

BOOK RELEASE

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Electronic Discovery and Evidence: Court Sanctions for Spoliation Intensify

PHOENIX, AZ – Law Partner Publishing announced the release of the 2005-2006 edition to the acclaimed *Electronic Discovery and Evidence* treatise by the well-known speaker and author, Michael R. Arkfeld.

This new edition comes at a time when the courts continue to impose severe sanctions for spoliation of electronic evidence. In two landmark decisions, the Courts in *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*, 2005 WL 67071 (Fla. Cir. Ct. Mar. 1, 2005) and *Zubulake v. UBS Warburg LLC*, No. CIV.02-12432004, WL 1620866, at *8 (S.D.N.Y. July 20, 2004) issued adverse inference instructions for spoliation of evidence. As a result, the jury in the *Morgan Stanley* case returned with a 1.4 billion dollar verdict and in *Zubulake* the jury returned with a 29 million dollar verdict.

Answers on how to discover, produce and admit electronic evidence to avoid ethical problems and court sanctions can be found in this latest edition of *Electronic Discovery and Evidence*.

New Edition

This expanded edition (more than 100 additional pages) will update you on all the latest case law and procedural developments concerning electronic evidence. The new edition enlarges the analysis surrounding discovery and admissibility for instant and text messaging, audit trails and logs, spyware, global positioning systems (GPS), vehicle crash and listening devices, RFID (radio frequency identification device) tagging and web logs or blogs.

In addition, this update places special emphasis on chain of custody issues including analysis of audit reports, hash values and “certification” of the identification, collection and production process. This analysis correlates with an additional focus on the use of forensic experts and service bureaus with problems associated with forensic examinations.

New or substantially enlarged sections, in light of recent case law, include pretrial procedural discovery issues regarding document retention prior to litigation, cost allocation (Rowe/Zubulake factors), trade secrets, expedited discovery and supplementation, meet and confer, Rule 34 issues (reasonably useful form, kept in the usual course of business, and possession, custody or control) and taxation of electronic discovery costs.

Author Comments

In his comments on the new edition Michael Arkfeld stated, “the Courts continue to impose severe sanctions on lawyers and clients for failing to properly preserve and disclose electronic evidence. This trend combined with the proliferation of text and instant messaging and new devices such as GPS and RFID tagging will increase the burden on law firms to effectuate ‘best practices’ to ensure the proper discovery, production and admissibility of electronic information. These ‘best practices’ will include aligning with forensic specialists for assistance and ‘certification’ of the preservation and collection process for subsequent court review.”

Overview

A detailed legal treatise for lawyers and other legal professionals, *Electronic Discovery and Evidence* explores nearly every legal dilemma that may confront the discovery and admissibility of electronic evidence. It covers electronic storage devices and locations, data types, as well as legal issues regarding preservation and discovery with a special focus on admissibility of electronic evidence. All this is accomplished with clear explanations of technology and legal concepts; authoritative discussion of court rules and case law; evidentiary analysis and forms, checklists and practical pointers.

Electronic Discovery and Evidence is organized into eight chapters to guide you through the process of discovering and admitting electronic evidence. Chapter 1, ***Electronic Information in Litigation***, sets the stage for understanding the pervasive change from paper to electronic evidence. It discusses the unique characteristics of electronic data and why you have to discover and also produce this evidence. In Chapter 2, ***Creation and Storage of Electronic Information***, basic information is provided as to how electronic information is created, stored and retrieved. Chapter 3, ***Structure and Types of Electronic Information***, discusses the underlying computer setup, business software applications and how electronic material is organized. It explores special issues unique to electronic information and provides a detailed analysis of the different software types, and citations to legal authorities when applicable. Chapter 4, ***Computer Forensics, Experts and Service Bureaus***, explores the role of forensic specialists to assist you in the collection and processing of electronic information. Chapter 5, ***Collecting, Processing and Searching Electronic Information***, focuses on the actual collection and processing of electronic information. In Chapter 6, ***Discovery and Production Process***, the discovery and production steps are discussed. The focus here is on the overall plan, scope of request, preservation request, production format and other practical issues involved in discovering and producing data. Chapter 7, ***Court Procedural Rules and Case Law***, focuses on the relevant Federal Rules of Procedure and case law in production and disclosure of electronic information. It covers a broad area including Rule 16 pretrial conference, Rule 26 initial disclosures, experts' reports, relevancy, overbroad claims, cost allocation issues, work product, attorney-client waiver issues and protective orders and so forth. Chapter 8, ***Admissibility of Electronic Evidence***, examines the evidentiary considerations for the admission of electronic evidence. It discusses the general concepts of preliminary questions, judicial notice, relevancy, expert witness testimony, hearsay, authentication and the Best Evidence rule.

Reviews and Citation

Reviewers have labeled the book as “an extraordinarily useful, practical and accessible guide,” “magnificent resource,” “a solid digital discovery reference resource, packed full of detailed information and replete with case citations,” “extremely valuable new book,” “comprehensive and comprehensible” and a “powerhouse of information.” (Complete reviews are available at www.lawpartnerpublishing.com).

The *Electronic Discovery and Evidence* treatise was referenced by the Honorable Shira A. Scheindlin in *Zubulake v. UBS Warburg LLC*, No. CIV.02C1243, 2004 WL 1620866, at * 49 (S.D. N.Y. July 20, 2004).

Ordering

The book is available by ordering from the Law Partner Publishing, LLC web site located at www.lawpartnerpublishing.com. It can also be obtained by mail at Law Partner Publishing, LLC at 9602 North 35th Place, Phoenix, AZ 85028 or by phone at 602-993-1937. Like the original book, this edition is a one volume, loose-leaf (updated annually), 722 pages and sells for \$149.99

plus shipping and handling. There is also a guaranteed 30 day approval period for this revised edition.

Recent case summaries, practice forms and other information are included with the book and updated on the Law Partner Publishing web site (password protected) located at www.lawpartnerpublishing.com.

Author - Michael R. Arkfeld, Esq. Mr. Arkfeld is a consultant, practicing civil litigator, speaker and author who is involved on a daily basis in the discovery and admission of electronic information. As a former Assistant United States Attorney his practice included cases involving personal injury, medical malpractice, employment discrimination, immigration and a host of other civil claims. He has appeared before both federal and state appellate courts and has tried more than 30 cases before a jury. He lectures frequently throughout North America and internationally on the impact of technology in the practice of law, and on discovery and admission of electronic evidence. Michael is also the author of *The Digital Practice of Law (5th Ed.): A Practical Reference for Applying Technology Concepts to the Practice of Law*. In addition, he was given the 2004 E-Evidence Thought Leading Scholar Award and received the President's Award from the State Bar of Arizona in 1996. Michael can be reached by e-mail at Michael@Arkfeld.com. His web sites, Electronic Discovery and Evidence Center (www.edecenter.com) and Arkfeld and Associates (www.arkfeldandassociates.com), feature electronic discovery and other litigation and law office resources.

NOTE TO EDITORS: A limited number of review copies are available if you are planning on preparing a review article based on this book.

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