

**American Bar Association  
Section of Labor and Employment Law  
Ethics & Professional Responsibility Committee  
Midwinter Meeting**

**Lowes Miami Beach Hotel  
Miami Beach, Florida  
March 21-23, 2013  
Program Agenda**

**Thursday, March 21**

**5:30 – 6:30 p.m.**      **Welcome and Diversity Reception with Local Diverse Bar Associations** (*St. Mortiz Lawn*)

**Friday, March 22**

**7:00 - 8:15 a.m.**      **Registration & Continental Breakfast** (*Americana Salon 4*)

**8:15 – 12:35 p.m.**      **General Session** (*Americana Salon 1*)

**8:15 – 9:15 a.m.**      **Update on Ethical Issues and Social Media**  
Some employers have suggested the use of “cleaners,” social media expiration dates and other mechanisms that would purge on-line histories. To combat these techniques, some employers have sought to require applicants or employees to identify their social media presences and produce passwords as a condition of employment. This panel will examine new technologies, employer responses and the legal issues they generate. In the employment context, where employers commonly use on-line research to investigate applicants and claims, how could these technologies benefit employees or hamper employers? What are the ethical implications and perils of using them?

**Moderator/Speaker:**

Myra McKenzie, Wal-Mart Stores, Inc., Bentonville, Arkansas

**Speakers:**

John F. Hernandez, St. Thomas School of Law, Miami, FL  
Cynthia Sass, Law Offices of Cynthia N. Sass PA, Tampa, FL  
Elizabeth Theran, EEOC, Washington, D.C.

**9:15 - 9:45 a.m.**      **Introductory Remarks Section Leadership & Committee Co-Chairs**

Stuart Manela, Section Chair, Arent Fox LLP, Washington, DC  
Wayne N. Outten, Section Vice Chair, Outten & Golden LLP, New York, NY  
James F. Allmendinger, Union & Employee Co-Chair, NEA - New Hampshire, Concord, NH  
Cara E. Greene, Employee Co-Chair, Outten & Golden LLP, New York, NY  
Evangelina Hernandez, Public Co-Chair, Administrative Law Judge, U.S. Social Security Administration-ODAR, Stockton, CA  
David D. Powell, Jr., Employer Co-Chair, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Denver, CO

- 9:45 - 10:40 a.m. Ethics in Discovery: Where the Rubber Meets the Road**  
Employment attorneys face a number of ethical quandaries when litigating matters. What happens when your client lies under oath? When does witness preparation cross the line into unethical territory? Are the rules for E-Discovery different from traditional discovery? This panel will address these and other ethical pitfalls in discovery.
- Moderator/Speaker:**  
Stephanie Padilla, Johns Manville, Denver, CO
- Speakers:**  
Christopher Lage, EEOC, Washington D.C.  
Matthew D. Marca, Littler Mendelson, San Francisco, CA  
Marisa Warren, Pedowitz & Meister LLP, New York, NY
- 10:40 – 10:55 a.m. Refreshment Break**
- 10:55 - 11:45 a.m. Scripting Clients Contact with Represented Parties: Labor & Employment Implications from the ABA’s Formal Opinion 11-461**  
The ABA’s recent ethical opinion says rule 4.2 does not prohibit a lawyer from scripting clients contact with represented party. What are the L&E implications of this somewhat surprising conclusion? How does this impact persuader activity? Contact with an unrepresented EEOC claimant when the EEOC has found cause? What is its impact on other single-plaintiff cases?
- Moderator/Speaker:**  
Elvige Cassard, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., New Orleans, LA
- Speakers:**  
Mark Risk, Mark Risk P.C., New York, NY  
James F. Allmendinger, NEA – New Hampshire, Concord, NH  
Kimberly McCoy-Cruz, EEOC, Miami, FL
- 11:45 - 12:35 a.m. Ethical Issues in Class Actions**  
Class Actions present their own unique and special problems. Matter such as soliciting claimants, the distribution of remedies to the claimants, and the privately funded class litigation, and the government’s ethical obligations in a class case are strongly debated in the courts and the public. Charges of misconduct directed at all sides are leveled at a higher rate than in non class actions.
- Moderator/Speaker:**  
Jacqueline F. Drucker, Arbitration Offices of Jacqueline F. Drucker, New York, NY.
- Speakers:**  
Steven W. Moore, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Denver, CO  
Evangeline Hernandez, Administrative Law Judge, U.S. Social Security Administration-ODAR, Stockton, CA  
Roberta Steele, Goldstein, Demchak, Baller, Borgen & Dardarian, Oakland, CA
- 7:00 - 10:00 p.m. Reception and Dinner with the ERR Committee (*Americana Salon 4 and Terrace*)**

**Saturday, March 23**

**7:30 - 8:15 a.m. Continental Breakfast (*Americana Salon 4*)**

**8:15 – 9:15 a.m. Do the Right Thing: Professionalism in Practice and Candor to the Court: Ethical Restraints and Considerations (*Americana Salon 3*)**  
*Presented jointly by the Employment Rights & Responsibility Committee and the ERR Ethics & Professional Responsibility Subcommittee*

This joint program will discuss what counsel should do when observing or experiencing unprofessional conduct and the rules governing the interactions between counsel and the court.

**Moderator/Speaker:**

David D. Powell, Jr., Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Denver, CO

**Speakers:**

Charles Muhl, National Labor Relations Board, Chicago, IL

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

Nancy Cohen, MiletichCohen PC, Denver, CO

Hon. Andrew Peck, U.S. Magistrate Judge, Southern Dist. of New York

**9:15 – 9:30 a.m. Break (*Americana Salon 4*)**

**9: 30 - 10: 30 a.m. Ethical Issues in Internal Investigations (*Americana Salon 2*)**

Both in-house and outside counsel are often asked by their clients to oversee, respond to or conduct internal investigations of alleged misconduct that may pose a significant civil or criminal liability for the organization, its managers, and employees. Counsel are also often retained represent information or who may have witnessed the alleged misconduct. Regardless of the roles assumed by counsel, various ethical dilemmas often arise during the course of an investigation. This program will address some of the common ethical dilemmas faced by counsel involved in investigation process, the relevant ethical rules and guidelines, and provide suggestions for counsel should conduct themselves during the course of an investigation so as to avoid exceeding the boundaries of their ethical obligations

**Moderator/Speaker:**

Jim Allmendinger, NEA - New Hampshire, Concord, NH

**Speakers:**

Jordan Thomas, Labaton Sucharow, New York, NY

Karen M. Buesing, Akerman Senterfitt, Tampa, FL

Raymond E. Morales, Raymond E. Morales Law Offices, Hatorey, PR

**10:30 - 11:20 a.m. Maintaining Civility: Principals of Professionalism and Civility and Techniques for Diffusing Hostility (*Americana Salon 2*)**

Issues of professionalism and civility within the practice of law continue to be an important matter in the day to day activities of labor and employment attorneys. The 2006 adoption of “the College of Labor & Employment Lawyers Principles of Professionalism and Civility for Advocates” Was done with the intention of encouraging widespread adherence to these Principles by all Fellows of the College

as well as other members of the labor and employment law bar. Panel members will focus on issues of professionalism and civility between attorneys with respect to the courts and administrative agencies before whom they practice.

**Moderator/Speaker:**

Robert E. Weisberg, EEOC, Miami, FL

**Speakers:**

Elizabeth Kristen, Employment Law Center, San Francisco, CA

Hon. Joseph Farina, Mediator, Miami, FL

**11:20 - 12:10 a.m. Update Ethic 20/20 (*Americana Salon 2*)**

The American Bar Association's Commission on Ethics 20/20 has been reviewing the Model Rules of Professional Responsibility in light of advances in technology and global legal practice developments. This panel will summarize the work of the Commission and discuss implications for the Labor and Employment law attorney.

**Speakers:**

Cara E. Greene, Outten & Golden LLP, New York, NY

Elizabeth Tarbert, The Florida Bar, Tallahassee, FL

**12:10 – 12:40 p.m. Business Meeting (*Americana Salon 2*)**

**We would like to thank the following for their generous contributions to the 2013 Ethics and Professional Responsibility Committee Midwinter Meeting:**

**Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

**Outten & Golden LLP**