

## PROGRAM

### WEDNESDAY, JUNE 21, 2017

<b>9:00–10:00 a.m.</b>	<b>2017 Affiliate Leadership Workshop Registration &amp; Networking Breakfast</b> <i>(By Invitation Only)</i>	<b>Conference Rooms 3 &amp; 4</b>
<b>10:00 a.m.–5:00 p.m.</b>	<b>2017 Affiliate Leadership Workshop &amp; Forum</b> <i>(By Invitation Only)</i>	<b>Conference Rooms 3 &amp; 4</b>
<b>12:00–8:00 p.m.</b>	<b>2017 Annual Convention Registration</b>	<b>Registration Desk 2</b>
<b>2:00–3:30 p.m.</b>	<b>NELA Committee &amp; Practice Group Chairs Meeting</b> <i>(By Invitation Only)</i>	<b>Conference Room 5</b>
<b>5:00–6:15 p.m.</b>	<b>Social Justice Lawyering: From Law Student To Employee Advocate</b> <i>Moderator: Elizabeth Colman, Paul H. Tobias Attorney Fellow</i> <i>Speakers: Bill Beardall, Sarah E. Donaldson &amp; William R. Tamayo</i> Law students and recent law graduates are invited to join NELA and The Employee Rights Advocacy Institute For Law & Policy for an engaging and interactive discussion on how a career in plaintiff-side employment law offers a unique and meaningful way for new lawyers to use their skills to drive progressive social change. Experienced employment law practitioners will discuss their work as advocates for employee rights and how it intersects with and advances other social justice issues including civil rights, immigration, environmental justice, LGBT rights, and gender equality. The panelists also will address how to enter the plaintiffs' employment law field and what skills and experience can help law students be successful employee advocates as they begin their legal careers.  <i>This presentation is co-sponsored by The Employee Rights Advocacy Institute For Law &amp; Policy, Haynes &amp; Haynes, PC; King &amp; Greisen, LLP; Law Offices of David L. Lee; Salawdeh Law Office, LLC; Schall &amp; Barasch, LLC; and Webster &amp; Fredrickson, PLLC.</i>	<b>Conference Room 1</b>
<b>6:30–8:00 p.m.</b>	<b>President's Welcome Reception</b> Convention participants are invited to join NELA President Alicia K. Haynes, the NELA Executive Board, and the 2017 Annual Convention Committee for an informal gathering to celebrate 32 years of employee rights advocacy, renew friendships, and make new ones. First-time Convention participants are especially encouraged to attend.  <i>The President's Welcome Reception is generously co-sponsored by AARP Foundation Litigation and the Texas Employment Lawyers Association.</i>	<b>Salon Foyer</b>



## THURSDAY, JUNE 22, 2017

7:00–9:00 a.m.	<b>2017 Annual Convention Registration</b>	<b>Registration Desk 2</b>
	<b>Continental Breakfast</b> <i>Continental breakfast is available to Convention registrants only.</i>	<b>Salon Foyer</b>
8:30–9:30 a.m.	<b>Roll Call Of The States &amp; Opening Remarks</b> <i>Paul H. Tobias, NELA Founder, Alicia K. Haynes, NELA President &amp; Terisa E. Chaw, NELA Executive Director</i>	<b>Salons H &amp; I</b>
9:30–11:00 a.m.	<b>Be The Change: Honoring Courageous Plaintiffs</b> <i>Moderator: Alicia K. Haynes</i> <i>Honorees: Juan Alonzo-Miranda, Yosif Bakhit &amp; Gretchen Carlson</i> <i>Advocates: Lewis Chimes, John W. Griffin &amp; Martin S. Hyman</i> The Convention's opening plenary session will bring to life the stories of three remarkable individuals who stood up to their employers and held their ground in the face of immense adversity, not only to vindicate their own rights, but to improve the lives of others as well. Our honorees embody the change we want to see in the American workplace, and their perseverance and courage will inspire us to continue the fight for equality and justice for all. Their lawyers will share their legal theories and litigation strategies that led to their clients' extraordinary victories.	<b>Salons H &amp; I</b>
11:00–11:15 a.m.	<b>BREAK</b>	<b>Salon Foyer</b>
11:15 a.m.–12:15 p.m.	<b>Let's Get To Work! Defending &amp; Advancing Employee Rights</b> <i>Moderator: Daniel B. Kohrman</i> <i>Speakers: Katherine L. Butler, The Honorable Jenny R. Yang &amp; Mariko Yoshihara</i> The Trump Administration presents challenges as well as opportunities for defending and advancing equality and justice in the American workplace. As the largest plaintiffs' employment law firm in the country, NELA will harness the power of its members to ensure that we continue to protect employee rights at the federal and state levels. Our esteemed panelists will share lessons learned from the best pro-employee state laws and how to apply them to those states that offer little or no protections to workers; utilizing legislative and legal strategies to advocate for employee rights in a hostile environment; and how to make the most of the guidance and regulations promulgated by the U.S. Equal Employment Opportunity Commission over the last eight years to protect your clients. Let's get to work to defend and advance employee rights in the years ahead!	<b>Salons H &amp; I</b>
12:15–1:45 p.m.	<b>Annual Luncheon &amp; Keynote Address By The Honorable Kevin H. Sharp</b> <i>Introduction By Wade B. Cowan</i> The Annual Luncheon is included in the registration fee for Convention registrants only. Guest tickets for the Annual Luncheon may be purchased at the Registration Desk or at the door.	<b>Salons C, D &amp; E</b>
2:00–3:15 p.m.	<b>CONCURRENT SESSIONS</b>	
<i>Discovery</i>	<b>ESI On A Shoestring Budget</b> <i>Moderator/Speaker: Brian E. Koncius</i> <i>Speakers: Enrique Chavez, Jr. &amp; Ariana J. Tadler</i> Plaintiffs face unique challenges in preserving and collecting evidence from a variety of sources. To mount a strong offense, we must have a strong defense. Managing e-discovery is an increasingly important part of any law practice, but the price tag of many document management systems on the market often puts them beyond the reach of small law firms, nonprofits, and legal service organizations. Our panelists will discuss creative alternatives for handling electronic discovery, especially in class actions and other large and complex cases, when your financial resources are limited.	<b>Salon H</b>
<i>New Lawyers</i>	<b>Starting Out: Basic Skills Training For New Lawyers</b> <i>Moderator/Speaker: Susan D. Motley</i> <i>Speakers: Phillis h. Rambsy &amp; Hunter A. Swain</i> For new lawyers and those new to employment law, this session will offer suggestions to help newer plaintiffs' employment lawyers succeed, including substantive tips from case intake to case closing, and practical pointers on managing time, money, and people—including opposing counsel and themselves.	<b>Conference Rooms 17 &amp; 18</b>

**Title VII & The Equal Pay Act:  
Dynamic Duo When Challenging Sex Discrimination In Compensation**

*Moderator/Speaker: Deborah Marcuse*

*Speakers: David Sanford & David E. Schlesinger*

There has been an increasing trend of bringing both Equal Pay Act (EPA) collective actions and Title VII class actions in one case, and there have long been examples of such claims being combined in individual litigation. This panel will address the pros and cons of bringing both claims simultaneously, and provide advice on how to maximize the benefits and minimize the risks from this combination. Specific topics include managing the administrative exhaustion process where one claim requires exhaustion and the other does not; strategic and logistical issues in handling opt in collective action and opt out Rule 23 classes; considerations related to comparators; how the defenses under the EPA and the disparate impact/business justification defenses relate to one another; the impact of adding EPA claims on the statistical analysis; how to prove these claims; and settlement issues.

**Representing Guest Workers In Civil Litigation**

**Salons A & B**

*Moderator: Michelle Lapointe*

*Speakers: Christopher Benoit & Christopher M. Willett*

Guest workers represent a significant and growing sector of the American workforce. They also are some of the most vulnerable workers in the country, often experiencing wage theft, discrimination, retaliation, and human trafficking. Despite the high incidence of abuse within this sector, guest workers face barriers to justice, including finding counsel and accessing the courts. Our panelists are experts in guest worker litigation and will review the nuts and bolts of litigating all aspects of guest worker cases under various statutes, such as the Fair Labor Standards Act, Trafficking Victims Protection Reauthorization Act, Racketeer Influenced and Corrupt Organizations Act, and Title VII. They will review the challenges with representing guest workers, including those related to immigration status, and recent victories that have considerably expanded the laws that protect these workers.

**Ten Rules For A Successful Mediation**

**Salon G**

*Moderator/Speaker: Dana L. Sullivan*

*Speakers: Allen S. Blair & Michael L. Russell*

Too often attorneys believe that putting together a mediation statement and calculating damages is sufficient preparation for mediating a case. This presentation by two individuals who have practiced extensively in employment law and have mediated hundreds of cases as attorneys and mediators will provide the best practices for mediation preparation, preparing your client for mediation, engaging in conversations with the mediator in advance of mediation, and common impediments to settlement in the mediation process.

**“Was It Something I Said, Or Just Who I Am?”:**

**Salons J & K**

**Hiring Discrimination Issues Under Title VII, The ADEA & ADA**

*Moderator: Dara S. Smith*

*Speakers: P. David Lopez & Marni Willenson*

Despite being a key impetus for Title VII, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act, hiring discrimination against job applicants persists in the 21st century. The use of “objective” screening tools such as online job applications have not solved the problem but rather can impede transparency and create new methods to disfavor jobseekers on prohibited bases. In response, hiring discrimination has become an EEOC strategic enforcement priority. This session offers practical guidance and strategies for NELA lawyers to help their clients in hiring discrimination cases. The panelists will discuss potential solutions to key procedural, factual, and legal challenges in hiring cases—such as exhaustion, tolling of limitations, effective pre-complaint investigation, the scope of legal protections against “illegal questions,” handling inaccuracies in job applications, developing evidence of implicit bias and illegal disparate impact, and varying burdens of proof. Also included will be an up-to-the-minute report on the extent of EEOC’s progress in challenging hiring bias, and the agency’s plans for stepping up its game in the future. Finally, attendees can expect an update on significant legal developments, including recent decisions affording strong protection from religious bias for applicants under Title VII (*EEOC v. Abercrombie & Fitch Stores, Inc.* (US, 2015)), and limiting protection for applicants under the ADEA (*Villarreal v. RJ Reynolds Tobacco Co.* (11th Cir., 2016)).

**3:15–3:30 p.m.**

**BREAK**

**Salon Foyer**

## Discovery

**Impact Analysis: When To Use It & The Statistics To Support It**

Salons A &amp; B

*Moderator/Speaker: Bruce B. Elfvin**Speakers: Adam T. Klein, Toni S. Locklear, Ph.D. & Candis A. McGowan*

In *Texas Dept. of Housing and Comm. Affairs v. The Inclusive Communities Project, Inc.*, the U.S. Supreme Court, while extending disparate impact analysis to cases brought under the Fair Housing Act, reaffirmed the viability of that theory under both Title VII and the Age Discrimination in Employment Act. Since that decision, the Court alluded to disparate impact analysis in other contexts, such as in *EEOC v. Abercrombie & Fitch Stores, Inc.* and *Young v. UPS*. Issues of statistical proof, both for liability and damages, have also arisen (*Tyson Foods v. Bouaphakeo*). Special considerations can arise when an employer relies upon computerized screening instruments and “Big Data” to identify candidates for hire. This session will explore the current state of disparate impact theory and the benefits and pitfalls facing disparate impact litigation, such as statistical evidence of impact and causation versus statistical evidence of treatment, expert analysis and *Daubert*, and limitations on remedies.

## Trial Advocacy

**Witness Interviewing, Examination & Lie Spotting**

Salons J &amp; K

*Moderator: Ethan Levin-Epstein**Speaker: Philip A. Mullenix*

Philip Mullenix, an attorney and frequent consultant to law enforcement, will share his strategies on witness interviewing, examination, and lie spotting. Since 1976, Mr. Mullenix has provided instruction to hundreds of attorneys, military, intelligence, law enforcement, and security personnel in the detection of deception, interviewing, and interrogation. Mr. Levin-Epstein is a NELA member and a seasoned trial lawyer with over 40 years of experience in criminal law. His criminal law practice has enhanced his ability to represent individuals effectively in their employment-related matters as there is significant overlap between the two fields and where clients face situations which have implications from both an employment and criminal perspective. This presentation will include many valuable tips and techniques for taking depositions and conducting direct and cross-examination at trial.

**The Practicalities Of Litigating In Arbitration**

Salon H

*Moderator/Speaker: Daniel M. Klein**Speakers: Kathryn Burkett Dickson & Shannon Liss-Riordan*

Our speakers will provide guidance on how to litigate individual, multi-plaintiff, and class cases in the strange world of employment arbitration. Topics include the impact of not having a jury, the costs of arbitration, discovery in the arbitration system, the application of the American Arbitration Association’s employment rules rather than its commercial rules, fighting provisions in the arbitration agreement, and other practical issues. Learn where your litigation instincts will fail you, and where the hidden obstacles—for one side or the other—lie.

**Defining “Employment” Relationships In The 21st Century**

Salon G

*Moderator/Speaker: Justin D. Cummins**Speakers: Robert A. Canino & Catherine K. Ruckelshaus*

Keeping up with the economic realities of a rapidly changing workplace may prove to be more difficult than “Keeping Up with the Kardashians.” For decades regulation of workplace fairness and the social safety net has been based on protections for “employees” administered by and through “employers”: minimum wage and overtime protections; collective bargaining rights; unemployment and health insurance; and workers’ compensation. Likewise, social security and income tax collection have been managed largely through the “employment” relationship. Recently, however, new technologies and business structures have built their businesses off the backs of “independent contractors,” disrupting traditional concepts of “employee,” “employer,” and “employment” and causing courts and the NLRB to review these business models closely and consider new theories of employer liability. Commerce has increasingly used sub-contracting, franchising, staffing agencies, and employee leasing—approaches that separate employees from enterprises for which they work and that fragment legal accountability. This panel will discuss recent developments in the evolving definition of an employee and employer, and examine litigation strategies for holding companies responsible for their workforce and the struggle to apply traditional concepts to these new circumstances.

**Not Just Plain Vanilla: Creative Settlement Terms In Employment Disputes**

Salon I

*Moderator/Speaker: Wayne N. Outten**Speakers: Sheila Engelmeier & Margo Hasselman Greenough*

Not every settlement follows the same vanilla agreement template. This presentation is designed to provide advice on crafting creative settlement agreements in order to preserve our clients’ rights, collect the money the defendant agreed to pay, and other extraordinary circumstances that may arise. On the employee’s side, our speakers will address release of claims for employee benefits, agreements not to re-apply for employment, the use of ill-defined terms like “agents,” and more. On the employer’s side, they will discuss including provisions in the settlement agreement in case the defendant sells their business, if the defendant files for bankruptcy, and requiring individual owners to sign a confession of judgment.

*Moderator/Speaker: Laurie A. McCann*

*Speakers: Dennis E. Egan & Cathy Ventrell-Monsees*

In December 2017 the Age Discrimination in Employment Act (ADEA) will celebrate its golden anniversary as a part of U.S. civil rights law. The Act has eliminated maximum age restrictions in hiring—which used to be prevalent, as well as mandatory retirement in all but a few exempt professions. It is virtually the only basis for challenging a discriminatory reduction-in-force under federal law. Yet, in the eyes of many NELA lawyers the ADEA is a poor relative, trailing Title VII, the Fair Labor Standards Act (FLSA) and even the Americans with Disabilities Act (ADA) as a reliable means for challenging employer misconduct. At this pivotal moment in ADEA history, it is time to again take stock: To what extent does the Act provide valuable protection for older workers; to what extent is it more or less powerful than Title VII and the ADA; are there aspects of the ADEA that need fixing, and if so, what are they and why? This session will offer ADEA litigation tips, a historical perspective on age bias law, and ideas about bringing the ADEA up to parity with Title VII.

**6:00–7:30 p.m.**

**Annual Reception**

**Salons C, D & E**

The Annual Reception is included in the registration fee for Convention registrants only. Guest tickets for the Annual Reception may be purchased at the Registration Desk or at the door.

**FRIDAY, JUNE 23, 2017**

**7:00 a.m.**

**Tobias 5K Run**

**San Antonio Marriott Rivercenter Hotel Lobby**

Participants are requested to meet in the lobby of the San Antonio Marriott Rivercenter at 6:45 a.m.

**7:00–9:00 a.m.**

**2017 Annual Convention Registration**

**Registration Desk 2**

**Continental Breakfast**

**Salon Foyer**

Continental breakfast is available to Convention registrants only.

**9:00–10:15 a.m.**

**Because “Cause” Matters: Causation Under Federal & State Employment Discrimination Laws**

**Salons H & I**

*Moderator: Mary Anne Sedey*

*Speakers: Alice W. Ballard, Paul W. Mollica & Gillian Thomas*

Terms like “but for” cause, “motivating factor,” and “sole cause” appear frequently in the case law interpreting every employment discrimination statute, but they do not always seem to mean the same thing to every judge in every jurisdiction. This presentation will explore both the latest court opinions and some underlying theory regarding how causation standards do or do not differ at various procedural stages of a case and when attempting to prove a claim of Title VII discrimination, Title VII retaliation, age discrimination under the Age Discrimination in Employment Act, and other common types of discrimination claims.

**10:15–10:30 a.m.**

**BREAK**

**Salon Foyer**

**10:45 a.m.–12:00 p.m.**

**CONCURRENT SESSIONS**

*Discovery*

**Tweeting & Snapping: What You Need To Know About Preserving, Discovering & Using Social Media**

**Salons A & B**

*Moderator/Speaker: Heather Newsom Leonard*

*Speakers: Lynne Bernabei & Peter Sung Ohr*

Facebook, Twitter, and Instagram, as well as other lesser-known social networking platforms used within the workplace, can be a treasure trove of information about workplace culture, including discriminatory remarks and hostile work environments. These postings also can yield powerful evidence in the form of contemporaneous statements that undermine pretextual explanations later offered by an employer for why your client was fired, or disciplined, or not promoted. At the same time, social media postings can be a minefield creating distractions for your case and potentially damaging your client’s credibility, especially if you do not know ahead of time what surprises your client’s Facebook history may contain. Our speakers will discuss the state of the law as it relates to social media discovery, and provide practical advice on how to maximize the opportunities of social media for developing your case while avoiding traps for the unwary. In addition, they will explore how to best cull, preserve, download, upload, extract, and review social media discovery.

**Rules Of The Road: A Map For Plaintiffs' Employment Lawyers**

Salon H

*Moderator/Speaker: Brian P. Sanford**Speakers: Amanda A. Farahany & William B. Ryan*

In a practice area where trials seem few and summary judgment proceedings take up so much time, it is sometimes hard to keep trial skills current and to practice new skills that might help us and our clients. In other legal specialties, such as personal injury law, the *Rules of the Road* are familiar and often used tools, but they may be considered as an off-road adventure for those who have never tried them in an employment context. Our experienced *Rules of the Road* litigators will provide tips and tricks for better applying the rules in our own cases so that we can make the trip from intake through victory with more ease.

**Top Ten Things You Need To Know About Litigating Wage & Hour Cases**

Salon I

*Speakers: Richard J. (Rex) Burch & Michele R. Fisher*

Join our veteran practitioners as they provide their countdown of the issues that must be at the forefront of every advocate's mind when they are preparing to litigate a wage and hour case.

**Where Are They Now? How Lower Courts Are Applying Recent U.S. Supreme Court Employment Decisions**

Salon G

*Moderator: Leonard Bates**Speaker: Professor Scott A. Moss*

Reviews of U.S. Supreme Court decisions are like profiles of new bands: they offer more detail than you need, with breathless hype about their potential. A year or three later, the bias toward writing about new things leaves you wondering what became of them. Like the semi-popular VH-1 television series *Where Are They Now?*, which detailed the usually sad eventual fates of bands that drew great attention before fading from memory, this presentation and accompanying written materials analyze what lower court decisions have arisen (through spring 2017) from major 2013–2015 employment law decisions such as *EEOC v. Abercrombie & Fitch Stores* (religious accommodation); *Young v. United Parcel Service* (pregnancy accommodation); *Integrity Staffing Solutions, Inc. v. Busk* (required off-the-clock tasks); *Vance v. Ball State University* (which “supervisors” trigger employer vicarious liability for harassment); and *University of Texas Southwestern Medical Center v. Nassar* (“but-for” causation standard for retaliation and certain other claims).

**Money, Money, Money: How To Deal With Defendant's Financial Condition Pre & Post Bankruptcy**

Conference Rooms 17 &amp; 18

*Moderator: Daniel A. Katz**Speakers: Bonnie L. Clair, Reena I. Desai & Joseph D. Kenyon*

The company tells you that it doesn't have any money and it is potentially going to file for bankruptcy. How many times has this happened in one of your cases? How do you verify what it is telling you is true? What if the company files for bankruptcy, then what? Our panelists will discuss the ins and outs of a potentially insolvent defendant and educate lawyers (who are generally not so good at math) on how to determine if a company really doesn't have money to pay a settlement or a judgment. They also will provide a checklist and practice tips on what to do if the defendant does file for bankruptcy.

**Problem Solving While Record Building:  
Guiding A Client Through The Interactive Process**

Salons J &amp; K

*Moderator: Mary E. Kelly**Speakers: John A. Beranbaum & Lorrie McKinley*

This session will provide practical tips on how to guide a client who is attempting to navigate the interactive process under the Americans with Disabilities Act (ADA). Our experienced ADA practitioners will explore the following questions, with practitioner examples: (1) What can employees do to trigger the interactive process?; (2) What determines which functions of a job are essential?; (3) What roles do the employee's treating professionals and employer's doctors have in the process of assessing the employee's needs and the suitability of specific accommodations?; (4) When should we stop counseling our clients from behind the scenes and become directly involved in communications with the employer?; (5) What documentation should our clients seek, or create, to build a record in the event that litigation becomes necessary?; (6) How can common employer defenses be preemptively addressed during the interactive process?; and (7) How should we advise clients to deal with difficult employers/supervisors once it appears that there is a serious prospect of retaliation and/or termination?

12:00–1:45 p.m.

**Box Lunch**

*Box lunch is available to Convention registrants only.*

**Salon Foyer & Salon D**

**NELA Members Forum: Be The Change!**

“I am asking you to believe. Not in my ability to bring about change – but in yours.”

—President Barack Obama, January 10, 2017

**Salon H**

Join NELA President Alicia K. Haynes, the NELA Executive Board, and NELA Staff to learn about NELA's Legislative Action Team, how NELA members and NELA Affiliates are responding to the challenges in defending the progress our country has made on civil and workers' rights, and our collective efforts to bring about positive change in the American workplace.

**Dialogue With The EEOC**

Join EEOC Commissioner Jenny Yang and Senior Advisor Cathy Ventrell-Monsees for updates on the EEOC and an opportunity to provide feedback to the agency.

**Salon G**

**NELA Committee & Practice Group Meetings**

Convention participants are welcome to attend the committee and practice group meetings of their choice. Please check the bulletin board at the Registration Desk for other meetings.

**Age Discrimination Law Practice Group**

Daniel B. Kohrman & Laurie A. McCann, Co-Chairs

**Conference Room 13**

**Class & Collective Actions Practice Group**

Deborah Marcuse & Christine E. Webber, Co-Chairs

**Conference Room 10**

**Disability Rights & Religious Discrimination Practice Groups**

Brian East, Disability Rights Practice Group Chair

Todd R. McFarland, Religious Discrimination Practice Group Chair

**Conference Room 8**

**Employee Benefits Law Practice Group**

Denise M. Clark & Margo Hasselman Greenough, Co-Chairs

**Conference Room 1**

**Ethics & Sanctions Committee**

Carla D. Brown, Charles W. Day, Jr. & David L. Kern, Co-Chairs

**Conference Room 19**

**Federal Employee Rights Practice Group**

Susan E. Jewell & Elbridge W. Smith, Co-Chairs

**Conference Room 2**

**Low Wage Workers Practice Group**

Nieves Bolanos & Edgar Fabrice Ndjatou, Co-Chairs

**Conference Room 3**

**Sexual Harassment Law Practice Group**

Scott M. Pollins, Co-Chair

**Conference Room 4**

**Sexual Orientation & Gender Identity Discrimination Law Practice Group**

Grace Cretcher & Rob Wiley, Co-Chairs

**Conference Room 9**

**Trial Practice & Litigation Practice Group**

Bernard Alexander, Dennis E. Egan & Heather Newsom Leonard, Co-Chairs

**Conference Room 7**

**Wage & Hour Law Practice Group**

Rachel M. Bien & Rachhana T. Srey, Co-Chairs

**Conference Room 11**

## Discovery

**What To Do When Clients Access Employer Documents Outside The Formal Discovery Process**

Salon G

*Moderator/Speaker: Ellen J. Messing**Speakers: Tylden Shaeffer & Jason M. Zuckerman*

NELA members and our clients are beset with challenges when our clients access employer documents outside the formal discovery process. Documents can include materials generated by clients themselves or co-workers; materials called “confidential” by employers; materials that may be subject to the employer’s attorney-client privilege; and materials that the client wants to produce to a government agency. Clients can be at risk for sanctions and potential civil and even criminal liability; as their lawyers, we’re subject to several conflicting obligations and our own risks. This panel explores the risks and benefits of accessing employer documents from the contrasting perspectives of a lawyer representing whistleblowers; a criminal defense lawyer; and a longtime member of NELA’s Ethics & Sanctions Committee.

*This presentation qualifies for 1.25 hours of ethics credits.*

## New Lawyers

**Preparing For Your First Deposition**

Conference Rooms 17 &amp; 18

*Moderator/Speaker: Marcus G. Keegan**Speakers: Jennifer Lin Liu & Kate Sedey*

In this practical presentation, new lawyers will learn how to (1) develop potential evidence to support their own contentions as well as to undermine their opponent’s positions; (2) flesh out credibility evidence for (and against) both sides of the litigation, including evidence that might either explain or exploit an apparent inconsistency; (3) convert their potential evidence into topics to explore during their depositions; and (4) organize important topics into a useful deposition outline.

## Trial Advocacy

**Maximizing Damages In Civil Rights Cases**

Salon H

*Moderator: Carla D. Brown**Speakers: Hal K. Gillespie, Jan Sawyer & Brooke Timmer*

You’ve overcome the defense’s motion for summary judgment. How do you convince a jury what your client’s case is worth or that the employer’s conduct is so reprehensible that they should award punitive damages? Using trial strategies to assist the jury in placing value on your client’s emotional distress and economic losses is critical. Equally important are post-verdict strategies to assist the judge in evaluating whether to increase the initial verdict value by awarding damages for the additional tax liability to your client and/or for additional months of back pay resulting from the appellate process. Our panel of successful trial attorneys and a veteran jury consultant will share their strategies utilized in real-life victories where they obtained seven-figure verdicts in employment discrimination cases for their clients.

## Representing Vulnerable &amp; Underserved Workers

**Creative, Cost-Effective Advocacy In Low-Wage, Immigrant & Undocumented Worker Cases**

Salons A &amp; B

*Moderator/Speaker: Bryce W. Ashby**Speakers: M. Nieves Bolanos & Aaron Johnson*

The low-wage, immigrant, and undocumented worker communities are among the sectors of our country’s workforce most vulnerable to unlawful wage practices, discrimination, and retaliation. They often have difficulty securing legal representation when their rights are violated and employers regularly pursue scorched-earth tactics to suppress their claims. Our advocates will share practical strategies to minimize your risk in representing this significant component of the labor force and to maximize recovery for your clients.

**Getting The Hint: Moving Implicit Bias Theory From The Classroom To The Courtroom**

Salon I

*Moderator/Speaker: Thomas A. Newkirk**Speakers: Walt Auvil, Kathleen M. Cahill & The Honorable Bernice B. Donald*

Reconciling the legal concept of “intentional discrimination” with the growing scientific evidence and sociological literature on how implicit bias leads to discrimination in the real world, and figuring out how to apply theories of implicit bias in our cases, is a subject fraught with both challenge and potential. A federal judge will be joined by NELA practitioners (with different views on how and when to invoke implicit bias theory in the course of litigating employment discrimination cases) to explore the evolution of the idea and discuss practical suggestions for incorporating implicit bias concepts into our pleadings, negotiations, and motion practice—as well as addressing the implicit biases of the decision-makers in our cases, our litigation adversaries, and ourselves.

*This presentation qualifies for 1.25 hours of elimination of bias credit.*

**The Employee Who Stays: A Tangled Web****Salons J & K***Moderator/Speaker: Nina T. Pirrotti**Speakers: Patricia A. Barasch & Jerome J. Dobson*

This panel will explore the myriad of pitfalls and opportunities that present themselves when an employee who complains about discrimination remains employed by the offending employer. Topics will run the gamut from the manner in which the employee should lodge the complaint; how the employee should conduct herself after she does so in order to avoid giving the employer a legitimate reason to terminate her; navigating the employer's investigation of the employee's allegations (including how to make a record if that investigation is inadequate or biased); guiding the employee on documenting any retaliatory behavior; a discussion of the various forms a settlement for the employee who remains can take from economic damages (resulting from constructive discharge to emotional distress damages to promotion and/or transfer to a different supervisor, etc.) and, of course, the pros and cons of staying versus leaving and claiming constructive discharge as well as the circumstances in which one might be more preferable to the other.

**3:15–3:30 p.m.****BREAK****Salon Foyer****3:45–5:00 p.m.****CONCURRENT SESSIONS***New Lawyers***Valuing Your Case & Persuading Others That You Are Right****Salon H***Moderator/Speaker: Charles E. Guerrier**Speakers: Robert (Bobby) Lee & Shirley Lin*

You face two questions when assessing the value of your case: First, what do you think the case is worth, and, second, how do you convince others (such as defendants, mediators, and insurance representatives) that you are right? The members of the panel will provide guides and tips on how to marshal evidence to support damages; identify and quantify items of relief (including back pay, prejudgment interest, tax consequences of lump-sum payment, attorney fees, and non-pecuniary compensatory damages); prepare a persuasive demand letter or mediation statement; respond to counter-arguments; and deal with difficult opposing counsel and mediators. Attention also will be paid to the pitfalls which can arise when negotiating attorney fees along with damages.

*Representing Vulnerable & Underserved Workers***Successfully Managing Large Cases****Salon I***Moderator/Speaker: Rachel M. Bien**Speakers: Lindsay Nako & Rachhana T. Srey*

Whether it is a nationwide wage and hour case or a multi-plaintiff or class discrimination case, managing large cases tests one's ability to juggle many balls in the air at once. In addition to the many moving parts that come with representing numerous plaintiffs (sometimes numbering thousands), there are other issues to deal with, such as the defense bar's increasing desire for more discovery of plaintiffs (including written and deposition discovery), multiple expert witnesses, and document review and management. Practitioners will suggest best practices for overall case and team management, offer ways to preempt the defendant's obstructive litigation tactics, and present strategies for communicating with large numbers of plaintiffs, gathering discovery from them, and keeping track of it all.

**Introduction To Reasonable Accommodations Under The ADA & Leave Requests Under The FMLA****Salons A & B***Moderator/Speaker: Darcie R. Brault**Speakers: William Bush & Thomas J. Crane*

This presentation will provide an overview of the Americans with Disabilities Act (ADA) and the Family Medical Leave Act (FMLA) with a focus on requests for reasonable accommodation under the ADA, and requests for continuous or intermittent leave under the FMLA. You will learn about the types of accommodations that are available (including modified schedules and working from home), the process for requesting accommodations/FMLA leave, and the types of questions that employers may and may not ask—and medical documentation they may and may not require—as part of the request process. Our speakers will present fact patterns as a means of discussing common issues that arise in ADA failure to accommodate and FMLA interference cases, and discuss factors for attorneys to consider when the two types of claims overlap. Retaliation claims under the two statutes also will be briefly covered.

**Arbitration Case Law Update****Salons J & K***Moderator/Speaker: Karla Gilbride**Speakers: L. Steven Platt & Karen Roberts Washington*

Our panel of experts will discuss the most important arbitration issues of the past year, including U.S. Supreme Court rulings dealing with arbitration issues, as well as notable federal and state court decisions. In addition, they will address important federal legislative and regulatory developments.

**Settlement Of Federal Employee Claims****Conference Rooms 17 & 18***Moderator/Speaker: David Weiser**Speakers: Michelle F. Bercovici & Susan E. Jewell*

Attorneys settling federal employee claims are presented with opportunities and challenges that are distinct from other types of settlements. NELA's veteran federal employee rights lawyers will discuss the practical and strategic settlement considerations that arise when settling federal employee claims.

**Current Issues In National Origin Discrimination Litigation****Salon G***Moderator/Speaker: Rebecca L. Salawdeh**Speakers: A. Steven Porter & William R. Tamayo*

In addition to a general overview of recent case law, our panelists will address linguistic characteristic discrimination, cases that overlap with religious discrimination, Section 1981 and 1983 issues, and special considerations related to representing low-wage or non-English speaking clients.

**7:30–11:00 p.m.****NELA's Annual Gala Fundraiser | Simply The Best****Salon F**

After 27 years, Executive Director Teri Chaw will be retiring in July 2017. As our greatest champion, she has had a positive impact on thousands of employee rights advocates, the field of plaintiffs' employment law, and the American workplace. Please join the NELA and Institute family for an unforgettable farewell celebration honoring Teri at NELA's 2017 Annual Gala Fundraiser, which fuels NELA's *Amicus*, Judicial Nominations, and Legislative & Public Policy Programs, including the initiatives of our Washington DC Office. Tickets can be purchased at the Registration Desk or at the door.

**SATURDAY, JUNE 24, 2017****7:30–9:00 a.m.****2017 Annual Convention Registration****Registration Desk 2****Continental Breakfast****Salon Foyer**

*Continental breakfast is available to Convention registrants only.*

**9:00–10:15 a.m.****CONCURRENT SESSIONS***New Lawyers***Top 10: A New Lawyer's Guide To Preparing A Plaintiff For Her Deposition** **Conference Rooms 17 & 18***Moderator/Speaker: Matthew Lango**Speakers: Darci E. Burrell & Trang Q. Tran*

Defending a plaintiff's deposition is much less fun than taking a deposition of the other side. Our panel of veteran practitioners will provide their "Top 10" tips and strategies for properly preparing a plaintiff for his or her deposition for discrimination, retaliation, harassment, and wage theft claims.

*Trial Advocacy***Mosaics & Motivating Factors: Unshackling Summary Judgment From *McDonnell Douglas*** **Salon G***Moderator/Speaker: David L. Lee**Speakers: Sonya Edwards & Elizabeth A. Rodgers*

Developments in a number of circuit courts may provide employee rights advocates effective mechanisms for presenting circumstantial evidence of discrimination at summary judgment in ways that avoid the restrictive confines of *McDonnell Douglas*. In *Ortiz v. Werner Enters., Inc.*, No. 15-2574 (2016), the Seventh Circuit concluded that twenty-plus years of jurisprudence regarding "direct/indirect" evidence and the "convincing mosaic" standard had come to obscure, rather than clarify, the central questions at summary judgment, while other circuits (e.g., *Ahmed v. Johnson*, 752 F.3d 490 (1st Cir. 2014) and *Holland v. Gee*, 677 F.3d 1047, 1056 (11th Cir. 2012)) have recognized the "convincing mosaic" framework and begun to wrestle with its implications only more recently. In addition, the Eleventh Circuit has joined other courts in affirming that *McDonnell Douglas* does not apply at summary judgment when the plaintiff alleges that unlawful discrimination was a "motivating factor" in an adverse employment action (*Quigg v. Thomas County Sch. Dist.*, 814 F.3d 1227 (2016)). Join our panel of summary judgment gurus, who will review the state of the law in different circuits on these issues and discuss the pros and cons of using alternative methods of organizing circumstantial evidence to defeat summary judgment.

**30 Years After *Meritor Savings Bank v. Vinson*:  
The State Of Sexual Harassment In The Workplace****Salon I***Moderator: Scott M. Pollins**Speakers: The Honorable Chai Feldblum, Professor Elizabeth A. Schneider & Joseph M. Sellers*

It's been 30 years since the U.S. Supreme Court ruled that a claim of "hostile environment" sexual harassment is a form of sex discrimination that is actionable under Title VII. Gretchen Carlson's sexual harassment suit against Roger Ailes has brought the topic back into the national spotlight. Our experts will provide an overview of the state of the law, practical litigation strategies, how to overcome the employer's scorched earth tactics, and findings of the EEOC's Select Taskforce On Harassment In The Workplace.

**Defending LGBT Workers From Discrimination “Because of Sex”:  
Title VII, Title IX & Beyond**

**Salons A & B**

*Moderator/Speaker: Joshua R. Goodbaum*  
*Speakers: Maureen T. Holland & Rob Wiley*

Our speakers will survey recent case law surrounding the application of Title VII to claims of workplace discrimination brought by LGBT employees, focusing on both the gender stereotype and associational theories of discrimination (the associational theory meaning that gay and lesbian employees are treated adversely because of the gender of their romantic partners). They also will touch on state and local protections that may apply to LGBT employees as a protected class and will discuss the possible applications of Title IX in certain employment settings. Finally, they will provide practical advice on some of the challenges that transgender people may encounter in the workplace—from bathrooms to dress codes to health care coverage. Additionally, they will offer resources for NELA members to share with potential clients and employers alike as well as suggestions for framing a case when litigation becomes necessary.

**Employer-Initiated Medical Examinations: Preventing Abusive Employer Tactics**

**Salon H**

*Moderator: Kelly Brandon*  
*Speakers: Brian East & Mark D. Sherinian*

Many times employers utilize fitness for duty or pre-employment examinations as a way to “screen out” individuals with disabilities. Our speakers will address the limits of these types of examinations; the duties of an employer to accommodate restrictions identified during the exams; the abuse of independent medical examinations; and how we as plaintiff advocates can prevent overreaching employers from invading our client’s privacy rights.

**Good Faith & Fair Dealing**

**Salons J & K**

*Moderator/Speaker: Joseph D. Garrison*  
*Speakers: Mark Hammons, Sr. & Deborah H. Karpatkin*

The Restatement of Employment Law has heartily endorsed the doctrine of good faith and fair dealing. But there has been virtually no exploration of the concept of “fair dealing.” And, in many cases, courts place a burden on the plaintiff to show “bad faith,” rather than allowing a jury to determine whether a defendant acted in good faith. Other courts have allowed plaintiffs to plead, as a separate count, breach of the covenant of good faith and fair dealing, giving plaintiffs an excellent jury charge as well as expanding sympathetic evidence that may be relevant. NELA lawyers need to use the concept of breach of good faith and fair dealing more actively. Our speakers will review applicable standards and make practical suggestions of how to make this covenant work for our clients.

**10:15–10:30 a.m.**

**BREAK**

**Salon Foyer**

**10:45 a.m.–12:30 p.m.**

**The Year In Review: Significant Developments In Employment Law**

**Salons H & I**

*Moderator: Matthew C. Koski*  
*Speakers: Professor Eric Schnapper & Richard T. Seymour*

The 2017 Annual Convention will close with Professor Schnapper and Mr. Seymour discussing the employment cases decided by the U.S. Supreme Court during its 2016–2017 term, significant legislative and state law developments, as well as emerging issues in plaintiffs’ employment law.

**12:30 p.m.**

**Convention Adjourns**



**JOIN US IN CHICAGO FOR NELA'S  
2018 ANNUAL CONVENTION**

**JUNE 27–30, 2018  
Hilton Chicago Hotel  
Chicago, IL**