



## AGENDA

### COURSE:

**ARBITRATING IN A DIGITAL WORLD:  
FAIR & EXPEDITIOUS MANAGEMENT OF  
ELECTRONIC DISCOVERY  
(12.0 HOURS)**

### DATES & LOCATION:

**New York: October 10 & 11, 2017**  
AAA Regional Office  
150 East 42<sup>nd</sup> St., Floor 17  
New York, New York

**New Orleans: December 7 & 8, 2017**  
Frilot LLC  
1100 Poydras St. #3700  
New Orleans, LA 70163  
(504)599-8000

### DAY ONE:

12:00 - 12:30 p.m.

Registration

12:30 – 12:45 p.m.

#### INTRODUCTION

Outline Program  
Define e-Neutral  
Introductions

12:45 – 2:00 p.m.

#### WHY DOES ESI MATTER IN ARBITRATION?

An Arbitrator's Viewpoint  
Bits & Bytes  
What is "ESI"?  
Characteristics  
Where Is It?  
Social Media  
EDRM  
Concepts emanating from  
rulemaking  
Information governance  
BYOD  
Vendors  
New Realities  
Cybersecurity  
Internet of Things

2:00 – 2:45 p.m.

#### PRESERVATION & HOW IT FITS IN ARBITRATION

Preservation Duty  
Trigger Dates  
Litigation Hold Letters  
Preservation Letters  
Preservation Orders  
Timing in arbitration  
Pitfalls in arbitration

2:45 a.m. – 3:00 p.m.

Break

3:00 – 3:30 p.m.

Breakout Session I

3:30 – 3:50 p.m.

#### FORM(S) OF PRODUCTION: GETTING IT RIGHT AT THE OUTSET

FRCP 34(b)  
Forms of Production  
Metadata

3:50 – 4:15 p.m.

Breakout Session II

4:15 – 4:30 p.m.

Search Methodologies (TAR)

4:30 – 4:45 p.m.

Break

4:45 – 5:15 p.m.

**MANAGING CLAIMS OF PRIVILEGE**

FRCP 26(b)(5)

Privilege

Non-Waiver Agreements

5:15 – 5:45 p.m.

Breakout Session III

5:45 – 6:00 p.m.

Conclusion of Day I

6:00 – 6:45 p.m.

Networking Reception  
(Dinner group on your own  
available)

**DAY TWO:**

8:00 - 9:00 a.m.

**FINDING EFFICIENCIES – PART ONE**

FRCP 26(b)(2)(B)

Accessibility

Data Collection

FRCP 34(a)

Testing/Sampling

Cost-Shifting

Review Applications

9:00 – 9:30 a.m.

**ETHICS IN ARBITRATION**

Rules of Operation

Ethical considerations

Non-Parties

Cross Border Issues

The Cloud

California Ethics Opinion

9:30 – 10:00 a.m.

**FINDING EFFICIENCIES – PART TWO**

Early Case Assessment

FRCP 26(b)(2)(C)

FRCP 16

FRCP 26(g)(1)(B)

Proportionality in Preservation

Proportionality in Production

Meet & Confer

Custodian depositions

10:00 – 10:15 a.m.

Break

10:15 - 10:45 a.m.

Breakout Session IV

10:45 - 11:30 a.m.

**FAIRNESS**

Safe Harbor Rule

Spoliation

Sanctions

11:30 - 12:00 p.m.

Breakout Session V

12:00 - 12:30 p.m.

**PUTTING IT ALL TOGETHER**

Use of e-Neutrals

Marketing

e-Mediation

Conducting the

“e-hearing”

Prehearing Conference

12:30 – 1:00 p.m.

Closing Remarks  
Certificates of Completion

**SUGGESTED READING BEFORE  
ATTENDING:**

*Zubulake v. UBS Warburg*, 217 F.R.D. 309  
(S.D.N.Y. 2003) (Zubulake I)

*Zubulake v. UBS Warburg*, 216 F.R.D. 280  
(S.D.N.Y. 2003) (Zubulake III)

*Zubulake v. UBS Warburg*, 220 F.R.D. 220  
(S.D.N.Y. 2003) (Zubulake IV)

*Victor Stanley Inc. v. Creative Pipe, Inc.*,  
250 F.R.D. 251 (Victor Stanley I)

*Victor Stanley, Inc. v. Creative Pipe, Inc.*,  
269 F.R.D. 497 (D. Md. 2010) (Victor  
Stanley II)

*Pension Comm. Of Univ. of Montreal  
Pension Plan v. Banc of Am. Sec.*, 685 F.  
Supp. 2d 456 (S.D.N.Y. 2010)

*Rimkus Consulting Group, Inc. v.  
Cammarata*, 688 F. Supp. 2d 598 (S.D. Tex.  
2010)

*Federal Rules of Civil Procedure* 16, 26, 33,  
34, 37 and 45 (amended Dec. 1, 2015)