

Second Circuit Says Specific Intent Is Required to Impose Sanctions for Spoliation Under FRCP 37(e)(2), Contributing to Emerging Consensus Across the Circuits

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On February 13, 2025, the Second Circuit held that to impose sanctions for spoliation under Federal Rule of Procedure 37(e)(2), the moving party must show, by a preponderance of the evidence, that the accused party acted with the “intent to deprive” another party of lost electronically stored information (“ESI”) — i.e., a showing of negligence, or even gross negligence, will not suffice.

The Second Circuit’s decision in *Hoffer v. Tellone* adds to an emerging consensus across circuits on the appropriate standard for evaluating requests for sanctions for spoliation of evidence under Rule 37(e)(2).

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