

Wednesday, February 28, 2018

6:00 — 8:00 **Welcome Reception**

Thursday, March 1, 2018

7:30 — 8:30 **Breakfast & Registration**

8:30 — 8:45 **Welcome & Announcements**

*(English, Grossman, Weinlein)*

8:45 — 9:15 **Applying What We Have Learned From “eDiscovery 1.0” to New and Evolving Legal Challenges**

*(English, Grossman)*

While we can all agree that eDiscovery is no longer novel or reserved for the rare, large cases, some have even gone as far as to assert that eDiscovery is a “solved problem.” Though in some ways, eDiscovery has indeed become more ubiquitous and routinized as certain eDiscovery processes have been automated or outsourced, we still face new challenges ahead. Over the next day and a half, we will explore some of those challenges, as well as the ways that lawyers and litigation support professionals are starting to apply concepts and technologies that have evolved in eDiscovery over the past 20 years to other areas of the legal practice. Our program co-chairs will identify the trends we will be exploring in more detail during the 12th Annual Sedona Conference Institute, and provide insights gained from their own personal journeys moving beyond eDiscovery 1.0.

9:15 — 10:30 **[Panel 1] Update on eDiscovery Rules, Case Law, and Court Pilot Projects**

*(Evans, Jones, Priest Johnson, Withers\*)*

We now have two full years of federal case law under the amended Federal Rules of Civil Procedure, during which many questions have been answered and new questions raised. In addition, federal district courts and some states are now experimenting with variants on the amended rules or instituting entirely new rules, such as Mandatory Initial Disclosures. This panel will present highlights from the past year’s court decisions, rules changes, and new pilot projects, setting the stage for the panels to follow.

**Required**

[01] Kenneth J. Withers, *Selected 2017 eDiscovery Decisions*

**Recommended**

[01] *In re Broiler Chicken Antitrust Litigation*

10:30 — 10:45 **Morning Break**

Thursday, March 1, 2018 (Cont.)

10:45 — 12:00 **[Panel 2] Discovery of ESI from Apps, Personal Devices, and the Internet of Things**  
*(Boehning, Cousins, Hood, Keeling\*, Sachs)*

Digital communication has evolved well beyond email to mobile and corporate apps that present unique challenges for preservation, collection, review, and production. Digital information now permeates every aspect of our lives and practically every object, from houses and cars to kitchen appliances and children's toys. This volume, diversity, and dispersion of ESI presents new challenges for eDiscovery and information governance. This panel will explore those challenges and presents practical lessons based on recent cases and experience.

**Required**

- [02a] Robert D. Keeling, *The Challenge of Collecting Data from Mobile Devices in eDiscovery*
- [02b] The Sedona Conference, *Commentary on BYOD: Principles and Guidance for Developing Policies and Meeting Discovery Obligations (Public Comment Version)*

**Recommended**

- [02] Littler Mendelson, *The "Bring Your Own Device" to Work Movement: Engineering Practical Employment and Labor Law Compliance Solutions*

12:00 — 1:00 **[Panel 3] Using Data Analytics and Metrics to Achieve Proportionality**  
*(Evans, Favro\*, Grossman, Porcelli, Wettre)*

The concept of "proportionality" has been around for a while, but only recently has the legal profession developed the tools and expertise to actually measure, predict, and evaluate the costs and benefits of eDiscovery, allowing proportionality to be more than something "we know when we see it." This panel will introduce basic scientific and mathematical concepts that can be applied to eDiscovery, and will also explore their application to other areas of the law.

**Required**

- [03] The Sedona Conference, *Commentary on Proportionality in Electronic Discovery*

**Recommended**

- [03a] Philip Favro, *Analytics, Metrics, and Sampling - Tools Required for Litigating in the Age of eDiscovery*
- [03b] Maura R. Grossman and Gordon V. Cormack, *Technology-Assisted Review in Electronic Discovery*
- [03c] Gareth Evans and David Grant, *Metrics that Matter*
- [03d] *Coalition of Technology Resources for Lawyers, 3rd Annual Analytics Survey*

1:00 — 2:15 **Lunch**

Thursday, March 1, 2018 (Cont.)

2:15 — 3:30 **[Panel 4] Legal Technology Selection and Evaluation**  
*(Brooks, English, McVoy\*, Schultz, Vance)*

New technologies are being developed to automate certain eDiscovery processes, and these technologies are being applied to other areas of the law, prompting some commentators to speculate that lawyers and paralegals may eventually be replaced by robots. Until then, however, humans will need to select, operate, and evaluate the efficacy of the technologies they use. This panel of legal technology experts will survey the current legal technology landscape and provide guidance for legal technology consumers.

3:30 — 3:45 **Afternoon Break**

3:45 — 5:00 **[Panel 5] Data Breach Response: It's Going to Happen, So You Had Better Be Prepared**  
*(Adam Cohen, Harris, Hegedus, Landon\*, Pinson)*

It's every lawyer's worst nightmare, and it is happening all too frequently--the loss or unauthorized disclosure of client data, including sensitive client confidences and personally identifying information, implicating professional responsibility obligations. While strong security measures are essential to prevent a data breach, no security is ever perfect, and every law firm and legal department must have a response plan in place. This panel will take us through a data breach "fire drill" and identify the key elements of a robust and defensible response.

**Required**

[05a] Adam Cohen, *Views on Cybersecurity from an E-Discovery Lens*

[05b] Adam I. Cohen, Mark Hegedus, Jana M. Landon, and Chad Pinson, *Data Breach Response Hypothetical*

**Recommended**

[05a] Federal Trade Commission, *Data Breach Response: A Guide for Business*

[05b] *Bibliography of Data Breach and Incident Response Resources*

5:30 — 7:00 **Reception**

Friday, March 2, 2018

7:30 — 8:45 **Breakfast & Registration**

8:45 — 9:00 **Welcome & Announcements**

*(English, Grossman, Weinlein)*

9:00 — 10:15 **[Panel 6] Cross-Border eDiscovery and Data Transfer**

*(Backhouse, Matt Cohen, Kemnitz\*, Peck)*

We live in a world economy where data knows no boundaries. Even the simplest civil litigation today can involve cross-border discovery, as personal data may be stored in the cloud by a multinational Internet service, storage, or application provider. Civil litigators and transactional attorneys alike must learn to identify and navigate the myriad rules, regulations, and restrictions on cross-border data transfer which are rapidly proliferating. This panel will explore the various international data transfer frameworks, with special emphasis on the European General Data Protection Regulation (GDPR), which goes into effect in May.

**Required**

[06a] The Sedona Conference, *International Principles on Discovery, Disclosure & Data Protection in Civil Litigation (Transitional Edition)*

[06b] The Sedona Conference, *Practical In-House Approaches for Cross-Border Discovery & Data Protection*

**Recommended**

[06a] The Sedona Conference, *International Principles for Addressing Data Protection in Cross-Border Government & Internal Investigations*

[06b] Kenneth J. Withers, *eDiscovery Counsel, Legal Technologists Express Discomfort with Proposed ISO/IEC eDiscovery Standard*

[06c] David C. Shonka, *Producing Information from the EU to U.S. Government Agencies*

[06d] *U.S. v. Microsoft: Brief of the European Commission*

10:15 — 11:30 **[Panel 7] Artificial Intelligence, Ethics, and the Law**

*(Economou\*, Grossman, Hegedus, Kemnitz)*

To what extent should the legal system delegate to machines, decisions that affect people? Should algorithms be evaluating the strength or weakness of a case, arbitrating business disputes, allocating law enforcement resources, selecting juries, or determining criminal sentences? At what point do humans become “things” in the Internet of Things? This panel will discuss how and why eDiscovery has become the starting point for the exploration and development of ethical principles that apply to many areas of law.

Friday, March 2, 2018 (Cont.)

**Required**

- [07a] Nikola Datzov, Ryan Johnson & Jerami D. Kemnitz, *The Critical Nexus Between AI and the Law – Liability, Intellectual Property and Privacy*
- [07b] Prof. Roy D. Simon, *Beware of Artificial Ingredients: Legal Ethics Issues in Using Artificial Intelligence*

**Recommended**

- [07a] *Selected ABA Model Rules of Professional Conduct Related to Artificial Intelligence*
- [07b] Ryan Calo, *Peeping HALs*
- [07c] *Article 29 Working Party, WP 251: Guidelines on Automated Individual Decision-Making and Profiling*

11:30 — 11:45 **Morning Break**

11:45 — 1:00 **[Panel 8] Judicial Roundtable**

*(Cousins, Peck, Porcelli, Priest Johnson, Wettre, Withers\*)*

The 12th Annual Sedona Conference Institute eDiscovery program cumulates in the Judicial Roundtable, during which a panel of experienced jurists will discuss how eDiscovery has transformed the way civil disputes are litigated, affecting expectations of attorney and judicial competence, the role of technology in resolving disputes, the role of statistical evidence, tension between rules and judicial discretion, concerns for personal privacy, and more.

**Required**

- [08] Kenneth J. Withers, *2017 eDiscovery Pilot Projects and Rules Developments*

1:00 — 2:00 **Closing Announcements, followed by Grab & Go Lunch**