

FAIRCHILD INN OF COURT PROGRAM LIST FOR 2013-2014

October Program:

“Mission Impossible” -- The Duty to Preserve Evidence Even When Messages Self-Destruct in Five Seconds (Ethics)

Do you remember the old television show Mission Impossible? At the beginning of each show, Impossible Missions Force lead agent, Jim Phelps (played by Peter Graves), received his team’s instructions via a hidden tape recorder and, within ten seconds, smoke would rise from the tape and the instructions would be destroyed. We are now giving you a similar mission. (In a “taped” voice: “Your mission, Group 1, if you choose to accept it, is to present a program about the duty to preserve and maintain evidence. As always, should you or any of your force be caught or killed, the Fairchild Inn will disavow any knowledge of your actions. This tape will self-destruct in five seconds. Good luck, Group 1.” This program will address duty to preserve and maintain evidence and the challenges that this duty can impose. The program should address the challenges of finding, preserving, and litigating production of relevant evidence in the face of corporate records retention policies and today’s technologies, including self-destructing “snapchat.com” photos and evanescent Instagram and text messages and social media postings. This program should also address corporate record retention policies, clients’ legal duties to retain records under the Sarbanes-Oxley Act of 2002 and when litigation is reasonably anticipated, and our legal and ethical duties as attorneys to advise clients to preserve evidence.

November Program (Double-Header):

Creative Snooping -- How to Find Evidence in Creative Ways

Program No. 1: Last year, our Inn groups presented some programs about how to mine for evidence on the Internet and how to keep and authenticate it. This year, we will address a similar topic -- how to find evidence in creative ways. This program may discuss new ways of finding evidence on the Internet, but it will also address creative but ethical ways to search for and find other kinds of evidence, too. For example, the program may discuss use of secret shoppers, background checkers and private investigators. The program may address many methods of investigation over the Internet and elsewhere.

Be Careful When You Snoop (Ethics) – How to Properly Hire and Ethically Use an Investigator and Gather Evidence Creatively

Program No. 2. Program No. 2 reminds us that when we “snoop” for evidence, we should avoid going too far. You may have read about famed celebrity private investigator Anthony Pellicano, who engaged in the wiretapping and illegal

background checks of high profile litigants. Pellicano was charged with a federal crime along with one of the lawyers who had retained him and whose client enjoyed the fruits of Pellicano's criminal eavesdropping. This program will address when lawyers might want to hire private investigators and what legal and ethical rules and practical guidelines lawyers should follow in selecting, working with, and supervising private investigators and when engaging in creative endeavors to gather evidence themselves or through others. The presentation will address the federal and state laws, and ethical rules, applicable to using impersonators and deception, secretly recording conversations, video surveillance, hacking into email accounts, obtaining non-public financial information or records, and contacting represented persons.

December Program:

The Big Bang Theory: Preparing and Challenging Expert Witnesses Before Trial

As anyone who watches the popular television show "The Big Bang Theory" knows, dealing with experts can be challenging. Sometimes they are geniuses but lack communication skills, or refuse to listen to you because they think they can outsmart everyone else. They may forget to tell you about some of their prior writings or actions. And sometimes, your opposing counsel will take advantage of these problems. This program addresses the nuts and bolts of preparing your expert witnesses during the discovery process and prior to trial. The program will discuss preparing and disclosing an expert report and working papers and getting your expert ready for his or her deposition. The program will also address the flip side – challenging and cross examining the opposing party's expert witnesses.

January Program:

"Is That Your Final Offer?: Negotiating Effectively in Modern Times"

Most cases are resolved before trial, many as a result of negotiation. Getting to "Yes" is a true art form. This program will provide tips for how best to engage in negotiations, as well as provide some tips for negotiating with attorneys from other states and countries, where the rules of engagement can be very different from our own. Knowing what to say, how to say it, and even more importantly when to say it takes preparation, skill, and a mastery of the issues involved.

February Program:

Titanic Evidentiary Disasters

Even seasoned attorneys can experience Titanic evidentiary disasters when submitting evidence to the court. Failing to lay a proper foundation can sink your entire case. Forgetting to properly authenticate deposition transcripts, written contracts and other evidence likewise can torpedo your case. Courtroom technology flubs can be like icebergs that block a smooth introduction of evidence. This program

presents some specific examples of Titanic evidentiary disasters in high profile national cases, and even from our own cases, and also provides some tips for how to avoid them.

March Program (Double-Header):

Program No. 1: How to Use and Respond to Subpoenas

Various provisions of the Federal Rules of Civil Procedure pertaining to subpoenas have recently been amended. One rule was amended because so many attorneys were ignoring it. That experience suggests that many of us need a good refresher about subpoena practice. This program will provide a solid nuts and bolts review about the rules pertaining to all manner of subpoenas – civil, criminal, and administrative, both state and federal. The program will address how and when to serve subpoenas, the scope and reach of subpoenas, and how to properly object and respond to subpoenas. The program will include practical pointers about using and responding to subpoenas, misperceptions about subpoenas, and common mistakes that attorneys make in issuing and responding to subpoenas. The program should include an update on the recent amendments to federal and state laws concerning subpoenas.

Program No. 2: Always Answer in the Form of a Question: Court Rules Jeopardy!

This program, based loosely on a popular game show, will provide a good refresher for all on state and federal procedural and evidentiary rules. Members will be divided into teams who answered questions about court rules, including topics like motions to continue, motions to withdraw, motions for default judgment, conduct in courts and discovery disputes. Both state and federal procedure and evidence rules are fair game. Just remember to answer in the form of a question.

April Program: Joint Program with the Doyle Inn of Court

TBD by Doyle Inn

May Program:

The Changing Environment of the Practice of Law and How to Thrive in it

The legal services business and the legal profession are undergoing massive structural changes, as we all have become painfully aware. Entire categories of legal services, such as the preparation of various types of legal documents, are becoming systematized and commoditized. Many tasks previously performed by law firms, including document review, are now being delegated to others outside law firms. And rapid advances in legal technologies, including automated document assembly and automated document review, challenge the viability of the traditional law firm business models, for large and small firms alike. These changes have reduced the demand for traditional legal services and have reduced the market power of law firms. Some prominent large law firms have failed or shrunk considerably; unemployment among attorneys is up; and clients are now quicker to re-evaluate their law firm relationships and demand alternative billing arrangements and lower bills. This program will give a brief overview of these sea changes in the legal market. It will then offer practical ideas about how we can keep ourselves and our practices relevant, responsive to our clients' needs, and cost effective – and how we can even thrive – in this upheaving legal environment in which we now practice.

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