

2nd Annual ADR Symposium: ADR in the Workplace – Richmond, VA

September 24, 2018 | MCLE Credits: 5.0 (1.5 Ethics) *Approved*
MCME Credits: 5.75 (0.5 Ethics) *Approved*

Monday, September 24, 2018

- 9:45 a.m.** **Registration**
- 10:15 a.m. – 10:30 a.m.** **Opening Remarks and Introductions**
- Speaker:* James C. Cosby | Chair, Joint ADR Committee of The Virginia Bar Association and The Virginia State Bar
Vandeventer Black LLP – Richmond
- 10:30 a.m. – 11:45 a.m.** **Employer ADR Programs**
(75 min. CLE)
(75 min. CME)
- While the Federal Arbitration Act was enacted in 1925, the arbitration of statutory workplace claims is largely a development of only the last 25 years. As a result of a series of Supreme Court decisions, from *Gilmer* in 1991, to *Circuit City* in 2001, to this year’s ruling in *Epic Systems*, arbitration has evolved from one aspect of collective bargaining agreements and select executive contracts, to a dispute resolution mechanism that is applicable to an estimated 60 million workers. This session will address the legal foundation upon which these developments are based, and will identify the ways in which alternative dispute resolution mechanisms—including but not necessarily limited to arbitration—may exist in the workplace. Two practitioners with extensive experience—in the practical development and implementation of ADR programs, and a quarter century of appellate review of challenges to enforcement of arbitration agreements—will explain the ways in which ADR programs, and agreements to arbitrate, have transformed the ways in which workplace claims can be resolved.
- Speakers:* Ellen Duffy
Genworth Financial, Inc. – Richmond
- David E. Nagle
Jackson Lewis P.C. – Richmond
- 11:45 a.m. – 12:15 p.m.** **Break for Lunch (Included in registration fee)**
- 12:15 p.m. – 12:45 p.m.** **Update on Appellate Mediation Project**
(30 min. CLE)
(30 min. CME)
- The Supreme Court of Virginia and the Court of Appeals of Virginia will undertake mediation pilot projects beginning January 1, 2019. The mediation

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pilot projects will run for two years, and will be available in select civil cases where both parties are represented by attorneys.

In 2017, at the request of Chief Justice Donald W. Lemons, the Joint Alternative Dispute Resolution (ADR) Committee of the Virginia State Bar and the Virginia Bar Association established a Special Committee to Study Appellate Mediation in Virginia. The Special Committee included the Honorable Wesley G. Russell, Jr., Judge, Court of Appeals of Virginia. In April 2018, the Special Committee made specific recommendations to the Chief Justice, including the establishment of mediation pilot projects in the Commonwealth's appellate courts. The Special Committee also recommended a new level of certification for appellate mediators during the pilot projects, which will be presented to the Judicial Council for adoption later this year.

Judge Russell will describe the pilot projects, and discuss the potential benefits of mediation to litigants in the appellate courts in Virginia.

Speaker: The Honorable Wesley G. Russell, Jr.
Court of Appeals of Virginia – Richmond

12:45 p.m. – 1:00 p.m.

Break

1:00 p.m. – 2:15 p.m.

(75 min. CLE)

(75 min. CME)

The Art of Mediating Employment Claims: Strategies for Maximizing Outcomes and Satisfaction for Your Clients

A select panel of employment litigation lawyers and an employment claim mediator share their techniques and tips on:

- When to schedule the mediation to increase the likelihood of resolution
- How to use the mediation and the mediator for informal discovery
- How to effectively prepare your client and the mediator for a successful negotiation
- How and when to use joint sessions to impact case value and increase the likelihood of settlement
- How to create “significant other support” or “institutional buy-in” to maximize client satisfaction with the outcome, the process and you
- How to create settlement “value” that’s not money
- Breaking impasse

Speakers: Carla D. Brown
Charlson Bredehoff Cohen & Brown, P.C. – Reston

Jack W. Burtch, Jr.
Burtch Law PLLC – Richmond

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John E. Davidson
Davidson & Kitzmann, PLC – Charlottesville

Betty S.W. Graumlich
ReedSmith LLP – Richmond

Moderator: Joan S. Morrow
Joan S. Morrow P.A. – Richmond/Williamsburg

2:15 p.m. – 2:30 p.m.

Break

2:30 p.m. – 3:45 p.m.

(75 min. CLE)
(75 min. CME)

Atypical ADR

This panel will discuss the application and potential of ADR resources and procedures to matters beyond typical civil disputes. Panel members will share observations and experiences regarding special challenges, best practices and lessons learned, and future opportunities and the potential for growth in ADR to such matters. Example areas include:

- Environmental and land use
- Community development
- Education and educational institutions
- Health Care
- Public Policy and legislative challenges
- Matters of race, public spaces and memorials
- State and local government matters and public entities
- Mass tort
- Transnational matters

Speakers: David H. Burt
Independent Arbitrator – Wilmington, DE
Executive Consultant to the International Institute for Conflict Prevention and Resolution (CPR Institute) – New York, NY

Frank Dukes, PhD.
University of Virginia School of Architecture – Charlottesville

Mark E. Rubin
Virginia Center for Consensus Building – Richmond

Moderator: James C. Cosby | Chair, Joint ADR Committee of The Virginia Bar Association and The Virginia State Bar
Vandeventer Black LLP – Richmond

3:45 p.m. – 5:00 p.m.

Ethical Issues in Mediation

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(75 min. CLE)
(45 min. non-ethics
and 30 min. Ethics CME)

This program will bring together Tom Spahn of McGuireWoods, a frequent speaker and author on legal ethics, and John McCammon of The McCammon Group. Their focus will be the lawyer's challenge to negotiate both ethically and effectively in mediation, what lawyers can reasonably ask and expect of mediators and what lines mediators should not cross.

Speakers: John B. McCammon
The McCammon Group, Ltd. – Richmond

Thomas E. Spahn
McGuireWoods LLP – Tysons

5:00 p.m. – 6:00 p.m.

Reception

An opportunity to network with other attendees and continue the discussion.

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