

THE SEDONA PRINCIPLES AND E-DISCOVERY

The Sedona Conference is a nonprofit, 501(c) (3) research and education institute dedicated to the advancement of law and policy in the areas of antitrust, complex litigation and intellectual property rights. It brings together leading jurists, lawyers, experts, academics and others in a dialogue process that has produced, through its Working Groups, a series of forward-looking principles, best practices and guidelines in areas of the law where none or few may be found, or which are at a "tipping point." Through a peer review process, the conference works to produce output that is balanced, authoritative, and of immediate benefit to the bench, the bar, and the public. Its output is free and downloadable at www.sedonaconference.org.

Its first publication was "The Sedona Principles for Electronic Document Production" which is now in post public-comment version that was updated in July 2005. However, there are Special Project Teams that are tackling specific areas, and further updating is being done in view of amendments to the Federal Rules of Civil Procedure that will become effective on December 1, 2006.

There are 14 principles covering specific considerations of electronic discovery, and each is followed by comments and case law that pertain to that area. It is these comments with case law and examples that further expand upon and reinforce each principle and its place in the ever-expanding world of electronic discovery. Here are some selected principles.

1. *Electronic data and documents are potentially discoverable under FED. R. Div P34 or its state law equivalents. Organizations must properly preserve electronic data and documents that can reasonably be anticipated to be relevant to litigation.* The comments that followed dwelt on the importance and benefits of proper document management policies, and that records management policies should account for records in both paper and electronic form. An interesting, major offshoot is that



this same Working Group produced in September 2004 its second publication which is titled "The Sedona Guidelines: Best Practice Guidelines & Commentary for Managing Information & Records in the Electronic Age." This book presents five broad guidelines to reflect the best practices for managing electronic information and records.

3. *Parties should conference early in discovery regarding the preservation and production of electronic data and documents when these matters are at issue in the litigation and seek to agree on the scope of each party's rights and responsibilities.* The Federal Rule of Civil Procedure 26(f) requires parties to confer early in litigation in developing a discovery plan. Several United States District Courts have mandated that such conferences must include issues related to electronic discovery. This should include which computer systems will be subject to preservation and discovery, the time period, and the identities of persons likely to have relevant electronic documents. By such early identification, litigants can work to resolve disputes before they become collateral lawsuits.
5. *The obligation to preserve electronic data and documents requires reasonable and good faith efforts to retain information that may be relevant to pending or threatened litigation.*

However, it is unreasonable to expect parties to take every conceivable step to preserve all potentially relevant data. The obligation to preserve relevant evidence requires that the producing party make reasonable efforts to manage the relevant information. However, this must be balanced with the need and right of a party to continue managing its electronic information for the good of the enterprise. This includes overwriting that is a normal part of operations and not a deliberate attempt to destroy evidence. A balance must be struck between the duty to preserve relevant data and an organization's need to continue its operations.

6. *Responding parties are best situated to evaluate the procedures, methodologies and technologies appropriate for preserving and producing their own electronic data and documents.* The scope of collection should be defined to address the issues fairly while not causing unreasonable overreaching, burden and cost. This can include collecting data from key players rather than searching the total corporate system. To be avoided are searches and collection efforts that are greatly out of proportion to the merits or framework of the case.
8. *The primary source of electronic data and documents for production should be active data and information purposely stored in a manner that anticipates future business use and permits efficient searching and retrieval. Resort to disaster recovery backup tapes and other sources of data and documents requires the requesting party to demonstrate need and relevance that outweigh the cost, burden, and disruption of retrieving and processing the data from such sources.* A comment points out that organizations which outsource all or part of their systems, or which share data with third parties, should consider how this may affect their obligation to preserve and present data for litigation purposes.

Above are five of the 14 principles. All are available in an 82-page free download from www.sedonaconference.org.

Steps you can take to make the discovery process less painful for your organization.

Two experts in the area of e-discovery, both members of the Sedona Conference, have some thoughts on preparing your organization for the possibility of electronic discovery.

Herbert L. Roitblat, Ph.D., points out that proper surveillance of e-mail can decrease the risk of inappropriate material being found in your e-mails.

He states that some companies ask their employees to make decision about which documents should be retained as business records, but this brings the danger of inconsistency. He feels that searching by keywords alone is not sufficient.

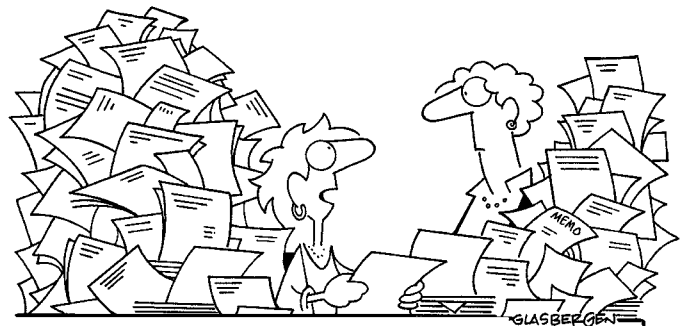
He recommends concept-searching and artificial-intelligence technologies that "learn" the meaning of words and can categorize documents. These methods can identify e-mails that may put your company at risk, and they can also identify documents that should be retained. (www.law.com/jsp/legaltechnology.)

Conrad J. Jacoby, Esquire, addresses the burden of conducting e-discovery and states that being specific will help a judge understand the time and money involved in producing electronically stored information, or ESI, as discovery. A plaintiff's request for a search of an organization's entire network should be countered with numbers as to how many computers, servers and locations would need to be searched as opposed to the smaller number of employees whose computers are more likely to contain relevant information. A request for backup tapes that are now in storage can be countered with specifics as to when they were created and whether they can still be read with today's technology. Furthermore, the information on these tapes may be accessible at lower cost from servers and workstations now in use.

A cost estimate for discovery will likely be prepared by e-technologists who support the trial team. Beyond this estimate, it may be appropriate to bring in an outside expert to explain why the procedures within the estimates must be used to complete the task. This can be useful especially in situations where the requesting and producing parties are miles apart in their estimates of the cost involved in producing particular e-discovery.

Finally, the cost of discovery must make sense in relation to the case at hand. As Jacoby, states, "A \$50,000 breach of contract matter should not require \$500,000 of e-discovery services." For his complete article, see www.llrx.com/columns/fios8.htm.

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"I am not disorganized — I know exactly where everything is!
The newer stuff is on top and the older stuff is on the bottom."

From the ARMA Website:**AUTHOR SOUGHT FOR MANAGEMENT BOOK**

ARMA is seeking an author for a publication on the general management knowledge and skills – presented in a records management context – individuals will need to successfully step into a records management position.

With few exceptions, people moving into the field of records and information management have been trained in another discipline. The new manager is likely to have two immediate needs: the specific policies and practices of records and information manager and the more general knowledge and skills needed for general management. This book is meant to meet this second need.

Issues

The typical manager quickly learns that success on the job is going to require skills in financial management, marketing, communications, operating the assigned business units, optimizing people resources and, when things get a bit tough, inspiration and motivation provided by other managers' success stories.

Audience

The primary audience is the newly promoted individual who now has records and information responsibilities. Based on the turnover observed within the ARMA International membership, this represents a relatively large audience. There are important secondary audiences for this book:

- The current practitioner who needs a quick refresher course on one of these topics
- Students in collegiate business and RIM programs (Because of its high-level, how-to orientation, this book will be most useful for introductory-level classes.)

What It Will Look Like

The publication will be a paperback with a cover design that implies "quick answers to useful business information I need to know." The book should include many illustrations, charts, checklists, and other devices that will facilitate the fast problem-solving orientation of the book. The author should include many references to authorities that the reader can consult for more in-depth information.

Potential Topics for "Management Tools for Records Managers" Book Financial**Financial Strategy**

- Finance Management – Understanding Reports for Effective Decision Making
- Operating Budgets – How to Create and Sell Them
- Writing an RFP
- Writing a Grant Application

Operations

- Program/Process Analysis
- Aligning Departmental Objectives with Organizational Goals
- Management by Objectives
- Business Decision Making
- Project Management Essentials
- Effective Report Writing – Techniques/Tools

Organizational Dynamics

- Roles/Responsibilities as a Member of the Organization's Management Team
- Peer Relationship Building
- Assembling the Right Team – Job Needs Assessment
- Writing Job Descriptions
- Outsourcing
- Recruiting
- Training
- Coaching
- Performance Reviews

Professional Development

- Meeting Management
- Managing Conflict
- Staff Motivation
- Health and Safety

Marketing/Communications

- Writing Effective Business Communications
- Advertising Departmental Successes to the Organization
- Presentation Skills/Tools
- Winning Support for your Program/Idea – Organizational Buy-in to Program
- Electronic Media – Using Web and other Resources as Internal and External Customer Interface

Business Law for Managers

- Ethics/Corporate Social Responsibility
- Contracts
- Sales/Leases/Warranties
- Employment

Global Managers

- International Law
- Understanding Business and Culture

Interested? Review the ARMA International Author's Primer to learn about ARMA's publication development process, then complete and submit the book proposal submission form to be considered by ARMA's Publications Editorial Board.

BRM is Growing!

These are exciting times to be a part of Business Records Management! 2006 was certainly a remarkable year in many ways, both for our valued customers and for the organization as a whole. In order to grow and expand our services throughout the region, BRM began operating in two new locations in Pennsylvania.

After our purchase of Stonycreek and Steel Curtain in the Central Pennsylvania area, we secured a new facility in Johnstown, fully equipped to offer our full line of services and products to the businesses and organizations that make the area great! Our presence in Johnstown has been a great success thus far, and a big "thank you" goes out to all our clients for their continued support and understanding.

After the dust settled in Johnstown, BRM was looking to the North! In November 2006, we completed the purchase of Records Management Services in Erie, Pennsylvania. BRM acquired the records storage and destruction division of RMS, and began to offer more services to the Erie market. We have worked closely with RMS to ensure a smooth transition, and exciting things are in sight for BRM in Erie.

Of course, none of this would have been possible without you, our valued customers. You are what makes up Business Records Management, and with your continued support we can make 2007 another exciting year!

Congratulations eNewsletter 4th Quarter Winners

Congratulations to **Mr. Doug Fitzsimmons** of Allegheny Health Choices. He received a pair of tickets to watch the University of Pittsburgh basketball team take on Providence College on Saturday, Feb. 10th at the Petersen Events Center. On behalf of everyone at BRM, thanks again and we hope you have a great time!

Employee Profiles



Jeff Black joined the BRM family in June 2006 as a Sales Executive. In this position, Jeff prospects for new accounts and works with clients to help with a variety of services. He thoroughly enjoys working with people and believes that he can be a key contributor to the continued success of

BRM. When he's not working, Jeff likes to spend time with his wife Erin and their dog Rockey. Listening to Country and Blues music and watching sports are favorites of Jeff.



Terri Hicks has been with BRM since October 2005 as a customer service specialist. Terri processes workorders for clients and enjoys speaking with them to make sure they are happy with BRM's service. Terri considers obtaining her degree her greatest accomplishment to date. Outside the

office, Terri spends time with her husband Eddie, and their three children, ages 5, 3 ½, and 2. Terri likes to vacation in Houston, Texas, and loves to listen to Christian music.



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