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SedonaConference



The Sedona Conference

The Sedona Conference Working Group 1
Electronic Document Retention & Production
2021 Midyear Meeting, Online (Zoom)

#SedonaConference

AGENDA

Wednesday, April 28, 2021 (all times EDT)

12:00 — 12:15 **Welcome and Announcements**
(Craig Weinlein, Martin Tully)

12:15 — 1:45 **[Session 1] Case Law Review**
(Allison Grounds, Tessa Jacob, Hon. Michael Robinson, Hon. Elizabeth Stafford, Ken Withers*)

We may have had limited access to the courts during most of 2020—and well into 2021—but that hasn't prevented judges from issuing landmark eDiscovery decisions. Sanctions cases get the most attention, of course, and we've seen several. But the courts have also addressed the collection of ESI during a pandemic, privilege and work product protection, the increasing significance of privacy considerations, and the continued back-and-forth over ESI protocols. eDiscovery veteran Ken Withers has developed a short list of the "must know" decisions from the several months, and he will be calling on some of your colleagues to present their facts, holdings, and practical impacts.

Required Material

1.1 Selected eDiscovery Court Decisions during the "Pandemic Era"

Recommended Material

1.2 Informing Juries About Spoliation of ESI Pursuant to Amended Rule 37(e)

1:45 — 2:00 **Break/open mic**

2:00 — 2:50 **[Session 2] The Privilege Log: What's Working, What Isn't, and Approaches to Modernize It**

(Adam Gajadharsingh, Henry Kelston, Sandra Metallo-Barragan*, Claudia Morgan, Meghan Podolny, Hon. Becky Thorson)

As a follow-up to the 2019 and 2020 WG1 Annual Meeting sessions on protecting privileged ESI and alternatives to addressing privilege issues, WG1 formed the Privilege Log Brainstorming Group. The Brainstorming Group evaluated what is and is not working in the privilege log process from the perspective of both parties, developed approaches to mitigate the issues identified, including the use of technology to streamline log generation, and identified best methods for handling log disputes. The Brainstorming Group developed a framework to apply logging rules, and mitigation techniques, in a practical and efficient way consistent with the Federal Rule of Civil Procedure 1's mandate to "secure the just, speedy, and inexpensive determination" of every case, while at the same time ensuring that parties have the ability to obtain evidence necessary to litigate cases. This panel discussion will explore how we can move the law forward in a reasoned and just way with some open questions for discussion with the membership regarding whether Sedona

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should take a position on issues such as: (1) whether Rule 26(b)(1) proportionality elements apply to privilege logs, (2) should Rule 26(g) inquiry obligations apply to privilege logs, (3) does the preferred process for dispute resolution work for most cases, and (4) whether a solution to privilege logs is possible without addressing issues associated with the privilege review.

Required Material

- 2.1 The Sedona Conference WG1 Brainstorming Group Draft Outline on Privilege Log Creation and Disputes Framework

Recommended Materials

- 2.2 EDRM Streamlined Privilege Log Protocol Background
2.3 LCJ Suggestion to Advisory Committee on Civil Rules on the Need to Amend Rules 26(b)(5)(A) and 45(e)(2)

2:50 — 3:00 Break/open mic

3:00 — 3:50 **[Session 3] Preserving and Collecting Data from the Internet of Things**
(Patrick Bland, Jennifer Coleman*, Ron Hedges, Hon. Mary Rowland, Steven Teppler)

The Internet of Things (“IoT”) refers to the ability of everyday objects to connect to the Internet and to send and receive data. This panel will discuss obtaining discovery from, for example, internet-connected cameras; home automation systems; smart speakers and TVs, and wearables. The panel will discuss the challenges of preserving and collecting data from the IoT, including topics like security, access, collection, and use of data. The panel will also discuss the results of the IoT brainstorming group’s work regarding whether Sedona should draft a paper on IoT.

Required Material

- 3.1 The Sedona Conference WG1 Brainstorming Group Draft Outline on Electronic Discovery and the Internet of Things

4:00 — 5:00 Break/open mic

4:00 — 5:00 Social Reception

Thursday, April 29, 2021 (all times EDT)

- 12:00 — 1:30 [Session 4] View from the Bench: How Lawyers Can More Effectively Address ESI Discovery Issues**
(Hon. Maria Audero, Phil Favro*, Hon. Karen Wells Roby, Hon. Michael Robinson, Hon. Mary Rowland, Hon Elizabeth Stafford, Hon. Becky Thorson, Hon. Nina Wang)
- The recent blockbuster sanctions order in *DR Distributors, LLC v. 21 Century Smoking, Inc.* has once again highlighted the importance of counsel recognizing and addressing ESI issues in discovery. In far too many cases, litigation seems to run amok because counsel neither anticipates nor properly prepares to address issues related to ESI discovery. In this session, federal and state judges will provide their insights on these problems and offer practice tips for how lawyers can more effectively address ESI discovery issues.
- Recommended Materials**
- 4.1 Methods for Effectively Addressing ESI Discovery
 - 4.2 New ESI Sanctions Order Offers E-Discovery 101 Course for Lawyers
 - 4.3 New TAR Case Spotlights Perils with Broad ESI Protocols
- 1:30 — 1:45 Break/open mic**
- 1:45 — 2:45 [Session 5] Model Rule and Best Practices for Uniformity in Filing ESI Under Seal**
(Hon. Maria Audero, Bethany Caracuzzo, Tony Petruzzi, Maria Salacuse, Jodi Munn Schebel*)
- The Federal District Courts differ significantly as to the procedures practitioners must follow in order to file documents under seal, with no national uniformity. In many districts, the time and expense of complying with the various requirements are burdensome to both litigants and the courts. The Working Group has undertaken a survey of the various District Courts' approaches to filing ESI and documents under seal in an effort to develop a uniform rule on the procedures for filing under seal that lessens the burden and expense on both the courts and practitioners, and creates consistency between and among jurisdictions. Our panelists will discuss edits made to the draft rule presented for member feedback at the Annual Meeting in October 2020; provide an update on a more comprehensive Commentary/Practice Guide that incorporates the uniform rule and discuss the legal basis/guidance for its development; and analyze current case law and standards relating to the sealing of records.
- Required Material**
- 5.1 The Sedona Conference Draft Commentary on the Need for Guidance and Uniformity in Filing Under Seal

ANNOTATED AGENDA

Thursday, April 29, 2021 (Cont.)

2:45 — 3:00 Break/state of WG1

3:00 — 4:15 **[Session 6] Recruiting, Retaining, and Promoting Diverse Talent in the eDiscovery Community**
(Andrea D'Ambra*, Kimberly Duplechain, Hon. Karen Wells Roby, Amy Sellars, Hon. Nina Wang)

Sitting at the intersection of the legal and tech sectors, eDiscovery suffers from under-representation by diverse personnel; perhaps even more so given that both sectors significantly under-represent minorities in every diverse category compared to the general population. Law firms and businesses are recognizing the tangible benefits of recruiting and promoting diverse legal talent. But many historical recruiting and retention practices may include unconscious bias that disadvantages diverse applicants and as well as employees seeking advancement. In this session our panelists will discuss specific changes that can be made improve recruiting, retention, and promotion of diverse eDiscovery lawyers.

Recommended Materials

- 6.1 Structured Interviews: A Practical Guide
- 6.2 Additional Resource List for Recruiting, Retaining, and Promoting Diverse Talent in the eDiscovery Community

4:15 — 4:30 **Closing remarks**
(Craig Weinlein, Martin Tully)