

Thursday, October 24

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

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

8:45 — 9:15 **[Session 1] State of Working Group 1 and The Sedona Conference**  
(Claudia Morgan)

Join us for a session where we will aim to be all things to all members. We'll start with a bit of additional background on our mission and methods – a little bit of 'how the sausage is made' so to speak. We'll then proceed with a recap of the past year's milestones and accomplishments, along with an overview of what's currently in the works. Before we cede the stage to the ESI case law session, we'll challenge attendees to share suggestions and ideas for future WG1 projects or topics to explore.

9:15 — 10:30 **[Session 2] ESI Case Law Session No. 1: Ethics, Discovery Process, Preservation, and Search**  
(Vince Carnevale, Hon. Lisa Cisneros, Phil Favro\*, Clinton Sanko)

Discovery case law is challenging lawyers to more effectively handle basic and advanced ESI issues for their clients. With key decisions on ethics, discovery process, preservation, search, and sanctions, this session will provide practitioners with an understanding of the top eDiscovery court decisions from the past six months and discuss how they may affect discovery practice as they prepare for 2025.

**CLE Material:**

2-1 Selected eDiscovery and ESI Case Law from 2024

10:30 — 11:00 **Morning Break**

11:00 — 12:00 **[Session 3] Initial Disclosures: Obligations and Room for a Fix**  
(Elliot Bienenfeld, Hildy Bowbeer, Alicia Hawley\*, Todd Heffner)

We all agree that early and efficient information exchange is the goal, right? Is Rule 26(a)(1) capable of delivering that ideal? Dialogue leaders will provide an overview of Rule 26(a)(1)'s mandate for Initial Disclosures and explore the strengths and weaknesses of the Rule as currently written. Discussion will include analysis of recent case law regarding compliance with Rule 26(a)(1), the challenge of balancing timing of disclosures against sufficient detail and completeness in a response, and practical advice for complying with the Rule. The panel will also raise ideas for potential Rule changes that may alleviate common struggles with effective compliance with Rule 26(a)(1).

**CLE Materials:**

- 3-1 Federal Judicial Center, Report on the Mandatory Initial Discovery Pilot
- 3-2 Mandatory Initial Discovery Users' Manual for the District of Arizona

**Member-Comment Draft:**

- 3-3 Draft Outline: Sufficiency of Rule 26(a)(1) Initial Disclosures

**12:00 — 1:00 Lunch (provided)****1:00 — 2:00 [Session 4] Discovery Implications of the Internet of Things**

(Lea Bays, Ross Gotler, Greg Kohn, Dan Regard\*, Hon. Juan Villaseñor)

The Internet of Things ("IoT") is upon us, as countless devices are knit together in a web of connectivity that continuously generate, communicate, and store data. Whether it is data from a fitness wearable or home security camera, these devices are increasingly capturing information that may be relevant in litigation or government investigations. As with any technological development, especially one as complex as the IoT, this brings new challenges to the eDiscovery process. The IoT drafting team will explain what constitutes IoT data and discuss the preservation, collection, production, and review challenges unique to IoT.

**CLE Materials:**

- 4-1 *The Sedona Conference Database Principles Addressing the Preservation & Production of Databases and Database Information in Civil Litigation* (2014)
- 4-2 *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production* (2018)
- 4-3 The Sedona Conference, *Commentary on ESI Evidence & Admissibility, Second Edition* (2021)

**Member-Comment Draft:**

- 4-4 The Sedona Conference Draft Primer on the eDiscovery Implications of the Internet of Things

**Supplemental Resources:**

- 4-5 The Sedona Conference, *Commentary on Rule 34 and Rule 45 "Possession, Custody, or Control"* (2024)
- 4-6 The Sedona Conference, *Commentary on Rule 45 Subpoenas to Non-Parties, Second Edition* (2021)
- 4-7 Video, The Denver Post, [Shooting in Old Town Fort Collins](#)

**2:00 — 2:45 [Session 5] Drafting Team Updates: Government Privileges; Discovery of Collaboration Platforms**

(Gareth Evans, Joe Guglielmo, Alex Khoury, Robb Snow)

This panel will provide updates to membership on works in progress from the newly formed Government Privileges drafting team and the Discovery of Collaboration Platforms drafting team, which is the process of final revisions based on feedback received at the WG1 Midyear Meeting.

**Member-Comment Drafts:**

- 5-1 Draft Commentary on Discovery of Collaboration Platform Data
- 5-2 Discovery of Collaboration Platforms Discussion Topics
- 5-3 Government Privileges Discussion Topics

**2:45 — 3:00 Afternoon Break**

- 3:00 — 4:00 [Session 6] Legal Holds: Once We've Got Them, What Do We Do with Them?**  
(Jen Coleman\*, Alicia Hawley, Lauren Holupko, Nathaniel McPherson, Hon. Joel Richlin)
- There is already significant guidance on when legal holds must be implemented and the appropriate scope of legal holds. There is, however, a dearth of guidance regarding when and how to modify or release legal holds. This newly formed drafting team will provide an update on its efforts to create guidance for modifying and releasing legal holds in the course of or after the close of investigations or litigation. The drafting team will share an overview of the origins of this drafting team, its work product so far, and the proposed vision and trajectory of the commentary.
- CLE Materials:**
- 6-1 The Sedona Conference, *Commentary on Managing International Legal Holds* (2023)
  - 6-2 The Sedona Conference, *Commentary on Legal Holds, Second Edition, The Trigger & The Process* (2019)
- Member-Comment Draft:**
- 6-3 Draft Outline: Managing, Modifying, and Lifting Legal Holds
- Supplemental Resources:**
- 6-4 The Sedona Conference, *Commentary on Privacy and Information Security* (2015)
  - 6-5 The Sedona Conference, *Commentary on Information Governance, Second Edition* (2019)
  - 6-6 The Sedona Conference, *Commentary on Defensible Disposition* (2019)
  - 6-7 The Sedona Conference, *International Principles on Discovery, Disclosure & Data Protection in Civil Litigation (Transitional Edition)* (2017)
- 4:00 — 5:00 [Session 7] Ethics Session: Defense of Judiciary and Duty of Civility**  
(Hildy Bowbeer, Hon. Betsy Chestney, Aaron Nash, Maria Salacuse\*, Ken Withers)
- In recent years, there has been a troubling rise in both verbal and physical attacks on state and federal judges. Since 2019, serious threats against federal judges have more than doubled. Social media has played a significant role in spreading unfair criticism of judges, their staff, and even their families. Due to ethical restrictions, judges are unable to publicly defend themselves regarding the cases they oversee. This panel will explore the ethical responsibilities of lawyers and bar associations to advocate for the judiciary and uphold the rule of law. Additionally, the discussion will cover the ethical duty of civility within the legal profession.
- CLE Materials:**
- 7-1 Ethics Handout: Defending the Judiciary & the Duty of Civility
  - 7-2 State of Arizona Supreme Court, Task Force on Countering Disinformation (March 1, 2022 Concluding Report)
- Supplemental Resources**
- 7-3 American Board of Trial Advocates, Protocol for Responding to Unfair Criticism of Judges
  - 7-4 Selected Orders in *Fredin v. Middlecamp*
  - 7-5 Bullying in the Legal Profession
- 5:30 — 7:30 Reception**

Friday, October 25

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

8:30 — 10:00 [Session 8] Voices from the Bench: The Judicial Perspective for 2024 and Beyond

(Hon. Betsy Chestney, Hon. Lisa Cisneros, Robert Keeling\*, Hon. Scott McCoy, Hon. Joel Richlin, Hon. Juan Villaseñor)

This session offers a wide variety of judicial perspectives about eDiscovery topics that have taken center stage in 2024, including:

- **Artificial Intelligence**—how has the increased use of AI technologies, including generative AI, impacted matters and/or eDiscovery obligations (if at all)? How should litigants approach the use of AI in eDiscovery, and what guardrails are needed to ensure ethical obligations are met?
- The dilemma of **hyperlinked files**—how have courts treated requests for the production of cloud files (i.e., hyperlinked documents from SharePoint, OneDrive, Google Drive) and what should parties expect going forward?
- Views related to the duty to preserve data from **ephemeral messaging applications**, and what steps have or should parties take to address recent court holdings on the issue?
- Has the increased use of **negotiated ESI protocols** between the parties reduced the number of discovery challenges brought to the courts, and what are the most common benefits and pitfalls of entering into ESI protocols for the parties?
- What steps can companies take to plan for the lack of uniformity surrounding the issue of **possession, custody, and control** over data, particularly over data contained on employee phones?
- How should parties think about preservation/production of increasingly available **video and audio evidence**?
- **Reproductions** of document productions from related investigations or litigation—are requests for re-productions appropriate and have they been helpful or harmful in attempting to streamline discovery and ease discovery burdens on the parties in large, complex litigation?
- What parties can learn from recent **sanctions** opinions related to eDiscovery?

**CLE Materials**

8-1 Tom Paskowitz, Robert Keeling & Colleen Kenney, *E-Discovery Quarterly: Rulings on Hyperlinked Documents*

8-2 Tom Paskowitz, Robert Keeling & Colleen Kenney, *E-Discovery Quarterly: Recent Rulings on Text Message Data*

**Supplemental Resources**

8-3 Voices from the Bench Supplemental Resource List

10:00 — 10:30 Break

**10:30 — 11:45 [Session 9] Generative AI's Potential Impact on the Discovery Process**  
(Kelly Atherton\*, Ray Mangum, Chad Roberts, Daniel Stromberg, Cristin Traylor)

GenAI may create new options for expediting and enhancing the discovery process. If the reality meets the hype then this may change the way we approach search and retrieval, document analysis, and other discovery related tasks. Our discussions with clients, vendors, opposing counsel, and the court may need to expand accordingly. This panel will discuss how GenAI is being used now, potential benefits and pitfalls, what may be on the horizon, and what you need to know to stay abreast of these changes.

**CLE Materials:**

- 9-1 Roshana Omrani et al., *Beyond the Bar: Generative AI as a Transformative Component in Legal Document Review*
- 9-2 Tara Emory et al., *TAR 1 Reference Model: An Established Framework Unifying Traditional and GenAI Approaches to Technology-Assisted Review*
- 9-3 Varun Magesh & Faiz Surani et al., *Hallucination-Free? Assessing the Reliability of Leading AI Research Tools*
- 9-4 Craig Ball, *Adapting Requests for Production for AI GLLM Assessment*

**11:45 — 12:45 [Session10] ESI Case Law Session No. 2: ESI Protocols, Nonwaiver Orders, Privilege Issues and Sanctions**  
(Andrea D'Ambra, Phil Favro\*, Farhad Mirzadeh, Hon. Scott McCoy)

2024 has ushered in several ESI developments regarding discovery affecting lawyers and litigants alike. With new wrinkles in longstanding topics like ESI protocols, family productions, non-waiver orders, and sanctions, this session will provide practitioners with an understanding of some the top eDiscovery court decisions issued so far this year.

**CLE Materials:**

- 10-1 Selected eDiscovery and ESI Case Law from 2024
- 10-2 Thomas Y. Allman, *The Ubiquitous Role of the Specific "Intent to Deprive" Requirement of Amended Rule 37(e)(2)(B)*

**12:45 — 1:00 Closing Remarks**  
(Ken Withers)**1:00 Adjournment & Grab & Go Lunch (provided)**