



American Bar Association  
 Section of Labor and Employment Law  
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# Midwinter Meeting

**ERR: March 15–19, 2016**

**Ethics: March 17–19, 2016**

**The Ritz-Carlton • New Orleans, Louisiana**



ABA Section of Labor and Employment Law

# Midwinter Meeting

The Ritz-Carlton • New Orleans, Louisiana

**Employment Rights and  
 Responsibilities Committee**

**March 15–19, 2016**

**Ethics and Professional Responsibility Committee**

**March 17–19, 2016**



We thank the following for their generous contributions in support of our 2016 Midwinter Meeting:

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Morrison & Foerster LLP

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Greenberg Traurig LLP

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## Garden District

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The Case Law Firm

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## Canal Street

Hyderally & Associates PC

Mark Risk, P.C.

Zuckerman Law



**R**enowned for its culture, music, cuisine and architecture, New Orleans is one of the most fascinating cities in the world. Join us in the Crescent City for the 2016 Midwinter Meeting of the ABA Section of Labor and Employment Law's Employment Rights and Responsibilities ("ERR") Committee, March 15-19. You will have your pick of a variety of lively and thoughtful presentations covering the most recent and significant developments in labor and employment law by national experts in their fields. Our CLE panels are practical, substantive and engaging, and present the diverse perspectives of management, employee, union, in-house, government, academics, and neutrals.

We look forward to an exciting program at the Ritz-Carlton New Orleans, on the edge of the French Quarter. We are delighted that the Ethics and Professional Responsibility ("EPR") Committee will join us from March 17-19. It will be an outstanding opportunity to expand your options for CLE, as you may partake of the EPR programming at no additional cost.

There also will be plenty of time to enjoy New Orleans' many attractions. You can eat and sip your way through the city with your choice of several culinary and cocktail tours. Here you will find many of the country's finest, award-winning restaurants, specializing in a vast array of cuisines, which of course includes the region's famous Creole and Cajun classics and so much more. Music lovers will thrill to the sounds of many genres including traditional Jazz, R&B, Heavy Metal and Zydeco. Plan to visit the spectacular Audubon Aquarium of the Americas, located a short distance from our hotel on the banks of the Mississippi, as well as the Audubon Zoo. In this wonderful city, there is something for everyone to enjoy!

On behalf of the ERR family, we hope that you will join us in New Orleans for this fabulous and distinctive Midwinter Meeting.

**Daniel L. Bonnett**, *Union & Employee Co-chair*

**Lori D. Ecker**, *Employee Co-chair*

**Eric W. Iskra**, *Employer Co-chair*

**Diane I. Smason**, *Public Co-chair*

# Midwinter Meeting

## Tuesday, March 15

• 6:00 – 7:30 P.M.

### Diversity Reception & Welcome

We thank the following firms for their generous contributions in support of this evening's reception:

**Greenberg Traurig, LLP**  
**Jackson Lewis P.C.**  
**Laner Muchin, Ltd.**  
**Littler Mendelson P.C.**  
**Neal, Gerber & Eisenberg LLP**  
**Outten & Golden LLP**  
**Practical Law**  
**Saul Ewing LLP**  
**Spilman Thomas & Battle, PLLC**

## Wednesday, March 16

• 8:00 – 9:00 A.M.

### ERR Subcommittee Co-chair Meeting

• 8:00 – 9:30 A.M.

### Continental Breakfast & Registration

**8:00 – 9:30 A.M.**  
**Corporate Counsel Caucus**

Jeffrey Heller from BP and George L. Washington, Jr. from Orange Business Services will host a caucus meeting for in-house attorneys focusing on emergent issues important to the in-house labor and employment practitioner. The topics will be discussed from the unique perspective of in-house counsel responsible for providing legal advice to corporate clients on these topics. The meeting format allows participants to discuss and compare approaches for addressing risk management and other legal issues. Attendance is limited to in-house corporate counsel to promote a free flow of information. Discussion topics will be solicited from in-house registrants in advance of the meeting.

• 9:30 – 9:35 A.M.

### Welcome and Introductions

#### COMMITTEE CO-CHAIRS

**Daniel L. Bonnett**, *Martin & Bonnett PLLC, Phoenix, AZ*  
**Lori D. Ecker**, *Law Office of Lori D. Ecker, Chicago, IL*  
**Eric W. Iskra**, *Spilman Thomas & Battle, PLLC, Charleston, WV*  
**Diane I. Smason**, *U.S. Equal Employment Opportunity Commission, Chicago, IL*

#### PROGRAM CO-CHAIRS

**Samantha C. Grant**, *Mitchell Silberberg & Knupp LLP, Los Angeles, CA*  
**Stephanie M. Jones**, *U.S. Equal Employment Opportunity Commission, Charlotte, NC*  
**Glen D. Savits**, *Green Savits LLC, Florham Park, NJ*  
**Douglas L. Steele**, *Woodley & McGillivray, Washington, DC*  
**George L. Washington, Jr.**, *Orange Business Services, Oak Hill, VA*

#### ADMINISTRATIVE CO-CHAIRS

**Lori L. Deem**, *Outten & Golden LLP, Chicago, IL*  
**Paul E. Starkman**, *Pedersen & Houpt, PC, Chicago, IL*

• 9:35 – 10:35 A.M.

### Effectively Addressing Alleged Misconduct Committed by Purported Whistleblowers: No Good/Bad Deed Goes Unpunished

This panel will explore challenging issues that arise when employees allegedly engage in misconduct in the course of engaging in protected whistleblowing. In particular, this panel will focus on the removal by an employee of company documents, including confidential documents as well as privileged materials. The varying approaches of federal and state courts – along with relevant agencies – will be examined.

#### MODERATOR:

**Jason Zuckerman**, *Zuckerman Law, Washington, DC*

#### SPEAKERS:

**Stacey A. Campbell**, *Campbell Litigation, PC, Denver, CO*  
**Robert L. Jones, Jr.**, *American Airlines, Fort Worth, TX*  
**Louis Lopez**, *U.S. Office of Special Counsel, Washington, DC*

• 10:35 – 11:50 A.M.

### Accommodating Pregnancy and Pregnancy-Related Disabilities: A “Heavy Lift?”

#### Jointly Presented by Disabilities and Leaves of Absence and Statutory Rights Subcommittees

This panel will address employees' requests for and employers' obligations to offer light duty or other accommodations for pregnant workers in the wake of *Young v. UPS*. Learn how employers have changed their policies in light of the Supreme Court's decision, how case law on pregnancy accommodation has developed in the past year, what the EEOC guidelines say and what states are doing to address the rights of pregnant workers.

#### MODERATOR:

**Ann Henry**, *U.S. Equal Employment Opportunity Commission, Chicago, IL*

#### SPEAKERS:

**Wynter Allen**, *The Alden Law Group PLLC, Washington, DC*  
**Melinda C. Burrows**, *Outerwall Inc., Bellevue, WA*  
**M. Megan O'Malley**, *O'Malley & Madden, PC, Chicago, IL*  
**Naomi N. Oglesby**, *Vercruyse Murray, PC, Bingham Farms, MI*

# 2016



- **12:00 – 1:15 P.M.**

## **First-Time Attendee Luncheon**

**Sponsored by Morrison & Foerster LLP**

First-time attendees are invited to an informal luncheon with Section and Committee leaders who will discuss what ERR does and how to get involved.

- **1:30 – 1:45 P.M.**

## **Welcome and Section Leadership Report**

**Wayne N. Outten**, *Section Chair, Outten & Golden LLP, New York, NY*

**Gail Golman Holtzman**, *Section Chair-Elect, Kass Shuler, Tampa, FL*

**Paula Graves Ardelean**, *Employer Council Liaison, Butler Snow, Ridgeland, MS*

**Jonathan Ben-Asher**, *Employee Council Liaison, Ritz Clark & Ben-Asher LLP, New York, NY*

**William Lurye**, *Union & Employee Council Liaison, AFSCME, Washington, DC*

- **1:45 – 2:45 P.M.**

## **Hot Topics in Labor and Employment Law: Geaux On, Please!**

*Obergefell v. Hodges*, *Integrity Staffing Solutions, Inc. v. Busk*, DOL rulemaking, paid sick leave, misclassification, joint employer liability, minimum wage, NLRB new election rules – 2015 brought so many changes to the labor and employment law landscape! More dramatic changes are expected in the near future. The panel will select an assortment of these and other hot topics to address. You will not want to miss this cutting-edge program.

**MODERATOR:**

**Maureen S. Binetti**, *Wilentz, Goldman & Spitzer P.A., Woodbridge, NJ*

**SPEAKERS:**

**Hon. Andrew J. Peck**, *U.S. District Court for the Southern District of New York, New York, NY*

**William Lurye**, *AFSCME, Washington, DC*

**Stewart S. Manela**, *Arent Fox LLP, Washington, DC*

**Rafael Medina**, *McDonald's Corporation, Oak Brook, IL*

- **2:45 – 3:45 P.M.**

## **Law School Rankings and Ensuring a Diverse Attorney Workforce: Is It Just Lip Service?**

**Presented by Diversity Outreach and Inclusion Taskforce (DOIT)**

Are employers who choose solely from the top tier of law schools ranked by *U.S. News and World Report* implicitly skewing their hiring practices against diverse lawyers? Law firms and government agencies often tout their diversity hiring goals. Few, however, are held to account when they fall short of their expressed goals. This panel will discuss new attorney performance in the context of the most famous law school

ranking system and explore how legal employers set diversity hiring goals, how the goals are implemented and what external forces promote compliance.

**MODERATOR:**

**Cynthia E. Nance**, *University of Arkansas School of Law, Fayetteville, AR*

**SPEAKERS:**

**Samantha C. Grant**, *Mitchell, Silberberg & Knupp LLP, Los Angeles, CA*

**John A. Henderson**, *U.S. Equal Employment Opportunity Commission, Baltimore, MD*

**Mark Roellig**, *Massachusetts Mutual Life Insurance Company, Springfield, MA*

**Joseph West**, *Minority Corporate Counsel Association, Washington, DC*

- **6:00 – 7:00 P.M.**

## **Subcommittee Reception**

For those having a hard time deciding which ERR subcommittee to join, the Membership Committee will present the Subcommittee Reception. First-time attendees are encouraged to meet with subcommittee co-chairs and other ERR and Section leaders in a festive and relaxed setting to learn more about ERR's subcommittees and how to become involved in ERR activities.

We thank the following firms for their generous contributions in support of this evening's reception:

**Broach & Stulberg, LLP**

**David J. Carr, Ice Miller LLP**

**Flaster/Greenberg PC**

**Hardwick Benfer LLC**

**Martin & Bonnett P.L.L.C.**

**O'Malley & Madden, P.C.**

**Pollins Law Firm**

**Polsinelli**

**Scott Dukes & Geisler P.C.**

- **7:00 – 9:00 P.M.**

## **Bourbon Street Pub Crawl**

## Thursday, March 17

- 8:00 – 9:00 A.M.

### Continental Breakfast

- 8:00 – 9:00 A.M.

### \*Breakfast Roundtable I: Gab with the Government

Join a panel of government agency attorneys who will discuss the newest developments and provide the latest updates from their respective agencies. Come prepared to ask questions and learn about matters currently of interest to the federal government in the labor and employment law context. This session is open to all meeting attendees.

#### MODERATOR:

Stephanie M. Jones, U.S. Equal Employment Opportunity Commission, Charlotte, NC

#### SPEAKERS:

Shayna Bloom, U.S. Department of Justice, Washington, DC

Jennifer Brazeal, National Labor Relations Board, Detroit, MI

Darren Cohen, U.S. Department of Labor, New York, NY

- 8:00 – 9:00 A.M.

### \*Breakfast Roundtable II: In-House Corporate Counsel: What Were You Thinking?

Join a panel of in-house corporate counsel and employee counsel for an interactive discussion on what works – and what does not – in working together to resolve employee disputes before a claim is filed. What annoyances, misunderstandings and issues serve as roadblocks in the interaction between in-house counsel and employee counsel? More important, what strategies and practice pointers can these parties use to overcome real (and perceived) obstacles? Among the topics to be discussed are demand letters (i.e., what really happens to them), requests for informal discovery, and dealing with the so-called “problem employee.” This session is open to all meeting attendees.

#### MODERATOR:

Bobbie Fox, CopperPoint Mutual Insurance Company, Phoenix, AZ

#### SPEAKERS:

Gina Casias, Gates Corporation, Denver, CO

Cheryl D. Jackson, State Farm Mutual Automobile Insurance Co., Bloomington, IL

Zena E. McClain, The McClain Law Firm LLC, Savannah, GA

Marisa Warren, Pedowitz & Meister LLP, New York, NY

## CONCURRENT PROGRAMS: TRACK 1

- 9:00 – 10:00 A.M.

### Best Practices for Using Experts at Deposition and Trial: If an Expert Says It Cannot Be Done, Get Another Expert

Presented by Trial and Appellate Advocacy Subcommittee

Experts can be critical to the development of a case, from examining the basis for class-wide claims to providing the jury

with background on specific issues regarding protected classes in discrimination cases. A panel of practitioners and experts in diverse areas of employment will explore best practices for retaining experts, preparing expert reports and testimony, and examining experts at deposition and trial within the proper parameters.

#### MODERATOR:

Mark Grajski, Seyfarth Shaw LLP, Sacramento, CA

#### SPEAKERS:

Hon. Wiley Y. Daniel, U.S. District Court for the District of Colorado, Denver, CO

Ty Hyderally, Hyderally & Associates PC, Montclair, NJ

Diane I. Smason, U.S. Equal Employment Opportunity Commission, Chicago, IL

Harley V. Stock, Ph.D., ABPP, Plantation, FL

- 10:00 – 10:15 A.M.

### Break

- 10:15 – 11:15 A.M.

### Class Actions in Arbitration: How Many Eggs Go in One Basket?

Presented by Complex Litigation Subcommittee

This panel will discuss the legal and practical considerations that arise when class and collective actions clash with arbitration agreements. Topics will include the pros and cons of class arbitration, whether class arbitrability is a decision for courts or arbitrators, whether employers violate the NLRA by requiring employees to execute class waivers, and the practical challenges when employers insist on individualized arbitration of small-stakes claims.

#### MODERATOR:

Eric L. Barnum, Schiff Hardin LLP, Atlanta, GA

#### SPEAKERS:

Jennifer Brazeal, National Labor Relations Board, Detroit, MI

Jennifer Kroll, Martin & Bonnett, PLLC, Phoenix, AZ

Hon. Philip M. Pro (Ret.), JAMS, Las Vegas, NV

Richard T. Seymour, Law Office of Richard T. Seymour, PLLC, Washington, DC

- 11:15 A.M. – 12:15 P.M.

### How to Survive and Thrive in an e-Discovery World

Presented by Technology Subcommittee

Love it or hate it, e-discovery is an integral part of virtually every lawsuit. This panel will review the key points of the new federal rules and offer good, bad and ugly pointers on drafting e-discovery requests and third-party subpoenas, including how to word requests to obtain relevant information in a usable format, and how to ensure objections are defensible and in compliance. Additionally, e-discovery vendors and in-house counsel will discuss the practical ramifications of gathering and reviewing electronically stored information under the new (and old) rules, and offer tips on how to make the process cost effective and fun for everyone (okay, the last part is wishful thinking).

\*The Breakfast Roundtables on Thursday and Friday mornings are informal gatherings designed to permit group discussions. There will be no written materials distributed about the topics and, due to their informal nature, these sessions are not approved for CLE credit.

**MODERATOR:**

Jeffrey A. James, *Sebris Busto James, Bellevue, WA*

**SPEAKERS:**

Caryl Flannery, *Centene Corporation, St. Louis, MO*

Dean Gonsowski, *Recommind, Carlsbad, CA*

Mark Risk, *Mark Risk PC, New York, NY*

Paige Hunt Wojcik, *Discovia, Seattle, WA*



## CONCURRENT PROGRAMS: TRACK 2

• **9:00 – 10:00 A.M.**

### Employee Use of Counterclaims and Anti-SLAPP Actions to Challenge Restrictive Covenant Claims: Let's Play the Feud!

**Presented by Covenants Not to Compete Subcommittee**

Employee-defendants are turning the tables in non-compete and trade secret litigation by filing anti-SLAPP motions and counterclaims to stymie employers' claims. How viable are these tactics and what implications do they raise for restrictive covenant litigation? Teams will see what the "survey says" in a no-holds-barred competition to answer these and other pressing questions about this developing trend.

**MODERATOR/HOST:**

Eric A. Tate, *Morrison & Foerster LLP, San Francisco, CA*

**SPEAKERS:**

Joseph Y. Ahmad, *Ahmad Zavitsanos & Anaipakos PC, Houston, TX*

Donald S. Barth, *Munich Reinsurance America, Inc., Princeton, NJ*

Deirdre A. Fox, *Scharf Banks Marmor LLC, Chicago, IL*

Christina H. Bost Seaton, *Troutman Sanders LLP, New York, NY*

Amy F. Shulman, *Broach & Stulberg, LLP, New York, NY*

Abra C. Siegel, *Chicago, IL*

• **10:00 – 10:15 A.M.**

### Break

• **10:15 – 11:15 A.M.**

### Demystifying Tax Issues in Employment Agreements: Do Do that Voodoo that You Do So Well

**Presented by Contracts and Executive Compensation Subcommittee**

This panel will provide an overview of the myriad of tax issues that can arise in the context of drafting and negotiating executive employment and separation agreements. Panelists will explore and discuss IRS Rule 409A issues, focusing on contractual provisions required to address 409A implications. The panel will also address the taxation of severance, benefits, parachute payments and equity compensation (including restricted stock, SARs, and incentive stock options versus non-qualified options).

**MODERATOR:**

Paul E. Starkman, *Pedersen & Houpt, PC, Chicago, IL*

**SPEAKERS:**

Sandra Cohen, *Osler, Hoskin & Harcourt LLP, New York, NY*

Jeffrey S. Heller, *BP America Inc., Houston, TX*

Robert Phansalkar, *Outten & Golden LLP, New York, NY*

• **11:15 A.M. – 12:15 P.M.**

### Asserting and Defending against Joint Employer and Franchisor/Franchisee Employment Claims: Tossing the Hot Potato

**Presented by the Contingent Workforce Subcommittee**

Given that multiple federal agencies have prioritized enforcement of joint employment status against franchisors and other similar employers, and have taken positions that mark a break from prior employer-friendly law, practitioners on both sides of the aisle must have a firm understanding of recent developments to be effective advocates. Join an outstanding panel to learn more about recent developments in positions taken by the National Labor Relations Board and the Equal Employment Opportunity Commission, the response by employers and the courts, as well as practical tips to take advantage of these developments when counseling clients and engaging in litigation.

**MODERATOR:**

Michael C. Royal, *Littler Mendelson, P.C., Dallas, TX*

**SPEAKERS:**

Darren Cohen, *U.S. Department of Labor, New York, NY*

T. Warren Jackson, *The DIRECTV Group, El Segundo, CA*

Michael J. Scimone, *Outten & Golden LLP, New York, NY*

• **12:30 – 2:00 P.M.**

### Subcommittee Luncheon

ERR's subcommittees will meet over lunch to plan activities for the next year and their panels for the 2017 Midwinter Meeting in Puerto Vallarta, Mexico. Newcomers are encouraged to attend! We thank the following for their generous contributions in support of the Subcommittee Luncheon:

Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing  
The Case Law Firm

Law Offices of Lori D. Ecker

Foley Hoag LLP

Mitchell Silberberg & Knupp LLP

Polsinelli

Ritz Clark & Ben-Asher LLP

Van Dermyden Maddux Law Corporation

Vercruyse Murray, P.C.

Wilentz, Goldman & Spitzer, P.A.

• **2:30 – 5:00 P.M.**

### Membership Committee Activity

• **7:00 – 10:00 P.M.**

### French Quarter Dine-Around

Meeting registrants and guests are invited to participate in an organized "dine-around" in the French Quarter. We have made reservations at some of New Orleans' best restaurants, and you choose your favorite! Sign-up sheets will be posted on Wednesday at the ABA Registration Desk.

## Friday, March 18

- 8:00 – 9:00 A.M.

### Continental Breakfast

- 8:00 – 9:00 A.M.

### \*Breakfast Roundtable I: Don't Let the "Outsider" Give You the Mediation Blues

Presented by Insurance Subcommittee

Preventing a mediation from going off the rails because the plaintiff's strategy (inadvertently?) incites a conflict between the insurer and the insured can be challenging. This roundtable discussion will include how employee's counsel can avoid creating division, the techniques the mediator may use to manage the case towards a resolution, and how management counsel can navigate the conflict between the insurer and the insured. Discussion will be sparked by a scenario involving a complex litigation matter with multiple defendants to allow for the various interpretations of coverage to provide depth to the conflict.

#### MODERATOR:

Stephanie D. Girona, Wilentz, Goldman & Spitzer, P.A., Woodbridge, NJ

#### SPEAKERS:

Jeremy L. Edelson, Laner Muchin, Ltd., Chicago, IL  
Heather F. Lindsay, Lindsay & Lindsay, P.A., Milton, FL  
Stacey Widlansky, Allied World Insurance Company, Farmington, CT

- 8:00 – 9:00 A.M.

### \*Breakfast Roundtable II: International Approaches to Employee Leaves and Flexible Work Arrangements: Lessons for the U.S.?

Presented by International Subcommittee

Other countries continue to outpace the U.S. in providing legal protections and flexible work arrangements for employee caregivers or those who pursue "work/life" balance for other reasons. International employees enjoy greater parental leaves, and some countries impose a statutory limit on the amount of time an employee may spend working and being available via email. With more developments on the way, what approaches can the U.S. import from abroad to expand support for employees who require greater leaves or who need flexible work arrangements? The panelists will explore how these issues intersect with issues facing parents in our own profession, especially those who have caretaker responsibilities.

#### MODERATOR:

Lisa C. Cabel, Borden Ladner Gervais LLP, Toronto, ON

#### SPEAKERS:

Paul Callaghan, Taylor Wessing LLP, London, United Kingdom  
Delphine Levy, JeantetAssociés, Paris, France  
Javiera Medina Reza, Baker & McKenzie, Mexico City, Mexico  
Erin M. Sweeny, Miller & Chevalier, Washington, DC

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- 9:00 – 10:00 A.M.

### Constructive Discharge: How Bad Does It Have to Get?

Presented by Employment At-Will Subcommittee

Employees call it being "railroaded," "forced out," or "pressured to quit." Employers call it "voluntary resignation." Depending on the circumstances, courts may call it constructive discharge or constructive dismissal. In theory, there is a vast difference between simply disliking your work or your boss and truly being forced to quit. Offering perspectives from management, employees, unions, in-house and a neutral arbitrator/mediator, this panel will help define when a resignation becomes a discharge for purposes of liability under the law.

#### MODERATOR:

Melinda (Mindy) J. Caterine, Littler Mendelson PC, Portland, ME

#### SPEAKERS:

Kristin M. Case, The Case Law Firm, LLC, Chicago, IL  
Jennifer R. Guckert, Amedisys, Inc., Baton Rouge, LA  
Alan A. Symonette, Symonette ADR Services, Inc., Philadelphia, PA  
Jeffrey N. Young, Johnson, Webbert & Young, LLP, Augusta, ME

- 10:00 – 10:15 A.M.

### Break

- 10:15 – 11:30 A.M.

### Big Data and Wearable Technology in the Workplace: If the Fit Bits, Wear It

Jointly Presented by Employee Benefits and Privacy Subcommittees

Employers are embracing wellness programs – and the potential health insurance savings they can provide – more than ever. But offering these programs to employees and their families requires employers to navigate their way through a variety of often conflicting federal statutes enforced by four federal agencies. This panel will explore the issues related to the kinds and amounts of incentives employers can offer for participation and the privacy issues associated with collecting participant health data through health assessments, medical screenings and wearable devices. In so doing, it will guide those representing employers on how to collect this data responsibly and those representing employees on the potential legal claims available to them should employers fail to do so.

#### MODERATOR:

Rebecca G. Pontikes, Pontikes Law LLC, Boston, MA

#### SPEAKERS:

Trina Mengesha Brown, U.S. Department of Homeland Security – TSA, Southfield, MI  
Ellen Doyle, Feinstein, Doyle, Payne & Kravec LLC, Pittsburgh, PA  
Brian D. Hall, Porter, Wright, Morris & Arthur LLP, Columbus, OH  
J. Timothy McDonald, Thompson Hine LLP, Atlanta, GA  
Camille Monahan, U.S. Equal Employment Opportunity Commission, Milwaukee, WI  
Danielle Van Lier, SAG-AFTRA, Los Angeles, CA

- 11:30 – 12:30 P.M.

### Understanding the Employment and Immigration Implications of Terminating Expatriates: At the Journey's End

Presented by International Subcommittee

Terminating an expatriate employee abroad (whether in the U.S. or another country) may raise a number of employment and immigration

issues. This panel will discuss what U.S. and foreign laws are triggered upon a termination of an expatriate in their respective countries and what protections are available to expatriates (depending on what country they are in and what their agreements provide for).

**MODERATOR:**

Thomas A. Roper, *Roper Greyell LLP, Vancouver, BC*

**SPEAKERS:**

Jonathan Grode, *Green & Spiegel LLC, Philadelphia, PA*  
Wendi S. Lazar, *Outten & Golden LLP, New York, NY*  
Esther Martin, *CM Murray LLP, London, United Kingdom*  
Gerlind Wisskirchen, *CMS Hasche Sigle, Cologne, Germany*

• **12:30 – 6:00 P.M.**

**Golf Tournament at TPC Louisiana**

• **2:00 – 5:00 P.M.**

**ERR Gives Back**

We will continue with our ERR tradition of focusing on a charitable/community project. This year those interested in “giving back” will have the opportunity to spend the afternoon at Second Harvest Food Bank, whose mission is to “end hunger in South Louisiana by providing food access, advocacy, education and disaster response.” Come join your fellow ERR attendees to lend a helping hand. No experience is needed, but space is limited.

• **7:00 – 11:00 P.M.**

**Reception, Dinner and Dance**

## Saturday, March 19

• **7:00 – 8:00 A.M.**

**Continental Breakfast**

• **8:00 – 9:00 A.M.**

**A Peek into the Minds of Arbitrators**

**Presented by Alternatives to Litigation Subcommittee**

Have you ever wondered what an arbitrator really thinks? Many practitioners wonder what documents and other evidence are most persuasive to an arbitrator, which witnesses an arbitrator finds most credible, and how an arbitrator wants to see a case presented. This program will explore those questions, as well as what arbitrators think about discovery disputes and summary judgment motions. Three distinguished arbitrators with different perspectives and backgrounds are prepared to address these questions (and more) candidly and in a most entertaining manner.

**MODERATOR:**

Denise K. Drake, *Little Mendelson P.C., Kansas City, MO*

**SPEAKERS:**

Hon. Candace Cooper (Ret.), *JAMS, Los Angeles, CA*  
Christine Godsil Cooper, *Arbitrator, Chicago, IL*  
John E. Sands, *Arbitrator and Mediator, Roseland, NJ*  
Joyce E. Smithey, *Rifkin, Weiner, Livingston, Levitan & Silver, LLC, Annapolis, MD*



• **9:00 – 10:15 A.M.**

**Unraveling the Ethical Complexities of Workplace Investigations**

**Jointly Presented by Ethics and Workplace Investigations Subcommittee and Ethics and Professional Responsibility Committee**

Internal investigations into employee complaints and compliance issues are becoming increasingly complex. At the outset or during the pendency of the investigation, the complaint may be under review by a governmental agency or the subject of a lawsuit. The investigative process may also uncover additional areas of concern or reveal facts seemingly contrary to the client’s best interests. This panel will discuss the complex legal and ethical issues of attorney-client privilege, work product, actual and potential conflicts of interest, joint representation, written conflict waivers and Upjohn warnings in the context of workplace investigations, anticipated litigation and responding to governmental agencies.

**MODERATOR:**

Deborah L. Maddux, *Van Dermyden Maddux Law Corporation, Sacramento, CA*

**SPEAKERS:**

William Bensussen, *SAG-AFTRA, Los Angeles, CA*  
Lynne C. Hermle, *Orrick Herrington & Sutcliffe LLP, Menlo Park, CA*  
Devjani Mishra, *Alexion Pharmaceuticals Inc., Cheshire, CT*  
Nina Pirrotti, *Garrison, Levin-Epstein, Richardson, Fitzgerald & Pirrotti, PC, New Haven, CT*

• **10:15 – 10:30 A.M.**

**Break**

• **10:30 – 11:30 A.M.**

**Religious Freedom vs. Equal Opportunity: Who Wins at Work?**

**Presented by State Law Developments Subcommittee**

A panel of practitioners will discuss state legislative efforts to protect employees’ and employers’ religious freedom at work and how those efforts have withstood constitutional and court challenges. This panel will review new laws that are popping up in some states, such as Indiana, as well as the common law with regard to how federal courts have handled situations in which an employee or employer acting on his or her religious beliefs allegedly infringes upon the equal opportunity rights of individual employees, based on protected statuses such as sexual orientation, same-sex marriage, minority religious beliefs, national origin, etc.

**MODERATOR:**

Douglas L. Steele, *Woodley & McGillivray, LLP, Washington, DC*

**SPEAKERS:**

Michael D. Homans, *Flaster/Greenberg PC, Philadelphia, PA*  
John P. Madden, *O’Malley & Madden, PC, Chicago, IL*  
Sandra Pullman, *Office of the New York State Attorney General, New York, NY*  
Bobby Simpson, *General Electric Company, Louisville, KY*

• **11:30 A.M. – 12:00 P.M.**

**Wrap-Up and Feedback**



# Midwinter Meeting 2016

## Thursday, March 17

• 5:30 – 6:30 P.M.

### Diversifying the Pipeline to the Profession

Many times, attorneys wonder how they can assist in diversifying our profession but aren't sure where to start. One way is through pipeline programs. Our panelists will discuss how they created an effective diversity pipeline program for college students in New Orleans, how they garnered resources to maintain it, and how they measure ongoing success. They also will share practical tips for creating, maintaining and growing diversity pipeline programs attorneys can use in their local communities.

**PANELISTS:**

**Michelle D. Craig**, *Co-Founder of DiversiTea and Transcendent Legal, New Orleans, LA*

**Jade Brown Russell**, *Co-Founder of DiversiTea and Transcendent Legal, New Orleans, LA*

• 6:30 – 7:30 P.M.

### Welcome and Diversity Reception

**James F. Allmendinger**, *Union & Employee Co-Chair, Concord, NH*

**Andrew Altschul**, *Employee Co-Chair, Portland, OR*

**Christopher Lage**, *Public Co-Chair, Washington, DC*

**Myra L. McKenzie-Harris**, *Employer Co-Chair, Bentonville, AR*

## Friday, March 18

• 7:00 – 8:00 A.M.

### Continental Breakfast

• 8:00 – 9:00 A.M.

### Civility in Litigation—Raising the Level of Professionalism in the Bar

Employment attorneys face a broad range of ethical challenges during litigation. How attorneys rise to these challenges can make all the difference in achieving success and shaping their reputations. This panel will discuss some of the more common ethical challenges and suggest ways of handling them. Topics will include what counsel should do when observing or experiencing unprofessional conduct and interactions between counsel and the court. The panel will also address ways in which treating colleagues with respect and professionalism can benefit lawyers and their clients.

**MODERATOR:**

**Andrew Altschul**, *Buchanan, Angeli, Altschul & Sullivan, Portland, OR*

**SPEAKERS:**

**Michelle D. Craig**, *Transcendent Legal, New Orleans, LA*

**Tracie L. Washington**, *Louisiana Justice Institute, New Orleans, LA*

• 9:00 – 10:30 A.M.

### Can I Tell You Something . . . In Confidence? Sticky Wickets in Joint Representation

Occasionally, plaintiff and defense counsel have the opportunity to represent two or more parties. With adequate notice and waivers, the relationships can be fruitful. When counsel represents multiple plaintiffs in non-class action cases, however, it can be a challenge to fulfill the fiduciary duties owed to each, especially when negotiating a settlement or when one client shares information that could be detrimental to another client. Panelists will discuss these and other potential pitfalls and present best practices for avoiding sticky wickets in joint representation.

**MODERATOR:**

**Michael P. Posner**, *Posner & Rosen, Los Angeles, CA*

**SPEAKERS:**

**Brandi Davis**, *U.S. Equal Employment Opportunity Commission, Chicago, IL*

**David L. Johnson**, *Butler Snow, Nashville, TN*

**Myra L. McKenzie-Harris**, *Wal-Mart Stores, Bentonville, AR*

• 10:30 – 10:45 A.M.

### Break

• 10:45 – 11:45 A.M.

### Social Media Guidelines for Lawyers

Social media continues to expand as a resource for attorneys to gather facts about witnesses, judges, and organizations. To help attorneys navigate the ethical issues raised by the use of social media, the New York State Bar Commercial and Federal Litigation Section has recently issued non-binding guidelines. The guidelines explain how use of social media can implicate the ethical rules regarding competence, advertising, providing legal advice, use of evidence, communicating with clients and courts, and researching jurors. Join our panel as it explores best practices for attorneys who wish to exploit social media without running afoul of the ethics rules.

**MODERATOR:**

**Christopher Lage**, *U.S. Equal Employment Opportunity Commission, Washington, DC*

**SPEAKERS:**

**Mark A. Berman**, *Ganfer & Shore, LLP, New York, NY*

**Matthew Marca**, *Gutierrez Marca LLP, Los Angeles, CA*

**Susan McCaffery Zoeller**, *Barnes & Thornburg LLP, Indianapolis, IN*

• 11:45 A.M. – 12:45 P.M.

### Surrendering Papers and Property to Former Clients

When your clients ask for their files, or ask you to transfer their files to another firm, what do you need to do? What "papers and property" actually belong to the client? What belongs to the firm or attorney? This panel will discuss the impact of ABA Formal Ethics Opinion 471, issued on July 1, 2015, which addresses these issues.



**MODERATOR:**

**Lori D. Ecker**, *Law Office of Lori D. Ecker, Chicago, IL*

**SPEAKERS:**

**Dane S. Ciolino**, *Professor of Law, Loyola University College of Law, New Orleans, LA*

**Andrew M. Schpak**, *Barran Liebman, Portland, OR*

- **7:00 – 11:00 P.M.**  
**Reception, Dinner and Dance**

## Saturday, March 19

- **7:00 – 8:00 A.M.**  
**Continental Breakfast**

- **8:00 – 9:00 A.M.**  
**Diligence vs. Perfection—  
Maintaining High Ethical  
Standards While Avoiding Burnout**

The ethical obligation of diligence requires lawyers to pursue matters “despite opposition, obstruction or personal inconvenience” to the lawyer. Many lawyers strive for more than mere diligence – they shoot for perfection. As many of us know all too well, the quest for perfection can lead to severe anxiety and depression. Some lawyers turn to harmful behaviors such as substance abuse, while others suffer mental illnesses or suffer in silence. Many simply drop out of the profession. This panel will explore practical strategies for lawyers to fulfill their professional obligations while preserving their mental health and deriving satisfaction from the practice of law.

**SPEAKERS:**

**Esther G. Lander**, *Akin Gump, Washington, DC*

**J.E. “Buddy” Stockwell III**, *Lawyers Assistance Program, Inc., Louisiana State Bar, Mandeville, LA*

- **9:00 – 10:15 A.M.**  
**Unraveling the Ethical Complexities  
of Workplace Investigations**

**Jointly Presented with the Employment  
Rights and Responsibilities Committee**

Internal investigations into employee complaints and compliance issues are becoming increasingly complex. At the outset or during the pendency of the investigation, the complaint may be under review by a governmental agency or the subject of a lawsuit. The investigative process may also uncover additional areas of concern or reveal facts seemingly contrary to the client’s best interests. This panel will discuss the complex legal and ethical issues of attorney-client privilege, work product, actual and potential conflicts of interest, joint

representation, written conflict waivers and Upjohn warnings in the context of workplace investigations, anticipated litigation and responding to governmental agencies.

**MODERATOR:**

**Deborah L. Maddux**, *Van Dermyden Maddux Law Corporation, Sacramento, CA*

**SPEAKERS:**

**William Bensussen**, *SAG-AFTRA, Los Angeles, CA*

**Lynne C. Hermle**, *Orrick Herrington & Sutcliffe LLP, Menlo Park, CA*

**Devjani Mishra**, *Alexion Pharmaceuticals Inc., Cheshire, CT*

**Nina T. Pirrotti**, *Garrison, Levin-Epstein, Richardson, Fitzgerald & Pirrotti, PC, New Haven, CT*

- **10:15 – 10:30 A.M.**  
**Break**

- **10:30 – 11:30 A.M.**  
**Bias, Prejudice & Harassment  
in the Legal Profession:  
A Proposal for a New Rule**

A comment to Model Rule 8.4 states that an attorney who, in the course of representing a client, manifests bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, may be unethical. The ABA Standing Committee on Ethics and Professional Responsibility is currently considering moving the comment into the text of the rule along with additional expansive changes. Join this panel as it discusses the pros and cons and what practical impact the change would have on an attorney’s responsibilities.

**SPEAKERS:**

**Paula J. Frederick**, *State Bar of Georgia, Atlanta, GA*

**Elizabeth Kristen**, *Gender Equity & LGBT Rights Program, Legal Aid Society Employment Center, San Francisco, CA*

**Reginald M. Turner**, *Clark Hill PLC, Detroit, MI*

- **11:30 A.M. – 12:00 P.M.**  
**Committee Business Meeting**

# Registration Information

## Meeting Registration

The ERR Committee Midwinter Meeting registration fees cover the Tuesday and Wednesday Receptions and the Friday Reception, Dinner and Dance, continental breakfasts and refreshment breaks during the meeting. The ERR spouse/guest registration fee includes all evening events.

The Ethics & Professional Responsibility Committee Midwinter Meeting registration fees cover all meeting materials and scheduled meal functions on Thursday, Friday and Saturday. The Ethics spouse/guest registration fee includes the evening functions on Thursday and Friday.

You are encouraged to register online at [www.americanbar.org/groups/labor\\_law.html](http://www.americanbar.org/groups/labor_law.html). You also may register by filling out the attached registration form and returning it with your payment to the ABA by March 1, 2016. Registration fees are refundable, less a \$50 administrative fee, for cancellations received in the Section Office by March 1, 2016.

## Hotel Accommodations

We have negotiated a special group rate at the Ritz-Carlton New Orleans of **\$269**. The reservation deadline for the group rate is **February 1, 2016**. If necessary, cancellations must be made 72 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge. Reservations may be made by calling the hotel at **800-826-8987** or online at [www.ambar.org/LELMidwinter](http://www.ambar.org/LELMidwinter). Be sure to mention you are attending the “ABA Employment Rights and Responsibilities Committee Midwinter Meeting” to receive the special group rate.

## Air Travel

American Airlines and United Airlines provide two types of airfare discounts to ABA meeting attendees. You can receive these discounts offline by calling, toll free, American Airlines at 800-433-1790 or United Airlines at 800-521-4041 or Orbitz for Business at 877-222-4185. For more information visit the ABA Travel Website at [www.americanbar.org](http://www.americanbar.org).

## Social Events

### • Diversity Reception and Welcome

The ERR Diversity Reception and Welcome will be held on Tuesday, March 15 from 6:00 to 7:30 p.m. All ERR Midwinter Meeting attendees and registered guests are welcome to attend.

### • Subcommittee Reception and Bourbon Street Pub Crawl

Following the Subcommittee Reception for First-Time Attendees, New ERR Committee Members and Subcommittee Co-chairs from 6:00–7:00 p.m., the ERR Membership Subcommittee will lead a Bourbon Street Pub Crawl on Wednesday, March 16 from 7:00 to 9:00 p.m.

### • French Quarter Dine-Around

On Thursday, March 17, meeting registrants and guests are invited to participate in an organized “dine-around” in the French Quarter. We will make reservations at some of New Orleans’ best restaurants, and you choose your favorite!

### • Friday Reception, Dinner and Dance

You will not want to miss our Friday dinner party for meeting attendees and registered guests, which begins at 7:00 p.m. The evening will feature great food, drinks and live entertainment. The cost of this event is included in the registration fees.

## Continuing Legal Education Credit

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, PR, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 13.75 CLE credit hours (including 1.25 ethics hours) in 60-minute states and 16.50 credit hours (including 1.50 ethics hours) in 50-minute states. This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, visit [www.americanbar.org/cle/mandatory\\_cle.html](http://www.americanbar.org/cle/mandatory_cle.html).

## Financial Assistance

Visit the Section of Labor & Employment Law website at [www.americanbar.org/labor](http://www.americanbar.org/labor) for information about the Section Development Fund and Government and YLD Fellowship Program opportunities.



# Registration Form

## ABA Section of Labor and Employment Law Midwinter Meeting

### Employment Rights and Responsibilities Committee

March 15–19, 2016 • The Ritz-Carlton New Orleans • New Orleans, Louisiana

### Ethics and Professional Responsibility Committee

March 17–19, 2016 • The Ritz-Carlton New Orleans • New Orleans, Louisiana

**Registration Deadline: March 1, 2016**

#### ONLINE:

[www.ambar.org/llelmidwinter](http://www.ambar.org/llelmidwinter)

(Credit card payments accepted online only.)

#### FAX:

(312) 988-5850

#### MAIL:

ABA Section of Labor & Employment Law  
Attn: Service Center – Meeting/Event Registrations Dept.  
321 North Clark Street, Chicago, IL 60654

**Enclosed check**

(made payable to American Bar Association)

NAME

NICKNAME/BADGE NAME

FIRM/ORGANIZATION

STREET ADDRESS

CITY

STATE/PROVINCE

POSTAL CODE

PHONE

FAX

E-MAIL ADDRESS

NAME OF ATTENDING SPOUSE/GUEST(S)

#### Affiliation:

Employer/Management  Employee/Plaintiff  Union & Employee  Public/Government  Neutral  Other

**First-Time Attendee**

If any special arrangements are required under the ADA, contact Shannon Gilmore at (312) 988-5523.

#### ERR Registration

##### Registration Fees:

	Number Attending	Total
Early Section Member Discount (on or before 1/13/16)	_____ @ \$475	\$ _____
*Section Member (after 1/13/16)	_____ @ \$575	\$ _____
ABA # _____		
ABA Member	_____ @ \$675	\$ _____
Non-ABA Member	_____ @ \$775	\$ _____
Government Agency, Full-Time Academic or Non-Profit	_____ @ \$325	\$ _____
First-Time Attendee	_____ @ \$325	\$ _____
Spouse/Guest(s)	_____ @ \$175	\$ _____
Children (12–18)	_____ @ \$75	\$ _____

##### Social Events:

Tuesday Welcome Reception \_\_\_\_\_ (included in ERR registration fee)  
Wednesday Diversity Reception \_\_\_\_\_ (included in ERR registration fee)  
Friday Reception and Dinner \_\_\_\_\_ (included in ERR registration fee)

#### Ethics Registration

##### Registration Fees:

	Number Attending	Total
*Section Member	_____ @ \$295	\$ _____
ABA # _____		
ABA Member	_____ @ \$395	\$ _____
Non-ABA Member	_____ @ \$495	\$ _____
Government Agency, Full-Time Academic or Non-Profit	_____ @ \$195	\$ _____
Law Student	_____ @ \$195	\$ _____
First-Time Attendee	_____ @ \$195	\$ _____
Spouse/Guest(s)	_____ @ \$125	\$ _____
Children (12–18)	_____ @ \$50	\$ _____

##### Social Events:

Thursday Welcome Reception \_\_\_\_\_ (included in Ethics registration fee)  
Friday Reception and Dinner \_\_\_\_\_ (included in Ethics registration fee)

**Total Enclosed:** \$ \_\_\_\_\_

**Total Enclosed:** \$ \_\_\_\_\_

\* Not a Section of LEL member?

Join online at [www.americanbar.org/join/](http://www.americanbar.org/join/) to register  
for the meeting at the Section Member rate.