

AMERICAN BAR ASSOCIATION
SECTION OF LABOR AND EMPLOYMENT LAW

ADR IN LABOR AND EMPLOYMENT LAW COMMITTEE
MIDWINTER MEETING
KEY WEST, FLORIDA
FEBRUARY 15-18, 2009

Program Agenda

Saturday, February 14

6:00 - 7:00 P.M. Welcome Reception for Early Arrivals (*Flagler's Patio*)

The ADR in Labor & Employment Law Committee co-chairs invite you and your guest to an informal early arrivals gathering at the resort. Join us to meet up with friends, new attendees and their guests before you explore the unique restaurants of Key West for your own Saturday evening dinner.

Sunday, February 15

6:00 – 6:30 P.M. First-Time Attendees & Guests ~ Welcome Reception (*Flagler's Patio*)

We invite all first-time attendees and guests to meet the LEL officers and directors, Council liaisons, the Committee's 2009 Scholar in Residence, our Government Fellow and the Committee Co-Chairs and their guests before the Committee welcome reception begins.

6:30 – 8:00 P.M. Welcome Reception for Committee (*Flagler's Patio*)

Please join all members of the Committee, Section officers and directors, Council liaisons, our 2009 Scholar in Residence, Government Fellow and other invited guests for a cocktail reception as we kick off the 33rd Midwinter Meeting of our Committee in sunny Key West, Florida.

Monday, February 16

7:00 – 8:00 A.M. Continental Breakfast/Registration (*Grand Ballroom Patio*)

8:00 – 12:30 P.M. General Session (*Grand Ballroom*)

8:00 – 8:15 A.M. Introductory Remarks

Mark L. Irvings, Neutral Co-Chair, Brookline, MA
Nora L. Macey, Chair- Elect, ABA Section of Labor and Employment Law,
Indianapolis, IN
Patrick Sanders, Employer Co-Chair, St. Louis, MO
Donald Sapir, Employee Co-Chair, White Plains, NY
Michelle Sullivan, Union Co-Chair, Toledo, OH

8:15 – 9:15 A.M. Key Note Presentation by 2009 Scholar-in-Residence Employment Arbitration: Closer Look at the Employment Dispute Resolution Process

Professor Bales will present his thoughts and analysis of the key elements of an employment-related claims arbitration process. Our speaker will focus on the many due process and procedural fairness issues which are among the most troublesome areas in pre-dispute arbitration agreements and the arbitration of statutory claims. Professor Bales will also comment on the key elements necessary in the establishment of employment dispute resolution program which would permit employees to effectively vindicate their statutory rights in the forum of arbitration.

Speaker:

Richard Bales, Professor of Law, Salmon P. Chase College of Law, Northern Kentucky University, Highland Heights, KY

9:00 – 10:30 A.M. Spouse/Partner/Guest Breakfast (*Grand Ballroom Patio*)

9:15 – 10:45 A.M. Expanding Conflicts in a Shrinking Economy: Resolving ERISA/MPPAA/VEBA and Related Pension Issues in Mediation and Arbitration

The recent and continuing downturn in the economy, and the dramatic decline in the value of investments, will result in a flood of arbitrations regarding both pension and health and welfare plans. Our speaker will present an overview of the relevant ERISA and related laws, including a review of Multi-Employer Pension Plan issues and the Pension Protection Act, and our panel will preview and discuss the types of disputes which we will all be involved in resolving in the near future.

Speaker:

Ira F. Jaffe, Esq., Arbitrator-Mediator, Potomac, MD

Panelists:

Jonathan G. Axelrod, Esq., Beins, Axelrod, P.C., Washington, DC
Harry Burton, Esq., Morgan Lewis, Washington, DC

10:45 – 11:00 A.M. Break (*Grand Ballroom Patio*)

11:00 – 12:30 P.M. Lessons Learned from Drug Testing on the World Stage: Understanding and Applying Experience from the Tour De France, 2008 Olympics and Professional Sports to the Workplace

Professor McLaren, a labor management arbitrator in Canada and the U.S. for the past thirty plus years, has been a member of the Court of Arbitration for Sport since 1993 and has served as an on-site arbitrator at the last five Olympic Games. He has adjudicated the drug related charges involved with many famous athletes, including Justin Gatlin, Tyler Hamilton, Floyd Lewis and Marion Jones. Professor McLaren was the only external consultant to Senator George Mitchell for his 2008 report on drugs in baseball. He will review the different testing protocols and dispute resolution procedures employed in these various arenas and compare them with those seen in American workplaces under collective bargaining agreement.

Speaker:

Richard McLaren, Esq., Professor at Western Law; Counsel to McKenzie Lake Lawyers, Arbitrator, Ontario, Canada

Panelists:

Ellen M. Grachek, Cook, Portune & Logothetis, L.P.A., Cincinnati, OH
Robert D. Weisman, Schottenstein Zox & Dunn, Columbus, OH

6:30 – 9:30 P.M. Reception and Dinner at Casa Marina (Grand Ballroom)

Tuesday, February 17

7:00 – 8:00 A.M. Continental Breakfast and Subcommittee and Business Practice Roundtables (Grand Ballroom Patio)

8:00 - 12:45 P.M. General Session (Grand Ballroom)

8:00 – 9:00 A.M. LEL/ADR/NAA: Should there be Joint Involvement in Efforts to Revise or Refine the Protections of the Due Process Protocol?

Efforts to revise, refine or completely replace the 14 year old Due Process Protocol are continuing to gain traction among various interested groups. Professor St. Antoine is a long time member of the LEL/ADR committee and the NAA and recently attended the NAA meeting where the critical issues confronting employment arbitration and due process rights for all participants were discussed in detail. We will receive a first hand briefing on his efforts and from the panel who attended the 2007 NAA meeting on these issues. All will discuss their views on these issues and the role of our committee in the ongoing discussions and revision efforts.

Speaker:

Theodore J. St. Antoine, Professor University of Michigan Law School, Member, National Arbitration Association, Ann Arbor, MI

Panelists:

Bruce Feldacker, Feldacker & Durbin, St. Louis, MO
Mark L. Irvings, Arbitrator/Mediator, Brookline, MA
Patrick M. Sanders, Lathrop & Gage, LC, St. Louis, MO

**9:00 – 10:00 A.M. 2008 Circuit Court Update:
Labor and Employment Arbitration Cases**

Our speaker will review the key court cases from 2008 involving labor and employment arbitration litigation. Kevin McCarthy has been bringing our Committee his annual briefing for many years, and his always lively presentation of the latest, the interesting and the odd will keep all attendees up to date on the latest decisions from the various courts around the country.

Speaker:

Kevin M. McCarthy, McCarthy Smith Law Group, Portage, MI

Panelists:

Stan Gosch, Richard Rosenblatt & Associates, Greenwood Village, CO
Arnold Pedowitz, Pedowitz and Meister, New York City, NY

10:00 – 10:15 A.M. Break (*Grand Ballroom Patio*)

10:15– 11:45 A.M. Mandatory Arbitration of Statutory Discrimination Claims Pursuant to a Collective Bargaining Agreement (CBA) (*Penn. Plaza LLC v. Pyett*)

Pending before the U.S. Supreme Court is *Penn. Plaza LLC v. Pyett*, in which the Court will decide whether an employee's right to bring a lawsuit under ADEA is waived by a clause in a CBA which specifically states that such claims are subject to the arbitration provision of the CBA. Our panel, which includes lawyers who drafted briefs considered by the Supreme Court in this case, will explain why the Court may or may not order that the statutory claims must be submitted to arbitration under a CBA.

Moderator:

Donald L. Sapir, Sapir & Frumkin LLP, White Plains, NY

Panelists:

Kathleen Barnard, Schwerin Campbell Barnard Iglitzin & Lavitt, Seattle, WA
Mark Berger, University of Missouri-Kansas City Law School, Kansas City, MO
Mark Harris, Proskauer Rose LLP, New York, NY
Michelle T. Sullivan, Allotta, Farley & Widman Co., L.P.A., Toledo, OH

11:45 – 12:45 P.M. Ethics Issues in Class Action Arbitrations and Mediations

Class action arbitrations are becoming increasingly prevalent in employment disputes. Besides confronting intricate procedural issues not previously encountered in arbitration, these cases often raise difficult ethical issues for plaintiff and employer counsel, as well as the assigned neutral. Seemingly straightforward issues like incentive or exemplary payments for named plaintiffs and the determination and payment of attorneys' fees and expenses can cause serious ethical dilemmas for all involved. Our speaker and panel will help identify what could be traps for the unwary, and will discuss their experience and suggest alternatives to consider in handling these issues in an effective and ethical manner.

Speaker:

Thomas Doyle, Esq., Saunders & Doyle, Chicago, IL

Panelists:

Mark L. Irvings, Esq., Arbitrator/Mediator, Brookline, MA
Peter W. Zinober, Esq., Greenberg Traurig, LLP, Tampa, FL

Wednesday, February 18

7:00 – 8:00 A.M. Continental Breakfast and Subcommittee and Business Practice Roundtables
(Grand Ballroom Patio)

8:00 – 12:15 P.M. General Session (Grand Ballroom)

8:00 – 8:30 A.M. Government Fellow Report – Current Developments Affecting ADR

Our Committee's Government Fellows will report on, discuss and answer questions regarding the current trends and initiatives in ADR programs at the U.S. Equal Employment Opportunity Commission and the Federal Mediation and Conciliation Service

Speaker:

Shelley E. Kahn, U.S. Equal Employment Opportunity Commission, Washington, DC
Jeannette Walters-Marquez, Federal Mediation and Conciliation Service, Washington, DC

8:30 – 9:30 A.M. Essential Collaborative Technology: The Future Has Arrived (and You Can Do It!)

Find out how collaborative technology helps parties resolve more disputes by *dramatically* improving their ability to make important decisions, solve complex problems and penetrate process barriers. Learn how you can use these tools to better manage people, process, substance, and time.

Speaker:

Michael J. Wolf, National Mediation Board, Washington, DC

9:30 - 9:45 A.M. Break (Grand Ballroom Patio)

9:45 - 10:45 A.M. Current Developments and Discharge Issues in Labor and Employment Arbitration

Mr. May, a senior editor for BNA, will brief us again this year on the key 2008 arbitration cases all labor practitioners and neutrals should be aware of, and he will offer his insight on how these cases may impact our arbitration practices. Mr. May and his panel of experienced advocates and neutrals will discuss their views on the latest cases. Questions and comments from the floor will be encouraged.

Speaker:

Ken May, Bureau of National Affairs, Washington, DC

Panelists:

Frank C. Botta, Eckert & Seamans, Pittsburgh, PA
Emma Leheny, Rothner, Segall, Greenstone & Leheny, Pasadena, CA

10:45 - 11:45 A.M. Arbitration of Class Action Employment Claims and the Due Process Protocol: Where Do We Go from Here?

Commentators have debated the role of arbitration in the resolution of statutory claims within the context of the collectively bargained grievance arbitration for decades. Recent developments including a pending Supreme Court case have sharpened the focus of the debate during the last eighteen months. Professor Bales will also discuss several forward looking issues that could impact the ongoing discussion of the due process protocol. These and other developments will be discussed and Professor Bales will take questions on the implications these issues have for arbitrators and advocates.

Speaker:

Richard Bales, Professor of Law, Salmon P. Chase College of Law, Northern Kentucky University, Highland Heights, KY

11:45 – 12:15 P.M. Committee Business Meeting