



### Andrew J. Peck

#### Senior Counsel

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The Honorable Andrew J. Peck served for 23 years (from February 1995 until his retirement in February 2018) as a United States Magistrate Judge for the Southern District of New York, including a term as Chief Magistrate Judge from 2004 to 2005. Before his appointment to the bench, Judge Peck was in private practice for 17 years, focusing on commercial and entertainment litigation, including copyright and trademark matters, with extensive trial experience.

At DLA Piper, Judge Peck advises on copyright and trademark matters, and also serves as a resource for the firm and its clients on litigation strategy and discovery issues, from a Judge's perspective. Judge Peck particularly advises on innovative and efficient solutions to the challenges of information management, both within and outside the litigation context, including cross-border discovery issues.. He frequently speaks at conferences concerning eDiscovery issues. Since joining DLA Piper, Judge Peck has been retained to serve as special discovery counsel to clients and law firms, and to submit expert reports in state court cases.

Judge Peck is ranked in Band 2 by Chambers and Partners in their 2021 *Chambers USA* guide in Nationwide E-Discovery & Information Governance. Chambers commented that his "former position as a US Magistrate Judge, and prior experience as a broad-based commercial litigator, make him a unique asset to clients, who regularly engage him as special e-discovery counsel". Chambers added that "He is very knowledgeable on litigation tactics, ESI and much more. He is not only a complete subject matter expert, but he can anticipate what the opposing side will say." *The Legal 500 United States 2021* ranked DLA Piper's eDiscovery team in Tier 2, with client testimonials noting that Judge Peck is "very experienced in handling a variety of e-discovery matters" and is "very innovative when it comes to dispute resolution."

Judge Peck is available to serve as an arbitrator, mediator, Special Master, and ediscovery expert witness. In addition to serving directly through DLA Piper, Judge Peck is on the arbitration and mediation rosters of the American Arbitration Association (AAA), Federal Arbitration, Inc., and National Arbitration and Mediation (NAM).

Judge Peck is recognized internationally for bringing electronic discovery competency to the attention of both the judiciary and bar. He is widely described as one of the first judges to tackle the subject of e-discovery head on. His landmark decision in the 2012 employment class action *Monique Da Silva Moore, et. al. v. Publicis Groupe & MSL Group*, was the first judicial decision approving the use of technology-assisted review (TAR). By 2015, Judge Peck declared in *Rio Tinto v. Valle* that it was black-letter law that if the responding

### RELATED SERVICES

- Trademark and Copyright
- Litigation, Arbitration and Investigations
- Intellectual Property and Technology
- eDiscovery and Information Management
- Appellate Advocacy

party wished to use TAR, courts would allow it. In the third of his trilogy of TAR cases, *Hyles v. City of New York*, he stated that while he preferred the use of TAR, neither the requesting party nor the court could require a reluctant responding party to use TAR.

On his retirement from the bench, the *New York Law Journal* in March 2018 called Judge Peck "one of e-discovery's most influential figures." Among the honors he has received, the *American Lawyer* named him to its list of the Top 50 Innovators of the Last 50 Years as its Judicial E-Discovery Innovator.

## EXPERIENCE

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During his tenure as a Magistrate Judge, Judge Peck issued more than 1,500 opinions. He also settled numerous cases.

### JUDGE PECK'S KEY EDISCOVERY OPINIONS ARE:

- *Fischer v. Forrest*, 14 Civ. 1304 & 1307, 2017 WL 773694 (S.D.N.Y. Feb. 28, 2017) (Rule 34)
- *Hyles v. New York City*, 10 Civ. 3119, 2016 WL 4077114 (S.D.N.Y. Aug. 1, 2016) (requesting party cannot force responding party to use TAR)
- *Rio Tinto PLC v. Vale S.A.*, 14 Civ. 3040, 2015 WL 4367250 (S.D.N.Y. July 15, 2015) (appointing TAR Special Master)
- *Rio Tinto PLC v. Vale S.A.*, 306 F.R.D. 125 (S.D.N.Y. 2015) (black-letter law that responding party can use TAR)
- *Da Silva Moore v. Publicis Groupe*, 287 F.R.D. 182 (S.D.N.Y. 2012) (first judicial decision approving use of predictive coding aka TAR), *aff'd*, 2012 WL 1446534 (S.D.N.Y. Apr. 26, 2012)
- *William A. Gross Constr. Assocs., Inc. v. Am. Mfrs. Mut. Ins. Co.*, 256 F.R.D. 134 (S.D.N.Y. 2009) (keyword search)
- *In re NTL, Inc. Sec. Litig.*, 244 F.R.D. 179 (S.D.N.Y. 2007) (possession, custody or control; spoliation & adverse inference instruction), *aff'd*, 2007 WL 1518632 (S.D.N.Y. May 17, 2007)
- *Anti-Monopoly, Inc. v. Hasbro, Inc.*, 94 Civ. 2120, 1995 WL 649934 (S.D.N.Y. Nov. 3, 1995) (discoverability of computerized data)

### REPRESENTATIVE INTELLECTUAL PROPERTY DECISIONS

- *Janik v. SMG Media, Inc.*, 16 Civ. 7308, 2018 WL 345111 (S.D.N.Y. Jan. 10, 2018) (denial of defendant's motion for prevailing party attorneys' fees under the Copyright Act)
- *Goldberger Co. v. Uneeda Doll Co.*, 16 Civ. 4630, 2017 WL 3098110 (S.D.N.Y. July 21, 2017) (denial of Rule 11 sanctions in trademark and false advertising case)
- *Fischer v. Forrest*, 14 Civ. 1304 & 1307, 2017 WL 2992663 (S.D.N.Y. July 14, 2017), 2017 WL128705 (S.D.N.Y. Jan 13, 2017) (granting motion to dismiss and motion for summary judgment on copyright, trademark, Digital Millennium Copyright Act and false advertising claims)
- *Crown Awards, Inc. v. Trophy Depot, Inc.*, 15 Civ. 1178, 2017 WL 564885 (S.D.N.Y. Feb. 13, 2017) (denial of Rule 11 sanctions in trademark and false advertising case)
- *Wu v. John Wiley & Sons, Inc.*, 14 Civ. 6746, 2015 WL 5254885 (S.D.N.Y. Sept 10, 2015) (copyright infringement claim re photographs in textbooks; statute of limitations and damage issues)
- *Denimafia Inc. v. New Balance Athletic Shoe, Inc.*, 12 Civ. 4112, 2014 WL 814532 (S.D.N.Y. Mar. 3, 2014) (trademark infringement)
- *Mahoney v. Sony Music Entertainment*, 12 Civ. 5045, 2013 WL 491526 (S.D.N.Y. Feb. 11, 2013) (contractual royalty dispute)
- *Toto v. Sony Music Entertainment*, 12 Civ. 1434, 2012 WL 6136365 (S.D.N.Y. Dec. 11, 2012) (contractual royalty dispute)
- *Wi-LAN, Inc. v. LG Elec., Inc.*, 10 Civ. 432, 2011 WL 3279075 (S.D.N.Y. Aug. 2, 2011) (patent infringement, claim construction)
- *All-Star Mktg. Group, LLC v. Media Brands Co.*, 10 Civ. 1764, 2011 WL 9381 (S.D.N.Y. Jan. 3, 2011) (statutory trademark damages)
- *Burberry Ltd. v. Euro Moda, Inc.*, 08 Civ. 5781, 2009 WL 4432678 (S.D.N.Y. Dec. 4, 2009) (statutory trademark damages)
- *Mowry v. Viacom Int'l, Inc.*, 03 Civ. 3090, 2005 WL 1793773 (S.D.N.Y. July 29, 2005) (summary judgment in copyright infringement action; no proof of access or striking similarity)
- *Revlon Consumer Prods. Corp. v. Estee Lauder Cos.*, 00 Civ. 5960, 2003 WL 21751833 (S.D.N.Y. July 30, 2003) (patent claim construction)

## CREDENTIALS

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## Admissions

- New York

## Clerk Experience

- The Honorable Paul Roney, United States Court of Appeals for the Eleventh (then Fifth) Circuit, 1977-1978

## Recognitions

- *Law Technology News* – Champion of Technology Award, 2011
- Electronic Discovery Institute – Judicial Leadership Award, 2013
- Zapproved Pinnacle Award (for providing direction on how to handle the rapidly changing demands of electronic discovery in civil litigation) January 30, 2018
- *American Lawyer* Judicial E-Discovery Innovator, on its list of the Top 50 Innovators of the Last 50 Years
- *Chambers USA*, "Recognized Practitioner" for Nationwide Litigation: E-Discovery, 2019
- *Chambers USA*, Band 3 for Nationwide E-Discovery & Information Governance, 2020
- *Chambers USA*, Band 2 for Nationwide E-Discovery & Information Governance, 2021
- *The Legal 500 United States*, Tier 2, eDiscovery, 2020, 2021

## Education

- J.D., Duke University 1977  
Order of the Coif, graduated First in the class  
Editor, *Duke Law Journal*
- B.A., Cornell University 1974  
with honors

## Courts

- Supreme Court of the United States
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Fifth Circuit
- United States Court of Appeals for the Sixth Circuit
- United States Court of Appeals for the Seventh Circuit
- United States Court of Appeals for the Eighth Circuit
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Tenth Circuit
- United States Court of Appeals for the Eleventh Circuit
- United States District Court for the Southern District of New York
- United States District Court for the Eastern District of New York

## Memberships

- SDNY-EDNY Local Rules Committee – member and former Co-Chair
- Second Circuit Federal-State Judicial Council

- Sedona Conference Working Group 1 (Electronic Discovery) Steering Committee
- LegalTech Educational Advisory Board
- Judicature Editorial Board, Bolch Judicial Institute, Duke Law School
- Duke Law Bolch Judicial Institute, Advisory Board
- Georgetown Advanced Ediscovery Institute (AEDI) Advisory Board, Georgetown Law School
- EDRM Advisory Board
- New York State Bar Association Commercial & Federal Litigation Section, Executive Committee

## Civic and Charitable

- Baker Street Irregulars and other Sherlock Holmes societies
- Mystery Writers of America, Inc. –member; former national Executive Vice President; former President and New York Chapter Board of Directors member
- Duke Law School Board of Visitors

## INSIGHTS

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### Publications

#### **Defensible deletion: The proof is in the planning**

5 February 2021

A framework for making defensible deletion an attainable goal.

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#### **Rule 26(g) certification means more than guide and advise: Key takeaways**

12 August 2020

Sanctions were imposed on an attorney for failing to properly oversee the client's discovery process.

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- The Sedona Conference Commentary on the Effective use of Federal Rule of Evidence 502(d) Orders (2021) (Co-editor-in-chief and Steering Committee Liaison)
- Exterro Case Law Alerts, "Expert Analysis" (periodically)
- A View from the Bench and the Trench(es) in Response to Judge Matthewman's New Paradigm for E-Discovery: It's More Complicated, 71 Fla. L. Rev. F. 143 (2010)
- The Sedona Conference Commentary on Rule 45 Subpoenas to Non-Parties, Second Edition (October 2020) (Co-editor-in-chief and Steering Committee Liaison)
- Keeping Civil Cases Civil: A Best Practices Guide From 4 Perspectives, ACC.com (with Vincent Montalto, Cara D. Edwards, and Reyna E. Kessler)
- Foreword, TAR for Smart People (3d edition 2018), by John Tredennick
- Creating Cooperation in Discovery: Musings on Building Trust, N.Y.L.J., April 9, 2018 (with Dawson Horn and David Kessler)
- Judge Andrew J. Peck, 1 of E-Discovery's Most Influential Figures, Retires from the Branch, by Ian Lopez, N.Y.L.J., March 5, 2018
- The Sedona Conference Federal Rule of Civil Procedure 34(b)(2) Primer: Practice Pointers for Responding to Discovery Requests, 19 Sedona Conf. J. 447 (2018) (Judicial Participant)
- The Sedona Principles, Third Edition, 19 Sedona Conf. J. 1 (2018) (Judicial Participant and Editorial Style Committee member)

- The Sedona Conference TAR Case Law Primer, 18 Sedona Conf. J. 1 (2017) (Judicial Observer)
- Foreword, Perspectives on Predictive Coding (edited by Jason Baron, Ralph Losey and Michael Berman), American Bar Association 2016
- The Sedona Conference Commentary on Protection of Privileged ESI, 17 Sedona Conf. J. 95 (2015) (Judicial Participant)
- Foreword, A Survey of Emerging Issues in Electronic Discovery, 26 Regent Univ. L. Rev. 1 (2013-14)
- E-Discovery: Where We've Been, Where We Are, Where We're Going, 12 Ave Maria L. Rev. 1 (2014) (with Magistrate Judge John Facciola and Steven Teppler)
- Search, Forward: Will manual document review and keyword searches be replaced by computer-assisted coding?, Law Technology News, Oct. 2011

## PRESENTATIONS AND SEMINARS

### 2020-2021 WEBINARS AND VIRTUAL CONFERENCES

- Speaker, Sedona Conference on Remote Case Management of IP Proceedings, June 10, 2021
- Speaker, ACEDS and Relativity, TAR on Trial: From Da Silva Moore to Today, June 8, 2021
- Speaker, Legility Symposium, Views from the Bench: Conversation with the Judiciary, May 25, 2021
- Speaker, Everlaw Summit: Illuminate 2021, Panel: Disruption as an Enabler of Change in 2021, April 27, 2021
- Speaker, Duke Law School Bolch Judicial Center, What is Proportional Discovery?, April 21, 2021
- Speaker, Corporate Round Table, judges panel, January 27, 2021
- Speaker, EDRM- Doug Austin, EDiscovery MonthlyCase Law Update Webinars, monthly in 2020-2021
- Speaker, DLA Piper public webinar, Ethics and EDiscovery, November 10, 2020
- Speaker, PLI Trial Evidence 2020: FRE 502 and Preservation of Privilege, October 22, 2020
- Speaker, ARMA InfoCon, Judicial Fireside Chat, October 20, 2020
- Speaker, HPC Global Summit, Judicial Keynote, October 8, 2020
- Speaker, DLA Piper public webinar, Corporate Clutter and Defensible Deletion, September 15, 2020
- Speaker, TextIQ a webinar, How AI is Reshaping Privilege Review, August 13, 2020
- Speaker, Driven Hot Topics in InfoGov and EDiscovery webinar, July 8, 2020
- Speaker, Exterro EDiscovery Case Law Updates: 2020 Half Year Review June 2020

### 2018 TO DATE CONFERENCES AND SEMINARS

- Speaker, Georgetown Advanced eDiscovery Institute, Washington, DC, November 21-22, 2019
- Speaker, The Sedona Conference Working Group 1 Annual Meeting, virtual, October 28, 2020; St. Louis, MO, October 24-25, 2019; Hollywood, CA, October 25-26, 2018
- Speaker, Exterro Infusion Conference, Portland, OR, October 16-17, 2018
- Speaker, Electronic Discovery Institute (EDI) Leadership Summit, Fort Lauderdale, FL, October 11-12, 2018
- Speaker, GICLI (Government Investigations & Civil Litigation Institute) Annual Meeting, Fort Lauderdale, FL, October 10, 2018
- Speaker, Relativity Fest, virtual, October 2020; Chicago, IL, October 21-22, 2019; October 1-3, 2018
- Speaker, Zapproved PREX (Preservation Excellence) Conference, Chicago, IL, September 17-19, 2019; Portland, OR, September 26-27, 2018
- Speaker, PLI Hot Topics in Electronic Discovery, virtual, 2021; New York, NY, September 17, 2018
- Speaker, Sandpiper Partners, Hot Topics in E-Discovery Conference, Dallas, TX, September 14, 2018
- Speaker, C4 Legal New York Chapter, Fireside Chat with the Honorable Andrew J. Peck: Preparing for EDiscovery Trends in 2020 and Beyond, New York, NY, September 13, 2019
- Speaker, ABA Cross-Border Discovery Institute, Berlin, Germany, July 25, 2019; Brussels, Belgium, July 26-27, 2018
- Speaker, Today's General Counsel & Institute, E-Discovery for the Corporate Market, New York, NY, July 16-17, 2019; July 17-18, 2018

- Speaker, Ediscovery Institute (EDI) Summer Meeting, New York City, June 20, 2018
- Keynote Speaker, Fresh Off the Bench – Judicial Perspective on E-Discovery, New York State Bar Association CLE Program at Yankee Stadium, Bronx, NY, June 12, 2018
- Speaker, Lighthouse Illuminations Summit, Coconut Grove, FL, May 20-22, 2019
- Participant, Duke Law – EDRM Workshop on TAR & GDPR, Durham, NC, May 16-17, 2019; May 23-25, 2018
- Speaker, DRI Super Conference Business Litigation, Austin, TX, May 10, 2019
- Speaker, Women in Ediscovery National Conference, Austin, TX, May 9, 2019
- Speaker, The Sedona Conference Mid-Year Meeting, Charlotte, NC, May 2-3, 2019; Nashville, TN, May 3-4, 2018
- Speaker, Sandpiper Partners GDPR: Impact Worldwide on Data Protection, Privacy, E-Discovery and Cybersecurity, New York, NY, April 24, 2018
- Speaker, National Ediscovery Leadership Institute (NELI), Kansas City, MO, April 5, 2019
- Speaker, American Bar Association Employment Rights and Responsibility Committee Midwinter Meeting, Clearwater Beach, FL, March 20-24, 2018
- Keynote Speaker, Arkfeld – ASU E-Discovery and Digital Evidence Conference, Phoenix, AZ, March 6-8, 2018
- Speaker, The Sedona Conference Institute, St. Louis, Mo., March 5-6, 2020; Charlotte, NC, March 7-8, 2109; Nashville, TN, March 1-2, 2018
- Speaker, From Da Silva Moore to Microsoft: A Program Honoring Judge Peck and Judge Francis on the Occasion of Their Retirement From the Bench, Cardozo Law School, New York, NY, February 27, 2018
- Speaker, American Bar Association Fair Labor Standards Legislation Committee Midwinter Meeting, Nassau, Bahamas, February 21-23, 2018
- Faculty, Sedona Conference Negotiation Training, New York, NY, February 13-14, 2020
- Participant, Global Governance of A.I. Roundtable, Dubai, UAE, February 10, 2019
- Keynote Judicial Panel and other panels, Legal Tech New York, virtual, January 14, 2021; New York, NY, February 4-6, 2020; January 29-30, 2019; January 31, 2018
- Speaker, New York State Bar Association Commercial and Federal Litigation Section Annual Meeting, New York, NY, January 16, 2019

## Events

### Previous

#### The AEDI Classroom - eDiscovery 101

9 September 2021 | 12:00 ET  
Webinar

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#### What is "Proportional Discovery"?

21 April 2021 | 12:30 - 2:30 ET  
Webinar

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#### Ethics and eDiscovery Webinar

10 November 2020 | 1:30 - 2:30 ET  
Webinar

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## Corporate clutter and defensible deletion

15 September 2020 | 1:30 – 2:30 ET

Webinar

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## NEWS

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### Retired Judge Andrew Peck appointed as Judicial Emeritus member of Sedona Conference Working Group 1 Steering Committee

5 January 2021

DLA Piper is pleased to announce that former United States Magistrate Judge Andrew J. Peck has been appointed by The Sedona Conference as a Judicial Emeritus member of the Steering Committee of Working Group 1 (WG1), effective January 2021.

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