AMERICAN BAR ASSOCIATION
SECTION OF LABOR AND EMPLOYMENT LAW

ADR IN LABOR AND EMPLOYMENT LAW COMMITTEE
MIDWINTER MEETING
CORONADO, CALIFORNIA
FEBRUARY 15-17, 2019

Friday, February 15

6:00 p.m. – 7:30 p.m. Welcome Reception

Saturday, February 16

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

8:00 a.m. – 8:15 a.m. Welcome and Introductory Remarks
Fredric R. Dichter, Neutral Co-Chair, Vero Beach, FL
Wesley G. Kennedy, Union & Employee Co-Chair, Chicago, IL
Raquel Fas Bravo, Employee Co-Chair, Boynton Beach, FL
James S. Rosenfeld, Employer Co-Chair, Detroit, MI
Christopher T. Hexter, Section Chair-Elect, St. Louis, MO
Jon H. Rosen, Section Council Liaison – Union & Employee, Seattle, WA
Susan Grody Ruben, Section Council Liaison – Member-at-Large, Cleveland, OH

8:15 a.m. - 9:30 a.m. Negotiation Ethics
When proficient negotiators interact, they regularly lie to each other. Model Rule 4.1 makes it unethical for lawyers to knowingly misrepresent material fact or law, but Comment 2 indicates that persons have different expectations when they negotiate. They expect “puffing” and “embellishment.” As a result, statements regarding one’s settlement intentions and values do not constitute “material” facts, which exempt such puffing and embellishment. Nonetheless, negotiators may not misrepresent anything else they cover. Scholar-in-Residence Professor Charles B. Craver will provide his views on the ethics of negotiations.

Speaker: Charles B. Craver, Freda Alverson Professor of Law, George Washington University, Washington, DC

9:30 a.m. – 10:30 a.m. Should Harassment Claims be Subject to Arbitration?
The emergence of the #MeToo movement has raised many questions about whether harassment claims should be subject to arbitration. Is arbitration an inappropriate venue for adjudicating harassment claims? Does the arbitral process limit the victims due process rights? How do you balance confidentiality concerns? Panelists will provide their perspectives on these important issues.

Speakers: Raquel Fas Bravo, The Law Office of Raquel Fas Bravo, Boynton Beach, FL
Brenda D. Pryor, Southern Illinois University School of Medicine, Springfield, IL
James S. Rosenfeld, Butzel Long, Detroit, MI

10:30 a.m. - 10:45 a.m. Break
10:45 a.m. – 11:45 a.m.  Litigation, Membership and the Duty of Fair Representation
Has Janus changed the landscape on litigation, membership and DFR? If so how?

Speakers:  
York Chang, California Teachers Association, Los Angeles, CA  
Fredric R. Dichter, Arbitrator, Vero Beach, FL  
Ricardo Ochoa, Ochoa Law, San Diego, CA  
Ellen C. Wu, Dannis Woliver Kelley, Long Beach, CA

11:45 a.m. - 12:00 noon  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.

Speaker:  
Rachael Steenbergh, U.S. Equal Employment Opportunity Commission, Charlotte, NC

12:00 noon – 1:00 p.m.  2018 Circuit and Supreme Court Update: Labor and Employment Law Arbitration Decisions
Panelists will discuss 2018 arbitration decisions in the Circuit Courts and U.S. Supreme Court.

Speakers:  
Rachel Bien, Outten & Golden LLP, New York, NY  
Allison L. Gambill, Brownstein Hyatt Farber Schreck, LLP, Denver, CO  
T. Warren Jackson, Signature Resolution, LLC, Los Angeles, CA  
Richard Siwica, Egan, Lev & Siwica, P.A., Orlando, FL

7:00 p.m. – 9:00 p.m.  Reception and Dinner

Sunday, February 17

7:30 a.m. – 8:30 a.m.  Continental Breakfast

8:30 a.m. – 9:30 a.m.  Class Action Waivers Update: Where Does It Go from Here?
The U.S. Supreme Court’s 2018 decision in Epic Systems Corp. v. Lewis was . . . epic. What have management attorneys and plaintiff attorneys been doing in response? How has the decision changed the landscape for neutrals? Join us for a discussion on where Epic has taken us.

Speakers:  
Alejandro “Alex” Caffarelli, Caffarelli & Associates Ltd., Chicago, IL  
Troy L. Kessler, Shulman Kessler LLP, Melville, NY  
Anthony J. Oncidi, Proskauer Rose LLP, Los Angeles, CA  
Susan Grody Ruben, Arbitrator and Mediator, Cleveland, OH

9:30 a.m. – 10:30 a.m.  Does New Technology Serve the Purposes of Arbitration and Mediation or Not (or Both)?
Panelists will discuss the pros and cons of using cutting edge technology, including electronic submissions and remote hearings, to facilitate the arbitration and mediation process.

Speakers:  
Wesley G. Kennedy, Allison, Slutsky and Kennedy, P.C., Chicago, IL  
Theodore St. Antoine, University of Michigan Law School, Ann Arbor, MI  
Patrick M. Sanders, SmithAmundsen LLC, St. Louis, MO  
Jeanne Charles Wood, Arbitrator and Mediator, Chicago, IL and Fort Lauderdale, FL
10:30 a.m. – 10:45 a.m.  Break

10:45 a.m. – 11:45 a.m.  Current Developments in Labor and Employment Arbitration
Panelists will discuss the current trends in labor and employment arbitration awards as submitted for publication to Bloomberg Law.

Moderator:  S. Douglas Bonney, Arbitrator/Mediator, Kansas City, MO

Speakers:  Danielle Lucido, Engineers and Scientists of California Local 20 IFPTE, Oakland, CA
           Olesja L. Cormney, Toyota Motor North America, Inc., Dallas, TX

11:45 a.m. – 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.

Speaker:  Daniel E. Schiff, Federal Labor Relations Authority, Washington, DC

12:00 noon – 1:00 p.m.  The Impact of Gender on Bargaining Interactions
Professor Charles B. Craver will discuss male and female differences that might affect bargaining interactions, and then consider the impact of gender he has found with respect to student performance on his negotiation course bargaining exercises. While women often do not perform as well as men when they negotiate for themselves, there are generally no differences when men and women negotiate on behalf of other.

Speaker:  Charles B. Craver, Freda Alverson Professor of Law, George Washington University, Washington, DC

1:00 p.m. – 1:15 p.m.  Committee Business Meeting