BEST PRACTICES

The Sedona® Group I Working Group members responsible for updating a popular guide for identifying eDiscovery obligations describe recent changes and improvements to the publication.

Sedona Conference® Revises Popular Tool for Starting eDiscovery Project

By Kevin F. Brady

The Sedona Conference® recently released the 2016 version of its popular *The Sedona Conference® "Jumpstart Outline": Questions to Ask Your Client & Your Adversary to Prepare for Preservation, Rule 26 Obligations, Court Conferences & Requests for Production*. This third edition of the publication reflects several recent developments that practitioners need to understand in order to advise their clients appropriately.

Background. The Sedona Conference® is a nonprofit research and educational institute dedicated to the advanced study of law and policy in the areas of antitrust law, complex litigation, and intellectual property rights. The Outline is one of several publications on eDiscovery that the Arizona-based think tank has produced since its formation in 1997.

The Outline was originally published in 2008 and updated in 2011 under the direction of Ariana J. Tadler of Milberg LLP.

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Ariana Tadler, Kevin F. Brady of Redgrave LLP and Karin Scholz Jenson of BakerHostetler collaborated on the recent update.

Organization and Scope. The 2016 edition of the *Jumpstart Outline*, like prior versions, is framed in a series of topics and questions for lawyers to use with their clients and their adversaries with respect to discovery obligations in litigation. It is directed to those individuals who have had only limited experience in dealing with electronic discovery.

However, experience has shown that it is also an excellent tool to set and manage expectations of seasoned in-house counsel as well as experienced outside counsel in terms of discussing complex technical and legal issues.

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Karin S. Jenson, national leader of BakerHosteler's e-discovery team and one of the authors of the updated *Jumpstart*, confirmed this aspect of the Outline's functionality. She said:

"When I was an associate, I kept a copy of *Jumpstart* on my desk not only to help me get comfortable with my process, but also to help explain to partners and clients why we needed to ask these questions. It is still at the top of my list

of resources when I'm working with litigators across the firm."

Why the Current Change? The drive to update the *Jumpstart Outline* was due, in part, to a number of significant changes over the past five years that have influenced how lawyers and their clients approach the topic of eDiscovery and in particular, early case assessment.

The increase in the use of social media websites and applications, mobile devices and cloud computing storage as well as the network of physical objects embedded with technology that enables these objects to communicate with each other—the so called "Internet of Things"— has given rise to a 10-fold increase in the volume of digital information since 2011.

Many of these emerging uses are generating a significant amount of data and as a result, it is becoming more challenging for lawyers to identify data sources and custodians and then manage that digital information through the preservation, collection, review and production phases of litigation.

Finally, the 2015 amendments to the Federal Rules of Civil Procedure (FRCP), with the emphasis on proportionality, cooperation and early and active judicial case management as well as the changes in timing in Rules 4, 16 and 34 have modified the eDiscovery landscape and created more of a need for a proactive management approach to discovery of digital information.

New Content. New to the 2016 edition of the *Jumpstart Outline* are an overview of the key changes to FRCP as well as a discussion about emerging technologies and the corresponding and sometimes complex sources of data.

A section now addresses key issues arising out of emerging technologies which include mobile devices and tablets, bring-your-own-device (BYOD) policies, social media and networking accounts, file-sharing accounts, devices with GPS, and internet or cloud based services to name a few.

Another new section discusses information governance issues, the different types of potentially relevant policies and why those policies might bear some relationship to the identification, preservation or collection of relevant information.

As noted in the 2016 Outline, the discussion about the topics and the answers to the questions posed in the Outline are iterative in nature and should help guide the parties in:

■ facilitating constructive discussions between outside and in-house counsel, record owners, and others who will be involved in satisfying preservation and production obligations;

■ understanding the systems and preservation efforts of parties in the case;

■ crafting a discovery plan;

■ issuing and responding to requests for production;

■ defending discovery decisions; and

■ resolving or litigating discovery disputes.

Given her long association with the Outline, Ariana Tadler is proud of its longevity and continuing ability to adapt to the changing legal climate. She observes,

"As the original author of the *Jumpstart Outline*, I had hoped that this practical tool would help lawyers to better understand how to approach discovery and to do so in an efficient and practical way. The fact that the Outline is now in its third edition suggests to me that it has proven useful to others. I am very happy to see it evolve with the benefit of contributions from so many experienced practitioners over the years."

Download a copy of The Sedona Conference® "Jumpstart Outline" at https://thesedonaconference.org/ download-pub/4683