



**Labor & Employment Law
Section Chair**

Sharon P. Stiller, Esq.

Abrams, Fensterman,
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Program Co-Chairs

Alyson Mathews, Esq.

Lamb & Barnosky, LLP
Melville

William D. Frumkin, Esq.

Frumkin & Hunter LLP
White Plains

Robert L. Boreanaz, Esq.

Lipsitz Green Scime Cambria LLP
Buffalo

Labor & Employment Law Section

Fall Meeting

The Washington Court Hotel
525 New Jersey Avenue, NW
Washington, DC

September 23–25, 2016



Attendance at this meeting offers up to 8.0
MCLE credit hours in Professional Practice for
Experienced Attorneys only.

IMPORTANT INFORMATION

Under New York's MCLE rule, this program has been approved for a total of **up to 8.0 credit hours** in professional practice for experienced attorneys only. **This is not a transitional program and is NOT suitable for MCLE credit for newly-admitted attorneys because it is not a basic practical skills program.**

MCLE Credit Breakdown by Session:

Plenary I: 1.5 in Professional Practice

Plenary II: 1.5 in Professional Practice

Workshop A: 1.5 in Professional Practice

Workshop B: 1.5 in Professional Practice

Workshop C: 1.5 in Professional Practice

Plenary III: 1.5 in Professional Practice

Plenary IV: 1.0 in Professional Practice

Plenary V: 1.0 in Professional Practice

DISCOUNTS AND SCHOLARSHIPS: New York State Bar Association members and non-members may receive financial aid to attend this program. Under this policy, anyone who requires financial aid may apply in writing, **not later than seven working days prior to the program**, explaining the basis of his/her hardship, and if approved, may receive a discount or scholarship.

Scholarships apply to the educational portion of the program only. For more details, please contact: cteeter@nysba.org or Catheryn Teeter, New York State Bar Association, One Elk Street, Albany, New York 12207. 518-487-5573

ACCOMMODATIONS FOR PERSONS WITH

DISABILITIES: NYSBA welcomes participation by individuals with disabilities. NYSBA is committed to complying with all applicable laws that prohibit discrimination against individuals on the basis of disability in the full and equal enjoyment of its goods, services, programs, activities, facilities, privileges, advantages, or accommodations. To request auxiliary aids or services or if you have any questions regarding accessibility, please contact Catheryn Teeter at New York State Bar Association, One Elk Street, Albany, New York 12207 or cteeter@nysba.org **at least 10 business days prior to the start of the meeting.**

Hotel Information:

Washington Court Hotel

525 New Jersey Avenue, NW

Washington, DC

The Hotel is a five minute walk from Union Station; close to Union Square, the National Mall, the US Capitol Building and DC's trend-setting shopping, dining and nightlife.

Go to: www.nysba.org/LaborFallMtg16 to be directed to the Hotel webpage to book your accommodations online by August 20th.



SCHEDULE OF EVENTS

Friday, September 23

- 11:00 am** **Registration** – Ballroom Foyer
- 11:00 – 12:00 pm** **Lunch** – Box lunches are **provided for registered attorneys only** as part of their meeting fees.
- 12:00 pm** **GENERAL SESSION** – Ballrooms 2 & 3
- Welcome Remarks** **NYSBA Welcome**
Sharon P. Stiller, Esq., Section Chair **Claire P. Gutekunst, Esq., President**
- Introduction to the Program/Announcements**
Alyson Mathews, Esq. and William D. Frumkin, Esq., Program Co-Chairs
- 12:15 – 1:30 pm** **Plenary One: We Can Do It!...But When? From Entry Level to Boardroom, the Riveting Struggle for Equal Pay**
Rosie the Riveter symbolizes a nation coming together to support a foreign war, but she could easily represent something else. Rosie, like most women in the workforce at the time, was paid substantially less than her male counterparts who stayed behind, as well as those who went to fight, even though they were doing the same job. More than seventy years later, the struggle for pay equity and gender parity is ongoing, whether it's an entry level job, a position in the C- Suite, or somewhere in between. This distinguished panel will examine the legal, social and economic ramifications of the gender pay gap, with a focus on solutions including litigation.
- Moderator:** **Wendi S. Lazar, Esq.,** Outten & Golden LLP, New York City
Panelists: **Francis H. Byrd,** Byrd Governance Advisory, Brooklyn
 Zachary Fasman, Esq., Proskauer Rose, LLP, New York City
 Pamela Coukos, Advisor, Workplace Equality Law, Washington, DC
- 1:30 – 1:45 pm** **Coffee/Networking Break**
- 1:45 – 3:00 pm** **Plenary Two: Newton's Laws of Motion and the LGBT Community...What's Next?**
2015 saw both an expansion and contraction of rights in the LGBT Community. Gay marriage is in, but bathroom access is out, and religious freedom laws are proliferating. What is an employer to do? This panel will examine the issue of LGBT Workplace Rights, focusing on the EEOC's effort to expand the meaning of "sex" under Title VII, and the complicated issue of a transgender employee in the workforce.
- Moderator:** **Christopher A. D'Angelo, Esq.,** Michelman & Robinson, LLP, New York City
Panelists: **David Lopez, Esq.,** General Counsel, EEOC, Washington, DC
 Sarah Warbelow, Esq., Legal Director, Human Rights Campaign, Washington, DC
 Phyllis Taylor, Esq., V.P., Legal Services, Consolidated Edison Co. of New York, Inc., New York City
- 3:00 – 3:15 pm** **Coffee/Networking Break**
- 3:15 – 4:30 pm** **CONCURRENT WORKSHOPS (CHOOSE ONE)**
Workshop A: Labor Arbitration – An Overdue Look at Some Controversial Issues in Disciplinary Cases
While just cause hearings are often considered routine, some aspects of the disciplinary case still spark controversy. A panel of arbitrators and advocates will address some of these contested issues, including: the role of employer investigations; last chance agreements and leniency; when an employer may call the grievant as its witness; and counseling memos as predicates for subsequent discipline. The program will conclude with a look at the increasingly popular procedures for expediting disciplinary cases.
- Moderator:** **Jay M. Siegel, Esq.,** Arbitrator & Mediator, Cold Spring
Panelists: **James A. Brown, Esq.,** Arbitrator and Mediator, Brooklyn
 Richard K. Zuckerman, Esq., Lamb & Barnosky LLP, Melville
 Steven M. Klein, Esq., Senior Associate Counsel, CSEA, Inc., Albany

SCHEDULE OF EVENTS

Friday, September 23 *Continued*

3:15 – 4:30 pm **Workshop B: Labor Relations Round-Up**

Not quite a year after breaking new ground in *Browning-Ferris Industries*, the NLRB issued its long-awaited decision in *Miller & Anderson*, allowing bargaining units composed of jointly and solely-employed employees of a single user employer. The workshop also will address recent NLRB rulings on workplace rules (*Whole Foods Markets*), the “perfectly clear” successor doctrine (*Adams & Associates*), withdrawal of recognition in guard units (*Loomis Armored*), the General Counsel’s efforts to seek reconsideration of the *Levitz* doctrine, and an update on the status of litigation over US DOL’s new rule on reporting of “persuader” activity.

Panelists:

Allyson L. Belovin, Esq., Levy Ratner, PC, New York City

Peter D. Conrad, Esq., Proskauer Rose LLP, New York City

Richard F. Griffin, Jr., Esq., General Counsel, National Labor Relations Board, Washington, DC

3:15 – 4:30 pm **Workshop C: Bullying in the Workplace**

Approximately 20 States, including New York, are considering legislation that would curb or ban workplace bullying. The workshop will focus on identifying workplace bullying; how workplace bullying varies from other types of bullying; the harm it can cause to employees’ productivity and morale; how workplace bullying can poison the atmosphere in an office or factory; and measures currently being used to address it.

Moderator:

Geoffrey A. Mort, Esq., Kraus & Zuchlewski LLP, New York City

Panelists:

Robert T. Szyba, Esq., Seyfarth Shaw LLP, New York City

Jose Luis Manjarrez, Esq., New Jersey State Parole, Newark, NJ

Dr. Loreleigh Keashly, Wayne State University, Detroit, MI

Fran Sepler, President, Sepler & Associates, Minneapolis, MN

5:00 – 6:00 pm **MEET & GREET WITH JUSTICE RUTH BADER GINSBURG AT THE SUPREME COURT**

Open to Registered Attorneys Only. Very Limited availability. Sign up early online to ensure admittance. Tickets required. 15 minute walk from Hotel. Directions will be provided.

6:30 pm **Cocktail Hour** – Atrium Ballroom

7:30 pm **Dinner** – Atrium Ballroom

Guest Speaker: CATHY VENTRELL-MONSEES, ESQ., Sr. Counsel, EEOC, Washington, DC

Saturday, September 24

8:00 am **Registration** – Ballroom Foyer

8:00 – 8:40 am **Committees Breakfast Meetings** – Ballroom 1

8:40 am **Remarks & Program Announcements** – Ballroom 2 & 3

Sharon Stiller, Esq., Section Chair

Robert L. Boreanaz, Esq., Program Co-Chair

8:45 – 10:00 am **Plenary III: Accommodating Mental Disabilities**

Not all disability cases are alike. When the individual has a mental health disability, that case will differ, in ways both practical and legal, from cases in which the disability is a bodily impairment. The Panel will examine how symptoms of a mental health disorder, or side effects of medications, can manifest as difficulties interacting with supervisors or co-workers; panic attacks when under deadlines; lateness and absenteeism because of sleep deprivation. The Panel will also discuss, from the employee, employer and neutral perspectives, challenges in the “interactive process” that are particular to a psychiatric disability, such as supervisor and peer discomfort about working with a mentally-ill individual.

Moderator:

Rachel J. Minter, Esq., Law Office of Rachel J. Minter, New York City

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SCHEDULE OF EVENTS

Saturday, September 24 *Continued*

8:45 – 10:00 am **Plenary III: Accommodating Mental Disabilities *Continued***

Panelists: **John A. Beranbaum, Esq.**, Beranbaum Menken LLP, New York City
Laura M. Fant, Esq., Proskauer Rose LLP, New York City
Aaron Konopasky, J.D., Ph.D., ADA/GINA Policy Division, EEOC, Washington, DC

10:00 – 10:10 am **Coffee/Networking Break**

10:10 – 11:00 am **Plenary IV: High Court Round Up**

This panel will highlight and explore the relevant Labor, Employment and Employee Benefit decisions from the U.S. Supreme Court 2015-2016 term.

Moderator: **Robert T. Simmelkjaer, Esq.**, New York City

Panelists: **Louis G. Santangelo, Esq.**, Citigroup Global Markets, Inc., New York City
Howard Schragin, Esq., Sapir Schragin LLP, White Plains
David Kahne, Esq., Stroock & Stroock & Lavan LLP, New York City

11:00 – 11:10 am **Coffee/Networking Break**

11:10 – 12:00 pm **Plenary V: Big Data Analytics – New Frontier or Veritable Minefield?**

“Big Data” analytics and the corresponding “data mining” may be the new frontiers in employment law. Data analytics and data mining gives employers sophisticated information about applicants and existing employees. Is this an effective new tool to assess predictive employee trends and attributes ... or is it an area fertile for litigants to frame theories of liability? The Panel will explore the new frontier as well as its benefits and pitfalls.

Panelists: **Michael T. Anderson**, Murphy Anderson PLLC, Boston, MA
Kate Bischoff, Esq., Zelle LLP, Minneapolis, MN

1:35 pm *or* 1:55 pm **Optional Event: U.S. CAPITOL TOUR**

Tours at 2:20 pm and 2:40 pm. Attendees must arrive at the Capitol Visitor Center entrance at First St. NE and East Capitol St. at least 45 minutes prior to the selected tour time to go through security. **Preregistration required. Please specify tour time preference when registering.**

2:00 pm **Optional Event: THE NEWSEUM, 555 Pennsylvania Avenue NW**

Dedicated to free expression and the five freedoms of the First Amendment: religion, speech, press, assembly and petition, the museum’s seven levels of interactive exhibits include 15 galleries and 15 theaters. Exhibits include the 9/11 Gallery, the Berlin Wall Gallery, and the Pulitzer Prize Gallery featuring photographs from every Pulitzer Prize-winning entry dating back to 1942. In 2015, TripAdvisor users rated the Newseum as a “Traveler’s Choice Top 25 Museum in the U.S.” **Preregistration required. Tickets: Adults – \$19; Children 7 to 16 – \$13; ages 6 & under, free.**

7:00 – 8:00 pm **Cocktail Reception – Montpelier Room**

8:00 pm **Dinner on Your Own**

Sunday, September 25

8:00–10:00 am **Breakfast – On Your Own**

8:30 – 10:30 am **Labor & Employment Law Section Executive Committee Breakfast Meeting – Ballroom 2 & 3**

12:00 noon **Departure/Check-Out**

THINGS TO DO

Tour the National Monuments and Memorials

Our national monuments are truly spectacular. The best time to see them is at night when they are illuminated, less crowded and parking is easier. During daytime visits, take a tour bus. Listen to informative park ranger talks and you won't have to negotiate congested city traffic.

African American Civil War Memorial and Museum, 1200 U Street NW. A Wall of Honor lists the names of 209,145 United States Colored Troops (USCT) who served in the Civil War. The museum explores the African American struggle for freedom in the United States. Open Monday to Friday, 10 a.m. to 5 p.m., Saturdays, 10 a.m. to 2 p.m.

Arlington National Cemetery, across the Memorial Bridge from D.C. America's largest burial ground with the graves of President John F. Kennedy, Supreme Court Justice Thurgood Marshall, boxer Joe Louis and the Tomb of the Unknowns. Hours are 8 a.m. to 7 p.m. daily.

Franklin Delano Roosevelt Memorial, West Potomac Park near Lincoln Memorial on Ohio Drive SW. Four outdoor galleries, one for each of FDR's terms in office from 1933 to 1945. Hours are 8 a.m. to 11:45 p.m. daily.

Iwo Jima Memorial, Marshall Drive, next to Arlington National Cemetery in Arlington, Virginia. Also known as the United States Marine Corps War Memorial, dedicated to the marines who gave their lives during one of the most historic battles of World War II. Hours are 6 a.m. to midnight daily.

Jefferson Memorial, 15th Street SW. This dome-shaped rotunda honors the nation's third president. The 19-foot bronze statue of Jefferson is located on the Tidal Basin, surrounded by a grove of trees. Hours are 8 a.m. to midnight daily.

Korean War Veterans Memorial, Daniel French Drive and Independence Avenue SW. Our nation honors those who were killed, captured, wounded or remain missing in action during the Korean War (1950 -1953). Nineteen figures represent every ethnic background. A Pool of Remembrance lists the names of the lost Allied Forces. Hours are 8 a.m. to 11:45 p.m.

Lincoln Memorial, 23rd Street between Constitution and Independence Avenues NW. Dedicated in 1922 to honor President Abraham Lincoln. Hours are 8 a.m. to midnight.

Martin Luther King Jr. National Memorial, Tidal Basin. Honors Dr. King's national and international contributions and vision for all to enjoy a life of freedom, opportunity, and justice. Open 24 hours. Guides onsite 9:30 a.m. – 10 p.m. daily.

Pentagon Memorial, I-395 at Boundary Channel Drive. Honors the 184 lives lost in the Pentagon and on American Airlines Flight 77 during the terrorist attacks on September 11, 2001. Open 24 hours a day.

U. S. Holocaust Memorial Museum, 100 Raoul Wallenberg Place SW. The museum serves as a memorial to the millions of people who were murdered during the Holocaust. Open 10 a.m. to 5:20 p.m. daily. Reserve same-day passes online (www.ushmm.org) or pick up onsite at Museum day of visit.

Vietnam Veterans Memorial, Constitution Ave. and Henry Bacon Drive NW. A V-shaped granite wall is inscribed with the names of the 58,209 Americans missing or killed in the Vietnam War. Hours are 8 a.m. to 11:45 p.m.

Washington Monument, Constitution Ave. and 15th St. NW. The memorial to George Washington, took 40 years to complete its original construction due to lack of funds, but was finally dedicated in 1885. Take the elevator to the top and see a wonderful view of the city. For free tickets, go to the kiosk on the Washington Monument grounds at 15th Street and Madison Drive. Hours are 9 a.m. to 4:45 p.m. daily. Advance tickets are available for a \$1.50 service fee.

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Additional Things to do not located on The Mall or surrounding the Tidal Basin

WalkingTownDC Tours 2016: September 17-25

Grab your walking shoes and get ready for Washington, DC's best FREE public tour program featuring more than 50 guided walking tours in neighborhoods throughout the District. This popular annual event introduces visitors to the art, culture, and history of Washington, DC through a series of "bite-size" lunchtime tours, after-work "happy hour" tours, and longer weekend tours. Tours are led by historians, licensed tour guides, community leaders and business owners, enthusiasts and docents, who all donate their time and expertise for this annual festival. **All tours require reservations and are free and open to the public.** For additional information, visit: www.culturaltourismdc.org/portal/walkingtown-dc1

The Phillips Collection, 1600 21st Street, NW. America's first Museum of Modern Art. Opened to the public in 1921 in the Dupont Circle neighborhood. Paintings by Renoir, Rothko, Bonnard, O'Keeffe, Van Gogh and Diebenkorn are among the many stunning impressionist and modern works that fill the museum. The collection continues to develop with selective new acquisitions, many by contemporary artists. Open Tuesday - Sunday; 10 am to 5 pm. www.phillipscollection.org

National Zoo, Rock Creek Park, Washington, D.C. Part of the Smithsonian Institution with more than 435 different species of animals. The Zoo's Conservation and Research Center, located in Front Royal, Virginia, is a breeding preserve for rare and endangered species.

THINGS TO DO

In Washington, D.C., you will enjoy access to fascinating, FREE attractions and historic sights. Touch a moon rock, marvel at the Hope Diamond, view Dorothy's Ruby Red slippers or explore Native American culture at the Smithsonian Institution's fifteen Washington, D.C. area facilities. Discover treasures like the Gutenberg Bible at the Library of Congress, the only da Vinci painting in North America at the National Gallery of Art and historic documents like the Declaration of Independence at the National Archives.

Library of Congress, Thomas Jefferson Building, 10 First Street SE. America's oldest national cultural institution, 216 years old, the library has become the largest repository of recorded knowledge in the world and a symbol of the vital connection between knowledge and democracy. Thomas Jefferson's personal library is the core of the library, and the vast range of his interest determined the universal and diverse nature of the Library's collections and activities. Open Monday – Saturday, 8:30 am – 5:00 pm.

Smithsonian Institution Building (The Castle)

1000 Jefferson Drive SW. This historic building is a good place to start your tour of the museums. The Smithsonian Info. Center is here and you can find a map and schedule of events.

Smithsonian National Air & Space Museum

7th and Independence Ave. SW. The largest collection of air and spacecraft in the world as well as smaller items like instruments, memorabilia, and clothing. There are IMAX films and planetarium shows several times a day.

Smithsonian Hirshhorn Museum and Sculpture Garden

Independence Ave. and 7th St. SW. The Smithsonian's museum of modern and contemporary art includes arts of traditional historical themes and collections addressing emotion, abstraction, politics, process, religion, and economics.

Smithsonian Freer Gallery

1050 Independence Ave. SW. World-renowned collection of art from China, Japan, Korea, South and Southeast Asia, and the Near East. Paintings, ceramics, manuscripts, and sculptures. The Eugene and Agnes E. Meyer Auditorium provides free programs relating to the collections of the Freer and Sackler galleries, including performances of Asian music and dance, films, lectures, chamber music, and dramatic presentations.

Smithsonian Sackler Gallery

1050 Independence Ave. SW. Connected underground to the Freer Gallery of Art. The Sackler collection includes Chinese bronzes, jades, paintings and lacquerware, ancient Near Eastern ceramics and metalware and sculpture from Asia.

Smithsonian National Museum of African Art

950 Independence Ave. SW. Ancient as well as contemporary works from Africa. Special events, storytelling, demonstrations and children's programs.

Smithsonian Institution National Museum of Natural History

10th St. and Constitution Ave. NW. Family favorite museum – 80-foot dinosaur skeleton, life size model of a blue whale, an enormous prehistoric white shark, and a 45-and-a-half carat jewel known as the Hope Diamond. The Discovery Room is a great hands-on display for young children.

Smithsonian American History Museum

12th to 14th Sts. NW. More than 3 million artifacts of American history and culture, from the War of Independence to the present day including the Star-Spangled Banner. New galleries such as the Jerome and Dorothy Lemelson Hall of Invention, presenting "Invention at Play," join old favorites including "The American Presidency: A Glorious Burden" and "America on the Move."

Smithsonian National Museum of the American Indian

4th St. and Independence Ave. SW. Showcases Native American objects from ancient pre-Columbian civilizations through the 21st century. Multimedia presentations, live performances and hands-on demonstrations bring the Native American people's history and culture to life.

The White House, 1600 Pennsylvania Avenue. Tour requests must be submitted through your Member of Congress. These self-guided tours are available 7:30 a.m. to 1:30 p.m. Fridays and Saturdays. Tour hours may be extended when possible based on the official White House schedule. Tours are on a first come, first served basis. Requests can be submitted up to three months in advance and no less than 21 days in advance. White House tours are free of charge. (Please note that White House tours may be subject to last minute cancellation.)

Additional free museums located in Washington, D.C., not on the National Mall:

Smithsonian Renwick Gallery

70 9th St. NW. The building was the original site of the Corcoran Gallery and is furnished with American crafts and contemporary arts from the 19th to 21st centuries. The museum features unique works of art in an impressive setting across the street from the White House.

National Portrait Gallery & Smithsonian American Art Museum

8th and F Streets NW. In the Penn Quarter neighborhood of downtown – The National Portrait Gallery presents six permanent exhibitions of paintings and sculpture to photographs and drawings. *The Smithsonian American Art Museum* houses the largest collection of American art in the world spanning more than three centuries.

Smithsonian National Museum of African American History & Culture – GRAND OPENING SEPTEMBER 24 at 1 PM. SEPTEMBER 25 OPEN 10 AM to 10 PM.

1400 Constitution Avenue, NW. Since 2003, the museum has been collecting items to tell the story of America through the African American lens on topics such as slavery, post-Civil War reconstruction, the Harlem Renaissance, and the civil rights movement. *Special festivities throughout the opening weekend.*



NEW YORK STATE BAR ASSOCIATION
MEETINGS DEPARTMENT

One Elk Street
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