

## BOOK RELEASE

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### ***Electronic Discovery and Evidence: New E-Discovery Federal Rules***

PHOENIX, AZ – Law Partner Publishing announces the release of the 2006-2007 edition of its acclaimed *Electronic Discovery and Evidence* treatise by the well-known author, speaker and attorney, Michael R. Arkfeld.

This 2006-2007 expanded edition (more than 60 additional pages) will update you on all the latest case law and procedural developments concerning electronic evidence. Inside you will find a significant chapter discussing the pending federal rules. You will also find expanded analyses concerning search protocol and certification, and the numerous federal directives requiring counsel to proactively identify and preserve responsive electronic data. Answers on how to discover, produce and admit electronic evidence to avoid ethical problems and court sanctions are found in this latest edition of *Electronic Discovery and Evidence*.

Also included are the new e-discovery Federal Rules of Civil Procedure, effective December 1, 2006. An expanded Chapter 7 sets forth the pending rules, committee notes and commentary for each rule. For instance, the pending rules require counsel to discuss the preservation and disclosure of electronic data during the Rule 26 “meet and confer” conference, and then prepare a proposed order for the subsequent Rule 16 hearing before a federal judge. After the Rule 16 hearing, the pending rules require that initial disclosures must include “electronically stored information” (ESI). The pending rules also cover the burdensome issue of accessible vs. inaccessible data as well as the procedural format for handling the inadvertent production of privileged information. Rule 33 has been amended to permit the reference to ESI in response to an interrogatory. Rule 34 enlarges the concept of “document” to include ESI, and sets forth the procedure to determine the form or forms for disclosure of data between the parties. The treatise discusses the necessity to disclose data “into a reasonably useful format” and as “kept in the usual course of business.” Rule 37 was amended to include the concept of a “safe harbor” for the loss of data under certain circumstances. Finally, Rule 45 was changed as to discovery of electronic data from third parties, incorporating many of the same changes affecting parties to a lawsuit.

As a bonus, the treatise is now accompanied with a copy of the *Best Practices Guide*, which provides a practical step-by-step guide on how to request or produce electronic data containing critical cross-references to the *Electronic Discovery and Evidence* treatise.

This leading treatise has been purchased by more than 1400 of the top law firms, corporations, service bureaus, government organizations and law libraries in the country. The treatise has become the textbook of choice for law schools and is provided online for the SEC’s enforcement unit.

### **Author Comments**

In his comments on the new edition Michael Arkfeld stated, “[t]he Courts have codified, with the pending e-discovery rules, the procedural framework for many issues concerning e-discovery. These changes will be one of the most dramatic changes in the history of procedural rules governing our federal courts. Unfortunately, these changes, along with a lack of understanding of electronic data by the vast majority of lawyers, will result in sanctions in many more cases.

Attorneys must commit to educating themselves regarding the many e-discovery issues. They must also have open communications with their clients regarding electronic information to ensure that court mandated discovery and disclosure procedural rules are followed.”

## 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. All this is accomplished with clear explanations of technology and legal concepts; authoritative discussion of court rules and case law; evidentiary analysis, 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 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. This includes an analysis of storage media, devices and locations. 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 (e-mail, web pages, etc.), as well as citations to legal authorities when applicable. Chapter 4, ***Computer Forensics, Experts and Service Bureaus***, explores the role of forensic specialists to assist in the collection and processing of electronic information. Chapter 5, ***Collecting, Processing and Searching Electronic Information***, focuses on the actual collection, processing and searching of electronic information as well as the different data formats. 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 pending e-discovery 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, etc. 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 as they pertain to specific electronic data.

## Reviews and Citation

Reviewers have labeled the treatise 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](http://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

An electronic PDF version of the treatise (digitally protected) is also available and features hyperlinked, cross references within the text and *Best Practices Guide*. To obtain a site license or multiple print copies of the *Electronic Discovery and Evidence* treatise and *Best Practices Guide* contact Law Partner Publishing at 602-993-1937.

The *Electronic Discovery and Evidence* treatise can be ordered online at the Law Partner Publishing, LLC web site located at [www.lawpartnerpublishing.com](http://www.lawpartnerpublishing.com). It can also be obtained by mail from Law Partner Publishing, LLC located at 9602 North 35<sup>th</sup> Place, Phoenix, AZ 85028 or by phone at 602-993-1937. Like the original book, this edition is a single volume in loose-leaf format, 788 pages in length and sells for \$180.00 plus shipping and handling. Updates for previous customers, and sold without the binder, are available for \$150.00. Included as a bonus is a 64 page cross-referenced copy of the *Best Practices Guide* setting forth a step-by-step guide for the request and production of electronic data. A guaranteed 30 day approval period for this revised edition is offered.

With the purchase of the treatise in either loose-leaf or electronic formats, customers can access recent case summaries, practice forms and other valuable information available online by enrolling on a password-protected Members' website which can be found at [www.lawpartnerpublishing.com](http://www.lawpartnerpublishing.com).

**Author - Michael R. Arkfeld, Esq.** 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. Michael has appeared before federal and state appellate courts and has tried more than 30 cases before a jury. His lectures and seminars on the impact of technology in the practice of law, and on discovery and admission of electronic evidence have taken him throughout North America and internationally. Michael is also the author of *The Digital Practice of Law (5<sup>th</sup> Ed.): A Practical Reference for Applying Technology Concepts to the Practice of Law*. He was given the national *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](mailto:Michael@Arkfeld.com). His web sites at Arkfeld and Associates ([www.arkfeldandassociates.com](http://www.arkfeldandassociates.com)) and The Digital Practice of Law ([www.arkfeld.com](http://www.arkfeld.com)) feature electronic discovery, litigation and law office resources.

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

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