

FOREWORD

Little has changed business or daily life more in the last few decades than electronic data. Mainframe computers have evolved into desktop PCs, laptops, smart phones, smart watches, smart appliances, smart vehicles, tablets, digital voicemail, digital cameras, digital video recorders, doorbell video cameras, fitness trackers, GPS devices, local servers, and massive server farms that comprise the “cloud.” These devices make possible many of the conveniences and necessities of modern business and life and, as a consequence, capture our movements, actions, communications, and thoughts in ways previously unimaginable. The resulting data are captured in word processing documents, text files, audio files, video files, spreadsheets, databases, slides, posts, tweets, emails, text messages, snaps, digital images, voicemails, and, of course, metadata (i.e., data about data).

As goes life, so goes litigation. Depending on one’s perspective, discovery of electronically stored information (ESI) in any particular case can represent: (1) the best, and perhaps only, way to discover the facts needed to litigate a case; (2) an overly burdensome and unreasonably expensive intrusion that is unlikely to produce value equivalent to its cost; (3) an opportunity to discover a game-changing piece of evidence hidden somewhere in a vast sea of ones and zeros; (4) a minefield in which well-meaning efforts to comply with discovery requests can nonetheless lead to fines and potentially outcome-determinative sanctions; (5) a chance to catch red-handed dishonest litigants who are willing to deceive and intent on obstructing justice; and (6) a mechanism to make litigation even more expensive. Electronic discovery can be, simultaneously, a powerful tool for the discovery of the truth, a trap for the unwary, and an instrument of abuse.

The pervasiveness of electronic data in nearly every aspect of business and life means that ESI discovery is here to stay, use of ESI in litigation will continue to increase, and lawyers who don’t want their clients to be at a disadvantage need to understand ESI and be prepared to engage with it. In this volume, the editors have undertaken a commendable effort to provide a comprehensive guide to the use of ESI in the Maryland courts. The breadth of the publication extends beyond the natural focus on ESI discovery to tackle important and timely issues such as the presentation of ESI in the courtroom; the use of ubiquitous social media posts to investigate parties, witnesses, and prospective and seated jurors; and other implications of reliance on social media by lawyers and judges. From rules to case law to comparative analysis to theory to pragmatic primers and how-to guides, the editors have assembled an impressive collection of information that promises to provide value to practitioners experienced with the discovery and use of ESI, those new to the area, and those in between. They also offer helpful food for thought as the rules and law continue to evolve.

Kudos go to the Maryland State Bar Association for another valuable addition to its library, as well as for its selection of editors. The Honorable Paul W. Grimm is a nationally recognized authority on the discovery and use of ESI whose judicial opinions and scholarly articles have long led the national discussion on the subject. Michael D. Berman, Esq., has been a prominent litigator, author, and presenter on ESI-related issues for more than a decade. This publication is a natural extension of the substantial scholarly and practical contributions Judge

Grimm and Mr. Berman, writing together and separately, have already made in this area. Alicia L. Shelton, Esq., who is adding another impressive publication to her growing resume, lends her scholarship as editor and author. And contributing editor Diane Kilcoyne, Esq., adds her substantial experience from years of working with and teaching ESI in the public and private legal sectors. The editors' assembly of this in-depth exploration of ESI in Maryland courts is an important and timely resource for any litigator wading into the world of electronic discovery.

Hon. Matthew J. Fader
Chief Judge, Maryland Court of Special Appeals
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