



Friday, August 10, 2012



*The City Bar Building
42 West 44th Street
New York, NY*

[Program Coursebook \(PDF\)](#)

[eCoursebook \(ePub\)](#)

for Nook, eReader, iPhone and iPad

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[Presentation Slides](#)

Approved by the New York State CLE Board.
This course is not eligible for Illinois MCLE credit.

Friday, August 10 – Opening Statements



9:00a – 9:05a
NETWORK VICE CHAIR
James Miller
Akerman Senterfitt (Miami, FL)



9:05a – 9:10a
SEMINAR Co-CHAIRS
Phillip Sykes – Forman Perry Watkins & Tardy (Jackson, MS)
David Harris – Lowenstein Sandler (Roseland, NJ)
Jeff Williams – Schiff Hardin (San Francisco, CA)

Session I



9:10a – 9:30a
EARLY CASE EVALUATION
Joe Ortego
Nixon Peabody (New York, NY)
Whether we proceed to trial or settle, it's vitally important to arrive at as accurate an assessment of the case as early as possible. The importance today of electronic evidence, particularly e-mail, further complicates this process. Trial lawyer Joe Ortego discusses his experiences with different methods and tools for early case assessment and offer his

First Name:

Last Name:

Position/Title:

Company:

Business Phone:

Fax:

Email:

Company Address1:

Company Address2:

City:

State:

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CLE INFORMATION

Please enter below the State(s) that you are admitted to and your ID Number(s)

State1: ID:

State2: ID:

State3: ID:

State4: ID:

Seminar Agenda

- FRI AUG 7:30a Continental Breakfast and Program Registration
- FRI AUG 9:00a Opening Statements
- FRI AUG 9:10a CLE Session I
- FRI AUG 10:50a Coffee and Refreshment Break
- FRI AUG 11:20p CLE Session II
- FRI AUG 1:00p CLE Session III – Working-Lunch Break-Out Sessions
- FRI AUG 2:00p CLE Session IV – Ethics
- FRI AUG 3:40p Closing Statements

advice on how to better evaluate your cases and how to do it sooner.



9:30a – 9:50a

STRATEGIC POINTERS FOR NON-COMPETE AND TRADE SECRET LITIGATION

Steve Fogg

Corr Cronin Michelson Baumgardner & Preece
(Seattle, WA)

Employees and executives changing jobs can put their companies on one side or the other of non-compete and trade secret disputes and suits. Trial lawyer Steve Fogg has litigated these cases from both sides of the fence. He shares strategic insights to achieve your goals, whether as plaintiff or defendant.



9:50a – 10:10a

REMOVAL TO FEDERAL COURT – THE NEW RULES

Kevin Schiferl

Frost Brown Todd (Indianapolis, IN)

Affecting nearly every diversity case filed in or removed to federal court, the new Federal Court Jurisdiction and Venue Clarification Act of 2011 requires all federal practice litigators to reconsider longstanding litigation strategies. Removal of multiple defendant suits, venue, the rule of unanimity, supplemental jurisdiction of unrelated state claims, residency and how the amount in controversy is determined are all affected. Litigation managers must know these important changes.



10:10a – 10:30a

EXPERTS IN 2012: THE GOOD, THE BAD, AND THE UGLY

Jessie Zeigler

Bass Berry & Sims (Nashville, TN)

It has been one and a half years since the changes to the Federal Rules of Civil Procedure governing expert discovery became effective. How have courts construed these changes? Have recent Daubert/Frye decisions changed the landscape? How has the explosion of technology impacted how counsel need to work with their experts and tackle opponents' experts? Trial lawyer Jessie Zeigler will explore the latest developments and the best practices for working with experts in 2012.



10:30a – 10:50a

LEGAL PROJECT MANAGEMENT: DON'T START BUILDING WITHOUT A BLUEPRINT

Lewis Wiener

Sutherland Asbill & Brennan (Washington, DC)

Build a bridge, a building, even a shed without a blueprint? No chance. Clients need to know in advance the beginning and end points of matters as well as the benchmarks along the way. Veteran trial attorney Lew Wiener will discuss the essentials of LPM: partnering with clients, scoping, transparency, identifying mission critical tasks and having the right team in place, all designed to provide clients with efficient,

cost effective, value added legal services.
"Fees for Services Rendered"? Not anymore.

Refreshment and Coffee Break



Session II



11:20a – 11:40a
INDEPENDENT CONTRACTORS VS. EMPLOYEES
– THE LATEST DEVELOPMENTS

Will Carroll

Schiff Hardin (San Francisco, CA)

The stakes continue to grow in the battle over who may and may not be properly classified as an "employee." With the Obama Administration, Congress, and regulators jumping into the fray -- and plaintiffs' lawyers not far behind -- companies must develop effective strategies for minimizing the risk of misclassification. What are the latest proposals on the legislative front? What are administrative agencies doing to bypass Congressional gridlock? Where are plaintiffs' lawyers gaining traction in class action lawsuits? Labor & employment litigator Will Carroll will get you up to speed on each of these fronts, and discuss practical solutions to dealing with the classification quandary.



11:40a – 12:00p
GETTING YOUR MOJO BACK REGARDING
ARBITRATION

Scott Marris

Beirne Maynard & Parsons (Houston, TX)

Think arbitration has lost its luster? You're not alone. Arbitrator and trial lawyer Scott Marris discusses why arbitration has lost respect, and how you can get your mojo back to harness the power of arbitration to obtain a successful award.



12:00p – 12:20p
21ST CENTURY LEGAL FEE ARRANGEMENTS –
A BRAVE NEW WORLD

Mark Hauck

Dykema (Detroit, MI)

The traditional financial relationship between clients and their attorneys based on the hourly rate may have seen its better days. Innovations in legal fee arrangements have changed the competitive landscape for legal services and this is just the beginning. In-house counsel should challenge their legal services providers to rethink how they are charging for their services.

12:20p – 12:40p

KNOW YOUR PRODUCT

Greg Marshall

Snell & Wilmer (Phoenix, AZ)

Trial lawyer Greg Marshall will give in-house



counsel his perspective on where to go, with whom to speak, and what to do to learn about the product that you will be defending. An intimate knowledge and understanding of your product's engineering, design and manufacture is essential to a good defense, as Greg's defense of a wrongful death case involving a Russian made MiG 21 fighter jet will attest.



12:40p – 1:00p
PUNITIVE DAMAGE CAPS: CONSTITUTIONAL?
 Walter Boone
 Forman Perry Watkins Krutz & Tardy
 (Jackson, MS)
 Trial lawyer Walter Boone will present a nationwide survey of the recent attempts by the plaintiffs' bar to attack these statutes as unconstitutional under various state constitutional provisions. This is a must see presentation for those managing litigation on a nationwide basis.

Session III – Working–Lunch Break–Outs



1:00p – 2:00p
SESSION A:
CURRENT TRENDS IN BUSINESS LITIGATION
 Moderator: Bobby Hood, Jr.
 Hoode Law Firm (Charleston, SC)
 Room: Evarts

With Discussion By:
Tom Myrick – Moore & Van Allen (Charlotte, NC)
Jim Balich – Schiff Hardin (San Francisco, CA)
James Weller – Nixon Peabody (Long Island, NY)



1:00p – 2:00p
SESSION B:
EFFECTIVELY MANAGING INTER–JURISDICTIONAL CLASS ACTIONS
 Moderator: David Neave
 Blake Cassels & Graydon (Canada)
 Room: Tweed

With Discussion By:
Nicole Bearce Albano – Lowenstein Sandler (Roseland, NJ)
Susan Artinian – Dyekma (Detroit, MI)



1:00p – 2:00p
SESSION C:
THE SUCCESSFUL PARTNERSHIP OF IN–HOUSE AND OUTSIDE COUNSEL: CREATING THE WINNING TEAM
 Moderator: Madeline Sherry
 Gibbons (Philadelphia, PA)
 Room: Carter

With Discussion By:
Joe Cincotta – Gibbons (Philadelphia, PA)

Molly Craig – Hood Law Firm (Charleston, SC)

Joel Hoxie – Snell & Wilmer (Phoenix, AZ)

Mark Hauck – Dykema (Detroit, MI)

Stefan Bourn – Forman Perry Watkins Krutz & Tardy (Jackson, MS)



1:00p – 2:00p

SESSION D:

MANAGING E-DISCOVERY PROVIDERS –
AVOIDING TRAPS FOR THE UNWARY

Moderator: Jeff Williams

Schiff Hardin (San Francisco, CA)

Room: CLE Room

With Discussion By:

William Cronin – Corr Cronin (Seattle, WA)

Cooper Ashley – Maslon Edelman Borman & Brand (Minneapolis, MN)

Larry Polk – Sutherland Asbill & Brennan (Atlanta, GA)

David Sager – Lowenstein Sandler (Roseland, NJ)



1:00p – 2:00p

SESSION E:

TRADE SECRET LITIGATION

Moderator: David Harris

Lowenstein Sandler (Roseland, NJ)

Room: Cromwell

With Discussion By:

Tony White – Thompson Hine (Columbus, OH)

Steve Fogg – Corr Cronin Michelson Baumgardner & Preece (Seattle, WA)

Miguel Pozo – Lowenstein Sandler (Roseland, NJ)



1:00p – 2:00p

SESSION F:

LITIGATION MANAGEMENT

Moderator: David Schultz

Maslon Edelman Borman & Brand (Minneapolis, MN)

Room: Hughes

With Discussion By:

Jim Miller – Akerman Senterfitt (Miami, FL)

Phillip Sykes – Forman Perry Watkins Krutz & Tardy (Jackson, MS)

Sam Goldblatt – Nixon Peabody (Boston, MA)

Mike Fried – LVL Claims (New York, NY)



1:00p – 2:00p

SESSION G:

THE INSIDE SCOOP: In-HOUSE COUNSEL
PERSPECTIVES ON LITIGATION CHALLENGES
AND TRENDS

Moderator: Tony Lathrop

Moore & Van Allen (Charlotte, NC)

Room: Davis

With Discussion By:

John Sandberg – Sandberg Phoenix & von Gontard (St. Louis, MO)

Stacie Hartman – Schiff Hardin (Chicago, IL)

Kyle Dufrane – Dykema (Detroit, MI)

Rick Simses – Beirne Maynard & Parsons
(Houston, TX)



1:00p – 2:00p

SESSION H:

CLIENT SERVICE AND COMMUNICATION –
BETTER RESULTS AND COST EFFICIENCY

Moderator: Mary Anne Mellow

Sandberg Phoenix & von Gontard (St. Louis,
MO)

Room: Stimson

With Discussion By:

Christine Welstead – Akerman Senterfitt
(Miami, FL)

Catherine Ahlin – Maslon Edelman Borman &
Brand (Minneapolis, MN)

Barbara Lukeman – Nixon Peabody (New
York, NY)

Linda Woolf – Goodell DeVries Leech & Dann
(Baltimore, MD)

Session IV – 1.5 Hours of Ethics



2:00p – 2:20p

ETHICS: ETHICAL CONSIDERATIONS OF E-
DISCOVERY

Nikki Nesbitt

Goodell DeVries Leech & Dann (Baltimore,
MD)

It relates to attorneys' responsibilities to
ensure client compliance with litigation
holds, etc., and sanctions that can be issued
against counsel for e-discovery violations.



2:20p – 2:40p

ETHICS: THE CONVERGENCE OF ETHICS AND
BAD FAITH

Ellis Murov

Deutsch Kerrigan & Stiles (New Orleans, LA)

As more and more attorneys represent
insureds, and sometimes multiple insureds,
conflicts can sometimes arise. Additionally,
the ethical duties of attorneys to their clients
sometimes closely parallel duties of insurers
to their insureds. Join us for a discussion and
application of Model Rules 1.1, 1.2(c), 1.3,
1.4(a)(3), 1.4(b), 1.7(a)(1), 1.9(a), 1.16(b)(1)
and 1.16(d) in the context of an evolving
case that went to the United States Fifth
Circuit Court of Appeals on multiple
occasions and that eventually included
malpractice and bad faith allegations.



2:40p – 3:00p

ETHICS: BE CAREFUL WHAT YOU ASK FOR:
PITFALLS IN SETTLEMENT NEGOTIATIONS

Carolyn Fairless

Wheeler Trigg O'Donnell (Denver, CO)

Settlement negotiations put demands on
attorneys to put their clients' cases in the
best light. Puffery and misrepresentation are
often separated by only a thin line. It's easy
to violate ethical proscriptions when
communicating with others involved,
including opposing parties, opposing
counsel, a mediator and your own client. And
there are limits on what you can and what

you cannot ask for. Trial lawyer Carolyn Fairless gives us some easy-to-follow guidelines and interesting practical examples.



3:00p – 3:20p

ETHICS: HOW TO KEEP YOUR HEAD WHEN ALL ABOUT YOU ARE LOSING THEIRS AND BLAMING YOU

Marshall Grossman

Bingham McCutchen (Santa Monica, CA)

When do in house and retained counsel trade a bar number for prison bars? Trial lawyer Marshall Grossman will discuss the ethical pitfalls in every day decisions which can ensure or end your career.



3:20p – 3:40p

ETHICS: DISQUALIFICATION OF TRIAL COUNSEL – NECESSARY FOR FAIRNESS OR UNFAIR TACTIC

Frank DeSantis

Thompson Hine (Cleveland, OH)

Recently, the number of motions by parties to disqualify the trial counsel of the adverse party seem to be significantly increasing, both in terms of decisions reported and trial lawyer experience. There are many ethics issues associated with the grounds advanced in support of these motions, mostly centered on theories of conflict of interest or breach of duty of loyalty. But are the concerns which are generally expressed by the moving parties in these motions, truly based upon ethics issues, or are these motions strictly a tactic aimed at obtaining unfair advantage. Trial court judges struggle with this dichotomy on a case-by-case basis.

Closing Statements



3:40p – 3:45p

NETWORK VICE CHAIR

James Miller

Akerman Senterfitt (Miami, FL)