

# 2016 AAA/ICDR Arbitrator Conference

FEBRUARY 19 & 20, 2016 NEW ORLEANS, LA

## C O N F E R E N C E   A G E N D A

### THURSDAY, FEBRUARY 18, 2016

5:00 pm – 7:00 pm    **Welcome Reception**

### FRIDAY, FEBRUARY 19, 2016

7:15 am – 9:00 am    **Registration and Breakfast**

9:00 am – 10:15 am    **Opening Plenary Session**

#### *Marketplace Expectations of AAA Arbitrators*

The “marketplace” for the AAA’s arbitration services has needs and expectations that every AAA panelist must understand and, consequently, strive to meet – on every assignment. The conference begins with these needs and expectations front-and-center with a panel of sophisticated users of arbitration discussing their perspectives on the arbitration process and their views on specific things they look for from AAA arbitrators.

**Panelists:** To Be Announced

10:30 am – 12:15 pm    **Morning Breakout Sessions**

#### 101 *Red Flags and Risk Areas for Arbitrators:*

##### *A Review of Recent Cases Challenging Arbitrator Authority*

The most frequently asserted—and most frequently successful—statutory ground asserted by parties seeking vacatur of an arbitration award is that the arbitrators “exceeded their powers.” This session will review recurring fact patterns and risk areas addressed in a selection of recent cases where parties challenged an award on the ground that the arbitrators allegedly exceeded their authority.

**Thomas J. Brewer, Esq.,** Seattle, WA; **Karen Fitzgerald, Esq.,** Dallas, TX

#### 102 *Arbitral Subpoenas: Questions Abound, Answers Can Be Found*

The issuance and enforcement of arbitral subpoenas raise challenging questions for the arbitrator and counsel. Questions such as: Can subpoenas be utilized for depositions or are they limited to “pre-merits testimony” in front of an arbitrator? and What if the subpoenaed person or document is out of state or out of the country? Complicating the use of subpoenas under Sec. 7 of the Federal Arbitration Act are the conflicting interpretations of the various Circuit Courts of Appeals. More questions arise such as: How do the recent amendments to FRCP 45 (incorporated by reference into the statute) impact the use of subpoenas? and When are subpoenas available under alternative state arbitral regimes? In discussing these questions and others, the Panel will provide you with a useful and current primer for dealing with third-party subpoenas.

**Hon. William Bassler,** Red Bank, NJ; **Michael Chambers, Esq.,** Mobile, AL;  
**Mark A. Cymrot, Esq.,** Washington, DC

#### 103 *The Outer Limits of Arbitral Jurisdiction: Who Decides and When?*

New decisions dealing with specific aspects of arbitral jurisdiction are almost a weekly occurrence. This presentation will discuss the gamut of jurisdictional issues including procedural and substantive challenges to arbitration, the relevant AAA rules, emergency motions, when non-signatories can be required to arbitrate, class actions, when an arbitrator loses jurisdiction and how issues of res judicata and collateral estoppel are handled post-award. Come hear a practical and informative discussion of this rapidly developing area of the law.

**Anthony M. DiLeo, Esq.,** New Orleans, LA; **Mitchell L. Marinello, Esq.,** Chicago, IL

#### 104 *Motions! Sanctions! How to More Effectively Manage the Arbitration Process*

As motion practice in more complex arbitrations has continued to expand, coupled with the authority now of arbitrators to impose sanctions, some are concerned that arbitration continues to morph into litigation. But motions and sanctions are nothing more than tools that if used properly by the parties and arbitrators can more effectively manage the arbitration process. A better understanding of both these developments is important in recognizing how these tools may actually help achieve rather than detract from the twin goals of efficiency and economy that arbitrations seek to achieve.

**J. Timothy Eaton, Esq.,** Chicago, IL; **Stanley P. Sklar, Esq.,** Chicago, IL

#### 105 *Arbitration Law: Key Developments of 2015*

This session will offer a discussion and analysis of current developments in arbitration law.

**Eric P. Tuchmann, Esq.,** New York, NY; **Hon. Deborah Hankinson,** Dallas, TX

#### 106 *New Challenges for International Arbitrators – 2014 ICDR Rules*

The June, 2014 ICDR Rules present Arbitrators with new tools and new responsibilities. Innovations include a unique tool for resolving consolidation requests and expedited procedures, designed for cases large and small, with tight time limits for taking evidence. Drafting Committee leadership and ICDR senior staff will take you through the changes, tell you where the challenges are and, in the best tradition of ICDR Arbitrator Symposia, explore solutions with you.

**Presenters:** To Be Announced

12:30 pm – 1:45 pm    **Lunch**

#### *Emerging Importance of Cross-Cultural Competency in ADR*

Cross-cultural competency is increasingly becoming an important skill for arbitrators and mediators to have in their toolkit as the acceptance and use of mediation and arbitration continues to expand both domestically and globally. As parties from different legal systems, social traditions and backgrounds engage in the ADR process, there are endless opportunities for cross-cultural misunderstandings even among citizens of the same country. Our distinguished panelists have extensive experience in international and cross-cultural dispute resolution.

**Sasha Carbone, Esq.,** New York, NY; **Theodore K. Cheng, Esq.,** New York, NY

2:00 pm – 4:30 pm    **Afternoon Breakout Sessions**

#### 201 *eDiscovery: What Every Arbitrator Needs to Know*

99% of all information is now electronic and as a result eEvidence is part of virtually every arbitration. All arbitrators are now confronted with eDiscovery issues. This session will provide basic eDiscovery and eEvidence topics to improve arbitrators’ knowledge of this important topic.

**A.J. Krouse, Esq.,** New Orleans, LA; **Nancy F. Lesser, Esq.,** Washington, DC  
**Peter S. Vogel, Esq.,** Dallas, TX

#### 202 *Does LinkedIn Mean Conflicted Out and Other Ethical Conundrums*

This session will offer new perspectives on ethical obligations on disclosure and marketing in this new era of online communications and social media. Traditional ethical guidelines did not envision some of today’s ethical issues. Participants will raise their awareness and knowledge about how not to cross the line. This interactive session will include a quiz and group format and cover a wide range of issues. Don’t miss this opportunity to update your ethical awareness.

**Eugene I. Farber, Esq.,** White Plains, NY; **Ruth V. Glick, Esq.,** Burlingame, CA

#### 203 *Returning Arbitration to its Alternative Roots*

Are you an arbitrator who wants to learn more techniques for assuring a faster, more streamlined, less costly process that still assures fairness? This highly interactive program will involve you in controlling costs from the inception through the conduct of the preliminary hearing – which can form the embryonic stage of the arbitration – and will include planning for innovative presentations of expert witness testimony and use of final offer arbitration for all or aspects of the case. The techniques we will discuss and practice will allow you to avoid one-size fits all solutions and warmed-over court trials. Together we will develop and expand checklists and protocols that will offer the parties true alternative procedures.

**M. Scott Donahey, Esq.,** Palo Alto, CA; **Laura A. Kaster Esq.,** Princeton, NJ

#### 204 *The Full Pinocchio: Is Lying in Mediation Ever OK?*

What is a lie? Is it just an affirmative misstatement or does it include such things as puffing, exaggeration, understatement, partial truth and non-disclosure? Is it accepted that there will be some level of deception or lack of full truth in any mediation? If so, where should the line be drawn and how should the standard of truthfulness be defined for mediators? For parties? For parties’ counsel? This program will involve a rigorous, interactive discussion using a number of real-life case scenarios where we will discuss (i) Whether a lie has been committed or whether deception is in the air, and (ii) What the mediator’s response should be.

**Rebecca Callahan, Esq.,** Newport Beach, CA; **Harold Coleman, Jr., Esq.,** San Diego, CA

#### 205 *Clearing the Fog: Practical Insights for Enhancing AAA Arbitrator Practices and Opportunities*

Arbitrators need to understand the business side of arbitration so they can increase the satisfaction of both the AAA/ICDR and their customers. This session will dispel misconceptions and answer questions many arbitrators have about creating an effective bio, getting listed and selected for panels, best arbitrator billing practices and more. We will also focus on what parties and counsel say, on user surveys, about arbitrators. This is one session every AAA/ICDR arbitrator cannot afford to miss.

**Peter Michaelson, Esq.,** New York, NY; **Allison J. Snyder Esq.,** Houston, TX

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## FRIDAY, FEBRUARY 19, 2016 (CONTINUED)

- 5:00 pm – 6:15 pm      Reception**
- 6:30 pm – 8:00 pm      Dinner and Keynote Address**  
**India Johnson, President & CEO, AAA/ICDR**

## SATURDAY, FEBRUARY 20, 2016

- 7:15 am – 9:00 am      Registration and Breakfast**

- 9:15 am – 11:45 am    Morning Breakout Sessions**

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- 12:00 pm – 1:30 pm    Lunch**

***Decades of Experience: A Conversation with Distinguished Arbitrators***

Soren Kierkegaard observed that "life must be understood backwards; but it must be lived forward." The voice of experience from those looking back on long, distinguished arbitration careers have much to offer those who continue to move forward in their arbitration careers. An eminent panel of arbitration practitioners will share valuable lessons learned during decades of arbitration work.

**Panelists:** To Be Announced

- 1:45 pm – 3:30 pm      Afternoon Breakout Sessions**

**401    *Red Flags and Risk Areas for Arbitrators:***

***A Review of Recent Cases Challenging Arbitrator Authority***

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**406    *And Justice for All: Arbitration and the Self-Represented Party***

The unique challenges posed by pro se parties seeking dispute resolution through court or ADR organizations continues to be one of the most complex and vexing issues facing the legal system. This session will go beyond just highlighting the unique challenges posed by pro se parties. It will explore strategies and techniques to assist arbitrators in effectively and efficiently managing both the process and perhaps more importantly, the parties expectations. A panel of seasoned arbitrators and AAA staff will discuss the arbitrator's role and duty in providing access to justice and fairness for all parties throughout the arbitral process.

**Reginald A. Holmes, Esq.**, Pasadena, CA; **Neil Currie, Esq.**, Los Angeles, CA

- 3:30 pm      Conference Adjourns**