

# Section of Dispute Resolution

Annual Meeting

August 2-5, 2012



Headquarter Hotel: Intercontinental Hotel  
Presidential CLE Center: Hyatt Regency Chicago

## Section Chair

Deborah Masucci

## Meeting Co-Chairs

Teresa Frisbie  
Chicago, IL

David Stone  
Chicago, IL



## Schedule at a Glance

TIME	THURSDAY, AUGUST 2, 2012	LOCATION
8:30am – 10:00am	<i>Achieving Justice through 21st Century Arbitration</i>	Hyatt Regency Chicago
2:00pm – 3:30pm	<i>Myth Busting: Arbitration Perceptions, Realities and Ramifications</i>	Hyatt Regency Chicago
2:00pm – 3:30pm	<i>Foreclosure Dispute Resolution Across the U.S.</i>	Hyatt Regency Chicago
3:45pm – 5:15pm	<i>Recent Developments in Interpretation of Federal and State Arbitration Statutes</i>	Hyatt Regency Chicago
3:45pm – 5:15pm	Approaches to Mediation: Understanding Your Options	Hyatt Regency Chicago
<b>FRIDAY, AUGUST 3, 2012</b>		
8:30am – 10:00am	The Vacating of Arbitration Awards: Fact or Fiction?	Hyatt Regency Chicago
8:30am – 10:00am	<i>What Happens in Collaborative Stays in Collaborative: Thinking Differently About Zealous Representation</i>	Hyatt Regency Chicago
2:00pm – 3:30pm	<i>Practical Applications of Neuroscience in Mediation and Negotiation</i>	Hyatt Regency Chicago
2:00pm – 3:30pm	Rush Limbaugh and a Law Student's Encounter with Incivility: What is the Role of the Legal Profession	Hyatt Regency Chicago
3:45pm – 5:15pm	<i>Expand Your Listening Power: Hear What's Not Being Said to Negotiate More Effectively</i>	Hyatt Regency Chicago
3:45pm – 5:15pm	<i>Is the Grass Greener? - Dealing with Real-World E-discovery Issues in Court and in Arbitration</i>	Hyatt Regency Chicago
6:00pm – 9:30pm	Council Reception and Dinner	
<b>SATURDAY, AUGUST 4, 2012</b>		
7:30am – 8:30am	Executive Committee Meeting	Intercontinental Hotel
7:30am – 8:30am	Ethics Committee Meeting	Intercontinental Hotel
8:00am – 9:00am	Council Breakfast	Intercontinental Hotel
9:00am – 2:00pm	Council Meeting	Intercontinental Hotel
2:00pm – 2:30pm	Annual Meeting of the Members and Council Elections	Intercontinental Hotel
3:00pm – 4:00pm	Advisory Committee Meeting	Intercontinental Hotel
3:00pm – 5:00pm	Long Range Planning Committee Meeting	Intercontinental Hotel
<b>SUNDAY, AUGUST 5, 2012</b>		
8:30am – 10:00am	Arbitration Case Law Update <i>Joint Program with Labor and Employment Law Section</i>	Hyatt Regency Chicago

8:30am – 10:00am

***Achieving Justice through 21st Century Arbitration***

Grand Suite 3, Gold Level, East Tower, Hyatt Regency Chicago

***Co-sponsor: Business Law Section***

The increasing costs, prolonged delays and reduced funding for public courts that plague contemporary civil litigation are denying parties their day in court and make the need for private justice more imperative than ever. A well administered and managed arbitration with a neutral arbitrator and a prompt, efficient and fair hearing is the parties, and perhaps the nation's, best hope for the American legal system to provide full, final and binding civil justice. Nevertheless, the bad press and even demonization of ADR's classic resolution process - commercial arbitration - have gone largely unchallenged in recent years. Too seldom is arbitration praised for being the most cost efficient direct route to a just resolution of a dispute. This panel will examine and opine on this state of affairs, discuss the proper role of "justice" in commercial arbitration proceedings, examine the role of private justice in the origins of arbitration and offer contemporary definitions of "private justice". The panel will also discuss how best to achieve "Private Justice" while avoiding contravention of the US Supreme Court admonition against arbitrators "dispensing their own brand of industrial justice".

**Panelists:**

Reginald A. Holmes, The Holmes Law Firm, Pasadena, CA

Stanley P. Sklar, Dispute Resolution Services, Chicago, IL

Stuart Widman, Miller Shakman & Beem, Chicago, IL

2:00pm – 3:30pm

***Myth Busting: Arbitration Perceptions, Realities and Ramifications***

Grand Suite 3, Gold Level, East Tower, Hyatt Regency Chicago

***Co-sponsors: Business Law Section, International Law Section***

The program will review current perceptions of arbitration through a discussion of the many surveys that have been conducted in recent years as to how users view arbitration and through a user's perspective. The panel will address the accuracy of those perceptions including offering institutional statistics with respect to such perceptions as "arbitrator's split the baby," and the perception that there are increased delays and costs in arbitration today making it less attractive. A focus will also be presented on the significant economic dollar and cents costs caused by the misallocation of resources driven by delays in justice which can be avoided by using arbitration. This analysis will be based on significant economic studies that have been done in connection with the attempt by states to preserve judicial budgets and in connection with the ABA's ongoing Task.

**Panelists:**

Mark C. Morril, Viacom, New York, NY

Richard W. Naimark, American Arbitration Association, New York, NY

Nikolaus Pitkowitz, Graf & Pitkowitz Rechtsanwälte GmbH, Vienna, Austria

Edna Sussman, SussmanADR, New York, NY

Roy Weinstein, Micromonics, Inc., Los Angeles, CA

2:00pm – 3:30pm

***Foreclosure Dispute Resolution Across the U.S.***

Grand Suite 5, Gold Level, East Tower, Hyatt Regency Chicago

Dispute resolution programs that address residential mortgage foreclosures made their appearance four years ago. Since then, over half the states have adopted some type of third-party dispute resolution process to address these difficult matters. Led by two foreclosure dispute resolution system designers active in many states' program development (AZ, CA, DC, GA, HI, IL, ME, MO, NY, OR, UT and WI), this workshop will review the history, development process, and current status of foreclosure dispute resolution programs throughout the U.S. Participants will compare foreclosure dispute resolution challenges to other types of dispute resolution, troubleshoot common foreclosure dispute resolution issues, and discuss best practices that have emerged from recent evaluations of dispute resolution in the foreclosure context.

**Panelists:**

Joshua King, Institute for Advanced Mediation & Problem Solving, Salt Lake City, UT

Heather Scheiwe Kulp, Resolution Systems Institute, Chicago, IL

**3:45pm – 5:15pm**

***Recent Developments in Interpretation of Federal and State Arbitration Statutes***

Grand Suite 5, Gold Level, East Tower, Hyatt Regency Chicago

Over the course of the last several terms, the United States Supreme Court has decided three significant matters under the Federal Arbitration Act which some commentators have come to refer to as the Third Supreme Court Arbitration Trilogy: *Stolt-Nielsen v. Animal Feed*, *Rent-A-Center West v. Jackson*, and *AT&T Mobility LLC v. Concepcion*. Both individually and collectively these cases broadly expanded both concepts of federal preemption and the status of the Federal Arbitration Act as federal substantive law. However, not all courts have followed the cases rigidly. While many courts have adhered to the Supreme Court's directives others have narrowed the interpretation of these cases, developed alternative theories of determining the unconscionability of particular arbitration provisions and have set up a potential conflict between these decisions and the so-called Vindication of Rights Doctrine which recognizes that certain collective actions are essential in order for parties to fully vindicate their rights. The panel will explore the impact of these decisions and the counterbalancing decisions that are beginning to emerge from the lower courts, will discuss the impact of these decisions on the arbitration process, and the future of class arbitration and related matters.

**Panelists:**

Hiro Aragaki, Loyola Law School, Los Angeles, CA

Terry Moritz, Goldberg Kohn Ltd., Chicago, IL

Eric Tuchmann, American Arbitration Association, New York, NY

**3:45pm – 5:15pm**

***Approaches to Mediation: Understanding Your Options***

Grand Suite 3, Gold Level, East Tower, Hyatt Regency Chicago

Transformative, facilitative, hybrid/pragmatic. Mediations can be conducted using a variety of approaches. In this interactive session, we will start with brief explanations of each approach presented by three experienced mediators. These mediators will then demonstrate each approach in a mediation simulation. Participants have an opportunity to actually see how the approaches are used and consider the application to their clients' needs. At the end of the presentation, the mediators will answer questions from the audience to deepen their understanding.

**Panelists:**

Ann Battenfield, Clarity Performance Alliance, Chicago, IL

Andrea Becker, Oak Park, IL

Jillisa Brittan, U.S. Court of Appeals for the Seventh Circuit, Chicago, IL

Morgan McGough, Highland Park, IL

Jill S. Tanz, Chicago Mediation LLC, Chicago, IL

**Friday, August 3, 2012**

**8:30am – 10:00am**

***The Vacating of Arbitration Awards: Fact or Fiction?***

Grand Suite 3, Gold Level, East Tower, Hyatt Regency Chicago

With what frequency do courts actually vacate arbitration awards? Does it ever happen? Join two JAMS arbitrators for an expert analysis of this subject. Topics to be discussed include the grounds for vacating an award under the Federal Arbitration Act and companion state laws; if the subject matter of your case is a factor and if certain courts are more receptive to vacatur actions than others.

**Panelists:**

Hon. Wayne R. Anderson, JAMS, Chicago, IL

Hon. Julia M. Nowicki, JAMS, Chicago, IL

**8:30am – 10:00am**

***What Happens in Collaborative Stays in Collaborative: Thinking Differently About Zealous Representation***

Grand Suite 5, Gold Level, East Tower, Hyatt Regency Chicago

The success of the Collaborative Process depends on the degree of openness, trust, and cooperation among the attorneys, clients and other professionals involved. This special relationship expands the attorney's understanding of "zealous representation" to include the recognition of not just "winning" at trial, but promoting solutions that meet the broader needs and interests of his or her client. This workshop will allow attendees to consider the various elements of the Collaborative Process such as the commitment not to litigate and how they impact the special relationship among the professionals. Attendees will enhance their understanding of the power of the Collaborative process by observing practitioners confront a problem together, and they will have an opportunity to participate and to ask questions of the panelists.

**Panelists:**

Brigitte Bell, Brigitte Schmidt Bell, P.C./Brigitte Bell Mediation, Ltd., Evanston, IL  
Rita Ghose, Brigitte Schmidt Bell, P.C./Brigitte Bell Mediation, Ltd., Evanston, IL  
Stanley Majka, Brigitte Schmidt Bell, P.C./Brigitte Bell Mediation, Ltd., Evanston, IL

**2:00pm – 3:30pm**

***Practical Applications of Neuroscience in Mediation and Negotiation***

Grand Suite 3, Gold Level, East Tower, Hyatt Regency Chicago

Can we use recent developments in neuroscience in a practical way in mediation and negotiation? What can neuroscience tell us about existing common practices in mediation and negotiation? What are neuroscientists learning about empathy? This is an introductory look at some of the ways mediators and negotiators may be able to use these principles in practice.

**Panelists:**

Teresa F. Frisbie, Loyola University of Chicago School of Law, Chicago, IL  
David Stone, Stone Vastine Group, Chicago, IL

**2:00pm – 3:30pm**

***Rush Limbaugh and a Law Student's Encounter with Incivility: What is the Role of the Legal Profession***

Grand Suite 5, Gold Level, East Tower, Hyatt Regency Chicago

***Co-sponsors: Law Student Division, Antitrust Law Section, General Practice, Solo and Small Firm Division***

Georgetown law graduate Sandra Fluke learned firsthand that civility is currently in short supply. She will reflect on her experience on the national stage along with a panel discussion that will address the role of civility in the legal profession and the ethical obligations of attorneys. Judge Bauer will offer a judicial perspective on the current status of civility in the justice system and the legal profession. Professor Alfini will discuss whether legal education can do more to help law students develop a professional identity that includes inclinations towards civility and collegiality. Ms. Refo will offer perspectives from the practicing bar, and Mr. Shipp will consider how ethical obligations related to civility might be handled through the disciplinary system. The panel will generally be considering how the legal profession can be doing more to promote civility within the practice of law and in public discourse. **This is a complimentary CLE program.**

**Panelists:**

James Alfini, Professor and Dean Emeritus, South Texas College of Law  
Judge William Bauer, formerly Chief Judge of the United States Court of Appeals for the 7<sup>th</sup> Circuit  
Sandra Fluke, Georgetown University Law Center Graduate  
Patricia Refo, Snell & Wilmer, LLP and past chair of the ABA Section of Litigation  
Gene Shipp, Bar Counsel, Office of Bar Counsel, The District of Columbia Bar

Moderator: Bruce E. Meyerson, Past Chair, ABA Section of Dispute Resolution and Board member, National Institute for Civil Discourse

**3:45pm – 5:15pm**

***Expand Your Listening Power: Hear What's Not Being Said to Negotiate More Effectively***

Grand Suite 5, Gold Level, East Tower, Hyatt Regency Chicago

How do you know how effective your listening skills are? This experiential workshop explores different ways to listen beyond just proving the elements of your case. You will learn how to listen for what's not being said and identify underlying needs and interests for more successful resolutions. Gain more client trust, build your credibility and have more satisfying outcomes with less stress.

**Panelists:**

Trinnie Houghton, Rippleeffect Consulting, LLC, Concord, NH  
Scott Seagren, Compassionate Response to Conflict, LLC, Barrington, IL

**3:45pm – 5:15pm**

***Is the Grass Greener? - Dealing with Real-World E-discovery Issues in Court and in Arbitration***

Grand Suite 3, Gold Level, East Tower, Hyatt Regency Chicago

Do arbitrators and judges look differently at e-discovery? Two business trial lawyers will argue opposite sides of a series of real-world vignettes dealing with principles of cooperation and proportionality, preservation and spoliation, clawbacks, sanctions and e-discovery outside the United States. A federal judge and an arbitrator will rule as if the dispute arises in a lawsuit or arbitration. We will explore how different dispute resolution forums approach emerging e-discovery issues.

**Panelists:**

William E. Hartgering, JAMS, Chicago, IL  
Arthur J. Howe, Schopf & Weiss, Chicago, IL  
Scott T. Schutte, Morgan, Lewis & Bockius, Chicago, IL

**6:00pm – 9:30pm**

***Council Reception & Dinner***

Fraterna Grill and Topolobampo, 445 North Clark Street, Chicago, IL 60654

## Saturday, August 4, 2012

**7:30am – 8:30am**

**Executive Committee Meeting**

Michigan Room, Upper 5<sup>th</sup> Floor, InterContinental

**7:30am – 8:30am**

**Ethics Committee Meeting**

Illinois, Upper 5<sup>th</sup> Floor, InterContinental

**8:00am – 9:00am**

**Council Breakfast**

Empire Ballroom, 7<sup>th</sup> Floor, InterContinental

**9:00am – 2:00pm**

**Council Meeting**

Empire Ballroom, 7<sup>th</sup> Floor, InterContinental

**2:00pm – 2:30pm**

**Annual Meeting of the Members and Council Elections**

Empire Ballroom, 7<sup>th</sup> Floor, InterContinental

**3:00pm – 4:00pm**

**Advisory Committee Meeting**

Michigan Room, Upper 5<sup>th</sup> Floor, InterContinental

**3:00pm - 5:00pm**

**Long Range Planning Committee Meeting**

Illinois, Upper 5<sup>th</sup> Floor, InterContinental

**Sunday, August 5, 2012**

**8:30am – 10:00am**

**Where will the Pendulum Stop on Arbitration? ADR and Arbitration Case Law Update**

Gold Room, 2nd Level, Fairmont

**Primary Sponsor:** Section of Labor & Employment Law

## **Additional Annual Meeting Resources**

For more information, visit <http://new.abanet.org/annual/pages/default.aspx>

To register online, visit <http://www.americanbar.org/calendar/annual.html>