

The 2nd Annual

# ADVANCED E-DISCOVERY INSTITUTE: Practical Concerns, Pragmatic Advice, Emerging Trends

In Cooperation with the Federal Judicial Center and The Sedona Conference®

**Thursday-Friday,  
November 17-18, 2005**

**Georgetown University Law Center  
Washington, DC**

**11.0 CLE credit hours**  
(for states based on a 60 minute hour),  
including 1.0 hour of legal ethics

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(for states based on a 50 minute hour),  
including 1.0 hour of legal ethics

## BENEFITS OF ATTENDING THIS PROGRAM

**E**arlier this year, the *Corporate Legal Times* stated that “E-discovery is generating plenty of heartburn, especially for litigators and in-house counsel who realize the days of simply pleading undue burden have gone...As (a) judge points out, it’s time for in-house attorneys to stop carping, develop technical expertise, and take charge of their e-discovery issues.” In the same article, evidence authority Gregory Joseph opined, “Virtually all discovery today is electronic. And if it’s relevant evidence, then the evidence is going to have to be made available.”

Yes, e-discovery is hot, and it is burning holes in the self-confidence of plaintiff and defense lawyers, in-house counsel and judges. Everyone involved needs to improve their knowledge and skills if this burgeoning issue is to be tackled successfully.

At this exciting two-day program, developed by a national advisory board of

judges, plaintiff and defense lawyers, in-house counsel and consultants, you will:

- Receive practical, real-world advice about how to handle e-discovery problems, both technological and legal
- Benefit from comprehensive plenary sessions and targeted break-outs
- Solve problems based on a fact pattern developed specifically for this program
- Listen in on mock Rule 26 and Rule 16(b) conferences
- Receive hard-hitting advice from federal judges on what they expect from lawyers
- Learn what matters most to both requesting and responding parties
- Leave with greater knowledge, sharper skills and an enhanced appreciation of what all parties are seeking in e-discovery matters

## Why You Should Attend This E-Discovery Conference

Most e-discovery conferences are geared toward young associates. At the other end of the spectrum, the Sedona Conference® has done a magnificent job of bringing together experts to fashion broad, policy-oriented guidance. What has not existed outside the Sedona Conference® – till now – is a program for seasoned professionals – a program that disseminates the lessons learned from in-the-trenches experiences; a program that includes a sophisticated analysis of the “state of the art” and of where the law – and the technology — are heading. This program does all that – and more. It brings together federal and state court judges, plaintiff and defense lawyers, in-house counsel and consultants to analyze the most vexing issues they all face. If you only attend one e-discovery conference in 2005, make it this one!

## Who Will Be Attending:

- Federal judges
- State court judges
- Sedona Working Group members
- Plaintiff lawyers
- Defense lawyers
- In-house counsel
- IT professionals
- Consultants
- Vendors

## PROGRAM CHAIRS:

**Robert A. Eisenberg**  
Attorney & Litigation Consultant  
DOAR  
Washington, DC

**Jonathan M. Redgrave**  
Jones Day  
Washington, DC

**Kenneth J. Withers**  
Senior Education Attorney  
Federal Judicial Center  
Washington, DC

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Westlake, OH

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Director of Litigation Support  
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Schulman LLP  
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Executive Vice President, Chief  
Scientist  
DolphinSearch, Inc.  
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Howrey LLP  
Washington, DC

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Philip Morris USA  
Richmond, VA

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Chief Justice  
Indiana Supreme Court  
Indianapolis, IN

**Hon. Joseph R. Slight, III**  
Superior Court of the State of  
Delaware  
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*(The hotel is approximately two blocks from the Law Center)*

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Speakers are subject to change.

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### CANCELLATIONS/RAIN CHECKS/SUBSTITUTIONS:

Please fax your cancellation notice to (202) 662-9891 by 5:00 pm on Monday, November 14, 2005 for a refund (less \$75 administrative fee). Rain checks for a future program will be granted for cancellations received after November 14 and prior to the start of the program. Substitutions are accepted at anytime prior to the program.

### MONEY-BACK GUARANTEE:

We are confident that you will leave this conference with more than enough ideas and insights to make your investment pay off. However, if you feel you have not received your money's worth by the end of the program, simply contact a member of our registration team at the conference or call (202) 662-9890 and we will process a 100% refund of your registration fee!

## PROGRAM AGENDA -- ADVANCED E-DISCOVERY INSTITUTE: PRACTICAL CONC

### Thursday, November 17

8:00-8:45 am

### Registration and Continental Breakfast

8:45-9:00 am

### Welcome and Introduction

9:00-10:15 am

### State of the Art in E-Discovery: The Law and The Technology

Moderator:

*Kenneth J. Withers*

Panelists:

*Craig D. Ball*  
*Michael A. Clark*  
*Adam I. Cohen*  
*Carol L. Eoannou*  
*Michael E. Lackey, Jr.*

- The growing role of the e-discovery industry
- Themes emerging from the case law
- Technology trends: Data storage and backup, data mining, data conversion
- Observations on the federal rulemaking process

10:15-10:30 am

### Refreshment Break

10:30-11:15 am

### Litigants Talk to Judges: What We Need From You

Moderator:

*M. James Daley*

Panelists:

*R. Noel Clinard*  
*James L. Michalowicz*  
*Ariana J. Tadler*

- Getting the judge's attention
- Need for clarity in process
- Orders and understanding the litigants' reality
- Avoiding judicial micromanagement

11:15-11:30 am

### Refreshment Break

11:30 am-12:15 pm

### Judges Talk to Litigants: What We Need From You

Moderator:

*Hon. Randall T. Shepard*

Panelists:

*Hon. John M. Facciola*  
*Hon. Barbara J. Rothstein*

- Knowing of what you speak
- Tailoring your presentation to the court
- Spoliation: Presenting facts, not abstract law
- Cooperating with the court and the opposing party

12:15-1:45 pm

### Lunch: On Your Own

1:45-3:00 pm

### Getting to "Yes": Solving the E-Discovery Dilemma

PANEL I:

### What Matters to Requesting Parties

Moderator:

*James A. Batson*

Panelists:

*John C. Cruden*  
*Benjamin B. Klubes*  
*Mark V. Reichenbach*

- Definitions: Being specific
- Formats: Indicating how you want to receive the data
- Timeline: Making clear when you expect to receive the data
- Follow-up: Pursuing an iterative approach

3:00-3:15 pm

### Refreshment Break

3:15-4:30 pm

### Getting to "Yes": Solving the E-Discovery Dilemma

PANEL II:

### What Matters to Responding Parties

Moderator:

*Kevin F. Brady*

Panelists:

*Thomas I. Barnett*  
*Jason R. Baron*  
*Monica W. Latin*  
*Mark E. Michels*

- Establishing communication: Outside counsel, in-house counsel, management and IT staff
- Meeting preservation obligations
- Establishing process: Identifying key players and developing collection protocols
- Documenting and defending the process

### INSTITUTE LOCATION:

Georgetown University  
Law Center  
Hart Auditorium  
(formerly the Moot Courtroom)  
600 New Jersey Avenue, NW  
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4:30-5:15 pm

**The Evolution of the Federal Rules - Where Are We Heading?**

Moderator:

*Ellen Y. Suni*

Panelists:

*Hon. Nathan L. Hecht*

*Hon. Ronald J. Hedges*

*Richard K. Herrmann*

- The status of the FRCP amendments
- Rulemaking in the state courts
- Rulemaking in the local federal courts
- Will rules solve the problems?

5:15-6:30 pm

**Networking Cocktail Reception**

**Friday,  
November 18**

8:30-9:00 am

**Continental Breakfast**

9:00-9:15 am

**One Perfect E-Discovery Storm: Explanation and Review of Fact Pattern and Draft Order in a Mass Tort Multi-District Pharmaceutical Litigation Involving Federal and State Government with One Company Having Declared Chapter 11**

9:30-10:30 am

**SIMULTANEOUS BREAKOUT SESSIONS: Preparing for the Rule 26 Conference**

- Relevance, accessibility and the universe of data: What you have and are willing to produce, what you want and why
- Protective orders: What dangers do you foresee, what costs and burdens do you foresee, and what are you willing to trade?
- Form of production: Costs, logistics and litigation goals
- Privilege and privilege waiver

**A. Plaintiff Lawyers**

Facilitators:

*Conor R. Crowley*

*Daniel C. Girard*

**B. Defense Lawyers and In-House Counsel**

Facilitators:

*Robert A. Eisenberg*

*John J. Rosenthal*

**C. Government Attorneys**

Facilitators:

*Theodore C. Hirt*

*Jeanette Plante*

**D. Judges and Judicial Personnel**

Facilitators:

*Hon. Kent A. Jordan*

*Hon. Nan R. Nolan*

10:30-10:45 am

**Refreshment Break**

10:45-11:15 am

**Facilitators Report Back and Argue to Judges at Rule 16(b) Conference**

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11:15-11:30 am

**Refreshment Break**

11:30 am-12:15 pm

**Judges Discuss Their Considerations after Rule 16(b) Conference**

- Have the attorneys done their homework?
- Have the attorneys been able to work together?
- Have the attorneys addressed the threshold issues?
- What judicial actions are necessary at this stage?

12:15-12:45 pm

**Box Lunch**

12:45-1:45 pm

**SIMULTANEOUS BREAKOUT SESSIONS: Responding to the Rule 16(e) Order – Developing Production Protocols and Coping with Experts’ Desired Access to Databases**

- Translating the judge’s order into concrete tasks
- Accessing staff and expert resources
- Developing methodologies: Preservation, collection, organization and production
- Anticipating problems raised by the order, e.g., privilege, privacy, direct access to data
- Exploring strategic alliances and common ground

**A. Plaintiff Lawyers**

Facilitators:

*Conor R. Crowley*

*Daniel C. Girard*

**B. Defense Lawyers and In-House Counsel**

Facilitators:

*Robert A. Eisenberg*

*John J. Rosenthal*

**C. Government Attorneys**

Facilitators:

*Theodore C. Hirt*

*Jeanette Plante*

**D. Judges and Judicial Personnel**

Facilitators:

*Hon. Kent A. Jordan*

*Hon. Nan R. Nolan*

1:45-2:00 pm

**Refreshment Break**

2:00-2:45 pm

**Discovery Status Conference under Rule 16(b)(5): Parties report their proposed solutions and defend the solutions before the judge**

2:45-3:45 pm

**Legal Ethics in E-Discovery: Minefields to Avoid**

Moderator:

*Kenneth J. Withers*

Panelists:

*Prof. Michael S. Frisch*

*Hon. Paul W. Grimm*

*Ellen Y. Suni*

- The balance between civility and zealous advocacy
- The duty of competent representation
- The duty to maintain client confidences
- The duty of candor to the courts
- Privilege waiver

3:45 pm

**Adjournment**

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Attorney and Technologist  
Certified Computer Forensic Examiner  
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Ethics Counselor  
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