collected papers will be preserved  
- Set up *LAD Lit Hold Tracking Form* (see instructions)  
- For each Custodian, set up *Paper Chain of Custody Form* (see instructions) |
| 6 | ITD | Prepare for the case:  
- Create case folder on the Lit Hold Server  
- For each Custodian, create a Custodian E-Discovery Folder (CEDF)  
- Set up *IT Designee Lit Hold Tracking Form* (see instructions)  
- For each Custodian, set up *ESI Chain of Custody Form* (see instructions) |
| 7 | LAD |  
- Send *Custodian ESI Checklist* to each Custodian  
- Update *LAD Lit Hold Tracking Form* |
| **Initial Collection Phase** | | |
| 8 | ITD | For each Custodian:  
- Copy their email mailbox and email archive files in standard storage locations to the “Original” folder of their CEED  
- Update *IT Designee Lit Hold Tracking Form*  
- Update the Custodian’s *ESI Chain of Custody Form* |
| 9 | ITD | For each Custodian:  
- Copy their files in standard storage locations to the “Original” folder of their CEED  
- Update *IT Designee Lit Hold Tracking Form*  
- Update the Custodian’s *ESI Chain of Custody Form* |
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<tr>
<td><strong>Identification Phase (continued)</strong></td>
<td></td>
<td></td>
</tr>
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</table>
| 10   | LAD     | For each Custodian:  
  - Receive completed *Custodian ESI Checklist*  
  - Forward a copy of the checklist to the IT Designee  
  - Update *LAD Lit Hold Tracking Form* |
| 11   | OGC/LAD/ITD/CUNY Counsel (and, optionally, ITSC) | For the case, develop a discovery approach:  
  - To collect electronically stored information (ESI) and hardcopy records, including department- and organization-level information  
  - Determine which ESI is not reasonably accessible due to excessive access costs (e.g., old backup tapes) |
| 12   | LAD     | For each Custodian:  
  - Schedule a meeting with the Custodian and IT Designee  
  - Update *LAD Lit Hold Tracking Form* |
| 13   | ITD     | For each Custodian:  
  - Prepare *Custodian Interview Form* based on *Custodian ESI Checklist* (see instructions)  
  - Update *IT Designee Lit Hold Tracking Form* |
| **Custodian Preservation Phase** | | |
| 14   | OGC     |  
  - Receive signed *Custodian Certification Form* from each Custodian  
  - Notify LAD of receipt of each *Custodian Certification Form* |
| 15   | LAD     |  
  - Receive notification from OGC Case Attorney of each signed *Custodian Certification Form*  
  - Update *LAD Lit Hold Tracking Form* |
| **Additional Collection Phase** | | |
| 16   | LAD/ITD (and/or a vendor) | Interview each Custodian to locate, identify and collect their potentially relevant ESI (from non-standard storage locations) and hardcopy records:  
  - During the meeting, LAD physically collects all identified hardcopy records and updates the Custodian’s *Paper Chain of Custody Form* and the case’s *LAD Lit Hold Tracking Form*  
  - During the meeting, IT Designee copies all identified network-accessible (e.g., desktop) and physically available (e.g., thumb drives) ESI to the “Original” folder of the Custodian’s CEDF and updates the Custodian’s *Custodian Interview Form* and *ESI Chain of Custody Form*, and the case’s *IT Designee Lit Hold Tracking Form*  
  - LAD notifies OGC Case Attorney of meeting and all collected hardcopy records and ESI |
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| 17   | LAD     | For each Custodian:  
|      |         | - Collect identified hardcopy records (that were not available during the Custodian’s interview; e.g., documents stored off-site)  
|      |         | - Store collected hardcopy records at secure location  
|      |         | - Update the Custodian’s *Paper Chain of Custody Form* and the case’s *LAD Lit Hold Tracking Form*  
|      |         | - Notify OGC Case Attorney of collected hardcopy records |
| 18   | ITD     | For each Custodian:  
|      |         | - Copy all identified ESI that was not available during the Custodian’s interview (e.g., DVDs that are stored offsite) to the “Original” folder of their CEDF  
|      |         | - Update the Custodian’s *Custodian Interview Form* and *ESI Chain of Custody Form*, and the case’s *IT Designee Lit Hold Tracking Form*  
|      |         | - Notify LAD of collected ESI |
| 19   | LAD     | For each Custodian:  
|      |         | - Receive notification from IT Designee of collection of ESI  
|      |         | - Notify OGC Case Attorney of collected ESI |

### CUNY Preservation/Transfer Phase

| 20   | ITD     | For each Custodian:  
|      |         | - Copy all collected ESI from the “Original” folder of their CEDF to their “Search” folder  
|      |         | - Encrypt the collected ESI in the “Original” and “Search” folders  
|      |         | - Update *IT Designee Lit Hold Tracking Form* |
| 21   | LAD     | For the case, as requested by the OGC Case Attorney:  
|      |         | - Transfer to the OGC Case Attorney or CUNY Counsel, per their directions, all requested papers and other material  
|      |         | - Update each affected Custodian’s *Paper Chain of Custody Form* and the case’s *LAD Lit Hold Tracking Form* |
| 22   | ITD     | For the case, as requested by the LAD or OGC Case Attorney:  
|      |         | - Transfer to the OGC Case Attorney or CUNY Counsel, per their directions, all requested ESI (see ESI Pre-Production and Transfer instructions)  
|      |         | - Update each affected Custodian’s *ESI Chain of Custody Forms* and the case’s *IT Designee Lit Hold Tracking Form* |
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<td><strong>Process/Review/Analysis Phase</strong></td>
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<tr>
<td>23</td>
<td>CUNY Counsel/OGC/LAD</td>
<td>Develop search terms, including date ranges</td>
</tr>
</tbody>
</table>
| 24   | ITD (and/or LAD or OGC Case Attorney or vendor) | For each Custodian, when requested by the LAD or OGC Case Attorney:  
- Use search tool to apply search terms to their ESI  
- Copy identified ESI to Custodian’s “Hits” folder  
- Identify “hits” to LAD and OGC Case Attorney  
- IT Designee updates *ESI Chain of Custody Form*  
- IT Designee updates the case’s *IT Designee Lit Hold Tracking Form* |
| 25   | OGC/CUNY Counsel/LAD | For each Custodian:  
- Review hardcopy records and identified ESI for responsiveness and for privileged/confidential information  
- Flag or redact content, as appropriate  
- CUNY Counsel or OGC Case Attorney updates privilege log  
- LAD updates the case’s *LAD Lit Hold Tracking Form* |
|      | **Pre-Production/Transfer Phase** | |
| 26   | ITD (or a vendor) | For each Custodian, when requested by the LAD or OGC Case Attorney:  
- Prepare to produce by coping reviewed ESI to Custodian’s “Tran” folder  
- Update the case’s *IT Designee Lit Hold Tracking Form* |
| 27   | LAD (or a vendor) | For each Custodian, as directed by the OGC Case Attorney or CUNY Counsel:  
- Transfer requested papers and other material to the OGC Case Attorney or CUNY Counsel  
- Update each affected Custodian’s *Paper Chain of Custody Form*  
- Update the case’s *LAD Lit Hold Tracking Form* |
| 28   | ITD (or a vendor) | For each Custodian, as directed by the OGC Case Attorney or CUNY Counsel:  
- Prepare ESI in “Tran” folder for production (see ESI Pre-Production and Transfer instructions)  
- Transfer requested ESI to OGC Case Attorney or CUNY Counsel (see ESI Pre-Production and Transfer instructions)  
- Update each affected Custodian’s *ESI Chain of Custody Form*  
- Update the case’s *IT Designee Lit Hold Tracking Form* |