



# NYSBA

## Dispute Resolution Section Fall Meeting

### Section Chair

**Daniel F. Kolb, Esq.**

Davis Polk & Wardwell

### Program Co-Chairs

**Deborah Masucci, Esq.**

Masucci Dispute Management and  
Resolution Services

**Jeffery T. Zaino, Esq.**

American Arbitration Association

**Thursday, October 26, 2017**

**New York Law School**

185 West Broadway (corner of West Broadway and Leonard Street)  
New York, NY 10013-2921

This program provides up to 5.5 MCLE credit hours  
(3.0 in skills, 1.0 in professional practice and 1.5 in  
ethics), this program is transitional and does qualify  
for newly admitted attorneys.



# PROGRAM AGENDA

## Brave New World in Dispute Resolution

**8:30 a.m.**      **Executive Committee Meeting**

**10:00 a.m.**      **Welcoming remarks**

**Daniel F. Kolb, Esq.**, Chair, Dispute Resolution Section and Senior Counsel, Davis Polk & Wardwell LLP

**10:10 a.m.**      **Challenges to the Authority of an Arbitrator**

- Case study of “exceeding powers” and grounds for vacatur
- Common examples giving rise to claims of “exceeding authority”

Panelists will discuss how they would resolve challenges to arbitral authority covering both domestic and international jurisdictions. When does an arbitrator exceed his or her authority? What is deemed to be a problem award? A case study on motions to vacate will also be discussed.

**Moderator:**

**Neal Eiseman, Esq.**, Goetz Fitzpatrick, LLP

**Panelists:**

**Lea Haber Kuck, Esq.**, Skadden, Arps, Slate, Meagher & Flom LLP

**Derek Soller, Esq.**, Baker McKenzie LLP

**11:10 a.m.**      **Break**

**11:20 a.m.**      **Multi-party Mayhem:**

Simeon H. Baum (Resolve Mediation Services, Inc. [www.mediators.com](http://www.mediators.com)), Michele Kern-Rappy, Senior Settlement Coordinator NYS Supreme Court, and former NY Governor David Paterson will lead a discussion on unique challenges presented by Multi-party mediations. Drawing on experience with construction, insurance, investor fraud claims, and other matters that have multiple parties on either side of the “v,” we will consider preparation; ways to structure a productive process; how to address group dynamics; ways to handle mutual finger pointing and pre-existing expectations for percentage contributions; cross-purpose caucuses; scape-goating; and challenges in consensus building with multi-interest, multi-issue, and multi-party matters.

- Multi-party mediation challenges within construction, insurance, and investor fraud cases
- Best practices to structure productive processes
  - Addressing group dynamics
  - Techniques to mitigate mutual finger pointing
  - Managing pre-existing expectations for percentage contributions
  - Cross-purpose caucuses
- Building consensus in multi-interest, multi-issue, and multi-party matters

**Panelists:**

**Simeon H. Baum, Esq.**, Resolve Mediation Services, Inc.

**Michele Kern-Rappy, Esq.**, Senior Settlement Coordinators NYS Court System

**David Paterson, Esq.**, Former NY Governor

**12:30 p.m.**      **Lunch**

# PROGRAM AGENDA

1:30 p.m.

## **Finally Shattering the Glass Ceiling – Selecting to Enable Diversity**

Noah Hanft, President of the International Institute of Conflict Prevention and Resolution, will discuss how corporate counsel, providers and neutrals can – and must – work together to help qualified women and minorities secure neutral appointments in ADR Proceedings.

There then will be an interactive session on how to attack implicit bias in neutral selection with an introduction by Laura Kaster Appropriate Dispute Solutions, and a facilitated discussion led by Katherine E. Miller, Understanding Conflict.

Symphonies expanded the diversity of their performers by having potential candidates audition behind a screen. In this way, selections were based on the talent heard and not visually. What processes can be instituted by in-house counsel, outside counsel, providers, or even neutrals to increase the appointment of women and minorities? This will be a facilitated brainstorming session with concrete actions for the future as the goal.

### **Panelists:**

**Noah Hanft, Esq.**, International Institute for Conflict Prevention and Resolution

**Laura Kaster, Esq.**, Appropriate Dispute Solutions

**Katherine E. Miller, Esq.**, Understanding Conflict

2:40 p.m.

## **Ethical Quandaries in the ADR World: What to do? What not to do?**

This will be an interactive session. Attendees will be presented with 5 real life ethical dilemmas faced by neutrals and advocates in mediation and arbitration proceedings. Attendees will be broken down into groups to discuss how they would address the dilemma followed by a facilitated discussion.

### **Moderator:**

**Eugene Farber, Esq.**, Farber Segall & Pappalardo, LLP.

### **Panelists:**

**Hon. Carolyn Demarest**, JAMS - The Resolution Experts

**Devika Kewalramani, Esq.**, Partner & Co-Chair Legal Ethics & Law Firm Practice, Moses & Singer LLP

4:00 pm

## **Break**

4:10 p.m.

## **New Bottles for Old Wine: Innovation in the Dispute Resolution World –**

- Best methods for integrating dispute resolution processes
- Discussion of the Mixed Mode Task Force sponsored by the College of Commercial Arbitrators, the International Mediation Institute and the Straus Institute of Dispute Resolution

Disputes are as old as history, yet the search continues for effective and efficient dispute resolution processes. So-called “alternative” dispute resolution now is well engrained in the business and legal cultures in many parts of the world and often are highly effective. At the same time, disputes are increasingly complex and they remain at times expensive and time-consuming to resolve. Is it time to think about some new horizons? Can we make more effective use of available neutral talent and the strong skill sets and experience they bring to complex legal and business disputes? This panel of distinguished professionals will focus on innovative processes – some new, some redeployed to new areas and some combined in new ways. You will hear about the groundbreaking work of the Mixed Mode Task Force and the ways in which innovative processes might be incorporated in your practice.

### **Moderator:**

**Mark Morril, Esq.**, Morril ADR LLC

### **Panelists:**

**Edna Sussman, Esq.**, Sussman ADR LLC

**Kathleen Harmon, Esq.**, Harmon/York Associates, Inc.

**Patrick Green, Esq.**, Henderson Chambers

5:10 p.m.

## **Networking Reception**

## IMPORTANT INFORMATION

**The New York State Bar Association's Section and Meeting Services Department** has been certified by the NYS Continuing Legal Education Board as an accredited provider of continuing legal education in the State of New York. **Under New York's MCLE rule**, this program has been approved for up to **5.5 MCLE credits (3.0 in skills, 1.0 in professional practice and 1.5 in ethics.)** This program qualifies for newly admitted attorneys.

**Discounts and Scholarships:** New York State Bar Association members and non-members may receive financial aid to attend this program. This discount applies to the educational portion of the program only. Under this policy, any member of our Association or non-member who has a genuine basis of his/her hardship, if approved, can receive a discount or scholarship, depending on the circumstances. To apply for a discount or scholarship, please send your request in writing to: Beth Gould, New York State Bar Association, One Elk Street, Albany, New York 12207.



**Accommodations for Persons with Disabilities:** NYSBA welcomes participation by individuals with disabilities. NYSBA is committed to complying with all applicable laws that prohibit discrimination against individuals on the basis of disability in the full and equal enjoyment of its goods, services, programs, activities, facilities, privileges, advantages, or accommodations. To request auxiliary aids or services or if you have any questions regarding accessibility, please contact Sydney Joy at 518-487-5630 or [sjoy@nysba.org](mailto:sjoy@nysba.org).



NEW YORK STATE BAR ASSOCIATION  
**SECTION AND MEETING SERVICES DEPARTMENT**

One Elk Street  
Albany, NY 12207