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 SedonaConference

 The Sedona Conference
#SedonaConference

The 14th Annual Sedona Conference Institute:
eDiscovery, Data Security, and Privacy
March 5-6, 2020
Four Seasons Hotel – St. Louis, MO

AGENDA

Wednesday, March 4, 2020

5:30 — 7:30 Evening Welcome Reception

Thursday, March 5, 2020

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

8:30 — 8:45 Welcome and Announcements

8:45 — 10:00 [Session 1] eDiscovery Case Law Update: Cooperation, Proportionality, and Data Security

(Bailey, Duplechain, Judge Epps, Judge Fleissig, Hedges, Withers)*

The panel will present a selection of representative state and federal court decisions from the past year addressing cooperation, proportionality, and the impact of data security and privacy concerns on eDiscovery in civil litigation.

Required Materials:

1.1 Thomas Y. Allman, *eDiscovery Today*

Recommended Materials:

1.2 Kenneth J. Withers, *eDiscovery Case Law Update: Cooperation, Proportionality, and Data Security*

1.3 *Crosmun v. Trustees of Fayetteville Tech. Community College*, 832 S.E.2d 223 (N.C. App. 2019)

10:00 — 11:15 [Session 2] Data Security and Privacy Issues Know No Borders

(Domen, Goodis, Inslar, Kint, McAuliffe, Withers)*

A panel of experienced cybersecurity and privacy counsel, joined by a Canadian privacy regulator, will discuss the data security and privacy laws in their respective jurisdictions, the effect these laws may have on the practice of law and conduct of discovery in civil litigation, and the potential extraterritorial reach of these laws on organizations that do business in these jurisdictions but are headquartered elsewhere.

Thursday, March 5 (Cont.)

Required Materials:

- 2.1 The Sedona Conference Commentary on Privacy and Information Security: Principles and Guidelines for Lawyers, Law Firms, and Other Legal Service Providers
- 2.2 The Sedona Canada Commentary on Privacy and Information Security for Legal Service Providers: Principles and Guidelines

Recommended Materials:

- 2.3 Baker McKenzie, *Privacy is Coming: Preparing for the Storm of Privacy Bills Looming in 2020*
- 2.4 Charles N. Insler, *Still A Wild Ride after Rosenbach*
- 2.5 The Sedona Conference *Incident Response Guide*
- 2.6 The Sedona Conference Commentary on Application of Attorney-Client Privilege and Work-Product Protection to Documents and Communications Generated in the Cybersecurity Context

11:15 – 11:30 Morning Break

11:30 – 12:45 [Session 3] Information Governance Roundtable: Operationalizing IG in Today's Regulation Environment
([*Butts*](#), [*Osuch*](#), [*Parikh*](#), [*Sellars**](#), [*Strom*](#))

In-house Information Governance (IG) officers discuss the challenges of coordinating policies and procedures to comply with multi-jurisdictional data security and privacy regulations, and the tensions between compliance with privacy regulations and eDiscovery or investigative disclosure requirements.

Required Materials:

- 3.1 The Sedona Conference Commentary on Information Governance, Second Edition

Recommended Materials:

- 3.2 The Sedona Conference Commentary on Legal Holds, Second Edition
- 3.3 The Sedona Conference Commentary on Defensible Disposition
- 3.4 The Sedona Conference International Principles for Addressing Data Protection in Cross-Border Government & Internal Investigations: Principles, Commentary & Best Practices
- 3.5 The Sedona Conference Commentary on Data Privacy and Security Issues in Mergers & Acquisitions Practice

12:45 – 2:00 Lunch (provided)

Thursday, March 5 (Cont.)**2:00 — 3:00 [Session 4] Technology Roundtable: Deploying Legal Technology for More Than eDiscovery**

([*Emory**](#), [*Fiorentinos*](#), [*Gricks*](#), [*Keeling*](#))

In-house and independent legal technologists discuss how the tools and methods developed for eDiscovery, especially Artificial Intelligence and Data Analytics tools, may be repurposed for data security and privacy needs, as well as many other legal functions, from brief writing to deposition prep to recruitment. New technologies should be evaluated for “Swiss Army Knife” multimodality.

Required Materials:

- 4.1 Robert Keeling and Jeff Sharer, *Applying Predictive Coding to M&A Transactions*
- 4.2 Jamie J. Baker, *A Legal Research Odyssey: Artificial Intelligence as Disruptor*, American Association of Law Libraries, 110 Law Library Journal 1 (2018)

Recommended Materials:

- 4.3 Jamie J. Baker, *Beyond the Information Age: The Duty of Technology Competence in the Algorithmic Society*
- 4.4 *Bibliography of Additional eDiscovery Technology Resources*

3:00 — 4:00 [Session 5] eDiscovery Technology in the Trenches: Are We Using the eDiscovery Tools We Have Effectively?

([*Emory*](#), [*Gricks*](#), [*Keeling**](#), [*Kucirek*](#), [*Snow*](#))

The legal technology market has grown considerably over the years, and we now have tools for nearly every type and size of eDiscovery project. But are we using the right tools for the right tasks, can we use multiple tools, and can we effectively explain what we are doing to opposing counsel and the court?

Required Materials:

- 5.1 The Sedona Conference Best Practices Commentary on the Use of Search & Information Retrieval Methods in E-Discovery (2013)
- 5.2 The Sedona Conference *Database Principles Addressing the Preservation and Production of Databases and Database Information in Civil Litigation*
- 5.3 *The Sedona Conference TAR Case Law Primer* (2017)
- 5.4 Robert Keeling and Ray Mangum, *The Burden of Privacy in Discovery* (2019),

Thursday, March 5 (Cont.)**Recommended Materials**

- 5.5 Philip J. Favro and Keith A. Call *A New Frontier in eDiscovery Ethics: Self-Destructing Messaging Applications* (Utah Bar Journal, Vol 31, No. 2, Mar/Apr 2018)
- 5.6 *The Sedona Principles, Third Edition* (2018)
- 5.7 The Sedona Conference Commentary on Defense of Process: Principles and Guidelines for Developing and Implementing a Sound E-Discovery Process (2016)
- 5.8 The Sedona Conference Glossary: E-Discovery & Digital Information Management, 4th Edition (2014)
- 5.9 The Sedona Conference Commentary on Achieving Quality in the E-Discovery Process (2014)
- 5.10 The Sedona Conference Commentary on Ethics & Metadata (2013)
- 5.11 *Bibliography of Additional eDiscovery Technology Resources*

4:00 — 4:15 Afternoon Break**4:15 — 5:30 [Session 6] Protecting Privileges and Client Confidences in Civil Litigation**

(Judge Epps, Judge Fleissig, Judge Peck, Judge Robinson)*

A panel of state and federal judges will address the various mechanisms for protecting personal information, trade secrets, business confidences, and privileges, with special emphasis on the intersection of ABA Model Rules 1.1 (Competence), Rule 1.6 (Confidentiality of Information), and Rules 5.2 and 5.3 (Supervising Subordinate Lawyers and Nonlawyer Assistants); and the appropriate use of Federal Rule of Evidence 502 and available state equivalents (Attorney-Client Privilege and Work Product).

Required Materials:

- 6.1 *The Sedona Conference Commentary on Protection of Privileged ESI*
- 6.2 *The Sedona Conference International Principles on Discovery, Disclosure & Data Protection in Civil Litigation (Transitional Edition)*

Recommended Materials:

- 6.3 The Sedona Conference Primer on Social Media, Second Edition
- 6.4 The Sedona Conference Commentary and Principles on Jurisdictional Conflicts over Transfers of Personal Data Across Borders
- 6.5 David Kessler and Andrea D'Ambra, *Redactions Are Not the Problem, They Are a Solution*

5:30 — 7:30 Reception (Guests Invited)

Friday, March 6, 2020

7:30 — 8:30 Buffet Breakfast & Sign-In**8:30 — 9:30 [Session 7] eDiscovery in the #MeToo Era: The Need for Background and Viewpoint Diversity on the eDiscovery Team***(Cullen, D'Ambra, Duplechain*, Osuch, Parikh)*

Before the 2006 Amendments to the Federal Rules of Civil Procedure, eDiscovery usually meant working with word processing, email, and databases found in corporate IT environments. eDiscovery today involves identifying, locating, collecting, and reviewing electronically stored documents, communications, and digitally recorded interactions created by diverse users of diverse technologies. Understanding the way people use these technologies and understanding the content and significance of the data itself requires knowledge of languages, history, social mores, and emerging social trends. This panel asks whether your eDiscovery team is diverse enough to effectively conduct 21st-century, and what you can do to stay on the cutting edge.

Required Materials:

- 7.1 Kimberly J. Duplechain and Daryl Osuch, *The State of Diversity and Inclusion in eDiscovery*,
- 7.2 *2010 Report on Diversity in U.S. Law Firms*, National Association for Law Placement, Inc.

Recommended Materials:

- 7.3 Artificial Intelligence and Diversity: Additional Links to Recent Articles

9:30 — 10:30 [Session 8] Preserving, Collecting, and Protecting Data from Non-Traditional Sources
(Ackert, Coleman, Cullen, Gelb)*

Using an example from the world of trade secret litigation, a panel of experienced litigators, with an assist from legal technologists, discuss the challenges of preserving and collecting discoverable data from the growing number of diverse non-traditional sources, such as text, social media, ephemeral and encrypted messaging, third-party apps, and mobile devices, each of which present complicated technical, data security, and privacy concerns.

Required Materials:

- 8.1 Daniel K. Gelb, *The Court as Gatekeeper: Preventing Unreliable Pretrial eDiscovery From Jeopardizing a Reliable Fact-Finding Process*,
- 8.2 Daniel K. Gelb, *TAR in 2020: Is the Judicial "Gatekeeping" Function Still Necessary?*

Recommended:

- 8.3 *The Sedona Conference Primer on Social Media, Second Edition*
- 8.4 The Sedona Conference Commentary on Rule 34 and Rule 45 "Possession, Custody, or Control"
- 8.5 The Sedona Conference Data Privacy Primer
- 8.6 The Sedona Conference Commentary on ESI Evidence & Admissibility
- 8.7 Paul W. Grimm and Kevin F. Brady, *Admissibility of Electronic Evidence*

Friday, March 6

10:30 — 10:45 Morning Break**10:45 — 11:45 [Session 9] When eDiscovery Goes Criminal: 4th and 5th Amendment Protections for Email, Social Media, and Personal Devices***([Judge Collins](#), [Gelb](#), [Hedges*](#), [Judish](#))*

Criminal investigations and prosecutions have changed considerably with the advent of eDiscovery, and the law is developing quickly to address search-and-seizure issues under the 4th Amendment, self-incrimination issues under the 5th Amendment, and the prompt and fair disclosure of digital evidence under Federal Rule of Criminal Procedure 16, Department of Justice guidelines, and local rules.

Required Materials:

- 9.1 Daniel K. Gelb, Ronald Hedges, *Warrantless Searches in the Carpenter Age*,
- 9.2 Daniel K. Gelb, *Is the Reverse Location Search Warrant Heading in the Wrong Direction?*
- 9.3 Daniel B. Garrie and Daniel K. Gelb *eDiscovery in Criminal Cases: A Need for Specific Rules*

Recommended Materials:

- 9.4 *Pollard v. Florida*, No. 1D18-4572 (Fla. App. Dec. 23, 2019)
- 9.5 *Bibliography of Resources on eDiscovery in Criminal Cases*

11:45 — 12:00 Wrap-up**12:00 Adjournment and Grab-&-Go Lunch (provided)**