

Breaking Into E-Discovery

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E-Discovery is one of the fastest growing niches in the legal profession. Sally Kane offers a primer explaining what E-Discovery specialists do and how lawyers can break in to the field.

The legal industry is slow to embrace change and adopt new practices. However, the past two decades have witnessed the dawn of the digital age and, with it, advancements in technology that have reshaped the legal landscape. This evolving technology and recent amendments to the Federal Rules of Civil Procedure have spawned a new and lucrative law practice specialty: electronic discovery. The e-discovery niche, which combines the legal expertise of attorneys with the technical skills of IT professionals, is one of the fastest growing specialties in the legal industry.

Increasing volumes of electronically stored information (ESI), evolving e-discovery case law, the automation of legal processes, changing ESI protocols and harsher judicial sanctions have fueled the need for e-discovery specialists. In response to this trend, a growing number of firms are investing in consultative e-discovery talent by establishing dedicated e-discovery practice groups or, in smaller firms, creating the role of an e-discovery attorney. According to a [2011 survey](#) by The Cowen Group, a legal technology staffing firm, 30% of firms are adding e-discovery attorneys, with an anticipated 150-250 openings at major law firms.

E-discovery attorneys operate under a variety of titles: electronic discovery advisor, e-discovery counsel, EDD partner, electronic discovery consultant, special counsel, e-discovery specialist, and e-discovery director are a few. Most e-discovery attorneys work in law firms serving corporate clients although a growing number of attorneys are developing niche e-discovery roles within corporations and government agencies. Responsibilities vary according to practice environment and firm size. Below are a few of the roles the e-discovery attorney may tackle.

Client Education. Despite the growing importance of technology in litigation, many attorneys, clients and business executives lack an understanding of the complexities of e-discovery and the technicalities required to collect, process and review electronic data. E-discovery attorneys educate clients and the legal team regarding legal technology, best practices and e-discovery policies. As case law governing the e-discovery process continues to evolve, e-discovery practitioners also help clients navigate changing laws and develop best practice guidelines to ensure compliance with new rulings and emerging discovery standards.

Technology Expertise. E-discovery practitioners leverage technology to help clients streamline workloads and mitigate the risks and expense associated with e-discovery. They also help to identify

and implement the appropriate technology tools and manage vendor relationships on behalf of the client. E-discovery lawyers have the tech know-how to make wise technology decisions and possess intimate knowledge of the management, retrieval and use of electronically stored information and the ability to facilitate complex litigation case automation.

Litigation Readiness. Organizations that implement a litigation readiness plan can minimize the costs of e-discovery and reduce response time in the event of litigation. E-discovery professionals help clients develop a strategy for preserving relevant data and assist clients in drafting, implementing and complying with litigation holds and preservation orders.

Data Collection and Review. The collection and review stages of e-discovery are often the most costly and labor-intensive. E-discovery attorneys guide clients through the critical decision-making process of key word- or contextual-based searching and streamline the review process to avoid mistakes and minimize expense. As part of the review process, they help accord the proper privilege or work product protections to documents.

Risk Management. Organizations are subject to heavy sanctions for litigation abuses and a failure to comply with e-discovery rules. As judicial tolerance declines, the failure to properly preserve and produce ESI in litigation can result in costly sanctions and other consequences. Spoliation of evidence and negligent or willful misconduct are a few discovery abuses that merit sanction. Sanctions can be harsh, including preclusion of evidence, monetary penalties, criminal charges, or default judgments. E-discovery lawyers help develop best practices and defensible discovery solutions that minimize the risk and cost of e-discovery.

E-Discovery Liaison. In large organizations, e-discovery is a complex process. E-discovery attorneys serve as a liaison between personnel involved in various aspects of the e-discovery process, including attorneys, paralegals, IT personnel, litigation support professionals, third-party vendors, human resources personnel and records management staff, to develop processes and best practices for the management of electronic data.

Global Management. As international e-discovery gains momentum, countries around the world, including Canada, England and Australia, are enacting laws governing e-discovery. Many nations also impose restrictions on when ESI can be gathered, processed, used and transmitted beyond borders. Organizations with global operations face the challenging task of navigating multi-jurisdictional e-discovery and privacy laws. E-discovery professionals assist multi-national clients in understanding e-discovery issues from a global perspective.

Records-Retention Protocols. Managing volumes of ESI begins with the creation of an effective records-management policy. E-discovery attorneys counsel clients in designing records-retention protocols that comply with legal and regulatory retention mandates and meet the needs of the client organization. E-

discovery lawyers also provide advice regarding records retention policies, schedules, best practices and other recommendations to lower record management costs and reduce liability risks.

Breaking In

Within a growing framework of federal, state and local laws and evolving case law, the role of the e-discovery consultant is evolving. If you are a law student or practicing attorney, how can you transition into an e-discovery niche?

Educate Yourself

One way to break into e-discovery is to educate yourself. Formal e-discovery training programs are just beginning to emerge across the nation. Certifications in specific software applications and database platforms are also offered by many litigation support vendors. In addition, several organizations have begun offering e-discovery certifications upon the successful completion of an exam or coursework. Obtaining such [certifications](#) can help demonstrate a commitment to the profession, enhance your professional credibility and boost employability. Below are several training and certification offerings:

- **Association of Certified E-Discovery Specialists (ACEDS)**
- **The Organization of Legal Professionals (OLP)**
- [Kroll Ontrack's E-Discovery Certification Course](#)
- [LitWorks™ Certified Litigation Support Professional \(CLSP\)](#)
- **Georgetown Law Center's [Advanced E-Discovery Institute](#)**
- **Ralph Losey's E-Discovery Team Training**

Networking

Networking is another way to learn about e-discovery opportunities. Networking within your firm and local bar association is a good place to start. Attend local chapter meetings, conferences, seminars, and luncheons and talk to people who work in the field to learn more about e-discovery and available job openings. You can also network with thought leaders in the industry by attending industry conferences. These conferences are usually one to five days in length and cost between \$500 and \$3,000. Several of the most popular and well-attended e-discovery/legal technology conferences are:

- **The ABA TECHSHOW** – The ABA TECHSHOW is usually held in March or April and showcases the industry's latest technology.
- **LegalTech** – This conference, sponsored by Incisive Media, is held annually in February, and garners attendees from all walks of the legal industry including attorneys, paralegals, IT professionals, litigation support professionals and others.
- **International Leadership Technology Association (ILTA)** – ILTA provides educational content, peer-networking opportunities and information resources in order to make technology work for the legal profession. The ILTA conference is usually held annually in August.

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- **The Masters Conference** - The Masters Conference, usually held annually in October, aims to provide corporate counsel, law firm attorneys and litigation support teams with practical information and tools regarding e-discovery.
- **Women in eDiscovery** – With more than 25 chapters worldwide, this non-profit organization brings together women in technology and law and offers them opportunities for leadership, education, and networking.

In addition to in-person networking, don't overlook social media platforms. Join LinkedIn groups relating to litigation support and e-discovery, follow e-discovery experts on Twitter and participate in e-discovery forums and listservs.

Find a Mentor

If you are new to e-discovery, a mentor can help to teach you the ropes, introduce you to others in the field and nurture your career. If your firm has an e-discovery practice, get cross-trained in your firm, even if it means performing extra tasks on your own time. Volunteer to assist the e-discovery experts in your firm, ask questions and study the rules and case law. If your firm doesn't have an e-discovery practice, connect with a mentor through your local bar association or e-discovery group. E-mentoring is another growing trend; if you are unable to find a mentor in your town, you might try connecting with a mentor online.

As the e-discovery industry matures, the field is attracting skilled attorneys with diverse backgrounds. Legal professionals with the right blend of legal knowledge, technological know-how, management expertise and innovating thinking can find challenging and lucrative careers in this growing industry.

*Sally Kane is an attorney and writer focusing on law-related topics. She serves as About.com's [Guide to Legal Careers](#) and editor-in-chief of *Paralegal Today* magazine. She assists clients across the globe with law-related writing projects and has published over 200 articles in various publications including *Student Lawyer*, *The Legal Intelligencer*, *Legal Management*, *Litigation Support Today*, and *The Writer*. She tweets at [@sallyannekane](#) and can be reached at skane@conexionmedia.com.*