



PROTECTING RIGHTS • PURSUING JUSTICE
PROMOTING PROFESSIONALISM

THE BAR BULLETIN

E-Discovery tips: Top 5 ways to get the electronic data you deserve

By Charles Jimerson
Managing partner of
Jimerson & Cobb

It has been more than 10 years since the seminal E-Discovery case Zubulake v. UBS Warburg was decided in the U.S. District Court for the Southern District of New York.

Judge Shira Scheindlin issued a series of groundbreaking opinions in the field of electronic discovery that gave courts and practitioners guidance on both the legal and technical aspects of E-Discovery.

Ten years after this opinion and three decades into the digital age, I am still consistently surprised at how many good litigators know so little about E-Discovery and remain recalcitrant about the value it can add to their case.

Aldous Huxley said, "There are things known and there are things unknown, and in between are the doors of perception."

Perhaps in committing to learn more about this scary unknown, as a Bar we'll all broaden the vista of our perception. Even though you can't always get what you want, here are just five ways you might be able to get what you need:

Issue an early and specific preservation letter to opposing

counsel. Whether by retention policy or not, electronic data tends to disappear over time. Without timely notice of preservation, you may be in a poor position to complain about it if you didn't ask for the evidence while it was still around. A panoptic preservation letter that forces the recipient to understand their own systems will prohibit them from later using ignorance as an excuse.

Force broad preservation, but pursue narrow discovery. One of the keys to a successful discovery plan is to know what is needed to win the case and not chase unneeded data, thereby wasting your time and resources. Avoid asking for documents that are not needed to prove essential elements of claims or defenses that will slow down the case and start unnecessary skirmishes that cost you goodwill with opposing counsel and the court.

Don't just accept assertions about cost or complexity unless you know them to be accurate. Inevitably, in most large cases you'll get sandbagged by opposing counsel regarding the costs and challenges of producing discovery as requested. Don't just capitulate. Instead, independently evaluate all such claims and

be prepared to propose alternatives. Through utilizing trusted vendors and technology, you can economically manage cases involving hundreds of thousands of documents without sacrificing resources that are needed to pursue the advocacy for or defense of the claims.

Exercise your right to depose the information technology records custodian. A growing trend in commercial litigation is to depose the opposing party's IT operations to gain a thorough understanding of the supporting technology architecture, ESI policies (retention, backup, security and use) and unwritten exceptions that transpire outside of the policies. This is usually necessary if you are faced with an initial deficient production.

Meet and confer. Although it is strongly urged in the notes, there is not a meet-and-confer requirement under the new Florida E-Discovery rules amendments like that required in federal cases under Rule 26(f). However, best practices dictate that practitioners should meet with the opposing side so agreements can be reached (or arguments can be made) as to: discovery scope, preservation issues, date ranges, custodians, key word searches, methods of

collection, searching and processing, protective orders and privileged documents administration, phased or limited discovery and production formats. Communication is a skill that no one is too old to learn. If you're willing to work at it, you can rapidly improve the quality of your advocacy.

Lastly, as you consider augmenting your perceptions on E-Discovery, it is incumbent upon me to remind all of you litigators that maintaining competence and staying abreast of the changes in the law and its practice are contemplated in Florida Rule of Professional Conduct 4-1.1 and ABA Model Rule 1.1 and most assuredly include cultivating knowledge and skills in electronic discovery.

As part of this commitment to continuing education, I encourage you to contact me for more



Jimerson

details on the seminar the JBA's Construction Law Committee and Commercial Litigation Committee are hosting next month.

JBA DIVERSITY LUNCHEON Monday, March 3

Doors open at 11:30 a.m.
and we will commence promptly at noon.

Hyatt Downtown
Speaker: Gene Pettis
President, The Florida Bar

Login at jaxbar.org to RSVP

2014 Diversity Symposium

"Generational Diversity & Successful Business
Bridging the Gap to Capitalize on
Embracing Our Differences!"

Monday, March 3 ~ 1:30-5 p.m.

Immediately following the member luncheon (Luncheon reservations are not automatic, please register separately.)
Hyatt Regency Downtown

4.0 General CLER Credits, 4.0 Ethics Credits Applied
for with The Florida Bar

*Register online at www.jaxbar.org

* JBA MEMBERS MUST LOG IN TO THEIR PROFILE
TO SECURE MEMBER DISCOUNT PRICING.

Lawyer Snapshot



Amanda Baggett

Name: Amanda Baggett

Age: 35

Family: Matt (husband), John and Susannah (2) and Bo (10 months)

Pets: A mutt named Banjo

Education: University of Georgia undergrad (Go Dawgs!) and Mercer University School of Law

Admitted to the Bar: 2004

Employed by: Rogers Towers

Field of practice: Board certified in construction law

Professional organizations: The Jacksonville Bar Association, UGA Alumni Association, Women's Council — Associated Builders and Contractors and American Society of Highway Engineers

Community involvement: ACE Mentor Program of Northeast Florida. I mentor high school students at Orange Park High School with an interest in the fields of architecture, engineering and construction.

How did you become involved?

I went to an informational meeting for prospective mentors.

How can someone else become involved?

Call me! Or go to acementor.org/index.php/affiliates/florida/northeast/about-us/

What have you learned/achieved through the experience?

That teenagers are extremely motivated to make their future career dreams a reality and to improve the world. They just need some guidance and support to make it happen.

What was the last book you read or are reading?

"What Remains" by Carole Radziwill

Tickets on Sale NOW!

Thursday, April 17, 2014
6:00 PM to 9:00 PM
Hyatt Regency Jacksonville Riverfront
225 East Coastline Drive • Jacksonville, FL 32202

EARLY BIRD TICKET SALE ENDS MARCH 11, 2014

The Jacksonville Women Lawyers Association & The Young Lawyers Section of the JBA

2014 DATE AUCTION

BENEFITTING JACKSONVILLE AREA LEGAL AID

DON'T DELAY! Get your tickets TODAY at:
<https://www.eventbrite.com/e/charity-date-auction-for-jala-tickets-9638311449>