Music to Your Ears

OCTOBER 10-12, 2018 ★ NASHVILLE
Omni Nashville Hotel

41ST ANNUAL FORUM ON FRANCHISING

#ABAFranchising18
We are pleased to invite you to the 41st Annual Forum on Franchising on October 10-12, 2018 at the Omni Hotel in downtown Nashville, Tennessee where you will experience “Franchising: Music to Your Ears.” Please join us for the very best in franchise educational programs, CLE and networking opportunities. Social events include Thursday night at the Country Music Hall of Fame, a treasure trove of fascinating music artifacts and history. Friday night, the Forum steps out for an evening of live music, dancing and good cheer at the Wildhorse Saloon in the heart of Nashville’s famous honky-tonk district.

Program details are available at www.ambar.org/2018franchising or on the Forum’s mobile app. See you in Nashville in October!

YOUR PROGRAM CO-CHAIRS
Michael Gray, Gray Plant Mooty, PA, Minneapolis, Minnesota
Julie Lusthaus, Lusthaus Law P.C., Harrison, New York

HOTEL RESERVATIONS
The Forum on Franchising has negotiated a special room rate of $245 per night for a single or double room at the Omni. Sales tax of 15.25% and occupancy fee of $2.50 per night will also apply. You may call the hotel directly at 615.782.5300 and mention the ABA Forum on Franchising 2018 meeting.

We have reserved a limited block of rooms through September 17, 2018 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.

GETTING THERE
The Omni Nashville Hotel is approximately 10 miles from the Nashville International Airport. The taxi service from the airport is a flat rate of $25.
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 some of the nation’s top franchise lawyers as they discuss structuring a franchise, disclosure and registration requirements, defining and protecting a franchise system’s intellectual property, franchise relationship laws, antitrust considerations, international franchising and the representation of franchisees. Each attendee will receive a copy of the most current edition of The Fundamentals of Franchising.

Antitrust:
Ronald T. Coleman, Jr., Parker, Hudson, Rainer & Dobbs LLP

Intellectual Property:
Ronald T. Coleman, Jr., Parker, Hudson, Rainer & Dobbs LLP

Representation of Franchisees:
Peter Lagarias, Lagarias & Napell, LLP

International Franchising:
Karen Satterlee, Hilton Hotels Corporation

Franchise Relationship Laws:
William K. Whitner, Paul Hastings LLP

Structuring the Franchise:
Will K. Woods, Baker & McKenzie LLP

Disclosure and Registration:
Will K. Woods, Baker & McKenzie LLP

INTENSIVE 2
The Most Common Post-Relationship Disputes
This intensive program will discuss the practical aspects of addressing the most common disputes which might arise when the franchise relationship ends, whether through termination, expiration or otherwise. The panel will address topics such as de-identification and trademark protection, assignment of telephone numbers, email accounts and domain names, social media take-downs, unpaid royalties and other fees, liquidated damages, repurchase obligations, leasehold step-in rights, protecting customer lists, trade secrets and other proprietary information, releases, indemnification rights, and enforcing non-competition agreements. The panel will also discuss best practices for drafting post-relationship contract provisions, taking into account those franchise agreement provisions that survive termination or expiration of the agreement, and review the most relevant case law on each subject.

Jennifer Dolman, Osler, Hoskin & Harcourt LLP
Ron Gardner, Dady & Gardner, P.A.
Ann H. MacDonald, Schiff Hardin LLP
David W. Oppenheim, Greenberg Traurig, LLP
Susan E. Tegt, Larkin Hoffman Daly & Lindgren Ltd.

INTENSIVE 3
The Law Department of the Future: Innovation and a New Business Model for In-House Counsel
There is no question that the provision of legal services is changing rapidly, both for in-house counsel and the outside attorneys who advise them. These changes include the manner in which services are delivered, pressure to maintain or reduce legal budgets, the globalization of law practice, and the use of technologies to increase efficiency. This intensive program will explore the changes in the legal industry affecting both in-house and outside counsel, and how those changes will shape the law department of the future.

Innovation. Clients are demanding innovation in the delivery of legal services. The expectation is that law departments will work better, faster and with fewer resources. Counsel must be able to innovate along with their business partners. How do you manage legal talent in this shifting paradigm? How can technology drive process improvement that will deliver business results? How can you continue to manage risk appropriately?
Law Firms as Legal Service Providers. Companies are increasingly holding law firms to the same expectations as other service providers, asking for budgets and fee caps and commitments for continuous process improvement. Progressive law firms are embracing this trend, capitalizing on the opportunity to distinguish themselves from competitors by developing new service models, implementing alternative fee arrangements and developing continuous improvement procedures, all without sacrificing results. How do in-house and outside counsel work together effectively to set expectations about billing, budgets and continuous improvement?

From Client to Business Partner. Companies expect law departments to drive economic value to the enterprise. In-house and outside counsel are increasingly asked to play a business role or exercise business judgment when giving substantive or strategic advice. Successful in-house counsel are more than ever described as “true business partners,” but what does that mean, and is it always consistent with a lawyer’s duty to his or her client? How does counsel navigate those demands while still functioning as a legal advisor? What are the ethical obligations and the effects on attorney-client privilege?

The Rise of Legal Operations. Law departments are increasingly adding legal operations functions to promote the idea of the law department as a business unit that drives results for the enterprise. What goes into creating this function? What role should it play within the law department? Is change management part of this function?

Contract Administration. Consider what results can be delivered by better technology, analytics, automation, and artificial intelligence. What tools do you need? Does this important function belong under the supervision of the law department, or in a business unit? What are the pros and cons of each decision?

Bethany L. Appleby, Franchise World Headquarters, LLC
Steven M. Goldman, Friedlander Misler PLLC
Kerry R.J. Olson, Faegre Baker Daniels, LLP
Sarah A. Walters, Foley & Lardner LLP
Shelley Weatherbie, Hilton Worldwide

Plenary 1: Annual Developments
The Forum’s signature event! Join your colleagues for a thoughtful, comprehensive and lively review of the year’s key judicial and legislative developments affecting franchising and distribution.
Elliot R. Ginsburg, Garner & Ginsburg, P.A.
Elizabeth M. Weldon, Snell & Wilmer L.L.P.

Plenary 2: Preparing for and Responding to an Active Shooter – What to Do

In any moment of decision...the best thing you can do is the right thing, the next best thing is the wrong thing, and the worst thing you can do is nothing.
-Theodore Roosevelt

Just as franchise systems prepare for data breaches, negative media exposure and social media attacks, it is important to plan for potential physical attacks on their locations. Learning what to do – and what not to do – in the event of an active shooter can mean the difference between life and death for you and your loved ones, employees and co-workers. Whether in a public place like a mall or outdoor event or in a more private space such as a franchise location or workplace, being aware and reacting properly can make a significant difference. Learn option-based, proactive survival strategies to prepare for active shooter incidents from a veteran FBI Agent. This scenario-based program will inform participants on the best practices associated with preparing for and responding to an active shooter incident in several types of venues, including locations commonly associated with franchises. In addition, attendees will gain an understanding of how to plan ahead and aid in the development of an emergency action plan for their franchise organizations.
Joe Malhoit, Special Agent, Federal Bureau of Investigation [Ret.]
W-1: When is a Lie Actionable? Litigating Misrepresentation Claims and the Requirement of Reasonable Reliance

This program will discuss litigating claims based on false or misleading representations made in an FDD under state franchise acts and common law. The session will focus on Item 7 estimated initial investment expenses and Item 19 financial performance representations, and will address the circumstances under which historical representations and projections have been deemed actionable misrepresentations. The panel will also explore when the failure to include material information can give rise to claims of misrepresentation or fraud by omission. The program will include an in-depth look at the element of reliance under common law, state franchise disclosure statutes, and little FTC acts. And, the panel will consider the effect of disclaimers in the FDD, compliance questionnaires and franchise agreements, and state statutes that limit their scope and effectiveness.

Frank J. Sciremammano, Gray Plant Mooty, PA
Nicole S. Zellweger, Associate Circuit Court Judge St. Louis County, MI

W-2: Effective and Failed Strategies to Compel or Avoid Arbitration

Many franchisors include arbitration clauses in their franchise agreements. This program will discuss hot-button issues surrounding attempts to enforce or avoid arbitration clauses, such as: (a) seeking injunctive relief in court when most arbitral institutions offer a procedure for emergency injunctive relief; (b) determining the issue of arbitrability - what does it mean and who decides; (c) enforcing the arbitration clause by and against non-signatories; (d) enforcing/avoiding arbitration venue provisions; and (e) drafting arbitration clauses to streamline the process without limiting enforceability.

Andy P. Beilfuss, Quarles & Brady LLP
J. Brian Shrimp, High Swartz LLP
C. Griffith Towle, Bartko, Zankel, Bunzel & Miller

W-3: Judicial Panel

Take advantage of this rare opportunity to hear the viewpoints of several experienced judges on a variety of topics important to franchise litigation, including the 2015 revisions to the FRCP related to discovery, evidence necessary to establish irreparable harm in the post-Winter and eBay world and how to effectively present or defend motions to dismiss and for summary judgment. Come hear this noteworthy panel discuss these and other recent issues and answer questions about the view directly from the bench.

Moderator: Benjamin B. Reed, Plave Koch PLC
Chancellor Ellen Hobbs Lyle, Davidson County TN Chancery Court, Part III
Chief District Judge Waverly D. Crenshaw, Jr., United States District Court, Middle District of Tennessee
Magistrate Judge Christopher H. Steger, United States District Court, Eastern District of Tennessee

W-4: Joining Forces: Preparing Clients for Litigation

This program will focus on the role of outside and in-house counsel in assisting their clients and business partners in navigating challenging issues that arise during litigation and successfully litigating a franchise case. Areas of discussion will include: whether the client wants to sue and what initial choices it has if sued; developing effective litigation holds in an age of dispersed digital information and competing document retention policies; maintaining the attorney-client privilege for internal and external communications; early engagement with opposing counsel to address electronically stored information and document management issues; navigating potential insurance coverage and indemnification issues; early case evaluation and assessment of potential outcomes and the related costs; handling public relations issues for high profile cases; and the financial and human cost of effectively managing and litigating a franchise case.

Joseph S. Goode, Laffey, Leitner & Goode, LLC
Laura Heltebran, Hilton Worldwide
W-5: Claim Evaluation for the Franchisee Attorney
When a franchisee seeks counsel, typically it is in a quest to address an unresolved issue, find relief from a failing business or otherwise leave the franchise system. How do franchisee lawyers evaluate the franchisee’s position and determine whether the franchisee can accomplish its objective? Are there procedures franchisee lawyers follow or should follow? What should the franchisee’s lawyer understand about the franchise system and interchange between franchisee and franchisor? What reports and key performance indicators are relevant to assessing the franchisee’s status and claims? This program will address the evaluation process that franchisee attorneys use when determining whether to accept the representation, and if so, whether to negotiate, litigate or pursue an alternative strategy. Panelists will discuss issues relating to system-wide implications, and the possible impact on strategy. The panel will also discuss ways that franchisee counsel approach franchisors in these situations and franchisors’ typical responses.

Joel R. Buckberg, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
Michael Einbinder, Einbinder & Dunn LLP

W-6: Winning Round One: A Preliminary Injunction Motion in a Franchise Case
Winning or losing a preliminary injunction motion can set the tone for the entire case and can even decide it. Drawing on real world examples, this session will discuss the most effective strategies for prosecuting and defending such motions, including motions to enforce or resist a non-compete provision and to protect trademarks, trade dress, goodwill, and other system interests. Panelists will address the current requirements for obtaining preliminary injunctive relief, in court and in arbitration, including sliding scale tests and other measures of the likelihood of success, adequacy of other remedies, and irreparable harm. The program will highlight the potential impact of common franchise agreement provisions and other evidence the parties may develop in the course of the franchisor-franchisee relationship, which can affect the chance of prevailing. Finally, the panelists will discuss the practicalities of bond requirements and the other potential protections against an injunction later determined to be improper.

Allison R. Grow, Cheng Cohen LLC
Paula Morency, Schiff Hardin LLP

W-7: Confidentiality Clauses – Scope and Effectiveness
So exactly what information is “confidential” in any given franchise system? Multi-paragraph confidentiality clauses listing all manner of data and information are ubiquitous, but do they render such information protectable? Further, most front-line employees have not signed non-disclosure agreements, yet they observe and participate in many aspects of a franchise operation. Franchise agreements often say that “confidential information” constitutes a trade secret, but whether that is true is determined not solely by the language of the franchise agreement, but also by how the parties treat the information as well as applicable statutory and common law. This program will address all of these issues, as well as how to draft effective confidentiality provisions in various agreements, including franchise agreements, settlement agreements and non-disclosure agreements, and best practices for litigating claims related to those clauses.

Mark J. Burzych, Fahey Schultz Burzych Rhodes, PLC
Nina Greene, Genovese Joblove & Battista, P.A.

W-8: Franchising – Litigating the Definitional Elements
“This isn’t a franchise, is it?” This comprehensive program will address litigating the elements of a franchise under federal and state franchise laws, regulations, regulatory guidelines and case law interpreting these statutes and regulations. The panel will discuss how courts draw the lines between: simple trademark licenses and substantial association with a trademark; direct and/or indirect payments that have been found to constitute franchise fees; what it means to exercise “substantial control” over franchisees’ business operations and where courts have surprisingly found (or failed to find) a “community of interest,” “marketing plan” or “system of operation.”

David Gurnick, Lewitt Hackman
Jeff Haff, Dady & Gardner, P.A.
Craig P. Miller, Gray Plant Mooty, PA
W-9: When the Franchise Agreement Ends but the Relationship Continues

Often enough, a franchise agreement expires yet the parties continue operating as though the agreement were still in effect, or the franchisee unilaterally continues to operate or represent itself as remaining in the system without the franchisor’s knowledge or consent. What happens months or years later when the franchisor seeks to enforce the expiration and the franchisee objects? If the franchise agreement is silent on this issue, will a court find that the agreement has automatically renewed? If yes, for how long? Does the answer depend on whether there is an applicable state relationship law? What if the franchisee wants to terminate the relationship? Are the post-expiration obligations enforceable—or expired? Panelists will discuss the state of the law on these issues and present arguments from both the franchisor and franchisee perspectives.

Marcus A. Banks, Wyndham Worldwide Corporation
Evan M. Goldman, Hill Wallack LLP
Trishanda L. Treadwell, Parker, Hudson, Rainer & Dobbs LLP

W-10: Enforcing System Standards – A Franchisor’s Prerogative?

Uniformity is the touchstone of any successful franchise system. But does a franchisor have an obligation to actually enforce its own system standards and contractual rights? Often franchisors lack the internal resources to address every deficiency or default, or may have legitimate reasons for not doing so. This program will analyze legal and business problems that may arise when a franchisor does not uniformly enforce its standards. Topics will include best practices for documenting defaults and ongoing enforcement efforts, whether a franchisor has a legal obligation to enforce system standards and if a franchisee can compel the franchisor to enforce the standards. The panel will also discuss the potential perils of differential enforcement related to post-termination obligations and non-competition covenants and how inconsistent enforcement affects waiver, estoppel, the duty of good faith and fair dealing and state relationship laws, including anti-discrimination provisions.

Jess A. Dance, Polsinelli PC
Robert M. Einhorn, Zarco Einhorn Salkowski & Brito, P.A.
Heather Carson Perkins, Faegre Baker Daniels, LLP


Regardless of whether a security breach involves the franchisor’s own trade secrets, such as its operations manuals, policies, recipes and formulas or business plans, or third party data such as customer or franchisee information, the resultant business and legal issues are similar. Failure to act quickly and appropriately may mean that trade secrets and confidential information lose their protected status by ending up in the public domain. The result can be a tremendous loss of value to the franchisor and its franchisees, and can expose the franchisor to claims by shareholders, franchisees, and/or customers. What is the allocation of loss between franchisor and franchisee? This panel will address best practices for salvaging the value of compromised trade secrets and third party data, and—where necessary—litigating against the wrongdoers.

Jason Adler, Cellairis Franchise, Inc.
Eleanor Vaida Gerhards, Fox Rothschild LLP
Michael J. Lockerby, Foley & Lardner LLP

W-12: In Sync: What In-House Counsel and Business Clients Expect from Their Outside Counsel

Do you really understand what business people and in-house counsel expect from their outside attorneys? This program will address what clients want (and do not want) from their outside counsel. Topics will include how businesses choose outside counsel, expanding opportunities for additional legal work and best practices in maintaining the attorney-client privilege and communicating with clients. Panelists will consider the need for outside counsel to understand the corporate environment in which in-house counsel operate, including: budgeting; cost controls and outside counsel billing practices; legal project management; use of technology; working in integrated client teams; and sharing risk by partnering in expectations and outcomes. The panel also will address common outside attorney practices that cause businesses to fire or replace them.

Gary R. Batenhorst, Cline Williams Wright Johnson & Oldfather, L.L.P.
Gillian Scott, Osler, Hoskin & Harcourt LLP
Donald Wray, Franchise World Headquarters, LLC

WORKSHOPS
W-13: Beyond the Franchise Agreement: A Look at the “Other” Agreements Between the Franchisor and Franchisee
The franchise agreement is, of course, one of the most important agreements between the franchisor and franchisee, but what about the other agreements that are often executed as part of the initial transaction or during the term of the relationship? These may include term sheets, franchise law exemption questionnaires, personal guarantees, designated territory descriptions or amendments, confidentiality agreements, software licenses, lender comfort letters, transfer agreements, termination and release agreements, and more. Any one of these agreements may form the basis of a dispute or litigation, or provide a valuable tool to avoid disputes. This program will review these contracts and discuss best practices for drafting these collateral but necessary agreements.

Suzie Trigg, Haynes and Boone, LLP
Chris Wallace, Choice Hotels

W-14: Indemnification Provisions in Franchise Agreements: How to Draft Them and How to Enforce Them
Franchise agreements usually include extensive indemnification provisions. This program will explore contractual and common-law indemnification in the franchise and related business context, with emphasis on drafting indemnification provisions with sufficient detail and clarity to be effective and enforceable. Panelists will address how indemnification provisions intersect with the insurance provisions in most franchise agreements and how they provide a secondary basis for coverage for the franchisor. The panel will also discuss relevant case law on indemnification and provide guidance on common mistakes to avoid during drafting, efforts to negotiate by franchisees and judicial enforcement.

Bryan W. Dillon, The Law Offices of Bryan W. Dillon
Dean T. Fournaris, Wiggin and Dana LLP

W-15: The Intersection of Franchise and Real Estate Law
Important ingredients to a successful franchised business are...location, location, and location. This program will address the intersection of franchise and real estate law, and how franchisors and franchisees create and leverage their rights related to real estate. The panel will discuss best practices, from both the franchisee and franchisor perspectives, for negotiating and drafting common real estate provisions and agreements related to exclusive and permitted uses, renewal and termination rights, lien rights, collateral assignment and contingent options and step-in rights. The panel will examine the practical and legal challenges of and strategies for enforcing real estate rights against the competing rights of landlords, lenders, lien-holders, third-party purchasers and other non-signatories to the franchise agreement. The panel will also discuss how rights to the real estate affect rights to furniture, fixtures and equipment located at the site. Other issues to be addressed include the extent to which a franchisor should review the franchisee’s lease and best practices for avoiding conflicting obligations imposed by the franchisor, landlord and lender.

Annie Caiola, Caiola & Rose, LLC
Mark D. Shapiro, Hyland Levin LLP

W-16: “Oh No, They Did What?! What Do We Do Now?”
Compliance issues can be challenging for a franchisor’s employees and representatives who regularly interact with potential and current franchisees. Sometimes, mistakes are made. This program will address the risks and potential best practices for remedial actions when counsel discovers that a franchisor’s employee made a mistake in the franchise sales, registration or disclosure process. Topics will include what to do when: a prospect was disclosed with the wrong FDD; the franchisor failed to obtain a signed Item 23 receipt and/or failed to wait 14 days before letting the prospect sign the franchise agreement; the salesperson provided undisclosed financial projections, and there was a failure to properly document a transfer, expiration or renewal. The panel will address applicable law and strategies for rectifying the noncompliance and mitigating risks resulting from those all too common mistakes.

Anthony Marks, Bryan Cave Leighton Paisner LLP
Dawn Newton, Donahue Fitzgerald LLP
Gerald C. Wells, Rita’s Franchise Company
W-17: The New FASB Rules
The new FASB rules on revenue recognition, which went into effect for calendar year-end public companies on January 1, 2018 and which will go into effect for all other calendar year-end companies on January 1, 2019, create changes for franchisors which are likely to ripple through the pages of their financial statements to their day-to-day business practices. This program will address the new FASB revenue recognition rules as applied to franchisors and how the new requirements will affect their long-term and multi-faceted contracts with franchisees. The panel will also address how the new FASB rules may apply to initial fees, training fees, equipment, product sales, and ongoing royalties. The panel will discuss the possible impact on franchisors’ financial statements and the resulting consequences such as those relating to state financial assurance requirements, valuations, and lending opportunities, as well as how the FASB changes align (or do not align) with International Accounting Standards/International Financial Reporting Standards.

James Kroeker, Financial Accounting Standards Board
Christa LaBrosse, Plante Moran, PLLC
Lee Plave, Plave Koch PLC

W-18: Domain Name Management and Enforcement
Franchise brand protection requires both an aggressive program to acquire strategic domain names relating to the brand and a robust plan to fend off infringers. Learn how in-house and outside counsel establish and manage domain name acquisition and protection programs with the latest tools to protect trademark rights and reputation in a changing market. Consider how to acquire and preserve value in domain name portfolios, including how to identify infringers and the tactical use of the Uniform Domain-Name Dispute-Resolution Policy required by ICANN (Internet Corporation for Assigned Names and Numbers) to stop improper use of brand names. Panelists will also discuss whether pursuing the use of Generic Top-Level Domains (“gTLDs”) and Country Code top level domains (“ccTLDs”) is worth the cost and effort, both domestically and in international markets.

Carol Anne Been, Dentons US LLP
Susan Meyer, Greensfelder, Hemker & Gale, P.C.

W-19: Drafting the FDD for Multiple or Otherwise Complex Offerings
Franchise models are almost endlessly diverse and complex. Franchisors offer multiple brands or systems with different operating models, such as full service, kiosk, inline and satellite locations, and use a variety of structures for the franchise system, including master/subfranchise models, area representative programs, area development programs, joint ventures and licensing programs. A single franchisor can offer a combination of several of these features. This program will discuss the implications of such complexity on FDD drafting, including whether and how several offerings can be included in one FDD or when a single FDD will not suffice. Panelists will also discuss NASAA and FTC guidance for complex offerings and offer best practices.

Susana Grueneberg, Snell & Wilmer LLP
Beata Krakus, Greensfelder, Hemker & Gale, P.C.

W-20: Perspectives on Non-traditional Franchise Ownership Structures
As multi-unit franchise ownership becomes more prevalent, and franchisees become more sophisticated, the formation of simple corporate entity structures (e.g., corporations and LLCs) is often not enough. Franchisees are creating and utilizing more elaborate arrangements, such as ESOPs, trusts, and non-profit entities. These arrangements – along with the ownership of multi-unit franchisees by private equity funds and publically-held franchisees, and joint ventures between franchisors and franchisees – often lead to franchise agreement modifications and other adjustments designed to address the special needs of these non-traditional owners. Should and must franchisors be willing to sell – and permit transfers to – these non-traditional owners? And, if so, what are the pros and cons of making modifications to franchise agreements and to the franchise system (e.g., as to confidentiality and non-competition, ownership and management, and transfers and permitted transferees)? Also, how do these modifications change the nature of the franchisor-franchisee relationship, and the dynamics within the franchise system? Come learn all about the features and needs of these non-traditional franchisee ownership structures, and how franchisors are dealing with them.

Marc Lieberstein, Kilpatrick Townsend & Stockton LLP
Bret Lowell, DLA Piper LLP
Susan Metcalfe, Duane Morris LLP
Whether to report the ethical misconduct or material impairment of another attorney can be one of the most difficult situations an attorney faces. This was difficult terrain even before the rise of the “Me Too” movement and the ABA’s adoption of new Model Rule 8.4(g). Whether you are in private practice, in-house or a government setting, there is a fair chance that at some point in your career, you will see or experience conduct that raises the prospect of a reporting obligation under your state’s ethics rules. What obligation does an attorney have to report unethical behavior or other improper conduct (e.g. a lawyer engaging in sexual harassment) by another attorney? How does a lawyer determine whether a line has been crossed from “zealous advocacy” into “professional (and unethical) bullying”? Is there an ethical obligation to report a colleague or adversary impaired by drugs, alcohol or mental illness? And, even if there is not, what ethical obligations might you have to communicate to your client about what is going on because of its impact on their case? In most jurisdictions, a lawyer’s failure to report certain unethical conduct on the part of another lawyer is itself a violation of the state’s ethics rules under analogs of Model Rule 8.3. This session will address reporting obligations under these and other scenarios and the potential consequences of failing to do so.

Brian S. Faughnan, Lewis Thomason
Kevin M. Kennedy, Wiggin and Dana LLP
Shannon L. McCarthy, Chihuly Studio

W-22: Regulatory Update
This program will cover a wide range of current issues in franchise registration and disclosure regulation, with practical guidance on staying within the lines on the franchise regulatory highway. The panel of state regulators will discuss compliance with the FPR and multi-unit commentaries: risk factors; financial assurance conditions and revised FASB rules that may trigger new conditions; advertising claims and filings: electronic filings: technology and FDD content: and the most common registration and disclosure deficiencies.

Moderator: Warren L. Lewis, Akerman LLP
Michelle Webster, Esq., Dept. of Financial Institutions, Securities Division
Tim O’Brien, Virginia Division of Securities & Retail Franchising
Peggy Shanks, Maryland Attorney General’s Office

W-23: Establishing and Maintaining an International Compliance Program
You’ve signed an international franchise agreement, so now what? Protecting your brand and ensuring compliance becomes even more difficult when franchisees are based thousands of miles away from the franchisor’s principal place of business and in a country where the franchisor may have a limited (or no) physical presence. This program will explore the compliance challenges facing franchisors after the execution of an international deal. The panel will cover issues such as establishing and approving local training programs: ensuring compliance with the terms of subfranchise agreements: structuring the approval process for changes to franchise ownership, translations, government filings; securing local suppliers: monitoring local advertising requirements: reviewing compliance with the development schedules: training related to applicable anti-bribery laws and anti-corruption laws and compliance with Office of Foreign Assets Control (OFAC) regulations.

Ximena Couret, Baker & McKenzie LLP
Mark Forseth, Marriott Hotels International Limited
Tao Xu, DLA Piper LLP (US)

W-24: How to Protect Your Brand in Foreign Countries
This program will address more frequently arising challenges in protecting a franchisor’s brand and trademarks in foreign countries. The panel will consider copycat stores – for example, complete and authentic-looking knockoffs (e.g., the fake “Apple” store in China) and totally unauthorized “franchise” operations in countries where the franchisor is not even considering operation. The panel will also discuss how to deal with trademark pirates in “first to file” countries and registration of trademark license agreements in countries where doing so is a predicate to enforcing trademark rights.

Dr. Mark Abell, Bird & Bird LLP
Kendal Tyre, Nixon Peabody LLP
WEDNESDAY, OCTOBER 10
7:00 am – 5:00 pm
Forum Registration
10:00 am – 5:00 pm
Intensive 1: Fundamentals of Franchising
11:00 am – 1:00 pm
Lunch Buffet for Intensives
12:00 pm – 5:00 pm
Intensive 2: The Most Common Post-Relationship Disputes
Intensive 3: The Law Department of the Future: Innovation and a New Business Model for In-House Counsel
All Intensives will break after every 90 minutes of programming
5:00 pm – 6:30 pm
Welcome Reception
7:00 pm – 10:00 pm
Newcomers’/YLD Networking Event
7:00 pm – 10:00 pm
Restaurant Rounds

THURSDAY, OCTOBER 11
7:00 am – 5:00 pm
Forum Registration
7:00 am – 8:15 am
Continental Breakfast
7:00 am – 8:15 am
(Concurrent)
LADR Breakfast
Corporate Counsel Breakfast
8:30 am – 10:00 am
Awards Presentations and Plenary 1:
Annual Developments
10:00 am – 1:30 pm
Spouse/Guest Event Tour with Luncheon
Cheekwood Estate & Gardens
10:30 am – 11:45 am
CONCURRENT WORKSHOPS
W-3: Judicial Panel
W-4: Joining Forces: Preparing Clients for Litigation
W-9: When the Franchise Agreement Ends but the Relationship Continues
W-13: Beyond the Franchise Agreement: A Look at the “Other” Agreements Between the Franchisor and Franchisee
W-15: The Intersection of Franchise and Real Estate Law
W-18: Domain Name Management and Enforcement
11:45 am – 1:00 pm
Networking Lunch
11:45 am – 1:00 pm
Women’s Caucus Lunch
1:15 pm – 2:30 pm
CONCURRENT WORKSHOPS
W-1: When is a Lie Actionable? Litigating Misrepresentation Claims and the Requirement of Reasonable Reliance
W-2: Effective and Failed Strategies to Compel or Avoid Arbitration
W-5: Claim Evaluation for the Franchisee Attorney
W-12: In Sync: What In-House Counsel and Business Clients Expect from Their Outside Counsel
W-14: Indemnification Provisions in Franchise Agreements: How to Draft Them and How to Enforce Them
W-22: Regulatory Update
W-23: Establishing and Maintaining an International Compliance Program
2:45 pm – 4:00 pm
CONCURRENT WORKSHOPS
W-7: Confidentiality Clauses – Scope and Effectiveness
W-8: Franchising – Litigating the Definitional Elements
W-15: The Intersection of Franchise and Real Estate Law
W-16: “Oh No, They Did What?! What Do We Do Now?”
W-19: Drafting the FDD for Multiple or Otherwise Complex Offerings
W-24: How to Protect Your Brand in Foreign Countries
4:15 pm – 5:30 pm
CONCURRENT WORKSHOPS
W-3: Judicial Panel
W-6: Winning Round One: A Preliminary Injunction Motion in a Franchise Case
**PROGRAM SCHEDULE**

**FRIDAY, OCTOBER 12**

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: Preparing for and Responding to an Active Shooter – What to Do

11:00 am – 12:15 pm  
**CONCURRENT WORKSHOPS**

W-5:  Claim Evaluation for the Franchisee Attorney

W-6:  Winning Round One: A Preliminary Injunction Motion in a Franchise Case


W-12:  In Sync: What In-House Counsel and Business Clients Expect from Their Outside Counsel

W-16:  “Oh No, They Did What?! What Do We Do Now?”


W-23:  Establishing and Maintaining an International Compliance Program

12:15 pm – 1:30 pm  
Networking Lunch

12:15 pm – 1:30 pm  
Diversity Caucus Program (Elimination of Bias & Diversity Credit Available)

1:45 pm – 3:00 pm  
**CONCURRENT WORKSHOPS**

W-2:  Effective and Failed Strategies to Compel or Avoid Arbitration

W-8:  Franchising – Litigating the Definitional Elements

W-9:  When the Franchise Agreement Ends but the Relationship Continues

W-13:  Beyond the Franchise Agreement: A Look at the “Other” Agreements Between the Franchisor and Franchisee

W-20:  Perspectives on Non-traditional Franchise Ownership Structures

W-22:  Regulatory Update

W-24:  How to Protect Your Brand in Foreign Countries

3:15 pm – 4:30 pm  
**CONCURRENT WORKSHOPS**

W-1:  When is a Lie Actionable? Litigating Misrepresentation Claims and the Requirement of Reasonable Reliance

W-4:  Joining Forces: Preparing Clients for Litigation

W-7:  Confidentiality Clauses – Scope and Effectiveness

W-10:  Enforcing System Standards – A Franchisor’s Prerogative

W-17:  The New FASB Rules

W-18:  Domain Name Management and Enforcement

W-19:  Drafting the FDD for Multiple or Otherwise Complex Offerings

7:00 pm – 10:00 pm  
Wildhorse Saloon Reception/Dinner

**SATURDAY, OCTOBER 13**

9:00 am – 2:30 pm  
Group Tour and Lunch  
Grand Ole Opry  
Ryman Auditorium

10:00 am – 1:00 pm  
Community Service Events - Room in the Inn or Nashville Rescue Mission

Room in the Inn  
10:00am – 12:45pm

Nashville Rescue Mission  
10:30am – 1:00pm
<table>
<thead>
<tr>
<th>Speaker Name</th>
<th>Company/Position</th>
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<tbody>
<tr>
<td>Dr. Mark Abell</td>
<td>Bird &amp; Bird LLP</td>
</tr>
<tr>
<td>Jason Adler</td>
<td>Cellairis Franchise, Inc.</td>
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<tr>
<td>Bethany L. Appleby</td>
<td>Franchise World Headquarters, LLC</td>
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<tr>
<td>Marcus A. Banks</td>
<td>Wyndham Worldwide Corporation</td>
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<tr>
<td>Gary R. Batenhorst</td>
<td>Cline Williams Wright Johnson &amp; Oldfather, L.L.P.</td>
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<tr>
<td>Carol Anne Been</td>
<td>Dentons US LLP</td>
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<tr>
<td>Andy P. Beilfuss</td>
<td>Quarles &amp; Brady LLP</td>
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<tr>
<td>Joel R. Buckberg</td>
<td>Baker, Donelson, Bearman, Caldwell &amp; Berkowitz, PC</td>
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<td>Ronald T. Coleman, Jr.</td>
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<td>Ximena Couret</td>
<td>Baker &amp; McKenzie LLP</td>
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<tr>
<td>Chief District Judge</td>
<td>Waverly D. Crenshaw, Jr. United States District Court, Middle District of Tennessee</td>
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<td>Bryan W. Dillon</td>
<td>The Law Offices of Bryan W. Dillon</td>
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<td>Jennifer Dolman</td>
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<td>Evan M. Goldman</td>
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<td>Friedlander Misler PLLC</td>
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<td>Snell &amp; Wilmer L.L.P.</td>
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<td>Laura Heltebran</td>
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<td>Kevin M. Kennedy</td>
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<td>Beata Krakus</td>
<td>Greensfelder, Hemker &amp; Gale, P.C.</td>
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<td>James Kroeker</td>
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<td>Plante Moran, PLLC</td>
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<td>Peter Lagarias</td>
<td>Lagarias &amp; Napell, LLP</td>
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<tr>
<td>Theresa Leets</td>
<td>California Department of Business Oversight</td>
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<tr>
<td>Warren L. Lewis</td>
<td>Akerman LLP</td>
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SPEAKER LIST

Marc Lieberstein
Kilpatrick Townsend & Stockton LLP

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DLA Piper LLP

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Joe Malhoit
Special Agent, Federal Bureau of Investigation (Ret.)

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Will K. Woods
Baker & McKenzie LLP

Donald Wray
Franchise World Headquarters, LLC

Tao Xu
DLA Piper LLP (US)

Nicole S. Zellweger
Stinson Leonard Street LLP
Social & Special Events

WEDNESDAY, OCTOBER 10
Welcome Reception
Omni Nashville Hotel
5:00 pm – 6:30 pm
Newcomers’/YL Networking Event
7:00 pm – 10:00 pm
Restaurant Rounds
Dutch Treat at Local Restaurants
7:00 pm – 10:00 pm

THURSDAY, OCTOBER 11
Continental Breakfast
LADR Breakfast
Corporate Counsel Breakfast
7:00 am – 8:15 am (concurrent)
Spouse/Guest Event
Tour with Luncheon
Cheekwood Estate & Gardens
10:00 am – 1:30 pm
Networking Lunch
Women’s Caucus Lunch
11:45 am – 1:00 pm (concurrent)
Forum’s 41st Annual Reception & Dinner
Country Music Hall of Fame
6:00 pm – 10:00 pm

FRIDAY, OCTOBER 12
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
12:15 pm – 1:30 pm (concurrent)
Reception & Dinner
Wildhorse Saloon
7:00 pm – 10:00 pm

SATURDAY, OCTOBER 13
Group Tour and Lunch
Grand Ole Opry
Ryman Auditorium
9:00 am – 2:30 pm
Community Service Events
Room in the Inn or Nashville Rescue Mission
Room in the Inn
10:00 am – 12:45 pm
Nashville Rescue Mission
10:30 am – 1:00 pm
Many venues are within walking distance.

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 2018” in the App Store or Google Play.

Join the Conversation
#ABAFranchising18
and follow us @ABAFranchising
1. Hotel Information
The conference will be held at the Omni Nashville Hotel, 250 5th Avenue South, Nashville, TN 37203. The reservation website is: ambar.org/2018franchising.

2. Hotel Reservations
The Forum on Franchising has negotiated a special room rate of $245 per night for a single or double room at the Omni. Sales tax of 15.25% and occupancy fee of $2.50 per night will also apply. You may call the hotel directly at 615-782-5300 and mention the ABA Forum on Franchising 2018 meeting to access the group rate. We have reserved a limited block of rooms through September 17, 2018 at 5:00 p.m. 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 Omni Nashville Hotel is approximately 10 miles from the Nashville International Airport. The taxi service from the airport is a flat rate of $25.

5. Program Registration
To register for all programs and events described in this brochure, we encourage you to register online at ambar.org/2018franchising. 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 5, 2018. 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 10 at 7:00 am, 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 October 11 & 12 at 7:00 am and will close each day at 5:00 pm.

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 Yolanda.Muhammad@americanbar.org on or before Friday, October 5th 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 2018” 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 Yolanda.Muhammad@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 7, 2018. Cancellations may be e-mailed to Yolanda.Muhammad@americanbar.org. No refunds will be granted after September 7, 2018. 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.
10. CLE Credit
The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, CT, 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, 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 Yolanda.Muhammad@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 free 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. Full text of the Forum Policy can be found at: https://www.americanbar.org/groups/franchising/resources.html The 2018 Annual Forum starts at 10:00 am, Wednesday, October 10, 2018 and concludes at the end of the Tour on Saturday, October 13, 2018 at 2:30 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 Yolanda.Muhammad@americanbar.org in writing or via email by September 7, 2018 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 Yolanda.Muhammad@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 attorneys may receive a 50% reduction in tuition fees.
41ST ANNUAL FORUM ON FRANCHISING
OCTOBER 10-12, 2018
OMNI NASHVILLE HOTEL, NASHVILLE, TN

Visit our website for the latest information