

Programs

Publications

People

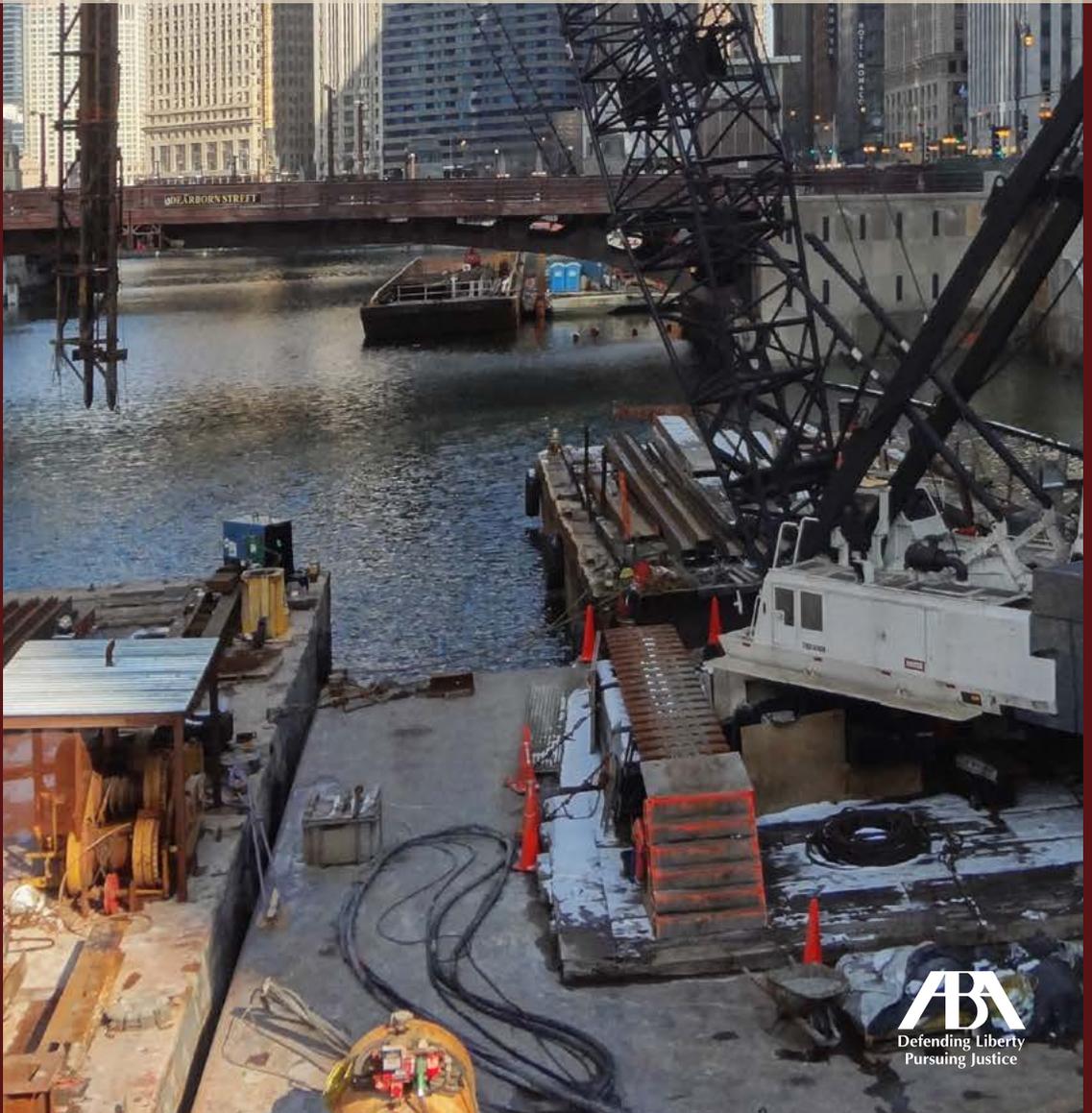


FORUM ON THE CONSTRUCTION INDUSTRY
BUILDING THE BEST CONSTRUCTION LAWYERS

BULLDOZERS, CRANES & CLAIMS:

Challenges of Rebuilding the Construction Industry

2014 FALL MEETING October 16-17, 2014 **Hilton Chicago** Chicago, Illinois



ABA
Defending Liberty
Pursuing Justice

DEAR COLLEAGUES:

The Forum welcomes you to the “Windy City” for its Fall 2014 Program. Our program, “Bulldozers Cranes and Claims: Challenges of Rebuilding the Construction Industry,” focuses on “rebuilding.” In a post-recession world, many of our clients’ have emerged with a new set of challenges. In their quest to survive in a struggling economy, they have ventured into new relationships with unfamiliar partners, began bidding public projects without understanding compliance and ventured into other areas that threaten their financial survival. As we enter the cycle of rebuilding, clients now have a whole new set of risks and challenges. This program promises to help you navigate those risk and challenges.

Our clients have shifted roles: from contractor to construction manager, from design-build to integrated project delivery, and from private to public work. Learn the type of advice that the savvy construction lawyer needs to provide in order to assist their unwary and perhaps over-eager client who leapt into public contracting without full awareness of the risks and consequences. In their quest to be awarded new work, many clients have teamed up with new partners to gain required bonding capacity and/or to satisfy minority participation requirements. In many instances, these teaming relationships are, instead, the construction industry-equivalent of a “shotgun marriage.” If the deal goes south (and it often does), learn how to avoid the “messy divorce,” to complete the project, the mega-dispute, the financial disaster and, if all else fails, to better manage their litigation.

You will also learn innovative practice tips, such as what “non-verbal” signs we should watch for to detect a liar or cheater in construction litigation, mediation, and arbitration. You will evaluate how the insurance industry has reacted to integrated project delivery arrangements, public/private partnerships, new products to insure against liquidated damages, indemnification obligations and other industry challenges. To help you prepare clients to better respond to and rebuild from such a disaster, we will identify proactive and reactive measures that project participants need to undertake in the wake of a natural disaster. Finally, we will explore the ethical issues that arise for the construction lawyer whose client’s changed business may stretch the lawyer beyond his or her competency level; or whose clients want to handle their own document management to save money, but in doing so may damage their own legal position.

You don’t want to miss this program because, as an added benefit, you will walk away from each session with exemplars of agreements, letters, and “checklists” that you can put into practice immediately. And we look forward to your own perspective enriching this thought-provoking and enlightening program.

Come for the program at an outstanding time of year. Chicago has it all: world-class museums, superb shopping, championship sports, exquisite dining and entertainment provides something for everyone. Come hear legendary blues; visit museums; take in some side-splitting improv, or grab a deep-dish pizza. You’ll be just steps from the Art Institute and the Field Museum; Navy Pier and Chicago’s Lakefront; the acclaimed shopping along the Magnificent Mile and Oak Street boutiques; Chicago’s theaters and nightclubs; and the serene escape of Millennium Park.

See you in Chicago!

PROGRAM CO-CHAIRS

Erin L. Ebeler, Esq.

Woods & Aitken LLP, Lincoln, NE

Richard J. Wittbrodt, Esq.,

Gibbs Giden Locher Turner Senet
& Wittbrodt LLP, Los Angeles, CA

GOVERNING COMMITTEE LIAISON

Kristine A. Kubes, Esq.

Kubes Law Office, PLLC
Minneapolis, MN



2014-2015 LEADERSHIP

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Becker & Poliakoff
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Law Office of Deborah Mastin
Miami, FL

Wm. Cary Wright
Carlton Fields PA
Tampa, FL



PROGRAM SCHEDULE

WEDNESDAY, October 15, 2014

Noon – 5:30 PM

EARLY REGISTRATION

THURSDAY, October 16, 2014

7:00 AM – 5:00 PM

REGISTRATION/ EXHIBIT HALL OPEN

7:30 AM – 8:15 AM

CONTINENTAL BREAKFAST

8:15 AM – 8:30 AM

WELCOME FROM THE FORUM CHAIR AND PROGRAM CO-CHAIRS

Opening Remarks
& Announcements

8:30 AM – 9:45 AM

PLENARY 1

When the Going Gets Tough, the
Tough Start Lying...How to Know
Who's Telling the Truth

Can you tell when a witness, potential juror, or opposing attorney isn't telling the truth? Recognizing and judging non-verbal cues in construction litigation or dispute resolution is key to properly advising your client. This session will focus on teaching you the tell-tale signs of

spotting dishonest behavior and rehabilitating witnesses.

John S. Freud, Esq.

Mediation Solutions Inc., Miami, FL

Jennifer Evans Morris, Esq.

AT&T, Dallas, TX

Arthur H. Patterson, Ph.D.

DecisionQuest, Sarasota, FL

9:45 AM – 10:00 AM

BREAK

10:00 AM – 11:00 AM

PLENARY 2

Outside the Box: Challenges of New
Roles and Delivery Methods

During the recession, project participants migrated into new areas structured around construction management, design-build, general contracting and integrated project delivery whether by design or because of merger or acquisition activity. This session will address risk management, insurance and surety dilemmas, licensing disasters, contracting issues and issues of "change" created by these new roles and how to address them.

Ernest C. Brown, Esq., P.E.

Smith Currie & Hancock LLP

San Francisco, CA

James V. Farrell, CPA

Capstone Advisory Group, LLC, Chicago, IL

Timothy R. Sznawajs, MBA

FMI Capital Advisors, Inc., Denver, CO



11:00 AM – 12:15 PM

PLENARY 3

The Perfect Pair ... or The Odd Couple? Challenges of Teaming Arrangements

The construction industry has recently seen significant changes in the way contractors “chase” to win projects, which often includes the need to form “horizontal or vertical teams,” but these new arrangements may result in strange bedfellows. This session will evaluate key issues related to Teaming Arrangements – contracts, internal disputes, and strategies to eliminate or resolve claims.

Theresa A. Goetz, Esq.

Schlemlein Goetz Fick & Scruggs, PLLC
Seattle, WA

Charles E. Hardy, Esq.

Slates Harwell, LLP, Dallas, TX

Stephen H. Reisman, Esq.

Peckar & Abramson, P.C., Miami, FL

12:15 PM – 12:45 PM

LUNCH

12:45 PM – 1:45 PM

DIVISION PROGRAMS

1:45 PM – 2:00 PM

BREAK

2:00 PM – 3:15 PM

PLENARY 4

Knee-Deep in Mud: Lessons Learned From Leaping into the Public Contracting Arena

Many clients moved into public contracting in search of work during the recession, but after they won “the beauty con-

test” they were confronted with hurdles they never knew existed. How do you counsel them? The program will discuss substantial compliance obligations; the challenges of ongoing critical infrastructure needs with limited public funding or the threat of loss of funding; and the threats to public contractors who unwittingly have found themselves knee-deep in difficulty in this arena.

Jeremy Becker-Welts, Esq.

Jeremy Becker-Welts, Winchester, VA

Douglas L. Patin, Esq.

Bradley Arant Boulton Cummings, LLP
Washington, D.C.

3:15 PM – 4:30 PM

PLENARY 5

Breaking Up is Hard to Do: It's Gut Check Time!

Termination among the “horizontal or vertical team” presents a unique situation. This session will identify considerations for each party when evaluating termination as a viable option and the resulting fall out, including critical contract provisions and drafting nuances to improve chances of success throughout the termination process

Brian L. Henninger, Esq.

Kiewit Infrastructure Group Inc.
Woodcliff Lake, NJ

Joel J. Rhiner, Esq.

Stein Ray LLP, Chicago, IL

4:30 PM - 5:30 PM

EXHIBITOR RECEPTION

5:30 PM – 6:30 PM

WELCOME RECEPTION

FRIDAY, October 17, 2014

7:00 AM – NOON
**REGISTRATION/
EXHIBIT HALL OPEN**

7:00 AM – 8:30 AM **DIVERSITY BREAKFAST**

The Difference: Lessons
in Leadership, Change,
and Driving Innovation

Join us as we welcome keynote speaker, Kat Cole, the president of Cinnabon, Inc. Her inspirational story charts her journey from retail clerk to Hooters waitress to leader of global brands. In addition to being an author and highly-requested speaker and consultant on leadership and change management, Ms. Cole is a humanitarian, and her speech is a fundraiser for the Global Hope Network International. Do not miss the opportunity to hear from a true change-agent!

Kat Cole, President
Cinnabon, Inc., Atlanta, GA

7:30 AM – 8:30 AM
CONTINENTAL BREAKFAST

8:30 AM – 8:45 AM
**OPENING REMARKS/
ANNOUNCEMENTS**

8:45 AM – 10:00 AM
PLENARY 6

Over the Edge: When Your Client's
Business Changes Your Practice
(Ethics)

Lawyers' roles may change as the construction client's business changes or rebuilds – moving the lawyer to a broader or narrower practice. Are you ready for it? This plenary will address ethical issues related to serving clients' rebuilding efforts, including limited representation, competency, co-counsel relationships, and lobbying.

Wendy J. Muchman, Esq.
Attorney Registration and Disciplinary
Commission, Chicago, IL
Douglas R. Richmond, Esq.
Aon Risk Solutions, PLC, Lincolnshire, IL
The Honorable William Jay Riley
Chief Judge, Eighth Circuit
Court of Appeals, Omaha, NE



10:00 AM – 10:15 AM

BREAK

10:15 AM – 11:15 AM

PLENARY 7

In the Eye of the Storm: Disaster Response and Resilience

Natural disasters pose a variety of potentially disastrous issues to construction clients: How can you prove a claim if all the project documents were lost in the storm? Will insurance cover the losses? Who will compensate for the delay? What if the storm leads to bankruptcy of one of the players? This session will develop strategies for preparation and response to help clients deal with catastrophe when it occurs.

Wendy Huff Ellard, Esq.

Baker, Donelson, Bearman,
Caldwell & Berkowitz, PC
Jackson, MS

Allyn E. Kilsheimer, P.E.

President and CEO, KCE Structural
Engineers, PC, Washington, D.C.

11:15 AM – 12:30 PM

PLENARY 8

New Horizons, New Risks: The Insurance Industry Responds ... Or Does it?

How has the insurance industry responded to the growing and changing needs of construction and design - and where it has not yet responded? This session will address insurance issues from the perspective of owner, design professional, and contractor, evaluate the pros and cons of new insurance products, such as coverage for liquidated damages, and evaluate whether new project delivery methods (IPD, P3, etc.) and contracting arrangements have affected the risk profile so as to require new insurance products.

Keith W. Jurss

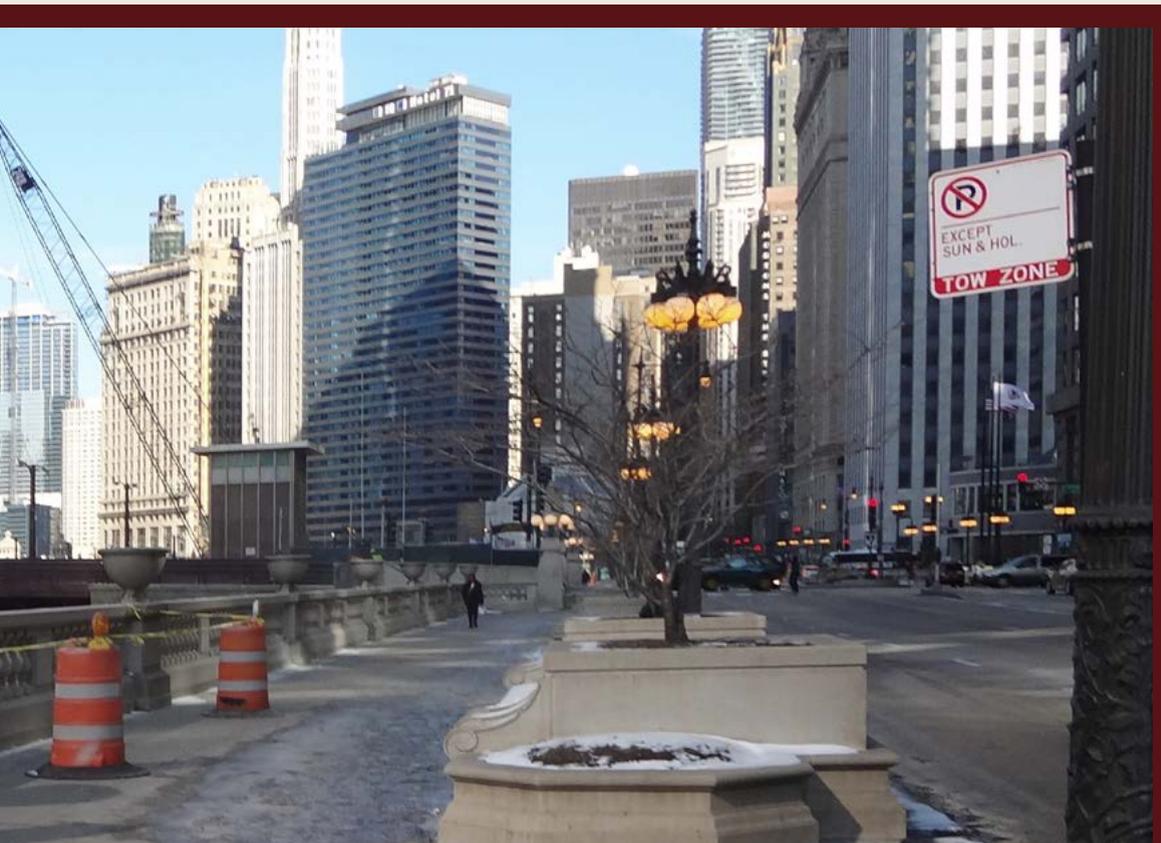
Willis National Construction Practice
Chicago, IL

Caroline W. Spangenberg, Esq.

Kilpatrick Townsend & Stockton LLP
Atlanta, GA

12:30 PM

PROGRAM CLOSING REMARKS





Special thanks to our Advisory Panel, who provided invaluable guidance for this Fall Program:

Leslie O'Neal Coble, Esq.
Brasfield & Gorrie LLC | Orlando, FL

Jaimee L. Nardiello, Esq.
Zetlin & De Chiara LLP | New York, NY

Asha Echeverria, Esq.
Bernstein Shur | Portland, ME

Mike Tarullo, Esq.
McDonald Hopkins LLC | Columbus, OH

Tom Finnegan
FTI Consulting | Atlanta, GA

SPECIAL EVENTS

TUESDAY, October 14, 2014

3:30 PM – 5:30 PM

Construction Law Practicum
for New Construction Lawyers
ABA Headquarters; Fee: \$50/person

Several nationally-recognized construction attorneys will describe the general contours of “construction law” as a practice field, walking through the details of important construction law doctrines, discussing key concepts that are unique to construction law, distinguishing the practice of construction law from other areas, and highlighting attributes of litigation that are peculiar to construction disputes. In addition, attorneys who have established their reputations in construction law will review the many career paths available to construction attorneys, both in traditional legal fields and in other professions where their training has prepared them to provide highly-specialized services to construction industry players.

Practicum participants will learn:

- The contractual web that characterizes construction projects
- Construction contracts in a nutshell
- Why so much of what you learned about contracts in law school came from construction disputes
- Blue-ribbon construction law cases
- Five things every construction lawyer needs to know
- What it means to practice construction law
- Where your construction law practice can take you

WEDNESDAY October 15, 2014

5:00 PM – 7:00 PM

Women’s Networking
Cocktail Party

THURSDAY October 16, 2014

7:00 AM – 8:10 AM

First Time Attendee
& New Member Breakfast
The Normandie Lounge

4:30 PM - 5:30 PM

Exhibitor Reception
The Normandie Lounge

5:30 PM – 6:30 PM

Welcome Reception
The Normandie Lounge

FRIDAY October 17, 2014

7:00 AM – 8:30 AM

Diversity Breakfast

Kat Cole, President
Cinnabon, Inc., Atlanta, GA

12:30 PM – 4:30 PM

Of Course You Can! Advanced Negotiation Skills for Women
ABA Headquarters; lunch included
Fee: \$195 general public; \$175 for ABA members; \$150 for Forum members
Are you tired of being told that women can’t negotiate? Has it come to the point that you are starting to believe it? Hogwash! Negotiation is a teachable skill and women can and do learn it. Many women negotiate very well, thank you. So come attend the Forum’s Fall special session on advanced negotiations skills for women and make yourself one of the many women who negotiate routinely and effectively.

Ava J. Abramowitz, Esq.
The George Washington University
Law School | Washington, D.C.

CONFERENCE INFORMATION

1. HOTEL RESERVATIONS:

The conference will be held at Hilton Chicago, located at 720 South Michigan Avenue, Chicago, IL 60605. Telephone: 312-922-4400. The Forum has negotiated a special room rate of \$254 plus 16.4% (\$274 for a lake-view room, if available at the time of booking). You may call the hotel directly at 1-800-HILTONS and refer to the Forum on the Construction Industry 2014 Fall Meeting. You must register for the conference prior to making your hotel reservation. We have reserved a limited block of rooms through September 22, 2014 at 5pm CST. After this date, and if we are sold out of our block, rooms will be assigned on a space available basis at a rate the hotel chooses. All changes and cancellations to guaranteed hotel reservations must be made with the hotel at least 72 hours before the scheduled day of arrival to avoid a one-night cancellation charge.

2. AIR AND GROUND TRAVEL:

The Hilton Chicago is approximately 45 minutes away from O'Hare International Airport and approximately 25 minutes away from Midway Airport. Additional information can be found at <http://www.hiltonchicagohotel.com/hotel-information/map-directions/>

Airfare and car rental discounts for ABA meetings are available through ABA Orbitz for Business. To book online, go to www.americanbar.org/travel > click on the Orbitz for Business logo > read the instructions under "Travel Paid by Self." For assistance with online or offline reservations using the ABA Orbitz for Business website, call toll free 877-222-4185. Additional airline discounts may be available. Visit http://www.americanbar.org/membership/travel_services/air_travel_discounts.html for more information.

3. PROGRAM REGISTRATION:

To register for all programs and events described in this brochure, we encourage you to register online at www.americanbar.org/groups/construction-industry. Confirmations will be emailed or faxed to you within 72 hours of registration receipt. In order to be included in the list of program attendees, you must register by October 6, 2014. Guest tickets for the Welcome Reception are available for an additional fee. Please see the registration form for price details. Early Bird Registration Deadline: September 8, 2014.

4. ONSITE REGISTRATION

Onsite Registration is available for those persons who missed the registration deadline. If you plan to register at the door, please call the Forum at 312-988-5794 on or before Friday, October 15, 2014 to confirm that space is still available. Failure to call in advance may preclude admission to a sold out conference. Onsite registrants must pay the registration fees by credit card. NO registrations will be accepted without payment.

5. TUITION AND SCHOLARSHIP INFORMATION:

Tuition includes admission to the program, welcome and other identified receptions, continental breakfasts, beverage breaks, lunches, and course materials. The Forum provides program materials only on flash drive to help the environment. Please contact Tamara Harrington by email at Tamara.Harrington@americanbar.org or by phone at 312-988-5674 for more scholarship information.

6. CANCELLATION POLICY:

Registrants who are unable to attend the conference will receive a refund less a \$50 administrative fee if written cancellation is received by September 29, 2014. Cancellations may be emailed to Tamara.Harrington@americanbar.org or faxed to 312-988-5677. No refunds will be granted after September 29, 2014. Substitutions are acceptable, or conference materials will be sent in lieu of a refund after the program. The ABA reserves the right to cancel any programs and assumes no responsibility for personal expenses.

7. CLE 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, NM, NV, NY, NC, ND, OH, OK, OR, PA, 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 9.5 CLE Credit hours in 60-minute states, and 11.0 CLE Credit 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 contact Tamara Harrington by email at Tamara.Harrington@americanbar.org

8. MEMBERSHIP:

To encourage registrants to join the ABA Forum on the Construction Industry, the reduced member's tuition rate will be extended to registrants who join the Forum when they register for the conference. Forum membership dues are \$60 for attorneys/associates and \$5 for law students. Membership in the ABA and one Section is a prerequisite to Forum membership. Please include a separate check (payable to the American Bar Association) for membership dues.

9. TAX DEDUCTION FOR EDUCATIONAL EXPENSES:

In the United States an income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals and lodging expenses (see Treas. Reg. Sec. 1.162-2) *Coughlin v. Commissioner*, 203 F.2d 307 (2nd Cir. 1953.)

10. AMERICANS WITH DISABILITIES ACT:

If special arrangements are required for disabled individuals to attend this program, please contact the Forum in writing by September 15, 2014 at the American Bar Association, 321 N. Clark Street, Chicago, Illinois, 60654.

Email: Tamara.Harrington@americanbar.org

11. DRESS:

In keeping with Forum tradition, participants are encouraged to wear business casual attire during the programs and all special events.

12. FOR THE LATEST PROGRAM INFORMATION:

Please visit the ABA Forum on the Construction Industry's website: www.americanbar.org/groups/construction_industry. Contact Tamara.Harrington@americanbar.org with any questions.