

**Joint Presentation by the Electronic Discovery and Digital Evidence Committee and
Computer Law and Technology Committee of the Business Law Section of the Florida Bar**

**2017 Florida State Bar Annual Meeting
Friday, June 23, 2017 -- 8:00 a.m. – 12:00 p.m.**

4 Hours of Continuing Legal Education Credit

Title

**The Constancy of Change – Keeping Pace with The Impact of Advancements in
Technology on the Practice of Law**

Overview

Advancements in technology and their impact on the practice of law have been fast, frequent, and increasingly furious. These impacts arise from the non-stop growth and proliferation of electronically stored information (“ESI”) and its increasing importance and use as evidence in both federal and state litigation, the to-be-determined impact of connected devices (aka the “Internet of Things”) on security, privacy, and product liability, and the onslaught of cybersecurity risk, data breaches and system compromises to businesses and health care providers. This half-day CLE will offer the insight of speakers and panels consisting of lawyers, federal and state judges and technologists who are thought leaders in their respective fields of expertise.

Session Content

8:00 a.m. – 8:10 a.m. – Opening Remarks

**8:10 a.m. – 9:00 a.m. -- Session 1: Federal or State? The Primary Differences Between the
Federal and Florida Rules Regarding the Discovery, Authentication and Admissibility of
ESI**

In 2012, the Florida Rules of Civil Procedure were amended to specifically address the discovery of ESI. At the time, the Florida Rules were patterned after the corresponding Federal Rules of Civil Procedure. In December 2015, several of the Federal Rules that concern the discovery of ESI were amended, thereby creating a gap between the Florida and Federal Rules. This session describes the primary differences between the Federal and Florida Rules with respect to the discovery, authentication and admissibility of ESI, discusses recent, notable federal and Florida court decisions on this topic, and provides an overview of where we stand in the cycle of possible further amendments to the Florida Rules in light of the recent amendments to the Federal Rules. (50 minutes; 1 hour of general CLE.)

Speakers:

- William Hamilton, Esq., Executive Director of the University of Florida, Levin College of Law E-Discovery Project
- R. Christopher (“Chris”) Dix, Esq., Attorney, Smith Hulsey & Busey

9:05 a.m. – 9:55 a.m. -- Session 2: CyberSecurity Controls Needed for Firms and Clients Alike

CyberSecurity controls involve more than just hardware (firewalls) and software (system patches). They also include, but are not limited to, User Access Management, Security & Privacy Training Programs, Logging \ Monitoring, Disaster Recovery Planning, Human Resources Controls, and System Inventory. The Session will highlight the policies, procedures, and controls your firm and your clients' businesses should have in place to ensure proper CyberSecurity. With a better understanding of CyberSecurity controls, an attorney can look to identify any gaps and subsequent remediation efforts to address. Without properly understanding and addressing CyberSecurity, an organization can face increased legal liability exposure from individual and class action torts, contractual breach, regulatory actions, both general (FTC, State AG) and industry specific (HIPAA – HealthCare, PCI – Financial). Accompanying technology attorneys on the panel will be CyberSecurity professionals who are experienced with CyberSecurity policies, procedures, and controls. (50 minutes; 1 hour of general CLE (possibly qualifying for technology credit and/or ethics credit))

Speakers:

- Bart Valdes, Esq., Attorney, de Beaubien, Knight, Simmons, Mantzaris & Neal, LLP
- Keith Kanouse Jr., Esq., General Counsel, Therigy
- Daniel Whitehouse, Esq., Attorney, Whitehouse & Cooper
- David Taylor, Managing Director, Protiviti
- Serge Jorgenson, Founder and CTO, The Sylint Group

9:55 a.m. – 10:05 a.m. -- Break

10:05 a.m. – 10:55 a.m. -- Session 3: And The Court Decided That . . . : Federal and State Judges Preside Over a Mock Hearing on the Discovery, Authentication and Admissibility of ESI

One of the best ways to learn how to do something is to observe the practice of others who are skilled in the art. In this session, two practicing lawyers with extensive experience and expertise in litigating issues concerning the discovery, authentication and admissibility of ESI square off with one another in a mock hearing. The lawyers will be accompanied by a jointly-selected, neutral expert witness who will assist the court in understanding and deciding the issues. One federal and one state judge will preside over the hearing. They will render their respective rulings and discuss the basis of their rulings under the applicable federal or state rules. (50 minutes; 1 hour general CLE)

Speakers:

- The Honorable Steven Scott Stephens, Florida Circuit Judge, Thirteenth Judicial Circuit
- The Honorable Anthony E. Porcelli, United States Magistrate Judge, M.D. Florida (tentative)
- Steven W. Teppler, Esq., Attorney, Abbot Law Group, P.A.
- David R. Hazouri, Esq., Attorney, Hickey Smith LLP
- Andy Reisman, Esq., CEO Elijah

11:00 a.m. – 11:50 a.m. -- Session 4: A View from the Bench: Federal and State Court Judges Offer Their Observations, Insight and Advice on Emerging and Problematic Issues Concerning ESI

The pace of technological advancement is accelerating. As a result, the law is constantly confronted with new and challenging issues concerning the discovery of ESI, and its authentication and admissibility. Some examples of this entail social media evidence, evidence generated by wearable technologies and other Internet of Things devices, and potentially relevant evidence generated, stored and maintained by third-parties. During this session, a panel of esteemed state and federal judges will discuss the emerging and problematic issues they are encountering in their respective courtrooms regarding ESI, explain how they are dealing with these issues, and offer advice to attorneys on how best to address such issues with the Court. (50 minutes; 1 hour general CLE)

Speakers:

- The Honorable Gill S. Freeman (ret.), Florida Circuit Judge, Eleventh Judicial Circuit
- The Honorable Lisa T. Munyon, Florida Circuit Judge, Ninth Judicial Circuit
- The Honorable Steven Scott Stephens, Florida Circuit Judge, Thirteenth Judicial Circuit
- The Honorable Anthony E. Porcelli, United States Magistrate Judge, M.D. Florida (tentative)
- The Honorable Thomas B. Smith, United States Magistrate Judge, M.D. Florida

11:50 a.m. – 12:00 p.m. -- Concluding Remarks and Wrap Up