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SedonaConference



The Sedona Conference

The Sedona Conference Working Group 1  
Electronic Document Retention & Production  
2024 Midyear Meeting

FDIC Virginia Square Campus – Arlington, VA

#SedonaConference

ANNOTATED AGENDA

Wednesday, April 24

5:30 — 7:30 Evening Welcome Reception: Punch Bowl Social, 4238 Wilson Blvd., Arlington

Thursday, April 25

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

8:30 — 8:45 Welcome & Announcements  
(Claudia Morgan, Ken Withers)

8:45 — 10:15 [Session 1] ESI Case Law in 2024: Staying Current with Key eDiscovery and ESI Decisions  
(Phil Favro\*, Nathaniel Giddings, Hon. Andrew Peck (ret.), Hon. Rukhsanah Singh)

ESI case law in 2024 is pushing courts to consider issues across the spectrum of electronic discovery. While tackling issues involving artificial intelligence and other novel sources of ESI, courts must also deal with seemingly banal yet still timely and important topics such as ESI preservation failures and privilege log disputes. This session will review a range of these issues, highlighting some of the top eDiscovery cases from the past six months and discussing how they may affect discovery practice going forward this year and beyond.

**Required Material**

1-1 Selected eDiscovery and ESI Case Law from 2023-24

10:15 — 10:45 Morning Break

10:45 — 11:45 [Session 2] Drafting Team Report: MDL Discovery  
(Gil Keteltas\*, Tanya Canup, Shauna Itri, Gerard Quinn)

Multidistrict Litigations (MDLs) can present unique procedural and logistical discovery hurdles that set them apart for other litigation in federal court. The Federal Rules Advisory Committee has recently proposed Rule 16.1 to address these unique issues. The MDL drafting team has reviewed the comments received to Rule 16.1 during the comment period and will be prepared to discuss the proposed rule during this session and to present their working outline to prompt efficient discovery in the MDL context.

**Required Material**

2-1 Discovery in Multidistrict Litigation Drafting Team Outline (April 2024)

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**11:45 — 12:45 [Session 3] Drafting Team Report: Commentary on Discovery of Modern Communications and Collaboration Platforms**

(Gareth Evans\*, Hon. Travis Laster, Jonathan Swerdloff, Cristin Traylor)

The drafting team will provide an update on the draft Commentary regarding modern electronic communications and collaboration platforms. Given the increase in the business use of these platforms for business use, the Panel will discuss the identification, preservation, collection and production of modern communications and collaboration data and the challenges involving discovery from these platforms. The Panel will also discuss and elicit membership feedback on the drafting team's work to date.

**Required Material**

- 3-1 Draft Commentary on the Discovery of Modern Communications and Collaboration Platforms (April 2024)
- 3-2 Discussion Topics: Discovery of Modern Communications and Collaboration Platforms

**Recommended Material**

- 3-3 Collaboration Platforms Notable Case Law

**12:45 — 2:00 Lunch (provided)****2:00 — 3:00 [Session 4] Recommendations from the Artificial Intelligence and Machine Learning Brainstorming Group**

(Kelly Atherton\*, Steven Berrent, Hon. Cathy Bissoon, Miriam Marks, Amy Sellars)

The Brainstorming Group will share insights from their outline on potential WG1 guidance for the use of Artificial Intelligence and Machine Learning, including generative AI, in discovery. After meeting for several months, the group has reached consensus and will make recommendations on issues including applications of AI and ML in discovery, overlap with TAR, advancing acceptance, application of Sedona Principles and other past guidance, and ethical requirements. The group seeks feedback from WG1 members on their recommendations.

**Required Material**

- 4-1 Brainstorming Group Outline: Artificial Intelligence and Machine Learning in Discovery (March 2024)

**Recommended Materials**

- 4-2 Hon. Xavier Rodriguez, *Artificial Intelligence (AI) and the Practice of Law* (September 2023)
- 4-3 Additional Resources List: Artificial Intelligence and Machine Learning

**3:00 — 4:00 [Session 5] Mobile Device Discovery: Challenges and Guidance**

(Dennis Kiker\*, Hon. Mark Coulson, Jason Lichter, Michelle Newcomer, John Pappas)

Gone are the days when the contents of mobile devices, specifically phones and tablets, could be presumed to be outside of the scope of discovery obligations. Discovery of mobile device data affects all parties (and often non-parties) in litigation and investigations, whatever their role or size

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of organization. Yet, there are few sources of practical guidance on the topic. This panel will: (i) provide guidance for identifying when mobile device data (including third-party chat or messaging applications) may be subject to discovery; (ii) discuss best practices for preserving, collecting, searching, and producing mobile device data; (iii) discuss the implications of BYOD and other company policies and procedures on a party's obligations to preserve, search, and produce mobile device data; and (iv) explore privacy issues that arise when personal mobile devices are collected and searched.

### Required Materials

- 5-1 Draft Commentary on Discovery of Mobile Device Data (April 2024)
- 5-2 Discussion Topics: Discovery of Mobile Device Data

**4:00 — 4:15 Afternoon Break**

**4:15 — 5:00 [Session 6] eDiscovery Insights from the January 6 Investigation with Special Guest Candyce Phoenix**  
(Tara Emory\*, Candyce Phoenix)

Candyce Phoenix, Senior Counsel and Senior Advisor to the Select Committee to Investigate the Jan. 6th attack on the U.S. Capitol, will discuss insights on the role of data and discovery in the investigation. Ms. Phoenix will discuss the nature and effects of discovery in this complex investigation, including coordination of multiple teams and stakeholders, deployment of various workflows and data analysis techniques, and culmination of the evidence into a compelling narrative.

**5:30 — 7:30 Reception (Guests Invited): Quincy Hall, 4001 Fairfax Drive, Arlington**

## Friday, April 26

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

**8:30 — 10:00 [Session 7] Voices from the Bench: The Judicial Perspective for 2024 and Beyond**  
(Tessa Jacob\*, Hon. Cathy Bissoon, Hon. Deborah Boardman, Hon. Mark Coulson, Hon. Iain Johnston, Hon. Travis Laster, Hon. Rukhsanah Singh)

This session will present a wide range of judicial perspectives on emerging eDiscovery trends, new technologies, and recent case law. This esteemed panel will discuss hot topics such as generative AI, collaboration and short-message format discovery, modern "attachments," and best practices for evaluating and resolving complex eDiscovery disputes.

### Recommended Materials

- 7-1 *The Sedona Principles, Third Edition* (2018)
- 7-2 Hon. Xavier Rodriguez, *Artificial Intelligence (AI) and the Practice of Law* (September 2023)

**10:00 — 10:30 Break**

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**10:30 — 11:45 [Session 8] Drafting Team Report: Discovery-Related Sanctions**  
(Jeannine Kenney\*, Hon. Iain Johnston, Eric Mandel, Kelly McNabb)

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 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. In this Panel, the dialogue leaders will discuss and elicit membership feedback on the draft paper's guidance to jurists, practitioners, and litigants about how to effectively utilize discovery-related sanctions to ensure fairness, protect the integrity of proceedings, and further Rule 1's mandate.

**Required Material:**

8-1 Discussion Topics: Sanctions Drafting Team Scope of Publication

**11:45 — 12:45 [Session 9] Ethical Issues Around the Use of Generative Artificial Intelligence in Discovery**  
(Leeanne Mancari\*, Hon. Deborah Boardman, Andrea D'Ambra, Joseph Guglielmo, Daniel Lim)

This panel will discuss ethical issues you should consider when using generative AI tools in discovery, including:

- Maintaining confidentiality of client Information
- Duty of candor
- Duty of competence

**Recommended Materials**

- 9-1 David J. Kessler and Andrea L. D'Ambra, Enhancing Protective Orders to Address Generative AI
- 9-2 State Bar of California Standing Committee on Professional Responsibility and Conduct, Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law
- 9-3 Professional Ethics of the Florida Bar, Proposed Advisory Opinion 24-1
- 9-4 Additional Resources: [AI in Courts Tracker](#), ABA [Model Rules of Professional Conduct](#)

**12:45 — 1:00 Closing Remarks**  
(Ken Withers)

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