

ALL WG2 MEMBERS ASKED TO REVIEW PRE-PUBLICATION DRAFT BY MARCH 15 -
OPPOSING VIEWPOINTS INVITED - BIBLIOGRAPHY CONTRIBUTIONS SOUGHT

Howdy! On Tuesday February 27, 18 members of Working Group 2 on Privacy and Public Access to Court Records met by conference call to discuss the final pre-publication draft (posted in the WG2 Member's Only section of The Sedona Conference web site earlier in February) and plans for distribution and public education.

The pre-publication draft is the culmination of more than 18 months of dialogue and public comment, three months of intensive work by the Editorial Committee (Ron Hedges, Laurie Dore, Greg Wood, Bob Deyling and Ken Withers) and a final review for balance, fairness, and legal accuracy by three independent members of The Sedona Conference Advisory Board (Hon. J. Thomas Marten of the District of Kansas, Prof. Stephen Saltzburg of George Washington University, and Prof. Jay Tidmarsh of Notre Dame University), all of whom were thanked for their efforts.

Formatting work will now begin on the draft, including cover, layout, table of contents, and appendices. An appendix included in many Sedona Conference publications is a roster (names and affiliations only; not contact information) of the Working Group members who participated in the dialogue leading up to publication. That appendix was included in the April 2005 Public Comment Draft and included an important disclaimer, which would also be included in the forthcoming publication:

"The opinions expressed in this publication, unless otherwise attributed, represent consensus views of the Editors and members of The Sedona Conference® Working Group on Protective Orders, Confidentiality and Public Access. They do not necessarily represent the views of any of the individual participants or editors, or their employers, clients, or any other organizations to which any of the participants belong, nor do they necessarily represent official positions of The Sedona Conference®."

Although few, if any, WG2 members are 100% in agreement with every statement in the draft, and the composition of WG2 has changed considerably in the nearly two years since the Public Comment draft was published, the Editorial Committee is confident that the current version represents a balanced, well-researched, and reasonable statement of current law and best practices in the areas of confidentiality agreements, protective orders, sealing, and public access to court records and proceedings, and that most of you will be happy to share in the credit for its publication. However, those who have expressed strong disagreement with portions of the Working Group's draft have also indicated they may not want their names included. If several of these folks desire to have their names excluded, we will likely not include any Roster Appendix, as their views have contributed to the final draft in a major way and to publish a lopsided roster would be misleading.

THEREFORE, WE ASK THAT IF YOU DO NOT WANT TO BE LISTED IN THE POSSIBLE ROSTER APPENDIX "A" TO INFORM ME BY EMAIL TO tsc@sedona.net ON OR BEFORE THURSDAY MARCH 15.

There was spirited discussion about whether the pre-publication draft should be subject to yet another round of editorial review and revision, but the editorial committee felt strongly that all views have been thoroughly stated, discussed and considered, many changes have been made to the draft to accommodate these views, and it is time to move on. The proposed edits and views can be reviewed in the WG2 "Members Only" section of the web site, under the Drafts tab, together with redlined versions of the final draft, comparing it to the May 2005 Public Comment Draft and the November 2006 draft produced at the conclusion of the public comment period and Working Group dialogue. Special thanks is due to Bill Humphreys and the six WG2 members who contributed to the alternative draft he submitted in December, which had a significant positive impact on the final pre-publication draft.

A few members on the call indicated an interest in submitting an "opposing views" piece, which would be published on The Sedona Conference website along with the Working Group publication. This follows precedent set by WG1, which published an "opposing views" piece to The Sedona Principles submitted by two WG1 members who also signed on to The Sedona Principles themselves. That article, written by then USMJ John Carroll and current WG2 editorial committee member Ken Withers, has been cited many times in articles and judicial opinions as a complimentary counterpoint to the Principles themselves. No deadline was set for submission of such a piece, and those who were interested in the idea were invited to hold a separate conference call to discuss it and report back to the Working Group as a whole. Please let me know by March 15th if one is to be prepared, so we can reference it in the Preface to the main piece.

Meanwhile, there has already been interest expressed in distribution of the publication as soon as it is ready at an upcoming meeting of the Kansas State Bar Association and by some participants in the Court Access conference held annually at William & Mary School of Law.

This will be the start of a national education campaign, with presentations at judicial workshops, bar association gatherings, and "town meeting" style events across the country. WG2 members are urged to be on the lookout for events in which we might want to participate and provide dates and organizer contact information to Ken Withers at kwithers@sedona.net.

Finally, Laurie Dore, an Editorial Committee member and professor at Drake Law School, has been working with law student assistants to consolidate and update the complete bibliography which will be posted on the web site. She has noted a relative dearth of state supreme court case law, state court rules, and state statutes in the current bibliography, compared to the federal authorities. She appeals for your help. If you have any state authority to contribute, please contact her at laurie.dore@drake.edu.

Again, thank you all for participating in this phase of Working Group 2's mission, and I look forward to your continued participation as we move into the judicial and public education phase. As mentioned during the call, we will decide in a year or so if there is reason to revisit our efforts based on developments in the case law and rules.

Thank you again for all your efforts (for many of you, over a 3 year period of time), congratulations, best wishes, and take care, r.

180 Broken Arrow Way South, Sedona, AZ 86351

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