

WG1 Call for Volunteers (May 2022)

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We are pleased to offer two new opportunities to become more involved in Working Group 1 (WG1). The Steering Committee is forming two new brainstorming groups. Please see the fuller descriptions of each one, below. If interested, **be sure to follow the subsequent instructions for applying and note that the deadline for submitting an application to participate is May 20, 2022.**

Brainstorming Group on eDiscovery Best Practices for Multidistrict Litigation

Multidistrict Litigations (MDLs) are the 800-pound gorilla in federal courts that require creativity in case management, including discovery mechanisms. Since at least August 2017, when the Advisory Committee on Civil Rules created an MDL subcommittee, conversations, panels, and conferences have discussed unique aspects of discovery in MDL proceedings. WG1 explored challenges (asymmetry in discovery, proportionality, interaction between federal and state cases, leadership committees, bellwether case discovery, etc.) and best practices (central repositories, the importance of relationships, conforming practices in related cases) in MDLs during a panel at the 2022 Midyear Meeting in April.

Following up on the vibrant dialogue on this topic at the Midyear Meeting on this topic, the WG1 Steering Committee proposes a Brainstorming Group to evaluate whether WG1 can, and should, add to the conversation and therefore move the law forward in a reasoned and just way with respect to eDiscovery best practices in MDL matters.

The WG1 Steering Committee liaisons for this Brainstorming Group will be Kelly McNabb, Kimberly Duplechain, and Tessa Jacob.

Brainstorming Group on the Evolution of “Documents” and Its Impact on the Discovery Lifecycle

Evolving technologies have caused legal practitioners to reconsider traditional notions of what constitutes a “document” for purpose of conducting eDiscovery. Electronically Stored Information (ESI) and electronic communications increasingly bear little resemblance to digital representations of their paper ancestors. Instead, modern electronic communications and collaborative channels and platforms defy existing definitions of “document,” “record,” “attachment,” or “unitization.” No longer readily identifiable as familiar containers of information, they more resemble snapshots in time of a confluence of data flows that often originate from and live in multiple places. These next-generation forms of communication and collaboration are evolutionary branching events that may present significant challenges for the conduct of the discovery lifecycle, particularly identification, preservation & collection, search & retrieval, production, and presentation.

Following on the heels of a recent WG1 Virtual Town Hall on this topic, the WG1 Steering Committee proposes a Brainstorming Group to: (i) explore the technological nuances of modern electronic communications and collaborative platforms; (ii) assess the unique challenges they present for conducting eDiscovery; and (iii) evaluate whether WG1 can, and should, add to the conversation and move the law forward in a reasoned and just way regarding how these cutting-edge issues should be addressed consistent with best practices.

The WG1 Steering Committee liaisons for this Brainstorming Group will be Tara Emory, Ross Gotler, and Sandra Metallo-Barragan.

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 telephonic 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.
- If feasible, Brainstorming Group members are 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:

It is important that a wide range of perspectives and backgrounds are represented. Accordingly, 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 consensus that is beneficial to all stakeholders. Perspectives we will seek to have represented on the groups 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. 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, 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 either of the Brainstorming Groups, please indicate which group(s) and provide separate answers to each of the questions below and submit to Dave Lumia at dbl@sedonaconference.org **no later than May 20, 2022**. Please be brief when answering the questions; no more than 50 words per answer to a question.

- What is your profession and expertise?
- How many years of experience do you have?
- What organization do you work for?
- Do you regularly represent requesting parties, responding parties, or both?
- What qualifications or experiences make you particularly qualified to serve on this brainstorming group, and why?
- If you are applying for both Brainstorming Groups, what is your order of preference?

Please do not be discouraged if you are not selected for the Group. Because The Sedona Conference is a self-selected group of engaged, proactive people, we get many more excellent and eminently qualified applicants for each Group than we can take. If you do not get selected for a Group, please try again! Even if you are not selected, 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 after 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 does factor into your 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, as mentioned, 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.