

FRANCHISING

An Oasis of Opportunity

ABA *Forum on*
FRANCHISING

40th

ANNUAL FORUM ON FRANCHISING

Palm Desert, California | October 18-20, 2017 | JW Marriott Resort & Spa

DEAR COLLEAGUES AND FRIENDS:

We're excited to introduce the 40th Annual Forum on Franchising on October 18-20, 2017 at the JW Marriott Resort & Spa in Palm Desert, California. Join us at this "Oasis of Opportunity" to experience the best in franchise educational programs, CLE, and networking activities. Social events include the Forum's milestone 40th birthday celebration on Thursday, and a glamorous "Old Hollywood" evening at Greta Garbo's La Quinta house on Friday.

Program details are available at americanbar.org/groups/franchising.html or on the Forum's mobile app. See you in Palm Desert in October!

PROGRAM CO-CHAIRS

Ron Coleman – *Parker, Hudson, Rainer & Dobbs LLP*

Dawn Newton – *Donahue Fitzgerald LLP*



HOTEL RESERVATIONS

The Forum on Franchising has negotiated a special room rate of \$230 per single/double room at the JW Marriott Desert Springs Resort & Spa in Palm Desert, California. Sales tax and a \$15 resort fee will also apply per night. You may call the hotel directly at 1-800-228-9290. Please reference the ABA Forum on Franchising. The hotel is located at 74-855 Country Club Drive, Palm Desert, California 92260.

We have reserved a limited block of rooms through September 18, 2017. After this date, the hotel will assign rooms on a space available basis. All changes and cancellations to hotel reservations must be made with 48 hours of the scheduled day of arrival to avoid a one night's cancellation charge.

GETTING THERE

The JW Marriott Resort is 12 miles from the Palm Springs International Airport. You can also consider flying into Los Angeles International Airport or the Ontario International Airport and renting a car, but depending on the time of day, traffic can make this a 2-4 hour trip. Self-parking is included in the daily resort fee.

INTENSIVES & PLENARIES

Intensive 1: Fundamentals of Franchising

This program provides a comprehensive overview of franchise law for those who want a thorough introduction to this field, as well as those who want a refresher on one or more areas of franchise law practice. Join our top-notch experts who will present on structuring a franchise, disclosure and registration requirements, defining and protecting a franchise system's intellectual property, franchise relationship laws, antitrust considerations, international franchising, and representation of franchisees. Each attendee will receive a copy of the most current edition of *The Fundamentals of Franchising*.

Bethany L. Appleby, Franchise World Headquarters, LLC (Subway)

Joseph J. Fittante, Jr., Larkin Hoffman Daly & Lindgren Ltd.

Steve Goldman, Garvey Schubert Barer

Jim Goniea, Einbinder Dunn & Goniea LLP

Allan P. Hillman, Kern & Hillman, LLC

Rochelle Spandorf, Davis Wright Tremaine

Will K. Woods, Baker McKenzie LLP

Intensive 2: Exemption-Based Franchising Throughout the United States

This intensive program will provide a comprehensive and definitive review of federal and state laws relating to franchise exemptions and exclusions from pre-sale registration and disclosure in the United States. Although much has been written on the nuances of complying with franchise registration and disclosure laws, the benefits and burdens of exemption-based franchising has received far less attention in the literature.

In addition to an overview of the available federal and state franchise exemptions, this program will provide specific guidance on how to use exemptions as part of a franchisor's sales strategy, as well as how to implement a national exemption-based franchise program. As part of the discussion, the panelists will review some of the challenges and trade-offs required of franchisors relying on exemptions to offer and sell franchises. The panelists also will consider the issues arising around making sales without providing a traditional franchise disclosure document, including issues likely to be of concern to franchisee counsel representing purchasers in exemption-based systems. This program will provide franchisor and franchisee practitioners with practical tips and guidance on navigating a complex area of franchise law for the benefit of their clients. Each attendee will receive a copy of the new 2017 ABA publication, *Exemptions and Exclusions Under Federal and State Franchise Registration and Disclosure Laws*, and a thumb drive containing the program's PowerPoint presentation, a compliance checklist and other helpful tools.

Martin Cordell, Washington Department of Financial Institutions

Leslie Curran, Plave Koch PLC

Beata Krakus, Greensfelder, Hemker & Gale, P.C.

Karen Boring Satterlee, Hilton Worldwide

Charlene York, Worldwide Express

Plenary 1: Annual Franchise and Distribution Law Developments

The Forum's signature event! Join your colleagues for a thoughtful, comprehensive, and lively review of the year's key judicial, regulatory, and legislative developments affecting franchising and distribution.

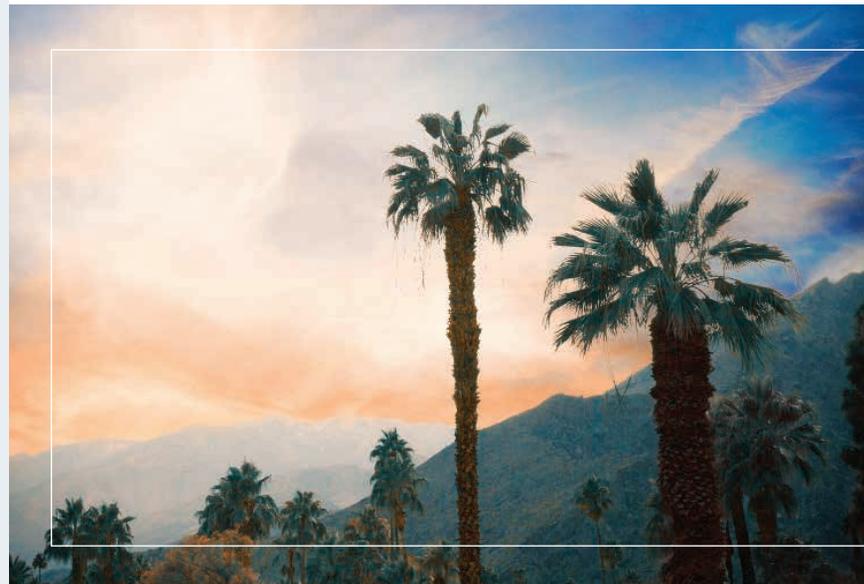
Corby C. Anderson, Bradley Arant Boult Cummings LLP

Clay A. Tillack, Schiff Hardin LLP

Plenary 2: They Know HOW Much About Me? Understanding and Dealing with Digital Profiles in the Age of Social Media and Mobile Devices

The amount of data collected, stored, and processed through our use of computers and mobile devices is staggering – and often much more than most of us know. Hear Ovie Carroll, Director for the Department of Justice, Cybercrime Lab at the Computer Crime and Intellectual Property Section (CCIPS) and a Digital Forensics Certified Examiner (DFCE), give an eye-opening presentation about how companies like Apple, Google, and Facebook collect data from their users. Learn about the types and volume of the data these companies generate, and how they use it, as a trade-off for the services they provide. Also learn some tips on how to control and minimize your online profile, and limit the kinds of information that can be collected.

Ovie L. Carroll, Director, Cybercrime Laboratory, U.S. Department of Justice Computer Crime and Intellectual Property Section



WORKSHOPS

W-1: Storytelling – The Importance of Theme-Building to Create a Persuasive Legal Narrative at All Stages of an Action

Storytelling and developing compelling case themes are critical skills for any litigator. These skills are essential to establish a theory of the case, provide a satisfying explanation of the underlying events, and motivate the decision maker to want to embrace and adopt your client's positions. But these concepts require different considerations at different stages of an action, based on the stage of fact development, the relevant legal standards, and the particular audience – whether judge, arbitrator, or jury. You will hear from experienced trial attorneys as they take real world examples of franchise litigation and discuss best practices for building your case themes and crafting persuasive narratives at the following stages of a case: motion to dismiss, preliminary injunction, mediation, class certification motion, motion for summary judgment, and trial. Learn what storytelling techniques can be learned from non-legal industries such as film maker's storyboarding and publishing to make your advocacy more persuasive.

Ronald K. Gardner, Dady & Gardner, P.A.

Jonathan Solish, Bryan Cave, LLP

Dale Launer, Screenwriter, "My Cousin Vinny"

W-2: Nipping It in the Bud – Effective Early Evaluation and Resolution of Franchise Disputes

Everyone knows that litigation is expensive and disruptive, and it should be avoided or resolved promptly where possible. But that is easier said than done. Hear experienced franchisor and franchisee litigators and in-house counsel discuss how they approach early evaluation of cases, both before deciding to bring a lawsuit as a plaintiff and upon initial review of a lawsuit when representing a defendant. This workshop will address the pros, cons, and strategies for ADR options such as early dispute resolution, early neutral evaluation, and early mediation. It also will discuss ways that a franchisor can try to identify and resolve disputes internally before litigation arises, such as ombudsman programs and cooperative efforts with franchisee associations. Finally, the workshop will provide an overview of potential settlement methods and strategies for early resolution of complex disputes like class and multi-party actions.

Nancy Gourley, LQ Management L.L.C.

Peter R. Silverman, Shumaker, Loop & Kendrick, LLP

William K Whitner, Paul Hastings LLP

W-3: Basics of Franchisee Bankruptcies

Financially troubled franchisees are an unfortunate fact of life, but the world of bankruptcy law can be a foreign land to the general franchise practitioner. This program will provide an overview of the bankruptcy process and how it can impact a franchise relationship, from both the franchisor's and the franchisee's perspective. It will address issues that commonly arise in franchisee bankruptcies regarding the enforceability of the franchise agreement, including assignability, termination rights, intellectual property rights, and non-compete restrictions. The panelists will also discuss steps parties can take to better position themselves in the event of a bankruptcy filing.

Jason B. Binford, Gardere

James S. Rankin, Jr., Parker, Hudson, Rainer & Dobbs LLP

Robert Salkowski, Zarco Einhorn Salkowski & Brito, P.A.

W-4: A New World for Trade Secrets in Franchising – New Options and Strategies Under the Federal Defend Trade Secrets Act

In 2016, the Defend Trade Secrets Act (DTSA) became law, providing the first ever federal civil cause of action for trade secret misappropriation. The DTSA is important because nearly every company has proprietary, non-public information crucial to its business that could be protected from competitors as a trade secret. Many franchise companies rely on valuable trade secrets, including formulas and recipes, marketing plans, and specialized equipment or processes. The DTSA will bring many changes and different strategic options for trade secret litigants, including access to the nationwide reach of the federal courts, the interplay between the DTSA and existing state trade secret statutes, and powerful new remedies like an ex parte seizure order to recover misappropriated trade secret materials. Hear experienced franchise and trade secret litigators discuss early decisions under the DTSA, application of the DTSA in light of state non-competition laws, and how litigants can use the DTSA to their advantage in enforcing or defending trade secret claims.

Scott McIntosh, Quarles & Brady LLP

Natalma ("Tami") McKnew, Smith Moore Leatherwood LLP

WORKSHOPS

W-5: Enforcing the Bargain or Buying Your Way Out? The Right to Specific Performance in Franchise Agreements versus the Concept of Efficient Breach

Franchise agreements are long-term relationship contracts. As a result, the parties' circumstances and interests may change over time, and they may seek either to end the relationship or to force the other party to continue to perform against its will. Under what circumstances might a party want to compel specific performance of franchise agreement terms, and how likely would it be to succeed? Alternatively, when can a party decide to breach the contract and pay damages for the right not to further perform? This workshop will explore the legal theories of specific performance, on the one hand, versus efficient breach of contract, on the other, and will discuss case law dealing with such disputes in the franchise context.

Fredric A. Cohen, Cheng Cohen LLC

Mackenzie L. Dimitri, Einbinder Dunn & Gonied LLP

W-6: Litigating Franchise Cases Under Unfair Trade Practices Statutes

Statutory claims often have powerful remedies for franchisees, such as enhanced damages and attorneys' fees. Although there is no private right of action under the Federal Trade Commission Act's Franchise Rule, state "little FTC acts" and other unfair trade practices acts can provide relief for unfair and deceptive conduct, including conduct that violates the FTC Act or related regulations. This workshop draws on the presenters' 50-state survey of "little FTC acts," developed for this year's Forum, by examining the nuances of those statutes and their unique application to franchising and franchise litigation. This workshop also explores various ways by which a franchisee might bring a claim based on an FTC Act violation and how a franchisor might defend against it.

Leslie Smith, Foley & Lardner LLP

Ari N. Stern, Witmer, Karp, Warner & Ryan LLP

W-7: States' Rights – Multi-State Franchise Relationships and the Application of Multiple States' Franchise Relationship Laws

Litigation can get complicated when disputes arise between a franchisor and a franchisee that operates in multiple jurisdictions, and the issues get even trickier when some or all of the jurisdictions have a franchise relationship statute. Which state's franchise law(s) apply, and to what extent? How, if at all, does the contractual choice of law apply? This scenario can apply when a single franchise agreement covers units operating in multiple states, or when multiple franchise agreements covering different states contain cross-default provisions. Similar issues can arise when a franchisor is sued by multiple franchisees from different states, where relationship laws can conflict with contractual choice of law. This program will address these legal and strategic issues arising from potentially overlapping state laws. Experienced litigators will discuss case strategies and arguments from both the franchisor and franchisee perspectives.

Michael D. Joblove, Genovese Joblove & Battista, P.A.

Peter C. Lagarias, Lagarias & Napell, LLC

W-8: Caught in a Trap – Dealing with Customer and Patron Claims under the TCPA and ADA Against Franchisors and Franchisees

Franchisors and franchisees are not immune from having to deal with compliance issues under federal statutes that are not franchise-specific, such as the Telephone Consumer Protection Act (TCPA) and the Americans with Disabilities Act (ADA). Enterprising plaintiff lawyers are more aggressive than ever in bringing suits, and these claims can have significant statutory damages and few defenses. These claims often are brought as class actions, thus increasing the risk and exposure. This workshop will focus on claims under the TCPA for unauthorized text messages, faxes, and pre-recorded phone calls. It also will cover claims under the ADA for web sites that are not appropriately accessible for visually or hearing impaired people, and for access to physical facilities. Hear from litigators who have defended these claims on behalf of franchise clients as well as in-house counsel who have had to deal with both compliance counseling and litigation defense.

Laura Danysh, Hilton Worldwide

John Doroghazi, Wiggin and Dana LLP

Heather Carson Perkins, Faegre Baker Daniels LLP

W-9: Investigations Gone Wild – Use and Misuse of Private Investigators

Many systems routinely use private investigators or other covert techniques to determine a franchisee's compliance with franchise agreements, including adherence to brand standards, post-term trademark infringement, and in-term or post-term non-compete obligations. Investigators also are used to seek evidence of infringement and unfair competition by competitors. The proper use of investigators and other undercover techniques is not always well-defined and can vary by state. The timing of investigations can raise ethical issues as well. Even if the use of private investigators is permissible, there can be questions about the most effective way to use these procedures and how to convert what is yielded into useable evidence at a hearing or trial. This workshop will examine how best to use investigative techniques and findings, both from the franchisor and franchisee perspectives, and will review decisions in which investigative techniques have been questioned.

Christopher P. Bussert, Kilpatrick Townsend & Stockton LLP

Jeremy Liebman, Krispy Kreme Doughnut Corporation



WORKSHOPS

W-10: Yes I Can – Intellectual Property Fair Use in Franchising

Intellectual property laws provide potent rights against infringers, but those laws also recognize “fair use” rights for third parties in certain instances. The general concept of fair use is familiar to many, but determining whether fair use applies to a particular fact pattern can be challenging and the consequences for misapplication severe. Consideration of fair use rights has become increasingly important for franchise systems as social media continues to grow in use, and franchisors face risks when their employees use content from other sources. Fair use issues also can arise when franchisors desire to stop a third party from unauthorized use of the franchisor’s trademarks, such as on “gripe sites,” by independent franchisee associations, or by competitors in comparative advertising. This program will explore the legal concept of fair use with respect to those intellectual property disciplines most relevant to franchising – trademark, copyright, trade secret, and right of publicity. It will discuss what uses might be fair or foul, and how franchisors and franchisees can go about making what are inherently fact-specific determinations which often have no clear answers.

Jonathan S. Jennings, Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP

Michael K. Lindsey, Steinbrecher & Span LLP

W-11: Privilege Issues in Franchise Systems

Privilege issues are a constant concern for franchise lawyers. This workshop will provide an overview of case law and ethics rules regarding legal privileges, and address common privilege questions faced by in-house and outside counsel advising franchisors and franchisees. What are the general “rules of the road” governing corporate attorney-client privilege? When is the lawyer acting in a legal versus business role for the organization? When might other privileges, such as work product, joint defense, or common interest, apply? How can privileges be waived, and how can one avoid doing so? Learn how these and other privilege issues play out in the real world of franchise litigation. Get your ethics credit.

Caroline B. Fichter, The Bundy Law Firm, PLLC

Theresa D. Koller, Cline Williams Wright Johnson & Oldfather, L.L.P.

W-12: New Fees, Same Work – Preparing and Responding to Alternative Fee Arrangements

In-house and outside counsel alike struggle with the “new normal” for engaging and compensating outside counsel. In-house counsel are facing greater pressure to manage and control legal budgets, while outside firms are trying to respond and figure out how to deliver more value for less money. Clients and outside counsel now regularly confront alternate fee arrangements as the billable hour model continues to be criticized. This program will bring together experienced in-house and outside counsel to discuss how both groups can maximize the opportunities to use new fee structures to cement a more satisfying and mutually beneficial client-counsel relationship. The panelists will discuss (1) different alternative fee structures that might apply to different kinds of franchise matters, (2) which ones might make sense under particular circumstances, (3) the most common mistakes that law firms make in formulating alternative fee arrangements, (4) how to craft engagement agreements to address common problems and pitfalls like defining the scope of work, identifying assumptions, and how to account for changes in the nature or scope of the engagement, and (5) ethical considerations associated with implementing alternative fee arrangements.

Kathy Kotel, Franchise Counsel

Norman M. Leon, DLA Piper LLP (US)

Vanessa Szajnoga, Liberty Tax Service

W-13: As My Franchisor Lay Dying – Franchisee and Franchisor Options in a Struggling System

Participants in struggling systems face a variety of challenges. Some systems falter for internal operational reasons, while others are disrupted by new technology, changing trends, reputational crises, or regulatory changes. In these systems, franchisees see withering businesses, and franchisors wrestle with shrinking revenues that are insufficient to address systemic issues, support existing infrastructure and replace departing personnel. Franchisee and franchisor creative collaboration may help save the system, while claims and hard-line stances may lead to mutual destruction or may save one party at the expense of the other. This workshop will consider what claims and options franchisees have against the franchisor, the franchisor options to respond, and internally how a franchisor in these straits can work to pivot its business and rebuild. The panelists will discuss the risks and rewards of various actions by franchisors and franchisees in a challenged franchise system, including franchisee exits, claims against the franchisor, franchisor exit strategies, and creative collaboration.

Gary R. Batenhorst, Cline Williams Wright Johnson & Oldfather, L.L.P.

Nicole Liguori Micklich, Garcia & Milas, P.C.

Les Wharton, Coverall North America, Inc.



WORKSHOPS

W-14: The Unwelcome Phone Call – Responding to Regulatory Audits & Investigations

State and federal governments have been aggressive in recent years in investigating corporations for alleged wrongdoing. In the franchise world, various agencies have investigated franchisors and franchisees for alleged food safety violations, immigration fraud, wage and hour violations, workplace improprieties, and more. What should a company do when the government demands information, seeks to interview employees, or issues subpoenas? In this session, the panel will discuss what immediate steps franchisors and franchisees should take in response to a government investigation, including how to deal with document requests, how to conduct an internal investigation to help in formulating an appropriate response to the government, and how to handle communications with government agents. Are there different responses for civil versus criminal investigations? The panelists will also discuss the benefits and drawbacks of the franchisor's involvement in scenarios in which the investigation is initiated against a franchisee rather than the franchisor.

Christopher A. Nowak, Wyndham Hotel Group, LLC

Eric L. Yaffe, Gray Plant Mooty

W-15: Regulatory Update

This workshop will cover the current issues in franchise disclosure and registration. The panelists will specifically address the latest developments related to financial performance representations, and will address risk factors, including efforts by the States to create more uniformity in risk factors. The panel will also address common deficiencies in registrations through a "lightning round" of tips, traps, and trends for practitioners.

Dale Cantone, Maryland Attorney General's Office

Theresa Leets, California Department of Business Oversight

Charles S. Modell, Larkin Hoffman Daly & Lindgren Ltd.

Michelle Webster, Washington Department of Financial Institutions

W-16: Franchisee Associations to the Rescue – Using Associations and Advisory Councils to Avoid Joint Employer Risk and Enhance the Brand

This workshop will consider how and when franchisors can utilize franchisee associations and advisory councils to facilitate system change and to provide support to franchisees on day-to-day issues, including operations, employment, and human resources. An effective association can assist franchisors with tasks such as hiring consultants to provide HR advice as well as wage and hour compliance training to franchisees. A properly leveraged relationship between franchisor and a franchisee association can help franchisors find the sweet spot between HR support of franchisees and joint employer peril, and create enhanced collaboration, feedback and guidance on operations, innovations and other system improvements. The panelists will discuss the opportunities for, and challenges to, establishing working relationships with associations. A collaborative relationship can help both parties develop a mutual understanding of the issues facing the system, incentivize further franchisee investment in the brand, elevate franchisee buy-in, and minimize franchisee discontent and the attendant risk of litigation.

Erin E. Conway, Garner & Ginsburg, P.A.

Eric H. Karp, Witmer, Karp, Warner & Ryan LLP

Brenda B. Trickey, Popeyes Louisiana Kitchen, Inc.

W-17: What's New and What's Next – The New Administration and Beyond

How are the new administration and recent legal changes shifting the landscape for franchising in 2017, and how are businesses reacting? This panel will discuss the latest trends in joint employer cases, the impact of recent changes to SBA regulations, the fight for and against minimum wage increases, and other recent and anticipated regulatory shifts. The panelists will provide a variety of perspectives on how these changes impact franchisors and franchisees across different industries and present tips for best practices in planning for the next few years.

Rupert Barkoff, Kilpatrick Townsend & Stockton LLP

Susan Grueneberg, Snell & Wilmer LLP

Carl Zwisler, Gray Plant Mooty

W-18: Mergers & Acquisitions – The Basics for Buying and Selling the System

The M&A market for franchisors is as strong as it has ever been. This workshop will examine unique issues involved in the purchase and sale of a franchise system, including pricing, structure of the transaction, key provisions included in the operative agreements such as representations and warranties, due diligence, franchise regulatory issues, franchise relationship issues, and the role of system franchisees and franchisee associations in the sales process.

Alan R. Greenfield, Greenberg Traurig, LLP

Christina M. Noyes, Gust Rosenfeld P.L.C.

Sherin Sakr, Realogy Franchise Group LLC



WORKSHOPS

W-19: Franchise Whole Business Securitization – Structure, Regulatory and Operational Considerations

A franchise whole business securitization is a restructuring and refinancing transaction which enables a company to access credit on more favorable terms and at cheaper rates than would otherwise be available, using the franchisor's royalty stream and other cash-generating assets of the business as collateral. These transactions are occurring with greater frequency. This advanced workshop will walk through the steps of a franchise securitization transaction and discuss the significant transactional and franchise regulatory issues which must be addressed, including corporate structure changes, real estate assignments, licensing implications, intra-company management agreements and broker, franchise, and business opportunity filings. The panelists will discuss the significant changes required to be made to the franchisor's disclosure documents as a result of the securitization process, potential loss of exemptions, as well as administrative changes to the franchisor's system of operations and their potential impact on prospective and existing franchisees.

Claudia Levitas, Hooters of America, LLC

Kelly Mellecker, Paul, Weiss, Rifkind, Wharton & Garrison LLP

David W. Oppenheim, Greenberg Traurig, LLP

W-20: Click to Win – Boosting the Brand with Sweepstakes and Contests

Promotion in franchise systems is not just about loyalty programs. Many systems use the chance of winning splashy prizes as an incentive for consumers to like, follow, friend, retweet, or share their personal information. Opportunities to win can even be used strategically to obtain and use consumer information and permission for contact, including further email communications, which inherently present privacy concerns. In the age of social media, many sweepstakes and contests are designed quickly, but, without legal oversight, they can easily miss a required component or promote an illegal lottery, resulting in a harsh and costly backlash. Trademark, copyright, and right of publicity matters are also key considerations in modern day promotions. This workshop will present the right (and wrong!) ways to structure sweepstakes and contests, and give an overview of best practices for using these types of promotions. Attend for a chance to win a prize!

Maral Kilejian, Haynes and Boone, LLP

Michael S. Levitz, Nestlé USA

Robert E. Vinson, Jr., Vinson Franchise Law Firm

W-21: Between You and Me – A Toolkit for Counsel in and to Smaller Systems

This workshop brings together outside counsel who work with emerging franchisors and experienced in-house counsel to discuss the core skills, tools and crucial knowledge that counsel to smaller systems need in order to improve their practice and help their clients or companies thrive. How should outside counsel or the system's first in-house lawyer prioritize projects on a slim budget? What systems, policies and know-how do new in-house attorneys wish had been understood or implemented earlier? What templates, checklists and forms should comprise the legal arsenal? The panelists will present best practices to help a growing system smoothly transition from a smaller sized business to bringing an in-house attorney on board and will address the legal challenges to growing systems from both the outside counsel and in-house perspective.

Mike Cocco, SYNERGY HomeCare Franchising, LLC

Cheryl Mullin, Mullin Law PC

Antonia Scholz, Cheng Cohen LLC

W-22: Franchising 201 – Effective and Compliant Use of Brokers and Sales Agents

Many franchise systems leverage third parties to produce leads, sell franchise units, and facilitate system growth. This session will consider the role of third parties like brokers and development agents from the perspective of both the franchisor and franchisee, including the nature and extent of their obligations and to whom. How can these agents be used effectively and legally to sell the franchise, handle financial performance disclosure issues, and interact with other third parties like banks and landlords? What can franchisees and their counsel do to protect their interests and obtain the most accurate disclosures? This workshop will discuss liability concerns including the franchisor's responsibilities in establishing and disclosing these relationships, broker registration requirements, red flags that should halt transactions, practical considerations for vetting the ongoing quality and effectiveness of third parties in franchise transactions, and reported cases involving third-party representatives.

J. Mark Dady, Dady & Gardner P.A.

Robert A. Lauer, Haynes and Boone, LLP

WORKSHOPS

W-23: Canadian Fundamentals of Franchising

This international program will feature an outline of the key topics involved in franchising in Canada that should be of particular interest to lawyers outside of Canada, including tax and corporate structure issues, differences in Canadian franchise agreements and practices, an outline of Canadian franchise laws (including the newly enacted British Columbia Franchises Act), key IP protection issues, differences in the enforcement of franchise agreements, and key case law principles.

Andraya Frith, Osler, Hoskin & Harcourt LLP

Judy A. Rost, Alexander Holburn Beaudin + Lang LLP

Larry M. Weinberg, Cassels Brock & Blackwell LLP

W-24: International – The Subfranchisees Are Doing What?!

This workshop explores the direct and indirect remedies that may be available to a franchisor when its international subfranchisees fail to adhere to brand standards or otherwise comply with their subfranchise agreements. The experienced panel will discuss potential legal and practical remedies when the franchisor's express rights over international subfranchisees are limited under the agreement or applicable law. Panelists will also present best practices for establishing a strong enforcement position vs. the subfranchisees, including issues to cover in the master franchise agreement and subfranchise agreements, and how to ensure master franchisee cooperation and assistance from the start of the relationship.

Kevin E. Maher, Baker & McKenzie LLP

John H. Pratt, Hamilton Pratt

Tao Xu, DLA Piper LLP (US)

Diversity Caucus CLE Program (Bias and Diversity Credit Available):

Join the Diversity Caucus and Amber Lee Williams, Senior Associate General Counsel for Walmart (US Compliance) and author of "How to Speak Up if You See Bias at Work," for a discussion of the opportunities and challenges involved in the recognition and elimination of bias in the legal workplace and in related applications, including the selection and treatment of franchisees and brand interactions with customers.

The Diversity Caucus program qualifies for 1.0 hours of Elimination of Bias credit in all states where this credit is accepted or required.

Amber Lee Williams, Walmart Stores, Inc.

PROGRAM SCHEDULE

WEDNESDAY, OCTOBER 18

7:00 am – 5:00 pm

Forum Registration

10:00 am – 5:00 pm

Intensive 1: Fundamentals of Franchising

11:00 am – 12:00 pm

Lunch Buffet for Intensives

12:00 pm – 5:00 pm

Intensive 2: Exemption-Based Franchising Throughout the United States

5:00 pm – 6:30 pm

Welcome Reception

7:00 pm – 10:00 pm

Newcomers' /YLD Networking Event
JW Marriott, Costas Nightclub

THURSDAY, OCTOBER 19

7:00 am – 5:00 pm

Forum Registration

7:00 am – 8:15 am

Continental Breakfast

7:00 am – 8:15 am

LADR Breakfast (New Event)
Corporate Counsel Breakfast

8:30 am – 10:00 am

Awards Presentations and Plenary 1: Annual Developments

10:15 am – 11:30 am

CONCURRENT WORKSHOPS

- W1** Storytelling – The Importance of Theme-Building to Create a Persuasive Legal Narrative at All Stages of an Action
- W4** A New World for Trade Secrets in Franchising – New Options and Strategies Under the Federal Defend Trade Secrets Act
- W7** States' Rights – Multi-State Franchise Relationships and the Application of Multiple States' Franchise Relationship Laws
- W8** Caught in a Trap – Dealing with Customer and Patron Claims under the TCPA and ADA Against Franchisors and Franchisees
- W15** Regulatory Update
- W19** Franchise Whole Business Securitization – Structure, Regulatory and Operational Considerations
- W22** Franchising 201 – Effective and Compliant Use of Brokers and Sales Agents

10:00 am – 2:00 pm

Spouse/Guest Event Luncheon
*Palm Springs Aerial Tram Tour
Mt. San Jacinto State Park
(Bring warm clothes or jacket)*

11:30 am – 12:45 pm

Networking Lunch

11:30 am – 12:45 pm

Women's Caucus Lunch

12:45 pm – 2:00 pm

CONCURRENT WORKSHOPS

- W2** Nipping It in the Bud – Effective Early Evaluation and Resolution of Franchise Disputes
- W6** Litigating Franchise Cases Under Unfair Trade Practices Statutes
- W9** Investigations Gone Wild – Use and Misuse of Private Investigators
- W13** As My Franchisor Lay Dying – Franchisee and Franchisor Options in a Struggling System
- W16** Franchisee Associations to the Rescue – Using Associations and Advisory Councils to Avoid Joint Employer Risk and Enhance the Brand
- W17** What's New and What's Next – The New Administration and Beyond
- W20** Click to Win – Boosting the Brand with Sweepstakes and Contests

PROGRAM SCHEDULE

2:15 pm – 3:30 pm

CONCURRENT WORKSHOPS

- W3** Basics of Franchisee Bankruptcies
- W5** Enforcing the Bargain or Buying Your Way Out? The Right to Specific Performance in Franchise Agreements versus the Concept of Efficient Breach
- W10** Yes I Can – Intellectual Property Fair Use in Franchising
- W12** New Fees, Same Work – Preparing and Responding to Alternative Fee Arrangements
- W18** Mergers & Acquisitions – The Basics for Buying and Selling the System
- W21** Between You and Me – A Toolkit for Counsel in and to Smaller Systems
- W24** International – The Subfranchisees Are Doing What?!

3:45 pm – 5:00 pm

CONCURRENT WORKSHOPS

- W4** A New World for Trade Secrets in Franchising – New Options and Strategies Under the Federal Defend Trade Secrets Act
- W8** Caught in a Trap – Dealing with Customer and Patron Claims under the TCPA and ADA Against Franchisors and Franchisees
- W11** Privilege Issues in Franchise Systems
- W14** The Unwelcome Phone Call – Responding to Regulatory Audits & Investigations

W19 Franchise Whole Business Securitization – Structure, Regulatory and Operational Considerations

W23 Canadian Fundamentals of Franchising

6:30 pm – 10:00 pm

Forum's 40th Celebration
Annual Reception & Dinner
Jackalope Ranch

FRIDAY, OCTOBER 20

7:00 am – 5:00 pm

Forum Registration

7:15 am – 8:30 am

Continental Breakfast

7:15 am – 8:30 am (Concurrent)

International Division Breakfast
Solo/Small Firm Breakfast
Paralegal/Franchise Administrators Breakfast
Law Professors Open House

8:45 am – 10:30 am

Annual Meeting and Plenary 2: They Know HOW Much About Me? Understanding and Dealing with Digital Profiles in the Age of Social Media and Mobile Devices

10:45 am – 12:00 pm

CONCURRENT WORKSHOPS

- W5** Enforcing the Bargain or Buying Your Way Out? The Right to Specific Performance in Franchise Agreements versus the Concept of Efficient Breach
- W6** Litigating Franchise Cases Under Unfair Trade Practices Statutes
- W9** Investigations Gone Wild – Use and Misuse of Private Investigators
- W12** New Fees, Same Work – Preparing and Responding to Alternative Fee Arrangements
- W17** What's New and What's Next – The New Administration and Beyond
- W21** Between You and Me – A Toolkit for Counsel in and to Smaller Systems
- W23** Canadian Fundamentals of Franchising

12:00 pm – 1:15 pm

Networking Lunch

12:00 pm – 1:15 pm

Diversity Caucus Program
(Bias & Diversity Credit Available)

PROGRAM SCHEDULE

1:15 pm – 2:30 pm

CONCURRENT WORKSHOPS

- W1** Storytelling – The Importance of Theme-Building to Create a Persuasive Legal Narrative at All Stages of an Action
- W7** States' Rights – Multi-State Franchise Relationships and the Application of Multiple States' Franchise Relationship Laws
- W10** Yes I Can – Intellectual Property Fair Use in Franchising
- W13** As My Franchisor Lay Dying – Franchisee and Franchisor Options in a Struggling System
- W14** The Unwelcome Phone Call – Responding to Regulatory Audits & Investigations
- W15** Regulatory Update
- W24** International – The Subfranchisees Are Doing What?!

2:45 pm – 4:00 pm

CONCURRENT WORKSHOPS

- W2** Nipping It in the Bud – Effective Early Evaluation and Resolution of Franchise Disputes
- W3** Basics of Franchisee Bankruptcies
- W11** Privilege Issues in Franchise Systems
- W16** Franchisee Associations to the Rescue – Using Associations and Advisory Councils to Avoid Joint Employer Risk and Enhance the Brand

W18 Mergers & Acquisitions – The Basics for Buying and Selling the System

W20 Click to Win – Boosting the Brand with Sweepstakes and Contests

W22 Franchising 201 – Effective and Compliant Use of Brokers and Sales Agents

7:00 pm – 10:00 pm

"Old Hollywood" Reception/Dinner
Greta Garbo House
La Quinta Resort & Club

SATURDAY, OCTOBER 21

8:30 am – 1:30 pm

Golf Outing
JW Marriott Resort & Spa

9:30 am – 12:00 pm

Mid-Century Modern Architecture Tour



SPEAKER LIST

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Scott McIntosh

Quarles & Brady LLP

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Mullin Law PC

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Hamilton Pratt

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Hilton Worldwide

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Foley & Lardner LLP

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Ari N. Stern

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Dessange Group North America

Les Wharton

Coverall North America, Inc.

William K. Whitner

Paul Hastings LLP

Amber Lee Williams

Walmart Stores, Inc.

Will K. Woods

Baker McKenzie LLP

Tao Xu

DLA Piper LLP (US)

Eric L. Yaffe

Gray Plant Mooty

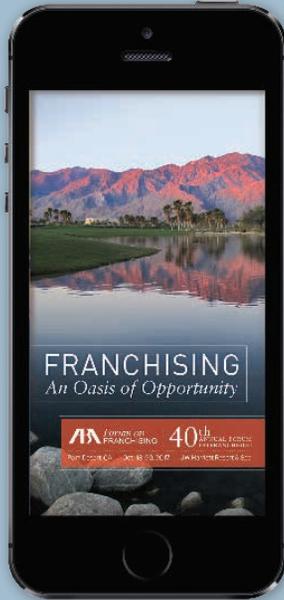
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Carl Zwisler

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FOR THE LATEST INFORMATION
CHECK OUT THE APP!



Download the Forum app with additional information about the programs and social and special events. The meeting schedule is available on your iPhone or Android device by searching "ABA Franchising 2017" in the App Store or Google Play.



SOCIAL & SPECIAL EVENTS

WEDNESDAY, OCTOBER 18

Welcome Reception

5:00 pm – 6:30 pm
JW Marriott Resort & Spa

Newcomers' /YLD Networking Event

7:00 pm – 10:00 pm
JW Marriott Resort & Spa

THURSDAY, OCTOBER 19

Continental Breakfast

LADR Breakfast

Corporate Counsel Breakfast

7:00 am – 8:15 am (concurrent)

Networking Lunch

Women's Caucus Lunch

11:30 am – 12:45 pm (concurrent)

Forum's 40th Annual Celebration

Reception & Dinner

6:30 pm – 10:00 pm
Jackalope Ranch

FRIDAY, OCTOBER 20

Continental Breakfast

International Division Breakfast

Solo/Small Firm Breakfast

Paralegal/Franchise Administrators Breakfast

Law Professors Open House

7:15 am – 8:30 am (concurrent)

Networking Lunch

Diversity Caucus Lunch

12:00 pm – 1:15 pm (concurrent)

"Old Hollywood" Reception & Dinner

7:00 pm – 10:00 pm
Greta Garbo House, La Quinta Resort & Club

SATURDAY, OCTOBER 21

Golf Outing

8:30 am – 1:30 pm
JW Marriott Resort & Spa

Mid-Century Modern Architecture Tour

9:30 am – 12:00 pm



CONFERENCE INFORMATION

1. Hotel Information

The conference will be held at the JW Marriott Desert Springs Resort & Spa, 74-855 Country Club Drive, Palm Desert, CA 92260. The reservation website is: resweb.passkey.com/go/forumonfranchising.

2. Hotel Reservations

The Forum on Franchising has negotiated a special room rate of \$230 per single/ double room at the JW Marriott. Sales tax and a \$15 resort fee will also apply per night. You may call the hotel directly at 877-622-3140 and mention the ABA Forum on Franchising 2017 meeting. We have reserved a limited block of rooms through September 18, 2017 at 5:00 PM CST. You must register for the conference prior to making your hotel reservation. After this date, the Hotel Reservation Office will assign rooms on a space available basis. All changes and cancellations to guaranteed hotel reservations must be made within 48 hours of the scheduled day of arrival to avoid a one night cancellation charge.

3. Air Travel

ABA Airfare discounts are available at American Airlines available at Egencia. Car rental discounts and more information is available at www.americanbar.org/membership/aba_advantage_discounts/egencia.html.

4. Ground Travel

The JW Marriott Desert Springs Resort & Spa is approximately 12 miles from Palm Springs International Airport, 82 miles from LA/Ontario International Airport, and 135 miles from LAX. Hertz Rental Car is located on property at the JW Marriott.

5. Program Registration

To register for all programs and events described in this brochure, we encourage you to register online at www.americanbar.org/groups/franchising.html. Confirmations will be e-mailed 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, 2017. Guest tickets for special events are available for an additional fee. Please see the registration form for price details.

6. On-site Check In

Beginning Wednesday, October 18 at 7:00 a.m., attendees may check in at the Forum registration desk to pick up registration packets that contain name badges and course materials. Registration will open again on Thursday October 19 at 7:00 a.m. and will close each day at 5:00 p.m.

7. On-site Registration

On-site registration is available for those persons who missed the registration deadline. If you plan to register at the door, please contact Lisha.Morris@americanbar.org on or before Friday, October 13th to confirm that space is still available. Failure to call in advance may preclude admission to a sold-out conference. On-site registrants must pay the registration fees by check, money order, Visa, MasterCard, Discover Card or American Express. No cash will be accepted. No registrations will be accepted without payment.

8. Tuition Information

Tuition for the intensive programs is separate and in addition to the main program registration fee. Intensive program tuition includes course materials, lunch, and welcome reception. Tuition for the main program includes admission to the two-day program, welcome reception, continental breakfasts, beverage breaks, lunches, course materials and the Annual Reception/Dinner. The Forum will be providing this year's program materials on a flash drive, on the "ABA Franchising 2017" app, and via a web link only in effort to help "green" the environment. A limited number of scholarships may be available. For more information contact Lisha.Morris@americanbar.org.

9. 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 15, 2017. Cancellations may be e-mailed to Lisha.Morris@americanbar.org. No refunds will be granted after September 15, 2017. Substitutions are acceptable, or conference materials will be sent in lieu of a refund after the program. The Forum reserves the right to cancel any programs and assumes no responsibility for personal expenses.

CONFERENCE INFORMATION

10. 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, MP, MT, NH, 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 14.0 CLE credit hours (including 1.0 ethics hours and 1.0 bias hours) in 60-minute states, and 17.0 credit hours (including 1.4 ethics hours and 1.2 bias 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/groups/franchising.html or contact Lisha.Morris@americanbar.org.

11. Membership

To encourage registrants to join the ABA Forum on Franchising, 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 \$50 for attorneys/associates and \$10 for law students. Please include a separate check (payable to the American Bar Association) for membership dues.

12. Additional Course Materials

Materials for all programs may be available for purchase after the conference by calling the ABA Service Center at 800-285-2221.

13. Forum Policy Regarding Self Promotion and Conflicts

In order to ensure a spirit of collegiality at the Annual Forum, please respect the Forum on Franchising's policy which provides that no individual, group or entity (other than the ABA) may engage in any type of self-promotion or conflicting activities (such as giving gifts; hosting group functions i.e., more than six guests including meals, parties, sporting events, meetings or seminars; or displaying or distributing advertising, marketing materials, books, articles, case reports or anything of value or scheduling non-Forum sponsored group meetings) at or in connection with the Annual Forum or any Forum sponsored

events (i.e., from the time the first event or program starts to the time the last event or program ends), in or near the city where the Forum event is taking place. The 2017 Annual Forum starts at noon, Wednesday, October 18, 2017 and concludes at the end of the Golf Outing and Architectural Tour on Saturday, October 21, 2017 at 1:30 pm.

14. 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.)

15. Americans with Disabilities Act

If special arrangements are required for disabled individuals to attend this program, please contact Lisha Morris, Lisha.Morris@americanbar.org in writing or via email by September 29, 2017 at the American Bar Association, 321 N. Clark Street, Chicago, Illinois, 60654.

16. Dress

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

17. For the latest program information

Please visit the Forum on Franchising Annual meeting site at www.americanbar.org/groups/franchising.html

18. Questions

If you have questions or require additional conference information contact Lisha.Morris@americanbar.org.

19. Scholarship

A limited number of scholarships to defray tuition expenses are available for this program. To request an application or receive additional information, please contact Yolanda.Muhammad@americanbar.org. Qualifying attorney may receive a 50% reduction in tuition fees.

ABA *Forum on* FRANCHISING

321 N. Clark St, MS 18.2, Chicago, IL 60654
ambar.org/franchising

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40TH ANNUAL FORUM ON FRANCHISING
OCTOBER 18-20, 2017

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Visit our website for the latest information

www.americanbar.org/groups/franchising.html and
download the Forum app by searching **ABA Franchising 2017**.