



Panel 1: eDiscovery Case Law Update

The 13th Annual Sedona Conference Institute:
Protecting Privacy, Confidentiality, and Privilege in Civil Litigation
March 7–8, 2019
The Ballantyne Hotel & Lodge, Charlotte, NC

Dialogue leaders

- ❖ Kimberly Duplechain
 - ❖ Littler Mendelson, P.C., Washington, DC
- ❖ Phil J. Favro
 - ❖ Driven, Inc., Alpine, UT
- ❖ Kenneth J. Withers
 - ❖ The Sedona Conference, Phoenix, AZ



Agenda: 28 cases in 75 minutes...

- ❖ Preservation
 - ❖ Proportionality
 - ❖ Social media discovery
 - ❖ Tension with privacy and data protection laws
 - ❖ TAR
 - ❖ Privilege and FRE 502
 - ❖ Cost awards
 - ❖ Rule 37(e): reasonable steps, evidential sanctions, monetary sanctions
 - ❖ Legal malpractice?
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Preservation

- ❖ *Franklin v. Howard Brown Health Center*, No. 17 C 8376, 2018 WL 4784668 (N.D. Ill. Oct. 4, 2018)
- ❖ *Fishman v. Tiger Natural Gas, Inc.*, No. C 17-05351, 2018 WL 6068295 (N.D. Cal. Nov. 20, 2018)

Proportionality

- ❖ *Firefighters' Retirement System, et al., v. Citco Group Limited, et al.*, No. 13-373, 2018 WL 276941 (M.D. La. Jan. 3, 2018)
- ❖ *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637, 2018 WL 3586183 (N.D. Ill. July 26, 2018)

Social Media Discovery

- ❖ *Forman v. Henkin*, 30 N.Y.3d 656 (2018)
 - ❖ *Connolly v. Alderman*, No. 17-cv-0079 2018 WL 4462368 (D. Ver. Sept. 18, 2018)
 - ❖ *Henson v. Turn, Inc.*, 15-cv-01497, 2018 WL 5281629 (N.D. Cal. Oct. 22, 2018)
 - ❖ *Nutrition Distribution LLC v. PEP Research*, 16-cv-2328, 2018 WL 3769162 (S.D. Cal. Aug. 9); *adopted as modified*, 2018 WL 6323082 (Dec. 4, 2018)
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Discovery v. Data Protection Laws?

- ❖ *Salt River Project v. Trench France SAS*, 303 F.Supp. 3d 1004 (D. Ariz. 2018)
- ❖ *Moretti v. The Hertz Corp.*, No. 14-469, 2018 WL 4693473 (D. Del. Sept. 30, 2018)
- ❖ *D'Amico Dry D.A.C. v. Nikka Finance, Inc.*, CA 18-0284, 2018 WL 5116094 (S.D. Ala. Oct. 19, 2018)

TAR

- ❖ *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637, 2018 WL 1146371 (N.D. Ill. Jan. 3, 2018)
 - ❖ *City of Rockford v. Mallinckrodt*, 326 F.R.D. 489 (N.D. Ill. 2018)
 - ❖ *In re Domestic Airline Travel Antitrust Litigation*, No. 15-1404, MDL No. 2656, 2018 WL 4441507 (D.D.C. Sept. 13, 2018)
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Cost Awards

- ❖ *Rimini Street, Inc. v. Oracle USA, Inc.*, No. 17-1625, 2019 WL 1005828 (Sup. Ct. Mar. 4, 2019) (Kavanaugh, J.)

Privilege / Evidence Rule 502

- ❖ *Federal Trade Commission v. Boehringer Ingelheim Pharmaceuticals, Inc.*, 892 F. 3d 1264 (D.C. Cir. 2018) (Kavanaugh, J.)
 - ❖ *In re Abilify (Aripiprazole) Prods. Liab. Litig.*, No. 3:16-md-2734, 2018 WL 4856767 (N.D. Fla. Oct. 5, 2018)
 - ❖ *In re Qualcomm Litig.*, 17-cv-00108, 2018 WL 6617294 (S.D. Cal. Dec. 18, 2018)
 - ❖ *Arconic Inc. v. Novelis Inc.*, No. 17-1434, 2019 WL 911417 (W.D. Pa. Feb. 25, 2019)
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Rule 37(e) Reasonable Steps

- ❖ *Manufacturing Automation and Software Systems v. Hughes*, No. 2:16–cv–08962, 2018 WL 2059839 (C.D. Cal. Apr. 30, 2018)

Monetary Sanctions

- ❖ *KCI USA, Inc. v. Healthcare Essentials, Inc.*, No. 1:14-CV-549 (N.D. Ohio); *findings*, 2018 WL 3196950 (June 29, 2018); *order re: merits*, 2018 WL 4327802 (Sept. 10, 2018); *order re: sanctions*, 339 F.Supp.3d 672 (2018) (appeal to 6th Circuit pending)
- ❖ *Klipsch Group, Inc. v. EPRO E-Commerce Ltd.*, 880 F.3d 620 (2d Cir. 2018)
- ❖ *GN Netcom v. Plantronics*, No. 12–1318, 2018 WL 273649 (D. Del. Jan. 3, 2018) (appeal to the 3d Circuit pending)

Rule 37(e) Sanctions

- ❖ *EPAC Technologies, Inc. v. Harpercollins Christian Publishing, Inc. f/k/a Thomas Nelson, Inc.*, No. 3:12-cv-00463, 2018 WL 1542040 (M.D. Tenn. Mar. 29, 2018); *aff'd as modified*, 2018 WL 3322305 (May 14, 2018); *aff'd on review*, 2019 WL 109371 (Jan. 4, 2019)
 - ❖ *Goldrich v. City of Jersey City*, No. 15-885, 2018 WL 4492931 (D.N.J. July 25, 2018); *adopted as modified*, 2018 WL 4489674 (D.N.J. Sept. 19, 2018)
 - ❖ *Lexpath Technologies Holdings, Inc. v. Welch*, 744 Fed.Appx. 74 (3rd Cir. 2018)
 - ❖ *Small v. University Medical Center*, No. 2:13-cv-0298, 2018 WL 3795238 (D. Nev. Aug. 9, 2018)
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Legal Malpractice

- ❖ *Industrial Quick Search, Inc. v. Miller, Rosado & Algois, LLP*, 13 Civ. 5589, 2018 WL 264111 (S.D.N.Y. Jan. 2, 2018)
- ❖ *R.F. Technologies, Inc. v. LeClair Ryan, P.C.*, No. 17-C-1886, 2018 WL 835349 (N.D. Ill. Feb. 12, 2018)

Questions and comments?

