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SedonaConference



The Sedona Conference

The Sedona Conference Working Group 1
Electronic Document Retention & Production
2022 Midyear Meeting

The Camby – Phoenix, AZ

#SedonaConference

ANNOTATED AGENDA

Wednesday, April 27, 2022

5:30 — 7:30 Evening Welcome Reception

Thursday, April 28, 2022

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

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

8:45 — 10:15 [Session 1] ESI Case Law in 2022: Key Trends and Developments
(Phil Favro*, Hon. Allison Goddard, Ruth Hauswirth, Robb Snow)

ESI case law in 2022 is pushing courts to consider both technologically challenging and well-worn topics. While addressing subjects like ephemeral messaging and cloud applications, courts continue to grapple with issues regarding Rule 34 responses and conduct that could merit discovery sanctions. This session will review some of the top eDiscovery court decisions from the past six months on these and other issues and discuss how they may affect discovery practice going forward in 2022.

Required Material:

1.1 Selected eDiscovery and ESI Case Law from 2021-22, Phil Favro, ed.

Recommended Materials:

1.2 Thomas Y. Allman, Amended Rule 37(e): Case Summaries.

1.3 Thomas Y. Allman, Rule 37(e) Today: By the Numbers.

10:15 — 10:30 Morning Break

10:30 — 11:30 [Session 2] Unique eDiscovery Challenges in Multidistrict Litigation
(Tracy Greer*, Tim Opsitnick, Angelica Ornelas, Michelle Six)

Multidistrict Litigations (MDLs) are the 800-pound gorilla in federal courts and are a procedural and logistical area outside of the “standard” rules. Since at least August 2017, when the Advisory Committee on Civil Rules created an MDL subcommittee, conversations, panels, and conferences have discussed problems with current MDL rules and proceedings. Join us for a session exploring the unique eDiscovery challenges in the MDL context as well as best practices in how to face those challenges.

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Recommended Materials:

- 2.1 Hon. David G. Campbell & Jeffrey A. Kilmark, *Advice to a New MDL Judge on Discovery Management*, 89 UMKC L. Rev. 889 (2021).
- 2.2 Elizabeth Cabraser, *The JPML Hearing: A Plaintiff's Perspective*, 89 UMKC L. Rev. 817 (2021).
- 2.3 Sheila L. Birnbaum, et al., *JPML Process: A Defendant's Perspective*, 89 UMKC L. Rev. 817 (2021).
- 2.4 Additional Resource List for Unique eDiscovery Challenges in Multidistrict Litigation.

11:30 — 12:00 [Session 3] Drafting Team Review: Today's Privilege Log Solutions (Tessa Jacob*, Adam Gajadharsingh, Meghan Podolny)

With the explosion of electronic communications, privilege review has become even more cumbersome and expensive, causing many to ask whether a better approach to demonstrating privilege exists. The Sedona Conference has assembled a drafting team to explore alternative logging options and methodologies for improving efficiencies. Dialogue leaders will update membership on the team's draft and elicit feedback on important topics.

Required Materials:

- 3.1 The Sedona Conference WG1 Draft Commentary on Privilege Logs.
- 3.2 Compilation of Exemplar Privilege Logs.

12:00 — 1:00 Lunch (provided)

1:00 — 2:00 [Session 4] Database Principles: Keeping Current in the Cloud in a Remote-Work Era (Scott Clary*, Jeffrey Bannon, Laura Hunt, Shari Mauney, Jonathan Swerdloff)

WG1 last updated *The Sedona Database Principles* in 2014 to reflect current best practices and recommendations for eDiscovery in civil actions involving databases and information derived from databases. Since that time there has been a growing trend toward remote work and virtual offices. With this trend, the use and importance of cloud databases has significantly increased. The Database Principles drafting team will provide dialogue on the status of the team's efforts to update the Database Principles to reflect the current times.

Required Materials:

- 4.1 The Sedona Conference WG1 Database Principles Drafting Team Outline.

Recommended Material:

- 4.2 The Sedona Conference Database Principles Addressing the Preservation & Production of Databases & Database Information in Civil Litigation (2014).

2:00 — 3:00 [Session 5] Diversity in the Legal Sector: Branding or Sincere Initiative? (Kelly Atherton*, Leeanne Mancari, David Moncure, Maureen O'Neill, Hon. Maria Valdez)

Are diversity and inclusion committees, policies, and mission statements being used by the legal sector truly effective, or are they marketing fluff? In this session, representatives of different

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constituencies will explore initiatives that have truly advanced diversity and inclusion in the legal field, as well as those that have fallen short. Join us to dialogue on what we can learn from both to continue to advance diversity and inclusion.

Recommended Materials:

- 5.1 National Association for Law Placement, Inc., *2021 Report on Diversity in Law Firms*, (Jan. 2022).
- 5.2 Maureen O'Neill, *A Framework for Recognizing and Overcoming Implicit Bias in the Legal Profession*, Consilio Institute (2022).
- 5.3 Additional Resource List for Diversity in the Legal Sector.

3:00 — 3:30 Afternoon Break**3:30 — 4:30 [Session 6] The Application and Effectiveness of Discovery-Related Sanctions**
(Eric Mandel*, Kimberly Duplechain, Adam Gajadharsingh, Kelly McNabb, Hon. Anthony Porcelli)

The Sedona Conference has undertaken a paper focusing on the application and effectiveness of discovery-related sanctions available under the Federal Rules of Civil Procedure, including how sanctions are being used in discovery, the court's application of sanctions since the 2015 amendments, and the interplay between sanctions available under the Rules and the court's inherent authority. This panel will discuss how The Sedona Conference can help practitioners navigate this evolving body of law.

Required Material:

- 6.1 The Sedona Conference Discovery Sanctions Drafting Team Dialogue Outline.

Recommended Material

- 6.2 The Sedona Conference WG1 Discovery Sanctions Brainstorming Group Draft Outline.

4:30 — 5:00 [Session 7] Drafting Team Review: Discovery Implications of the Internet of Things
(Ross Gotler*, Claire Hass, Tessa Jacob, Greg Kohn)

The Internet of Things Drafting Team was convened in 2021 to examine the discovery challenges presented by the emergence of tens of billions of connected devices, commonly known as the Internet of Things ("IoT"). This session will provide a progress report on the drafting team's efforts and seek feedback from Sedona membership.

Required Materials:

- 7.1 The Sedona Conference WG1 Draft Commentary on Discovery Implications of the Internet of Things.

5:00 — 7:00 Reception (Guests Invited)

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Friday, April 29, 2022

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

8:30 — 10:00 [Session 8] **Voices from the Bench: The Judicial Perspective for 2022 and Beyond**
(Greg Kohn*, Hon. Allison Goddard, Hon. Anthony Porcelli, Hon. Sam Thumma, Hon. Maria Valdez)

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

- What is and isn't working with ESI Protocols?
- What technologies are increasingly problematic for ESI discovery?
- Should courts help parties reach agreement regarding ESI disputes or just make rulings on those disputes?
- Do Special Masters help?
- How have remote proceedings affected litigation?
- Sanctions and their role in ESI disputes.

Recommended Materials

- 8.1 The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production (2017).
- 8.2 The Sedona Conference Primer on Crafting eDiscovery Requests with "Reasonable Particularity" (2022).

10:00 — 10:30 Break

10:30 — 11:30 [Session 9] **Changes and Trends in TAR Case Law**
(Maria Salacuse*, Emily Jennings, Leeanne Mancari, John Pappas)

TAR has provided fertile battleground among litigating parties on many issues, including parties' discretion to use TAR, transparency and cooperation, use of search terms with TAR, validation, proportionality, and, of course, the application of Sedona Principle 6. WG1 published its *TAR Case Law Primer* in 2017, which provided a comprehensive synthesis of TAR case law at that time. Five years later, case law has continued to evolve, such that a drafting team began work last year on an updated, second edition of the *Primer*. This panel will discuss TAR case law changes and trends since 2017 and how they are being incorporated into the revised *Primer*.

Required Material:

- 9.1 The Sedona Conference TAR Case Law Draft Primer, Second Edition.

Recommended Material:

- 9.2 TAR Quotation Appendix.

11:30 — 11:45 Break

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11:45 — 12:45 [Session 10] The Evolving Ethics of Technology Competence in a Post-Email World
(Christopher Boehning*, Lea Bays, Steven Berrent, Claire Hass, Niloy Ray, Hon. Sam Thumma)

Forty states have ethics requirements of technology competence for lawyers; some well-known court decisions have stressed their importance. With a continued shift in communications from email to chats, texts, apps, Teams, and Slack — accelerated by the pandemic — and technology focused on the cloud and Internet of Things, what does this mean for lawyers in 2022 and beyond? Our panel will discuss this topic and such questions as:

- What standards should judges hold counsel — and themselves — to?
- Should judges receive additional training so they are aware of the recent changes in technology?
- Should such training be part of continuing education requirements for lawyers?
- What ethics principles are lawyers bound by in their eDiscovery obligations?

Recommended Materials:

- 10.1 ABA Model Rule 1.1 Competence – Comment.
- 10.2 Robert Ambrogi, LAWsites, *Tech Competence – 40 States Have Adopted the Duty of Technology Competence*.
- 10.3 Additional Resource List for The Evolving Ethics of Technology Competence in a Post-Email World.

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

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