

**AMERICAN BAR ASSOCIATION
SECTION OF LABOR AND EMPLOYMENT LAW**

**ADR IN LABOR AND EMPLOYMENT LAW COMMITTEE
MIDWINTER MEETING
CLEARWATER BEACH, FLORIDA
FEBRUARY 8-11, 2018**

Thursday, February 8

6:00 – 7:30 pm **Welcome Reception at Wyndham Grand Clearwater Beach Resort**

Friday, February 9

7:00 am – 8:00 am **Continental Breakfast**

8:00 am – 8:15 am **Introductory Remarks**

Fredric R. Dichter, *Neutral Co-Chair, Vero Beach, FL*

Raquel Fas Bravo, *Employee Co-Chair, Boynton Beach, FL*

Brenda Pryor, *Union & Employee Co-Chair, Chicago, IL*

James Rosenfeld, *Employer Co-Chair, Detroit, MI*

Don Slesnick, *Chair, ABA Section of Labor and Employment Law, Coral Gables, FL*

Joseph E. Tilson, *Chair-Elect, ABA Section of Labor and Employment Law, Chicago, IL*

8:15 am - 9:15 am **Class Action Waivers: The Courts and the NLRB**

While it has long been the case that courts will enforce arbitration agreements in employment contracts, employees and their advocates seek a new avenue for challenging arbitration agreements – using the NLRA, specifically Section 8(a)(1), which protects employees' concerted activity for mutual aid and protection like union organizing and negotiating a collective bargaining agreement, to attack class action waivers included in employee's arbitration agreements. The Supreme Court in *NLRB v. Murphy Oil* will consider the viability of this strategy, deciding, at some point during the 2017-18 term, whether an employee's waiver of the right to bring a class action violates Section 8(a)(1) of the NLRA. This session will consider the impact of class action waivers contained in employment arbitration agreements and how *Murphy Oil*, depending on its outcome, will affect employers and employees and their ability to bring claims in court and arbitration.

9:15 am – 10:15 am **Class Action Waivers from the Advocates Point of View**

A panel of practitioners will add their perspectives to Professor Cole's presentation.

9:30 am – 11:00 am ***Spouse/Guest Breakfast***

10:15 am - 10:30 am **Break**

10:30 am – 11:30 am **2017 Circuit and Supreme Court Update:
Labor and Employment Law Arbitration Decisions**

A trio of experienced labor, employment, and management attorneys will discuss the mischief created by the Circuit Courts and Supreme Court in the world of arbitration in 2017.

11:30 am - 11:45 am **Government Fellow Report: Equal Employment Opportunity Commission**

Our Committee's EEOC Government Fellow will report on, discuss, and answer questions regarding current trends and initiatives at the EEOC.

11:45 am – 1:00 p.m. Employee Benefits Arbitration Issues

Jointly presented with the Employee Benefits Committee

This panel will explore employee benefits arbitration issues including ERISA class action waivers in arbitration agreements post-*NLRB v. Murphy Oil*, arbitration of ERISA claims and the scope of arbitration in withdrawal liability cases.

6:30 pm – 9:30 pm Reception and Dinner at Wyndham Grand

Saturday, February 10

7:00 am – 8:00 am Continental Breakfast

8:00 am – 9:30 am Designing Innovative Workplace ADR Programs

In the past 20 years, workplace ADR has expanded beyond arbitration and mediation. These days, organizations can design ADR programs to fit their environment and workforce. The best programs conform to the core ADR principles while allowing the maximum opportunity for all parties to freely express their views in resolving their concerns. For example, unhealthy group dynamics affect many more employees than individual disputes. Therefore, resolving negative interactions within groups will have a much bigger impact on organizations. The session will discuss new approaches to workplace conflict, such as assessments (individual, team, and climate), conflict coaching, conflict facilitation, organizational ombudsman, and appreciative inquiry.

9:30 am – 10:30 am When Is an Act So Severe that a Second Chance Is Unwarranted?

Using racial slurs, calling a boss or co-worker a Nazi or other epithet, sexual harassment: Is termination the only recourse for such offenses or should an employee be given a second chance? If so, under what circumstances? Does it make a difference if it is a public employer with notoriety?

10:30 am – 10:45 am Break

10:45 am – 11:45 am Current Developments in Labor and Employment Arbitration

Bloomberg BNA's emeritus arbitration specialist, Kenneth May, will discuss the trends he is seeing in awards submitted for publication to Bloomberg BNA. A panel of practitioners will add their perspectives.

11:45 am – 12:00 noon Government Fellow Report: Federal Labor Relations Authority

Our Committee's Government Fellow will report on, discuss, and answer questions regarding current trends and initiatives at the FLRA.

6:00 p.m. – 9:00 p.m. Optional Activity (*ticketed event*)

Sunday, February 11

7:00 am – 8:00 am Continental Breakfast

8:00 am – 9:00 am Ethical Obligations Regarding Social Media: The Next Legal Frontier

With the rise of social media, ethical concerns have been on the rise as well. What are attorneys and neutrals to do when there has been inadvertent contact with a party or their representative? Is "liking" enough to create a conflict? Given conflicting opinions regarding lawyers' interactions online with opposing parties, potential clients, clients, witnesses and the general public, this panel will discuss the latest ethics rules and developments related to using social media in a legal practice, in litigation and in the negotiations process. After attending this presentation, lawyers will have a better understanding of their ethics obligations regarding social media platforms.

- 9:00 am – 9:15 am** **Government Fellow Report: Federal Mediation and Conciliation Service**
Our Committee's Government Fellow will report on, discuss, and answer questions regarding current trends and initiatives at the FMCS.
- 9:15 am – 10:15 am** **Bringing Mediation Back from the Brink: Effective Approaches to Break Impasse**
The ability and techniques utilized to bring a failing mediation back from the brink depend on many factors. Crucial among others are: level of commitment to achieving a resolution; Counsel's preparation of the parties to have reasonable and realistic expectations; and mediator creativity and tenacity. A panel composed of a mediator, counsel for employers and for individuals working in both union and non-union workforces will explore a myriad of tactics designed to achieve a successful mediation.
- 10:15 am - 10:30 am** **Break**
- 10:30 am - 11:30 am** **Diversity in the Arbitration Field: What Has Been Done and What More Can Be Done?**
Litigants, representatives and arbitration providers, like the American Arbitration Association, CPR and JAMS, express concern about the lack of diversity among arbitrators and worry that this lack of diversity will undermine the integrity of the arbitration process. It is likely that increasing diversity on neutral rosters will improve the public's perception of the fairness and impartiality of the arbitration process. This session will explore arbitrator provider organizations' efforts to improve arbitrator roster diversity as well as improving diversity in arbitration selection. The session also will offer new ideas for improving not only diversity among the arbitrator corps but also diversity in arbitrator selection.
- 11:30 am – 12:00 noon** **Committee Business Meeting**