

TRACK: Legal B
SESSION #: LB#8
DATE: Tuesday April 20, 2010
TIME: 1:20-2:35pm

SESSION TITLE: PANEL DISCUSSION: "Navigating Computer Usage and Records Management Policies"

SPEAKER(S): William A. McComas – Teaches Computer Forensics and the Law at *Stevenson University, MD*; Partner at *Shapiro Sher Guinot & Sandler, Member of InfraGard®*
Michael D. Berman – Counsel with *Rifkin, Livingston, Levitan, & Silver, LLC*

ABSTRACT: "Navigating Computer Usage and Records Management Policies"

The presenters will discuss the policies companies should implement with respect to electronic information and records to operate more efficiently, to be better positioned for efficient and informed discovery once litigation occurs, and to comply with the duty to preserve once it attaches. The program will explain current trends and emerging issues and how companies are addressing them in their policies. The focus is not on advising companies on how to draft policies; rather, it is on educating business people and litigators about the current challenges in this area. The presenters will explain how to identify gaps between policies and practice that create potential liability and how to discover any gaps between the duty to preserve and practice so that operational personnel can efficiently communicate with corporate attorneys, and so that corporate attorneys can properly interview their clients, seek and respond to discovery properly, and effectively depose opponents. The talk will also provide companies, in-house counsel, and litigators with a road map to corporate ESI: How to manage, seek it, and deal with the mismanagement of it in disputes.

Attendees will gain the latest intelligence about the following concerns:

- The purpose, content and scope of computer usage and records management policies.
- Emerging issues in such policies—SMS and instant messaging, for example.
- Data integrity and its impact on ESI
- Typical gaps between the duty to preserve and practice.
- How corporate IT departments function.
- Typical workplace restrictions and prohibitions applying to e-mail and internet use.
- Spotting inconsistencies between policies and practice.
- Software installation and security.
- Remote network access.
- Proxy rights.
- Blogs.
- Portable devices (laptops, handheld computers, smart phones, thumb drives).
- Authenticating the time/date of ESI.
- Archiving on third-party websites.
- Third parties in possession of original documents.
- Metadata.
- Tips from recent cases.

SPEAKER BIO(S):

William A. McComas teaches in the graduate program for Computer Forensics and the Law at Stevenson University in Maryland. He is also a partner at Shapiro Sher Guinot & Sandler, a Maryland law firm. A former software engineer, Mr. McComas concentrates in technology law and has long counseled businesses and litigators on electronic discovery and records management and helped draft the local rule for the State of Maryland in response to the federal rule changes. A member of InfraGard®, he has been cited for several years in publications listing outstanding attorneys such as *The Best Lawyers in America* and *Super Lawyers*. His articles on technology law topics have been regularly published by *The National Law Journal*, *The Guardian* and *Legal Times*.

Michael D. Berman is counsel with Rifkin, Livingston, Levitan, & Silver, LLC, a Maryland firm. Mr. Berman teaches semester-long workshops at the University of Maryland and University of Baltimore Schools of Law and offers professional services in the mediation of disputes involving electronically stored information. He has authored and co-authored articles on electronically stored information in the *University of Baltimore Law Review*, the *ABA Litigation News* magazine, the *ABA Technology for Litigators* publication, *BNA's Digital Discovery and e-Evidence* newsletter, and other publications. He has participated as a speaker, moderator, and panelist in national and local ESI programs. Mr. Berman has also actively participated in the bar association committee to draft recommendations for the Maryland ESI protocol and suggested discovery guidelines.