

AMERICAN BAR ASSOCIATION
SECTION OF LABOR AND EMPLOYMENT LAW
ADR IN LABOR AND EMPLOYMENT LAW COMMITTEE
2020 MIDWINTER MEETING
Playa del Carmen, Mexico
JANUARY 24-26, 2020

PROGRAM AGENDA

Friday, January 24

6:00 pm – 9:00 pm **Reception and Dinner at Grand Hyatt Playa del Carmen**
Along with Moments of Tribute in Honor and Memory of
Susan Grody Ruben and Charles A. Werner
(Under the Bridge and The Grill Beach Deck)

Saturday, January 25

7:00 am – 8:15 am **Breakfast Buffet (*Citrus Patio*)**

7:15 am – 8:15 am **Breakfast and Basics: Practical Pointers when**
Drafting Settlement Agreements for Workplace Disputes (*Ballroom B*)
Join us for a presentation on practical pointers to consider when drafting settlement agreements for workplace disputes, including standards for determining voluntariness, standards for valid consideration, unenforceability of prospective waivers, which claims can and cannot be released, confidentiality, OWBPA compliance, attorneys' fees and tax issues.

Speaker: **Victor Voloshin, U.S. Equal Employment Opportunity Commission,**
Washington DC

8:15 am – 8:20 am **Introductions: Committee Chairs and Others**
Raquel Fas Bravo, Employee Co-Chair, Lake Worth, FL
Michael Z. Green, Neutral Co-Chair, Fort Worth, TX
Wesley Kennedy, Union & Employee Co-Chair, Chicago, IL
James S. Rosenfeld, Employer Co-Chair, Detroit, MI
Victor Voloshin, Public Co-Chair, Washington, DC

8:20 am – 8:30 am **Report from Section Leadership**
Christopher T. Hexter, Section Chair, St. Louis, MO
Robert M. Goldich, Employer Council Liaison, Philadelphia, PA
Jon H. Rosen, Union/Employee Council Liaison, Seattle, WA

8:30 am – 9:30 am **Implicit Bias and Justice (*Ballroom B*)**
Joint Program with State & Local Government Collective Bargaining &
Employment Law Committee
The session will include information on 1) how our minds operate, 2) the real-world implications of implicit bias, and 3) ways to guard against bias. Recognizing that implicit bias can be a challenging topic, we will begin by establishing an understanding that we are there to have a conversation about how our minds work, not about who is a “good” or “bad” person.

Speaker: **Preshuslee Thompson, Training and Development Specialist, The Ohio State**
University, The Kirwan Institute for the Study of Race and Ethnicity, Columbus, OH

9:30 am – 11:00 am *Spouse/Guest Breakfast (La Cocina)*

9:30 am – 10:30 am **To Three or Not to Three: That is the Question:
The Pros and Cons of Tripartite Arbitration (Ballroom B)**
*Joint Program with State & Local Government Collective Bargaining &
Employment Law Committee*

In both interest and grievance arbitration, a tripartite arbitration panel may be prescribed by either statute or the parties' collective bargaining agreement. Some advocates prefer to waive the requirement, leaving the neutral as the sole member of the arbitration panel, while others are satisfied with the tripartite panel. Panelists will discuss the advantages and disadvantages of tripartite panels.

Moderator: **Barry E. Simon**, *Arbitrator, Arlington Heights, IL*

Speakers: **Gary L. Bailey**, *Illinois Fraternal Order of Police Labor Council,
Western Springs, IL*
Amy Moor Gaylord, *Akerman, Chicago, IL*
Alan Symonette, *Arbitrator, Philadelphia, PA*

10:30 am – 10:45 am **Break (Citrus Patio)**

10:45 am – 11:00 am **Government Fellow Report:
U.S. Equal Employment Opportunity Commission (Ballroom B)**
Our Committee's EEOC Government Fellow will report on, discuss and answer questions regarding current trends and initiatives at the EEOC.

Speaker: **Rachael S. Steenbergh-Tideswell**, *U.S. Equal Employment Opportunity
Commission, Washington DC*

11:00 am – 12:00 pm **2020 Scholar-in-Residence Presentation:
The Media's Impact on the Perceptions of Arbitration (Ballroom B)**
Professor Rafael Gely will present his thoughts and analysis of arbitration discussions in the media. This will build on the origins of the ArbitrationInfo.com project and the importance of educating journalists and the public about arbitration. ArbitrationInfo.com is a joint venture of the National Academy of Arbitrators and the University of Missouri. The site was created as a response to often inaccurate reporting in the media about labor and employment arbitration and Professor Gely acted as the co-editor for the website and participated in its design, implementation and ongoing maintenance.

Speaker: **Rafael Gely**, *University of Missouri School of Law, James E. Campbell Missouri
Endowed Professor of Law and Director of the Center for the Study of Dispute
Resolution, Columbus, MO*

*We acknowledge the generous support by the National Academy of Arbitrators
Research Education Foundation (NAAREF) of the Scholar-in-Residence program.*

12:00 pm – 1:00 pm **ADR Remedies for Outside World (Social Media, #MeToo, Violence)
Impacts on the Workplace (Ballroom B)**

Panelists will comment on Professor Rafael Gely's presentation and, along with Professor Gely, explore the impact of the outside world on the workplace. The panel will consider Section 7 of the NLRA, anti-discrimination/retaliation laws, workplace safety and issues of proof in examining various ADR avenues to address these issues.

Speakers: Alex Caffarelli, *Caffarelli & Associates, Chicago, IL*
Marcia Greenbaum, *Arbitrator, Essex, MA*
Wesley Kennedy, *Allison, Slutsky & Kennedy, Chicago, IL*
James Rosenfeld, *Butzel Long, Detroit, MI*

6:00 pm – 7:00 pm **Sunset Reception (*Presidential Suite*)**

7:00 pm – 9:00 pm **Dinner at Madre Tierra (*optional ticketed event*)**

Sunday, January 26

7:30 am – 8:30 am **Breakfast Buffet (*Citrus Patio*)**

7:30 am – 8:30 am **Breakfast and Basics:
A Closer Look at the EEOC's Dispute Resolution Program (*Ballroom A*)**
Speakers will discuss the EEOC ADR programs and the role employee and management representatives play in resolving EEO allegations.

Speakers: Tawny Alvarez, *Verrill Dana, LLP, Boston, MA*
Jennifer Ortiz Prather, *U.S. Equal Employment Opportunity Commission,
Dallas, TX*
Jennifer Platzkere Snyder, *Dilworth Paxson LLP, Philadelphia, PA*
Rachael S. Steenbergh-Tideswell, *U.S. Equal Employment Opportunity
Commission, Washington DC*

8:30 am – 9:30 am **Current Developments in Labor and Employment Arbitrations (*Ballroom A*)**
Panelist will discuss the current trends in labor and employment arbitrations awards as submitted for publication to Bloomberg Law.

Moderator: Emily Martin, *Washington State Public Employment Relations, Kirkland, WA*

Speakers: Vanessa Bullock, *Federal Mediation and Conciliation Service, Philadelphia, PA*
David Hughes, *Jackson Lewis, P.C., Atlanta, GA*
Jon H. Rosen, *The Rosen Law Firm, Seattle, WA*

9:30 am – 10:30 am **The Trump National Labor Relations Board's Impact on Labor Arbitration (*Ballroom A*)**
A panel of union, management and neutral representatives will reflect on the potential impact on labor arbitration of recent developments in the NLRB's treatment of collective bargaining agreements (Waiver of Right to Bargain, Employer Rules, Deferral, etc.).

Speakers: Dean Burrell, *Burrell Dispute Resolution, Morristown, NJ*
Wesley Kennedy, *Allison, Slutsky & Kennedy, Chicago, IL*
Theodora R. Lee, *Little Mendelson PC, Walnut Creek, CA*
Mark Gaston Pearce, *Workers' Rights Institute, Georgetown Law School,
Washington, DC*

10:30 am – 10:45 am **Break (*Citrus Patio*)**

**10:45 am – 11:45 am 2019 Circuit and Supreme Court Update:
Labor and Employment Law Arbitration Decisions (Ballroom A)**
Panelists will discuss the mischief created by the Circuit Courts and Supreme Court in the world of arbitration in 2019 including *Lamps Plus Inc. v. Varela*, *Henry Schein v. Archer and White Sales* and *New Prime Inc. v. Olivera*.

Speakers: **Raquel Fas Bravo**, *The Law Office of Raquel Fas Bravo, Lake Worth, FL*
Allison Gambill, *Brownstein Hyatt Farber Schreck, LLP., Denver, CO*
Michael Z. Green, *Texas A&M University School of Law, Fort Worth, TX*
Richard Siwica, *Egan, Lev & Siwica, P.A., Orlando, FL*

**11:45 am – 12:45 pm 2020 Scholar-in-Residence Presentation:
Ethics Issues in Resolving Labor and Employment Disputes
through ADR in the Cannabis Industry (Ballroom A)**
Professor Rafael Gely will present his thoughts and analysis of the ethical challenges facing dispute resolution professionals when resolving disputes involving individuals and companies in the cannabis industry. Because the industry's product is still illegal at the federal level, the parties are increasingly pursuing ADR as an employment dispute resolution tool instead of the uncertainty of using the courts to resolve disputes. As a result, arbitrators and mediators face ethical challenges in resolving questions of illegality presented in these disputes.

Speaker: **Rafael Gely**, *University of Missouri School of Law, James E. Campbell Missouri Endowed Professor of Law and Director of the Center for the Study of Dispute Resolution, Columbus, MO*

12:45 pm – 1:00 pm Committee Business Meeting (Ballroom A)

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