ELECTRONIC DISCOVERY AND EVIDENCE

By Michael R. Arkfeld (Phoenix, AZ: Law Partner Publishing, 2003) [Law Partner Publishing, 741 West Moon Valley Drive, Phoenix, AZ 85023; (602) 993-1937; sales@arkfeld.com]; 454 pp.; $154.95, including shipping.

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Electronic Discovery and Evidence is a thorough and pragmatic compendium of information covering the broad range of subjects a trial lawyer must know to discover, protect, and produce electronic information in the course of litigation and counseling clients. The book contains detailed and complete discussions regarding both the technical and legal aspects of what we have come to call "electronic evidence." Nonetheless, because it is well organized and contains helpful chapter and subchapter titles, it is easy to read and comprehend. Of greatest importance is the fact that all of the chapters, whether "technical" or "legal," contain extensive references to recent cases and law review articles. These discussions make this book an indispensable reference manual for a trial lawyer newly initiated to the intricacies of electronic discovery.

A description of the contents of each chapter should help the practitioner understand why *Electronic Discovery and Evidence is so* useful. Chapter 1, "Electronic Information in Litigation," discusses the pervasive shift from paper to electronic data storage and discovery; the unique characteristics of computer stored information; the importance of understanding electronic information, and its evidentiary value; and attorneys' ethical obligations with regard to retention and production of their clients' electronic information. Chapter 2, "Creation and Storage of Electronic Information," contains a technical discussion of computer hardware and software, how computers work, and how computers store and maintain electronic data. Chapter 3, "Structure and Types of Electronic Information," explains underlying computer setups; various types of business software applications; all types of directories, files, and file information; and special issues having to do with electronic information, including its redundancy, resistance to deletion, "defragmentation," and its ability to be altered. Chapter 4, "Computer Forensics, Experts and Service Bureaus," discusses the role of forensic specialists and contains helpful information on locating and selecting computer experts and consultants.

The book then goes into even more detailed practical topics. Chapter 5, "Collecting, Processing and Searching Electronic Information," focuses on how electronic data are collected, processed, converted, and produced. This chapter also contains a helpful discussion of various types of electronic discovery software. Chapter 6, "Discovery and Production Process," includes extremely helpful information with regard to how to be certain that clients and opponents are preserving electronic data. It also describes several other "how-to's," such as how to encourage clients to adopt workable data retention policies, obtain electronic data from opponents, screen for privilege and relevance, and formulate a "production response plan."

Chapter 7, "Court Procedural Rules and Case Law," discusses how the Federal Rules of Civil Procedure apply to the disclosure of electronic information. It specifically focuses on discovery and preservation orders, Rule 26(a) disclosures, expert witness reports, concerns regarding relevancy and overbroad requests, cost allocation issues, and the protection of work product and attorney client privilege. Chapter 8 is entitled "Admissibility of Electronic Evidence." It discusses the specific issues that arise in attempting to get electronic information into evidence and advises lawyers on how to meet hearsay objections, authenticate electronic data, meet the requirements of the best evidence rule, and lay complete foundations for the admission of computer records.

All of the chapters contain indispensable sample formats. For instance, there are samples of a preservation letter, which includes sample interrogatories to ascertain an opposing party's means of storing electronic data; lists of items to be included in a production response plan; and a detailed agenda for a Rule 16(c) pretrial conference, dealing with computer-based discovery. Finally, the book includes numerous discussions of how to lay the appropriate foundations and make the appropriate objections with regard to the admission of electronic evidence.

At the end of the book is a glossary, which defines almost 200 information technology terms, from "analog" to "zip." This glossary appears to be leave nothing out when it concerns discovery. I highly recommend this book to the practicing trial bar.