



The 11th Annual Sedona Conference Institute Program on eDiscovery:
Discovery in a Dynamic Digital World
Royal Sonesta Hotel
Houston, Texas

DAY ONE: Thursday, March 2, 2017

7:30 - 8:30 Breakfast & Registration

8:30 - 8:45 Welcome & Announcements
(*Evans, Martin, Weinlein*)

8:45 - 9:15 eDiscovery Comes of Age: Opportunities and Challenges
(*Evans, Martin*)

More than 21 years ago, one of the judges on this faculty declared that “today it is black letter law that computerized data is discoverable...” Since then, we have developed specific rules, a large body of case law, and a specialized area of legal practice. The co-chairs of this Institute look back at where we have come from, outline today’s emerging challenges of the future, and place the dialogue to occur over the next day-and-a-half into context.

Materials

- [01] *eDiscovery Comes of Age: Opportunities and Challenges* (Feb. 2017)

9:15 - 10:30 Panel 1: Catching up on the eDiscovery Case Law, Part 1: Rules 1 and 26
(*Bencivengo (J), Bland (J), Hanks (J), Rosenthal (J), Stafford (J), Withers**)

A panel of state and federal judges discuss the practical implications of the 2015 amendments to the Federal Rules of Civil Procedure, focusing on recent court decisions applying amended Rule 1 on cooperation in pretrial matters and Rule 26 on proportionality in discovery.

Materials:

- [02] Kenneth J. Withers, ed., *eDiscovery Case Law*, December 1, 2016 – December 31, 2016 (Selected) (Feb. 2017)
- [03] Thomas Y. Allman, *Proportionality Today* (2017)
- [04] Hon. John G. Roberts, Jr., *2015 Year-End Report on the Federal Judiciary* (2015)

10:30 - 10:45 Morning Break



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10:45 - 12:00

Panel 2: Preserving and Collecting Mobile and Non-Custodial Data

(Anderson, Gosalia, Greer, Hegedus, Keeling, Schwarz*)

Gone are the days when discovery preservation and collection involved a few file cabinets, desktop hard drives, email accounts, and perhaps a file server. Today, the discovery attorney must consider preserving and collecting data on mobile devices, interconnected “things,” social media platforms, and the cloud; and it is unlikely that these are in the client’s “possession, custody, or control,” except for the purposes of Rule 34. What do you need to consider with respect to preservation and collection of ESI from these “non-custodial” sources?

Materials:

- [05] Warren Kruse, Paul McVoy & Kevin Chang, *The Internet of All Things: Collecting the Right Data For Your Case* (Feb. 2017)
- [06] Robert Keeling, *The Challenge of Collecting Data from Mobile Devices in E-discovery* (Feb. 2017)

12:00 - 1:15

Lunch

1:15 - 2:30

Panel 3: Privacy, Security, and Data Protection in Discovery

(Anderl (J), Hegedus, Lichtman, Moncure, Sherer*)

Discovery often involves collecting personal and sensitive business information, and transmitting that information to litigation support services, opposing counsel, witnesses, and courts. A panel of veteran eDiscovery attorneys and technical consultants discuss the security measures, data processing procedures, contractual agreements, and protective orders that should be in place to prevent or mitigate the danger of data breach.

Materials:

- [07] *Privacy, Security, and Data Protection in Discovery – An Incident in Three Acts* [Panel 3 hypothetical fact patterns] (Feb. 2017)
- [08] *WG1 Commentary on Privacy and Information Security: Principles and Guidelines for Lawyers, Law Firms, and Other Legal Service Providers* (Nov. 2015)
- [09] *WG6 International Litigation Principles on Discovery, Disclosure & Data Protection in Civil Litigation (Transitional Edition) – Appendix C: Model Protective Order* (Jan. 2017)



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2:30 - 3:45

Panel 4: Implementing Advanced Technology to Achieve the “Just, Speedy, and Inexpensive Determination of Every Action”
(*Evans**, *Greer*, *Grossman*, *Keeling*, *Peck (J)*)

Whether you call it “predictive coding” or “technology-assisted review” (TAR), advanced search and review tools are transforming the practice of law and have the potential to dramatically reduce costs associated with eDiscovery. It is now settled that courts will approve the use of these tools to replace expensive page-by-page document review. But they are still not extensively utilized by eDiscovery practitioners. A panel of actual TAR users demystify the technology and explore where and when its use is most effective.

Materials:

- [10] *WG1 TAR Case Law Primer* (Final/Prepublication Edition, Jan. 2017)
- [11] Gareth Evans and Jennifer Rearden, *Practical Considerations in Using Predictive Coding* (2015)
- [12] Maura Grossman & Gordon V. Cormack, *A Tour of Technology-Assisted Review* (2016)

3:45 - 4:00

Afternoon Break

4:00 - 5:15

Panel 5: Discovery from Overseas: Navigating the Turbulent Data Protection Regulation Waters
(*Anderson*, *Backhouse**, *Ghalayini*, *Gosalia*, *Levy*)

In the 21st century, U.S. litigation often requires discovery of information held overseas, where pretrial discovery is discouraged, and in some cases, actually unlawful, requiring careful navigation of comity. An experienced panel will discuss recent international developments affecting U.S. discovery, including Privacy Shield, the EU General Data Protection Regulation, and the recently updated Sedona International Principles.

Materials:

- [09] *WG6 International Litigation Principles on Discovery, Disclosure & Data Protection in Civil Litigation (Transitional Edition)* (Jan. 2017)

5:30 - 7:00

Reception



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DAY Two: Friday, March 3, 2017

7:30 - 8:45 Breakfast & Registration

8:45 - 9:00 Welcome & Announcements

(*Evans, Martin, Weinlein*)

9:00 - 10:30 Panel 6: Catching up on the eDiscovery Case Law, Part 2: Rules 34 and 37(e)

(*Andler (J), Peck (J), Stafford (J), Walsh (J), Withers**)

A panel of state and federal judges discuss the practical implications of the 2015 amendments to the Federal Rules of Civil Procedure, focusing on recent court decisions applying amended Rule 34 on discovery requests, responses, and objections; and Rule 37(e) on sanctions for the loss of electronically stored information (ESI).

Materials:

- [02] Kenneth J. Withers, ed., *eDiscovery Case Law*, December 1, 2016 – December 31, 2016 (Selected) (Feb. 2017)
- [13] Thomas Y. Allman, *Applying Amended Rule 37(e)* (Feb. 2017)

10:30 - 11:30 Panel 7: Managing eDiscovery Risks and Costs from the In-House Perspective

(*Levy, Moncure*, Prine, Watts*)

A panel of corporate counsel discuss emerging trends in how eDiscovery is being handled by businesses and institutions today and how it likely will be handled in the future, from implementing Information Governance policies, to bringing eDiscovery processes in-house, to negotiating with outside legal service providers to reduce risks and costs, and to emphasizing dispute resolution over scorched-earth litigation tactics.

Materials:

- [14] *WG6 Practical In-House Approaches for Cross-Border Discovery & Data Protection* (June 2016 Edition)
- [15] David Moncure, *ESI Budget Calculator* (Feb. 2017)

11:30 - 11:45 Morning Break

11:45 - 1:00 Panel 8: Ethical Dangers in Social Media

(*Backhouse, Bencivengo (J), Brady*, Grossman*)

In 2016, the District of Columbia Bar issued a pair of ethics opinions—synthesizing opinions issued by a score of other bar associations around the country—that warn attorneys who blog on legal issues that they may be creating conflicts with their clients, and also warn that the use



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of certain social media platforms may expose client confidences. On the other hand, the DC Bar also warns that failing to include social media sources in discovery requests and responses may be negligence. In an interactive session, you'll be presented with a number of hypotheticals involving attorney use of social media and asked for your responses to multiple choice questions. Your responses will be analyzed by the panel, who will then present the "right" answer.

Materials:

- [16] Panel 8 Ethical Dangers in Social Media – Hypothetical Fact Pattern
- [17] *District of Columbia Bar Ethics Opinion 370, Social Media I: Marketing and Personal Use*
- [18] *District of Columbia Bar Ethics Opinion 371, Social Media II: Use of Social Media in Providing Legal Services*

1:00 - 2:00 **Closing Announcements, followed by Grab & Go Lunch**
(*Evans, Martin, Weinlein*)