

**The Sedona Conference Working Group 1  
Electronic Document Retention & Production  
Midyear Meeting**

**The Langham Huntington  
Pasadena, CA**

**Tuesday, April 12, 2016**

**6:00 — 8:00 Evening Welcome Reception**

**Wednesday, April 13, 2016**

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

**8:30 — 8:45 Welcome and Overview**  
*(K. Brady, W. Butterfield\*, C. Weinlein)*

**8:45 — 10:15 2016 eDiscovery Case Law Update, with an Emphasis on the Impact of the 2015 Rules Amendments**  
*(K. Withers, et al.)*

The ink was barely dry on the changes to the Federal Rules of Civil Procedure when decisions started coming out applying them. There is already a growing body of law interpreting the Rules. In this fast-paced interactive session, eDiscovery case law expert Ken Withers will select 12 representative court opinions and enlist members of the faculty and audience to help explain their practical significance.

- Kenneth J. Withers, ed., eDiscovery Case Law, December 1, 2015 – March 15, 2016

**10:15 — 10:45 Morning Break**

**10:45 — 12:00 Legal Holds and Sanctions After the 2015 Rules Amendments:  
Has Anything Changed?**  
*(T. Allman\*, Judge Hanna, D. Horn, R. Solomon, A. Tadler)*

In September 2010, Sedona Working Group 1 published its Commentary on “Legal Holds: The Trigger & The Process.” This review of the law with 11 practical guidelines has been cited favorably by courts and commentators for five years, but now needs updating to accommodate the 2015 amendments to the Federal Rules of Civil Procedure emphasizing proportionality in discovery and sharpening the analysis of sanctions for the loss of discoverable ESI; developments in state and federal case law on preservation and spoliation; new and novel sources of ESI requiring preservation and collection; and advances in electronic document management technology. In this session, a panel of Working Group 1 veterans will lead a dialogue to assess the impact of the 2010 practical guidelines, identify where the Commentary most needs updating, and air suggestions for proposed revisions.

- The Sedona Conference *Commentary on Legal Holds: The Trigger & The Process*, 11 Sedona Conf. J. 265 (2010)
- Thomas Y. Allman, Amended Rule 37e: Rationalizing the Spoliation Doctrine for ESI (March 2016)
- Kenneth J. Withers, ed., Suggested Updates to The Sedona Conference Commentary on Legal Holds (March 2016)

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- 12:00 — 1:00 **BYOD: Preservation and Discovery From Mobile Devices**  
(*Alitia Faccone\**, *Judge Francis*, *J. Neufeld*, *L. Schwartzreich*, *R. Wasell*)
- Fresh off the heels of a robust panel discussion at the Annual Meeting this past October, the BYOD drafting team went back to work tackling the very specific issues identified by Working Group 1 and members of the Steering Committee. Included among those changes were the addition of an executive summary, a more narrowly tailored group of principles, and pointed reference to other Sedona publications that bear directly on the BYOD question. Building on the momentum to provide needed guidance in this area, this panel will present the changes and edits made to the most recent draft, with the goal of achieving consensus from WG1 regarding the paper's readiness for the next stage in the publication process.
- The Sedona Conference, Primer on BYOD: Guidance and Commentary (March 2016 Working Draft)
- 1:00 — 2:15 **Lunch (provided)**  
**Status Update on WG1** (*W. Butterfield*)
- 2:15 — 3:45 **The Sedona Principles, Third Edition, with an Emphasis on Principles 12 and 14**  
(*E. Mandel\**, *C. Ragan*, *D. Sharp*, *M. Tully*)
- This panel will present, for WG1's discussion, the most recent updates to the draft of The Sedona Principles, Third Edition, based on the input of the membership during the annual meeting in October 2015, as well as the January 2016 online meeting. In particular, the panel will focus on the December 2015 amendments to Federal Rules 34 and 37, and the corresponding revisions made to Principle 12 on the form or forms in which ESI should be produced and Principle 14 on sanctions for the loss of discoverable ESI.
- The Sedona Conference, The Sedona Principles, Third Edition: Best Practices Recommendations & Principles for Addressing Electronic Document Production (April 2016 Working Draft - Clean)
  - The Sedona Conference, The Sedona Principles, Third Edition: Best Practices Recommendations & Principles for Addressing Electronic Document Production (April 2016 Working Draft - Redlined)
- 3:45 — 4:00 **Afternoon Break**

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- 4:00 — 4:30 **The WG1 Publications Process**  
(*D. Kuckelman\**, *E. Mandel*)
- This 30-minute session will consist of a review and discussion of the Commentary Subcommittee's proposed formal written process for the development and updating of WG1 publications.
- Kenneth J. Withers, ed., *Consensus and Publications of The Sedona Conference* (March 2016)
- 4:30 — 5:30 **Information Governance After the Federal Rules Changes: Issues and Challenges**  
(*J. Baron\**, *S. Harris*, *C. Lynn*, *P. Pepiton*, *R. Snow*)
- We define "information governance" (IG) as "an organization's coordinated, interdisciplinary approach to satisfying information legal and compliance requirements and managing information risks while optimizing information value." The 2015 amendments to the Federal Rules of Civil Procedure are expected not only to impact how eDiscovery is conducted in litigation, but also how organizations evaluate their legal risk in anticipating litigation and preserving increasingly large amounts of ESI. Rules 1, 26, 34, and 37, in particular, lend themselves to the development of supplemental guidance to assist counsel and litigants on how to approach the overall management, preservation, and disposition of ESI. This panel will discuss the work of the IG Brainstorming Group in identifying issues that arise out of the new rules and work product Sedona might undertake in this area including materials that WG1 can create for an IG toolbox.
- The Sedona Conference *Commentary on Information Governance*, 15 Sedona Conf. J. 125 (2014)
  - The Sedona Conference WG1, *Information Governance After Federal rules Changes: Issues and Challenges* (March 2016)
  - The Sedona Conference, *Typical Data Sources and Their Relative Burdens* (March 2016)
  - The Sedona Conference, *Information Governance: Intersections, Risks, and Opportunities* (March 2016)
  - The Sedona Conference, *Technology Assessment Questionnaire* (March 2016)
- 5:30 — 7:30 **Reception (Guests Invited)**

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**Thursday, April 14, 2016**

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

8:30 — 9:30 **Ethical Issues in eDiscovery: Is California the New Standard?**

*(K. Brady\*, Judge Conti, Judge Gandhi, M. Grossman, D. Shonka)*

In August 2012, the American Bar Association revised its comments to ABA Model Rule 1.1 on Competence to remind lawyers they “should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology. ...” The ABA report specifically stated that the revision included eDiscovery. Twenty states have now followed the lead of the ABA and adopted similar changes to their rules of professional conduct. On June 30, 2015, the State of California Standing Committee on Professional Responsibility and Conduct went even further by issuing Formal Opinion No. 2015-193, which addressed a number of issues regarding an attorney’s ethical duties in the handling of discovery of electronically stored information. This panel will explore the ethical implications of the December 2015 changes to the Federal Rules of Civil Procedure, with their increased emphasis on cooperation, proportionality, and civility in litigation, as well as the role that the California Ethics Opinion should play in providing an ethical roadmap for attorneys across the country who handle eDiscovery issues.

- The State Bar of California Standing Committee on Professional Responsibility and Conduct Formal Opinion No. 2015-193 on the issue of: What are an attorney’s ethical duties in the handling of discovery of electronically stored information?
- Hon. Joy Flowers Conti and Richard N. Lettieri, *E-Discovery Ethics: Emerging Standards of Technological Competence*, *The Federal Lawyer* (October /November 2015)
- The Sedona Conference *Commentary on Privacy and Information Security: Principles and Guidelines for Lawyers, Law Firms, and Other Legal Service Providers* (November 2015)
- Kevin F. Brady, Karin Scholz Jenson, and Ariana J. Tadler, *Jumpstart Outline: Questions to Ask Your Client & Your Adversary to Prepare for Preservation, Rule 26 Obligations, Court Conferences & Requests for Production* (March 2016)

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9:30 — 10:45 **Judicial Roundtable on eDiscovery**

*(Judge Conti, Judge Francis, Judge Gandhi, Judge Hanna, D. Kessler\*)*

The panel of judges will provide their thoughts on the topics addressed during the Mid-Year Meeting and other topical discovery issues including, but not limited to, the new Federal Rule 37(e); achieving proportionality in complex matters like class and collective actions; addressing possession, custody and control in discovery; cross-border discovery; and the “encryption” debate between privacy advocates and security/law enforcement. This is also your opportunity to ask questions of the judges related to eDiscovery and pretrial case management practices in general.

10:45 — 11:15 **Morning Break**

11:15 — 11:45 **Where Should WG1 Go Next?**

*(K. Brady, W. Butterfield\*)*

11:45 — 1:00 **Developing Synergies between In-House and Outside Counsel**

*(A. Crews, K. Jenson, W. Matus, G. Trimarco\*)*

The requirements of in-house counsel have shifted towards a greater focus on cost-control, problem-solving, teamwork, proactive advice, and alternative fee strategies, among others. These concerns present mounting challenges to the practice of law posed by the traditional (billable hour) model of the delivery of corporate legal services. This panel will discuss potential solutions that integrate legal and business analysis, taking advantage of cost-saving tools provided by the Federal Rules and case law, and align the incentives of both in-house and outside counsel with those of the client. The panel will address the ways that outside counsel can adapt to become more collaborative and responsive to the perspective and needs of in-house counsel, and review the legal issues that can arise when the collaboration is ineffective or breaks down.

- Kevin F. Brady, Karin Scholz Jenson, and Ariana J. Tadler, Jumpstart Outline: Questions to Ask Your Client & Your Adversary to Prepare for Preservation, Rule 26 Obligations, Court Conferences & Requests for Production (March 2016)
- Complaint for Damages, *J-M Manufacturing Company, Inc. v. McDermott Will & Emery*, Case No. BC462832 (Cal. Super. Ct., 6/2/11)
- Order Granting in Part and Denying in Part Defendant’s Motion for Sanctions and Sanctioning Qualcomm, Incorporated and Individual Lawyers, *Qualcomm Inc. v. Broadcom Corp.*, Case No. 05-1958 (S.D. Cal., 1/7/08)

1:00 — 2:00 **Grab & Go Lunch (provided)**