
Wednesday, Nov. 1, 2017

5:30 — 7:30 Evening Welcome Reception

Thursday, Nov. 2, 2017

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

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

8:45 — 9:45 [Session 1] Roundup of the Status of U.S. District Court Pilot Projects (Arizona and Illinois) and State eDiscovery Rules
(Justice Brutinel, Judge Dow, Judge Rayes, M. Tully, K. Withers*)

This year, just as we were beginning to grapple with the December 2015 amendments to the Federal Rules of Civil Procedure, federal courts in the Northern District of Illinois and District of Arizona initiated the Mandatory Initial Discovery Pilot Project (MIDPP), requiring full disclosure of documents and ESI on a tight timetable, “whether favorable or unfavorable, and regardless of whether they intend to use the information in presenting their claims or defenses,” without formal requests from opposing parties. The MIDPP is based in large part on Arizona RCP 26.1, but is entirely novel to Illinois practitioners. Meanwhile, some states have adopted bits and pieces of the 2015 Federal Rule Amendments or have formulated their own approaches to cooperation, proportionality, and sanctions. This session looks closely at the MIDPP from the viewpoint of judges and practitioners who have experienced it first-hand, explores a little of the history, and reports on state eDiscovery rules developments nationwide.

Required Materials:

- 1.1 Mandatory Initial Discovery Pilot Project – Overview and Key Reference Documents
- 1.2 Southern District of Florida, Rule 26(f) ESI Checklist
- 1.3 Kenneth J. Withers, *State Discovery Rulemaking After the Duke Conference* (Oct. 17, 2017)
Appendix A: Selected Arizona Rules of Civil Procedure as Amended Effective July 1, 2018
Appendix B: Selected Illinois Rules on Civil Proceedings in the Trial Courts

9:45 — 10:00 Morning Break

10:00 — 11:15 [Session 2] Cooperation, Transparency, and Sedona Principle 6 in Discovery: Finding the right balance
(A. Goodman, P. Pepiton*, Judge Shaffer, N. Sterling, D. Stromberg)

Cooperation is a highlight of Sedona efforts and one of the goals mentioned in the most recent round of amendments to the Federal Rules of Civil Procedure while transparency is one of the tools

of cooperation. Both are laudable but neither is required by the Rules, and both sit in tension with Sedona Principle 6, which says that Producing Parties are in the best position to determine the tools, methods, and processes to meet their discovery obligations. This session will explore the boundaries of all 3 notions and attempt to describe an intersection that might gain wide consensus.

Required Materials:

- 2.1 Hon. Craig B. Shaffer, *Deconstructing "Discovery About Discovery"* (October 2017)
- 2.2 WG1 Transparency & Cooperation Brainstorming Group 09-28-2017 Draft Outline

11:15 – 12:15 [Session 3] Wearables, IoT, and Apps—The next world of discovery
(J. Lewis, E. Mandel*, E. Schwarz, D. Shonka)

In this session, we examine the next world of discovery: ESI generated from, and sometimes stored inside of, wearable technology, devices that fall within the rubric of the Internet of Things (IoT), and mobile apps. Join us as we explore what types of information are potentially available for discovery, the proportionality considerations that will need to be taken into consideration, and the hurdles we may face in preserving, collecting, reviewing, and producing this information for discovery.

Required Material:

- 3.1 U.S. FEDERAL TRADE COMMISSION, INTERNET OF THINGS: PRIVACY AND SECURITY IN A CONNECTED WORLD (Jan. 2015)

12:15 – 1:30 Lunch (provided)

1:30 – 2:45 [Session 4] Ethics: Exploring the boundaries of zealous advocacy
(K. Brady, V. Catanzaro, Judge Facciola (ret.)*, T. Opsitnick, A. Tadler)

The recent eDiscovery error that led to Wells Fargo accidentally releasing a trove of data about its wealthiest clients which included customer names, social security numbers, and financial details about their portfolios, brings to light the role of the ethical obligations of the lawyer (her law firm and their vendor) to manage the security of information in the discovery context. This panel will discuss the lawyer's duty of competence under Rule 1.1 and what that means regarding data security issues in discovery. It will also explore the ethical responsibility to maintain the confidentiality of the client's data under Rule 1.6(c) and the recent American Bar Association Formal Opinion 477 that deals with lawyer's responsibilities to protect a client's data from hacking and malware.

In addition, the panel will discuss the issue of candor in the meet-and-confer process and the diverging state court rules on judicial ethics and social media.

Required Materials:

- 4.1 Hon. John M. Facciola, *Summary of ABA Opinion 477 on Securing Communication of Protected Client Information* (October 2015)
- 4.2 *Emerald Coast Utilities Authority v. Bear Marcus Pointe, LLC*, No: 1D15-5714 (Fla. 1st DCA 2017)

2:45 – 3:00 Afternoon Break

3:00 — 4:00 **[Session 5] Legal Holds: Updates to Sedona’s legal hold guidance are underway**
(T. Allman, Judge Litkovitz, K. Malamis, J. Tredennick, G. Trimarco*)

This panel will explore legal hold and preservation guidance in light of the December 2015 amendments to the Federal Rules of Civil Procedure, new technology, and recent case law. The session will promote dialogue from the Working Group 1 audience on key issues, from trigger through process. For example, how do the recent developments impact legal hold obligations? Should reasonable steps be the focal point? These and other legal hold dilemmas will be analyzed to provide feedback to update the commentary.

Required Materials:

- 5.1 WG1 Legal Holds Drafting Team, The Sedona Conference Commentary on Legal Holds: The Trigger & The Process (Redlined and Annotated, Oct 2017)
- 5.2 WG1 Legal Holds Drafting Team, The Sedona Conference Commentary on Legal Holds: The Trigger & The Process (Revised Clean Draft, Oct 2017)
- 5.4 WG1 Legal Holds Drafting Team, The Sedona Conference Commentary on Legal Holds: The Trigger & The Process (Issues and Questions for WG1 Review)

Background Material:

- 5.3 Tom Allman, *Spoliation After Amended Rule 37(e)* (October 2017)

4:00 — 5:00 **[Session 6] Ethics, Economics, Enrichment: Three reasons to implement diversity in eDiscovery**
(S. Harris, C. Hass, J. Kemnitz, C. Lynn*, Judge Stafford)

Our community recognizes that achieving workplace diversity is a worthy goal. More than an end however, diversity is a powerful means to achieving other basic objectives of Bench, Bar, and Marketplace. Diversity leads to fairer, more ethical legal outcomes and verdicts. It expands opportunities and markets for legal services. And most importantly, diversity improves the quality of a team’s work product. Join us for a discussion of these three incentives for building a diverse workplace, and of practical ways to improve the diversity of your eDiscovery team (and our eDiscovery practice).

Required Materials:

- 6.1 ABA—Commission on Women in the Profession, *A Current Glance at Women in the Law* (Jan. 2017)
- 6.2 American Bar Association, Adopted Resolution 109 Amending Rule 8.4 and Comment of the ABA Model Rules of Professional Conduct (Aug. 8-9, 2016)
- 6.3 American Bar Association, Draft of Resolution 109 Amending Rule 8.4 and Comment of the ABA Model Rules of Professional Conduct (Aug. 2016)
- 6.4 National Association for Law Placement, *LGBT Representation Among Lawyers in 2016* (NALP Bulletin, Jan. 2017)
- 6.5 National Association for Law Placement (NALP), *Women and Minorities at Law Firms by Race and Ethnicity—New Findings for 2016* (NALP Bulletin, Feb. 2017)
- 6.6 The Sedona Conference, REVISED Diversity Hypothetical (Revised 10.23.17)

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

Friday, Nov. 3, 2017

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

8:30 — 9:45 **[Session 7] Judicial Roundtable: The Judicial Perspective for 2017 and Beyond**
(Justice Brutinel, Judge Dow, Judge Facciola (ret.), Judge Litkovitz, Judge Porcelli, Judge Rayes, Judge Stafford, Judge Swann, P. Weiner*)

This panel presents a wide variety of Judicial Perspectives (federal, state, appellate) about issues that are top-of-mind for the field, including:

- Are the December 2015 Civil Rule Amendments making a difference?
- Effective procedures for resolving eDiscovery disputes
- Are litigants effectively raising proportionality, including based upon Sedona's recently published *Commentary on Proportionality*?
- What is the proper balance between active judicial management vs. discovery being a party-driven process?
- What is the role of precedent when deciding eDiscovery issues?
- Third-party issues in eDiscovery

Required Materials: (Note-There is no 7.1 Material)

7.2 The Sedona Conference, *Commentary on Proportionality in Electronic Discovery* (May 2017)

7.3 The Sedona Conference, *TAR Case Law Primer* (Jan. 2017)

9:45 — 10:45 **[Session 8] The Interplay Between Rule 26(b)(1) and 26(b)(2)(B): Is there a need for clarity and advice?**

(L. Bays, H. Kolasinsky*, Judge Porcelli, T. Presnell, J. Zucker)

This session looks at the interplay between Rule 26(b)(2)(B) ("not reasonable accessible because of undue burden or cost") and the amendments to Rule 26(b)(1) incorporating proportionality into the scope of discovery. The discussion includes an analysis of the potential overlap between the NRA factors and the proportionality factors contained in both rules and their supporting commentary as well as post-amendment case law and potential technology changes that impact the analysis.

Required Material:

- 8.1 WG1 NRA Brainstorming Team, *The Interplay Between Rule 26(b)(1) and 26(b)(2)(B): Is there a need for clarity and advice?* (October 2017 Memo)
- 8.3 The Sedona Conference, *Commentary on Preservation, Management and Identification of Sources of Information that are Not Reasonably Accessible* (July 2008)

Background Material:

- 8.2 Tom Allman, *Rule 26(b)(2)(B) & Sedona: Interplay and Sublimation* (October 2017)

10:45 — 11:00 Morning Break

11:00 — 12:00 [Session 9] Rule 34 Primer: The rules changed but only some practitioners took note. Here's how your Rule 34 obligations have really changed.

(J. Coleman, A. Grounds, G. Kohn, M. Scimone, Judge Swann, M. Tully*)

This session will overview the new Rule 34 Primer, and then test its guidance to see what if anything should be added, deleted, changed, or expanded. The panel will discuss and engage the audience on real-world examples of challenges presented by the current version of Rule 34 and address practical solutions that comply with its specificity requirements. For example, how does one comply with the new approach to document requests issued 21 days after the complaint is served if insufficient information is available to meet the specificity requirement in those early requests? If the purpose of the initial document requests is truly to “start the conversation” in order to reduce costs and burden on the parties, would parties be better served by exchanging an informal list of items sought, and then conferring about them instead of spending a great deal of time drafting formal document requests and responses and objections? The objective of this dialogue is to explore whether there are better ways.

Required Material:

9.1 The Sedona Conference, *Federal Rule of Civil Procedure 34 Primer* (Sept. 2017 Public Comment Version)

12:00 — 1:00 [Session 10] Social Media Primer: Web 2.0 and 3.0 introduced many technical changes and discovery challenges. How should Sedona respond?

(P. Favro, M. Galloway, A. Geolot, A. Martin*, L. Schwartzreich)

Social media is an increasingly important source of discovery in civil litigation, and it is fraught with complications, both for individual litigants and organizations. Proponents of, and respondents to, social media discovery must be attuned to the restrictions of the Stored Communications Act and other regulations; considerations of privacy and accessibility that implicate Fed. R. Civ. P. 26(b)(1); “possession, custody, or control” and appropriate form-of-production analysis under Rule 34; and the mechanics of preservation to meet the “reasonable steps” element of Rule 37(e).

Working Group 1 first published its Social Media Primer in 2013, to introduce lawyers and judges to these complex issues. Since then, there has been significant development in case law, rules, and technology surrounding social media, so Working Group 1 has worked to update the Primer. This session will discuss the updated Primer and provide an opportunity for working group members to comment on the updated Primer before it is finalized and published.

Required Material:

10.1 WG1 Social Media Drafting Team, *The Sedona Conference Primer on Social Media* (October 2017 Draft for Member Comment)

1:00 Adjournment and Grab-&-Go Lunch (provided)