

**The John Marshall Law School
LL.M. in Information Technology & Privacy Law**

LAW 287/IT 881 B

eDiscovery, Digital Evidence and Computer Forensics”

Fall 2008
Wednesdays, 6:00 pm to 9:00 pm
September 17, 24
October 1, 15, 22, 29
November 5, 12, 19
December 3

SYLLABUS

Overview of the Course: This course explores the developing issues and new rules and practices involving the application of e-discovery, digital evidence and computer forensics issues in litigation and general practice. The purpose of the course is to expose the eries and hidden traps surrounding the use of computer and electronic records in everyday legal and corporate practice while examining the emerging rules governing electronic discovery and digital evidence. This two credit seminar meets in a ten session format.

Instructor

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Grading

Participation: Your class participation will constitute 30 percent of your final grade. Participation involves meaningful contribution and advancement of the discussion.
Take home Exam: A final take home exam will account for 70 percent of your grade. Details of the exam will be discussed in class

Course Readings;

Textbook : e-Discovery Current Trends and Cases by Ralph C. Losey, (ABA). Readings for classes will be **provided/available in the JMLS book store** and supplement via email as necessary.

Course Schedule:

Class 1 September 17, 2008: Introduction to E-Discovery Guest Speaker : TBA

1. Introduction to electronic media
2. Overview of the problems posed by E-Discovery
3. IT Philosophies and the Intellectual Foundation of E-Discovery
4. New trends and the application of pre-existing ethics rules to technology-based practices.

Assigned readings: e-Discovery Current Trends and Cases by Ralph C. Losey. Chapter 1 pages 1-55.

Class 2. September 24. Ethical Standards for E-Discovery. Guest Speaker : TBA

1. Zubulake duty
2. Rule 26(g) Sanctions
3. Sanctions for eDiscovery abuses
4. ABA Rules on eDiscovery

Assigned readings: e-Discovery Current Trends and Cases by Ralph C. Losey. Chapter 2 pages 55-76

Class 3 October 1: New Rules for E-Discovery Guest Speaker : TBA

1. History and Development of eDiscovery in the Federal Rules
2. Introduction to New Rules
3. When the new Rules apply
4. Is IT ready for New Rules?
5. Effect of revised rules 16(b) and 26(f)
6. Employer's right to mirror employees home computers

7. Uniform law Commission Model eDiscovery Rules and ABA Standards on eDiscovery and Technology

Assigned readings: e-Discovery Current Trends and Cases by Ralph C. Losey. Chapter 3 pages 77-112.

Class 4: October 15: Spoliation and Sanctions Part 1. Guest Speaker : TBA

1. Spoliation
2. Rule 11 Sanctions
3. Rule 37 Discovery Sanctions
4. Inherent Powers of the Court
5. Case Examples

Assigned readings: e-Discovery Current Trends and Cases by Ralph C. Losey. Chapter 4 pages 113-156.

Class 5: October 22: Spoliation and Sanctions Part 2. Guest Speaker : TBA

1. Costs Associated with E-Discovery
2. Duty to Preserve Data: scope, commencement, fulfilling duty to preserve
3. Litigation Best Practices re preservation and document retention policies
4. Document Retention Policies

Class 6 : October 29: Computer Forensics and Forensically Sound Collection Part 1: Metadata and Technological issues Guest Speaker : TBA

1. What is metadata
2. When should metadata be produced
3. Native Format production
4. E-mail archival and retention methods

Assigned readings: e-Discovery Current Trends and Cases by Ralph C. Losey. Chapter 5 pages 157 -176.

Class 7: November 5: Computer Forensics and Forensically Sound Collection Part 2. Guest Speaker TBA

1. What is Computer Forensics
2. Search and Review of ESI
3. Preservation and Collection of ESI
4. Key word searches versus Concept searches
5. Evidence Issues Associated with eDiscovery

Assigned readings: e-Discovery Current Trends and Cases by Ralph C. Losey. Chapter 6 pages 177-210.

Class 8 November 12: New technologies. Guest Speaker TBA

1. RAM must be produced
2. Hash
3. Computer maps
4. Forensic “fishing expeditions” not allowed

Assigned readings: e-Discovery Current Trends and Cases by Ralph C. Losey. Chapter 7 pages 211- 240.

Class 9: November 19. International Issues. Guest Speaker TBA

1. Privacy considerations
2. Criminal issues
3. Data Export consideration (EU / USDOJ Safe Harbor)
4. Future trends

Class 10: December 3 Course review. Take Home Exam.