

Wednesday, October 25

5:30 — 7:30 Evening Welcome Reception

Thursday, October 26

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

8:30 — 8:45 Welcome & Announcements
(Martin Tully, Ken Withers)

8:45 — 10:15 [Session 1] Case Law Review: Key eDiscovery and ESI Decisions from 2023
(Phil Favro*, Hon. Mark Dinsmore, Laura Hunt, Jeremy Wikler)

2023 has ushered in several ESI developments regarding discovery affecting clients and counsel. With new advances in longstanding topics like possession, custody, or control and family production practices, together with guidance on cutting-edge issues like the use of artificial intelligence, document productions from collaboration tools, and the need for better information governance to mitigate the impact of data breaches, this session will provide practitioners with an understanding of the top eDiscovery court decisions issued so far this year.

Required Material:

1-1 Selected eDiscovery and ESI Case Law from 2023

Recommended Materials:

1-2 Unleashing the Spoliation Inference: When and Why Courts Should Let the Jury Decide

1-3 Western District of Washington Model Agreement Regarding Discovery of Electronically Stored Information and Proposed Order

10:15 — 10:45 Morning Break

10:45 — 11:45 [Session 2] The Path from GenAI to Next Gen Discovery
(Tara Emory, Bobby Malholtra, Sandra Metallo-Barragan*, Chad Roberts, Cristin Traylor)

Discovery attorneys have long embraced legal technology, and now generative AI is building the next generation of tools. Mistakes have already been made, and will continue to be, but it is clear GenAI may redefine industry approaches to many aspects of the discovery process. This panel will explore what kinds of changes are happening or expected in document review workflows, drafting of motions and discovery requests/objections, and privilege logs. We will also address ethical considerations and potential impacts to cost structures.

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Recommended Materials:

- 2-1 Beyond the Bar: GPT-4 as a Review Assistant in E-Discovery
- 2-2 Artificial Intelligence and the Practice of Law
- 2-3 Generative AI and Courts: How Are They Getting Along?
- 2-4 Mata v. Avianca sanctions

11:45 — 12:30 [Session 3] Drafting Team Report: Discovery-Related Sanctions

(Eric Mandel,* Jeannine Kenney, Kelly McNabb, Hon. Xavier Rodriguez)

The Sedona Conference has undertaken a Commentary 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 the forthcoming paper and how The Sedona Conference can help practitioners navigate this evolving body of law.

Required Material:

- 3-1 Working Group 1 Sanctions Drafting Team Report: Categorical Analysis and Recommendation for Structuring of Publication

Recommended Materials:

- 3-2 The Sedona Principles, Third Edition
- 3-3 The Sedona Conference Commentary on Legal Holds, Second Edition

12:30 — 1:30 Lunch (provided)

1:30 — 2:30 [Session 4] Drafting Team Report: Discovery of Modern Communications and Collaboration Platforms

(Gareth Evans*, Doug Forrest, Adam Gajadharsingh, Joseph Guglielmo, Jonathan Orent)

Modern electronic communications and collaboration platform data have less in common than ever with their paper predecessors, with the rise of chat messages, hyperlinks, versioning, and availability of new metadata fields. Reflecting the complex layers and interconnectedness of today's data, these developments raise new challenges and invite reevaluation of approaches for all phases of discovery and information governance. The dialogue leaders will discuss and elicit membership feedback on the drafting team's work to date.

Required Materials:

- 4-1 The Sedona Conference Draft Commentary on Discovery of Modern Collaboration and Communications Platforms
- 4-2 Discussion Topics: Draft Commentary on Discovery of Modern Collaboration and Communications Platforms

Recommended Materials:

- 4-3 The Sedona Conference Commentary on ESI Evidence and Admissibility, Second Edition
- 4-4 The Sedona Conference Commentary on Proportionality in Electronic Discovery

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4-5 The Sedona Principles, Third Edition

2:30 — 3:30 [Session 5] The Future of Legal Diversity Initiatives under Color-blind Constitutionalism

(Maureen O'Neill, Niloy Ray, Hon. Xavier Rodriguez, Hon. Elizabeth Stafford)

For years, many companies have adopted and implemented policies aimed at diversifying their hiring. Diversity, Equity, and Inclusion (DEI) initiatives surged in 2020 following the murder of George Floyd. But now, with the Supreme Court's ruling in *Students for Fair Admissions v. Harvard*, and with a growing movement to abolish race-conscious policies in businesses and in schools, many are asking: what impact will all this have on policies to diversify hiring and schooling in corporate America? What impact will it have on DEI initiatives generally? This Panel will explore those same questions in the legal industry, and what the growing movement to eliminate race-conscious policies means for the legal sector now and in the future.

Recommended Materials

- 5-1 *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*
- 5-2 *U.S. Supreme Court Strikes Down Race-Conscious Admissions — What Does it Mean for Employers?*
- 5-3 *Report and Recommendations of the New York State Bar Association Task Force on Advancing Diversity*
- 5-4 Tom Cotton letter to Paul Hastings LLP
- 5-5 Additional Resource List for *The Future of Legal Diversity Initiatives under Color-blind Constitutionalism*

3:30 — 4:00 Afternoon Break

4:00 — 5:00 [Session 6] Brainstorming Group Report: Electronic Information in Government Proceedings

(Robert Keeling*, Michael Blank, Traer Cundiff, Robb Snow)

Preservation, handling, review, and production of electronic information are critical aspects of many government regulatory investigations and other proceedings. Some might argue that what we generally call "eDiscovery" first rose to prominence as part of government regulatory actions in the early 2000s, and such proceedings today are at the forefront of highlighting modern electronic information disclosure issues such as the use of personal devices. Most of the laws and commentary on eDiscovery, however, have focused on civil litigation between private entities, and not specifically on the roles and responsibilities of parties in the context of a government proceeding. Working Group 1 has recently established a brainstorming group on Electronic Information in Government Proceedings, which will recommend whether to form a drafting team for a Sedona Conference publication on the topic. This panel will update WG1 members on the work of the Government Proceedings brainstorming group, raise and discuss some of the key topics under consideration, and solicit feedback from members.

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Required Material:

- 6-1 The Sedona Conference Electronic Information in Government Proceedings Brainstorming Group Draft Outline

Recommended Materials:

- 6-2 The Sedona Conference Primer on Managing Electronic Discovery in Small Cases
6-3 The Sedona Principles, Third Edition
6-4 The Sedona Conference Primer on Crafting eDiscovery Requests with “Reasonable Particularity”

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

Friday, October 27

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

8:30 — 10:00 **[Session 7] Voices from the Bench:**

(Hon. Helen Adams, Rebekah Bailey*, Hon. Mark Dinsmore, Hon. Scott McCoy, Hon. Elizabeth Stafford)

This session will present a wide range of judicial perspectives on emerging eDiscovery trends, common disputes, and recent case law. This esteemed panel will discuss hot topics such as ESI protocols, search negotiations, privilege logging, linked documents, redactions, and preferred practices for assessing and resolving eDiscovery disputes.

Recommended Materials:

- 7-1 The Sedona Principles, Third Edition
7-2 The Sedona Conference Cooperation Proclamation: Resources for the Judiciary
7-3 The Sedona Conference Primer on Crafting eDiscovery Requests with “Reasonable Particularity”

10:00 — 10:30 **Break**

10:30 — 11:30 **[Session 8] Brainstorming Group Report: The Sufficiency of Rule 26(a)(1) Initial Disclosures**

(Alicia Hawley*, Elliot Bienenfeld, Brett Burney, Kristen Marttila, Hon. Scott McCoy, Steven Williams)

Rule 26(a)(1) initial disclosures can be extremely useful early in discovery if they are complete and correct. But what does Rule 26(g)’s “complete and correct” requirement mean in the context of initial disclosures? This panel will discuss the Initial Disclosures brainstorming group’s preliminary thoughts, and elicit membership feedback, on whether to form a drafting team for a Sedona Conference publication that addresses the following issues:

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- are parties currently living up to the original intent of the Rule and meeting their obligations to make a reasonable inquiry into the facts in preparing the disclosures;
- as part of a party's initial disclosures, should they be identifying custodians, including the names, titles and departments of custodians, and custodial and noncustodial data sources containing potentially relevant ESI for potential collection, review, and production;
- is the timing for initial disclosures under Rule 26(a)(1)(C) workable for the parties to provide sufficient disclosures?

Required Material:

- 8-1 The Sedona Conference Sufficiency of Rule 26(a)(1) Initial Disclosures Brainstorming Group Draft Outline

Recommended Materials:

- 8-2 The Sedona Conference "Jumpstart Outline"
8-3 The Sedona Conference Cooperation Proclamation

11:30 — 12:00 [Session 9] The State of Working Group 1
(Claudia Morgan, Martin Tully)

We will discuss recent publications of WG1 and papers currently in the publication process, and dialogue on the evolving state of the industry and where WG1 should be focusing its publishing and thought-leadership efforts over the next 12 months.

12:00 — 1:00 [Session 10] Ethical Obligations in Responding to Discovery
(Hon. Helen Adams, Lea Bays, Travis Bustamante, Andrea D'Ambra, Tessa Jacob*)

This panel will explore the ethical obligations counsel faces in responding to requests for documents. Specifically, this panel will discuss counsel's ethical obligations when searching for and collecting responsive documents, when selecting custodians, and when evaluating a requesting party's search terms and custodian picks. The panel will consider hypotheticals that will help explore areas where a producing party/counsel has to make decisions that could impact his or her ethical obligations to opposing counsel and the court. The panel will address applicable Professional Rules of Responsibility, Federal Rules, related case law, and applicable Sedona Principles.

Required Material:

- 10-1 Ethical Obligations in Responding to Discovery

1:00 — 1:15 Closing Remarks
(Ken Withers)

1:15 Adjournment & Grab & Go Lunch (provided)