

The Sedona Conference *Commentary on ESI Evidence & Admissibility* (March 2008)

Since the adoption of significant amendments to the Federal Rules of Civil Procedure (“FRCP”) in 2006 and 2015, the legal community has expended significant energy and focus on electronic data. A main focus has been on whether and under what circumstances a litigant must preserve and produce such data—known more formally as electronically stored information or “ESI”—in civil litigation.

While there are still significant issues to resolve with the amended FRCP (and their state court counterparts) and electronic discovery in general, the legal community is also grappling with whether and how ESI, once produced, can actually be authenticated and used as evidence at trial or in motion practice. As succinctly noted by Judge Grimm in a leading case on the subject:

[C]onsidering the significant costs associated with discovery of ESI, it makes little sense to go to all the bother and expense to get electronic information only to have it excluded from evidence or rejected from consideration during summary judgment because the proponent cannot lay a sufficient foundation to get it admitted.

Lorraine v. Markel American Ins. Co., 241 F.R.D. 534, 538 (D. Md. 2007).

This 28-page Commentary focuses specifically on that concern and is divided into three parts. Part I is a brief survey of the applicability and application of existing evidentiary rules and case law addressing the same. Part II addresses new issues and pitfalls that are looming on the horizon. Part III provides practical guidance on the use of ESI in depositions and in court.

The full text of *The Sedona Conference Commentary on ESI Evidence & Admissibility* is available free for individual download from The Sedona Conference website at

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