

The Road Less Traveled

A Look at Ediscovery Certification and Training Programs

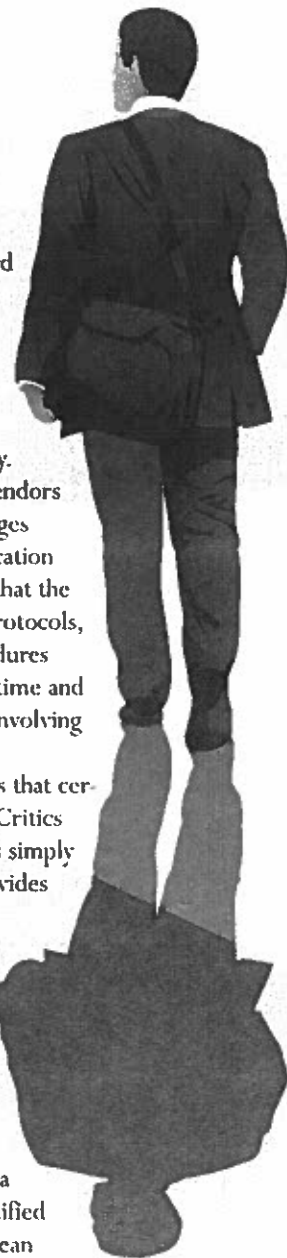
Sally A. Kane, Esq.

The growth of the e-discovery industry and the flood of professionals navigating this maturing field have sparked a debate regarding the need for industry-wide standards, training and certification. Presently there is no consensus in the legal profession regarding how the e-discovery training process should work, what level of training should be required, who should provide the training or whether certification is truly useful or effective.

Proponents of e-discovery certification programs argue that certification provides tangible documentation of a professional's knowledge in the field, demonstrates a commitment to the profession and establishes a baseline level of competency. Others argue that certification helps you gain a competitive edge in the marketplace. "If you are educated and certified in the space, you have one leg up on your peers, colleagues and those you are competing with for jobs," said Kelly Kubacki, staff attorney for Kroll Ontrack. "It also allows you to be seen as an expert within your own organization and you become an invaluable resource to your own company and firm."

Douglass Mitchell, a partner at Boies, Schillis & Flexner and chairman of the Organization of Legal Professional's Board of Governors, agrees: "Clients will more likely choose law firms whose lawyers and staff are certified to give them some assurance of quality. Law firms will choose vendors for the same reason. Judges will welcome the certification because they will know that the firms followed certain protocols, best practices and procedures and will save the courts time and money in hearing cases involving e-discovery."

Not everyone believes that certification is the answer. Critics argue that certification is simply a piece of paper that provides no guarantee of competence. Lawrence Center, Assistant Dean for Academic Conferences and Continuing Legal Education at the Georgetown Law Center states, "Just because someone passes a test that says they're certified in e-discovery doesn't mean



they are effective employees, can interact with clients or fit into a law firm's culture. It just means they took and passed a test."

Others maintain that certification can create a barrier to an industry that has a desperate need for qualified professionals. "Until our industry has an official governing body like the American Bar Association that regulates education, licensing and continuing education, this will be a hot topic," said Danielle Marbury, national training and development manager of LitWorks, a training organization for litigation support professionals. "I believe there are many ways to gain the knowledge and experience to be a successful litigation support professional. The recent certification exams that have been developed limit certain capable professionals from obtaining the credential, which can be a disadvantage to the industry long-term."

In response to the cry for industry education, a number of programs have been developed by lawyers, law schools, vendors, non-profit entities and for-profit organizations. As more certification and training options spring up across the e-discovery landscape, it can be difficult to determine how to obtain the best education in this complex and evolving field. Below is an outline of several recent and emerging training and certification offerings.

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Association of Certified E-Discovery Specialists (ACEDS)

The Association of Certified E-Discovery Specialists (ACEDS) offers the Certified E-Discovery Specialist credential. Headed by Executive Director Gregory Calpakis and President Charles Intriago, ACEDS is a for-profit, independent membership association for e-discovery professionals.

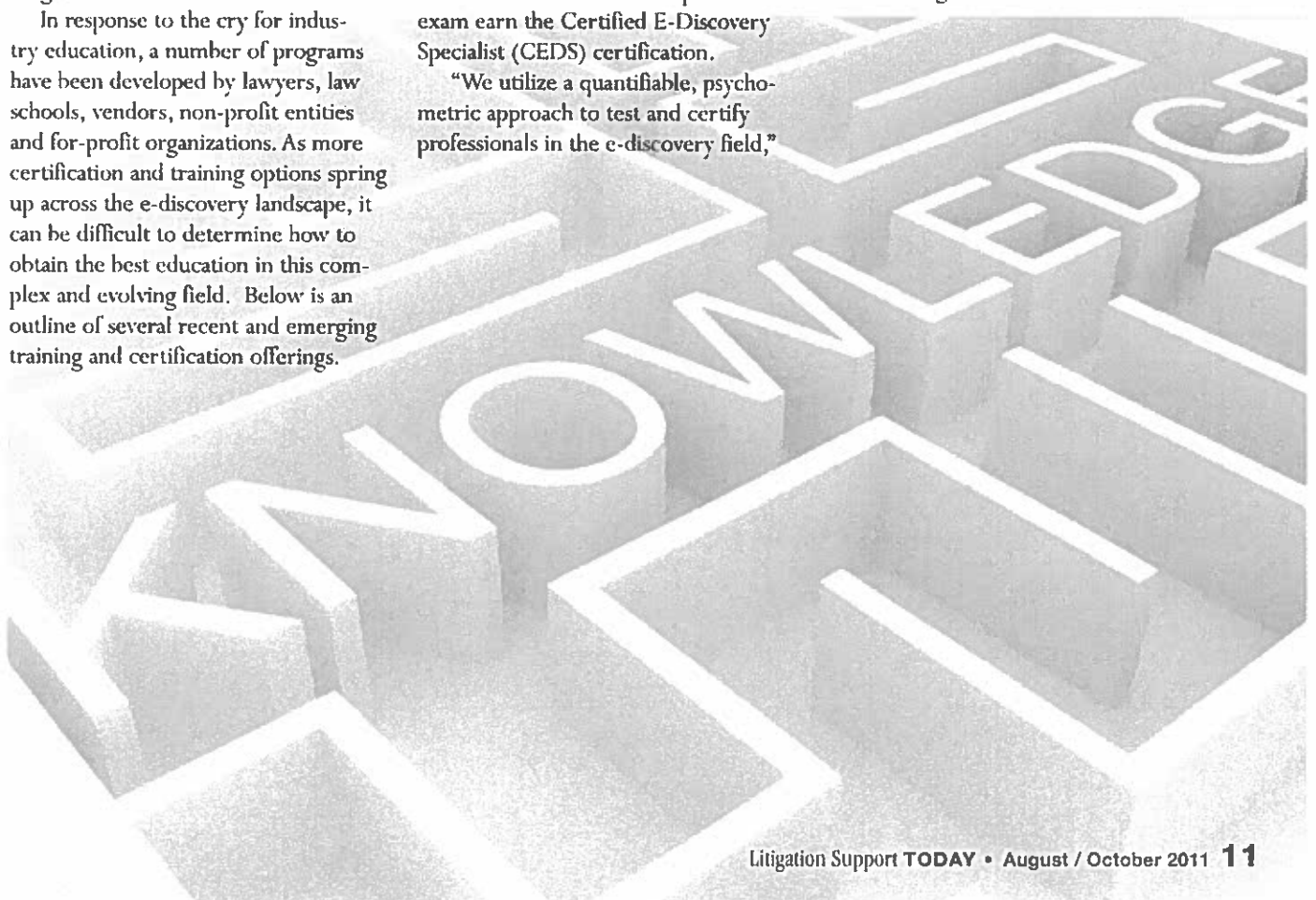
Last year, ACEDS established the field's first certification exam, a 4-hour test consisting of 145 scenario-based four-item multiple choice questions that test e-discovery knowledge and skills. Candidates who pass the exam earn the Certified E-Discovery Specialist (CEDS) certification.

"We utilize a quantifiable, psychometric approach to test and certify professionals in the e-discovery field,"

said ACEDS president, Charles Intriago. "Only about 74% of test-takers pass this rigorous exam."

The examination fee for ACEDS members is \$795, \$995 for non-members and \$595 for candidates employed in the government or academic institutions. Candidates can take the exam year-round at nearly 600 testing centers worldwide. Upon registering for the exam, CEDS candidates receive an electronic version of the CEDS Exam Preparation Manual at no extra charge. Additionally, ACEDS offers an online exam preparation course with sample questions.

To be eligible to sit for the CEDS



Examination, candidates must document at least 40 qualifying credits in e-discovery and closely related fields based on education, training and professional certification in the field and provide two professional references. Candidates receive results immediately upon completion of the exam and those who do not pass may retake the exam after two months.

The Association partnered with Kryterion, a test development company, to develop the exam content, along with the help of 40 volunteer experts from around the U.S. "We flew in e-discovery experts to a Miami Beach hotel and, over course of three days, hashed out through their combined expertise close to 500 e-discovery job tasks," Intriago explained. "We also surveyed the e-discovery community, asking a global multi-disciplinary audience how frequently the tasks occurred and how important they were in their daily work." Kryterion analyzed the answers and identified 15 major areas that contained 78 subtopics. With the help of the volunteer experts, the company then developed scenario-based exam questions spanning all disciplines of e-discovery based on the identified job tasks.

Some critics question the value of certifications offered by for-profit organizations. However, Intriago points out: "It is merely a tax status and many 'not-for-profits' have for-profit arms. The beauty of our model is that we have no hidden agenda and everything we offer is independent of any product or software or outside interests."

Kroll Ontrack

Kroll Ontrack provides consulting, services and technology products in the areas of data recovery, information management, computer forensics and e-discovery, among others. The company offers three e-discovery certification courses: the Intermediate Certification



Course, the Advanced Certification Course and the One-Day Certification Workshop.

"The Intermediate and Advanced Certification Courses are our flagship two-day courses held onsite at our corporate headquarters near Minneapolis, Minn.," said Kelly Kubacki, staff attorney. The intermediate course offers attendees a broad view of discovery essentials. It covers such topics as records management strategies, preservation and collection challenges and risks, introduction to computer forensics, common production issues and solutions, early data assessment (EDA) techniques and benefits, advanced searching technologies, document review and intelligent review technology.

"The Advanced Certification Course is a deeper dive into the foundational information received in the Intermediate Course and offers more technical depth and practical solutions," Kubacki said. The advanced

course explores topics such as global disputes and investigations, data security concerns and considerations, advanced computer forensics, cloud computing, archive and backup data management, social media concerns, ethical issues in discovery and data collection.

Both the Intermediate and Advanced Certification Courses have been approved for 10 MN CLE credits including one ethics credit. Tuition is \$995 for one attendee, \$1,295 for two attendees from the same organization and \$1,595 for three or more attendees from the same organization and includes course materials, lunch and refreshments.

Kroll Ontrack's newest offering, the one-day certification workshop, covers a variety of topics ranging from preservation, identification and collection and document review to intelligent review technology, technology trends and case law. Tuition is \$395 or two-for-one if you register with a colleague. The course has been approved for 5.5 NY

CLE credits, including 1 ethics credit.

The one-day course is a new 2011 venture and the company plans to expand it in subject matter and reach in 2012. "The one-day course curriculum mirrored much of the content from the Minneapolis-based Intermediate Course. In 2012, we plan to go back to the cities we visited with the Advanced Certification Course," Kubacki said. "We also hope to expand across the country and provide opportunities for people without the time and budget to travel to Minnesota. Companies and firms have tightened their spending belts, so a traveling course is more plausible for many interested parties."

Kubacki maintains that Kroll Ontrack's course is unique from others in that it offers a wide variety of topics and industry-leading speakers, a mixture of in-house and outside expertise and an interactive environment that encourages attendees to raise questions and learn from each other's experiences. The interactivity is "one of most

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well-received aspects of the course," she said.

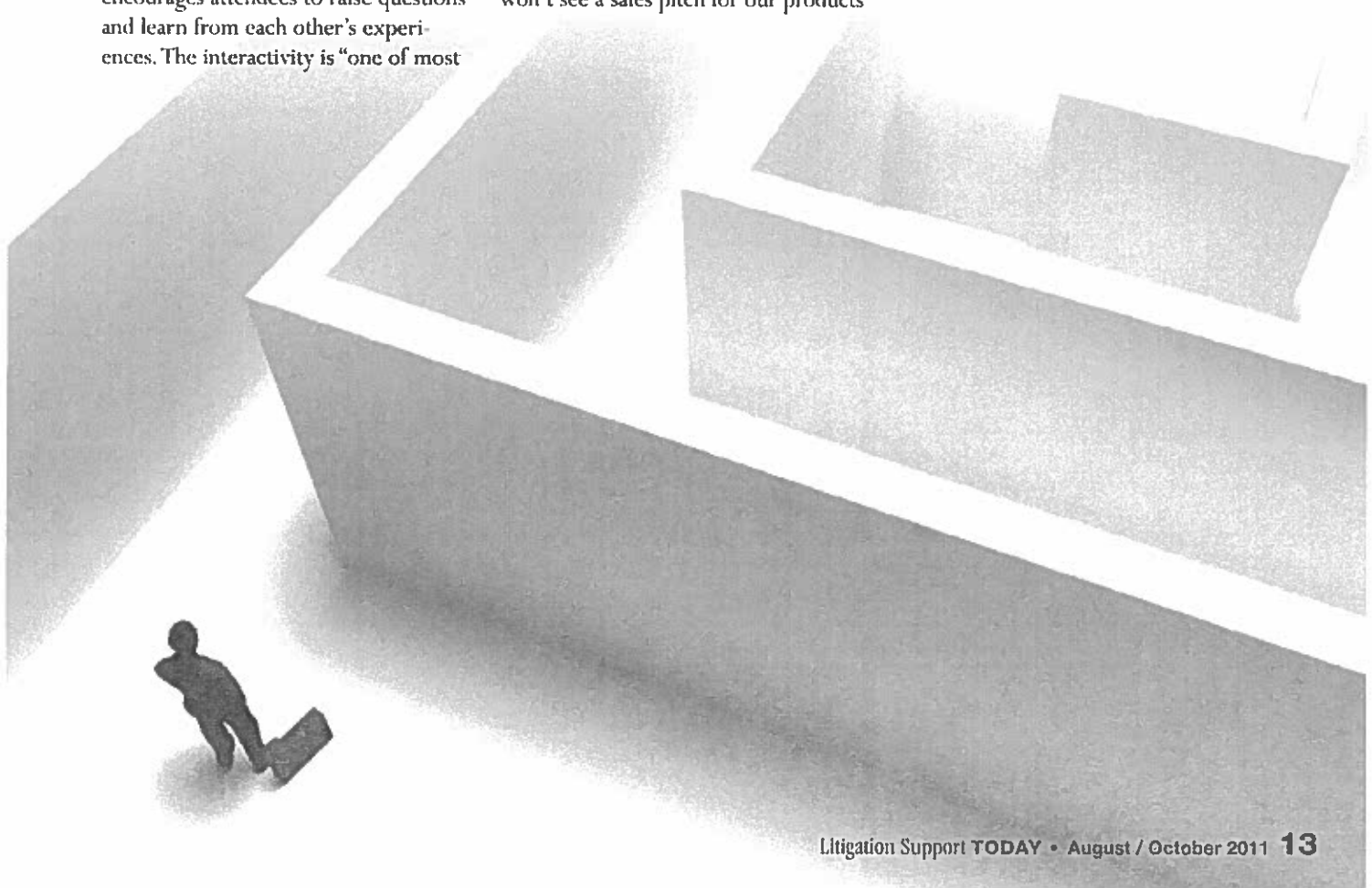
Kroll Ontrack does not require participants to pass an exam. "Sitting in the class and going through the interactive experience is enough. We don't feel an exam is necessary. Attendees leave with a thick set of course materials and are well-equipped to serve as leaders in their field," Kubacki said.

Critics of programs offered by vendors such as Kroll Ontrack argue that such programs focus on certifying the candidate on the use of the vendor's own technology. Kubacki maintains that Kroll Ontrack's program is a vendor-neutral presentation. "You won't see a sales pitch for our products

and services," Kubacki stated. "People don't want a sales pitch when they are investing valuable time and money for education."

The Organization of Legal Professionals (OLP)

The Organization of Legal Professionals is a non-profit professional association providing continuing education and certification exams to the legal community. OLP recently developed its Certified E-Discovery Professional program which consists of a four-hour online, self-study, self-paced preparation course and a three-hour certifica-



tion examination. Douglass Mitchell, a partner with Boies, Schiller & Flexner, LLP, and chairperson of OLP's Board of Governors, explained that the prep course "is a review tool, not a teaching tool. Presumably, the candidate is already familiar with the material in the prep course."

The program is targeted to attorneys, paralegals, litigation support professionals, case managers, vendors, consultants, jury consultants and other legal professionals. CeDP candidates can take the exam year-round at 1,000 worldwide Pearson-secured testing facilities in a proctored environment.

The certification exam costs \$275.00 and the online preparation courses cost \$695.00 for OLP members (OLP membership costs \$95 for an individual membership; \$495 for corporate membership). You do not have to take the prep courses to sit for

the exam, Mitchell noted.

The OLP has both educational and experiential requirements for certification. "OLP candidates must undergo a rigorous screening prior to sitting for the exam. You must have at least three years hands-on e-discovery experience (no matter how many years of experience in the legal field) and certain educational requirements along with professional references," Mitchell said. "You need to submit to a work history verification process."

The CeDP was developed in partnership with Pearson, a \$7 billion corporation with a division that specializes in testing and certification exams. "Pearson has developed well-known exams such as the LSAT, GRE and GMAT, to name just a few," Mitchell said. OLP provided the content from over 30 experts in the field and the exam was then peer-reviewed by sub-

ject matter experts. "The test follows the science of psychometrics: A team of five Pearson Ph.D.'s worked alongside of OLP's Exam committee rendering an unbiased, fair, independent, vendor-neutral, rigorous and balanced exam," Mitchell explained.

According to Mitchell, the test has been in development for over 18 months and the first CeDP exam will be held at the end of September. OLP is now developing a second certification exam in litigation support which will hit the marketplace in late fall.

Georgetown University Law Center

Georgetown Law Center takes a multi-pronged approach to e-discovery training. The school offers several programs, including the Advanced E-Discovery Institute's 2-day CLE, the E-Discovery Training Academy, and

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He added "In the past, we considered creating our own certification program because we are a law school but certification brings so many issues: liability issues, credit issues, definition issues. Instead, we chose to focus solely on education for education's sake. Certification is a tricky area because from an academic point of view, it's challenging to decide who is best to say someone is certified and what certification means, just because someone passes a test that

its newest program, the E-Discovery Practice Support Project.

"While most e-discovery education today is targeted for attorneys, Georgetown's new E-Discovery Practice Support Project focuses upon the education of Practice Support Professionals, although we expect practitioners specializing in eDiscovery Practice Support will have interest as well" said Robert Eisenberg, a founding chair of The Advanced E-Discovery Institute. "We are trying to offer all those in the e-discovery space options for their education." In addition to practice support professionals, Eisenberg anticipates that this program will attract IT professionals and JD's who wish to move into the project management side of the field. "These programs really target the entire demographic in the e-discovery world," he stated.

Georgetown will offer a symposium on November 4th which will present three career tracks: entry level Technical Analyst, Project Manager

and Department Leader, Lawrence Center, Assistant Dean for Academic Conferences and Continuing Legal Education, explained. The symposium will contain educational content and training geared to these three career areas, teaching the skill sets and best practices necessary for success. Presenters will include keynote speaker Chief Magistrate Judge Paul Grimm for the U.S. District Court of Maryland, one of the most respected e-discovery thought leaders in the federal judiciary.

The E Discovery Practice Support Project was created by a planning committee consisting of 60 practice support professionals from across the country that had attended a forum at Georgetown Law last October. The registration fee is \$395.

Dean Center noted that the focus of Georgetown's efforts is on education, not certification (The Academy offers a certificate of completion but not certification).



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says they're certified in e-discovery doesn't mean they are effective employees, can interact with clients or fit into a law firm's culture. It just means they took and passed a test. As a law school, we don't want to get into that business. We don't want to be diverted from teaching comprehensive content and providing skills and don't want to be driven by the need to teach to a test."

If the program on November 4th is successful, Georgetown plans to repeat it or expand on it by offering more programs in Washington or regionally in different parts of the United States and /or through a program of on-line education.

Ralph Losey's E-Discovery Team Training

Ralph Losey, author, blogger, educator and e-discovery attorney with the Orlando office of Jackson Lewis, has developed his own e-discovery team training program which evolved from his role as a law professor at the University of Florida. The training, which opened the doors to the public in late 2010, is a self-study, self-paced online program consisting of 84 classes that require from 75 to 400 hours of study. The program also has a wiki component where top vendors contribute their own non-commercial classes to the program.

"My goal is to revolutionize legal training in e-discovery by moving it into the clouds, and by opening up this education to anyone, not just lawyers and law students," Losey stated in an open letter posted on his E-Discovery Team blog.

The first five classes are vendor-sponsored classes offered at no cost. The first section, the "Freshman level" is \$99, the first two sections, the "Sophomore level," is \$300

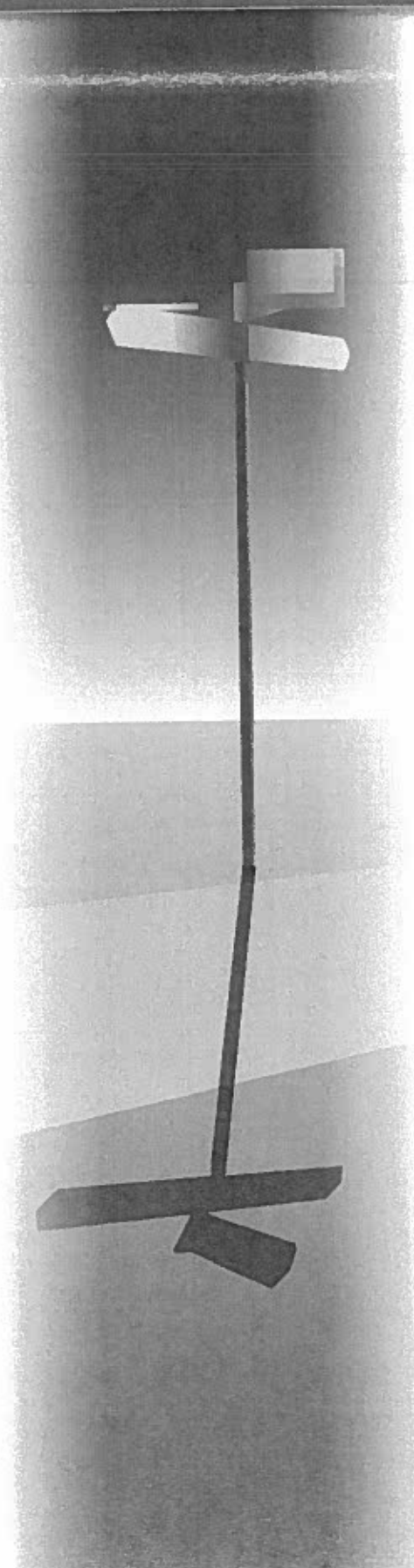
and the entire 84-class course, the "Junior level," is \$500. Students can also pay another \$500 for optional testing if they choose. The program is approved for 21 hours of CLE credit by the Florida, Texas and California Bar Associations.

The focus of Losey's program is on education, not certification. "I don't purport to certify competence and the descriptions of my course make this very clear," Losey states on his blog. "I happen to think this kind of competency certification and specialization designation should be done solely by the State Bar Associations. For me, training is the primary purpose of e-Discovery Team Training, not certification."

Association of Litigation Support Professionals (ALSP)

The Association of Litigation Support Professionals is a national organization dedicated to advancing the litigation support profession and contributing to the career development of practitioners around the world. In 2009, the ALSP board of directors and headquarters staff initiated a project to develop a new industry certification. Over the past two years, ALSP formed a steering committee, conducted market research, surveyed litigation support professionals regarding examination content and began the process of securing partnerships and relationships with industry stakeholders to underwrite development costs for a certification program. However, due to the high expense of creating a statistically sound and legally defensible certification program, ALSP is reconsidering its goals, according to Robin Thompson, national president of ALSP.

"Our membership grew from 18% to 45% this year and the majority of our members do not



want dues to go toward funding a certification,"Thompson said. "Our strength is in networking and we are looking at moving toward removing certification from our mission and refocusing our mission on networking and education."

In addition to cost concerns, ALSP also lacked the time and manpower required to develop a valid certification program. "I'm a member of ARMA and when they established the CRM [Certified Records Manager] there were so many protocols to put into place to ensure a valid, independent, legally defensible certification program. It is not a short-term process and you can't spin it out overnight without a one-hundred percent full-time effort," Thompson explained.

Thompson noted that ALSP's focus is to offer free educational programs to its members such as webinars and live conferences, to grow and expand its chapters and to re-establish ALSP's national conference which will take place next March in New Orleans. "We are also considering providing education scholarships where litigation support professionals can apply to attend university programs, LegalTech and other conferences,"Thompson said.

LitWorks

LitWorks is a resource for the training of e-discovery and litigation support professionals across the globe through workshops and small group real-life exercises. The company offers three types of certifications: Certified Litigation Support Professional, Certified Litigation Support Project Manager and Certified Litigation Support Manager.

"LitWorks provides a collaborative, real-world approach to e-discovery training. Our certification programs are based on industry standard best practices and provide students with the depth and

breadth of knowledge required of today's professionals," said Danielle Marbury, national training and development manager. "All of the LitWorks programs use the EDRM as a methodology model and are continuously updated to review recent case law and hot topics in the industry," she stated.

LitWorks offers three public classes on a recurring basis:

1. The Certified Litigation Support Professional course runs for four days at a cost of \$2,100. The class is designed for professionals at either an entry-level or three to five-year experience level who want a better understanding of the entire litigation lifecycle and how technical and electronic discovery support is handled within that overarching cycle.

2. The Certified Litigation Support Project Manager course runs for three days at a cost of \$1,900. This program is targeted to professionals who have been working in litigation support for three or more years and are looking to understand project management techniques that can be applied to the litigation lifecycle and, more specifically, to the discovery process, which still involves paper documents and more prevalent, electronic data.


3. The Certified Litigation Support Manager course runs for three days at a cost of \$1,900. This class is for the seasoned professional who has been or soon will be tasked with management of the litigation support function. Topics include basic management skills, a combination of internal marketing and external vendor management techniques and workshops surrounding best practices for creating a litigation support department from inception.

"Our courses are pass/fail and require attendees to complete real-world assignments that apply to the materials presented during the sessions," said Marbury.

Looking to the Future

As we transition to a digital world, most industry insiders agree that there is a need for e-discovery training, although the nature of this education is evolving. The good news is, despite a sluggish economy and a lack of training dollars, the e-discovery community is forging creative solutions to the education dilemma, tapping into the collective knowledge of e-discovery leaders across the globe to create new educational paradigms. ☛

About the Author: Sally Kane is an attorney and author who writes frequently on e-discovery topics. She is associate editor of Litigation Support Today, editor-in-chief of Paralegal Today and About.com's Guide to Legal Careers.



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