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**Digital Discovery & E-Evidence
Course Syllabus
University of Maine School of Law
Fall, 2008**

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Course Summary

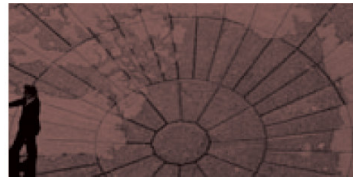
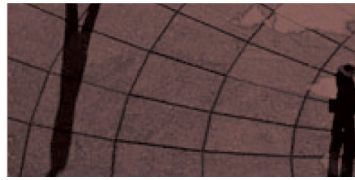
This course, offered for the third year in a row at the University of Maine School of Law, is a practice-based combination of legal and technology training in one of the most exciting and dynamic subjects in law today. Employing a combination of case law review, a technology "deep dive", and lectures from well-known practitioners on the national eDiscovery scene, the Digital Discovery and Computer Forensics course culminates in a mock negotiation with "opposing counsel" in one of the most unique and practical law practice preparatory courses in the country.

More than 90% of all information is now created in electronic form, ranging from word documents and spreadsheets to email and instant messaging. Corporate executives from Boeing to Credit Suisse First Boston have found their own inappropriate and often illegal activities exposed on the cover of the Wall Street Journal after scrutiny of their personal and business email accounts. Attorneys now find themselves scrambling to understand how their clients create, maintain, and destroy important business records, particularly in light of recent decisions requiring attorneys to understand the "document retention architecture" and computer systems of their client's networking system. The explosion of electronic information has changed the very nature of discovery, resulting in a lexicon including such new terms as filtering, deduplication, computer forensics, and meta data. Enterprising associates and partners in the largest firms are spearheading initiatives specifically designed to create and distribute best practices in the area of electronic discovery, yet find they lack important technical training critical to crafting those very standards. Treasure chests of potentially responsive electronic information are now available, at significant cost, yet the risks associated with improper assessment and management of electronic discovery engagements have never been higher.

Objectives

Students will gain

- 1) Appreciation of differences and associated legal risks between paper and electronic discovery, including volume, complexity and location.
- 2) Understanding of strategic and tactical approaches to seeking and producing information stored in electronic form.
- 3) Practical experience through simulated discovery conferences and brief drafting in negotiating parameters for preservation and production of electronically stored information.



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Outline of Course

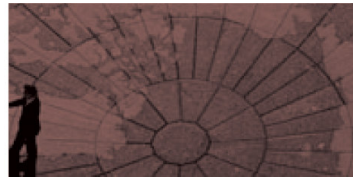
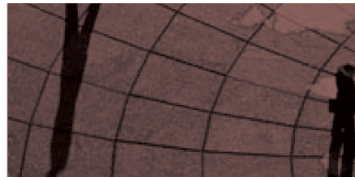
9/8/08: The first class provides a foundational introduction to discovery in general, then moves quickly to address the changing face of litigation driven by the unique qualities of fast paced electronic communication and the massive increase of electronically stored information in most corporations' networks. We will cover the deliberations by the Federal Advisory Committee confronting the challenges associated with email, spreadsheets, databases, and other unique aspects of electronically stored information that lead to revisions to the Federal Rules of Civil Procedure. Finally, Class 1 will examine the marquee decisions of electronic discovery, including the ground-breaking Zubulake line of cases which imposed on outside counsel new and controversial obligations.

9/15/08: The newly minted practitioner faces increasingly complex responsibilities far beyond traditional lawyering and advocacy. The typical associate in a litigation department must understand a client's use of technology, data retention architecture, methods, policies and procedures for managing electronically stored information, and act quickly and intelligently to advise their client on complex legal and technical issues. These issues will include professional responsibilities, ethical traps, an examination of key decisions of "what not to do", evidentiary concerns, and other practical training essential to the first year of practice. This session will be co-taught by one of the nation's premier experts on electronic discovery, who currently serves as special counsel on ediscovery at a large law firm in Washington, DC

9/22/08: Today, associates play a growing role in advising both their managing partners and clients on the complexities of litigating using electronically stored information. A new lawyer capable of providing legal advice which addresses intricate and nuanced legal principles AND includes insight into cost, management, and risk factors associated with electronically stored information is of great value to today's small and large firms. Session 3 is a "deep dive" into technology, including computer forensics, data analytics, metadata, deleted data, document production scenarios, review platforms, and the advantages (and risks) of all of them. Computer forensics and specialized data analytics play a critical role in stock manipulation, forensic accounting, money laundering, and corporation investigations.

9/29/08: A time honored tension between defense counsel, in-house counsel, and plaintiff's attorney becomes even more acute in the context of electronically stored information. As plaintiffs request broad preservation, identification, and production of information stored in corporate networks, laptops, blackberries, and other portable devices, corporate counsel argues the debilitating impact such requests have on the normal business operations. This class will hear from both sides, providing an inside window into the often bitter negotiations in "bet the company" litigation which often centers on the preservation, production, and privilege issues surrounding this fast moving area. The existence of "discovery on discovery" increases the stakes, and can be effectively leveraged by both plaintiffs and defendants, can impact evidentiary burdens at trial, result in adverse inferences, turn a weak case into a cash cow, and increase the ability to effectively negotiate for settlement

10/06/08: The final class provides the students with an opportunity to experience a street level perspective of legal negotiations involving electronically stored information. Each student will be assigned the role of either plaintiff or defendant, with the task of presenting reasoned arguments in the context of a "Meet & Confer" negotiation. Arguments will be made to a "judge", and must demonstrate both technical and legal aptitude and the ability to present solid and well thought-out solutions for addressing their client's concerns.



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Course Materials

Material will be assigned each class and posted to Blackboard, and will include many if not all of the following cases and resources.

Zubulake v. UBS Warburg, 2004 WL 1620866 (S.D.N.Y. July 20, 2004).

Zubulake v. UBS Warburg, 220 F.R.D. 212 (S.D.N.Y. 2003).

Qualcomm Inc. v. Broadcom Corp., 2008 WL 66932 (S.D. Cal. Jan. 7, 2008)

In re Priceline.com Inc. Sec. Litig., 2005 WL 3465942 (D. Conn. Dec. 8, 2005)

Residential Funding Corp. v. DeGeorge Home Alliance, Inc., 2002 U.S. App. LEXIS 20422 (2nd Cir. Sept. 2002).

Anti-Monopoly, Inc. v. Hasbro, Inc., No. 94CIV.2120 (LMM)(AJP), 1995 WL 649934 (SDNY Nov.3, 1995):

Williams v. Sprint/United Mgmt. Co., 2005 US Dist. LEXIS 21966 (D. Kan. Sept.

29, 2005).

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., 2005 Extra LEXIS

94 (Fla. Cir. Ct. Mar. 23, 2005).

Metropolitan Opera Ass'n v. Local 100, Hotel Empl. & Rest. Empl. Int'l Union, 2003 US Dist. LEXIS 1077 (SDNY, Jan. 28, 2003).

Rules and Standards

Federal Rules of Civil Procedure (as proposed)

Moore's Federal Practice, E-Discovery: The Newly Amended Federal Rules of Procedure, The Honorable Shira A. Scheindlin

Electronic Discovery Reference Model

Sedona Principals

Default Electronic Discovery Guidelines (state specific)

Grading

Each student will be assigned a role for the course (plaintiff or defendant), given a specific fact pattern, and will be required to submit a short (3-5 page) brief at the final class supporting their position in relation to the discovery of electronically stored information. In addition, each student will engage in a simulated discovery conference with opposing counsel, moderated by the professor. The grading is as follows:

- Preparation and submission of 3-5 page brief—70%
- Participation in simulated discovery conference—30%

Regular participation may result in upward adjustment of the final grade at the instructor's discretion.
