

Summer II 2014 – 5297 E-Discovery

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Location	211 TUII	Time	MW 6:00 – 8:30 pm
Credits	2		

Text: Managing E-Discovery and ESI from Pre-Litigation through Trial, Michael D. Berman, Courtney I. Barton, Paul W. Grimm, American Bar Association (2011).

Description:

The increased presence of technology in the workplace has also required significant changes in the way litigation, and specifically discovery, is handled. Adapting to these changes, litigants face an ever-changing arena referred to as electronic discovery, which can be a veritable treasure trove or minefield depending on the level of preparation taken by the client and the client's counsel prior to the arrival of any legal dispute.

Goals:

This course will outline the major issues and considerations for lawyers involved in the electronic discovery process and prepare the students to face these challenges in their practice.

Requirements:

The course's final grade will depend on the final exam and class participation. The exam date is July 7, 2014, 6 – 9 pm.

Course Schedule:

Date	Topic	Reading
2-June-14	Introduction. ESI & Discovery Preservation Obligations. The duty to preserve: Introduction to best practices, spoliation, sanctions and the safe harbor provision.	Text, pp. 1-30, 225-246. Federal Rules of Civil Procedure 26 and 34 (especially the Committee Notes). <i>Zubulake v. UBS Warburg LLC</i> , 229 F.R.D. 422 (S.D. N.Y. 2004).
4-June-14	Proportionality limits on the scope of preservation. Litigation Holds Introduction to Information Technology	Text, pp. 81-96, 247-264, 277-284, 361-386. Fed. R. Civ. P. 26(b) <i>Pippins v. KPMG LLP</i> , 279 F.R.D. 245 (S.D. N.Y. 2012). THE SEDONA CONFERENCE® COMMENTARY ON PROPORTIONALITY IN ELECTRONIC DISCOVERY (Oct. 2010) Craig Ball, Computer Forensics for Lawyers Who Can't Set a Digital Clock (http://www.craigball.com/cf.pdf). Only the first article of four.
9-June-14	Computer Usage Policies, Records Management, and Corporate IT Infrastructure Introduction to Metadata	Text, pp. 97-181. Craig Ball, Meeting the Challenge: E-Mail in Civil Discovery at http://www.craigball.com/cf.pdf . Only the second article. Also: The Litigators Guide to

		Metadata: http://www.craigball.com/metadataguide2011.pdf
11-June-14	Gathering, Reviewing and Producing ESI Data Collection. How should collection occur and who should search for documents and ESI	Text, pp. 321-340, 439-496.
16-June-14	Rule 26 Meet and Confer Session Privilege	Text, pp. 343-360, 387-438. Federal Rule of Evidence 502.
18-June-14	Initial Disclosures and duty to supplement & Rule 16 Initial Scheduling Conference Duty to Cooperate, collaboration and mediation of discovery disputes	Text, pp. 313-320. Text, pp. 673-681, 619-628.
23-June-14	Cost Sharing & Cost Shifting Rule 30(B)(6) Depositions and Use of ESI in Depositions	Text, pp. 591-618. Text, pp. 497-530. Read: Craig Ball, Cross-examination of the Computer Forensics Expert at http://www.craigball.com/cf.pdf. Note this link also includes four other articles. Only the fourth article.
25-June-14	Rule 26 & Not reasonably accessible because of undue burden or cost Admissibility of ESI (including authentication, and related issues)	Text, pp. 531-579.

	Managing a Production (including privacy issues and motions to compel)	The Homesteader and the Gunslinger (http://www.llrx.com/features/homestead.htm)
30-June-14	Ethical Issues in E-Discovery	Text, pp. 631-649, 683-725.
2-Jul-14	Practice in Texas courts versus federal	Text, pp. 49-74. Tex. R. Civ. P. 196.4 Tex. R. Evid. 803(6) <i>In re Weekley Homes</i>, 295 S.W.3d 309 (2009)
7-Jul-14	Final Exam	6 -9 pm