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National eDiscovery Leadership Institute

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5000 HOLMES RD., KANSAS CITY, MO 64110

National eDiscovery Leadership Institute

FRIDAY, OCTOBER 21, 2016

UMKC, Pierson Auditorium, Atterbury Student Success Center, 5000 Holmes Rd., Kansas City, MO 64110

PROGRAM AGENDA

7:45 – 8:15 a.m.

REGISTRATION

8:15 – 8:30 a.m.

WELCOME AND OPENING REMARKS

8:30 – 9:30 a.m.

PRESERVATION AND COLLECTION STRATEGIES

Moderator: Tessa Jacob (Husch Blackwell, LLP)

Panelists: Hon. Craig B. Shaffer (U.S.D.C. District of Colorado), Ed Rippey (Covington & Burling LLP), Martha Mazzone (Fidelity Investments)

Organizations are continually using new technologies and data infrastructure to meet their business needs and employees are using new devices and applications at a rapid pace. Thus, preservation continues to be a challenge. This panel will discuss the myriad of strategies and technologies that a party can use to meet its preservation and collection obligations. Because we know that one size does not fit all, the panel will share their insights on handling a mix of preservation challenges, from large to small cases, to handling preservation in various environments/sources. Learn strategies for determining what needs to be preserved and how best to convey that message, various options for collecting the data, and overall strategies for ensuring that a defensible approach to preservation and collection are utilized while not over doing it.

9:30 – 9:40 a.m.

BREAK

9:40 a.m. – 11:45 a.m.

THE VIEW FROM THE BENCH: SANCTIONS, ETHICS, AND ALL THINGS EDISCOVERY

Moderator: Hon. Shira Scheindlin (Ret.)

Panelists: Hon. David Waxse (U.S.D.C. District of Kansas), Hon. James P. O'Hara (U.S.D.C. District of Kansas), Hon. Craig B. Shaffer (U.S.D.C. District of Colorado), Hon. Andrew J. Peck (U.S.D.C. S.D.N.Y.), Hon. Kristen L. Mix (U.S.D.C. District of Colorado)

Judge Shira Scheindlin, a trailblazer in eDiscovery who wrote many landmark decisions in this field, has left the bench and has joined JAMS. NeLI has persuaded Judge Scheindlin to return this year to moderate a panel of her former colleagues in a broad-ranging discussion of ESI issues. You will observe a group of federal judges from across the country, all thought leaders in the eDiscovery field, display their nuanced understanding of ESI and their approach to various ESI issues. Come watch Judge Scheindlin, now free from the constraints of the bench, press her peers on issues ranging from preservation to production. This discussion will cover the latest developments in case law subsequent to the December 1, 2015 Federal Rule Amendments. What do the courts expect from litigants? Does the court maintain inherent power to sanction despite the changes to Rule 37(e) that arguably took this inherent power away? What are the parties' ethical obligations when engaging in discovery? What is going on in state courts? What is going on in the world at large – cross border discovery? All of these questions and more will be debated by this distinguished judicial panel.

12:00 p.m. – 12:20 p.m.

LUNCH BREAK

12:20 – 1:20 p.m.

MOCK HEARING ON TECHNOLOGY-ASSISTED REVIEW

Judge: Hon. Andrew J. Peck (U.S.D.C. S.D.N.Y.)

Defense Attorney/Pro Argument:

Maura Grossman (University of Waterloo)

Plaintiffs' Attorney/Con Argument:

Lea Malani Bays (Robbins Geller Rudman & Dowd LLP)

Welcome to Courtroom 20D in the United States District Court for the Southern District of New York, the Honorable Andrew J. Peck presiding. Watch as two litigants, with vast technology-assisted review (TAR) experience, try to convince Judge Peck that their client should or should not be compelled to do certain things when using TAR. As the adversaries make their case, Judge Peck will interrupt, inquire about, and, ultimately, rule on thorny issues such as: Must one party's intent to use TAR be disclosed to opposing counsel? Do the parties need to agree on its use? What, if any, information must be disclosed to opposing counsel if a party plans to use TAR? What is a reasonable TAR result?

1:20 – 1:30 p.m.

BREAK

1:30 – 2:30 p.m.

BYOD: WHO HAS POSSESSION, CUSTODY OR CONTROL?

Moderator: Lisa Lukaszewski (Redgrave LLP)

Panelists: Hon. Kristen L. Mix (U.S.D.C. District of Colorado), Keith Angle (UBS), Philip Cohen (Greenberg Traurig, LLP)

From the time that they take Civil Procedure class in law school, lawyers learn that "possession, custody or control" is the standard for production under Federal Rules of Civil Procedure 34 and 45. In the days of filing cabinets, paper storage rooms and banker's boxes, it wasn't hard to determine whether a party had "possession, custody or control" of information. All of that changed with the digital revolution. Employee use of personal devices for day-to-day employment duties is increasingly common. Personal mobile devices, "BYOD" policies, home computers, personal removable storage, the cloud and other technologies have turned the question of "possession, custody or control" into an almost existential inquiry. This panel will discuss the various circuit approaches as to what these terms mean, it will look at the handful of cases that have made determinations on what an employer must do in relation to its employees' mobile devices, and it will discuss the recent Sedona Conference Commentary as it relates to mobile devices.

2:30 – 2:40 p.m.

BREAK

2:40 – 3:40 p.m.

WRITTEN DISCOVERY AND ETHICAL OBLIGATIONS

Moderator: Robin Stewart (Kutak Rock LLP)

Panelists: Hon. James P. O'Hara (U.S.D.C. District of Kansas), Jennifer Shafer (Black & Veatch Companies), Denise Talbert (Shook, Hardy & Bacon L.L.P.)

Ask lawyers to explain Rule 26(g) and the vast majority will react with blank stares. Probe further and most lawyers will admit to ignorance as to their ethical obligations with respect to a client's discovery responses. While not one of



the most talked-about changes to the federal rules, the new Rule 34 places much greater emphasis on a responding parties' obligations. Couple that with both the responding and producing parties' obligations under Rule 26(g), and counsel is much more exposed to the risk of being sanctioned, especially if they fall back upon old practices, such as serving boilerplate objections or overly broad discovery requests. Counsel must also be aware of their obligation to certify a client's discovery responses, and the lawyers responsibilities related to discovery. This panel, comprised of speakers from the judiciary, in-house counsel and outside counsel will cover the dos and don'ts, as well as best practices, related to serving and responding to discovery requests. Examples of appropriate and inappropriate requests and responses will be provided.

3:40 – 3:50 p.m.

BREAK

3:50 – 4:50 p.m.

THIRD PARTY SUBPOENAS

Moderator: Jonathan Sablone (Nixon Peabody LLP)

Panelists: Hon. Stephen R. Bough (U.S.D.C. W.D. Missouri), Jeffery Kruse (Baker Sterchi Cowden & Rice L.L.C.), Mira Vayda Edelman (Google Inc.)

One of the most overlooked issues when discussing eDiscovery is that of the burdens and obligations placed on non-parties when served with a Rule 45 subpoena. This burden placed on non-parties often involves costly preservation, collection, review and production of the requested documents. Is it fair to make non-parties subject to a Rule 45 subpoena spend valuable resources on legal counsel, vendors, consultants and IT specialists? What options do they have? When does their duty to preserve begin, prior to or only after receiving the subpoena? This panel will address the panoply of issues that impact both the issuance and receipt of Rule 45 subpoenas. Does the recipient have a preservation obligation and, if so, how broad is it? To what extent can a non-party be forced to collect, cull, review and produce ESI? At what cost, and who should pay? How are disputes brought to the court, and which courts have jurisdiction? This panel of distinguished speakers will help answer these questions and more.

4:50 – 5:00 p.m.

CLOSING REMARKS

5:00 – 6:00 p.m.

NETWORKING RECEPTION

CLE CREDIT: MO 8.5, incl. 3.5 Ethics | KS 8.0, incl. 3.5 ethics | Other States Upon Request

REGISTRATION FORM

Online registration available at ediscoveryleadership.org.

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Full Day \$295 ☐ In Person ☐ Webcast ☐ MCLE Credit Requested: _____

Enclosed is \$_____ for _____ registration(s) for enrollment in the National eDiscovery Learning Institute, Friday, October 21, 2016 | UMKC, Pierson Auditorium, Atterbury Student Success Center, 5000 Holmes Rd., Kansas City, MO 64110

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You can also fax completed registration forms to 816.235.6552.

We understand that conflicts arise. Cancellations received 48 hours or more prior to the beginning of the program will be refunded. Late cancellations and "no shows" will receive program materials on request. Substitutions are always permitted.

Hotel accommodation information may be found at ediscoveryleadership.org.

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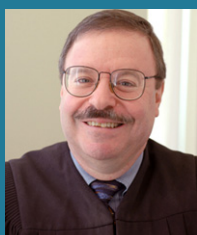
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Hon. James P. O'Hara
U.S.D.C. District
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Hon. Andrew J. Peck
U.S.D.C. S.D.N.Y.



Hon. Shira A. Scheindlin
(Ret.) U.S.D.C. S.D.N.Y.



Hon. Craig B. Shaffer
U.S.D.C.
District of Colorado



Hon. David J. Waxse
U.S.D.C.
District of Kansas

SPEAKERS



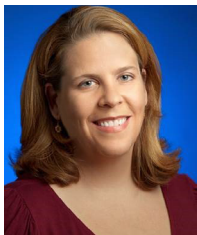
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