American Bar Association Section of Labor and Employment Law
Employment Rights and Responsibilities Committee
2004 Midwinter Meeting
Westin Mission Hills Resort ~ Rancho Mirage, California

PROGRAM AGENDA

In addition to the sessions listed below and the panels presented by the EEO Committee, the ERR and EEO Committees will jointly present an exciting three-day trial advocacy program, including a mock trial and feedback from a jurist and jury consultant. Details are contained in the separate “Trial Advocacy Program” agenda.

WEDNESDAY, MARCH 24, 2004

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<th>Time</th>
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<td>7:00 – 8:30</td>
<td>Continental Breakfast and Registration <em>(Celebrity Plazas)</em></td>
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| 8:30 – 10:30| Getting Back to Basics: Basic Employment Rights and Responsibilities *(Celebrity FGH)*  
This program provides an introduction to some of the major legal issues of the ERR Committee, including employment agreements, workplace privacy, employer investigations, wrongful discharge and employment torts. This panel will also give practical tips for dealing with clients, adversaries and judges in employment matters.  
Lori D. Ecker, Chicago, Ill.  
Samantha Grant, Los Angeles, CA  
Kathleen Mulligan, Los Angeles, CA  
Mark Risk, New York, NY  
Eric Tate, Palo Alto, CA |
| 10:00 - 10:45 | Subcommittee Co-Chair Meetings *(TBD)* |
| 10:30 – 10:45 | Break *(Celebrity Plazas)* |
| 10:45 – 11:45 | Is that the Right Title?: Title III of the Americans with Disabilities Act *(Celebrity FGH)*  
Guidance on litigating public accommodation cases under the ADA.  
Allison J. Nichol, U.S. Department of Justice, Washington, DC  
Gordon Anthony, Los Angeles, CA  
Jeffrey Gross, Hollywood, CA |
| 11:45 - 1:00 | New Kids on the Block: First Timer Luncheon / Orientation  
*(Membership Subcommittee)* *(Masters Plaza)* |
| 1:00 - 1:15  | Hello from Steve: Section Chair Welcome *(Celebrity D&E)*  
Stephen Gordon, Chair, ABA Section of Labor and Employment Law |
1:15 - 2:15  
**Joint Plenary Session with the EEO Committee:**  
The View from Washington (*Celebrity D&E*)  
In this plenary session, which will include attendees from both the EEO and the ERR Committees, senior government officials from the EEOC and U.S. Department of Labor will provide an update on agency actions and recent enforcement activities.

- The Honorable Cari M. Dominguez, Chair, EEOC, Washington, DC  
- Eric Dreiband, General Counsel, EEOC, Washington, DC  
- Howard Radzely, Solicitor, U.S. Department of Labor, Washington, DC

2:15 – 2:30  
**Break (*Celebrity Plazas*)**

2:30 – 3:30  
**We Can Work it Out: Federal Mediation and Conciliation Service Initiative: Conflict Resolution Programs for Private and Public Employers (*Celebrity D&E*)**

- Peter Hurtgen, Director,  
  Federal Mediation and Conciliation Service  
  Washington, D.C.

3:30 – 4:30  
**The First Amendment and Workplace Harassment: Did the Drafters Have this in Mind? (*Celebrity D&E*)**  
Lively panel discussion on free speech considerations and the impact on enforcement of sexual harassment policies and procedures.

- Delner Franklin-Thomas, Weston, FL  
- Adele Rapport, EEOC, Detroit, MI  
- Marvin Gittler, Chicago, IL  
- Eugene Volokh, Los Angeles, CA  
- Christine Cooper, Chicago, IL  
- Moderator: Delner Franklin-Thomas, Miami, FL

4:30 - 5:30  
**CPR for Lawyers: Comfort, Preparation and Responsibility (*Celebrity D&E*)**  
A U.S. Magistrate-Judge will use movie clips, anecdotes and quotations to offer practical tips for survival and success in our profession.

- The Honorable John J. Hughes, D.N.J.  
  Trenton, New Jersey

6:30 - 7:00  
**How Are You? First-Timer**  
New Member Meet and Greet Reception (*Masters Plaza*)

7:00 - 9:00  
**Let’s Party: Welcome Reception (*Masters Plaza*)**
THURSDAY, MARCH 25, 2004

7:00 – 8:30  Continental Breakfast (*Celebrity Plazas*)

7:30 – 8:15  **Surfing the Web and Riding the Waves: Mock Discovery Conference: Electronic Discovery (*Celebrity D*)**
At a conference before the Court, the panelists will consider emerging issues in the law of electronic discovery, and apply the law to an employment lawsuit. Counsel and the Court will attempt to reach solutions to the legal, technological and practical e-discovery issues presented by the case. (Presented by the Technology Subcommittee.)

The Honorable Andrew J. Peck, S.D.N.Y.
James S. Barber, Chicago, IL.
Sean R. Gallagher, Denver, CO
Mark D. Risk, New York, NY

8:15 - 9:00  **Can We Talk??? Alternatives to Litigation: The Art of Negotiation (*Celebrity D*)**
This panel will feature a simulated negotiation exercise. (Presented by the ADR Subcommittee.)

Daniel B. Boatright, Kansas City, MO
Melinda Burrows, Raleigh, NC
Darnley Dickenson Stewart, New York, NY
Julie L. Gottshall, Chicago, IL
The Honorable Suzanne H. Segal, C.D.Ca.
Felix Springer, Hartford, CT
Pearl Zuchlewski, New York, NY

9:00 - 10:00  **Raiders of the Last Inc.: Covenants Not to Compete (*Celebrity D*)**
Focus on the issues that arise when employees change employers, with a discussion of the inevitable disclosure doctrine. (Presented by the Covenants Subcommittee.)

Max Brittain, Chicago, IL
Stacey Campbell, Kansas City, MO
Marc Jacobs, Chicago, IL
Vanessa Kelly, Annandale, NJ
Gregory Palmer, Grand Rapids, MI
Robert Wood, Dallas, TX
Moderator: Robert Blackstone, Seattle, WA

10:00 - 10:15  Break (*Celebrity Plazas*)
10:15 - 11:15  **Who Are All of These Plaintiffs??? Class Actions: Collective Actions vs. Rule 23 Actions (Celebrity D)**  Collective actions under the FLSA, ADEA and FMLA and how they differ from Rule 23 class actions, with focus on practical analysis of bringing and defending these cases. (Presented by the Class Action Subcommittee.)

Donna L. Harper, EEOC, St. Louis, MO  
Jerome A. Hoffman, Philadelphia, PA  
John M. Husband, Denver CO  
Roberta L. Steele, Oakland, CA  
Darnley Dickinson Stewart, New York, NY  
Moderator: Richard Alfred, Boston, MA

11:15 - 12:15  **Can’t You Hear the Whistle Blowing? Sarbanes-Oxley: Whistleblower Complaints and Obligations of In-House and Outside Counsel (Celebrity D)**  This panel will discuss the significant ethical, regulatory and litigation issues presented by the whistleblower provisions of the Sarbanes-Oxley Act and the SEC’s implementing regulations governing whistleblowing by attorneys. (Presented by the Employment at Will and Ethics Subcommittees.)

Robert Kraus, New York, NY  
Jean FitzSimon, New York, NY  
Moderator: Paul Starkman, Chicago, IL

12:15 – 1:00  **Subcommittee Meetings – Box Lunches (Oasis Courtyard)**

1:00 - 6:00  **Let the Games Begin: Golf and Tennis Tournaments**

6:00 - 7:00  **Mingle, Mingle: Plaintiff/Management/Public/Union Community Caucus Cocktail Receptions**  
Union & Employee – *Hospitality Suite 517*  
Employer/Management – *Hospitality Suite 1019*  
Plaintiff/Employee – *Hospitality 1419*

7:30 - 11:00  **Anyone Hungry? Palm Springs Dine Around**  
Sign-up sheets posted in Celebrity Foyer  
(buses depart @ 7:00 pm)
FRIDAY, MARCH 26, 2004

7:00 – 8:30  Continental Breakfast *(Celebrity Plazas)*

7:15 – 8:00  Check the Berlitz for “Pretext”: Discrimination Issues in the European Union, Mexico and Elsewhere *(Celebrity D)*
Discussion of rights, remedies and strategies in the EU, Mexico and other countries, with management counsel from Europe and Mexico, using a hypothetical fact pattern. (Presented by the International Subcommittee.)

Wietje P. de Muinck Keizer, The Hague, Netherlands
Oscar de la Vega, Mexico City, D.F., Mexico

8:00 - 8:45  “Take Two Aspirin and Call Me in 12 Weeks”: New Developments in the FMLA *(Celebrity D)*
How the FMLA, the Department of Labor’s regulations and court decisions from around the country affect the handling of employee leave. (Presented by the Health, Disability and Leave of Absence Subcommittee.)

J. Timothy McDonald, Atlanta, GA
Glen D. Savits, Florham Park, NJ
Bennett Zurofsky, Newark, NJ
Moderator: Raymond E. Morales, San Juan, PR

8:45 - 9:30  Gotcha! Hidden Protections in Overlooked Statutes *(Celebrity D)*
Focusing on some new ways in which at-will employees may not be so at-will, including protection for concerted activity in non-union settings, employee committees, Weingarten rights and USERRA. (Presented by the Statutory Rights Subcommittee.)

Christopher Lenzo, Woodbridge, NJ
Peter Ohr, Honolulu, HI
Moderator: Niall Paul, Charleston, WV

9:30 - 10:15  Impractical Advice From Outside Counsel: What It Is and Why We Can’t Use It *(Celebrity D)*
Focusing on what employers value and don’t value about what their lawyers tell them, including advice about investigations, privilege issues, and litigation strategy.

Jeff Brodin, Phoenix, AZ
Melinda Burrows, Raleigh, NC
Jennie Clark, Kansas City, MO
Sherree Wright, Nashville, TN
Moderator: Lindsay Johnston, Philadelphia, PA
10:15 - 11:00  **Ain’t No Mountain Higher:**
*The Supreme Court’s Year in Review (Celebrity D)*
Our expert panel will analyze the Court’s significant employment law decisions and how they affect employee relations, litigation strategy, and damages. (Presented in conjunction with the Young Lawyers Division.)

Margaret Angelucci, Chicago, IL  
Keith Frazier, Nashville, TN  
Erik Iskra, Charleston, WV  
Anna Park, EEOC, Los Angeles, CA  
Jeffrey Patton, Winston-Salem, NC  
The Honorable Suzanne H. Segal, C.D.Ca.

11:00 – 11:15  **Break (Celebrity Plazas)**

11:15 - 11:30  **Publications Subcommittee Report (Celebrity D)**

11:30 - 12:30  **This Marital Spat May be Monitored for Quality Assurance:**
*Employee Privacy Rights in the European Union and Canada (Celebrity D)*
(Presented by the Privacy Subcommittee)

Wietje P. de Muinck Keizer, The Hague, Netherlands  
R. Ross Wells, Kitchener, Ontario, Canada  
Dr. Gerlind Wisskirchen, Koln, Germany

1:00 - 6:00  **Golf and Tennis Tournaments**

6:30 – 7:00  **Reception (Celebrity Foyer)**

7:00 - 11:00  **Dinner (Celebrity Ballroom)**

**SATURDAY, MARCH 27, 2004**

7:00 – 8:30  **Continental Breakfast (Celebrity East Plaza)**

7:45 - 8:30  **New Member / Mentor Breakfast (Celebrity ABC)**

8:30 – 9:15  **“We’re Confident, We’re Casual, We’re Covered”: How EPLI Affects a Case (Celebrity D)**
Using clips from a film in which in which Hollywood tackled sexual harassment, this panel will discuss how the presence of EPLI changes the way litigation evolves. Panelists will address the perspectives of key players in the movie, including the parties and their counsel and the mediator, as well as the carrier’s representative. (Presented by the Insurance Subcommittee.)
9:15 - 10:00  “We Didn’t Hire You. You Don’t Work Here. And Where’s That Memo You Owe Me?” Who Is An “Employee” Is Hardly A Simple Question (Celebrity D)
This panel will give practical advice on this issue in the context of federal anti-discrimination statutes, the FLSA, and the developing caselaw. Presented by the Contingent Workforce Subcommittee

Jerry Filippatos, New York, NY
Samantha Grant, Los Angeles, CA
Louis Lopez, Washington, DC
Moderator: John Holmquist, Bloomfield Hills, MI

10:00 - 10:15  Break (Celebrity East Plaza)

10:15 - 11:15  Do You Want to Know a Secret: HIPAA: What it Says, What It Means, What We Do (Celebrity D)
Focusing on issues of privacy, enforcement and litigation under this important statute and the Department of Labor’s changing regulations. (Presented by the ERISA Subcommittee.)

Ned Milenkovich, Chicago, IL
Jim Zalewski, Lincoln, NE
Moderator: Susan Martin, Phoenix, AZ

11:15 - 12:00  “I Could Have Sworn My Pay was Higher”: Survey of Statutes Addressing Wrongful Withholding by Employers, Particularly of Bonus and Commission Payments (Celebrity D)
(Presented by the Legislative Subcommittee.)

Lori D. Ecker, Chicago, IL
Delner Franklin-Thomas, Weston, FL
Benjamin Ghess, Chicago, IL
Frank Van Dusen, Seattle, WA

12:00 – 12:30  Time to Say Good Bye: Feedback and Wrap Up
A participatory forum to discuss your views of this year’s program and your ideas for 2005.