

## BOOK RELEASE

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### ***Arkfeld on Electronic Discovery and Evidence: Significant Trends in Electronic Discovery***

PHOENIX, AZ – Law Partner Publishing announces the release of the September 2009 edition of its acclaimed *Electronic Discovery and Evidence (2<sup>nd</sup> Ed.)* treatise by the well-known author, speaker and attorney, Michael R. Arkfeld.

#### **WHAT'S NEW?**

Updated and expanded through July 2009, this edition (1300+ pages) includes a detailed discussion of e-discovery federal and state cases with critical cross references to the underlying technology and legal concepts. Building on the well-organized and acclaimed first edition of this treatise, the second edition expands to cover the latest issues affecting e-discovery, including:

- Detailed analysis regarding new court mandates involving “triggering events” and implementing “litigation holds”
- Completely revised section on searching and retrieving “electronically stored information” (ESI) including search types, protocol, and certification of search methodology
- Expansion of treatise to include state cases and procedural rules from all jurisdictions
- New Rule FRE 502 section analyzing inadvertent disclosure, attorney-client privilege and work product and limitations on waiver
- Latest cases on cost allocation, proportionality, and “not reasonably accessible” issues
- Analysis of “reasonably usable form,” “kept in the usual course of business,” and ESI “form or forms”
- Analysis of “meet and confer” obligations including discussing “any issues relating to disclosure or discovery” of ESI
- Sanctions for failure to preserve and cooperate
- Over a hundred practice forms, checklists, preservation letters, court orders, etc. have been added and available online at eLawExchange ([www.elawexchange.com](http://www.elawexchange.com)) for current subscribers to the treatise.

#### **BEST PRACTICES GUIDES:**

As a bonus, the treatise is now accompanied with four Best Practices Guides:

***ESI Pretrial Discovery– Strategy and Tactics*** - This publication contains strategy and tactics for handling sixteen specific ESI issues throughout pretrial discovery. These include scope of discovery, preservation obligation, controlling costs, search methodology, form of production, accessibility of ESI and cost allocation, and much more. Whether it is a “meet and confer” or request for production, these are the sixteen critical issues to focus on in requesting or producing ESI.

Contents include:

- The Basics of Electronic Discovery
- Preparing an Overall Plan and Strategy

- ESI Issues and Strategy
- Litigation Stages and Procedural Discovery Rules

**Information Technology Primer For Legal Professionals** - This publication provides a much needed primer for understanding the “information technology infrastructure” of organizations. Understanding the infrastructure and technology concepts will enable legal professionals to apply e-discovery legal mandates in order to request and produce “electronically stored information” (ESI). The primer includes important sections in identifying, locating, and managing ESI using computer technology.

Contents include:

- Overview of information technology in organizations and the electronic discovery process
- Characteristics and “form or forms” of ESI
- IT infrastructure of a company’s IT people, hardware, software and networks
- ESI types, file systems and structure of data
- Sources, storage, locations, metadata and concealment of ESI
- Computer technology available to search, identify, review and produce ESI

**Litigation Readiness and Hold** - **NEW!** This completely revised publication provides strategic guidance, recommendations and practice forms for legal professionals, including corporate counsel, in preparing for and implementing a “litigation hold.” This Guide covers the components of a litigation readiness plan to ensure that your client can identify, preserve, collect, process, and review electronic data for disclosure in a timely manner. Such a proactive approach will contribute to your success by properly identifying and preserving ESI once a triggering event occurs.

Contents include:

- Litigation Readiness Plan Components
- How to Recognize “Triggering” Events
- How to Formulate a Litigation Hold Strategy
- Litigation Hold Court Directives, Duties, and Tasks
- Checklist for IT Systems and ESI Type, Storage, and Locations
- Practice Forms: Notice to Preserve Letter to Opposing Party, Organization Litigation Hold Procedures and Forms Manual and Law Firm Litigation Hold Procedures

**Electronic Discovery and Evidence** - This publication provides a practical step-by-step guide covering the legal and technology issues involved in requesting or producing electronic data. It contains critical cross-references to the treatise where you can find more information on each topic.

Contents include:

- The Basics of Electronic Discovery
- Is it Necessary to Have a Discovery Plan?
- Requesting Electronic Information
- Responding to an Electronic Discovery Request
- Admission of Electronic Evidence
- Amended Federal Rules of Civil Procedure & Committee Notes

**COMPANION CD-ROM:**

This fully-searchable companion CD-ROM contains the full text of the treatise and Best Practices Guides, with hypertext links to the full text of case law, statutes, regulations and rules cited by the author. The CD-ROM also includes checklists, practice forms, guidelines, and many other resources. The user-friendly and intuitive interface permits the user to print, copy and paste, and save materials to your computer.

In addition, with the purchase of the treatise, customers can access over a hundred practice forms and other valuable information online by enrolling on a password-protected members' website which can be found at eLawExchange ([www.elawexchange.com](http://www.elawexchange.com)).

### **AUTHOR COMMENTS**

In his comments on the new edition Michael Arkfeld stated, "over the past several years legal professionals across the country have applied federal and state electronic discovery cases and procedural rules to their litigation matters. During this time we have seen significant legal trends developing including search protocols in locating ESI from various computer sources and the enactment of FRE 502 that has a significant effect on the electronic review of ESI for privileged documents. This edition updates you on these and other latest trends in electronic discovery law."

### **TREATISE OVERVIEW**

A detailed legal treatise for lawyers and other legal professionals, *Arkfeld on Electronic Discovery and Evidence* explores nearly every legal dilemma that may confront the discovery and admissibility of electronic evidence. All this is accomplished with clear explanations of technology and legal concepts; authoritative discussion of court rules and case law; evidentiary analysis, forms, checklists and practical pointers.

*Arkfeld on Electronic Discovery and Evidence* is organized into eight chapters to guide you through the process of discovering and admitting electronic evidence.

Chapter 1, ***Electronic Information in Litigation***, sets the stage for understanding the pervasive change from paper to electronic evidence. It discusses the unique characteristics of electronic data and why you have to discover and produce this evidence.

In Chapter 2, ***Creation and Storage of Electronic Information***, basic information is provided as to how electronic information is created, stored and retrieved. This includes an analysis of storage media, devices and locations.

Chapter 3, ***Structure and Types of Electronic Information***, discusses the underlying computer setup, business software applications and how electronic material is organized. It explores special issues unique to electronic information and provides a detailed analysis of the different software types (e-mail, web pages, etc.), as well as citations to legal authorities when applicable.

Chapter 4, ***Computer Forensics, Experts and Service Bureaus***, explores the role of forensic specialists to assist in the collection and processing of electronic information.

Chapter 5, ***Collecting, Processing and Searching Electronic Information***, focuses on the actual collection, processing and searching of electronic information as well as the different data formats.

In Chapter 6, ***Discovery and Production Process***, the discovery and production steps are discussed. The focus here is on the overall plan, scope of request, preservation request, production format and other practical issues involved in discovering and producing data.

Chapter 7, ***Court Procedural Rules and Case Law***, focuses on the pending e-discovery Federal Rules of Procedure and case law in production and disclosure of electronic information. It covers a broad area including Rule 16 pretrial conference, Rule 26 initial disclosures, experts' reports, relevancy, overbroad claims, cost allocation issues, work product, attorney-client waiver issues and protective orders, etc.

Chapter 8, ***Admissibility of Electronic Evidence***, examines the evidentiary considerations for the admission of electronic evidence. It discusses the general concepts of preliminary questions, judicial notice, relevancy, expert witness testimony, hearsay, authentication and the Best Evidence rule as they pertain to specific electronic data.

## **REVIEWS AND CITATION**

Reviewers have labeled the treatise as “an extraordinarily useful, practical and accessible guide,” “magnificent resource,” “a solid digital discovery reference resource, packed full of detailed information and replete with case citations,” “extremely valuable new book,” “comprehensive and comprehensible” and a “powerhouse of information.” (Complete reviews are available at [www.lawpartnerpublishing.com](http://www.lawpartnerpublishing.com)).

The *Electronic Discovery and Evidence* treatise was referenced by the Honorable Shira A. Scheindlin in *Zubulake v. UBS Warburg LLC*, No. CIV.02C1243, 2004 WL 1620866, at \*49 (S.D. N.Y. July 20, 2004).

This leading treatise has been purchased by more than 2000 of the top law firms, corporations, service bureaus, government organizations and law libraries in the country. The treatise has become the textbook of choice for law schools and is provided online for the SEC's enforcement unit.

## **ORDERING**

For additional information about *Arkfeld on Electronic Discovery and Evidence* (2nd ed.) treatise, *Best Practices Guides* or other resources for your associates, classes or seminars please contact us in the manner most convenient to you:

*Website:* Law Partner Publishing, LLC ([www.lawpartnerpublishing.com](http://www.lawpartnerpublishing.com)).

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## **AUTHOR**

**Michael R. Arkfeld, Esq.** Michael an attorney, speaker and author. Among his writings are *Arkfeld on Electronic Discovery and Evidence* (2nd Ed.), *Arkfeld's Best Practices Guide for Electronic Discovery and Evidence*, *ESI Pretrial Discovery — Strategy and Tactics*, *Litigation Readiness and Hold* and *Information Technology Primer for Legal Professionals* from LexisNexis ([www.lexisnexus.com/arkfeld](http://www.lexisnexus.com/arkfeld)). Michael is a member of the State Bar of Arizona and the recipient of the national 2004 E-Evidence Thought Leading Scholar Award.

As a former assistant United States Attorney for the District of Arizona, Michael handled cases involving personal injury, medical malpractice, wrongful termination and a host of other tort

claims. He has appeared before both federal and state appellate courts and has extensive experience in jury (over 30 trials) and bench trials. Since 1985, Michael has incorporated personal computers extensively in his legal practice. He lectures and consults throughout North America and internationally on the impact of technology on the practice of law and the discovery and admission of electronic evidence. Michael can be reached by e-mail at Michael@Arkfeld.com. His web sites at Arkfeld and Associates ([www.arkfeld.com](http://www.arkfeld.com)) and eLawExchange ([www.elawexchange.com](http://www.elawexchange.com)) feature electronic discovery case law, litigation and other law office resources

**NOTE TO EDITORS:** A limited number of review copies of the treatise are available if you are planning on preparing a review article based on this book.

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