

eDiscovery: Modern Discovery in the Digital Era
George Mason University, Antonin Scalia Law School
Summer 2024 Term, Law 204 (1 credit hour)

CLASS DETAILS

First Class Date: **May 16**

Last Class Date: **June 27**

Class will be held every **Thursday** evening from **6-7:50 p.m. ET** virtually via Zoom.

Instructors:

Rishi P. Chhatwal, Esq.

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***Office Hours by Appointment**

This will be an **online course**. Please join each class promptly at the start time.

For technical support, please contact the Law School IT Helpdesk at:

Phone: 703.993.4855

Email: lawsupport@gmu.edu

COURSE DESCRIPTION

The exchange of information between adverse parties in litigation—*i.e.*, Discovery—has become more complex than ever in the digital age. With the expanded business use of social media platforms like Facebook, X, and Instagram, instant messaging tools like WhatsApp and Signal, and collaboration tools like Slack and Teams, modern litigation

requires an attorney to understand not only the legal framework, but also the role of modern communications and data systems to their case.

Broadly speaking, “eDiscovery” includes the identification, preservation, collection, review/analysis, and production of electronically stored information (“ESI”). The vast expansion and predominance of data in modern litigation brings challenges that have led to changes in the Federal Rules of Civil Procedure and the way in which courts, scholars, and legal practitioners view eDiscovery.

Although there was a time when “eDiscovery” was seen as a discipline separate and apart from general case discovery, in the modern era where all communications and documents are electronic, the evidence of the case will necessarily be electronic as well. Thus, all discovery now involves eDiscovery, and it is critical that attorneys—and particularly young attorneys who often handle the nuts and bolts of discovery—are knowledgeable about how modern communications will impact their case.

In the modern era, attorneys routinely work with consultants and vendors who provide technology-focused solutions to meet these eDiscovery challenges. To become effective lawyers, attorneys will need to be familiar with how technology impacts their clients and their practice. This includes using cutting-edge tools to find relevant evidence. Lawyers are now using machine learning (“ML”), artificial intelligence (“AI”), and technology-assisted review (“TAR”) to make the review of millions of documents more manageable and cost-effective; and advanced data analytics to help attorneys efficiently organize and review massive amounts of data.

LEARNING OUTCOMES

This course will provide students with a comprehensive understanding of the legal, practical, and technical parameters of mastering the various stages of eDiscovery and will offer students the opportunity to apply that knowledge to a hypothetical case that mirrors the experience they will have as real-world litigators engaged in eDiscovery practice in the modern digital world.

In this course, students will learn:

- The applicable rules and law governing eDiscovery in federal court, including the Federal Rules of Civil Procedure, Federal Rules of Evidence, ABA Model Rules of Professional Conduct, and relevant caselaw, as well as authoritative legal scholarship on eDiscovery
- The stages of the eDiscovery process, including identification, preservation, collection, review/analysis, production, and case closure
- Practical steps to effectively navigate and comply with eDiscovery obligations throughout the various stages, including opportunities for students to explore the issues based on a detailed hypothetical
- Best practices at each stage of the eDiscovery process

- How to leverage technology to more efficiently and effectively comply with eDiscovery obligations
- The technological components of managing the eDiscovery process and working with eDiscovery consultants and vendors

GRADING

Students will be evaluated on the following criteria and a letter grade will be assigned.

- Final Examination (85%): The Final Exam will consist of essay questions designed to test students' knowledge of the topics covered in this course and will be based on a detailed hypothetical.
- Participation (15%): Attendance and active participation in class discussions are crucial. Students are expected to contribute thoughtfully to conversations and engage with course materials both during and outside of class hours.
- Grading Criteria: The Final Exam will be graded based on the student's demonstration of critical thinking and analysis, substantive support for arguments, organization, clarity of writing, and appropriate legal citation.

COURSE MATERIALS AND SYLLABUS

Course Materials

Many of the pre-class reading assignments include publications by the Sedona Conference. These materials can be found online by searching the Sedona Conference® Publication Library, which is accessible at [The Sedona Conference Publications](#).

Other course materials, including Federal Rules, caselaw, and academic scholarship, can be found online by searching an electronic legal database, such as Westlaw. Many of the cases and materials will be provided throughout the session. The Instructors may supplement the pre-class reading assignments with additional materials during the course of the term.

The following publication may be helpful as a resource throughout the course: The Sedona Conference® Glossary: Commonly Used Terms for E-Discovery and Digital Information Management, Fifth Edition (available at [The Sedona Conference Glossary](#)).

Syllabus Overview

Class #	Date	Topic
1	May 16	Introduction to Modern Discovery; the Rules of Engagement (FRCP); Information Governance
2	May 23	Legal Holds; Duty to Preserve; Planning Discovery
3	May 30	Requests for Production of Documents; Collecting Relevant ESI; Processing ESI
4	June 6	Reviewing ESI; Analytics; Producing ESI; Confidentiality
5	June 13	Privilege and Privilege Logs; Privacy
6	June 20	Cyber Security; Social Media; and Other Kinds of eDiscovery; eDiscovery in the Media
7	June 27	Case Closure; Emerging ESI; and Ethical Issues