

PROGRAM

Wi-Fi Access Information

Network: Marriott Conference
Passcode: NELA2016

FRIDAY, OCTOBER 14, 2016

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|-------------------------|---|-------------------------------|
| 7:30–9:00 a.m. | Registration & Continental Breakfast | Covington Pre-Function |
| 8:45–9:00 a.m. | Welcome & Opening Remarks
<i>Alicia K. Haynes, NELA President; Matthew C. Koski, NELA Program Director; and the Ohio Employment Lawyers Association</i> | Covington III |
| 9:00–10:15 a.m. | Developing A Discovery Plan For Defeating Summary Judgment
<i>Speakers: Sandra L. Blevins & Heather Newsom Leonard</i>
Organizing a comprehensive discovery plan as early as possible in the case and carefully implementing it is essential to overcoming a motion for summary judgment. Our panelists will provide a roadmap to bring with you to the Rule 16 conference that will help you acquire the factual support you need to get your client's claims before a jury, as well as advice on how to navigate past the roadblocks that defendants commonly erect during discovery. | Covington III |
| 10:15–10:30 a.m. | Break | Covington Pre-Function |
| 10:30–11:45 a.m. | Winning The Framing Fight At Summary Judgment:
Pretexts, Motivating Factors & Convincing Mosaics
<i>Moderator/Speaker: Matthew C. Koski</i>
<i>Speakers: Amanda A. Farahany, Rebecca L. Salawdeh & Professor Sandra F. Sperino</i>
A big part of prevailing at summary judgment involves effectively aligning the applicable evidentiary framework with the particular facts of your case. Despite the U.S. Supreme Court's ruling in <i>Desert Palace v. Costa</i> , many courts continue to use the direct/indirect evidence framework and apply <i>McDonnell-Douglas</i> as a matter of course at summary judgment. In some recent cases, however, other courts have expressed doubts about the utility of <i>McDonnell-Douglas</i> , and instead have shifted their focus—more properly—to the employer's burdens. Our panelists will discuss the strengths and weaknesses of these different frameworks and suggest strategies for getting the court to accept the framing that is most advantageous to your client. | Covington III |
| 12:00–1:15 p.m. | Luncheon with Keynote Address By The Honorable Kevin H. Sharp | Grand Gazebo |
| 1:30–2:30 p.m. | The Problem Doctrines
<i>Speakers: Professor Michael Foreman & Christina M. Royer</i>
Our panelists will give you the good and the bad in the world of the problem doctrines, including "stray remarks," and the "same actor" and "same protected class" inferences. They also will address the increasingly restrictive definitions of "similarly-situated" comparators, the troubling re-emergence of "pretext-plus," the "HR Manager" exception, and other defense tactics. Our veteran practitioners will share advice on how to respond when the defendant raises these issues in your case. | Covington III |
| 2:30–3:15 p.m. | Attacking The "Honest Belief" & "Business Judgment" Defenses
<i>Speakers: Charles E. Guerrier & David L. Lee</i>
These two "problem doctrines" are so pernicious that they have earned their own panel. Our presenters will provide you with the state of the law regarding these increasingly prominent arguments, and suggest tactics that you can use to ensure that they do not derail your case at summary judgment. | Covington III |
| 3:15–3:30 p.m. | Break | Covington Pre-Function |

- 3:30–4:45 p.m. Defeating Summary Judgment In ADA & FMLA Cases Covington III**
Moderator: Dara S. Smith
Speakers: Christine T. Elzer & Lorrie F. McKinley
 Claims that arise under the Americans with Disabilities Act and Family and Medical Leave Act often take a different form and have elements distinct from claims arising under other employment laws. Our panelists will help you understand these differences, identify the pitfalls to avoid when bringing claims under these statutes, and survey common defense tactics that are used to derail these cases at summary judgment.
- 4:45–5:30 p.m. To Move Or Not To Move: That Is The Question Covington III**
Speakers: Reena I. Desai & Jason P. Hungerford
 This panel will explore the various considerations in moving for summary judgment from the plaintiff's perspective, either on a *prima facie* case or affirmative defense, in different types of employment cases.
- 5:30–7:00 p.m. Reception Grand Gazebo**
Co-sponsored by the Ohio Employment Lawyers Association and The Employee Rights Advocacy Institute For Law & Policy.

SATURDAY, OCTOBER 15, 2016

- 7:30–9:00 a.m. Registration & Continental Breakfast Covington Pre-Function**
- 9:00–10:15 a.m. A View From The Bench: The Judge's Perspective On Summary Judgment Covington III**
Moderator: Alicia K. Haynes
Speakers: The Honorable Michael R. Barrett & The Honorable Timothy S. Black
 Join us for an in-depth discussion of the summary judgment process from the judge's perspective. Our distinguished jurists will share their views on Rule 56 in employment cases. By learning how judges review summary judgment, you will improve the ways in which you brief and argue these motions, and find out what tactics to avoid in order to stay on the right side of the judge in your cases.
- 10:15–10:30 a.m. Break Covington Pre-Function**
- 10:30–11:45 a.m. Overcoming Summary Judgment In Harassment & Hostile Work Environment Cases Covington III**
Speakers: Charlotte M. Croson & Allegra L. Fishel
 Our experts will examine the unique obstacles to overcoming summary judgment in these often factually complex and legally demanding cases. They will review the state of the law regarding the "severe or pervasive" and "tangible employment action" standards, and discuss the ways in which the U.S. Supreme Court's adoption of a restrictive definition of "supervisor" in *Vance v. Ball State* has tipped the scales against victims of workplace harassment.
- 11:45 a.m.–1:15 p.m. Lunch (On Your Own)**
- 1:15–2:15 p.m. Just The Facts On Creating Persuasive Fact Sections Covington III**
Speakers: M. Nieves Bolanos & Kelly Mulloy Myers
 Regardless of how your jurisdiction requires fact sections to be organized at summary judgment, our experts will provide tips and strategies for ensuring that your client's story is presented in the most persuasive manner possible.
- 2:15–2:30 p.m. Break Covington Pre-Function**
- 2:30–3:30 p.m. Understanding The Art Of The Appeal In Summary Judgment Cases Covington III**
Speaker: Professor Eric Schnapper
 Because summary judgment is so often granted in employment cases, it is inevitable that at some point you will be standing before a court of appeals panel arguing that the district court's decision should be reversed. Accomplished U.S. Supreme Court and appellate advocate Professor Eric Schnapper will close the seminar by identifying the important ways in which briefing and argument must be approached differently at the appellate level, and by providing strategies that can help you not only get that all-important reversal, but also position you and your client to prevail on remand.

3:30–5:00 p.m.

Putting It All Together: Effective Written & Oral Summary Judgment Advocacy

Covington III

Moderator/Speaker: Cedar P. Carlton

Speakers: Richard M. Schall & Laura Welles Wilson

Too many summary judgment motions are lost because plaintiffs' attorneys are trying to "win" their cases, rather than simply defeat summary judgment. This panel will weave together the threads that have been discussed during the seminar and present the keys to avoiding this problem, as well as how to draft your brief persuasively and argue your position effectively at oral argument.

Program subject to change without notice.