

# WG1 Call for Volunteers (October 2024)

## Brainstorming Group on the Effectiveness of Rule 26(f) Conferences

We are pleased to offer a new opportunity to become more involved in Working Group 1 (WG1). The Steering Committee is forming a new brainstorming group on the Effectiveness of Rule 26(f) Conferences. Please see the fuller description below. If interested, follow the subsequent instructions for applying and note that **the deadline for submitting an application is October 11, 2024.**

### Expectations of Brainstorming Group Members

#### How to Apply

Federal Rule of Civil Procedure 26(f) mandates that the parties, “as soon as practicable,” conduct a conference to discuss “the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case,” initial disclosures, “any issues about preserving discoverable information,” and the development of “a proposed discovery plan.”

The Advisory Committee Notes to the Rule’s 2006 amendment provide examples for discussion, including topics for discovery, the time period for which discovery will be sought, the identity of various ESI sources, whether a party maintains that any information is not reasonably accessible, and the form of production. The 2015 Amendments expand upon what was required in 2006, and the Rule will soon be amended to provide further guidance.

But how effective is Rule 26(f) in getting parties to identify any issues about preserving discoverable information and developing a workable discovery plan? To explore this question, the 26(f) Brainstorming Group will consider and make recommendations to the WG1 Steering Committee on whether to form a drafting team for a Sedona Conference publication that addresses the following issues:

- i. What level of specificity is expected—or achievable—during a 26(f) discussion include with regard to disclosure, discovery, or preservation of ESI?
- ii. Are counsel appropriately familiarizing themselves with their client’s information systems prior to the Rule 26(f) conference as recommended by in the Committee Notes, and if not, what can be done to encourage counsel to do so?
- iii. Do jurisdictions with Local Rules or Court Guidelines that specifically address Rule 26(f) discussions make Rule 26(f) discussions more meaningful?
- iv. Are courts using Rule 37(f) to ensure meaningful Rule 26(f) discussion about ESI? If not, should they be?
- v. Should Rule 26(f) be amended to provide more detail regarding what should be discussed at a 26(f) conference as it relates to ESI?

The target completion date for the initial draft outline is in advance of the WG1 Midyear Meeting in April 2025 (attendance is optional but strongly encouraged), where the draft will be the focus of dialogue.

## **Expectations of Brainstorming Group Members**

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

- Participation in Brainstorming Groups is a benefit of individual Sedona Conference Working Group Series membership. All Brainstorming Group members must keep their membership current *at all times* during the process.
- As the name suggests, Brainstorming Group members are encouraged to think creatively and actually “brainstorm,” which may go beyond or even challenge the premise of the Brainstorming Group, as warranted.
- Accordingly, Brainstorming Group members are expected to regularly join and participate in Brainstorming Group virtual meetings. Brainstorming Group leaders will take attendance for all meetings and track meeting participation and contributions. One or more Brainstorming Group members will be asked to take notes of Group meetings.
- Brainstorming Group members will be expected to draft or assist in drafting portions of the outline and/or perform research as needed.
- Brainstorming Group members are expected to review all team drafts that are circulated, and comment and/or revise/edit as necessary.
- Brainstorming Group members are expected to dialogue, not debate, and work collaboratively as part of a team to achieve consensus.
- Brainstorming Group members are strongly encouraged (but not required) 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 Brainstorming Group members are active, engaged participants in the outline drafting efforts in order to produce high-quality work product in a limited timeframe.

### **Factors in Brainstorming Group Selection:**

The Steering Committee will work to ensure that a wide range of perspectives and backgrounds are 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 consensus that is beneficial to all stakeholders. Perspectives we will seek to have represented may include, among others:

- Requesting parties
- Responding parties
- In-house counsel
- Outside counsel
- Judges
- Judicial clerks
- Government counsel
- Academics
- Service providers/Technology companies
- Small firms/Solo practitioners

We will likely have more well-qualified, well-rounded applicants than we have spots available. As a result, we may have a ranked waiting list. Brainstorming Group member participation and contributions will be evaluated by the Steering Committee liaisons to the Group. If a 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 Brainstorming Group's objectives.

## 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. 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](mailto:info@sedonaconference.org) or (602) 258-4910.

In order to be considered for the Brainstorming Group, please answer each of the questions below and submit your responses to Dave Lumia at [dbl@sedonaconference.org](mailto:dbl@sedonaconference.org) **no later than October 11, 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 and provide a brief explanation if warranted.)

Type of Litigation	Requesting	Responding
Symmetric		
Asymmetric		

- What qualifications or experiences make you particularly qualified to serve on this drafting team?
- Are you willing and able to attend WG1 midyear/annual meetings to dialogue on the Brainstorming Group’s work?

Please do not be discouraged if you are not selected. Because The Sedona Conference is a self-selected group of engaged, proactive members, we get many more eminently qualified applicants for each Group than we can take. If you do not get selected, please try again! Your application and eagerness to be involved are favorably considered the next time you apply for a Brainstorming Group or Drafting Team. Also remember that as a member of WG1, you will have the opportunity to review and comment on any member-only work product written by this Group.

**Important Note About Subsequently Formed Drafting Teams**

Frequently, after the Brainstorming Group has presented an outline to the membership and a short period of member review and comment, the Steering Committee will approve the formation of a Drafting Team to produce a draft publication on the proposed topic. Being a member of the Brainstorming Group factors into consideration for Drafting Team membership, but it is not a guarantee that you will be selected. This is because Drafting Teams are usually smaller than Brainstorming Groups, function over a longer period of time, and require a particular balance of perspectives and experiences in order to build a consensus-based document that is beneficial to all stakeholders. Further, a Brainstorming Group is asked to recommend the composition of a subsequent Drafting Team, which may include a different mix of experience, expertise, or perspectives than for the Brainstorming Group.