

**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 D. Pryor, *Union & Employee Co-Chair, Chicago, IL*  
James S. Rosenfeld, *Employer Co-Chair, Detroit, MI*  
Gail Golman Holtzman, *Immediate Past Section Chair, Tampa, FL*  
Gwynne A. Wilcox, *Union & Employee Council Liaison, New York, NY*

**8:15 am - 9:30 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.

**Speaker:**      **Sarah Rudolph Cole**, *John W. Bricker Professor of Law; Director, Program on Dispute Resolution, The Ohio State University – Michael E. Moritz College of Law, Columbus, OH*

**9:30 am – 10:30 am**      **Class Action Waivers from the Advocates Point of View**

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

**Speakers:**      Sarah Rudolph Cole, *John W. Bricker Professor of Law; Director, Program on Dispute Resolution, The Ohio State University – Michael E. Moritz College of Law, Columbus, OH*  
Yvette D. Everhart, *Sass Law Firm, Tampa, FL*  
Wesley G. Kennedy, *Allison, Slutsky and Kennedy, P.C., Chicago, IL*  
Paul A. Salvatore, *Proskauer, New York, NY*

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

**10:30 am - 10:45 am**      **Break**

**10:45 am – 11:45 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.

**Speakers:** Allison L. Gambill, *Campbell Litigation, P.C., Denver, CO*  
Patricia Sigman, *Sigman & Sigman, P.A., Altamonte Springs, FL*  
Richard Siwica, *Egan, Lev & Siwica, P.A., Orlando, FL*

**11:45 am - 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 – 1:15 p.m. 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.

**Speakers:** Vanessa Bullock, *Federal Mediation and Conciliation Service, Philadelphia, PA*  
DeAndra Roaché, *Amtrak Corporation, Washington, DC*  
Victor Voloshin, *U.S. Equal Employment Opportunity Commission, Washington, DC*  
Gwynne A. Wilcox, *Levy Ratner, New York, NY*

**6:00 pm – 9:00 pm Reception and Dinner at Wyndham Grand**

## **Saturday, February 10**

**7:30 am – 8:30 am Continental Breakfast**

**8:30 am – 9:30 am Arbitration: Should Litigators Be Looking for New Jobs?**  
*Jointly Presented with the Employee Benefits Committee*  
This panel will discuss the potential impact of the Supreme Court's pending decision in *Epic Systems v. Lewis* where the Court will address whether the National Labor Relations Act precludes employers from requiring employees to waive their right to class proceedings despite the NLRA's protections for employees engaging in "concerted activities." This panel also will explore the pros and cons of employers adopting mandatory arbitration clauses precluding judicial review of ERISA claims and will discuss recent trends in the arbitration of withdrawal liability disputes.

**Speakers:** Judith P. Broach, *Broach & Stulberg LLP, New York, NY*  
Gregory J. Ossi, *Venable LLP, Tysons Corner, VA*  
Susan Grody Ruben, *Arbitrator and Mediator, Cleveland, OH*

**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?

**Speakers:** Fredric R. Dichter, *Arbitrator, Vero Beach, FL*  
J. Ray Poole, *Constangy, Brooks, Smith & Prophete, LLP, Jacksonville, FL*  
Brenda D. Pryor, *Cook County College Teachers Union, Chicago, IL*

**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.

**Speakers:** Frank C. Botta, *The Lynch Law Group, LLC, Cranberry Township, PA*  
Raquel Fas Bravo, *The Law Office of Raquel Fas Bravo, Boynton Beach, FL*  
Kenneth May, *Washington, DC*  
CM! Winters, *Cook County College Teachers Union, Chicago, IL*

**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.

**Speaker:** Brandon H. Iriye, *Federal Labor Relations Authority, Washington, DC*

## **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.

**Speakers:** Keith D. Greenberg, *Arbitrator and Mediator, North Bethesda, MD*  
Shawndra G. Jones, *Epstein Becker Green, New York, NY*  
Joshua R. Kersey, *Sass Law Firm, Tampa, FL*  
Betzabeth Sanchez, *SEIU Local 32BJ, New York, NY*

**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.

**Speaker:** Michael S. Franczak, *Federal Mediation and Conciliation Service, Independence, OH*

**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 and 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.

**Speakers:** Jon H. Rosen, *The Rosen Law Firm, Seattle, WA*  
James S. Rosenfeld, *Butzel Long, Detroit, MI*  
Alan A. Symonette, *Arbitrator, Philadelphia, PA*

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

**10:30 am - 11:45 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.

**Speaker:** **Sarah Rudolph Cole**, *John W. Bricker Professor of Law; Director, Program on Dispute Resolution, The Ohio State University – Michael E. Moritz College of Law, Columbus, OH*

**11:45 am – 12:00 noon Committee Business Meeting**