
Wednesday, May 2, 2018

5:30 — 7:30 Evening Welcome Reception

Thursday, May 3, 2018

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

8:30 — 8:45 Welcome and Announcements
(K. Brady, C. Weinlein)

8:45 — 10:15 [Session 1] eDiscovery Case Law Update
(T. Allman, D. Horn, Magistrate Schwabedissen, K. Withers*)

More info: eDiscovery case law expert Ken Withers will lead a fast-paced interactive session enlisting the faculty and audience members, and explain the significance of recent eDiscovery opinions.

Required Materials:

[1.1] *Selected 2017–2018 eDiscovery Decisions* (William E. Hoffman & Kenneth J. Withers eds., April 2018)

10:15 — 10:30 Morning Break

10:30 — 11:30 [Session 2] **Defensible Disposition and Information Governance:** Providing a roadmap to implement successful information governance programs, as well as ethical and defensible disposition strategies, consistent with Principle 6 of Sedona’s 2014 *Commentary on Information Governance*.
(K. Brady*, T. Emory, T. Gelsinger, Judge Hanks, L. Herlinger, H. Kolasinsky)

More info: While Principle 6 of *The Sedona Conference Commentary on Information Governance* provides guidance to organizations for the ethical, effective, timely, and consistent disposal of physical and electronic information that no longer needs to be retained, implementation of a process of disposition of information can present significant and sometimes overwhelming challenges to an organization’s Information Governance program. This panel will discuss the complex problems and challenges associated with disposition of data as well as a range of approaches including a roadmap for implementing a program that leads to a defensible disposition strategy.

Required Materials:

[2.1] The Sedona Conference, *Commentary on Information Governance* (April 2018 Pre-Public Comment Draft)
[2.2] The Sedona Conference, *Principles and Commentary on Defensible Disposition* (April 2018

Member Comment Draft)

11:30 — 12:30 [Session 3] Guidance from In-House Lawyers to Law Firms and Other Legal Service Providers: Tips for outside counsel and vendors to add more value to eDiscovery engagements.
(G. Evans*, K. Foster, C. Hass, D. Horn, A. Sellars)

More info: This panel will explore legal and practical considerations when engaging outside counsel and other legal service providers for eDiscovery projects. The dialogue among this panel and the audience will cover common issues such as budgeting, project management, and communication, as well as ethical considerations that may arise when outsourcing eDiscovery work.

Required Materials:

[3.1] Gareth Evans, *eDiscovery Vendor Developments: A Tale of Two Cities*, Bloomberg BNA Digital Discovery & e-Evidence, 15 DDEE 353 (2015)

[3.2] Stephanie Russell-Kraft, *Oracle's Top Lawyer on the 'Cascading Effect' of Diversity*, Big Law Business (Sept. 25, 2017) (PENDING APPROVAL)

12:30 — 1:45 Lunch (Provided)

1:45 — 3:00 [Session 4] New Technology, eDiscovery, and Attorney Competence: Explore the impact of technology on discovery, including AI, Blockchain, IoT, and Apps. Do attorneys understand their ethical obligations regarding these new data sources and how to manage the data in them?
(A. D'Ambra, P. Favro*, Justice Koch (ret.), T. Opsitnick, Judge Parker, E. Schwarz)

More info: Discussion will include: effects on records, preservation, and collection; compliance and investigations; authentication of data from new sources; and using data science to identify information, patterns, and anomalies.

Required Materials:

[4.1] Philip Favro & Keith Call, *A New Frontier in eDiscovery Ethics: Self-Destructing Messaging Applications*, 31 Utah B. J. 40 (Mar/Apr 2018)

3:00 — 3:15 Afternoon Break

3:15 — 4:30 [Session 5] GDPR for the U.S. eDiscovery Lawyer: How to safely navigate cross-border EU/U.S. data transfers—making the best of tough decisions and avoiding problems on both sides.
(D. Backhouse*, Judge Francis (ret.), T. Hoffman, Judge Scheindlin (ret.), J. Thomas)

More info: This session will examine issues raised when U.S.-based litigation implicates cross-border discovery, including the ethical considerations for counsel. The panelists will provide practical guidance and advice about adapting to the GDPR, effective May 25, 2018.

Required Materials:

[5.1] The Sedona Conference, *International Principles on Discovery, Disclosure & Data Protection in Civil Litigation (Transitional Edition)* (Jan. 2017)

4:30 — 5:00 **[Session 6] Sedona Working Group Series—All Publications. Where does WG1 go from here?** Review of current papers in progress from Working Groups 1, 6 & 11. Are there opportunities for collaboration?
(K. Brady, T. Hoffman, D. Shonka, M. Tully*)

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

Friday, May 4, 2018

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

8:30 — 10:00 **[Session 7] Judicial Roundtable:** Explore the judicial perspective for 2018 and beyond. (Judge Brown, Judge Francis (ret.), Judge Hanks, Justice Koch (ret.), Judge Parker, Judge Peck (ret.), Judge Scheindlin (ret.), Magistrate Schwabedissen, G. Trimarco*, Judge Vanaskie)

More info: This panel of judges will examine the impact of case law, Sedona Conference WG1 Commentaries, and other significant developments in eDiscovery in federal and state jurisdictions. The panel will provide insight from a wide variety of perspectives from the bench, representing federal and state court systems in different regions. Topics will include:

- How have litigants evolved in their approach to discovery? Is there more cooperation?
- Are there fewer disputes?
- Has the subject of the disputes changed?
- What are recommendations for effective dispute resolution?
- Are there more spoliation/failure to preserve opinions recently?
- How frequently is proportionality raised?
- New technology—does it raise authentication or admissibility concerns? Privacy issues? Ethics concerns?
- What are the persistent eDiscovery issues that Judges most often encounter?

Required Materials:

[7.1] The Sedona Conference, *Federal Rule of Civil Procedure 34(b)(2) Primer: Practice Pointers for Responding to Discovery Requests* (March 2018)

[7.2] The Sedona Conference, *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production* (2017)

10:00 — 10:15 **Morning Break**

10:15 — 11:30 [Session 8] Discovery in Trade Secret Litigation: Introduction to The Sedona Conference's new Working Group 12, and issues raised by the rising tide of trade secret litigation. These cases often involve discovery of electronic devices, work and personal email, and third-party apps and cloud storage, leading to a perfect storm of privilege, privacy, and proportionality considerations while conducting necessary discovery and handling proprietary and confidential information.

(R. Beck, R. Milligan*, Judge Vanaskie, J. Vaughn, W. Wu)

More info: Trade Secret litigation is currently on the rise, in part because protecting trade secrets in a digital environment is more difficult than in the old paper-and-secure-vault days. This panel will examine the difficulty of conducting necessary discovery of alleged highly confidential and proprietary trade secret information which is often stored on a multitude of devices and accounts, and complying with the highly restrictive protective orders entered in these cases to protect trade secrets throughout the discovery process. For example, such protective orders typically require inspection of highly confidential materials in a secure room on a stand-alone computer without internet access or network access by attorney's eyes only. Electronic copying is prohibited. A whole new burden is imposed when dealing with highly confidential and proprietary information which cannot be handled in the same manner as other electronic discovery. Additionally, the panel will discuss the requirements of trade secret identification which some jurisdictions have employed, with various degrees of success, to manage discovery.

Required Materials:

[8.1] Russell Beck, *Building the Case: Discovery in Trade Secrets Cases* (2013–2016)

[8.2] Seyfarth Shaw LLP, *The Defend Trade Secrets Act: What Employers Should Know Now* (2016)

11:30 — 12:45 [Session 9] Rule 45—Updated Guidance in the Age of Proportionality: Increased volume, more data regulation and enforcement, different proportionality considerations for non-parties, proliferation of third-party apps—WG1 will provide guidance on these issues and more.

(E. Leland, S. Metallo-Barragan, Judge Peck (ret.), P. Pepiton*, E. Schwarz)

More info: The overall increase in subpoenas to third parties, combined with increased data volumes and requests for cross-border or otherwise regulated data, has moved the needle on when one might respond vs. move to quash. Should Sedona refresh its 2008 *Commentary on Non-Party Production & Rule 45 Subpoenas*? The panel will cover these issues and encourage dialogue about practical guidance for third parties to successfully assert proportionality arguments and recoup costs of discovery.

Required Material:

[9.1] The Sedona Conference WG1 Brainstorming Group on Rule 45 Commentary: Recommendation Outline (April 2018)

Background Material:

[9.2] The Sedona Conference, *Commentary on Non-Party Production & Rule 45 Subpoenas* (2008)

12:45 Adjournment and Grab-&-Go Lunch (Provided)