



C)LAED
LEGAL ASPECTS OF
ELECTRONIC DISCOVERY



OFFICIAL COURSE OUTLINE **Summary**

KEY DATA

Course Number: CEDL (1/6) V1.6
Duration: 2-3 Days for all 6 Parts
Languages: English
Certification Exam (Optional):
 CEDL Certified in Electronic Discovery Litigation

Prerequisites:

Experience in using a computer. Non-technical people should not be intimidated.



Audience:

- Corporate Security Officers
- Civil Attorneys
- Criminal Attorneys
- County and District Attorneys
- Prosecutors
- Defenders
- Police and Sheriff Officers
- Anti-Terrorism Investigators
- Drug Enforcement Investigators

Electronic Discovery in Litigation, Prosecution & Defense™

Overview of Parts 1 through 6 (2-3 Days Total)

This is a six-part series. Participants may choose to attend one, some or all parts.

This series of courses will increase the participant's electronic discovery IQ through an understanding of the intersection between computer information systems and legal discovery. The series includes interactive discussion and exercises that reinforce knowledge about each step in the discovery process from records retention and destruction best practices through data identification, acquisition, review, and production of data.

C)LAED will help legal practitioners, law enforcement and IT security managers understand how technology works, and help technologists understand the legal issues of electronic discovery.



About the Presenter

Bill Lipner of New York City has been helping clients understand the application of technology to solve content management problems for over 20 years. Bill is an Electronic Discovery Specialist helping clients solve complex electronic discovery problems through a combination of guidance and education on the legal and technology issues driving electronic discovery.

Bill has provided CLE training to 100s of attorneys.

Seminar Titles (Detailed Descriptions Available):

- Part 1: Introduction to Personal Computer Technology for Electronic Discovery (3.0 Hours)
- Part 2: Computer Network Technology for E-Discovery (3.3 Hours)
- Part 3: The Litigation Lifecycle (4.0 Hours)
- Part 4: Common Legal Issues in Electronic Discovery (2.0 Hours)
- Part 5: Pending Changes to the Federal Rules of Civil Procedure (3.3 Hours)
- Part 6: Records Retention – Policy and Practice (3.3 Hours)
- Part 7: (Coming Soon) Street Smart Electronic Evidence Custody & Preservation for Law Enforcement Personnel. (3.0 Hours)





OFFICIAL COURSE OUTLINE

Summary

Electronic Discovery in Litigation, Prosecution & Defense™ Attendance Justification

Whether you're the defending, prosecuting, or investigating – the age of information as electronic data means you must understand the principles and process of electronic discovery. The course titled Legal Aspects of Electronic Discovery will guide students through the complex intersection of the law, technology, and discovery process.

Electronic discovery failures are legion – and costly:

Zubulake v. UBS Warburg, LLC, 229 F.R.D. 422 (S.D.N.Y. 2004) ("Zubulake V")

Finding that defendant acted willfully in destroying potentially relevant information, court granted plaintiff's motion for sanctions including adverse inference instruction. The jury awarded \$9.1 million in compensatory damages and \$20.1 million in punitive damages.

Green v. Baca, 225 F.R.D. 612 (C.D. Cal. 2005)

Court awarded plaintiff monetary sanctions of \$54,375 based on county's failure to produce readily-accessible computer-based information for a period of several months.

GTFM, Inc. v. Wal-Mart Stores, 2000 WL 1693615 (S.D.N.Y. Nov. 9, 2000)

Court reviewed plaintiffs' application for attorneys' fees and concluded that defendant's misrepresentations about computer capabilities warranted monetary sanctions of \$109,753.81

Recinos-Recinos v. Express Forestry, Inc., 2006 WL 2349459 (E.D. La. Aug. 11, 2006)

Court imposed monetary sanctions of \$36,391 where defendants "made no effort whatsoever to locate and provide either documentary or electronic data discovery,"

United States v. Philip Morris USA Inc., 327 F. Supp. 2d 21 (D.D.C. 2004)

Court imposed monetary sanction of \$2,750,000 and barred testimony from at least 11 witnesses who failed to comply with defendant's own internal document retention program.

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc., 2005 WL 679071 (Fla. Cir. Ct. Mar. 1, 2005)

CPH wins \$604 million in damages plus \$850 million in punitive damages after adverse inference instruction to jury for defendant's discovery abuses.

Anyone involved in the legal trial process will benefit from the LAED curriculum. Attorneys will gain insight into the mechanics of the electronic discovery process so they are better able to develop case strategy. Investigators will understand how the legal process and the forensic investigative process must work together for a successful outcome.

The program includes a careful examination of each step of the ediscovery process – beginning with a review of technology and how electronic data is managed, and then a review of the litigation process, typical legal issues of the process, U.S. changes to the Federal Rules of Civil Procedure which address electronic discovery, and a detailed look at records retention policy and practice.

As each step unfolds, attendees will participate in exercises which help reinforce an understanding of that step. Exercises range from "team challenge quizzes" to open discuss of relevant legal cases.

Upon completion, attendees will know:

- How to determine the strengths or weaknesses of a records retention program;
- Where to find relevant electronic data and how to preserve and produce it as evidence;
- How to gather, evaluate, and produce electronic evidence in the context of a legal action.



OFFICIAL COURSE OUTLINE

Part 1 of 6

KEY DATA

Course Number: CEDL (1/6) V1.6

Duration: 3 Hours

Languages: English

Format:

Instructor-led Course (lecture and labs)

Student Materials:

1. Student Workbook
2. Student Reference Manual

Certification Exam (Optional):

CEDL Certified in Electronic Discovery Litigation

Certification Track:

- CEDL Certified in Electronic Discovery Litigation
- CCE Certified Computer Examiner
- CFCE Certified Forensic Computer Examiner

Prerequisites:

Experience in using a computer



Electronic Discovery in Litigation, Prosecution & Defense™

Part 1: Introduction to Personal Computer Technology for Electronic Discovery

This is part one of a six-part series. Participants may choose to attend one, some or all parts.

This course increases the participant's electronic discovery IQ through an understanding of how personal computers work. The course includes interactive discussion and exercises that reinforce knowledge about the components of personal computers and their importance in the context of electronic discovery.

Topics include:

- Brief History of Computers 10 minutes
- What's Inside a Personal Computer? 30 minutes
 - o The Chassis and the Bus
 - o The Network Interface Card and the Network
 - o The CD Writer
 - o The Hard Disk Drive
 - How is information stored on a hard drive?
 - How is information removed from a hard drive?
 - What types of "space" are on a hard drive?
- What Sort of Information is Stored on a Personal Computer? 30 minutes
- What is MS DOS? 15 minutes
 - o Security In MS DOS
- How Do Software Applications Store Information? 50 minutes
 - o MS Office (sample exercise)
 - o Meta Data (sample exercise)
 - o Internet Browser (sample exercise)
- Computer Numerology 15 minutes
- Alphabet Soup 30 minutes
 - o What is a PST, TIFF, Bitmap, OCR, PDF, VOIP, Metadata, Parent-Child Relationship?

Related Seminars:

- Part 1: Introduction to Personal Computer Technology for Electronic Discovery
- Part 2: Computer Network Technology for E-Discovery
- Part 3: The Litigation Lifecycle
- Part 4: Common Legal Issues in Electronic Discovery
- Part 5: Pending Changes to the Federal Rules of Civil Procedure
- Part 6: Records Retention – Policy and Practice





OFFICIAL COURSE OUTLINE

Part 2 of 6

KEY DATA

Course Number: CEDL (2/6) V1.6
Duration: 3 Hours & 20 Minutes
Languages: English
Format:
 Instructor-led Course (lecture and labs)
 Student Materials:
 1. Student Workbook
 2. Student Reference Manual

Certification Exam (Optional):
 CEDL Certified in Electronic Discovery Litigation

Certification Track:

- CEDL Certified in Electronic Discovery Litigation
- CCE Certified Computer Examiner
- CFCE Certified Forensic Computer Examiner

Prerequisites:
 Experience in using a computer



Electronic Discovery in Litigation, Prosecution & Defense™

Part 2: Computer Network Technology for E-Discovery

This is part two of a six-part series. Participants may choose to attend one, some or all parts.

This course increases the participant's electronic discovery IQ through an understanding of how personal computer networks function, and includes an overview of third party systems. The course also includes interactive discussion and exercises that reinforce knowledge about network systems and its importance in the context of electronic discovery.

Topics include:

- Strategy of a Computer Network 30 minutes
 - Servers and Routers
 - Wide Area Networks
- Desktop Applications and Storing Information 20 minutes
 - Microsoft Word and Excel
 - Emails and PST Files
 - Web Browser
- Database Applications 30 minutes
 - Who speaks SQL
 - Flat File Databases
 - Query Tools and Reports
- Types of Storage 20 minutes
 - Online Storage
 - Offline Storage
 - Archival Storage
- Tape Backup and Disaster Recovery Systems. 30 minutes
 - How Tape Backup Works
- Information Outside the Network. 40 minutes
 - Voicemail Systems
 - Email Servers
 - Web servers
 - Transaction Servers
 - Third Party Services
- Data Collection and Data Preservation 30 minutes

Related Seminars:

- Part 1: Introduction to Personal Computer Technology for Electronic Discovery
- Part 2: Computer Network Technology For E-Discovery
- Part 3: The Litigation Lifecycle
- Part 4: Common Legal Issues in Electronic Discovery
- Part 5: Pending Changes to the Federal Rules of Civil Procedure
- Part 6: Records Retention – Policy and Practice





OFFICIAL COURSE OUTLINE

Part 3 of 6

KEY DATA

Course Number: CEDL (3/6) V1.6

Duration: 4 Hours

Languages: English

Format:

Instructor-led Course (lecture and labs)

Student Materials:

1. Student Workbook
2. Student Reference Manual

Certification Exam (Optional):

CEDL Certified in Electronic Discovery Litigation

Certification Track:

- CEDL Certified in Electronic Discovery Litigation
- CCE Certified Computer Examiner
- CFCE Certified Forensic Computer Examiner

Prerequisites:

Experience in using a computer



Electronic Discovery in Litigation, Prosecution & Defense™

Part 3: The Litigation Lifecycle

This is part three of a six-part series. Participants may choose to attend one, some or all parts.

This course increases the participant's electronic discovery IQ through an understanding of the entire litigation lifecycle from pre-discovery preparedness through data collection, review, and production. The course includes interactive discussion and exercises that reinforce knowledge about the litigation lifecycle and its importance in the context of electronic discovery.

Topics include:

- It's a Process 20 minutes
 - o Key Steps in the Process
 - o Data Authenticity and Chain of Custody (exercise)
 - o Opportunities to Control Costs
 - o Need for Planning
- Records Retention Practices 10 minutes
 - o What is a Reasonable Policy?
 - o What is a Complete Policy?
- Reasonably Anticipated or Notice of Litigation 20 minutes
 - o When Are We on Notice? (exercise)
 - o An Existing Plan for Next Steps
- Litigation Hold and Information Preservation 40 minutes
 - o Implementing Litigation Hold
 - o Outside Counsel Responsibilities (exercise)
 - o How to Preserve Data
- Data Gathering and Privilege Review 60 minutes
 - o Identifying the Data (exercise)
 - o Constraining the Amount of Data
 - o Correct Collection and Chain of Custody (exercise)
 - o Correct Collection and Spoliation (exercise)
- Review and Production of Responsive Documents 50 minutes
 - o Efficient Review – Deduplication (exercise)
 - o In-house vs. Outsource Solutions
 - o Efficient Review – Bulk Tagging (exercise)
 - o Efficient Review – Security and Flexibility
 - o Production of Documents
- Managing the Case 40 minutes
 - o Tools of the Trade
 - Software for Managing Documents
 - Software for Managing Transcripts and Trial Presentation



OFFICIAL COURSE OUTLINE

Part 4 of 6

KEY DATA

Course Number: CEDL (4/6) V1.6

Duration: 2 Hours

Languages: English

Format:

Instructor-led Course (lecture and labs)

Student Materials:

1. Student Workbook
2. Student Reference Manual

Certification Exam (Optional):

CEDL Certified in Electronic Discovery Litigation

Certification Track:

- CEDL Certified in Electronic Discovery Litigation
- CCE Certified Computer Examiner
- CFCE Certified Forensic Computer Examiner

Prerequisites:

Experience in using a computer



Electronic Discovery in Litigation, Prosecution & Defense™

Part 4: Common Legal Issues in Electronic Discovery

This is part Four of a six-part series. Participants may choose to attend one, some or all parts.

This course increases the participant's electronic discovery IQ through an understanding of the legal issues common to electronic discovery. The course includes interactive discussion and exercises that reinforce knowledge about these common issues and the technology behind the issues.

Course topics include discussion of these areas:

- Mandatory Disclosures 15 minutes
 - o Did We Forget to Mention?
- Duty to Investigate 30 minutes
 - o Who to Ask?
 - o Where to Look? (exercise)
- Cost Shifting 20 minutes
 - o What Constitutes Undue Burden?
 - o Accessible Data, Archival Data, and Backup Tapes
 - o Testing
- Form of Production 25 minutes
 - o What's Wrong with Native?
 - o What's Right with Metadata?
- Document Retention 30 minutes
 - o Reasonableness (exercise)
 - o Routine Operation
 - o Preservation Agreements – "for how long?!"

Related Seminars:

- Part 1: Introduction to Personal Computer Technology for Electronic Discovery
- Part 2: Computer Network Technology for E-Discovery
- Part 3: The Litigation Lifecycle
- Part 4: Common Legal Issues in Electronic Discovery
- Part 5: Pending Changes to the Federal Rules of Civil Procedure
- Part 6: Records Retention – Policy and Practice





OFFICIAL COURSE OUTLINE Part 5 of 6

KEY DATA

Course Number: CEDL (5/6) V1.6
Duration: 3 Hours & 20 Minutes
Languages: English
Format:

Instructor-led Course (lecture and labs)
 Student Materials:
 1. Student Workbook
 2. Student Reference Manual

Certification Exam (Optional):
 CEDL Certified in Electronic Discovery Litigation

Certification Track:

- CEDL Certified in Electronic Discovery Litigation
- CCE Certified Computer Examiner
- CFCE Certified Forensic Computer Examiner

Prerequisites:
 Experience in using a computer



Electronic Discovery in Litigation, Prosecution & Defense™ Part 5: Pending Changes To The Federal Rules Of Civil Procedure

This course increases the participant's electronic discovery IQ through an understanding of the pending changes to the Federal Rules of Civil Procedure and how the changes will impact the litigation document life cycle. The course includes interactive discussion and exercises that reinforce knowledge about the pending changes and their impact on the litigation document life cycle.

Course topics include:

- Changes to Rule 16(b)(5) and (6) Pretrial Conferences, Scheduling Management Expanded Scheduling Order 10 minutes
- Changes to Rule 26(a)(1)(B): General Provisions Governing Discovery; Duty of Disclosure; Required Disclosures; Discovering Additional Matter. Disclosure before discovery request.
 - o Facts of the case and scope of electronic data (exercise)
 - o Potential sources of electronic data
- Rule 26(b)(2)(B): General Provisions Governing Discovery; Duty of Disclosure; Discovery Scope and Limits; Limitations. Not reasonably accessible sources 40 minutes
 - o What electronic data is inaccessible? (exercise)
 - o What are the costs of retrieval? (exercise)
 - o What other sources are available?
- Rule 26(b)(5)(B): General Provisions Governing Discovery; Duty of Disclosure; Discovery Scope and Limits; Claims of Privilege or Protection of Trial Preparation Materials; Information Produced. Assertion of claim of privilege 20 minutes
- Changes to Rule 26(f)(3) & (4): General Provisions Governing Discovery; Duty of Disclosure; Conference of Parties; Planning for Discovery. Early Conference 40 minutes
 - o Knowledge about the information system or systems containing potentially responsive data
 - System architecture and where the electronic data is
 - System architecture and what type of electronic data
 - Accessible and inaccessible electronic data
 - System practices for data management (email archiving, backup type cycles)
 - o Preservation and related costs
 - o Production Agreement and Form of Production and metadata
 - o Changes to Form 35: Report Parties Planning Meeting. Reporting 10 minutes
- Rule 33(d): Interrogatories to Parties; Option to Produce Business Records. Responding to interrogatories 10 minutes
- Rule 34(a) & (b): Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and other Purposes; Procedure. Form or Forms of Production
- Rule 37(f): Failure to Make Disclosures or Cooperate in Discovery; Electronically Stored Information. Safe Harbor 30 minutes
 - o What are current records retention policies and practices?
 - o How have they been documented?
 - o How have they been administered?
- Rule 45 Subpoena; Form; Issuance. 10 minutes





OFFICIAL COURSE OUTLINE

Part 6 of 6

KEY DATA

Course Number: CEDL (6/6) V1.6
Duration: 3 Hours & 20 Minutes
Languages: English
Format:

Instructor-led Course (lecture and labs)

Student Materials:

1. Student Workbook
2. Student Reference Manual

Certification Exam (Optional):

CEDL Certified in Electronic Discovery Litigation

Certification Track:

- CEDL Certified in Electronic Discovery Litigation
- CCE Certified Computer Examiner
- CFCE Certified Forensic Computer Examiner

Prerequisites:

Experience in using a computer



Electronic Discovery in Litigation, Prosecution & Defense™

Part 6: Records Retention – Policy and Practice

This is part six of a six-part series. Participants may choose to attend one, some or all parts.

This course increases the participant's electronic discovery IQ through an understanding of records retention policy and practice and examines the vital links between records retention and effective litigation preparedness.

Course content includes:

- Overview 30 minutes
 - o Basic definitions
 - What is Records and Information Management (RIM)?
 - Litigation Hold
 - o Why retain records?
 - o Things can go wrong
- The Sedona Conference on Records Management 70 minutes
 - o Organizations should have RIM Policies and Procedures (RIM-P2)
 - o RIM-P2 should be Realistic, Practical, and Tailored to the Circumstances of the Organization (exercise)
 - o Organizations need not retain everything
 - o RIM-P2 should include specific procedures addressing RIM Lifecycle (exercise)
 - o RIM-P2 must define implementation of litigation hold
- How to Prepare for Litigation 50 minutes
 - o Litigation Hold
 - When does it begin?
 - How is it implemented?
 - How is content preserved?
 - When can litigation hold be relieved?
- Meeting the "good faith" standard 30 minutes

Related Seminars:

- Part 1: Introduction to Personal Computer Technology for Electronic Discovery
- Part 2: Computer Network Technology for E-Discovery
- Part 3: The Litigation Lifecycle
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- Part 5: Pending Changes to the Federal Rules of Civil Procedure
- Part 6: Records Retention – Policy and Practice