

THE *CAMPBELL LAW REVIEW* PRESENTS
EMERGING ISSUES IN ELECTRONIC DISCOVERY
FRIDAY, JANUARY 22, 2010
9:00 AM – 5:30 PM

CAMPBELL UNIVERSITY
NORMAN ADRIAN WIGGINS SCHOOL OF LAW
225 HILLSBOROUGH STREET
RALEIGH, NORTH CAROLINA

Description

Campbell University's Norman Adrian Wiggins School of Law is proud to present its Annual Law Review Symposium entitled Emerging Issues in Electronic Discovery. Electronic Discovery is a relatively new area of the law and is constantly evolving. Many attorneys are not aware of the potential issues that arise when a case involves electronic discovery. Examples of the types of data included in electronic discovery are e-mail, instant messaging chats, documents (such as Microsoft Office document files), accounting databases, CAD/CAM files, websites, and any other electronically stored information which could be relevant evidence in a law suit such as voicemails and data from "smartphones". Given the complexities of modern litigation and the wide variety of information systems on the market, electronic discovery often requires IT professionals from both parties to the litigation to communicate directly to address technology incompatibilities and agree on production formats. Failure to anticipate litigation that involves Electronically Stored Information (ESI) leads to additional time and unforeseen costs in acquiring new technology or adapting existing technology to accommodate the collected data. Litigation involving ESI requires collaboration among the attorneys and parties involved. E-Discovery also raises many ethical issues including those related to metadata.

Program and Faculty

9:00-9:10 A.M. –Introductory Remarks

9:10-10:00 A.M. –Honorable John Carroll-Proportionality in Discovery as it Applies to Electronically Stored Information

Judge Carroll is Dean of the Cumberland School of Law. Prior to his appointment as Dean, Carroll served as a federal trial judge for 14 years in the position of Chief U.S. Magistrate Judge for the Middle District

of Alabama. Carroll was also appointed by Chief Justice William Rehnquist to serve on the Judicial Conference's Advisory Committee on the Federal Rules of Civil Procedure.

10:00-10:40 A.M. - Allison Grounds- Practical Tips for Cost-Efficient E-Discovery Management

Ms. Grounds is an associate in the Complex Litigation and Intellectual Property practice groups of Troutman Sanders LLP and is the co-founder and co-leader of the Electronic Discovery and Data Management Team. Ms. Grounds is experienced in litigating various complex commercial and business disputes related to contractual rights, fraud, business torts, products liability, trademarks, copyrights, domain names, technology, false advertising, trade secrets, and unfair competition.

10:40-11:20 A.M.-Fernando Pinguelo- How Are Companies Positioning to Deal with E-Discovery in the Event of Further Litigation

Mr. Pinguelo, is an attorney with Norris, McLaughlin & Marcus and Co-Chair of its Response to Electronic Discovery and Information Group. He devotes his practice to complex litigation with an emphasis on business disputes, electronic discovery, and media and employment matters. He has experience as a former prosecutor. Mr. Pinguelo handles a broad spectrum of disputes including copyright infringement, misappropriation of trade secrets, fraud, breach of non-compete covenants, discrimination, and business torts. He sits on the Third Circuit Bar Association Committee on Rules of Procedure and clerked for the Honorable Edwin H. Stern, currently the Presiding Judge of Administration for the Superior Court of New Jersey, Appellate Division.

He works with business owners, C-level executives, in house counsel, and human resources, information technology, and risk managers to develop strategies to manage business and legal issues related to electronic documents. Mr. Pinguelo focuses on preventing claims and pursues strategies that enhance a client's ability to manage electronic documents. He teaches an electronic discovery course at Seton Hall University School of Law.

11:20A.M.-12:00 P.M. –Stephanie “Tess” Blair- Retention of Electronically Stored Data

Ms. Blair is an attorney with Morgan Lewis. She works with Morgan Lewis attorneys and clients to develop and implement strategies and cutting-edge technologies for successfully managing complex litigation matters, with an emphasis on electronic discovery. Ms. Blair has developed industry-leading “best practices” designed to provide clients with state-of-the-art records and discovery management, knowledge sharing, and collaboration resources. The E-Data team at Morgan Lewis plays a large role in defending clients in corporate matters, including product liability, mass torts, antitrust, M&A, regulatory, white collar, compliance, construction, insurance coverage, and complex commercial litigation.

12:00-1:00 P.M.- Lunch

1:00-1:35 P.M- Professor Elizabeth King- Metadata

Professor King received a Bachelor of Science in Business Administration from the University of Delaware in 1999 and a Juris Doctor from Widener University School of Law. She was Editor in Chief of

the Delaware Journal of Corporate Law. After graduating from law school, Professor King was a law clerk for the Honorable Jane R. Roth for the United States Court of Appeals for the Third Circuit. Ms. King has also worked as a professor for the Campbell University School of Law.

1:35-2:15 P.M.- Jonathan Bumgarner- Overview of Metadata in E-Discovery and Ethical Considerations Related to Mining and Scrubbing

Mr. Bumgarner is an attorney with Williams Mullen and is licensed to practice in North Carolina and is a member of the American Bar Association, the Litigation Section of the North Carolina Bar Association, the Wake County Bar Association, the Tenth Judicial District Bar, and the North Carolina Association of Defense Attorneys where he serves as member of the Young Lawyers Committee Executive Board. Mr. Bumgarner is admitted to practice before all federal and state courts of North Carolina, the Fourth Circuit Court of Appeals, and the U.S. Supreme Court.

Prior to joining Williams Mullen, Mr. Bumgarner served as a law clerk to the Honorable Frank W. Bullock, U.S. District Judge in the Middle District of North Carolina. There, he advised the court on employment discrimination and disability claims arising under Title VII, the ADA and the ADEA. Jonathan assisted the court in resolving federal tort claims, insurance coverage disputes and criminal cases, including white-collar crimes.

2:15-2:45 P.M.- Derek Witte- How Courts Will Apply E-Discovery Law and Spoliation to Electronically Stored Evidence Created or Stored on Social Networking Sites

Mr. Witte, is a Professor with the Cooley Law School and was previously a litigator in Chicago, Ill. At Jenner & Block LLP in Chicago, Witte litigated nationwide consumer fraud class actions, trade secret disputes, insurance coverage and commercial disputes for Fortune 500 corporations. He has also worked with Miller Johnson in Grand Rapids in complex commercial litigation including cases involving trade secrets, copyright, trade dress, unfair competition, consumer fraude and e-discovery.

2:45-3:30 P.M. -Professor Thomas B. Metzloff- Interaction of E-Discovery and the United States Supreme Court's Decisions in *Twombly* and *Iqbal*

Mr. Metzloff is a Professor with the Duke School of Law, he earned his BA from Yale College in 1976 and JD from Harvard Law School in 1979. He began his professional career with a judicial clerkship on the 5th U.S. Circuit Court of Appeals in New Orleans, followed by a clerkship with the Supreme Court of the United States. He then practiced with a private firm in Atlanta doing civil litigations matters before accepting a position at Duke Law School in 1985. He teaches civil procedure, ethics, and dispute resolution, as well as a specialized course on the American legal system for international LLM students. He currently serves as a member of the executive committee of Duke University's Academic Counsel.

3:30-4:10 P.M.-Panel Discussion- Intersection of the Federal Rules of Discovery with North Carolina Rules- Panel Leaders Elizabeth Scott and Patrick Oot

Elizabeth Scott is an attorney with Williams Mullen and represents businesses in the manufacturing, banking, health care and petroleum transport industries on a broad range of issues, including products

liability, contractual and unfair trade practices disputes, fiduciary duty claims and insurance coverage disputes. Ms. Scott also has served as primary litigation support to the environmental law practice group. Ms. Scott is certified by the North Carolina Dispute Resolution Commission to mediate civil suits and serves as mediator in cases pending before the North Carolina state courts, the Industrial Commission and the U.S. District Court for the Eastern and Middle Districts of North Carolina. Ms. Scott is also an NASD is also an NASD Regulation mediator. Prior to joining Williams Mullen Ms. Scott was clerk with both the North Carolina Court of Appeals and the North Carolina Supreme Court.

4:10-4:55 P.M.- Dr. Saby Ghoshray-Distorting the Constitutional Curvature or Expanding It's Fronteir-Examining the Unique Challenges of E-Discovery

Dr. Ghoshray has been a prolific researcher in multi-faceted disciplines, investigating issues from cross-cultural perspectives. He is the author of numerous law review articles and book chapters including *Charting the Future of Online Dispute Resolution: An Examination of the Constitutional and Jurisdictional Quandary* (*Toledo Law Review*, 2007). Dr. Ghoshray's main scholarship searches for equality in the legal process vis-à-vis the prism of gender, class and ethnicity. This is echoed in his work on diverse subsets of International law, Comparative Constitutionalism, Supreme Court Jurisprudence, Cyber Law and, First Amendment Jurisprudence, among others. His work has appeared in various prestigious Law journals, such as, the *Albany Law Review*, *ILSA Journal of International and Comparative Law*, *Fordham International Law*, *Santa Clara Law Review*, *European Law Journal ERA-Forum*, *Toledo Law Review*, *Temple Political & Civil Rights Law Review*, *Catholic Law Journal*, *Fordham International Law*, *Loyola Law Journal*, *Michigan State International Law Journal* and, *Georgetown International Law Review*, among others. He studied Law at Cornell University where he also received an MBA, besides completing his PhD. Dr. Ghoshray is multi-lingual, has travelled extensively while lecturing as both Panel Chair and Moderator in numerous legal symposiums in wide-ranging topics of Law, Policy & Corporate Governance. Dr. Ghoshray currently resides in Connecticut, where he is both a corporate executive in an Investment bank and the president of the Institute of Interdisciplinary studies.

4:55-5:30 P.M.- Patrick Oot- The Use of Advanced Search and Retrieval Technology When Conducting a Reasonable Inquiry

Patrick is the former Director of Electronic Discovery and Senior Litigation Counsel at Verizon in Washington D.C. Inside Counsel Magazine named Verizon's E-Discovery Team as one of the ten most innovative legal groups of 2006-2007. Patrick has extensive experience in discovery practices involving commercial litigation, regulatory filings, and antitrust matters. He was charged with advising Verizon's business units on electronic discovery while developing new technologies and strategies that meet the goals of Rule 1 of the Federal Rules of Civil Procedure. He has also testified as Verizon's 30(b)(6) witness for discovery related inquiries in other matters. Patrick has testified before the United States Judicial Conference's Advisory Committee on the Federal rules of Evidence where he presented Verizon's position and contributed language in its draft to the Judicial Conference. Patrick actively participates in the Sedona Conference Working Group on Electronic Document Retention and Product.

He lectures regularly at educational events, legal conferences, and general counsel round tables internationally.

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