



One Firm WorldwideSM



THE JONES DAY E-DISCOVERY COMMITTEE

The Jones Day E-Discovery Committee is another example of the Firm's ability to harness the talents, resources, and experience of lawyers in offices throughout the Firm to provide enhanced service to clients. The committee's work, already spanning more than seven years, has led to enhanced awareness of e-discovery issues, a database of e-discovery resources, and a growing list of articles and speaking engagements in which committee members and other Jones Day lawyers have informed clients and potential clients on the practical aspects of dealing with e-discovery issues. At present, the committee includes more than 25 lawyers and other professionals throughout the Firm.

HISTORY OF THE COMMITTEE

Jones Day lawyers have been dealing with e-discovery issues for years, of course. Since the 1970s, the

Federal Rules of Civil Procedure and parallel state rules have defined the term *documents* subject to discovery in litigation to include electronic versions of documents. In recent years, as businesses have increasingly come to rely on electronic documents (particularly e-mail) to conduct their affairs, discovery of such e-documents has become an important issue in litigation. Indeed, several high-profile, headline-grabbing cases have shown that e-documents, and the e-discovery process, can have a significant impact on the course and outcome of litigation.

Jones Day lawyers across the Firm have been heavily involved in these issues. These kinds of experiences have established a valuable base on which to draw when e-discovery issues arise in — or in anticipation of — the next case. Thus, in the year 2000 the idea for the E-Discovery Committee was born, from the simple



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notion that there should be an effort to collect the experiences of lawyers throughout the Firm and make the work product developed by those lawyers easily available to all.

COLLECTING KNOWLEDGE AND EXPERIENCE

One of the essential functions of the committee has been to gather information (legal memoranda, pleadings, orders, opinions, etc.) that may be useful to lawyers who confront e-discovery issues. The committee has organized a very effective method of managing the Firm's collective experience in this area. The committee also serves as a vital network for providing advice to Jones Day lawyers and their clients as new issues arise.

MONITORING DEVELOPMENTS

The committee has also closely monitored developments in the law and technology of e-discovery. For example, the committee has had significant involvement with The Sedona Conference Working Group on Electronic Document Retention and ProductionSM, which has offered statements of practical principles for e-discovery, based on commentary from interested members of the bar, the business community, and the judiciary. These principles have been increasingly cited in judicial opinions and academic treatments in this area. Committee members also constantly review judicial opinions, academic literature, and trade publications to identify emerging trends, new rules, and new technical developments that may affect clients.

INTERNAL AND EXTERNAL TRAINING

The committee has helped to organize a series of training programs on e-discovery for Firm litigators and other lawyers. Committee members and others have also participated in a large number of in-house and cosponsored CLE programs for clients and potential clients. In addition, committee members are frequently called upon to speak to members of the bench and bar at conferences throughout the United States.

CONTRIBUTING TO THE LITERATURE

Committee members and other Firm lawyers have written dozens of academic articles on the subject of e-discovery. Examples include:

Steven C. Bennett (New York), "The Clash of European Union and United States Privacy Laws," in editorial process for publication in *The National Law Journal*.

Steven C. Bennett (New York), *A Primer on Privacy for Corporate Counsel*, book in editorial process for publication by Aspatore.

Steven C. Bennett (New York), "Responding to Document Preservation Letters," in editorial process for publication in Pike & Fischer's *Digital Discovery & e-Evidence*.

Ted S. Hiser (Cleveland) (senior ed.), *The Sedona Principles: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 2d (The Sedona Conference 2007).

Marla S.K. Bergman (New York), "The New Discovery Rules Pertaining to Electronically Stored Information: The Early Bird Catches the Worm," *Commercial Litigation Insights* (Summer 2007).

Laura Ellsworth (Pittsburgh) and Cecilia Dickson (Pittsburgh), "E-eliminating an E-nigma of E-Discovery: Guiding Principles for Complying with Ethical Obligations Associated with Electronic Discovery," PLAC (Spring 2007).

Thomas R. Goots (Cleveland) and Karl M. Maersch (Cleveland), "Changes to the Federal Rules of Civil Procedure Bring eDiscovery Issues to the Forefront," published in spring 2007 on Jones Day's web site.

Marla S.K. Bergman (New York), "Ediscovery is Here to Stay: Counsel's Obligations, Responsibilities, and Shenanigans," *IP Litigator* (March/April 2007).

Steven C. Bennett (New York), "Do You Need A Chief Privacy Officer?" *The Practical Lawyer* 17–20 (February 2007).

Steven C. Bennett (New York), Alexander Dickson, and Cecilia Dickson (Pittsburgh), "Getting Started: Procedures for Developing a Document Retention System," 3:1 *BNA Tax and Accounting Policy and Prac. Spec. Rep.* 1–28 (2007).

Steven C. Bennett (New York), "Practical Responses to the New Federal Rules on E-Discovery," *New York Law Journal* (December 13, 2006), reprinted in 245 *New Jersey Lawyer* 56–58 (2007).

Steven C. Bennett (New York), "Report on Proposed Rule of Evidence 502," 12:1 *NYLitigator* 49–58 (2007).

Laura Ellsworth (Pittsburgh), Irene Savanis Fiorentinos (Chicago), and Cecilia Dickson (Pittsburgh), "E-Discovery-Related Changes to the Federal Rules of Civil Procedure," published in August 2006 on Jones Day's web site.

Steven C. Bennett (New York) and Sam Millar (London), "Multinationals Face e-Discovery Challenges," *International Financial Law Review* (January 2006).

Laura Ellsworth (Pittsburgh), David Kiernan (San Francisco), and Cecilia Dickson (Pittsburgh), Chapter 8: "Privilege," in *Understanding the New E-Discovery Rules*, Defense Research Institute (2006).

Lawrence LaPorte (Los Angeles) and Michael Tomasulo (Los Angeles), "Rule Changes for Electronic Discovery?" *The Corporate Counselor* (August 2005).

Gregory A. Castanias (Washington), R. Christopher Cook (Washington), Louis K. Fisher (Washington), and David L. Horan (Dallas), "The Supreme Court's Decision in *Arthur Andersen LLP v. United States*: An Important Development Regarding the Legal Consequences of Document Retention Policies," published in June 2005 on Jones Day's web site.

Jones Day E-Discovery Committee, "An Examination of 'Litigation Holds' and the Preservation of Electronic Documents in the Context of *Zubulake*," published in November 2004 on Jones Day's web site.

Steven C. Bennett (New York), "Proposed Amendments to the Federal Rules of Civil Procedure to Address Electronic Documents and Discovery and Other E-Discovery Developments in 2004," published in September 2004 on Jones Day's web site.

Michael Gray (Chicago), "Act Now: Prepare Clients Early for Electronic Discovery," *Lexis Nexis Applied Discovery* newsletter (February 2004).

Ted S. Hiser (Cleveland) (senior ed.) and Laura Ellsworth (Pittsburgh) (managing ed.), *The Sedona Principles: Best Practices, Recommendations & Principles for Addressing Electronic Document Production* (The Sedona Conference 2004).

Steven C. Bennett (New York), "In-House Counsel Dealing With Office E-mail," *New York Law Journal* (May 16, 2002).

Steven C. Bennett (New York), "Constructing an E-Document Retention Policy," published in July 2001 on Jones Day's web site.

Ted S. Hiser (Cleveland), "The Information Age, Part I: Fishing in the Ocean, A Critical Examination of Discovery in the Electronic Age," *The Sedona Conference Journal* 2:195–209 (2001).

FURTHER DEVELOPMENTS

The committee is dedicated to continuing its involvement in this area, as the law and technology continue to develop at a rapid pace. The committee is also alert to intersections between this area of the law and other important

developments (Sarbanes-Oxley, new privacy regulations, international law developments, etc.). Committee members are active participants in local and national rulemaking processes that affect this area of the law and closely follow proposals that have been offered by the Advisory Committee on the Federal Rules of Civil Procedure, the National Center for State Courts, the American Bar Association, and bar groups in individual states.

ADDITIONAL INFORMATION

For additional information, contact our committee chair, Steven C. Bennett, by phone (1.212.326.3795) or by e-mail (scbennett@jonesday.com). We encourage you to visit our web site at www.jonesday.com, where you will find electronic versions of our publications and news regarding upcoming events.

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