

Book review

Electronic Discovery and Evidence

by Elizabeth B. Wood, J.D., M.L.S.

Electronic Discovery and Evidence, by Michael R. Arkfeld. Law Partnership Publishing, 2003 454 p. loose leaf. Available from Law Partner Publishing, Web site at www.arkfeld.com, or through www.amazon.com for \$149.95.

This unassuming one-volume loose-leaf publication packs a powerhouse of information into eight chapters. Michael Arkfeld, a practicing attorney in Arizona, explains his purpose behind this book in one sentence:

The only way to adequately service your client's legal needs and to maintain a competitive edge is to understand computer technology and information management systems.

Electronic Discovery and Evidence, pp. 1-10.

Mr. Arkfeld is a veteran litigator whose practice includes medical malpractice, personal injury, immigration, and employment discrimination. Since 1985, he has lectured frequently on how technology has changed the practice of law. But this work is not aimed only at litigators. He also points out that business attorneys need to know their clients:

Now when you visit your client's business you will no longer walk through their building but instead will walk through their information infrastructure and communication system. You'll need to know the technical terms to enable you to communicate effectively with those who manage the data and communication systems.

[Id.](#) at 1-12.

The main purposes of the book are to first explain, and then to persuade others about the importance of knowing about current technology. Arkfeld places this need in the middle of the discovery process where most attorneys come face-to-face with the issues of electronic data in the form of e-mail, different versions of documents, etc. In this realm lie many pitfalls that Mr. Arkfeld addresses astutely and comprehensively. Yet, his message is not only for litigators in the discovery phase of a trial. It is subtly aimed also at the business lawyer. The business lawyer must counsel his or her clients on the need for having written document retention policies (and enforcing them), as well as communicating openly with the client once a complaint is filed against them in regards to that policy.

The eight chapters are organized in a manner that serves the needs of technology novices as well as those who know the technology, but need help with a particular evidence or discovery rule. Throughout the book, Mr. Arkfeld gives "Practice Pointers". These can be invaluable, as the book is in loose-leaf format and can be easily updated. However, the best part of this book is access to www.arkfeld.com. Here, the most recent cases are notated and much other invaluable information is available to purchasers through a members' only section in the web site.

There are three main sections to the volume: computer technology explained succinctly, the interaction of technology and lawyers preparing for trial, and finally the actual discovery and evidentiary rules and technology. The first three chapters explain electronic information in a comprehensive and comprehensible manner. He explains clearly how electronic information is stored, as opposed to information stored on paper in a filing cabinet. Mr. Arkfeld gives a brief layman's explanation of all the various types of electronic storage devices including how they are structured. In chapters four and five the reader learns about computer forensics and the pro's and con's of processing and searching electronic information.

In these chapters, Arkfeld is wonderful at explaining what questions to ask the computer consultants so that the right person for the job is hired. He also gives examples of some of the steps in the electronic discovery process. In chapter five, he has an entire section giving pointers to both requesting and producing parties. Arkfeld also devotes another section to the types of Electronic Discovery Software including "Criteria for Choosing Software". The last three chapters cover these topics: Discovery and Production Process, Court Procedural Rules and Case Law, and Admissibility of Electronic Evidence. These three chapters encompass about half of the book. The descriptions are detailed. The reader truly gains an understanding of electronic discovery. As Mike Arkfeld states,

The process of discovering electronic information from the opposing party in an average case is a relatively recent phenomenon and is not understood by many practitioners. It is essential that you understand the basics of electronic information not only for discovering, but also to produce computer data.

For the discovering party you must be able to respond to objections relating to privacy issues, fishing expedition claims, burdensome argument, etc. You'll also need to understand where important information may be "hidden" within modern information systems, the likelihood that such information can be recovered and the cost of acquiring this electronic information.

Electronic Discovery and Evidence, pp. 6-3.

For the many practitioners and litigators with little or much knowledge of technology, this book can be of tremendous use. It is down to earth. The author explains technology in laymen's terms. He elucidates the interactions between the courts and law of discovery and evidence, and new and ever changing technology. This is a good reference book to have in a pinch that may change the outcome for your client.

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