Electronic Discovery
Professor Randy Diamond
Spring 2017
Tuesdays and Thursdays, 8:00 – 8:50 (Room 3)

Course Description
Electronic Discovery provides an in-depth treatment of the legal, technical, and cost management issues involving identification, preservation, collection, review, and production of electronically stored information ("ESI") in civil litigation. Covers the 2006 FRCP ESI amendments: (Rules 26 meet and confer, 34 production, and 37 sanctions), FRE 502 (privilege review and production), state e-discovery rules, the rapidly developing ESI case law, and emerging best practices from the Sedona Conference Cooperation Proclamation, the Electronic Discovery Reference Model, and other e-discovery authorities.

Contact Information
Professor Diamond, Law Library, Room 226; 573-882-2935; diamondrj@missouri.edu

Office Hours  I am generally in my office during the week and you are welcome to stop by at any time. If my door is closed, you should not hesitate to knock; if it is not a good time, I will let you know. You may also e-mail to set up an appointment.

Attendance and Participation  I reserve the right to adjust grades by two points in either direction based on class preparation, attendance, and participation. Starting January 21st, I will take attendance. If you miss more than five classes you will be dropped from the course and not receive credit, with no distinction between excused and unexcused absences.

Consistent and thoughtful class participation is expected. Successful class participation encompasses participating in discussions, asking questions, being an active listener, and paying attention to the comments of others. Quality, not quantity, of comments and questions counts most, as will contributions to a positive, attentive, and engaged learning environment, including respect for others and opposing points of view.
Intellectual Pluralism  The School of Law community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either myself, one of the law school deans or the Director of the Office of Student Rights and Responsibilities (http://osrr.missouri.edu). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

Grading

• **Final Exam** (100%)
  The final exam is a two-hour open book essay/short answer exam (no multiple-choice questions). The final counts for 100% of your grade potentially adjusted by participation points per the Attendance and Participation section above.

• **Catalyst Search Exercises** *(successful completion of the exercises is a course requirement)*

Required Textbook
Sheindlin, Capra, and The Sedona Conference, **Electronic Discovery and Digital Evidence 3d ed.** (2015)  
http://store.westacademic.com/s.nl/it.A/id.32395/.f

E-Discovery Legal and Technology Overview

*Thursday, Jan 12*


• Textbook, **Skim** pp. 1-19

*Tuesday, Jan 17*

• Textbook pp. 51-75


• [http://www.lawsitesblog.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html](http://www.lawsitesblog.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html)

• View Catalyst Insight Tutorial [https://www.youtube.com/watch?v=bBXdsfvq4KY](https://www.youtube.com/watch?v=bBXdsfvq4KY)

*Thursday, Jan 19*

• View Competence in E-Discovery Part II [https://www.youtube.com/watch?v=AGEm1wnXniw](https://www.youtube.com/watch?v=AGEm1wnXniw)

• View Competence in E-Discovery Part VII [https://www.youtube.com/watch?v=MaPO0faCiXw](https://www.youtube.com/watch?v=MaPO0faCiXw)

• Textbook pp. 19-23
Preservation of Electronic Information

Tuesday, Jan 24
Amended Rule 26 Governing Scope of Discovery
Trigger of the Duty to Preserve
Textbook pp. 77-97

Thursday, Jan 26
Scope of the Duty to Preserve: “Possession, Custody, or Control”
Textbook: pp. 97-118

Tuesday, Jan 31
BYOD, Social Media, Accessible/Not Reasonably Accessible Information
Textbook: pp. 129-138; 154-162; 165-170

Thursday, Feb 2
Proportionality in the Preservation Context
Textbook: pp. 170-192

Tuesday, Feb 7
Implementing the Duty to Preserve
Textbook: pp. 193-216

Thursday, Feb 9
Implementing the Duty to Preserve (continued)
Preservation Orders
Textbook: pp. 216-238

Cooperation and the Discovery Plan

Tuesday, Feb. 14
Textbook: pp. 245-268

Data Collection

Thursday, Feb. 16
Textbook: pp. 289-307

Production

Tuesday, Feb. 21
Rule 34: Form of Production
How Production Should be Organized
Textbook: pp. 317-338

Thursday, Feb. 23
Metadata
Textbook: pp. 338-360
**Tuesday, Feb. 28**
On-Site Inspections
30(b)(6) Witnesses
Textbook: pp. 360-379

**Search of Electronically Stored Information**

**Thursday, March 2**
Search Methods
Textbook: pp. 425-442; 447-455

**Tuesday, March 7**
Technology-Assisted Review (TAR)
Textbook: pp. 456-475

**Thursday, March 9**
Technology-Assisted Review (TAR) (continued)
Party Agreement on Search Protocols
Textbook: pp. 480-503

**Costs, Cost Sharing, and Cost Shifting**

**Tuesday, March 14**
Cost Shifting
Textbook: pp. 540-564

**Thursday, March 16**
Cost Shifting Part II
Textbook: pp. 572-582; 585-591

**Spoliation**

**Tuesday, March 21**
New Rule Governing Sanctions 37(e) and Committee Note
Elements of Spoliation
Textbook: pp. 625-641

**Thursday, March 23**
Elements of Spoliation (continued)
Textbook: pp. 641-657

**Spring Break March 28 and 30**

**Tuesday, April 4**
Default Judgments, Dismissal
Textbook: pp. 658-674
Thursday, April 6
Adverse Inference/Permissive Spoliation Inference
Textbook: pp. 674-695

Tuesday, April 11
Adverse Inference/Permissive Spoliation Inference (continued)
Monetary Sanctions
Sanctioning a Party/Counsel
Textbook: pp. 695-716

Privilege Issues

Thursday, April 13
Textbook: pp. 871-891

Tuesday, April 18
Textbook: pp. 892-911

Ethical Issues in E-Discovery

Thursday, April 20
Textbook: pp. 750-756 (Group 4 on call)
State Bar of California Formal Opinion No. 2015-193

Topic tba

Tuesday, April 25

Exam Review and Course Wrap

Thursday, April 27
Past exams will be posted to TWEN