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Scope and Purpose: Increasingly, the courts are grappling with sometimes arcane issues regarding whether or not a pre-dispute arbitration agreement is enforceable. Increasingly employment disputes are being arbitrated. Two experts in employment arbitration, one the author of "Arbitration of Employment Disputes" text and the other an advocate for employees rights with respect to arbitration and an adjunct professor teaching arbitration, will discuss the gatekeeping issues as well as actual "nuts and bolts" of arbitration practice.

Among the topics that they will discuss will be:

- Bans on class and collective actions
- Limitations on damages/preclusion of punitive damages
- Awards of attorneys' fees
- Shortened statutes of limitations
- Discovery
- The handbook dilemma - can the employer have its cake and eat it too?
- AAA employment rules in practice
- Forum fees -- who pays?
- Scope of judicial review after Hall Street Associates
- Proposed federal legislation banning pre-dispute arbitration of employment disputes
- Arbitration cases excepted by the Supreme Court for review next term, including whether Alexander v. Gardner-Denver remains good law

Course Planners

Robert B. Fitzpatrick, Robert B. Fitzpatrick, PLLC, Washington, D.C.

Frank C. Morris, Jr., Epstein, Becker & Green, P.C., Washington, D.C.

Faculty

John Vail, Vice President and Senior Litigation Counsel, Center for Constitutional Litigation, PC, Washington, DC

Daniel P. O'Meara, Montgomery McCracken Walker & Rhoads, LLP, Berwyn, PA
PROGRAM (All Times EDT)

12:00 noon  Arbitration of Employment Disputes: Emerging Issues– Panel discussion

Questions and Answers

2:00 p.m.  Adjournment

* Questions and Answers will be integrated into the program. Questions are welcome in advance of and during the seminar by e-mail to TSQuestions@ali-aba.org (Subject line: Faculty question) and by fax to (215) 243-1608.

Total 60-minute hours of instruction: 2.0; Total 50-minute hours: 2.4

Suggested Prerequisite: Limited experience in legal practice in subject matter.

Educational Objective: Development of proficiency in performance of intricate and complex legal tasks within a narrow area, provision of information on recent legal developments; maintenance of professional competence as a practitioner.

Level of Instruction: Intermediate
ALI-ABA Course of Study
Arbitration of Employment Disputes: Emerging Issues

September 23, 2008
Telephone Seminar/Audio Webcast

PLANNING CHAIRS

Robert B. Fitzpatrick, Esquire
Robert B. Fitzpatrick, PLLC
1825 Connecticut Avenue N.W. Suite 640
Washington, DC 20009

Frank C. Morris, Jr., Esquire
Epstein Becker & Green, PC
1227 25th Street N.W.
Suite 700
Washington, DC 20037-1156

FACULTY

Daniel P. O'Meara, Esquire
Montgomery, McCracken, Walker & Rhoads, LLP
1235 Westlakes Drive
Suite 200
Berwyn, PA 19312-2413

John Vail, Esquire
Center for Constitutional Litigation
1050 31st Street N.W.
Washington, DC 20007-4405
Robert B. Fitzpatrick
Robert B. Fitzpatrick, PLLC
Washington, D.C.

Robert Brian Fitzpatrick is the principal in the law firm of Robert B. Fitzpatrick, PLLC in Washington, D.C. where he represents clients in employment law and employee benefits matters. Mr. Fitzpatrick has concentrated his practice in employment law disputes for over thirty-five years and has been described by the National Law Journal as being among the top employment lawyers in the country and by Washingtonian Magazine as "tops in employment law" in the Washington, D.C. area. He was also included in the 2006 edition of The Best Lawyers in America.

Mr. Fitzpatrick is an active member of the American Bar Association (ABA) and the District of Columbia Bar, being a frequent speaker at Bar meetings and a participant in the activities of several sections of the ABA and the D.C. Bar. He has been Co-Chairman of the ABA's Committee on Individual Employee Rights and Responsibilities of the Labor and Employment Law Section; Co-Chairman of the Steering Committee of the Labor Relations Section of the D.C. Bar; Chairman and founder of the D.C. Bar's Committee on Individual Employee Rights and Responsibilities; Chairman of the Federal Bar Association's Labor Law and Labor Relations Section; Chairman of the FBA's Committee on Equal Employment Opportunity; and Chair of the Employer-Employee Relations Committee of the Torts and Insurance Practice Section of the ABA. He has been a member of the Class Action Task Force of the Torts & Insurance Practice Section of the ABA and served as a member of the Long Range Planning Committee of ABA's Torts and Insurance Practice Section from 1993 to 1996. He is an active member of the Section of Dispute Resolution of the ABA and of the International Employment Law Committee of the International Law & Practice Section of the ABA. He has been the Chair of the Alternative Dispute Resolution Committee of the ABA's Section of Individual Rights and Responsibilities.
FRANK C. MORRIS, JR. is a member of the firm in the Litigation practice and heads the Labor and Employment practice in the Washington, D.C. office, and is the co-chair of the firm's Disability Law Group.

Mr. Morris' experience includes:

- Advising clients on and litigating employment, labor, disabilities, non-compete, confidentiality, benefits, information access and privacy law, wage and hour and general litigation matters in the state and federal courts and administrative agencies
- Representing and advising clients, including Audit Committees, in Sarbanes-Oxley and other whistleblower litigation and conducting investigations
- Representing clients in negotiations, arbitrations and mediations
- Mediations - serving as a mediator in various disputes
- Successfully trying various jury and bench trials, including particular expertise in handling expert witnesses and class and collective action litigation
- Electronic platform, Internet, Wireless and E-mail policy and litigation
- Representing builders, owners, managers, architects and lenders in fair housing, fair credit, and ADA matters
- Litigating Supreme Court and Court of Appeals cases raising issues under Title VII, the ADEA, ERISA, Executive Order 11246, the National Labor Relations Act, the Freedom of Information Act, the Privacy Act, the ADA and the Rehabilitation Act.

After law school, Mr. Morris joined the National Labor Relations Board in Washington, D.C., in the appellate branch of the Division of Enforcement Litigation, and handled cases in all of the United States Courts of Appeals as well as NLRB Supreme Court matters. He later entered private practice in Washington, representing private and public employers in EEO, disability, labor and general litigation matters. He also served as counsel for an employer's group, the Equal Employment Advisory Council.

Mr. Morris writes, speaks and teaches regularly on various litigation topics. He is regularly asked to share his trial expertise in various ALI-ABA programs and in the annual Georgetown University Employment Law and Litigation Update. Mr. Morris recently joined ten Federal judges on the faculty for a Georgetown-sponsored program "Litigating Employment Cases: Views from the Bench." He also co-chaired the ALI-ABA Video Law Review "How to Present and Challenge Experts: Persuading the Jury."

Mr. Morris authored the book Current Trends in the Use (and Misuse) of Statistics in Employment Discrimination Litigation, as well as articles on disability, equal employment, Sarbanes-Oxley, benefits and labor topics for journals, including Employee Relations Law Journal, The National Law Journal and The Practical Litigator. He co-
chaired the Federal Judicial Center and the American Law Institute-American Bar Association Video Law Review Program on the ADA, which included over 150 federal judges among the participants. He also co-chairs the annual ALI-ABA course "Current Developments in Employment Law," 1994-present, where among other topics, he presents the Electric Platform, ADA and FMLA updates and analysis. He co-chairs ALI-ABA's new and acclaimed monthly teleseminar/webinar series on current employment law and litigation topics. He is a member of the Editorial Advisory Boards of National Disability Law Reporter (LRP Publications) and the Corporate Counsel's Guide to the Americans with Disabilities Act (Business Laws, Inc.). He has addressed the trial and appellate judges of the Judicial Conferences for the Third, Fourth, Sixth, Seventh, Eighth and Eleventh Circuits on disability law and developments under the ADA and employment law.

Mr. Morris has been an adjunct professor of law since 1984 at George Washington University Law School where he teaches Discrimination Law and Claims and Litigation. He also served as a faculty member of the Cornell University of New York State School of Industrial and Labor Relations EEO Studies Program, as well as a frequent lecturer on equal employment, disabilities law, benefits, Sarbanes-Oxley and whistleblower issues, affirmative action, family and medical leave, labor relations, ADR and litigation topics for various associations, business, educational, and other groups.

Daniel P. O'Meara
Montgomery McCracken Walker & Rhoads, LLP
Berwyn, PA

Experience:

Daniel P. O'Meara is a partner and vice chair of the Montgomery, McCracken, Walker & Rhoads, LLP Labor and Employment Department. He has been a practicing attorney for nearly twenty years, with extensive experience in employment litigation, labor relations and preventive human resource practices. Mr. O'Meara has successfully tried cases to a conclusion in state and federal courts, and in arbitration. He served for a time as the sole in-house employment counsel at a Fortune 200 company.

Mr. O'Meara is the Managing Director of the Wharton School Council on Employee Relations and is a Senior Fellow of the Wharton School Center for Human Resources. His book, Protecting the Growing Number of Older Workers: the Age Discrimination in Employment Act (University of Pennsylvania) was reviewed in one national magazine as "a masterful work" and "both readable and informative," and has been cited in publications such as the Harvard Law Review. Mr. O'Meara is also the author of a 1000+ page book, O'Meara, Employment Arbitration (LexisNexis 2008) which has been described in national magazines as "timely," "balanced," and "a comprehensive review and discussion of the totality of employment arbitration law" and cited in a landmark judicial opinion.
Mr. O'Meara has been consulted by and featured as an employment law expert on television programs such as NBC News Dateline, MSNBC, and the Oprah Winfrey Show. He has been quoted on employment law topics in publications such as the Wall Street Journal and USA Today. He has written articles for a variety of publications, including HR Magazine and HR Professional.

Mr. O'Meara has substantial experience in matters involving trade secrets, noncompete agreements, and the employee duty of loyalty. He has written and spoken extensively on these subjects, and in a two-year period, obtained over 60 injunctions for employers in courts around the country. Mr. O'Meara is the chair of the firm's Trade Secret and Noncompete Litigation practice group.

Bar Associations:

Mr. O'Meara is the Chair of the American Bar Association Section of Litigation Subcommittee on Trade Secrets and Noncompetes.

Admitted to Practice:

Mr. O'Meara is a member of the bar of the Supreme Court of Pennsylvania. He is admitted to practice before the Supreme Court of the United States, U.S. Court of Appeals for the Third Circuit, the U.S. District Courts for the Eastern and Middle and Western Districts of Pennsylvania, and the Northern District of Illinois.

Education:

Mr. O'Meara received his Bachelor's Degree in Labor Studies, with honors, from Penn State. He went on to earn an MBA in Human Resource Management from the Wharton School of the University of Pennsylvania, and JD from the University of Pennsylvania Law School. He was a member of the University of Pennsylvania Law Review.

Services:
Labor & Employment, Trade Secret and Noncompete Litigation

Industries:
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State Admissions:
Pennsylvania

Office:
Berwyn, PA

Law School:
University of Pennsylvania Law School

Undergraduate School:
Penn State University
Graduate School:
The Wharton School of the University of Pennsylvania

John Vail, Vice President and Senior Litigation Counsel
Center for Constitutional Litigation, PC
Washington, DC

John Vail is Vice President and Senior Litigation Counsel with the Center for Constitutional Litigation in Washington, DC. He has focused his work solely on access to justice issues since 1997, representing clients in numerous state supreme courts and in the Supreme Court of the United States. His legal theories and articles have been used widely to keep open the doors to America’s courtrooms. Mr. Vail spent seventeen years doing legal aid work, concentrating in major litigation to advance rights. He has been recognized by the legal services community for “inspired vision and outstanding leadership” and received the Public Justice Achievement Award from the Trial Lawyers for Public Justice. Mr. Vail is a graduate of the University of Chicago and Vanderbilt Law School.