

**ABA Employment Rights & Responsibilities Committee
and Ethics & Professional Responsibility Committee
Midwinter Meetings
March 20-24, 2018
Clearwater Beach, Florida**

Tuesday, March 20

6:00 – 7:00 p.m. **Welcome Reception at Wyndham Grand Clearwater Beach Resort (*Pelican/Heron*)**

Wednesday, March 21

8:00 – 9:30 a.m. **Continental Breakfast (*Dunes Foyer*)**

8:00 – 9:00 a.m. **ERR Subcommittee Co-Chair Meeting (*Dunes I-II*)**

8:00 – 9:30 a.m. **Corporate Counsel Caucus (*Osprey Boardroom*)**

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 issues. 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.

9:00 – 10:00 a.m. **Genetics, Complicity or Bad Luck:
Is there Workplace “Lifestyle” Discrimination? If So, Is it Illegal? (*Dunes III-V*)**

Presented by the Disabilities and Leaves of Absence Subcommittee

The answer may be more complicated than you think. This panel will examine obesity and “lifestyle” conditions that give rise to actual or perceived disability claims. Panelists will discuss current case law along with the interplay of GINA, mandatory and voluntary employer wellness programs, and the EEOC’s wellness rules to provide an overview of this important and developing area of the law.

Moderator: **Hon. Stephanie M. Jones, *Federal Agency, Knoxville, TN***

Speakers: **Wynter P. Allen, *Alden Law Group, PLLC, Washington, DC***
Alisa B. Arnoff, *Scalambrino & Arnoff, LLP, Chicago, IL*
Cheryl D. Jackson, *State Farm Mutual Automobile Insurance Co., Bloomington, IL*
Daniel B. Kohrman, *AARP Foundation Litigation, Washington, DC*

10:00 – 11:00 a.m. **Political Action in the Non-Union Workplace:
Employment at Will vs. the National Labor Relations Act**

Presented by the Employment at Will Subcommittee

The 2016 presidential election and other politically charged events have prompted employees to express political views at work, on social media and in protests outside the workplace. As a result, at-will employers face questions about protections these workers may have under state and federal laws. This panel will examine these questions in the context of the employment-at-will doctrine and the right to concerted activity under the NLRA, including when and how non-union employees might legally implement a strike. In particular, panelists will discuss when terminating at-will employees could run afoul of the NLRA, anti-discrimination laws or even WARN.

Moderator: **John F. Beasley, Jr., *JF Beasley LLC, Watkinsville, GA***

Speakers: **Kenneth Baren**, *Kia Motors Corporation, West Point, GA*
David S. Cohen, *National Labor Relations Board, Tampa, FL*
Vanessa M. Kelly, *Clark Hill PLC, Princeton, NJ*
Jennifer Kroll, *Martin & Bonnett PLLC, Phoenix, AZ*

11:00 – 11:15 a.m. **Break** (*Dunes Foyer*)

11:15 – 12:15 p.m. **What We Know about President Trump and Immigration: The Impact on Labor and Employment Lawyers**
Whether you advise individuals, employers or unions, you will want to attend this review of all Executive Orders, regulations and statutes that have affected immigrants and employers since the start of the Trump Administration. Panelists also will discuss I-9 enforcement trends and immigration “raids,” as well as changes in border practices.

Moderator: **Jonathan A. Grode**, *Green and Spiegel LLC, Philadelphia, PA*

Speakers: **Todd P. Photopulos**, *Butler Snow, Memphis, TN*
Meredith Rapkin, *Friends of Farmworkers, Inc., Philadelphia, PA*
Richard Siwica, *Egan, Lev, Lindstrom & Siwica, P.A., Orlando, FL*
Marisa Warren Sternstein, *Dentsu Aegis Network, New York, NY*

12:30 – 1:30 p.m. **First-Time Attendee Luncheon (Pelica/Heron)**
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.

1:45 – 2:00 p.m. **ERR Welcome, Introductions and Section Leadership Report (Dunes III-V)**

Committee Co-Chairs

Daniel L. Bonnett, *Martin & Bonnett PLLC, Phoenix, AZ*
Lori L. Deem, *Outten & Golden LLP, Chicago, IL*
Samantha C. Grant, *Sheppard, Mullin, Richter & Hampton LLP, Los Angeles, CA*
Diane I. Smason, *U.S. Equal Employment Opportunity Commission, Chicago, IL*

Program Co-Chairs

Hon. Stephanie M. Jones, *Federal Agency, Knoxville, TN*
Heather F. Lindsay, *Lindsay & Lindsay, P.A., Milton, FL*
Paul E. Starkman, *Clark Hill PLC, Chicago, IL*
Douglas L. Steele, *Woodley & McGillivray LLP, Washington, DC*
George L. Washington, Jr., *Orange Business Services, Oak Hill, VA*

Administrative Co-Chairs

Gary B. Eidelman, *Saul Ewing Arnstein & Lehr LLP, Baltimore, MD*
Glen D. Savits, *Green Savits LLC, Florham Park, NJ*

2:00 - 3:00 p.m. **Dealing with a Dishonest Party with a Twist: Truth or Consequences**
Presented by the Workplace Investigations Subcommittee
This session will explore best practices for attorney-investigators to ensure an impartial investigation, including the attorney-investigator’s obligation when s/he suspects the client is withholding evidence, misrepresenting facts or otherwise impeding the investigation. Panelists will discuss how courts examine the integrity of investigations, including the concepts of a “fully resourced” investigation under the EEOC’s new mandate; “sham” investigations; investigations that reveal evidence of “pretext”; and legal strategies to ensure an investigation is admissible. The program also will cover best practices for in-house investigators and address allegations of “investigator “bias.”

Moderator: **Sue Ann Van Dermeyden**, *Van Dermeyden Maddux Law Corporation, Sacramento, CA*

Speakers: **Kirsten S. Branigan**, *The Law Office of Kirsten Scheurer Branigan, P.C., Nutley, NJ*
Jeremy Monteiro, *U.S. Department of Justice – Civil Rights Division, Washington, DC*
Jeffrey D. Patton, *Spilman Thomas & Battle, PLLC, Winston-Salem, NC*
George L. Washington, Jr., *Orange Business Services, Oak Hill, VA*

3:00 – 4:15 p.m.

**Working and Managing Effectively in a Multi-Generational Workforce:
Talking 'Bout My Generation**

Presented by the Diversity and Inclusion Taskforce (DOIT)

In today's legal practice, it is common that lawyers' ages range from 20s-70s (i.e., Traditionalists, Baby Boomers, Generation Xers and Millennials/Generation Yers). This panel will discuss the complicated issues that arise among these different age groups – specifically, how these generations have different viewpoints regarding diversity and inclusion. The panel also will offer best practices and guidance on how to effectively manage our respective workplaces and advise our clients.

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

Speakers: **Myra McKenzie-Harris**, *Walmart Legal, Bentonville, AR*
Lauren Stiller Rikleen, *Rikleen Institute for Strategic Leadership, Wayland, MA*
Darnley D. Stewart, *Outten & Golden LLP, New York, NY*
Julie A. Totten, *Orrick, Herrington & Sutcliffe LLP, Sacramento, CA*

4:15 – 4:30 p.m.

Break (*Dunes Foyer*)

4:30 – 5:30 p.m.

**Judicial Perspectives on Current Ethics and Labor and Employment Topics:
Views from the Bench While at the Beach**

Courts across the country grapple with challenging and cutting-edge labor and employment and ethics questions every day. Our panel of distinguished judges, who have years of experience hearing labor and employment and ethics cases, will share their unique perspectives on current issues in our practice area and provide their takeaways and tips.

Moderator: **Gary B. Eidelman**, *Saul Ewing Arnstein & Lehr LLP, Baltimore, MD*

Speakers: **Hon. Virginia M. Hernandez Covington**, *U.S. District Court for the Middle District of Florida, Tampa, FL*
Hon. Andrew J. Peck (ret.), *U.S. District Court for the Southern District of New York, New York, NY*
Hon. Yvette D. Roland, *The State Bar Court of California, Los Angeles, CA*

6:00 – 7:00 p.m.

ERR Subcommittee Reception (*Pelican/Heron*)

For those having a hard time deciding which ERR subcommittee to join, the Membership Committee will present the Subcommittee Reception. 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 reception:

The Case Law Firm, LLC
Green and Spiegel LLC
Green Savits LLC
Hardwick Benfer LLC
Hyderally and Associates P.C.

Law Office of Kirsten Scheurer Branigan, P.C.
O'Malley & Madden, P.C.
Pollins Law Firm
Scott Dukes & Geisler P.C.
Woodley & McGillivary, LLP

7:00 – 9:00 p.m.

Diversity and Inclusion Reception (*Pool Deck*)

We thank the following firms for their generous contributions in support of this reception:

Borden Ladner Gervais LLP
Clark Hill PLC
Laner Muchin, Ltd.
Little Mendelson P.C.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Outten & Golden LLP
Saul Ewing Arnstein & Lehr LLP
Sheppard, Mullin, Richter & Hampton LLP
Spilman Thomas & Battle PLLC
Van Dermydn Maddux Law Corporation

Thursday, March 22

7:30 – 9:00 a.m. **Breakfast (*Dunes Foyer*)**

8:00 – 9:00 a.m. ***Breakfast Roundtable:**

Cultural Interaction in the Global Workplace: It's a Small World After All (*Dunes I-II*)

Presented by the International Subcommittee

Cultural interaction at work is on the rise as employees move across borders more frequently and use technology to collaborate with co-workers in various countries. This roundtable discussion will examine workplace issues that arise from this interaction, including culture-based discrimination and cultural rules and policies. Panelists also will discuss laws, cases and trends in their jurisdiction that are implicated in these situations and practices that promote the integration of expatriated or seconded employees.

Moderator: **Kevin D. MacNeill**, *Norton Rose Fulbright LLP, Ottawa, ON*

Speakers: **Esther Martin**, *CM Murray LLP, London, United Kingdom*
Gabriel Ortiz-Aguilar, *Baker & McKenzie Abogados, S.C., Mexico City, Mexico*
Maricaroline Sinet, *Jeantet & Associés, Paris, France*

CONCURRENT PROGRAMS

9:00 – 10:00 a.m. **Whistleblowing Across America: The Interplay Between State and Federal Law (*Dunes IV-V*)**

Presented by the Whistleblower Subcommittee

In recent years, several states have enacted new whistleblower protection laws or strengthened existing statutes. This panel will provide an overview of recent developments in state whistleblower protections for public and private sector employees and discuss the interplay between federal whistleblower protection laws and state common law wrongful discharge remedies.

Moderator: **Jeffrey S. Heller**, *BP America, Inc., Houston, TX*

Speakers: **Monique Gougisha Doucette**, *Ogletree, Deakins, Nash, Smoak & Stewart, P.C., New Orleans, LA*
R. Scott Oswald, *The Employment Law Group, Washington, DC*

9:00 – 10:00 a.m. **Addressing Off Duty Conduct: What Happens in Clearwater Beach . . . Could Get You Fired (*Dunes III*)**

Presented by the Employee Privacy Subcommittee

Employers create and enforce code of conduct standards in the workplace, but how does that translate when employees are off duty? In many industries, high profile employees and executives may have contractual clauses that restrict the ability to engage in a variety of lawful activities. This panel will focus on employment law issues that may arise from off-duty conduct, including use of alcohol and drugs, social media presence, romantic/sexual relationships, and the extent to which employers can monitor and enforce standards or laws employees are expected to follow outside the workplace.

Moderator: **Stacey A. Campbell**, *Campbell Litigation PC, Denver, CO*

Speakers: **Caryl L. Flannery**, *Centene Corporation, St. Louis, MO*
Caroline Leonard, *National Labor Relations Board, Tampa, FL*
Kathleen O. Sedey, *The Case Firm LLC, Chicago, IL*

10:00 – 10:15 a.m. **Break (*Dunes Foyer*)**

**The Breakfast Roundtables 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.*

CONCURRENT PROGRAMS

10:15 – 11:15 a.m. Executives and Start-Ups: Let’s Make a Deal (*Dunes IV-V*)
Presented by the Contracts and Executive Compensation Subcommittee
This program will focus on executive compensation and contract issues that arise at various phases of a start-up company’s lifecycle, including founding, funding and exit (through acquisition or IPO). Topics include founders providing “sweat equity,” termination language, restrictive covenants, founders involved in side projects, stock buy backs, equity plans, and tax issues (and traps) that influence how equity may be granted and modified as the start-up obtains financing and approaches an acquisition or IPO.

Moderator: **Eric A. Tate**, *Morrison & Foerster LLP, San Francisco, CA*

Speakers: **Melinda C. Burrows**, *Netscout, Westford, MA*
Meredith A. Haviland, *Foley Hoag LLP, Boston, MA*
Amy Shulman, *Broach & Stulberg LLP, New York, NY*

10:15 – 11:15 a.m. The State of Employer-Sponsored Insurance: Guidance for Employers and Employees (*Dunes III*)
Jointly Presented by the Employee Benefits and Insurance Subcommittees
This panel will discuss the current state of employer-sponsored insurance, reflecting on changes enacted or contemplated by the current administration and predicting further changes coming down the road. The panel also will address the potential impact of insurance changes on unionized employers and collective bargaining negotiations.

Moderator: **Erin Sweeney**, *Miller & Chevalier Chartered, Washington, DC*

Speakers: **Bobbie J. Fox**, *CopperPoint Mutual Insurance Company, Phoenix, AZ*
Joel R. Hurt, *Feinstein Doyle Payne & Kravec, LLC, Pittsburgh, PA*
Michael Schionning, *Cheiron, Solana Beach, CA*

CONCURRENT PROGRAMS

11:15 – 12:15 p.m. Applicants and Employers at the Application Stage: Getting the Job and Getting Paid (*Dunes IV-V*)
Presented by the State Law Developments Subcommittee
This panel will explore a number of topics relating to the application process, including criminal background checks, the increasing state and municipal laws barring employers from asking for a candidate’s wage history, the *Rizo v. Yoviny* decision concerning prior salary, and other issues that impact applicants and employers. Panelists will debate the issue of criminal background checks, including how to litigate these types of cases, and discuss the developing case law in this area as well as various “Ban the Box” initiatives and applicable state and local laws.

Moderator: **Jeffrey N. Young**, *Johnson, Webbert & Young, LLP, Augusta, ME*

Speakers: **Eric L. Barnum**, *BakerHostetler, Atlanta, GA*
Sandra Pullman, *Office of the New York State Attorney General, New York, NY*
Bobby Simpson, *General Electric, Louisville, KY*
James C. Zalewski, *Olson Zalewski Wynner LLP, Lincoln, NE*

11:15 – 12:15 p.m. The Legal and Other Challenges to the “Gig Economy” around the Globe: What’s the Score? (*Dunes III*)
Presented by the International Subcommittee
The new age of “app-driven” businesses has challenged fundamental tenets of the employer/employee relationship around the globe and has produced challenges for legislators, regulators, employees, employers and unions. This panel will discuss the status of these challenges in various countries and proposals that attempt to resolve the competing interests of stakeholders. The panel will also address how regulation of these businesses, and of companies using contingent, temporary or zero hours workforces, may be affected by changing political landscapes in the U.S., U.K., E.U. and elsewhere.

Moderator: **Katherine Blostein**, *Outten & Golden LLP, New York, NY*

Speakers: **Paul Callaghan**, *Taylor Wessing LLP, London, United Kingdom*
Randy J. Kaardal, *Hunter Litigation Chambers, Vancouver, BC*
Gerlind Wisskirchen, *CMS Hasche Sigle, Cologne, Germany*

12:30 – 1:30 p.m. **Subcommittee Luncheon (*Dunes I-II*)**
ERR's subcommittees will meet over lunch to plan activities for the next year and their panels for the 2019 Midwinter Meeting in Las Vegas. Newcomers are encouraged to attend! We thank the following for their generous contributions in support of the Subcommittee Luncheon:

Bloomberg Law	The Murray Law Group
Foley Hoag LLP	Polsinelli PC
Employment Practices Group	Proskauer Rose LLP
Greenberg Traurig, LLP	Ritz Clark & Ben-Asher LLP
Lindsay & Lindsay, P.A.	Wilentz, Goldman & Spitzer, P.A.
Martin & Bonnett P.L.L.C.	

3:00 – 5:00 p.m. **Beach Volleyball (*Ocean Hai Patio and Beach*)**
Sponsored by the Membership Committee

6:00 – 7:00 p.m. **Ethics & Professional Responsibility Committee Welcome Reception (*Pelican*)**

7:00 – 10:00 p.m. **Dine-Around**
Meeting registrants and guests are invited to participate in an organized "dine-around" in some of Clearwater Beach's best restaurants. Sign-up sheets will be posted at the ABA Registration Desk.

10:00 p.m. – 12:00 a.m. **Late Night Hospitality Suite (*Pelican/Heron*)**

Friday, March 23

7:30 – 9:00 a.m. **Breakfast (*Dunes Foyer*)**

8:00 – 9:00 a.m. ***Breakfast Roundtable: Gab with the Government (*Dunes I-II*)**
Join a panel of government agency attorneys from the DOL, DOJ, EEOC and NLRB, who will discuss the newest developments and provide the latest updates from their respective agencies. Come prepared to ask questions and learn about matters currently of interest to the federal government in the labor and employment law context. This session is open to all meeting attendees.

Moderator: **Amber Trzinski Fox**, *U.S. Equal Employment Opportunity Commission, Baltimore, MD*

Speakers: **Uche Egemonye**, *U.S. Department of Labor, Atlanta, GA*
Linda M. Mohns, *National Labor Relations Board, Memphis, TN*
Jeremy Monteiro, *U.S. Department of Justice – Civil Rights Division, Washington, DC*
Siri Thanasombat, *U.S. Equal Employment Opportunity Commission, San Francisco, CA*

9:00 – 10:15 a.m. **The Ethics of Engagement Letters and Alternative Fee Arrangements: Beyond the First Date (*Dunes III-V*)**
Jointly Presented by the Ethics Subcommittee and Ethics and Professional Responsibility Committee
What are the ethical considerations when starting a new attorney-client relationship? What should and must be included in the engagement letter? What alternative fee arrangements are permissible under the ethics rules and what type of related documentation is required? This panel will explore these issues and other practical considerations related to moving from the initial consultation to an engagement.

Moderator: **Michelle B. Craig**, *Transcendent Legal, New Orleans, LA*

Speakers: **Hon. Yvette D. Roland**, *The State Bar Court of California, Los Angeles, CA*
Andrew Altschul, *Buchanan Angeli Altschul & Sullivan LLP, Portland, OR*
Sheree Wright, *Vanderbilt University, Nashville, TN*

10:15 – 10:30 a.m. Break (*Dunes Foyer*)

CONCURRENT PROGRAMS

10:30 – 11:30 a.m. **Litigation Issues Involving Staffing Agencies and PEOs:
We're in This Together . . . Or Are We? (*Dunes III-V*)**

Presented by the Contingent Workforce Subcommittee

Panelists will discuss practical strategies for preparing, proving and successfully defeating claims advanced by indirect “hires,” including but not limited to when plaintiffs and defendants should assert claims against staffing agencies and PEOs. The panelists also will provide thoughts and opinions about recent updates in the joint employer arena, including legislative developments at the federal and state level.

Moderator: Michael T. Royal, *Littler Mendelson P.C., Dallas, TX*

Speakers: Hon. J. Michelle Childs, *U.S. District Court for the District of South Carolina, Columbia, SC*
Uche Egemonye, *U.S. Department of Labor, Atlanta, GA*
Devjani Mishra, *Alexion Pharmaceuticals, Inc., New Haven, CT*
Scott Pollins, *Pollins Law, Swarthmore, PA*

10:30 – 11:30 a.m. **Managing Ethics Issues When Your Client is In the Wrong (*Dunes I-II*)**

Presented by the Ethics and Professional Responsibility Committee

A not so insignificant side story to the recent Equifax data leak and Harvey Weinstein sexual harassment/assault allegations has been the advice (or seemingly lack of advice) from some of their attorneys. These are two high-profile examples of a common ethically fraught occurrence: representing a client who is or appears to be in the wrong. While most lawyers instinctively fall back on the concept of the “zealous advocate,” that language, which applied exclusively to litigation, was stripped from the ABA Model Rules of Professional Conduct and most states rules decades ago. In contrast, Model Rule 2.1 actually requires that one “render candid advice,” which may reference not only the law but “other considerations such as moral, economic, social and political factors that may be relevant to the client’s situation.” This panel will discuss the ethical pitfalls in advising wrongdoing clients in high-profile and more common situations such as discovering employees are misclassified or that your client illegally recorded a conversation or took proprietary company documents.

Speakers: Paula J. Frederick, *State Bar of Georgia, Atlanta, GA*
Cara E. Greene, *Outen & Golden, New York, NY*
David D. Powell, *Ogletree Deakins, Denver, CO*

CONCURRENT PROGRAMS

11:30 – 12:45 p.m. **Trial Techniques and Strategies for Litigating Damages (*Dunes III-V*)**

Presented by the Trial and Appellate Advocacy Subcommittee

This program will focus on how to put on evidence demonstrating the damages part of your employment discrimination case. The presentation will include a discussion from practitioners about strategies for addressing damages in the opening statement and closing argument phases of the trial, the types of damages proof that is most compelling to juries, how to prepare your witnesses to discuss damages, and how to construct effective injunctive relief. The panelists also will discuss how to defend against claims of damages, both through discovery and motions *in limine*, as well as how to address the damages caps and whether to bring additional claims or defend against additional claims that are intended to avoid the damages caps.

Moderator: Hon. John A. Henderson, *U.S. Equal Employment Opportunity Commission, Baltimore, MD*

Speakers: Hon. Andrew J. Peck (ret.), *U.S. District Court for the Southern District of New York, New York, NY*
Stephen E. Fox, *Polsinelli PC, Dallas, TX*
Laura Carlin Mattiacci, *Console Mattiacci Law, LLC, Philadelphia, PA*

11:30 – 12:45 p.m. Ethics Issues When Lawyers Are Gig Economy Workers (Dunes I-II)
Presented by the Ethics and Professional Responsibility Committee
The gig economy is defined as “a labor market characterized by the prevalence of short-term contracts or freelance work as opposed to permanent jobs.” Lawyers working the “gig model” as contract attorneys, freelance attorneys, assignment-based attorneys or independent contractors can provide valuable experience for the attorney and provide valuable assistance for the law firm. However, such a relationship can easily run afoul of the fair ethics rules and the Fair Labor Standards Act. This panel will examine the ethics issues that can arise in this type of work relationship, examine recent opinions and cases analyzing these types of arrangements, and provide best practices for lawyers looking to use this model to maintain and/or grow his or her practice.

Speakers: **Stacey A. Campbell**, *Campbell Litigation, Denver, CO*
Michelle B. Craig, *Transcendent Legal, New Orleans, LA*
Navin Jani, *U.S. Department of Labor, Dallas, TX*
Lynlee Wells Palmer, *Harbuck Keith & Holmes, LLC, Birmingham, AL*

12:45 – 1:00 p.m. ERR Committee Business and Feedback Meeting (Dunes III-V)

12:45 – 1:15 p.m. Ethics & Professional Responsibility Committee Business Meeting (Dunes I-II)

1:00 – 5:30 p.m. Golf Tournament at Bardmoor Golf & Tennis Club

7:00 – 10:00 p.m. Reception, Dinner and Dance (Dunes III-V)

Saturday, March 24

7:30 – 8:30 a.m. Breakfast (Dunes Foyer)

CONCURRENT PROGRAMS

8:30 – 9:45 a.m. Title VII and Religion in Our Modern Society: Closely Held Beliefs (Dunes III-V)
Presented by the Statutory Rights Subcommittee
This program will provide a discussion of Title VII (specifically sexual orientation and transgender discrimination) and RFRA, the ministerial exemption, Title VII's co-religionist exemption, and other recent pronouncements from the Executive Branch. Panelists will explain in detail the exemptions and arguments on either side of the issue, including the political movements, as well as state and local laws.

Moderator: **Gail Golman Holtzman**, *Jackson Lewis PC, Tampa, FL*

Speakers: **Hon. J. Michelle Childs**, *U.S. District Court for the District of South Carolina, Columbia, SC*
Donald S. Barth, *Munich Reinsurance America, Inc., Princeton, NJ*
Amber Trzinski Fox, *U.S. Equal Employment Opportunity Commission, Baltimore, MD*
P. David Lopez, *Oутten & Golden LLP, Washington, DC*

8:30 – 9:45 a.m. Examining a Current Client as an Adverse Witness (Dunes I-II)
Presented by the Ethics and Professional Responsibility Committee
Lawyers contemplating cross examining or conducting third party discovery of a current client in an unrelated matter must tackle thorny conflicts of interest issues. ABA Formal Opinion 92-367 squarely addressed this scenario twenty-five years ago. Since then, the relevant ABA Model Rules of Professional Conduct were amended and some state bar ethics committees – Connecticut, California, New York and Texas – have published their own opinions on this issue. Panelists will discuss the ethical duties when an attorney discovers that a key witness in possession of relevant documents is a current client of the attorney in an unrelated lawsuit.

Speakers: **Megan K. Mechak**, *Woodley & McGillivray LLP, Washington, DC*
Scott Pollins, *Pollins Law, Philadelphia, PA*
Michael P. Posner, *Los Angeles, CA*
L. Julius M. Turman, *Constangy, Brooks, Smith & Prophete LLP, San Francisco, CA*

CONCURRENT PROGRAMS

9:45 – 11:00 a.m. **Compelling Issues at the Intersection of Class Actions and Arbitrations:
Be Careful What You Wish For! (*Dunes III-V*)**
Jointly Presented by the Alternatives to Litigation and Complex Litigation Subcommittees
Employers are increasingly seeking to avoid class and collective claims through mandatory arbitration agreements that contain class action waivers. The panel will analyze the (anticipated) Supreme Court decision in *Murphy Oil* on the enforceability of class action waivers and will discuss the practical issues that arise when an employer “wins” on decertification of a class or in enforcing a class waiver and then is “rewarded” with hundreds or thousands of individual cases.

Moderator: **Anna M. Pohl**, *Thomson Reuters – Practical Law, New York, NY*

Speakers: **Reena I. Desai**, *Nichols Kaster, PLLP, Minneapolis, MN*
Patrick J. Lamparello, *Proskauer Rose LLP, New York, NY*
Linda M. Mohns, *National Labor Relations Board, Memphis, TN*

9:45 – 11:00 a.m. **Using Mindfulness to Defuse Contentious Interactions (*Dunes I-II*)**
Presented by the Ethics and Professional Responsibility Committee
Lawyers are faced daily with contentious interactions. While we cannot stop contentious interactions, using mindfulness we can change how we react to another’s drama, often taking negative words or actions personally. Panelists will review what mindfulness is, how it can change the structure and function of the brain in the areas of attention, emotional regulation, and memory, how our thoughts trigger emotions and physical responses, and how we can stop a downward spiral and over reaction to contentious interactions.

Speaker: **Debi Galler**, *Green Street Solar Power, Tallahassee, FL*

11:00 – 11:15 a.m. **Break (*Dunes Foyer*)**

CONCURRENT PROGRAMS

11:15 – 12:30 p.m. **Strategic Use of Forensic Experts in Prosecuting and Defending
Noncompete, Trade Secret and Business Tort Claims (*Dunes III-V*)**
Jointly Presented by the Covenants Not to Compete and Technology Subcommittees
When the business is at stake, or your client’s livelihood is threatened, a forensic expert can help you save the day. In a lively, cutting edge and not-often-dreamed-of panel discussion, practitioners and experts will explore the costs and benefits of using an expert before a case is even filed, or in preparing pleadings, to help uncover and understand electronic breadcrumbs that can lead to a successful outcome. In addition, the panel will explore other pesky ESI questions, such as challenges in accessing, transferring, and ultimately, presenting ESI to a fact-finder in litigation.

Moderator: **Christina H. Bost Seaton**, *FisherBroyles, LLP, New York, NY*

Speakers: **Sonya Richburg**, *Coca-Cola Bottling Co. Consolidated, Charlotte, NC*
Cynthia N. Sass, *Sass Law Firm, Tampa, FL*
Adam Sharp, *E-Hounds, Oldsmar, FL*

11:15 – 12:30 p.m. **The Ethics of Bias and Looking Beyond Our Own Images:
The Lawyer’s Magical Looking Glass (*Dunes I-II*)**
Presented by the Ethics and Professional Responsibility Committee
Practicing as a lawyer and promoting a legal system where decisions are made free of bias is a solid goal of professionalism in lawyering. Confirmation bias is the tendency to selectively consider and give weight to information that confirms one’s beliefs. Bias, albeit unintentional, especially when coupled with skillful lawyering can undermine the legal system, which is founded on fair decision making. Panelists will explore how unintentional bias presents itself and undermines ethics and professionalism in lawyering.

Speakers: **Samantha C. Grant**, *Sheppard, Mullin, Richter & Hampton LLP, Los Angeles, CA*
Christopher Houk, *Gillespie, Shields, Durrant & Goldfarb, Phoenix, AZ*
Brenda Sutton-Wills, *UCLA School of Law, Los Angeles, CA*

We thank the following for their generous contributions
in support of our 2018 Midwinter Meeting:

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