

WG1 Call for Volunteers (March 2024)

Expectations of Drafting Team Members

How to Apply

New Drafting Team on Managing, Modifying, and Lifting Legal Holds

We are pleased to announce a new opportunity to become more involved in Working Group 1 (WG1). The WG1 Steering Committee is soliciting applications to fill a limited number of spots on a new drafting team for a Commentary on Managing, Modifying, and Lifting Legal Holds. Several members of the Lifting Legal Holds Brainstorming Group will continue as part of the drafting team, but we are seeking additional volunteers to ensure the proper diversity of perspectives, in particular requesting parties, judges and judicial clerks, government counsel, and small firms/solo practitioners.

Please see below for a fuller description. **If interested, be sure to follow the subsequent instructions for applying and note that the deadline for submitting an application to participate is March 25, 2024.**

There is much thought leadership and case law about when the duty to preserve is triggered, when legal holds must be implemented, and the appropriate scope of legal holds. There is, however, a dearth of advice about when to modify or release legal holds. Increasingly, organizations are preserving large volumes of data beyond established retention periods not only to meet preservation obligations but also to avoid spoliation claims and the potential for sanctions. Litigation and investigation-related demands to preserve may lead to over-preservation of electronically stored information, which in turn results in increased data volumes that can raise storage costs, degrade system operating performance, increase cybersecurity risks, and expand the cost of litigation. Moreover, preserving and/or using personal information beyond established retention periods heightens the risk of potential conflicts with rapidly changing data minimization and purpose limitation requirements under the privacy laws in U.S. jurisdictions such as California and Virginia as well as foreign data privacy laws like GDPR. Organizations also grapple with how to avoid premature or inadvertent release of legal holds, including the pressure to narrow the scope of legal holds to reduce the expense and risk associated with maintaining and ensuring compliance with large-scale legal holds. They must balance the burdens of maintaining large volumes of data with considerations of corporate, data privacy, and compliance regulations, data security concerns, and potential spoliation sanctions.

A Brainstorming Group explored this topic and has recommended a *Commentary* be published to provide guidance to parties, practitioners, courts, government agencies, data protection authorities and other regulators on policy and practical considerations for managing, modifying, and lifting legal holds as well as destroying data to ensure defensibility and consistency.

The charter for the Drafting Team is as follows:

Drawing on existing rules, statutes, regulatory actions, and case law, the drafting team is tasked with developing a Sedona Conference Commentary that: (i) addresses proportionality considerations in relation to preservation obligations, data disposition requirements, and data privacy regulations; (ii) provides guidelines and proposed best practices for modifying legal holds prior to formal commencement of proceedings or during pending litigation or investigation; (iii) provides guidelines and proposed best practices for releasing legal holds when a potential adversary fails to timely commence proceedings or after the close of litigation or investigation; (iv) evaluates document retention and production obligations pursuant to government inquiries and third-party subpoenas; (v) assists organizations in navigating potential conflicts between U.S. and international data preservation requirements and U.S. and international privacy and data protection laws; (iv) suggests a framework for courts, government agencies, data protection authorities, and other regulators to evaluate compliance with preservation, minimization, and/or disposition obligations in light of cybersecurity, privacy, data protection, and proportionality considerations.

The Drafting Team will review existing Sedona publications to ensure consistency (or explain any proposed inconsistency) with positions taken in the draft Commentary, including:

1. The Sedona Conference, *The Sedona Guidelines: Best Practice Guidelines & Commentary for Managing Information & Records in the Electronic Age* (September 2005)
2. The Sedona Conference, *Cooperation Proclamation* (2008)
3. The Sedona Conference, *Commentary on Privacy and Information Security*, 17 SEDONA CONF. J. 1 (2016)
4. The Sedona Conference, *Commentary on Proportionality in Electronic Discovery*, 18 SEDONA CONF. 141 (2017)
5. The Sedona Conference, *International Principles on Discovery, Disclosure & Data Protection in Civil Litigation (Transitional Edition)* (2017)
6. The Sedona Conference, *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 SEDONA CONF. J. 1 (2018)
7. The Sedona Conference, *Commentary on Information Governance, Second Edition*, 20 SEDONA CONF. J. 95 (2019)
8. The Sedona Conference, *Commentary on Legal Holds, Second Edition: The Trigger & The Process*, 20 SEDONA CONF. J. 341 (2019)
9. The Sedona Conference, *Commentary on Defensible Disposition*, 20 Sedona Conf. J. 179 (2019)
10. The Sedona Conference, *Commentary on Rule 45 Subpoenas to Non-Parties, Second Edition*, 20 SEDONA CONF. J. 95 (2020)

11. The Sedona Conference, *Commentary on Managing International Legal Holds*, 24 SEDONA CONF. J. 161 (2023)

The target completion date for the initial draft commentary outline is in advance of the WG1 Annual Meeting in October 2024 (attendance is strongly encouraged), where the draft will be the focus of dialogue.

The Steering Committee liaisons will be Kim Duplechain, Lea Bays and Tessa Jacob.

Expectations of Drafting Team Members

Drafting Teams are typically smaller in size than Brainstorming Groups and usually function over a longer period of time. In short, the work of a Drafting Team is more like a marathon than a sprint. Drafting Team members are expected to make the following commitments:

- Participation on Drafting Teams is a benefit of individual Sedona Conference Working Group Series membership. Each Drafting Team member must keep their membership current *at all times* during the drafting process.
- Total time commitment is approximately 12–15 hours per month, including actual drafting, review, and Drafting Team virtual meetings. As part of the review and comment process, there may be periodic gaps in activity along the course of the Drafting Team’s efforts.
- Drafting Team members are expected to regularly join and participate in Drafting Team virtual meetings—Drafting Team leaders will take attendance for all meetings, and track meeting participation and contributions during Drafting Team meetings. One or more Drafting Team members will be asked to take notes of Drafting Team meetings.
- Drafting Team members will be expected to draft or assist in drafting portions of the document and/or perform research as needed. Members will be expected to prepare law review quality drafts, including citations to legal authority in accordance with *The Bluebook: A Uniform System of Citation*. Drafting Team leaders will track contributions to the drafting and/or research.
- Unlike Brainstorming Groups, Drafting Teams are expected to stick to the parameters of their charter (see above) unless authorized or directed otherwise by the Steering Committee.
- Drafting Team members are expected to review all team drafts that are circulated, and comment and/or revise/edit as necessary.
- Drafting Team members are expected to dialogue, not debate, and work collaboratively as part of a team to achieve consensus.
- Drafting Team members are strongly encouraged to attend WG1 midyear or annual meetings where their work product is presented to the membership through a panel discussion and dialogue.

It is critical that all team members are active, engaged participants in the drafting efforts in order to produce high-quality work product in a limited timeframe. If the participation requirements outlined above are not something that you can commit to at this time, we would recommend that you postpone pursuing a spot on a Drafting Team until you are able to make these commitments. There will be more WG1 drafting efforts in the near future.

We will likely have more well-qualified, well-rounded applicants than we have spots. As a result, we may have a ranked waiting list. Drafting Team member participation and contributions will be evaluated by the Steering Committee liaisons to the Drafting Team. If a Drafting Team member is unable to maintain the commitment to actively participate and contribute, it is possible that the member may need to be replaced in order to timely achieve the Drafting Team's objectives.

Selection and Application Process

As Drafting Teams typically have fewer members than Brainstorming Groups, the Steering Committee will need to be very selective. The Steering Committee attempts to assemble a Drafting Team comprised of a balance of perspectives committed to collaboratively delivering the work product described in the charter. Prior participation on a Brainstorming Group does not guarantee selection for a Drafting Team on the same topic. Note, however, that all WG1 members will have a chance to review and comment on the draft that a team produces.

Factors in Drafting Team Selection:

- Expertise and Profession
- Years of experience
- Balance
 - As we work to achieve consensus-based documents, it is important that a wide range of perspectives and backgrounds are represented. Accordingly, in selecting Drafting Team members, the Steering Committee will work to ensure these perspectives are fairly represented. Please keep in mind, however, we do not seek differing perspectives so that one may advocate on behalf of a particular perspective or constituency; we seek differing viewpoints, backgrounds, and experiences in order to build a consensus-based document that is beneficial to all stakeholders.

Should you ultimately not be selected for the Drafting Team, it may simply be the result of too many applicants representing a particular perspective, and not of a lack of qualifications.

How to Apply

NOTE: If you are not currently a Working Group member but are interested in participating, become a member by [signing up for a Working Group Series \(WGS\) membership](#). Once a WGS member, one is eligible to take part in the activities of all Working Groups, including WG1. If you have any questions about how to sign up for a membership or encounter any difficulties while doing so, please contact our office at info@sedonaconference.org or (602) 258-4910.

In order to be considered for the Drafting Team on Managing, Modifying, and Lifting Legal Holds, please provide separate answers to each of the questions below and submit to Dave Lumia at dbl@sedonaconference.org **no later than March 25, 2024**. Please be brief when answering the questions; no more than 50 words per answer.

- What is your profession and expertise?
- What organization do you work for?
- How many years of experience do you have?
- Do you regularly represent requesting parties, responding parties, or both?

(Please mark appropriate box with an X.)

Type of Litigation	Requesting	Responding
Symmetric		
Asymmetric		

- What qualifications or experiences make you particularly qualified to serve on this drafting team?
- Do you know how to cite check legal authority and prepare citation form in accordance with The Bluebook: A Uniform System of Citation?
- Are you willing and able to attend WG1 midyear/annual meetings to dialogue on the Drafting Team’s work?