Midwinter Meeting

Naples Grande Beach Resort • Naples, Florida

ABA Section of Labor and Employment Law

March 26-28, 2015

Ethics and Professional Responsibility Committee

March 24-28, 2015

Employment Rights and Responsibilities Committee

Naples Grande Beach Resort • Naples, Florida

ERL: March 24-28, 2015

Ethics: March 26-28, 2015
Located on Florida’s Paradise Coast, Naples is home to tranquil beaches, beautiful sunsets and abundant nature preserves. Join us in this “paradise found” in March 2015, when the ABA Section of Labor & Employment Law’s Employment Rights and Responsibilities Committee (ERR) offers a CLE program that will be as restorative and bountiful as the idyllic surroundings.

From March 24 through 28, you are invited to participate in ERR’s annual Midwinter Meeting, where opportunities for professional development, substantive presentations and networking flow harmoniously with opportunities for socializing and relaxation. The panels will provide practical advice and in-depth coverage on important developments in labor and employment law. You will hear analyses from the perspectives of all constituencies—employer, employee, union, in-house, public, academics and neutrals. For example, the program will start off with a highly practical presentation on handling complaints before the EEOC, NLRB and DOL—a program certain to benefit both new and experienced practitioners. Some of the other topics include the impact of diversity on jury trials, effective arbitration programs and the enforceability of class action waivers, the misclassification of independent contractors, negotiating executive contract clauses, how to handle accusations of theft in the workplace, the impact of state marijuana legalization laws on employment law, developments in whistleblower law, workplace cyber crimes, injunctive relief in non-compete cases, and accommodating mental and emotional disabilities.

Additionally, as we will be joined by the Ethics and Professional Responsibility Committee (EPR) from March 26–28, meeting attendees will have numerous options for ethics programming, including a joint ERR-EPR program on the “Ethical Implications and Best Practices for Client Solicitation.”

Your “ticket to this paradise” also will include the many social and networking events that are the hallmarks of our meetings, including a welcome reception, a reception honoring diversity in the legal profession, a first-timer luncheon, a dine-around in quaint Old Naples, and the Friday night Dinner & Dance. You will be able to catch up with friends and colleagues and make lasting new friendships. There also will be plenty of down time for attendees to take advantage of Naples’ water sports, white sand beaches and shopping.

On behalf of the ERR family, we hope that you will join us in Naples for another unique and fantastic Midwinter Meeting!

Lori D. Ecker, Employee Co-chair
Eric W. Iskra, Employer Co-chair
Louis Lopez, Public Co-chair
Amy Shulman, Union & Employee Co-chair

Midwinter Meeting • March 24–28, 2015
Tuesday, March 24

- **6:00 – 7:30 P.M.**
  Welcome Reception and Registration
  We thank the following firms for their generous contributions in support of this evening's reception:
  - Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing P.C.
  - BLG/Borden Ladner Gervais
  - Foley Hoag LLP
  - Law Office of Lori D. Ecker
  - Mitchell Silberberg & Knupp LLP
  - Orrick, Herrington & Sutcliffe LLP
  - Pedersen & Houpt, PC
  - Practical Law
  - Spilman Thomas & Battle PLLC
  - Weil & Associés
  - Wilentz Goldman & Spitzer P.A.

Wednesday, March 25

- **8:30 – 10:00 A.M.**
  Continental Breakfast and Registration

- **8:30 – 9:30 A.M.**
  ERR Subcommittee Co-Chair Meeting

- **9:00 – 10:30 A.M.**
  Nuts and Bolts of Handling Complaints Before the EEOC, NLRB and DOL
  Presented by the Statutory Rights Subcommittee
  Not all employment agencies are alike. The EEOC, NLRB and DOL enforce various employment laws and have distinctly different ways in which they do so. This panel will address the differences and similarities in the methods and means by which these government agencies carry out their mandates to investigate and resolve claims and will provide insight into the workings of the agencies. The panel will offer practical advice to practitioners on how claims are processed and how best to serve your clients when working with the agencies.

  **MODERATOR:** Diane I. Smason, U.S. Equal Employment Opportunity Commission, Chicago, IL

  **SPEAKERS:**
  - Thomas F. Hurka, Morgan Lewis & Bockius LLP, Chicago, IL
  - Jennifer Kroll, Martin & Bonnett, PLLC, Phoenix, AZ
  - Jennifer B. Salvatore, Nacht & Associates PC, Ann Arbor, MI
  - DOL and NLRB Representatives

  **9:00 – 11:30 A.M.**
  Corporate Counsel Caucus
  Jeffrey Heller from BP and George L. Washington, Jr. from Orange Business Services will host a caucus meeting for in-house attorneys focusing on emergent issues important to the in-house labor and employment practitioner. The topics will be discussed from the unique perspective of in-house counsel responsible for providing legal advice to corporate clients on these topics. The meeting format allows participants to discuss and compare approaches for addressing risk management and other legal issues. Attendance is limited to in-house corporate counsel to promote a free flow of information. Discussion topics will be solicited from in-house registrants in advance of the meeting.

- **10:45 – 11:45 A.M.**
  *Iqbal*, Shmiqbal: Have the “New” Pleading Standards Really Made a Difference in Employment Litigation?
  Presented by the Trial and Appellate Advocacy Subcommittee
  It has been almost eight and six years, respectively, since *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal* ushered in a revolution in notice pleading. Plaintiff lawyers predicted that courts would use “Twiqbal” to toss out employment cases inappropriately, while management lawyers scoffed at these fears as overblown. This panel will examine whether these decisions have truly changed the landscape of employment litigation and, if so, how, by examining trends in the circuit courts and offering strategies for lawyers in navigating the post-*Twiqbal* world.

  **MODERATOR:** Stephen E. Fox, Polsinelli Shughart PC, Dallas, TX

  **SPEAKERS:**
  - The Honorable Andrew J. Peck, U.S. District Court for the Southern District of New York, New York, NY
  - Ty Hyderally, Hyderally & Associates, Montclair, NJ
  - Julie A. Totten, Orrick Herrington & Sutcliffe LLP, Sacramento, CA

- **11:45 – 1:00 P.M.**
  First-Time Attendee Luncheon
  Sponsored by Morrison & Foerster LLP
  First-time attendees are invited to an informal luncheon with Section and Committee leaders who will discuss what ERR does and how to get involved.
• **1:00 – 1:30 P.M.**

Pathways to Leadership

**COMMITTEE CO-CHAIRS**
Lori D. Ecker, Law Office of Lori D. Ecker, Chicago, IL
Eric W. Iskra, Spilman Thomas & Battle, PLLC, Charleston, WV
Louis Lopez, U.S. Office of Special Counsel, Washington, DC
Amy Shulman, Broach & Stulberg, LLP, New York, NY

**PROGRAM CO-CHAIRS**
Daniel L. Bonnett, Martin & Bonnett PLLC, Phoenix, AZ
Samantha C. Grant, Mitchell Silberberg & Knupp LLP, Los Angeles, CA
Glen D. Savits, Green Savits LLC, Florham Park, NJ
Diane I. Smason, U.S. Equal Employment Opportunity Commission, Chicago, IL
George L. Washington, Jr., Orange Business Services, Oak Hill, VA

**ADMINISTRATIVE CO-CHAIRS**
Lori L. Deem, Outten & Golden LLP, Chicago, IL
Paul E. Starkman, Pedersen & Houpt, PC, Chicago, IL

• **1:30 – 1:45 P.M.**

Welcome by Section Leadership

Joyce Margulies, Section Chair, Margulies Employment Law Consulting, Memphis, TN
Wayne N. Outtén, Section Chair-Elect, Outten & Golden LLP, New York, NY
Jonathan Ben-Asher, Employee Council Liaison, Ritz Clark & Ben-Asher LLP, New York, NY
Barbara J. D’Aquila, Employer Council Liaison, Norton Rose Fullbright, Minneapolis, MN
Wendy L. Kahn, Union & Employee Council Liaison, Zwerdling, Paul, Kahn & Wolly, P.C., Washington, DC

• **1:45 – 2:45 P.M.**

You Can’t Make This Stuff Up: The Everyday Advice Gleaned from Extreme Employment Law Cases

Using real-life, unusual workplace cases, this program will examine extreme employer and employee missteps and the practical take-a-ways for the more typical employment law situations with which many of us grapple. The wide range of topics to be covered includes employee speech, guns in the workplace, fitness for work issues, public policy concerns and intentional infliction of emotional distress. The panelists will discuss the lessons learned so that you and your clients can be prepared for both the common and unusual types of employment scenarios.

**MODERATOR:**
Cynthia E. Nance, University of Arkansas, Fayetteville, AR

**SPEAKERS:**
Gail Golman Holtzman, Kass Shuler, Tampa, FL
Sundeep Hora, Alderman, Devorsetz & Hora PLLC, Washington, DC

• **2:45 – 3:00 P.M.**

Break

• **3:00 – 4:30 P.M.**

The Impact of Diversity on Jury Trials

Presented jointly by the Diversity Outreach and Inclusion Taskforce

This panel will discuss how diversity issues arise in the context of jury trials. Some of the questions it will address are how do we uncover and address implicit bias of judges and juries alike to mitigate against adverse impact on the judicial process, how do diverse and non-diverse attorneys’ experiences affect the handling of trial witnesses and jury selection, and whether diverse trial teams impact jury trials.

**MODERATOR:**
Eric L. Barnum, Schiff Hardin LLP, Atlanta, GA

**SPEAKERS:**
The Honorable Bernice Donald, U.S. Court of Appeals for the Sixth Circuit, Memphis, TN
Daniel L. Bonnett, Martin & Bonnett PLLC, Phoenix, AZ
Jill Huntley Taylor, Dispute Dynamics, Inc., Philadelphia, PA

• **6:00 – 7:00 P.M.**

Subcommittee Sundae Soirée

For those having a hard time deciding which ERR subcommittee to join, the Membership Committee will present the Subcommittee Sundae Soirée. First-time attendees are encouraged to meet with subcommittee co-chairs and other ERR and Section leaders in a festive and relaxed setting to learn more about ERR’s subcommittees and how to become involved in ERR activities. We thank the following firms for their generous contributions in support of this evening’s reception:

**JF Beasley LLC**
Law Offices of Cynthia N. Sass, P.A.
Zuckerman Law
Zwerdling, Paul, Kahn & Wolly PC
Thursday, March 26

7:30 – 9:00 A.M.
Continental Breakfast

8:00 – 9:00 A.M.
*Breakfast Roundtable I:
Inside Talk: Perspectives on the Ins and Outs of In-house Practice
A panel of experienced in-house counsel will conduct an interactive discussion on issues and challenges faced by in-house labor and employment lawyers. The discussion will review common misconceptions about in-house practice, strategies that enable in-house counsel to work effectively with management counsel and also with counsel who represent employees, and skills needed to navigate the blurred lines that separate the business and legal roles of in-house lawyers and to handle the pressures of in-house practice. This session is open to all meeting registrants.

MODERATOR:
Sheree C. Wright, Vanderbilt University, Nashville, TN

SPEAKERS:
Bobbie Fox, CopperPoint Mutual Insurance Company, Phoenix, AZ
Julie Merten, BP America Inc., Houston, TX
Leigh Anne Yeargan, Walmart Legal Department, Bentonville, AR

8:00 – 9:00 A.M.
*Breakfast Roundtable II:
How to Make Immigration Law Part of Your Existing Practice
The Immigration Law Committee and ERR will present tips on expanding your practice. Employer lawyers will learn how to create sound corporate policies for hiring foreign nationals, including permissible “liquidated damages” clauses. Management and union lawyers will learn how to advocate for foreign workers through the various government agencies that regulate this ever-changing area of law, including DOL’s Wage and Hour Division, ICE and the DOJ’s Office of Special Counsel for Immigration-Related Unfair Employment Practices.

MODERATOR:
Jonathan Grode, Green and Spiegel LLC, Philadelphia, PA

SPEAKERS:
Alisa B. Arnoff, Scala Vrbrino & Arnoff, LLP, Chicago, IL
Sean Hanagan, Jackson Lewis P.C., White Plains, NY
Meredith Rapkin, Friends of Farmworkers, Inc., Philadelphia, PA
Gary Noah Savine, The Law Office of G. Noah Savine, Ltd., Northfield, IL

CONCURRENT PROGRAMS: TRACK 1

10:00 – 10:15 A.M.
Break

10:15 – 11:15 A.M.
Basic Employment Law Issues in Central & South America
Presented by the International Subcommittee
A panel of seasoned practitioners will review hot topics and important developments for employers doing business in Latin America. Topics will include the legal framework for outsourcing, latest developments on executive compensation, impact of anti-discrimination laws in the workplace, and rights and responsibilities regarding termination of employment. The panel will also highlight developing areas of which employment lawyers should be aware, especially areas that differ from the treatment in other regions.

MODERATOR:
Katherine Blostein, Outten & Golden LLP, New York, NY
**SPEAKERS:**
Carolina Tavares Rodrigues Davies, Machado Meyer Sendacz e Opice Advogados, Sao Paolo, Brazil
Rodrigo Funes de Rioja, Funes de Rioja & Asociados, Buenos Aires, Argentina
Javiera Medina-Reza, Baker & McKenzie S.C., Mexico City, Mexico
Juan Carlos Pro-Risquez, Norton Rose Fulbright, Caracas, Venezuela

**• 11:15 – 12:15 P.M.**
**Sailing Through the Arbitration Waters—What Floats and What Sinks**
Presented by the Alternatives to Litigation Subcommittee
The panelists will discuss the latest court decisions on enforcing arbitration provisions, including the enforceability of class action waivers. The discussion also will explore what makes a good arbitration program and what does not.

**MODERATOR:**
Jennifer Swain, Littler Mendelson P.C., Birmingham, AL

**SPEAKERS:**
Margaret J. Diaz, National Labor Relations Board, Tampa, FL
Ralph A. Morris, Schiff Hardin LLP, Chicago, IL
Scott M. Pollins, Pollins Law Firm, Philadelphia, PA
Bobby Simpson, General Electric Company, Louisville, KY

**CONCURRENT PROGRAMS: TRACK 2**

**• 9:00– 10:00 A.M.**
**Dodging the Iceberg: Spotting Employee Misclassification Issues and Avoiding Them Before Disaster Strikes**
Presented by the Contingent Workforce Subcommittee
As more states pass employee classification acts, and more courts issue employee misclassification decisions, the legal protections available to employees expand, and the risks of misclassifying employees exponentially increase. Join this panel to learn 2014 and early 2015 employee misclassification legal developments as well as practical tips and advice on identifying and addressing misclassification issues.

**MODERATOR:**
Richard W. Warren, Miller Canfield, Detroit, MI

**SPEAKERS:**
Yesenia Francisco, Berke-Weiss & Pechman LLP, New York, NY
T. Warren Jackson, The DIRECTV Group, El Segundo, CA
Jason C. Marsili, Posner & Rosen LLP, Los Angeles, CA
Jennifer Spector, National Labor Relations Board, Philadelphia, PA

**• 10:00 – 10:15 A.M.**
**Break**

**• 10:15 – 11:15 A.M.**
**Unclean Hands: Issues Surrounding Employee Theft**
Presented by the Employment At Will Subcommittee
Actual or suspected workplace theft issues almost always require quick employer responses. Workplace theft or the suspicion of it doesn’t just give rise to claims against employees. The quick employer responses often result in claims against the employer as well. This panel will present a lively and humorous skit where an employee is detained and investigated for stealing from the company and where the detention goes terribly awry. The panel, comprised of attorneys from both sides, will discuss the potential causes of action for both the employer and employee, defenses to those actions and best practices when handling suspected theft or in representing an employee who has been accused of theft.

**MODERATOR:**
Ann Fromholz, Jackson Lewis P.C., Los Angeles, CA

**SPEAKERS:**
Yesenia Francisco, Hardwick Benfer LLC, Doylestown, PA
Nina Pirrotti, Garrison, Levin-Epstein, Richardson, Fitzgerald & Pirrotti, P.C., New Haven, CT
Douglas L. Steele, Woodley & McGillivary, Washington, DC

**• 11:15 – 12:15 P.M.**
**“Takin’ It to the States:” A Look at Budding Issues from State Laws Legalizing Marijuana**
Presented by the State Law Developments Subcommittee
Almost half of the states have legalized marijuana in some capacity, and more are considering legislation to allow its use. As a result, employers and employees alike are facing new legal issues relating to cannabis, from drug testing to disability discrimination claims, and will be looking to employment lawyers to clear the air. Our joint panel will review these evolving issues from all perspectives and keep you and your clients on the straight and narrow.

**MODERATOR:**
John Husband, Holland & Hart LLP, Denver, CO

**SPEAKERS:**
Tiffany Benfer, Hardwick Benfer LLC, Doylestown, PA
Jon H. Rosen, The Rosen Law Firm, Seattle, WA
Devjani Mishra, Alexion Pharmaceuticals Inc., Cheshire, CT
Sandra Pullman, Office of the New York State Attorney General, New York, NY

**• 12:30 – 2:00 P.M.**
**Subcommittee Luncheon**
ERR’s subcommittees will meet over lunch to plan activities for the next year and their panels for the 2016 Midwinter Meeting in New Orleans, Louisiana. Newcomers are encouraged to attend! We thank the following for their generous contributions in support of the Subcommittee Luncheon:
Abrahamson Vorachek & Levinson
Broach & Stulberg, LLP
David J. Carr, Ice Miller LLP
The Case Law Firm
Flaster/Greenberg PC
Hardwick Benfer LLC
Hyderally & Associates PC
Martin & Bonnett PLLC
Scott Dukes & Geisler P.C.
Van Dermyden Maddux Law Corporation
Friday, March 27

• 7:30 – 9:00 A.M.
  Continental Breakfast

• 8:00 – 9:00 A.M.
  *Breakfast Roundtable I:
  A Cross-Border Discussion of Key
  Clauses in Employment Contracts
  Presented by the International Subcommittee
  This cross-border discussion will compare U.S., Canadian and
  European perspectives on key clauses in employment contracts.
  The discussion will examine country-specific approaches to
  defining the employment relationship in term, indefinite term
  and other contracts, as well as more complex issues relating to
  the definition and enforceability of clauses regarding “cause,”
  “misconduct,” “good reason,” “constructive discharge” and
  “change in control.” The panel also will highlight unusual
  clauses specific to particular jurisdictions.
  MODERATOR:
  Amy Shulman, Broach & Stulberg LLP, New York, NY
  SPEAKERS:
  Deborah Davidson, Jeantet Associés, Paris, France
  Daniel Ksiazek, Ksiazek & Bigaj, Krakow, Poland
  Pierre Moreau, Pierre Moreau Avocat, Montréal, Canada

• 8:00 – 9:00 A.M.
  *Breakfast Roundtable II:
  Gab with the Government
  Come hear the newest developments at our government
  agencies from attorneys at the Department of Justice, Equal
  Employment Opportunity Commission, Department of Labor
  and National Labor Relations Board.
  MODERATOR:
  Stephanie Jones, U.S. Equal Employment Opportunity Commission,
  Charlotte, NC
  SPEAKERS:
  Shayna Bloom, U.S. Department of Justice, Washington, DC
  Jamila B. Minnicks, U.S. Department of Labor, Washington, DC
  Jennifer Spector, National Labor Relations Board, Philadelphia, PA

• 9:00 – 10:00 A.M.
  To Catch a Thief: Prosecuting, Defending
  and Insuring Claims for Cyber Espionage
  Presented by the Insurance and Technology Subcommittees
  From data breaches to outright theft of trade secrets, today’s
  newspapers are littered with allegations of theft of electronically
  stored information. This panel will discuss how to prosecute,
  defend and insure against claims alleging cyber theft. Among the
  topics that will be covered are relevant federal and state statutory
  claims for relief, use of computer forensics to prove or disprove
  theft, whether and when to refer the case to law enforcement,
  as well as the types of insurance available for
  cyber theft.
  MODERATOR:
  Sean R. Gallagher, Polsinelli Shughart PC, Denver, CO
  SPEAKERS:
  Angela R. Elbert, Neal Gerber & Eisenberg, Chicago, IL
  Gavin W. Manes, Avansic, Tulsa, OK
  Richard W. Mather, Allied World Assurance Company,
  Farmington, CT
  Cynthia N. Sass, Law Offices of Cynthia N. Sass, P.A.,
  Tampa, FL

• 10:00 – 10:15 A.M.
  Break

• 10:15 – 11:45 A.M.
  Have You Seen Her Twitter?
  Balancing Thorough Investigations
  and Privacy Rights
  Presented by the Employee Privacy and
  Workplace Investigations Subcommittees
  Social media and technology often provide valuable tools for
  conducting workplace investigations— but with risks. This panel
  will explore the complex world of social media, telephone, video,
  location and other monitoring and surveillance devices. Join us
  to explore the potential conflict between the requirements of a
  thorough investigation and competing privacy interests arising
  from the use of social media and modern technology. What is
  relevant and “fair game” during an investigation?
  MODERATOR:
  Sue Ann Van Dermyden, Van Dermyden Maddux Law
  Corporation, Sacramento, CA
  SPEAKERS:
  Melinda Burrows, Outerwall Inc., Bellevue, WA
  Susan Hartmus Hiser, Vercruysse Murray, PC, Bingham Farms, MI
  Douglas R. Kertscher, Hill, Kertscher & Wharton, LLP, Atlanta, GA

• 11:45 – 12:45 P.M.
  Code Red: Emergency Injunctive
  Relief in Non-Compete Cases
  Presented jointly by the Covenants Not to
  Compete and Trade Secrets Subcommittee
  Join us for a mock TRO hearing featuring non-compete and
  expedited discovery issues. The presentation will address both
  common legal issues involving FRCP 65 relief and discovery
  issues, including electronic discovery.

*The Breakfast Roundtables on Thursday and Friday mornings are informal gatherings designed to permit group discussions. There will be no written materials distributed about the topics and, due to their informal nature, these sessions are not approved for CLE credit.
MODERATOR:
David J. Carr, Ice Miller LLP, Indianapolis, IN

SPEAKERS:
The Honorable Andrew J. Peck, U.S. District Court for the Southern District of New York, New York, NY
Joseph Ahmad, Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing P.C., Houston, TX
Robert Gilmore, Kohrman Jackson & Krantz PLL, Cleveland, OH

• 12:30 – 6:00 P.M.
Golf Tournament

• 7:00 – 11:00 P.M.
Reception, Dinner and Dance

Saturday, March 28

• 7:00 – 8:00 A.M.
Continental Breakfast

• 8:00 – 9:30 A.M.
Hot Wage and Hour Issues with an ERISA Twist
Presented by the Complex Litigation and Employee Benefits Subcommittees
Failure to appreciate the interplay between state wage and hour laws, ERISA and the new healthcare reform requirements can lead to disastrous consequences. This program will provide a roadmap to identify important new issues and avoid common pitfalls. The panel will also discuss proposed changes to the “white collar” exemption regulations and Busk v. Integrity Staffing (a/k/a the “Amazon” case) regarding compensation for time going through security check points.

MODERATOR:
J. Timothy McDonald, Thompson Hine LLP, Atlanta, GA

SPEAKERS:
Richard L. Alfred, Seyfarth Shaw LLP, Boston, MA
Ellen Doyle, Feinstein Doyle Payne & Kravec LLC, Pittsburgh, PA
Jamila B. Minnicks, U.S. Department of Labor, Washington, DC
R. Scott Oswald, The Employment Law Group, Washington, DC

• 9:30 – 10:30 A.M.
The Intricacies of Recognizing, Discussing and Accommodating Mental and Emotional Disabilities at Work
Presented by the Disabilities and Leave of Absence Subcommittee
Some workers have mental and emotional conditions that manifest themselves in varying ways in the workplace. The processes of recognizing, initiating discussion about and reasonably accommodating such conditions in accordance with the Americans with Disabilities Act, as amended, are generally situational and can be complex. This panel will use factual scenarios to bring focus to these processes and discuss recommended best practices, the legal boundaries of compliance and resources available to employees needing accommodation.

MODERATOR:
Alison Tasma Vance, Baxter International Inc., Deerfield, IL

SPEAKERS:
John F. Beasley, JF Beasley LLC, Watkinsville, GA
Beth Loy, Job Accommodation Network, Morgantown, WV
David M. Smith, Maynard, Cooper & Gale, PC, Birmingham, AL

• 10:30 – 10:45 A.M.
Break

• 10:45 – 11:45 A.M.
Making It Rain: The Ethical Implications and Best Practices for Client Solicitation
Presented jointly by the Ethics Subcommittee and Ethics & Professional Responsibility Committee
How far can lawyers go in soliciting clients to generate new business? What limitations do the Rules of Professional Conduct impose on solicitation, whether in-person or through use of the Internet or social media? Our panel will discuss the current state of the ethics of solicitation, including why text messages may be permissible solicitations, and will discuss the best new (but underutilized) ways to solicit clients in both individual matters and class actions.

MODERATOR:
George L. Washington, Jr., Orange Business Services, Oak Hill, VA

SPEAKERS:
Michelle D. Craig, Transcendent Legal, LLC, New Orleans, LA
Michael Z. Green, Texas Wesleyan University School of Law, Fort Worth, TX
Orin Kurtz, Gardy & Loius LLP, New York, NY

• 11:45 – 12:45 P.M.
What’s Blowing in the Wind: State and Federal Developments in Whistleblower Law
Presented by the Whistleblower Subcommittee
This panel will address hot topics in Sarbanes-Oxley, Dodd-Frank, and False Claims Act whistleblower retaliation claims. The panelists will focus on practical implications of the recent U.S. Supreme Court’s Lawson v. FMR LLC decision, DOL and federal court decisions defining the scope of protected conduct under SOX, the use of self-help discovery to prove retaliation claims, confidentiality provisions in settlement agreements, recent legislative and regulatory developments, including DOL’s implementation of the ACA whistleblower protection provision, and practical tips for litigating whistleblower retaliation claims.

MODERATOR:
Jeffrey S. Heller, BP America Inc., Houston, TX

SPEAKERS:
Lloyd B. Chinn, Proskauer Rose LLP, New York, NY
Megan E. Guenther, U.S. Department of Labor, Washington, DC
Robin B. Potter, Robin Potter & Associates PC, Chicago, IL

• 12:45 P.M.
Wrap-Up and Feedback
Thursday, March 26

• 6:00 – 7:30 p.m.
**Welcome and Diversity Reception**
James F. Allmendinger, Union & Employee Co-Chair, Concord, NH
Cara E. Greene, Employee Co-Chair, New York, NY
Christopher Lage, Public Co-Chair, Washington, DC
Myra L. McKenzie-Harris, Employer Co-Chair, Bentonville, AR

Friday, March 27

• 7:00 – 8:00 a.m.
**Registration and Continental Breakfast**

• 8:00 – 9:00 a.m.
**When the Ethics Rules Become a Sword**
In the course of representing a client, attorneys may be tempted to pursue every possible tactical advantage, including lobbing accusations of unethical conduct, moving to disqualify, threatening sanctions, or reporting opposing counsel to the relevant disciplinary committees. But attorneys who make these threats or take these steps may be violating the ethics rules themselves. This panel will explore when this type of behavior is appropriate or required (and what to do when that is the case) and will discuss when threats, complaints and motions constitute unethical or unprofessional behavior.

**SPEAKERS:**
Delyanne Barros, Practical Law, New York, NY
Erika L. Leonard, Paul Hastings, LLP, Atlanta, GA
Kimberly McCoy-Cruz, U.S. Equal Employment Opportunity Commission, Miami, FL

• 9:00 – 10:00 a.m.
**Up, Up and A-OK? Ethical Issues and Concerns Associated with Cloud Computing**
Management attorneys face many ethical issues associated with cloud computing: how do they advise corporate clients who rely on cloud computing and how do they address potential data security breaches and privacy issues? Employee counsel too must consider the ethics rules: what must they advise employees with respect to use of corporate technology systems? Panelists will discuss the basics of cloud computing, ethical DOs and DON'Ts of employer privacy policies, and the role of counsel in avoiding the ethical minefields of data security threats and breaches. Panelists will also discuss using the cloud for production of large amounts of data and information and the ethical concerns related to such use.

**SPEAKERS:**
Sheena Hamilton, Armstrong Teasdale LLP, St. Louis, MO
Marisa Warren, Pedowitz & Meister, LLP, New York, NY
Leigh Anne Yeargan, Walmart Legal Department, Bentonville, AR

• 10:00 – 10:15 a.m.
**Break**

• 10:15 – 11:45 a.m.
**Is It All Good? The Legal and Ethical Implications of Legalizing Marijuana in America**
Given the increase in states legalizing the use of marijuana, lawyers are faced with a number of professional, ethical, and counseling dilemmas. From a client service perspective, do lawyers have an obligation to divulge recreational marijuana use to clients? May attorneys provide legal advice to clients who are engaged in marijuana-related enterprises? Can clients bring complaints under state or Model Rules based solely on their lawyers’ use of the drug, given that federal law bans its use? Additionally, what are the workplace implications for attorneys? Do fellow lawyers have an obligation to report their colleagues’ use of marijuana when serving clients? If so, to whom? What are firms’ reporting obligations when they become aware of marijuana use by their lawyers? Panelists will discuss this developing landscape and will give suggestions on how to handle the challenges that follow.

**MODERATOR:**
Ed Harnden, Barran Liebman LLP, Portland, OR

**SPEAKERS:**
James Coyle, Colorado Supreme Court Office of Attorney Regulation, Denver, CO
Ellen Doyle, Feinstein Doyle Payne & Kravec, LLC, Pittsburgh, PA
Devika Kewalramani, Moses & Singer LLP, New York, NY

• 11:45 – 12:45 p.m.
**Stonewalling: Uncivil Civil Wars**
Stonewalling in discovery—whether by refusing produce relevant data to the opposing party, making boilerplate objections, or engaging in other tactics that drive up discovery costs—can make civil litigation feel like a civil war. Is it possible for attorneys to be strong advocates for their clients and still remain civil to and professional with the opposing party? Panel members will tackle this question in addressing stonewalling issues, with a special focus on standards of professionalism among attorneys in arbitration, court, and administrative proceedings.

**SPEAKERS:**
Jim Casey, Law Offices of Slesnick & Casey, LLP, Miami, FL
Dolores Dorainvil, District of Columbia Office of Bar Counsel, Washington, DC
Shirley Lin, Outten & Golden LLP, New York, NY
Edward Rawl, Fisher & Phillips LLP, Columbia, SC
12:45 – 1:00 p.m.
Section Report
Joyce Margulies, Section Chair, Margulies Employment Law Consulting, Memphis, TN
Wayne N. Outten, Section Chair-Elect, New York, NY
Lynlee Wells Palmer, Employer Council Liaison, Birmingham, AL
Michael P. Posner, Union & Employee Council Liaison, Los Angeles, CA

7:00 – 11:00 p.m.
Reception, Dinner and Dance

Saturday, March 28

7:00 – 8:00 a.m.
Continental Breakfast

8:00 – 9:30 a.m.
Ethics of E-Discovery in Complex Litigation
An attorney's obligations with respect to e-discovery are more complicated in the context of a class action or complex litigation. Attorneys for both the putative class and the company must decide how broadly to issue spoliation and preservation instructions. New technologies, like predictive coding and electronic file transfer (e.g. FTP), promise an easier route to identifying and producing relevant documents in complex litigation, but what are the ethical requirements and pitfalls when using these technologies? This panel will explore these questions and more in discussing the ethics of e-discovery in complex litigation.

SPEAKERS:
David M. Cook, Cook & Logothetis, LLC, Cincinnati, OH
Sean R. Gallagher, Polsinelli PC, Denver, CO
Charles Kellner, D4, Rochester, NY
Michael J. Scimone, Outten & Golden LLP, New York, NY

9:30 – 10:30 a.m.
"Objection as to Form"—Obstructionist Conduct or an Exercise in Restraint?
The utterance “Objection as to form” is deeply ingrained in our nation's deposition practice. But how did this cryptic phrase achieve such prominence, and what does it really mean? In a recent sanctions order one judge lambasted this "objection," calling it no objection at all and, worse yet, obstructionist conduct. Yet, other judges and jurisdictions have not only permitted, but also required, practitioners to limit themselves to this phrase, lest they engage in impermissible speaking objections or witness coaching. This panel will explore the origins of this objection, its legal effect, whether its use raises ethical and professionalism concerns, and the ethical implications of similar deposition conduct. In addition, the panel will examine alternatives that could preserve valid objections that would otherwise be waived while alleviating concerns about improper influencing.

SPEAKERS:
The Honorable Andrew J. Peck, U.S. District Court for the Southern District of New York, New York, NY
Samantha C. Grant, Mitchell Silberberg & Knupp LLP, Los Angeles, CA
Janet Wise, Law Offices of Cynthia N. Sass, P.A., Tampa, FL

10:30 – 10:45 a.m.
Break

10:45 – 11:45 a.m.
Making It Rain: The Ethical Implications and Best Practices for Client Solicitation
Presented jointly by the Ethics & Professional Responsibility Committee and the Ethics Subcommittee of the Employment Rights & Responsibilities Committee
How far can lawyers go in soliciting clients to generate new business? What limitations do the Rules of Professional Conduct impose on solicitation, whether in-person or through use of the Internet or social media? Our panel will discuss the current state of the ethics of solicitation, including why text messages may be permissible solicitations, and will discuss the best new (but underutilized) ways to solicit clients in both individual matters and class actions.

MODERATOR:
George L. Washington, Jr., Orange Business Services, Oak Hill, VA

SPEAKERS:
Michelle D. Craig, Transcendent Legal, LLC, New Orleans, LA
Michael Z. Green, Texas Wesleyan University School of Law, Fort Worth, TX
Orin Kurtz, Gardy & Notis LLP, New York, NY

11:45 – 12:30 p.m.
Committee Business Meeting
Meeting Registration
The ERR Committee Midwinter Meeting registration fees cover the Tuesday and Wednesday Receptions and the Friday Reception, Dinner and Dance, continental breakfasts and refreshment breaks during the meeting, and all meeting materials on flash drive. The ERR spouse/guest registration fee includes all evening events.

The Ethics & Professional Responsibility Committee Midwinter Meeting registration fees cover all meeting materials and scheduled meal functions on Thursday, Friday and Saturday. The Ethics spouse/guest registration fee includes the evening functions on Thursday and Friday.

You are encouraged to register online at www.ambar.org/lelmidwinter. You also may register by filling out the attached registration form and returning it with your payment by March 10, 2015 to the Section office. Registration fees are refundable, less a $50 administrative fee, for cancellations received in the Section Office by March 10, 2015.

Hotel Accommodations
We have negotiated a special group rate at the Naples Grande Beach Resort of $285 USD, plus a $5 daily resort fee. The reservation deadline for the group rate is February 23, 2015. If necessary, cancellations must be made 7 days prior to the scheduled day of arrival to avoid a one-night cancellation charge. Reservations may be made by calling the hotel at (844) 210-5931. Be sure to mention you are attending the “ABA Employment Rights and Responsibilities Committee Midwinter Meeting” to receive the group rates.

Air Travel
American Airlines and United Airlines provide two types of airfare discounts to ABA meeting attendees. You can receive these discounts offline by calling, toll free, American Airlines at (800) 433-1790 or United Airlines at (800) 521-4041 or Orbitz for Business at (877) 222-4185. For more information visit the ABA Travel Website at www.americanbar.org.

Social Events
Welcome Reception
The ERR Welcome Reception will be held on Tuesday, March 24 from 6:00 to 7:30 p.m. All ERR Midwinter Meeting attendees and registered guests are welcome to attend.

Diversity Reception
Following a special “Subcommittee Sunset Soirée” reception for First-Time Attendees, New ERR Committee Members and Subcommittee Co-chairs from 6:00–7:00 p.m., the ERR Diversity Reception will be held on Wednesday, March 25 from 7:00 to 8:30 p.m.

Fifth Avenue South Dine-Around
Meeting registrants and guests are invited to participate in an organized “dine-around” on Fifth Avenue South in Old Naples. We will make reservations at some of Old Naples’ best restaurants, and you choose your favorite!

Golf Tournament
The annual Golf Tournament will be held on Friday, March 27 at Naples Grande Golf Club. The cost for the tournament is $135 per player, which includes green fees, shared cart and range balls.

Friday Reception, Dinner and Dance
You will not want to miss our Friday dinner party for meeting attendees and registered guests, which begins at 7:00 p.m. The evening will feature great food, drinks and live entertainment. The cost of this event is included in the registration fees.

Continuing Legal Education Credit
Required sponsor documentation will be forwarded to and credit requested from MCLE states with general requirements for all lawyers. Each state determines the number of hours to be credited for attendance. Uniform Certificates of Attendance will be available at the meeting.

Financial Assistance
Visit the Section of Labor & Employment Law website at www.americanbar.org/labor for information about the Section Development Fund and Government and YLD Fellowship Program opportunities.
# ABA Section of Labor and Employment Law

## Midwinter Meeting

### Employment Rights and Responsibilities Committee

March 24–28, 2015 • Naples Grande Beach Resort • Naples, Florida

### Ethics and Professional Responsibility Committee

March 26–28, 2015 • Naples Grande Beach Resort • Naples, Florida

**Registration Deadline:** March 10, 2015

**ONLINE:**

[www.ambar.org/elmidwinter](http://www.ambar.org/elmidwinter)

(Credit card payments accepted online only.)

**FAX:**

(312) 988-5850

**MAIL:**

ABA Section of Labor & Employment Law

Attn: Service Center – Meeting/Event Registrations Dept.

321 North Clark Street, Chicago, IL 60654

- Enclosed check
  
  (made payable to American Bar Association)

---

**NAME**

**NICKNAME/BADGE NAME**

**FIRM/ORGANIZATION**

**STREET ADDRESS**

**CITY**

**STATE/PROVINCE**

**POSTAL CODE**

**PHONE**

**FAX**

**E-MAIL ADDRESS**

**NAME OF ATTENDING SPOUSE/GUEST(S)**

---

### Affiliation:

- Employer/Management
- Employee/Plaintiff
- Union & Employee
- Public/Government
- Neutral
- Other

- First-Time Attendee

If any special arrangements are required under the ADA, contact Judy Stofko at (312) 988-5813.

---

### ERR Registration

**Registration Fees:**

<table>
<thead>
<tr>
<th>Registration Fees</th>
<th>Number Attending</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Early Section Member Discount (on or before 1/5/15)</td>
<td>@ $475</td>
<td>$</td>
</tr>
<tr>
<td>*Section Member (after 1/5/15)</td>
<td>@ $525</td>
<td>$</td>
</tr>
<tr>
<td>ABA #</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ABA Member</td>
<td>@ $625</td>
<td>$</td>
</tr>
<tr>
<td>Non-ABA Member</td>
<td>@ $725</td>
<td>$</td>
</tr>
<tr>
<td>Government Agency, Full-Time Academic or Non-Profit</td>
<td>@ $325</td>
<td>$</td>
</tr>
<tr>
<td>First-Time Attendee</td>
<td>@ $325</td>
<td>$</td>
</tr>
<tr>
<td>Spouse/Guest(s)</td>
<td>@ $175</td>
<td>$</td>
</tr>
<tr>
<td>Children (12–18)</td>
<td>@ $75</td>
<td>$</td>
</tr>
</tbody>
</table>

**Social Events:**

- Tuesday Welcome Reception (included in ERR registration fee)
- Wednesday Diversity Reception (included in ERR registration fee)
- Friday Golf Tournament (with ERR) @ $135/player
- Friday Reception and Dinner (included in ERR registration fee)

**Total Enclosed:** $_____________

### Ethics Registration

**Registration Fees:**

<table>
<thead>
<tr>
<th>Registration Fees</th>
<th>Number Attending</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Section Member</td>
<td>@ $295</td>
<td>$</td>
</tr>
<tr>
<td>ABA #</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ABA Member</td>
<td>@ $395</td>
<td>$</td>
</tr>
<tr>
<td>Non-ABA Member</td>
<td>@ $495</td>
<td>$</td>
</tr>
<tr>
<td>Government Agency, Full-Time Academic or Non-Profit</td>
<td>@ $195</td>
<td>$</td>
</tr>
<tr>
<td>Law Student</td>
<td>@ $195</td>
<td>$</td>
</tr>
<tr>
<td>First-Time Attendee</td>
<td>@ $195</td>
<td>$</td>
</tr>
<tr>
<td>Spouse/Guest(s)</td>
<td>@ $125</td>
<td>$</td>
</tr>
<tr>
<td>Children (12–18)</td>
<td>@ $50</td>
<td>$</td>
</tr>
</tbody>
</table>

**Social Events:**

- Thursday Welcome Reception (included in Ethics registration fee)
- Friday Golf Tournament (with ERR) @ $135/player
- Friday Reception and Dinner (included in Ethics registration fee)

**Total Enclosed:** $_____________

* Not a Section of LEL member?

Join online at [www.americanbar.org/join/](http://www.americanbar.org/join/) to register for the meeting at the Section Member rate.