

B. Jay Yelton III

Of Counsel | jyelton@wnj.com

Kalamazoo

t +1.269.276.8130

f +1.269.276.8300



Biography

After 30+ years as a litigator and manager of eDiscovery teams, Jay now focuses on mediation and discovery facilitation where he helps clients solve disputes quickly, cost-effectively and confidentially. As a certified mediator who has been approved by most of the courts in Michigan, he has successfully mediated over 50 cases involving a wide variety of claims including breach of contract, landlord tenant, fair housing, civil rights, labor and employment, insurance coverage, and real estate disputes. As a discovery facilitator or special master, Jay assists parties to design and implement proportional discovery plans and assists parties and courts to resolve discovery disputes. Jay is a respected speaker and author and has written for and been quoted extensively by state and national publications. Jay is recognized by *Best Lawyers in America*® for both eDiscovery and Litigation, and he serves as Chairman for the Detroit Chapter of BARBRI's eDiscovery Association (Association of Certified eDiscovery Specialists), as a member and Project Trustee for the Global Advisory Council for E.D.R.M. and as a member and Drafting Team Leader for The Sedona Conference Working Group 6.

Practices

- Data Analytics and eDiscovery
- Litigation and Dispute Resolution

Education

- CEDS (Certified E-Discovery Specialist) 2020
- General Civil Mediator Certificate 2018
- Loyola University Chicago J.D. 1986
- Michigan State University B.A. 1983 with honors

Representative Experience

Civil Mediation

- Mediated various business and contract disputes involving loan agreements, automobile purchases, arrangement between sports complex and travel coach and team, arrangement for

sharing office reception area and services between medical professionals and claims against self-storage facility for breach of contract and theft

- Mediated various residential and commercial landlord-tenant disputes, including evictions, breach of lease or co-signor agreement and damage recovery actions
- Mediated various homeowner claims, including claims against home improvement companies, a home inspection company and fire and water damage restoration companies
- Mediated several federal prisoner civil rights litigation cases

eDiscovery Facilitation

- Assisted parties to design a proportional discovery plan
- Assisted parties and courts to resolve discovery disputes
- Provided parties with alternative and more effective strategies to conduct discovery

Litigation

- Lead counsel for the Fair Housing Center of Southwest Michigan obtaining a settlement providing three years of court enforced injunctive relief, monetary damages and an award of \$241,000 in attorneys' fees
- Co-counsel defending Section 1983 Civil Rights class action challenging the constitutionality of Michigan's child foster care system
- Co-counsel for Pharmacia & Upjohn Company obtaining summary judgment in cases alleging discrimination and wrongful termination
- Co-counsel for a prescription drug manufacturer defending price-fixing claims by a putative national class of drug retailers
- Lead counsel obtaining favorable judgment at trial in case involving neighbors seeking tear down of a multi-million dollar home on Lake Michigan for alleged violations of subdivision deed restrictions, local ordinances and MDEQ requirements

eDiscovery

- Created and supervised discovery management and litigation support teams at two AMLAW 200 Michigan law firms
- Member of the State Bar of Michigan Civil Discovery Court Rules eDiscovery Subcommittee
- National discovery counsel for Fortune Global 500 manufacturer; develop and maintain systems for timely and accurate discovery compliance throughout the United States
- National defense counsel for a global pharmaceutical company in price-fixing class actions in 15 U.S. states; develop a litigation and discovery management system for 6,900 plaintiffs, 100 complaints and over 1 million discovery documents
- Special Assistant Attorney General in a federal court civil rights action; designed, implemented and defended a discovery plan that involved the collection of over 1 million pages from multiple locations; briefed and argued motion for protective order, resulting in a 90% reduction in discovery compliance costs

- Local defense counsel for a Fortune Global 100 company in a federal court action involving antitrust and copyright infringement claims; collected, reviewed and produced over 80 million pages of discovery documents
- Discovery counsel for a major professional services firm in response to DOJ grand jury subpoena involving an alleged illegal off-shore tax shelter; designed and implemented hard copy and e-data preservation and collection strategy and created 300 page privilege log involving complex, multi-client communications, correspondence and documents
- Counsel for a group of furniture manufacturers participating at several landfill Superfund sites; developed a data management system for the review and analysis of documents and deposition testimony regarding manufacturers' potential liability share; utilized data management system to successfully challenge U.S. EPA's database and reduce client manufacturers' share of Superfund liability
- Negotiated sneak peek and clawback arrangement for DOJ's investigation of government officials as means to reduce time and cost for subpoena compliance
- Drafted and/or negotiated over 50 discovery plans involving the preservation, collection and review of electronically stored data

Honors & Awards

- *Best Lawyers in America*, Electronic Discovery and Information Management Law, 2019-Present; Commercial Litigation, 2007-Present; Litigation-Antitrust, 2007-Present and Litigation-Regulatory Enforcement (SEC, Telecom, Energy), 2012-Present
- Recipient of the Exceptional Leadership Award from United Way (2020)
- Recognized as one of America's Leading Lawyers for Business and Commercial Litigation by *Chambers USA*, 2006
- Loyola University Chicago School of Law, *Loyola Law Journal*, Executive Editor

Publications

- Co-author of Discovery of Electronic Evidence, Chapter 10 of ICLE's Book on Michigan Civil Procedure (2015-Present)
- Co-author of ICLE's How-to-Kit entitled "Advise Your Client on Preservation of Electronic Evidence" (2015-Present)
- "Michigan's Exciting Experiment: Discovery Mediation," *The Litigation Journal*, State Bar of Michigan, Winter 2020
- Co-author of the State Bar of Michigan Guidebook to the New Civil Discovery Rules (September 2019)
- Annual Whitepaper entitled "A Retrospective of eDiscovery, Information Governance and Data Security" (2015-2020)
- Data Analytics + eDiscovery Newsletter (Winter 2018, Summer 2019, Fall 2019)
- "What every lawyer should know about e-discovery, The best tip: Know what you don't know," *Michigan Lawyers Weekly*, August 18, 2014

- “Data Spoliation Sanctions,” Faces of Risk Management, *Financier Worldwide Magazine*, 2013
- “Recovery of E-Discovery Costs Under 28 U.S.C. §1920(4),” *Michigan Defense Quarterly*, October 2012
- “Data Security, E-Discovery and Corporate Boards,” *The Corporate Board Magazine*, July/August 2012
- “Email Missteps to Avoid: ‘Reply to All’ & ‘Auto-Complete,’” *Michigan Defense Quarterly*, July 2012
- “Develop a Record Retention Policy for the Law Office,” *Institute for Continuing Legal Education*, July 2010
- “Advise Your Client on Preservation of Electronic Evidence,” *Institute for Continuing Legal Education*, June 2010
- “New Federal Rule of Evidence Seeks to Protect and Preserve the Attorney-Client Privilege in the Age of E-Discovery,” *The Litigation Newsletter*, State Bar of Michigan, Winter 2009
- “Michigan’s New Discovery Rules: Early Involvement Can Reduce Risks and Costs of E-Discovery,” *The Litigation Newsletter*, State Bar of Michigan, Spring 2009
- “New Federal E-Discovery Rule: A Blessing or a Curse?,” *The Litigation Newsletter*, State Bar of Michigan, Winter 2007
- “Education and Training: The First Steps in Developing a Litigation Readiness Program,” *The Litigation Newsletter*, State Bar of Michigan, Winter 2007
- “LEGAL: How to Establish an Effective Management Program for Your E-Data,” *Detroit Regional Chamber*, October 26, 2006
- “New Federal E-discovery Rules: A Blessing or a Curse?,” *Midwest In-House*, July 2006
- “Education, Training Essential First Steps in Updating Your Company’s Discovery Management Program,” *Midwest In-House*, January 2005

Professional Affiliations

- Detroit Chapter of BARBRI’s Association of Certified E-Discovery Specialist (ACEDS), Chairman (Present), President (2020-2022), Education Director (2016-2019) and Board Member (2016-Present)
- E.D.R.M. Global Advisory Council (2020-Present), Member and Project Trustee
- The Sedona Conference Working Group 6: Drafting Team Leader on Proportionality in Cross-Border Discovery (2020-Present)
- Michigan Association of Court Mediators (2019-Present)
- Association of Records Managers International (ARMA)
- International Legal Technology Association (ILTA)

Community Affiliations

- Family & Children Services, Board Member (2020-Present)
- Community in Schools of Kalamazoo Volunteer (2018-Present)
- United Way of the Kalamazoo and Battle Creek Region, Cabinet Member (2018-Present)
- Dillon Complex for Independent Living, Board Member, Finance Committee Chair and President (2014-Present)
- Knights of Columbus (2008-Present)
- Fair Housing Center of Southwest Michigan, Cooperating Attorney and Sponsor (2004-2016)
- High School Mock Trial Competition, Coach, Judge and National Steering Committee (1992-Present)

Bar Associations

- American Bar Association
Business Law, Litigation and Science and Technology Law Sections
- Federal Bar Association
- State Bar of Michigan
Litigation and Information Technology Law Sections
- Kalamazoo County Bar Association

Teaching and Lecturing

- "eDiscovery & Leveraging Technology Assisted Review," Michigan State University College of Law, East Lansing, Michigan, October 5, 2020 and October 4, 2021
- "eDiscovery and Legal Technology Case Study," Michigan State University College of Law, East Lansing, Michigan, January 23, 2020
- "eDiscovery with Sixth Circuit Justice David McKeague", Michigan State University College of Law, East Lansing, Michigan, December 6, 2019
- "eDiscovery for Trial Practice Institute" classes, Michigan State University College of Law, East Lansing, Michigan, October 7, 2019
- "Advanced Discovery Training" for CORT Legal Services Attorneys from Michigan, Indiana, Ohio and West Virginia in Ann Arbor on October 1, 2019 and October 3, 2019
- "eDiscovery Yesterday, Today and Tomorrow," Michigan State University College of Law, East Lansing, Michigan, February 26, 2019
- Organizer and Speaker for Warner Norcross' Annual Data Solutions Spring Symposiums, Grand Rapids and Troy, Michigan (2015-19)
- "eDiscovery Today and Tomorrow," Michigan State University College of Law, East Lansing, Michigan, October 8, 2018
- "eDiscovery and Data Analytics," Michigan State University College of Law, East Lansing, Michigan, February 27, 2018

- “eDiscovery Best Practices,” MSU’s Fieger Trial Practice Institute, Michigan State University College of Law, East Lansing, Michigan, October 23, 2017
- “eDiscovery with Sixth Circuit Justice David McKeague,” Michigan State University College of Law, East Lansing, Michigan, April 26, 2016
- “e-Discovery Trends and Technology-Assisted Review,” Michigan State University College of Law, East Lansing, Michigan, November 17, 2014
- “Current and Future e-Discovery Trends and Opportunities,” Michigan State University College of Law, November 18, 2013
- “Electronic Discovery for Trial Attorneys,” Michigan State University College of Law, October 7, 2013
- Training Session for Federal Judges: “Predictive Coding: Workflow and Relevant Case Law,” United States District Court for the Eastern District of Michigan, Detroit, Michigan, May 22, 2013
- “Electronic Discovery + Records Management,” Michigan State University College of Law School, October 8, 2012

Speaking Engagements

- “eDiscovery Database Workshop” for Detroit ACEDS Chapter on June 24, 2020, the Jacksonville ACEDS Chapter on October 1, 2020, the Denver ACEDS Chapter on November 13, 2020, the Jacksonville Bar Association on January 14, 2021, the Bar Association of Metropolitan St. Louis on February 11, 2021 and the Ohio ACEDS Chapter on April 1, 2021
- “Michigan’s New Discovery Rules” for the Michigan Defense Trial Counsel Association in Novi, Michigan, on November 8, 2019
- Moderator for Judicial Panel Discussion of Michigan’s New Discovery Rules for Association of Certified eDiscovery Specialists (ACEDS) Fall Symposium in Detroit, Michigan, on September 27, 2019
- “Michigan Supreme Court: New Members and New Rules, Attorney Client Privilege, Litigation and Discovery,” Association of Corporate Counsel West Michigan, Grand Rapids, Michigan, May 22, 2019
- “ESI Protocol,” Association of Certified eDiscovery Specialists (ACEDS) 2017 Fall eDiscovery Symposium, Detroit, Michigan, September 21, 2017
- “Generating a Competitive Advantage Through Information Governance: Lessons from the Field,” South East eDiscovery & IG Retreat, Atlanta, Georgia, May 23, 2016
- “Information Governance - How do you Eat an Elephant,” 2015 East Coast eDiscovery & IG Retreat, Harwich, Massachusetts, November 9, 2015
- “Behind TAR’s Veil: How to Strike the Balance Between Transparency, Disclosure and Cooperation” and “Challenging the Assumptions, Claims and Givens of TAR to Make it More Effective and Just,” ACEDS 6th Annual e-Discovery Conference, National Harbor, Maryland, September 29, 2015

- “How an Understanding of Available Technology Tools and the Proposed Amendments to the Federal Rules of Civil Procedure Can and Should Reduce Litigation Costs and Risks,” Crain’s General and In-House Summit, Detroit, Michigan, June 10, 2015
- “TAR/Predictive Coding,” Association of Certified E-Discovery Specialists (ACEDS) Lunch & Learn, Detroit, Michigan, May 7, 2015
- “Merger Investigations: The Benefits of Technology-Assisted Document Review in 2014,” Knowledge Group Webinar, November 25, 2014
- “E-Discovery – Strategies and Ethical Considerations for Protecting Privileged and Patient Health Information,” 20th Annual Health Law Institute, March 7, 2014
- “Practical Approaches to Creating and Implementing Rule 26 Discovery Plans,” eDiscovery Retreats, San Diego, California, July 1, 2013
- “What a Responsible Professional (CPA or Attorney) Should Know About E-Discovery and Records Management,” Illinois CPA Society Fraud Conference, Chicago, Illinois, September 20, 2012
- “E-Discovery Update – ESI and the Government,” Law Review CLE Webinar, Las Vegas, Nevada, June 24, 2012
- “Early Case Assessment: Assessing Your Client’s Risk,” The Association of Litigation Support Professionals, Detroit, Michigan, November 16, 2010
- “E-Discovery Tips, Tricks & Strategies for Antitrust Lawyers,” ExecSense Webinar, July 20, 2010
- “What Attorneys Must Know about Duty to Preserve Triggers,” In-House Counsel Webinar, January 21, 2010
- “Preservation of Electronic Evidence, e-Discovery – No Longer an Option – It’s a Rule, So Now What?” Oakland County Bar Association, Bloomfield Hills, Michigan, September 22, 2009
- “The Essentials of Preparing your Clients for the Burdens of E-Discovery,” 34th Annual Labor & Employment Law Institute, Plymouth, Michigan, April 2, 2009
- “Michigan’s New E-Discovery Rules,” Oakland County Bar Association, Employment Law Section, Bloomfield Hills, Michigan, March 10, 2009

Interviews

- “Michigan is Getting Prepared for its Biggest Discovery Rules Changes in 30+ Years,” Legaltech News, October 9, 2019
- “Law firms examine pros and cons of e-discovery,” Grand Rapids Business Journal, April 21, 2017
- “New Federal Rules of Civil Procedure aimed at efficiency,” Michigan Lawyers Weekly, December 14, 2015
- “Mega Data – Firms Step up to Maintain, Advise on Clients’ Info,” Michigan Lawyers Weekly, April 27, 2015

- “What every lawyer should know about e-discovery. The best tip: Know what you don’t know,” Michigan Lawyers Weekly, August 18, 2014
- “Magistrate Judge Limits Scope of the Duty to Preserve in Denying Spoliation Sanctions,” InsideCounsel, October 2013
- “Federal Court Orders Losing Party to Pay the Costs of Computer Assisted Review,” InsideCounsel, May 22, 2013
- “Rule Changes Would Deal with Discovery,” Michigan Lawyers Weekly, May 20, 2013
- “Following the Text Message Trail,” Michigan Lawyers Weekly, May 6, 2013
- “Apple, Samsung Narrowly Escape Adverse Inference Instruction,” InsideCounsel, November 2012
- “Court Reduces e-Discovery Costs Awarded by More Than 90 Percent: 3rd District has a Conservative View on What e-Discovery Costs are Recoverable,” InsideCounsel, June 2012
- “Shrinking the Universe of Information,” Detroit Legal News, April 17, 2012
- “Appeals Court Affirms Dismissal of Case for E-Discovery Compliance,” InsideCounsel, July 2011
- “Proportionality Principles,” InsideCounsel, March 2011
- “Seven Factors to Consider in Triggering a Litigation Hold,” InsideCounsel, May 2010
- “Discovery Discipline: Courts Impose Sanctions for Failure to Disclose Discoverable Data,” InsideCounsel, December 2009
- “Protecting Privilege – New Rule 502 Mitigates the Risk of Inadvertent E-Discovery Disclosures,” InsideCounsel, February 2009
- “No Safe Harbor in Discovery Storm,” Michigan Lawyers Weekly, September 29, 2008
- “Paradigm Shift: E-discovery Rules on Verge of Catching Up With Technology,” New England In-House, July 2006
- “Threat of Morgan Stanley Fine Highlights Perils of Email,” Compliance Week, September 20, 2005
- \$1.45B Fraud Verdict Against Morgan Stanley is ‘Wake Up Call’,” Lawyers Weekly USA, June 20, 2005

Courts

- U.S. District Court, Western District of Michigan
- U.S. District Court, Eastern District of Michigan
- U.S. District Court, Northern District of Illinois

Admitted

- 1990, Michigan