

Tuesday, October 19, 2021

5:30 — 7:30 Evening Welcome Reception

Wednesday, October 20, 2021

7:30 — 8:30 Buffet Breakfast & Sign-In

8:30 — 8:45 Welcome & Announcements  
(Craig Weinlein, Martin Tully)

8:45 — 10:15 [Session 1] Case Law Review: Key eDiscovery and ESI Decisions from 2021  
(Kevin Brady, Phil Favro\*, Kelly McNabb, Niloy Ray, Hon. Michelle Sheehan, Ken Withers)

2021 has ushered in several ESI developments regarding discovery affecting lawyers and litigants alike. With new wrinkles in longstanding topics like proportionality and sanctions to cutting-edge trends with forensic exams, family production practices, and the interplay between procedural and evidentiary rules, this session will provide practitioners with an understanding of the top eDiscovery court decisions issued so far this year.

**Recommended Material:**

1.1 Selected eDiscovery and ESI Case Law from 2021

10:15 — 10:45 Morning Break

10:45 — 12:00 [Session 2] Privilege Logs v. 2021  
(Kelly Atherton, Rebekah Bailey, Hon. Kimberly Priest Johnson, Claudia Morgan\*, Hon. Tom Vanaskie (ret.), Florence Yee)

Privilege logging in today's digital world can consume hundreds of thousands of dollars unnecessarily. A reassessment of privilege log requirements appears to be gaining ground, particularly since the Civil Rules Advisory Committee is considering possible amendments to address systemic privilege log problems. Continuing The Sedona Conference's tradition of dedicating sessions about privilege logs at WG1 meetings, representatives of different constituencies will lead the dialogue on the status of the Privilege Log drafting team's efforts.

**Required Materials:**

2.1 The Sedona Conference WG1 Privilege Logs Drafting Team Executive Summary  
2.1.1 Drafting Team Draft Commentary on Privilege Logs (Oct. 2021)

## ANNOTATED AGENDA

**Recommended Materials:**

- 2.2 Compilation of Exemplar Logs
- 2.3 Civil Rules Discovery Subcommittee Notes

**12:00 — 1:00 Lunch (provided)****1:00 — 2:15 [Session 3] Exploring the Effective Use of Discovery-Related Sanctions**  
(Anthony DiSenso, Robert Keeling\*, Jeannine Kenney, Hon. Xavier Rodriguez, Karen Sanner)

The Sedona Conference WG1 Sanctions Brainstorming Group performed a holistic analysis on the application and effectiveness of discovery-related sanctions available under the Federal Rules of Civil Procedure. Panelists from the Brainstorming Group will discuss their findings on how sanctions are being used in discovery, the impact of the inconsistent application of sanctions, and the interplay between sanctions available under the Rules and the court's inherent authority. The panel will provide guidance on what more can be done to resolve or navigate inconsistencies in the law and how sanctions can be effectively used to facilitate good-faith participation in discovery.

**Required Materials:**

- 3.1 The Sedona Conference Discovery Sanctions Brainstorming Group Executive Summary
- 3.2 The Sedona Conference Discovery Sanctions Brainstorming Group Draft Outline

**Recommended Material:**

- 3.3 Additional Resource List for Effective Use of Discovery-Related Sanctions

**2:15 — 2:45 Afternoon Break****2:45 — 3:45 [Session 4] eDiscovery Implications of the Internet of Things (IoT)**  
(Lilith Bat-Leah, Hon. J. Philip Calabrese, Jennifer Coleman\*, Warren Kruse, Christopher Suarez, Steven Teppler)

The universe of potentially discoverable ESI has been significantly expanded by the emergence of tens of billions of connected devices, commonly known as the Internet of Things ("IoT"). Devices such as smart watches, fitness trackers, vehicle systems, and smart home products, along with the ESI that they may generate, collect, transmit, and store, pose unique discovery challenges that may not fit neatly into current eDiscovery practices and associated decisional authority. In this session, members of the IoT drafting team will lead a dialogue on moving the law forward on this timely and complex topic.

**Required Material:**

- 4.1 Drafting Team Draft Primer on the eDiscovery Implications of the Internet of Things

## ANNOTATED AGENDA

**3:45 — 4:45 [Session 5] Database Discovery**

(Lilith Bat-Leah, Scott Cleary, Laura Hunt\*, Dan Regard, Hon. Brendan Sheehan)

The volume of data in databases, and the types of data stored in these databases, has, like all other data, increased exponentially. In addition, advances in broadband and “the Cloud” bring new ways to store and access that data. The Database Principles Brainstorming Group will report on their work evaluating the need to update the 2014 publication, *The Sedona Database Principles*, with regards to the paper’s applicability to present-day database discovery, the inclusion of new data types, and the impact of new Civil Rules and recent database case law.

**Recommended Materials:**

- 5.1 The Sedona Conference Database Principles Addressing the Preservation & Production of Databases & Database Information in Civil Litigation (September 2014)
- 5.2 Sedona Conference Database Principles Brainstorming Group Recommendations

**4:45 — 5:00 Recognitions****5:00 — 7:00 Reception (Guests Invited)****Thursday, October 21, 2021****7:30 — 8:30 Breakfast Buffet & Sign -In****8:30 — 10:00 [Session 6] Voices from the Bench: The Judicial Perspective for 2021 and Beyond**

(Hon. Stewart Aaron, Hon. J. Philip Calabrese, Jennifer Coleman\*, Hon. Kimberly Priest Johnson, Hon. Xavier Rodriguez, Hon. Brendan Sheehan, Hon. Michelle Sheehan, Hon. Melody Stewart)

This session offers a wide variety of judicial perspectives about issues that are top-of-mind for the field including:

- How might counsel handle ESI preservation and spoliation events within ethical boundaries?
- What is and isn't working with ESI Protocols?
- What technologies are increasingly problematic for ESI discovery?
- How can courts strike a balance between active judicial case management and discovery being a party-driven process?
- What strategies work for dispute resolution that encourage the parties to reach a cooperative resolution regarding ESI disputes?
- Special Masters for ESI disputes—what’s working and what’s not?
- Ethical obligations regarding competence—what is the standard, and how can courts make their expectations clear?

**Recommended Materials**

- 6.1 The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production

## ANNOTATED AGENDA

- 6.2 The State Bar of California Standing Committee on Professional Responsibility and Conduct Formal Opinion No. 2015-193
- 6.3 Additional Resources List for The Judicial Perspective for 2021 and Beyond

10:00 — 10:30 [Session 7] The State of Sedona WG1  
(Martin Tully)

10:30 — 10:45 **Morning Break**

10:45 — 11:45 [Session 8] “Let me guess, Proportionality”  
(Hon. Stewart Aaron, Vincent Catanzaro, Andrea D’Ambra\*, Tessa Jacob, Henry Kelston)

Proportionality has been part of the discoverability analysis since long before the 2015 amendments moved it to Rule 26(b). Since then, proportionality has enjoyed a renaissance as a popular basis for both objecting to and demanding discovery. Dialogue leaders will lead a discussion on the evolution of parties’ use, and courts’ analyses, of proportionality. The session will also explore the interplay between the proportionality factors and identify other possible considerations, such as privacy, that—while not identified in Rule 26(b)—have been considered while assessing proportionality.

**Recommended Materials:**

- 8.1 The Sedona Conference Commentary on Proportionality in Electronic Discovery (May 2017)
- 8.2 Proportionality Weaponized: How It Happens and What Can Parties and Courts Do about It

11:45 — 12:45 [Session 9] Ethics and Technology at the Intersection of Proportionality and Scope of Discovery  
(Kimberly Duplechain, Claire Hass, Angelica Ornelas, Hon. Melody Stewart, Jeremy Wikler\*)

Beyond an attorney’s ethical requirement of competence with technology, there are other rules of professional conduct that may be easy to miss as applicable to a litigator’s discovery practice. The rules calling for candor to the court and fairness to the opposing party, and counsel may be implicated when an attorney negotiates or uses technology in the realm of proportionality or scope of discovery. Our dialogue leaders will explore the intersection between these areas, technology, and the applicable ethical rules and discuss how litigators can best navigate those ethical waters.

**Recommended Material:**

- 9.1 Ethics and Technology at Intersection of Proportionality and Scope of Discovery

12:45 — 1:00 **Closing Remarks**  
(Craig Weinlein)

1:00 **Adjournment & Grab & Go Lunch (provided)**