



The Sedona Conference

Commentary on ESI Evidence & Admissibility,

Second Edition

(Public Comment Version, July 2020)

The Sedona Conference Commentary on ESI Evidence & Admissibility, Second Edition addresses how the 2017 and 2019 changes to the Federal Rules of Evidence apply to the ever-changing landscape of technology and influence how parties manage electronically stored information (ESI).

The growth of eDiscovery reflects the increasing digitization of information in society, which also results in more relevant evidence being sourced from ESI. This phenomenon means that successful litigators must understand how to get ESI admitted into evidence, which is a different question than preserving or gathering it for discovery. This *Commentary* focuses specifically on that concern.

The First Edition of this *Commentary* was published in 2008. This Second Edition provides updated guidance that reflects the advances in technology and the amendments to the Federal Rules of Evidence, in particular FRE 803(16), 807, and 902(13) and (14). For example, the changes to Rule 803(16) address authentication of digital information that has been stored for more than 20 years, eliminating the concern that factual assertions made in massive volumes of ESI will be admissible for the truth simply because of their age. The new subsections (13) and (14) to Rule 902 provide for streamlined authentication of ESI and potentially eliminate the need to call a witness at trial to authenticate the evidence.

This *Commentary* is divided into three parts. First, there is a survey of the application of existing evidentiary rules and case law addressing the authenticity of ESI. Second, there are discussions about new issues and pitfalls, such as ephemeral data, blockchain, and artificial intelligence, looming on the horizon. Finally, there is practical guidance on admissibility and the use of ESI in depositions and in court.

This version of *The Sedona Conference Commentary on ESI Evidence & Admissibility, Second Edition* is open for public comment through September 20, 2020. Your comments and suggestions may be sent to comments@sedonaconference.org.

The full text of *The Sedona Conference Commentary on ESI Evidence & Admissibility, Second Edition* is available for free individual download from The Sedona Conference website at https://thesedonaconference.org/publication/Commentary_on_ESI_Evidence_and_Admissibility.