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SedonaConference



The Sedona Conference

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

Bellevue Hotel – Philadelphia, PA

#SedonaConference.

ANNOTATED AGENDA

Wednesday, October 26, 2022

5:30 — 7:30 Evening Welcome Reception

Thursday, October 27, 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 Review: Key Trends and Developments from 2022**  
(Phil Favro\*, Suzanne Clark, Meghan Podolny, Hon. Gene E.K. Pratter)

2022 has seen hundreds of new cases involving issues with eDiscovery and ESI. Key topics run the gamut from ESI protocols and privilege logs to Rule 34 productions, cooperation, and sanctions. This session will examine some of the most significant ESI court decisions from the past six months on these and other issues and explore how they may affect discovery practice going forward in 2023.

**Required Material**

1.1 Selected eDiscovery and ESI Case Law from 2022, Phil Favro, ed.

**Recommended Material**

1.2 Thomas Y. Allman, Jury Findings of Intent to Deprive under Rule 37(e): An Assessment (Oct. 11, 2022).

10:15 — 10:30 Morning Break

10:30 — 11:15 **[Session 2] Draft Commentary Review: Database Principles**  
(Laura Hunt\*; Gregg Parker, 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 then the use and importance of cloud databases has significantly increased bringing new discovery challenges. This session will preview the member comment draft of the updated guidance.

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### Required Materials

- 2.1 The Sedona Conference WG1 Database Principles, Draft Second Edition.
- 2.2 Database Principles Appendix A.

### 11:15 — 12:00 [Session 3] Guest Speaker: Hon. Robert M. Dow, Jr., Chair, Advisory Committee on Civil Rules

(Ross Gotler\*, Hon. Robert M. Dow Jr.)

The Honorable Robert M. Dow, Jr. of the Northern District of Illinois, Chair of the Advisory Committee on Civil Rules, will discuss the work of the Committee in considering and proposing new amendments to the Federal Rules of Civil Procedure.

### Recommended Materials

- 3.1 Report of the Advisory Committee on Civil Rules (May 13, 2022).
- 3.2 Excerpts from the Advisory Committee on Civil Rules Agenda Book (Oct. 12, 2022).

### 12:00 — 1:00 Lunch (provided)

### 1:00 — 2:00 [Session 4] Brainstorming Group Report: Defining a “Document” For ESI in Modern Collaboration Platforms

(Tara Emory\*, Andrea D’Ambra, Hon. Jane P. Manning, Emily McIntosh, Josh Samra)

Collaboration platforms like Teams, Slack, and Google Workspace are prompting reevaluation of how relevant data should be handled in eDiscovery. The complex layers of these applications—including short messaging, document sharing and versioning, links, and more—present new challenges for all phases of discovery. The dialogue leaders will discuss and elicit membership feedback on the status and direction of the Evolution of Documents Brainstorming Group for these issues.

### Required Material

- 4.1 The Sedona Conference WG1 Evolution of Documents Brainstorming Group Outline.

### Recommended Material

- 4.2 Evolution of Documents Appendix A: Recommended Case Law Summaries.

### 2:00 — 3:00 [Session 5] Mental Health Challenges in eDiscovery: What We Know and How We can Help

(Kevin Brady\*, Candace Beck, Christine Payne, Jill Rorem, Amy Sellars)

The eDiscovery industry is not immune from the mental health crisis plaguing the legal industry. Increased awareness and support resources for mental health do not seem to be enough to stem the tide in the eDiscovery space. This panel will explore the root causes of mental health challenges in our industry and how we can best solve for them. They will also discuss what’s working and what isn’t and introduce the Mind-Budget Connection initiative started by a group of attorneys and researchers that seeks to reverse this downward mental health trend in e-discovery by examining the relationship between contractual relationships and mental health in the industry.

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### Recommended Materials

- 5.1 Well-Being Toolkit for Lawyers and Legal Employers
- 5.2 Oldenburg Burnout Inventory.
- 5.3 Supplemental Resource List for Mental Health Challenges in eDiscovery.

### 3:00 — 3:30 Afternoon Break

#### 3:30 — 4:30 [Session 6] Draft Outline Review: Commentary on Discovery-Related Sanctions (Kelly McNabb\*, Hon. Iain Johnston, Robert Keeling, Jeannine Kenney, Eric Mandel)

The Sedona Conference has undertaken a paper focusing on the application of discovery-related sanctions. Following the Midyear Meeting, the Drafting Team has worked on incorporating the membership's feedback and will discuss the paper's current outline and elicit feedback from the membership on same.

### Required Material

- 6.1 The Sedona Conference WG1 Discovery Sanctions Drafting Team Outline.

#### 4:30 — 5:00 [Session 7] Draft Commentary Review: eDiscovery in Small Cases (Greg Kohn\*; Hon. Jerome Abrams, Kimberly Duplechain, Tara Emory, Michael Scimone)

It is time to revisit the Small Cases Primer. A lot has changed in the past couple years, yet there is still a need for guidance on how to handle ESI in small cases. Practitioners and jurists alike continue to express interest in more pragmatic, day-to-day eDiscovery advice for the majority of cases that are modest in scope and often litigated in state courts. This session is dedicated to a review of the latest version of the Small Cases Primer and how the best practices memorialized in various WG1 publications can be adapted to more routine and smaller-scale matters. This session will also address various low- or no-cost tools, tips, and tricks that practitioners can utilize to achieve best practices while staying true to principles of proportionality.

### Required Material

- 7.1 The Sedona Conference WG1 Draft Primer on Managing Electronic Discovery in Small Cases.

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

## Friday, October 28, 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 (Claudia T. Morgan\*, Hon. Jerome Abrams, Hon. Michael Baylson, Hon. Robert M. Dow Jr., Hon. Iain Johnston, Hon. Jane P. Manning, Hon. Katharine Parker, Hon. Gene E.K. Pratter, Hon. Cynthia M. Rufe)

This session offers a variety of judicial perspectives about issues that are trending in the field

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including:

- Ethical obligations regarding eDiscovery competence – with 40 states having adopted some form of technological competence requirement is attorney competence in eDiscovery improving?
- Is the proliferation of cloud services and syncing of data across systems making preservation easier or more problematic?
- What is and isn't working for ESI protocols?
- Sanctions beyond 37(e) – what additional remedies are available for misconduct that doesn't fit within the scope of FRCP 37(e)?
- Is ephemeral messaging generally viewed with suspicion by courts?

### Recommended Materials

- 8.1 The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production (2017).
- 8.2 The Sedona Conference, Commentary on Ephemeral Messaging (2021).

**10:00 — 10:15 Break**

**10:15 — 11:00 [Session 9] Brainstorming Group Report: Unique eDiscovery Challenges in Multidistrict Litigation**

(Jodi Schebel\*, Hon. Michael Baylson, Gilbert Keteltas, Beena McDonald, Hon. Cynthia M. Rufe)

Multidistrict Litigations (MDLs) are the 800-pound gorilla in federal courts that require creativity in case management, including discovery mechanisms. Since at least August 2017, when the Advisory Committee on Civil Rules created an MDL subcommittee, conversations, panels, and conferences have discussed unique aspects of discovery in MDL proceedings. A Sedona WG1 Brainstorming Team was formed after the Midyear Meeting to explore the challenges and best practices regarding eDiscovery in MDL. This panel will discuss the Brainstorming Team's recommendations on this topic and next steps.

### Required Material

- 9.1 The Sedona Conference WG1 Unique eDiscovery Challenges in Multidistrict Litigation Brainstorming Group Outline.

**11:00 — 11:30 [Session 10] The State of Working Group 1**  
(Martin Tully)

We will cover recent publications of WG1 and papers currently in the publication process and Have a dialogue on the evolving state of the industry and where WG1 should be focusing its publishing and thought-leadership efforts over the next 24 months.

**11:30 — 11:45 Break**

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11:45 — 12:45 [Session 11] Stranger Things in eDiscovery: Ethical Challenges and Considerations for Discovery of New and Changing Technologies

(Kimberly J. Duplechain\*, Vince Carnevale, Shauna Itri, Hon. Katharine Parker, Carol Stainbrook)

Lawyers face an ever-changing landscape of complex technological and legal issues as new technologies create new sources of ESI and new eDiscovery tools. Current challenges include vast volumes of ESI generated by mobile devices, ephemeral messaging apps, collaboration platforms, and the increasing use of artificial intelligence. This panel of ethics and eDiscovery experts will explore the benefits and risks associated with various technologies and provide guidance on evolving duty of technological competence.

**Recommended Materials**

- 11.1 Stranger Things in eDiscovery: Ethical Challenges and Considerations for Discovery of New and Changing Technologies
- 11.2 James M. Rosenbaum, *In Defense of the DELETE Key*, The Green Bag (Summer 2000).
- 11.3 Hon. John G. Browning, *Real World Ethics in an Artificial Intelligence World*, 49 N. KY. L. REV. 155 (2022).
- 11.4 Supplemental Resource List for Stranger Things in eDiscovery

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

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