



**Reining In Retaliation &
Winning Whistleblower Cases**
Hilton Boston Back Bay Hotel
Boston, MA
April 8–9, 2016

PROGRAM

Wi-fi Access Information

Network: AVMS-Meetings
Username: NELA16
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FRIDAY, APRIL 8, 2016

7:30–9:00 a.m.	Registration & Continental Breakfast	Belvidere/Westminster Pre-Function
8:45–9:00 a.m.	Welcome & Opening Remarks <i>Alicia K. Haynes, NELA President & Matthew C. Koski, NELA Program Director</i>	Belvidere A & B
9:00–10:30 a.m.	Recent Developments & Current Trends In Retaliation Law <i>Speakers: Lisa J. Banks, Robert S. Mantell & Jordan A. Thomas</i> The U.S. Supreme Court decisions in <i>Burlington Northern v. White</i> and <i>Thompson v. North American Stainless</i> adopted less restrictive requirements for what potentially constitutes an “adverse action” and who qualifies as a protected person for purposes of applying the anti-retaliation provisions of Title VII. Those encouraging decisions were tempered by the Court’s 2013 ruling in <i>University of Texas Southwestern Medical Center v. Nassar</i> , which held that retaliation claims must satisfy a higher causation standard than discrimination claims brought under Title VII. In addition to reviewing the effects that <i>Nassar</i> has had on the success of retaliation claims in the years since it was decided, our panelists will provide an overview of recent developments in retaliation law and discuss other emerging trends, such as the implications of recent rulings in the Fourth, Fifth, and Sixth Circuit Courts of Appeals rejecting the so-called “H.R. manager exception/exemption.” They will also examine ways in which both new and existing whistleblower protection programs may be leveraged to help advocates more effectively pursue traditional retaliation claims on behalf of their clients, and vice versa.	Belvidere A & B
10:30–10:45 a.m.	Break	Belvidere/Westminster Pre-Function
10:45–11:45 a.m.	Overview Of Whistleblower Protection Laws <i>Speakers: Thad M. Guyer & Richard R. Renner</i> The universe of available whistleblower protection laws is more expansive than many practitioners may realize. Our panelists will summarize the programs that are available under various federal statutes, review industry-specific whistleblower protection provisions, and provide advice on how to select the one(s) that best fit the needs of your client.	Belvidere A & B
11:45 a.m.–12:00 p.m.	Box Lunch Pick-Up	Belvidere/Westminster Pre-Function
12:00–1:00 p.m.	Roundtable Luncheon Discussions Faculty and participants will have an opportunity to discuss and share practice tips, strategies, and experiences on topics presented at the seminar. Seating will be on a first-come, first-served basis.	Maverick A & B
1:15–2:30 p.m.	Concurrent Sessions	
	Representing Corporate Whistleblowers <i>Speaker/Moderator: Carla D. Brown</i> <i>Speakers: Lynne Bernabei & Jason M. Zuckerman</i> Exposing corporate malfeasance can have far-reaching positive effects within specific industries and in American society more generally. This panel will review the mechanisms that are available to ensure that even the largest, most resourceful private corporations cannot act unlawfully with impunity. Our panelists will also discuss key issues related to negotiating and drafting settlement agreements on behalf of corporate whistleblowers, and, in light of the Securities and Exchange Commission’s successful enforcement action against KBR, Inc., provide tips on how to advise and represent potential whistleblowers who have signed agreements that may include unlawful restrictions on those employees’ ability to report corporate wrongdoing.	Belvidere A

Retaliation In The Electronic Age**Belvidere B***Moderator: Matthew C. Koski**Speakers: Charles A. Lamberton & Marni Willenson*

Various types of emerging technology, including social media in all of its forms, have become integral to the way that many of our clients, their co-workers, and supervisors communicate both inside and outside the workplace. Social media and other forms of electronic communication can be a powerful organizing tool, but their use may open employees up to retaliatory actions. Understanding the depth, breadth, and nature of a client's or potential client's online presence at as early a stage as possible is vital to representing them effectively. Among other topics, our panelists will review the standards for determining which forms of online communication could also qualify as protected activity, which types and forms of electronic communication should be avoided, and what to be on the lookout for in terms of defense tactics designed to turn your clients' online activity against them.

2:30–2:45 p.m.**Break****Belvidere/Westminster Pre-Function****2:45–4:00 p.m.****Representing Employees In ADA & FMLA Retaliation Cases****Belvidere A & B***Moderator: Subhashini Bollini**Speakers: Brian East & Brooke Timmer*

Our panelists will discuss the unique legal framework that applies when one is representing employees who have faced retaliation for exercising their rights under the Americans with Disabilities Act (ADA) and/or Family and Medical Leave Act (FMLA). The presentation will include a review of the differences between interference, failure to accommodate, and retaliation claims. It will also focus on some of the particular legal and factual roadblocks that may arise in these types of cases, such as the requirement for employers to alter performance goals so that employees taking leave are not set up to fail, and the ways in which the types of claims being brought affects the scope of available remedies.

4:00–5:15 p.m.**Protecting Low-Wage Immigrant, Migrant & Guestworkers From Retaliation****Belvidere A & B***Moderator/Speaker: Meredith Stewart**Speakers: Dawson Morton & Christopher Willett*

Low-wage immigrant, migrant, and guestworkers represent a large and highly vulnerable sector of the American workforce. These workers are particularly vulnerable to workplace exploitation, and are also uniquely susceptible to particularly devastating forms of retaliation if they raise complaints about their unlawful treatment. The threat of deportation to an undocumented worker or the loss of a guestworker's employment authorization, in addition to the risk of being blacklisted by other employers in an industry, are powerful deterrents to asserting one's rights. Our panelists will describe the practical and legal challenges involved in litigating these types of cases and share the lessons they have learned from recent victories, such as the \$14 million verdict in favor of a group of Indian guestworkers in *David v. Signal International*. They will also review other actions currently proceeding on behalf low-wage immigrant, migrant, and guestworkers, and suggest ways in which employee rights advocates can get involved and support ongoing efforts to raise awareness of the problems faced by such workers, and help seek justice for them.

5:30–7:00 p.m.**Reception****Fenway Room***Co-sponsored by The Employee Rights Advocacy Institute For Law & Policy.***SATURDAY, APRIL 9, 2016****7:30–9:00 a.m.****Registration & Continental Breakfast****Belvidere/Westminster Pre-Function****9:00–10:30 a.m.****Meet The Agency Enforcers****Belvidere A & B***Moderator: Alicia K. Haynes**Speakers: The Honorable P. David Lopez, Michael Mabey & Adam Miles*

As retaliation and whistleblower claims continue to represent a large and growing portion of charges filed with the government, a robust enforcement program led by the relevant federal agencies is vital to the success of our anti-retaliation and whistleblower protections. This panel will feature some of our most active, progressive agency leaders whose efforts to enforce anti-retaliation and whistleblower protection laws are essential to ensuring that employees do not have to sacrifice their livelihoods when they stand up to expose unlawful discrimination, waste, corruption, and abuse. In addition to reviewing current trends and challenges in agency enforcement of anti-retaliation and whistleblower laws, our panelists will identify ways in which federal agencies and the private employee rights bar can work together to maximize the effectiveness of these worker protections.

10:30–10:45 a.m.**Break****Belvidere/Westminster Pre-Function**

10:45 a.m.–12:00 p.m.	Combatting Retaliatory Counterclaims & Countersuits <i>Speakers:</i> Ellen J. Messing & Jason M. Zuckerman Whether rooted in overly broad confidentiality agreements, or undertaken in response to our clients engaging in informal discovery to support their claims, the prospect of facing even frivolous counterclaims can have a serious chilling effect on employees who are otherwise willing to stand up to unlawful activity in the workplace. Our panelists will review the current lay of the land in this dynamic area of the law, describe the types of cases in which the risk of counterclaims is particularly high, and suggest best practices for both avoiding (to the extent possible) retaliatory counterclaims and responding to them in the event they are brought against our clients.	Belvidere A & B
12:00–1:15 p.m.	Lunch (On Your Own) <i>Lunch is on your own – why not invite another participant to dine with you? You can share information, review the morning sessions, and make lasting connections with your colleagues.</i>	
1:15–2:30 p.m.	Successful Strategies For Mediating Retaliation Claims <i>Moderator:</i> Paula Greisen <i>Speakers:</i> Loretta T. Attardo & Michael J. Leech Federal court dockets remain heavily impacted, and as fewer cases are resolved at trial, more courts are encouraging early mediation and other forms of alternative dispute resolution. In appropriate circumstances mediation can be an efficient method for resolving retaliation claims. Drawing on their experiences as both advocates and neutral mediators, our panelists will identify the types of cases that best lend themselves to being resolved through mediation, and share best practices for working productively with both your client and the mediator before, during, and after mediation.	Belvidere A & B
2:30–2:45 p.m.	Break	Belvidere/Westminster Pre-Function
2:45–4:00 p.m.	Concurrent Sessions	
	Working With Current Employees To Perfect Your Case <i>Speakers:</i> Charles E. Guerrier & Mark A. Kleiman Representing workers who are still employed by the defendant employer presents a unique set of legal and practical challenges, but also offers opportunities for the advocate that is prepared. Too often our clients must choose between standing up for their or their co-workers' rights and keeping their job. This panel will help you understand and successfully navigate the legal minefield that exists when one is representing a plaintiff who is still working for the offending employer.	Belvidere A
	Representing Federal Employees In Retaliation & Whistleblower Cases <i>Moderator:</i> Susan E. Jewell <i>Speakers:</i> Gary M. Gilbert & Cathy A. Harris Facing down the government on behalf of workers who have challenged discrimination, fraud, waste, and/or abuse can be a daunting task. Our panelists will provide an overview of the resources available to federal employees who have been retaliated against for reporting unlawful behavior, and share what they have learned from their experiences representing these workers in both the courts and before administrative agencies, such as the Equal Employment Opportunity Commission, the Merit Systems Protection Board, and the Office of Special Counsel.	Belvidere B
4:00–4:15 p.m.	Break	Belvidere/Westminster Pre-Function
4:15–5:30 p.m.	Charting A Successful Course In Retaliation And Whistleblower Cases <i>Moderator/Speaker:</i> Elizabeth A. Rodgers <i>Speakers:</i> Jeffrey A. Newman & Emma Quinn-Judge Panelists will address traps for the unwary, and opportunities tailor made for retaliation juries. On the <i>qui tam</i> side, Jeffrey Newman will address retaliation claims under the False Claims Act and the tactical decisions facing claimants, including unique requirements when the case is partially "owned" by Uncle Sam and the claimant. For example, what the claimant cannot say, even when still employed and questioned by company counsel. In addition, he will discuss decision making on the issue of whether state employment claims should be pursued at the same time as the <i>qui tam</i> action, and sticky issues such as which documents from the employer an employee may legally render to <i>qui tam</i> counsel to support the action. On the individual side, Elizabeth Rodgers and Emma Quinn Judge will undertake a sophisticated exploration of why courts, juries, and the public tend to be more receptive to retaliation claims than other employment claims, and propose what we can learn from the higher success rates of retaliation cases that will help us be more effective advocates in all of our cases.	Belvidere A & B

Program subject to change without notice.