Wednesday, October 24, 2018

| 5:30 | — | 7:30 | **Evening Welcome Reception** |

Thursday, October 25, 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
(P. Favro, Judge Knepp, K. Withers*, R. Zichella)

More info: It's back to law school for all of us, as eDiscovery case law expert Ken Withers leads a fast-paced interactive session, with selected audience members "briefing" significant eDiscovery court decisions from the past year and panel members providing observations on how these cases illustrate evolving concepts of cooperation, proportionality, preservation, and sanctions in both federal and state courts. Be prepared for some classic Socratic dialogue!

Required Material:
[1.1]   Kenneth J. Withers, Selected 2018 eDiscovery Decisions (Oct. 2018)

Background Material:
[1.2]   Thomas Y. Allman, Cases Interpreting Amended Rule 37(e) (Oct. 6, 2018)

| 10:15 | — | 10:30 | **Morning Break** |

10:30 — 11:30 [Session 2] Not Reasonably Accessible: What does Rule 26(b)(2)(B) give us that other rules don't? Reconciling the differences between proportionality and not reasonably accessible.
(L. Bays*, E. Evans, Judge Porcelli, T. Presnell, J. Zucker)

More info: This session explores the role of Rule 26(b)(2)(B) ("not reasonable accessible because of undue burden or cost") in light of the proportionality limitations to discovery under Rules 26(b)(1) (limiting discovery to that which is relevant and proportionality to the needs of the case). The discussion will address the apparent confusion over how each rule works, the interplay between each rule, the intent behind the rules, and provide guidance for resolving these issues going forward.

Required Material:
[2.1]   WG1 Not Reasonably Accessible & Rule 26(B)(2)(B) Drafting Team, The Sedona Conference Commentary on Rule 26(b)(2)(B) After the 2015 Amendments (Oct. 2018 Member Draft)

Background Materials:

[2.2]   Thomas Y. Allman, Cost-Shifting Evolution (Oct. 4, 2018)

[2.3]   Thomas Y. Allman, Memo re: Inaccessible Sources of ESI and The Sedona Principles, 3rd Edition (Oct. 4, 2018)

| 11:30 — 12:30 | **[Session 3] eDiscovery Best Practices for Small Cases: What guidance can Sedona provide?** Defensible solutions for cases with small budgets and uncooperative adversaries. (T. Patton, S. Ray, Judge Schneider, A. Sellars, M. Tully*) |

More info: While nearly all cases involve eDiscovery, most do not involve exabytes of data, nor bet-the-company litigation, nor require use of expensive software tools. Yet, the ethical obligation of technical competence does not overtly distinguish among cases based on their size, significance, or budgets. Moreover, practitioners and jurists faced with so-called "small cases" are just as deserving of insightful guidance on how to best handle eDiscovery issues as those who are handling large, multi-district, complex commercial litigations. In conjunction with the eDiscovery Best Practices for Small Cases Brainstorming Group, this panel will invite dialogue on: (i) How should a "small case" be defined; (ii) What issues arise in small cases that may not be specifically addressed by existing Sedona work product; (iii) What tailored tips and guidance can be given to practitioners and jurists regarding achieving eDiscovery best practices in small cases; and (iv) What is the appropriate role of technology in small cases, including, for example, when might predictive coding/TAR make business and legal sense for a smaller case?

Required Material:

[3.1]   WG1 Brainstorming Group on eDiscovery Best Practices for Small Cases, Draft Outline (Oct. 9, 2018)

| 12:30 — 1:30 | **Lunch (provided)** |

| 1:30 — 1:45 | **Updates from the All-Sedona Diversity Committee** |

| 1:45 — 2:45 | **[Session 4] Rule 45 and Non-party Discovery: Updated guidance in the age of proportionality and the rise of third-party apps.** Dialogue with the drafting team on the updated Sedona Commentary and discuss guidance for obtaining discovery from 3rd parties. (J. Baker, A. Diana, N. Giddings, R. Gotler*, Judge Peck (ret.), Judge Segal) |

More info: The overall increase in subpoenas to non-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. We are updating our 2008 Commentary on Non-Party Production & Rule 45 Subpoenas and will cover these issues and encourage dialogue about practical guidance for non-parties to successfully assert proportionality arguments, manage scope, and recoup costs of discovery.

Required Material:

[4.1]   WG1 Rule 45 Drafting Team, The Sedona Conference Commentary on Rule 45 Subpoenas to Non-Parties (Oct. 2018 Member Draft)

Background Materials:

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

[4.3]   WG1 Brainstorming Group on Rule 45, Rule 45 Commentary Recommendation Outline (April 2018)

| 2:45 | — | 3:30 | **[Session 5] ESI Evidence & Admissibility: Updates to Sedona's 2008 Commentary are underway. Have the amendments to Federal Rule of Evidence 902 eased the burdens of authentication of ESI? Are new forms of ESI complicating the expected benefits of the rule change?** |

(K. Brady*, H. Dyer, Judge Jordan, T. Opsitnick)

More info: The Sedona Conference has a drafting team updating the 2008 Commentary on ESI & Admissibility. The team is considering the new forms of ESI, the limits of technology, and the impact on authentication and admissibility. The panel will discuss if Rules 902 (13) and (14) are easing authentication burdens. The panel will provide insight into future evidence issues.

Required Materials:

[5.1]   WG1 ESI Evidence & Admissibility Drafting Team, Key Discussion Points for the Second Edition of the ESI Evidence & Admissibility Commentary (Oct. 2018)

[5.2]   Hon. Paul W. Grimm & Kevin F. Brady, *Recent Changes to Federal Rules of Evidence: Will They Make It Easier to Authenticate ESI?*, 18 Sedona Conf. J. 707 (2018)

Background Material:

[5.3]   The Sedona Conference, *Commentary on ESI Evidence & Admissibility* (2008)

| 3:30 | — | 3:45 | **Afternoon Break** |

| 3:45 | — | 5:00 | **[Session 6] Litigating at the Intersection of Sedona Principle 6 and Cooperation & Transparency: Guidance on how to find the right balance.** Practical guidance to resolve tensions between the bedrock Sedona principle that responding parties are in the best position to determine how to meet their discovery obligations and the goals of cooperation and transparency. |

(Judge Bissoon, J. Coleman, G. Evans*, T. Gricks)

Required Material:

[6.1]   WG1 Cooperation & Transparency Drafting Team, Litigating at the Intersection of Sedona Principle 6 and Cooperation & Transparency: A Practical Guide (Oct. 2018 Member Draft)

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

Friday, October 26, 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 Bissoon, Judge Jordan, Judge Knepp, Judge Peck (ret.), P. Pepiton*, Judge Porcelli, Judge Schneider, Judge Segal)

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 Material:
[7.1] The Sedona Conference, *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 Sedona Conf. J. 1 (2018).

| 10:00 — 10:15 | **Morning Break** |

10:15 — 11:30 **[Session 8] Optimizing the Attorney-Client Relationship: In-house counsel discuss practical approaches and ethical considerations in handling eDiscovery.** Practical advice from in-house counsel regarding litigators' handling of the eDiscovery life cycle to optimize value to the client.
(C. Hass, H. Kolasinsky, N. Ray*, A. Sellars, R. Snow)

More info: This panel will explore the expectations and experience of in-house counsel with respect to such ethical issues as legal and technical competence (Model Rule 1.1); confidentiality and data security (Model Rule 1.6); supervision of lawyers and non-lawyers (Model Rules 5.1–5.3); and how meeting these expectations furthers a lawyer's duty to litigate in a diligent and expeditious manner (Model Rules 1.3 & 3.2).

Required Materials:
[8.1] Industrial Quick Search, Inc. et al v. Miller, Rosado & Algois, LLP et al (S.D.N.Y. 2018)
[8.2] The State Bar of California Standing Committee on Professional Responsibility and Conduct, Formal Opinion No. 2015-193
[8.3] Kentucky Bar Association, Formal Ethics Opinion E-446

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

[8.5]   Kevin F. Brady, Michael Kearney & Tom Seymour, *Legal Malpractice and eDiscovery: Understanding the Unique Challenges and Managing the Increasing Risks*, Bloomberg BNA (2016)

11:30 — 12:45		**[Session 9] Evolving Challenges: Communications in the cloud.** Examine the benefits and challenges of meeting eDiscovery requirements when cloud-based systems and apps are involved.

(A. D'Ambra, P. McVoy, P. Weiner*)

More info: This session will address:
- the new cloud computing service models and technologies that are radically transforming enterprise information technology with major implications for information governance and electronic discovery;
- where the benefits and risks for information governance exist;
- how eDiscovery professionals are approaching the new service models and emerging sources of ESI adopted by their clients, adversaries, and third parties;
- how eDiscovery professionals are leveraging the new cloudscape for eDiscovery purposes, and the risks involved; and
- what the future looks like and what that picture suggests for WG1 constituents.

Required Materials:

[9.1]   Adam Cohen, *This is Not Your Father's Cloud*, Law Journal Newsletters (Part 1–June 1, 2018; Part 2–July 1, 2018)

[9.2]   Paul D. Weiner & Denise E. Backhouse, *Securing Protected Data in U.S. Legal Proceedings: Protective Orders* (2016)

[9.3]   Peter A. Nelson, *Privilege Waiver: Is Your File-Sharing Site a Public Park Bench?*, Patterson Belknap's Data Security Law Blog (March 15, 2017)

Background Materials:

[9.4]   Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility, Formal Opinion 2011-200

[9.5]   Harleysville Insurance Company v. Holding Funeral Home, Inc. et al, Case No. 1:15cv00057, Memorandum Opinion (W.D. Va. Feb. 9, 2017)

[9.6]   Harleysville Insurance Company v. Holding Funeral Home, Inc. et al, Case No. 1:15cv00057, Opinion & Order (W.D. Va. Oct. 2, 2017)

[9.7]   Illinois State Bar Association Professional Conduct Advisory Opinion No. 16-06

[9.8]   Timothy Peterson, *Cloudy with a Chance of Waiver: How Cloud Computing Complicates the Attorney-Client Privilege*, 46 J. Marshall L. Rev. 383 (2012)

[9.9]   Additional Resource List for Evolving Challenges: Communications in the Cloud

12:45 — 1:00		**Wrap-up**

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