

# The Fourth Annual National Institute on E-Discovery

Practical Solutions for Dealing with  
Electronically Stored Information (ESI)

**Thursday,  
May 27, 2010**

The Conference Center  
at Crowell & Moring, LLP  
1001 Pennsylvania Ave., N.W.  
Washington, DC



Presented by  
**The American Bar Association  
Section of Litigation and the  
Center for Continuing  
Legal Education**



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# Why You Should Attend This Program...

- Some of the most significant changes in the history of the Federal Rules of Civil Procedure relating to e-discovery may be on the horizon following the historic 2010 Conference being held at Duke Law School just two weeks before the National Institute. Our first panel will reprise the potential changes in e-discovery rules and the dramatic impact they may have.
- U.S. District Court Judge Scheindlin has shaken up the litigation world again with her decision in *Pension Committee* and will participate in interactive discussion of what may become the next most-cited e-discovery opinion since *Zubulake*.
- You may conduct great e-discovery but it won't do you any good if you can't get e-documents into evidence. Learn how from U.S. District Court Judge Grimm, the author of the leading opinion on the subject.
- "Marginal utility" is one of the most famous phrases in e-discovery. U.S. District Court Judge Facciola, who coined the phrase, will reflect on the role "proportionality" can play in controlling e-discovery costs, among other key subjects.
- Everyone wants to bring down search costs. Our panel, led by the Director of Litigation for the National Archives—who has the greatest incentive of anyone to control e-discovery costs—will bring you up to date on the most important tools available.
- Enjoy an interactive tour through the ethics of Web 2.0 that will certainly make you change the way you use—or at least, think carefully on how to embrace—social networking sites, video-sharing sites, cloud computing, and internet advertising.

## Sponsors

The Section of Litigation and the ABA Center for CLE join in thanking Crowell & Moring, Navigant Consulting, Inc., and LexisNexis™ Applied Discovery™ for their generous support of this National Institute.

## National Institute Faculty

### Thomas Allman

Former General Counsel of  
*BASF Corp.*  
Cincinnati, OH

### John M. Barkett

*Shook, Hardy & Bacon L.L.P.*  
Miami, FL

### Jason R. Baron

*National Archives and  
Records Administration*  
Washington, DC

### Diane E. Barry

*International Litigation  
Services*  
Huntington Beach, CA

### Courtney Ingraffia Barton

*AOL, Inc.*  
Dulles, VA

### Bennett Borden

*Gibson Dunn*  
Washington, DC

### David D. Cross

*Crowell & Moring LLP*  
Washington, DC

### Lawton P. Cummings

Visiting Associate Professor  
*George Washington University  
School of Law*  
Washington, DC

### Jerone J. English

*Intel Litigation & Competition  
Group*  
Washington, DC

### Honorable John Facciola

*U.S. Magistrate Court for the  
District of Columbia*  
Washington, DC

### Richard Finkelman

*Navigant Consulting*  
Irvine, CA

### Honorable Paul W. Grimm

*U.S. District Court for the  
District of Maryland*  
Baltimore, MD

### Toya E. Kelley

*Tydings & Rosenberg LLP*  
Baltimore, MD

### Kent A. Lambert

*Baker Donelson Bearman  
Caldwell & Berkowitz, P.C.*  
New Orleans, LA

### Cecil A. Lynn, III

*Ryley, Carlock, & Applewhite*  
Phoenix, AZ

### Jonathan M. Redgrave

*Nixon Peabody LLP*  
Washington, DC

### Honorable Shira Scheindlin

*U.S. District Court for the  
Southern District of New York*  
New York, NY

### Stacey Slaughter

*Robins, Miller & Ciresi, LLP*  
Minneapolis, MN

### Shannon L. Spangler

*Altria Corporation*  
Richmond, VA

### David Yerich

*UnitedHealth Group*  
Minnetonka, MN

## About the National Institute

After three years of history under the amended Federal Rules of Civil Procedure, important trends have emerged in the discovery of ESI. The National Institute continues its tradition of bringing together an all-star line-up of judges, lawyers and e-discovery consulting experts for a full day of advanced-level programs on the hot topics in e-discovery. Past attendees have raved about the quality of the panels and the excellent research materials prepared by panel members. This year will be no different.

# Program Agenda

## 8:00 a.m. Registration and Continental Breakfast

### 8:30 a.m. Welcoming Remarks

John M. Barkett

### 8:45 a.m. E-Discovery Is Here to Stay, But Where Is It Going?

The Civil Rules Advisory Committee will hold a major conference on May 10-11, 2010 to discuss the effects—pro or con—of the e-discovery amendments and whether the rules should be left alone or modified to advance the just, speedy, and inexpensive resolution of federal litigation. Our distinguished panel will reprise the e-discovery portion of the conference, discuss the impact of *Pension Committee (Zubulake revisited)*, and tell you where e-discovery is going in federal civil litigation.

**Moderator:** John M. Barkett, *Shook, Hardy & Bacon L.L.P.*

**Speakers:** Thomas Allman, Former General Counsel, *BASF Corp.*  
Honorable John Facciola, *U.S. Magistrate Court for the District of Columbia*  
Honorable Shira Scheindlin, *U.S. District Court for the Southern District of New York*

## 10:30 a.m. Break

### 10:45 a.m. E-Discovery and Web 2.0

The preservation and production issues facing lawyers and their clients in addressing topics such as temporarily-cached data in interactive cloud computing applications, obtaining information from third parties that offer services such as instant messaging and chat rooms, and the use of social networking sites to advance business interests are now mainstream. Learn what to do—and what not to do!

**Moderator:** David D. Cross, *Crowell & Moring LLP*

**Speakers:** Courtney Ingraffia Barton, *AOL, Inc.*  
Jerone J. English, *Intel Litigation & Competition Group*  
Richard Finkelman, *Navigant Consulting*  
David Yerich, *UnitedHealth Group*

### 12:00 p.m. Reflections on “Marginal Utility” Since *McPeak v. Ashcroft*

**Speaker:** Honorable John Facciola, *U.S. District Court for the District of Columbia*  
Jonathan M. Redgrave, *Nixon Peabody LLP*

## Lunch Sponsor

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Litigation Advisory Services  
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### 1:15 p.m. Discovering Electronic Evidence to Make It Admissible

You have done all the work to find electronic evidence and you are preparing for trial when the panic sets in. You ask yourself, “How am I going to get this into evidence?” Come listen to find out.

**Speakers:** Diane E. Barry, *International Litigation Services*  
Cecil A. Lynn, III, *Ryley, Carlock, & Applewhite*  
Honorable Paul W. Grimm, *U.S. District Court for the District of Maryland*  
Stacey Slaughter, *Robins, Miller & Ciresi, LLP*

## 2:30 p.m. Break

### 2:45 p.m. Breakthroughs in Search Technology: Have We Finally Found the

## Holy Grail?

Rapid developments in case law in the area of negotiating search protocols are forcing lawyers to become more conversant with new, automated search technologies that allow for more efficient, automated document review. To what extent do these new methods eliminate the need for human review to satisfy discovery obligations, and how costly and how defensible are they in real world litigation involving both large and small cases? This session will feature a discussion both of the latest search technologies as well as an “inside the boardroom” mock debate between the panelists on fashioning a “search strategy” in connection with a hypothetical Rule 26 meet and confer conference.

**Moderator:** **Kent A. Lambert**, *Baker Donelson Bearman Caldwell & Berkowitz, P.C.*

**Speakers:** **Jason R. Baron**, *National Archives and Records Administration*  
**Bennett Borden**, *Gibson Dunn*

## 4:00 p.m. The Ethics of Web 2.0

Can you pretextually friend on Facebook to gain information about a potential witness? Upload a deposition on YouTube? Social networking sites, lawyer evaluation websites, Twitter, cloud computing, and video-sharing sites present a number of very real ethical issues for the unaware lawyer. This interactive program will teach you what you need to know before your next tweet!

**Moderator:** **John M. Barkett**, *Shook, Hardy & Bacon L.L.P.*

**Speakers:** **Lawton P. Cummings**, *George Washington University School of Law*  
**Toyja E. Kelley**, *Tydings & Rosenberg LLP*  
**Shannon L. Spangler**, *Altria Corporation*

## 5:00 p.m. Adjourn

*A special thanks to LexisNexis™ Applied Discovery™ for underwriting the faculty expenses.*

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## Get Involved in the Section of Litigation

The development, planning, and presentation of the Fourth Annual National Institute on E-Discovery is the work of the following volunteers from the ABA Section of Litigation Commercial and Business Litigation Committee, Pretrial Practice & Discovery Committee (PP&D), and the Committee on National Institutes, who serve as the E-Discovery National Institute Planning Committee: **John M. Barkett** (Program Chair), *Shook, Hardy & Bacon L.L.P.*, Miami, FL; **David D. Cross**, *Crowell & Moring L.L.P.*, Washington, DC; **Kent A. Lambert**, *Baker Donelson et al*, New Orleans, LA, and **Stacey Slaughter**, *Robins, Kaplan, Miller, & Ciresi*, Minneapolis, MN.

The Planning Committee invites all attendees and their colleagues to join one or more of our sponsoring committees. Membership in up to three committees is free to all members of the ABA Section of Litigation. Go to [www.abanet.org/litigation/committees/](http://www.abanet.org/litigation/committees/) and enroll online today. Membership in committees allows you to keep an eye on emerging issues in your areas of practice. No time commitment is necessary.

# Check Out These ABA Web Store Products!

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## **Electronic Evidence: Law and Practice, Second Edition**

This book explores the range of problems encountered with electronic communications from discovery to trial, and offers practical solutions to both existing and potential problems. It examines (1) the new discovery rules and how they relate to past practices, and (2) fundamental evidentiary issues governing the admissibility of electronic evidence. Particular emphasis is given to the unique problems evolving around the way in which parties are asserting the attorney-client privilege and judges are applying it to e-mail communications.

Author Paul Rice offers a unique perspective on the attorney-client privilege issues of electronic evidence. He has 40 years of teaching experience, served as a special master for over 30 years, ruled on hundreds of thousands of privilege claims, and written the leading treatises on the subject of the attorney-client privilege for both state and federal courts.

### **Electronic Evidence**

- Guides you through common initial problems in discovery and explains, with suggested forms, where materials can be found and how document requests should be worded.
- Examines the increased responsibility to preserve and produce electronic evidence in its various forms.
- Reviews the application of established rules of evidence to this relatively new type of evidence with case authority from both the state and federal courts.
- Gives special guidance to corporations on how best to manage document circulation within the company to minimize costs and preserve the privilege protection, and lawyers on what is protected by the attorney-client privilege, how to assert the privilege for e-mail communications, and what must be filed in support of each claim.

*Electronic Evidence: Law and Practice* addresses and explains issues that are important to all lawyers who have clients; all clients with electronic communications who either seek legal assistance or are involved in litigation as a third party; and all judges asked to rule on discovery questions, privilege claims, and the admissibility of electronic evidence.

**Product Code: 5310375**

**Litigation Member Discount Price: \$98**

**Regular Price: \$120**

## **E-Discovery: Twenty Questions and Answers**

E-discovery has shaken up litigation across America. Judges are dealing with e-discovery issues unheard of ten years ago. Arbitrators are trying to figure out its impact in international and domestic arbitration. Civil law practitioners, who do not yet deal with e-discovery in the same sense as common law lawyers must deal with it, may be wondering what the fuss is about. The case law is developing in a number of areas and conflicting decisions are not unusual.

This concise book examines recurring issues in the area of e-discovery in an accessible question and answer format. It offers insight into the thorny issues and references specific cases to make your research quicker and easier. It provides much-needed clarity on the issues that you see again and again in e-discovery.

Questions include:

- Must a party preserve backup tapes?
- Must bad faith be shown to obtain sanctions against the United States?
- Are document retention notices and key word search protocols discoverable?
- How do you make sure that a party complies with e-discovery obligations?
- Can you use a subpoena to obtain information from an opposing expert?

**Product Code: 5310377**

**Litigation Member Discount Price: \$54.95**

**Regular Price: \$69.95**

## **The Ethics of E-Discovery**

This concise book by the author of *E-Discovery: Twenty Questions and Answers* examines the ethical issues associated with e-discovery and provides guidance on how to deal with the new and challenging intersection of electronic discovery and ethics. Referring primarily to the ABA Model Rules of Professional Conduct, it covers five key areas:

- Why Electronically Stored Information Is Different from Paper
- Federal E-Discovery Rules
- E-Discovery Under the Model Rules
- *Qualcomm v. Broadcom*
- Outsourcing E-Discovery

**Product Code: 5310380**

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# Program Information

## PROGRAM TUITION

Attend the entire program, including breakfast, lunch, networking with other registrants and faculty, and receive the written course materials, and pay only...

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- **\$540** for ABA Members (Save \$135)
- **\$399** for Section of Litigation Members (Save \$276)

## ABA SECTION OF LITIGATION

Become an ABA Member, and join this dynamic section when registering for this program at the cost of only \$55. Save up to **\$276** on this program tuition!

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Register 5 or more people at the same time and receive a 25% reduction on each program tuition!

**For more information, contact Sabrina Harris at 312.988.6342.**

## MCLE

Mandatory continuing legal education (MCLE) accreditation has been requested from all states that require continuing legal education. Each registrant will also be eligible for MCLE accreditation in those states that require continuing legal education. **6.5** hours of MCLE credit, including **1.0** hours of ethics credit, have been requested in 60-minute states, and **7.8** hours of MCLE credit, including **1.2** hours of ethics credit, have been requested in 50-minute states.

**For NY-licensed attorneys:** This transitional CLE program has been approved for all NY-licensed attorneys in accordance with the requirements of the New York State CLE Board for New York MCLE (**7.5** total NY MCLE credits, including **1.0** hours of ethics credit).

## SCHOLARSHIPS

Scholarships to defray tuition expense for National Institutes are available upon application. Preference will be given to public interest lawyers, government lawyers, law professors, and solo or small firm practitioners. For more information on scholarships, visit [www.abacle.org/scholarship](http://www.abacle.org/scholarship).

## SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required, please contact Dan Becker at 312.988.5140. Reasonable advance notice is requested.

## IN-PERSON REGISTRATION

If you plan to register in person, please call the ABA at least 24 hours in advance to confirm that the program is being held as scheduled and that space is available. Cash payments will **not** be accepted.

## CANCELLATIONS

Cancellations received 5 business days or more before the program will receive a 100% refund, less a \$50 cancellation fee. No refunds will be provided for cancellations after that date; however, substitute registrants are welcome at any time. To cancel your registration or substitute another individual, please call the ABA Service Center at 800.285.2221 or fax your request to 312.988.5850. Registrants who do not cancel within the allotted time period and who do not

attend the program will receive a copy of the program course materials after the program.

## PROGRAM CONFIRMATION

Written confirmation of your registration will be sent to you upon receipt. Please bring it with you to the national institute as proof of registration. If you do not receive the confirmation notice prior to the presentation, please call the ABA at 800.285.2221 at least 24 hours in advance to confirm that your registration was received and that the program is being held as scheduled.

## VENUE INFORMATION

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1001 Pennsylvania Avenue, N.W.  
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## AIRLINE INFORMATION

Airfare discounts are available through directly from the airline or through Orbitz for Business including ABA negotiated discounts on American and United. To book online go to [www.abanet.org/travel](http://www.abanet.org/travel) and click under the Orbitz for Business logo at the top of the page and click on the appropriate link in the self paid travel box. For assistance with online and offline reservations, call toll-free 877.222.4185. To receive discounts directly from the carrier, contact American Airlines at 800-433-1790 and use discount code **A121OSS**. Or contact United Airlines at 800-521-4041 and use discount code **578IG**.

## HOTEL INFORMATION

ABA members should check for ABA rates in Washington, DC hotels at: [http://www.abanet.org/travel/hotels/ABA\\_directory\\_A.pdf](http://www.abanet.org/travel/hotels/ABA_directory_A.pdf).

All attendees to the National Institute are eligible to use Crowell & Moring corporate rates at the following Washington, DC hotels:

**Grand Hyatt Washington DC | 800.233.1234**

Use Group/Corporate number 10939

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Ask for Crowell & Moring corporate rate

**Willard Intercontinental | 800.827.1747**

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**W Washington DC | 877.946.8357**

Ask for Crowell & Moring corporate rate

**Rooms are not guaranteed, and late May is a popular time to be in DC, so reserve early.**

## STANDING COMMITTEE ON CONTINUING LEGAL EDUCATION

Under the guidance of the Standing Committee on Continuing Legal Education, the Center for Continuing Legal Education administers and produces national institutes, video law seminars, teleconferences, other technology-based products, and written course materials to assist lawyers' continuing legal education efforts.

**David W. Hilgers**, Chair, *Brown McCarroll, LLP*  
Austin, TX

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Illinois residents add 10.25% sales tax. District of Columbia residents add 6% use tax before including domestic shipping and handling charges. Price is subject to change.

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- I am an ABA member but want a further reduction on my tuition for this program. Please enroll me in the Section of Litigation. I've enclosed a separate check for \$55.

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