



**“Great conference.
Very current. Cost
of the conference
was a bargain, based
on content covered
and the number of
luminaries in field.”**

– 2008 participant

6th Annual

Advanced E-Discovery Institute: Identifying Today's Problems & Tomorrow's Solutions

In Cooperation with the Sedona Conference®

November 12-13, 2009

Capital Hilton • Washington, DC

CLE credit will be available.

Agenda

Thursday, November 12

■ 7:45-8:15 am Registration & Continental Breakfast

■ 8:15-8:30 am Welcome & Introductions

■ 8:30-9:30 am Keynote: **Is The E-Discovery Process Broken, And, If So, Can It Be Fixed?**

Hon. Lee H. Rosenthal

- Review of the 2009 ACTL/IAALS Final Report
- Preview of the 2010 Rules Committee Conference
- Prognosis for the future of e-discovery

■ 9:30-10:00 am Networking Break

■ 10:00-11:15 am E-Discovery Case Law Update

There are now hundreds of reported e-discovery opinions in both federal and state courts and the volume is increasing steadily. This panel of judges will analyze the most significant cases decided during the past year and explore the long-term impact these opinions may have on your practice.

Moderator: Kenneth J. Withers

Panelists: Hon. John M. Facciola
Hon. Paul W. Grimm
Hon. Nan R. Nolan
Hon. Andrew J. Peck
Hon. James M. Rosenbaum
Hon. David J. Waxse

■ 11:15 am - 12:15 pm Information Everywhere: Understanding New Technologies and Coping With New Problems

New technologies + expanding existing technologies = many more types, sources and locations of ESI to be identified, preserved, processed and produced in e-discovery. Data sources and the volume of ESI are

expanding at an ever-increasing rate. E-discovery isn't just about email, servers and backup tapes anymore, and the explosive growth in emerging and existing technologies will continue to bring new challenges to e-discovery. You will explore the e-discovery issues presented by:

- Cloud computing
- Web 2.0, 3.0...and beyond
- Unified messaging and communications
- Advancements in audio search technology and the impact of the advancements on discovery obligations
- Digital rights management
- Social networking and instant messaging
- Browser-based collaboration and document management platforms
- Issues related to outsourcing IT environments
- The advent of "recordless" email that cannot be forwarded, printed or stored and disappears after being read

Moderator: Hon. James C. Francis

Panelists: Anne Kershaw
Thomas Morrissey
George Rudoy

■ 12:15-1:30 pm Lunch (On your own)

■ 1:30-2:45 pm Concurrent Focus Sessions

A. Admissibility of ESI - Once You Have It, Can You Use It?

Learn from the experts how admissibility issues can be avoided in the course of proper planning at the very beginning of the case and during depositions, and through strategic use of discovery tactics as the case progresses. You will participate in a lively discussion where everyone will be the judge for several hypothetical admissibility situations.

Moderator: Kevin F. Brady

Panelists: Hon. Paul W. Grimm
George L. Paul
Barbara Van Gelder

B. Controlling E-Discovery Costs through Records Management

An operational Records and Information Management (RIM) system is the foundation for e-discovery readiness, yet many companies have failed to take steps to link these processes in an effective manner. You will discuss how sound RIM practices and selective preservation of structured and unstructured documents and other data can prevent the accumulation of unnecessary data and ease the effort expended in the collection, processing, review and analysis of ESI. You will also learn how advanced RIM practices can help in early case assessment and the management of privileged ESI; how to successfully integrate an inter-company e-discovery team in RIM practices; how to obtain compliance with records retention schedules, privacy and other data protection requirements; and how to use RIM programs and processes to defend the reasonableness of search, retrieval and production efforts, including establishing the authenticity of ESI.

Moderator: John J. Rosenthal

Panelists: Deirdre Brekke
Conor R. Crowley
Richard R. Roberts

C. Clash of Laws and Cultures: Cross Border E-Discovery and International Data Management

Information - including personal data - is often stored in multiple countries, and where the data resides can determine whether or how it can be handled in response to U.S. discovery requests, regulatory proceedings and as part of critical business processes. You will explore the concept of personal data, how it is treated and protected in civil law and common law countries, and the impact of privacy and data protection laws and blocking statutes found in the EU, Latin America, and Asia. In this session you will:

- Learn about recent developments in privacy and data protection, as well as barriers to the transfer of personal data outside the EU
- Review the potential impact of the EU Article 29 Data Protection Working Party Document on pre-trial discovery for cross-border civil litigation
- Discuss alternative use of the Hague Convention on The Taking of Evidence Abroad in Civil or Commercial Matters
- Examine the impact on U.S. e-discovery of the French Supreme Court decision *In re Advocat Christopher X*, affirming the conviction of a French attorney who attempted to obtain evidence for a U.S. proceeding by speaking to an adverse witness

Moderator: M. James Daley

Panelists: Alexander B. Blumrosen
Kenneth N. Rashbaum
Lisa J. Sotto
Christian Zeunert

■ **2:45-3:15 pm**
Networking Break

■ **3:15-4:30 pm**
Technology Focus: Backup Systems - Tapes, Disks and Emerging Media and Methodologies

Disputes about backup media lie at the heart of many e-discovery disputes, yet much of what lawyers, judges and litigation support specialists think they understand about backup systems is wrong or outdated. As part of the Institute's annual focus on a selected technology area for in-depth treatment, this session is devoted to the nuts and bolts of backup systems - past, present and future - including the hardware, software and structure of backup systems, technical characteristics impacting cost and burden of preservation and search, single instance storage, sampling strategies and emerging backup technologies. Questions for discussion will include:

- Are backup media still not reasonably accessible?
- Is the answer the same for tape, disk and online backup?
- Is there a difference if they are still "in system" or not?
- What exactly are backup systems?
- How do they store information and how and when do you search them?
- What do you need to know about your client's backup systems, and what questions do you ask to find out?

Moderator: Daniel L. Regard
Panelists: Craig D. Ball
Quintin Gregor
Timothy M. Opsitnick

■ **4:30-5:30 pm**
Ethics and E-Discovery: Hot Topics and New Challenges

E-discovery tests traditional ethics concepts in new ways and creates unique challenges and trip wires for the unwary. During this roundtable discussion, you will address some of the emerging ethical issues in the e-discovery process, including:

- Permitted and prohibited uses of ESI and metadata
- Ethical issues raised by limiting the document review universe and production to agreed upon keyword searches
- How to handle inadvertent metadata production and the variance in opinions from state bar associations on this subject
- Whether there should be compulsory technical training and competence testing for attorneys who handle e-discovery
- Whether ethics rules should address relationships with and retention of e-discovery service providers and vendors

Moderator: Ariana J. Tadler
Panelists: Hon. John M. Facciola
Ralph C. Losey
Edward H. Rippey

■ **5:30-6:45 pm**
Networking Cocktail Reception

Friday, November 13

■ **8:00-8:30 am**
Continental Breakfast

■ **8:30-9:30 am**
FRE 502 in Practice – The First Year in Review

On September 19, 2008, President Bush signed into law S. 2540 creating new Federal Rule of Evidence 502. Designed to provide a consistent set of rules for handling attorney-client privilege and attorney work product doctrine waiver issues, and also to address the rising costs of handling privilege issues in e-discovery, FRE 502 establishes a new framework for resolving cases of inadvertent production of privileged documents in connection with the production of ESI. To take advantage of the protections of FRE 502(b), a party must establish that the production was inadvertent, the party took reasonable steps to protect against disclosure, and then promptly tried to rectify any inadvertent disclosure when discovered. You will review the developing case law, including the state court application provisions of the Rule. In addition, you will learn proactive steps to take when handling ESI to maximize the protections available under FRE 502.

Moderator: Leslie Wharton
Panelists: Hon. Joseph R. Slight, III
Hon. David J. Waxse
Patrick Oot

■ **9:30 - 10:30 am**
Advanced Search and Retrieval Technology

The volume of ESI is expanding exponentially and labor-intensive methods of search and review have simply become too expensive and inefficient. In addition, recent court cases are calling into question the effectiveness of traditional word searches, and recognizing the potential need for expert witnesses to assess and defend search terms and methodologies. What's next on the horizon? What technology solutions are in place or are emerging to help us deal with the current staggering volumes of ESI and meet e-discovery obligations? Learn about concept-based and statistically-based search

technologies, clustering techniques used in early-case assessment, and other leading edge emerging technologies designed to ease the review and analysis of large volumes of ESI, as well as how to deploy defensible processes and quality control measures, including using testing and sampling techniques.

Moderator: Jason R. Baron
Panelists: Maura R. Grossman
Mark V. Reichenbach
Herbert L. Roitblat
Ellen M. Voorhees

■ **10:30-11:00 am**
Networking Break

■ **11:00am - 12:15 pm**
Concurrent Focus Sessions

A. E-Discovery and the Health Care Industry

Converting all medical records to electronic form is a primary goal of the health care industry and the new administration. Unsure of how medical data is structured and stored? Confused about the effect of HIPAA and the many other problems presented when handling medical record ESI during e-discovery? In this session, you will learn about the structure and distribution of medical ESI, privacy issues, legislative and regulatory factors affecting the storage, collection and processing of medical ESI, and creative problem-solving strategies for handling medical ESI.

Moderator: Jeane A. Thomas
Panelists: Dr. Katherine L. Ball
Kimberly Baldwin-Stried
Reich
Dr. Paul Thompson

B. Litigation is the Key: How E-Discovery "Fits" into Civil Actions

E-discovery sometimes seems to take on a life of its own. However, decisions on e-discovery must be made in the context of specific civil litigation, which can often be lengthy and complex. In this session you will:

- Follow the course of a "typical" civil litigation
- Explore the use of collaboration to realize economies and efficiencies
- Consider how the course of litigation affects preservation, processing, and production of ESI

Moderator: Ronald J. Hedges
Panelists: Michelle Greer Galloway
Margaret L. Havinga
Gilbert S. Keteltas

C. Hot Topics in Corporate E-Discovery: Risk Management and Cost Control

Statistics tell us that 98% of cases settle and do not go to trial, but the nature of ESI and the requirements of e-discovery force corporations to incur significant e-discovery costs at the beginning of a case or be faced with significant risk of spoliation of data, adverse inferences, and other discovery sanctions. Because of the distributed nature of corporate computing and the tremendous volume of data, national and multinational corporations face unique and large-scale problems in handling e-discovery. The problems and choices are constantly shifting, and companies are seeking solutions to problems where the outcome is often unclear. The cost of e-discovery is skyrocketing and is a paramount concern. How does a company manage and control costs? What works and what doesn't? Should a company bring portions of the e-discovery process in-house? Which portions? Should a company outsource? Does retention of a permanent outside e-discovery counsel make sense? What risks are created by the way companies handle ESI, and how can those risks be managed, controlled or avoided? Is arbitration and avoidance of as much e-discovery as possible the answer?

Moderator: Mark E. Michels
Panelists: Allison L. Brecher
Tim Crouthamel
Vincent M. Catanzaro
Andrew P. Drake

**■ 12:15-12:45 pm
Box Lunch Distribution**

**■ 12:45 - 1:30 pm
Luncheon Presentation:
Controlling E-Discovery Costs in
Smaller Stakes Litigation**

Small cases present especially difficult e-discovery challenges because the amount of ESI in a case is often disproportionate to the size or value of a case. Often existing small case data is poorly managed and structured. This experienced panel will suggest e-discovery protocols for the "smaller stakes" case, assessing scalability and proportionality, developing and staying within budget, dealing with service providers, and developing the necessary expertise on costs and technology for the small stakes litigation.

Moderator: Paul D. Weiner
Panelists: Hon. Joseph Slights, III
William P. Butterfield
Frank C. Morris, Jr.

**■ 1:30-1:45 pm
Networking Break**

**■ 1:45-2:45 pm
Concurrent Focus Sessions**

A. E-Discovery Project and Process Management

Law schools do not train attorneys in budgeting, project management, or process management, but these are exactly the skills attorneys need to survive in today's competitive e-discovery environment. This session will illustrate how to prepare and implement a realistic e-discovery budget and use project management skills to take control of the e-discovery process. You will learn how to avoid costly mistakes by using project and process management skills that are routinely employed in other disciplines. The panel will also discuss the unique role of the e-discovery project manager, creation and management of an e-discovery team, and the importance of project planning, monitoring, and communication in managing a large-scale e-discovery project.

Moderator: Mark R. Koehn
Panelists: Carmen Oveissi Field
Sherry B. Harris
Jonathan M. Redgrave

B. E-Discovery Issues in Business Closings, Downsizings and Bankruptcy

It's no secret we are in the midst of the greatest financial crisis since the Great Depression. Each day the news brings stories of major institutions failing, businesses contracting and sometimes combining, and companies laying off employees and downsizing. There is tremendous pressure to cut costs – including IT and e-discovery costs. These circumstances can produce serious e-discovery preservation, collection and processing problems. You will learn how to approach e-discovery obligations in a turbulent economy, the data preservation and spoliation risks created by disappearing, contracting or bankrupt companies and common preservation and spoliation issues with outbound employees.

Moderator: Martin J. Jaron, Jr.
Panelists: Hon. Judith K. Fitzgerald
Robert J. Koch
James L. Michalowicz

C. E-Discovery in Federal Investigations

Regulatory investigations, post-filing qui tam suit investigations, and criminal investigations by the Federal government can be some of the most troublesome, largest, and most expensive e-discovery matters, with problems commensurate in size. Typical investigations often begin with small amounts of information and then expand greatly as new leads are followed. The Justice Department, SEC and other government agencies are developing detailed data delivery standards and there is new appreciation for the complexity of the discovery of ESI and the many locations where information relevant to an investigation may be located. The subject's risk of spoliation is greater when destruction of ESI can result in potential obstruction of justice charges. And, the cost of responding to e-discovery in a large investigation can be formidable and interfere with normal business operations. Hear from experts from both sides of the table on the unique problems each side faces in conducting or responding to government investigations, and learn practical approaches to resolving differences when each side faces competing goals and demands.

Moderator: David C. Shonka
Panelists: Matthew I. Cohen
Andrew D. Goldsmith
Miriam Smolen

**■ 2:45-3:00 pm
Networking Break**

**■ 3:00-4:15 pm
Judicial Roundtable - Perspectives
from the Bench on Today's ESI
Discovery Problems and Tomorrow's
Solutions**

Moderator: Hon. Paul W. Grimm
Panelists: Hon. John M. Facciola
Hon. Judith K. Fitzgerald
Hon. Royce C. Lamberth
Hon. Nan R. Nolan
Hon. Andrew J. Peck
Hon. David J. Waxse

**■ 4:15-4:30 pm
Closing Remarks**

About The Sedona Conference®

The Sedona Conference® is a 501(c)(3), nonprofit law and policy think tank based in Sedona, Arizona, focusing on antitrust law, complex litigation, and intellectual property rights. Its Working Group on Electronic Documents produced The Sedona Principles for electronic document production. For further information on The Sedona Conference®, its Conferences or Working Groups, go to www.thesedonaconference.org.

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Accreditation has been or will be requested for this program from states with mandatory Continuing Legal Education requirements for 13.0 CLE credits (based on a 60-minute hour), including 1.0 hour of ethics credit and 15.5 CLE credits (based on a 50-minute hour), including 1.0 hour of ethics credit. Georgetown University Law Center is an accredited CLE provider in most MCLE states. Georgetown Law CLE is a State Bar of California approved MCLE provider. Some states require nominal accreditation fees. You will be asked to submit payment at the program's conclusion.

About Georgetown Law CLE

Georgetown Law CLE has established a thirty-two year tradition providing the legal community high quality programs. Our programs are developed with the profession's ever-changing needs in mind, while at the same time meeting the mandatory CLE requirements of various state bars. Located in the heart of the nation's capital, we feature the country's leading officials, judges and practitioners.

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E-Discovery Institute (Nov. 12-13, 2009)

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Please select in which format you prefer to receive your course materials.

- Hard copy book
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Why You Should Attend

The downturn in the economy has created more than ripples in the pond of e-discovery. In some instances it has created waves, leaving law firms, corporations, government agencies and service providers feeling pressure to reduce costs. The recession-ridden economy requires a vast array of organizations to maintain or retrain specialists in-house or as outside consultants to oversee an e-discovery process that is both highly financially sound and defensible.

Compounding the financial constraints are the increasingly common threats of spoliation sanctions, massive pre-trial expense and professional liability, all of which have made too real the potential for serious repercussions for anyone in the e-discovery field.

This combination of issues is creating the need for practitioners to learn the latest trends in reducing expenses and risk while delivering solid, quality results. Attendance at the Advanced E-Discovery Institute offers an opportunity to focus on the pressing issues of today's legal climate with professionals from across the country. You will receive advice from the leading experts in the e-discovery field, including more judicial speakers than any other e-discovery CLE program.

At the 2009 Institute, you will:

- Identify the most efficient, economic and defensible approaches to preservation, collection, processing and production of electronic discovery
- Discover the ethical issues raised by limiting the document review universe and production to agreed upon keyword searches
- Analyze the developing case law since the recent enactment of FRE 502
- Gain insight into controlling e-discovery costs in smaller stakes litigation
- Learn about the e-discovery issues in business closings, downsizings and bankruptcy
- Receive tips on e-discovery practice directly from the judges during the popular judicial roundtable
- Plus much more, including the opportunity to customize your learning experience with concurrent focus sessions

Who Will be Attending

- Federal judges
- State court judges
- Bankruptcy judges
- Plaintiff lawyers
- Defense lawyers
- In-house counsel
- Litigation support professionals
- IT professionals
- E-discovery service providers and consultants

