

# *46th Annual Forum on Franchising*



AMERICANBARASSOCIATION

Forum on Franchising

**FRANCHISING**  
*is bigger in texas*

ABA FORUM ON FRANCHISING ★ NOVEMBER 1-3 ★ DALLAS, TX

REGISTRATION NOW AVAILABLE ONLINE, [CLICK HERE.](#)

## *Dear Colleagues and Friends,*

It is our honor to serve as Co-Chairs for the 46th Annual Forum on Franchising in Dallas, Texas, on November 1-3, 2023, at the Sheraton Dallas Hotel. We hope you will join us and see that Franchising is Bigger in Texas!

Our schedule includes a broad range of the exceptional programming that is the Forum's hallmark, including three intensive programs, 24 workshops, and the Forum's signature plenary, Annual Developments. We are especially pleased to welcome Lois C. Greisman, Associate Director of the Division of Marketing Practices, and William T. Maxson, Assistant Director of the Division of Marketing Practices, both of the United States Federal Trade Commission, who will join a conversation hosted by the Forum's Chair Elizabeth Weldon and Past Chair Will Woods. This plenary session includes an opportunity for attendees to submit questions in advance. During breakfasts, lunches, and other networking events you can meet and reconnect with Forum colleagues.

On Thursday night, the Forum's Annual Reception and Dinner will be held in historic Dallas Union Station, where we will have plenty of time to socialize, eat and drink, and enjoy a casino night with live entertainment. The Friday night event will be at Dallas' popular Happiest Hour, where we will enjoy great food and drink in an elevated space, with beautiful views of the Dallas skyline.

We look forward to seeing you!

To find out more, visit: <http://www.americanbar.org/groups/franchising>.

### **Your Program Co-Chairs**

**Nicole Liguori Micklich**, Urso | Liguori | Micklich,  
nicolemicklich@ulmlawfirm.com

**Heather Carson Perkins**, Faegre Drinker Biddle & Reath,  
heather.perkins@faegredrinker.com

You can register for the event by scanning the QR code:



### **Hotel Reservations**

The Forum on Franchising has negotiated a special room rate of \$249 per night plus taxes and fees (totaling 18.356% as of June 1, 2023, subject to change) for single or double occupancy.

Reservations can be secured by calling the hotel at 214-922-8000 and mentioning the ABA Forum on Franchising 2023 Annual Meeting. You may also reserve online at

<https://book.passkey.com/gt/219326736?gtid=69f51a059174141dd079330c0d4014d4>.

The deadline for booking your room is October 8, 2023 at 5:00pm CST or once the room block is full, whichever occurs first. We strongly recommend you book your hotel room early.

### **Getting There**

Attendees have choices when flying into Dallas. The Sheraton Dallas Hotel is approx. 25 minutes from Dallas/Fort Worth International Airport and 15 minutes from Dallas Love Field. Taxi service, Uber & Lyft are available from either airport. Alternatively, attendees can get to the hotel via the DART Light Rail; The Sheraton Dallas Hotel is a brief 5-minute walk when you exit at the Pearl/Arts District Subway Station.





## Intensives & Plenaries

*The Intensive Programs are offered as one course. You must attend all parts to receive MCLE credit.*

**Wednesday, November 1**

**10:00am - 4:00pm**

### **Intensive 1: Fundamentals of Franchising**

This program provides a comprehensive overview of franchise law for those who want a thorough introduction to this field, as well as those who want a refresher on one or more areas of franchise law practice. Join top franchise lawyers as they discuss structuring a franchise, disclosure and registration requirements, franchise relationship laws, defining and protecting a franchise system's intellectual property, the representation of franchisees, and international franchising. Each attendee will receive a copy of the most current edition of *The Fundamentals of Franchising*.

#### **Speakers:**

**Disclosure and Registration:** Jason Adler, Cellairis Franchise, Inc.

**International Franchising:** Nicola Broadhurst, Stevens & Bolton LLP

**Structuring the Franchise :** Steven Goldman, Friedlander Misler, PLLC

**Representing the Franchisee:** Erin Johnsen, Garner, Ginsburg & Johnsen, P.A.

**Relationship Laws:** Phyllis Alden Truby, Phyllis Alden Truby APC

**Intellectual Property and Antitrust:** Will K. Woods, Baker McKenzie

**11:00am - 4:30pm (concurrent)**

### **Intensive 2: Advanced Issues in Mergers and Acquisitions of Franchise Companies**

The acquisition process for a franchise system can differ from a traditional M&A deal because of the unique assets being sold and the complexity of legal compliance requirements. This program will follow the life cycle of such a transaction, from pre-transaction deal preparation and investigation to post-closing, for in-house and outside counsel. The speakers will provide an overview of options for structuring such deals and best practices associated with communicating with colleagues and co-counsel. They will also cover conducting due diligence, including analyzing intangible assets, and reviewing the franchise agreement and other contracts. The panel will discuss advanced topics including disclosure issues, unique public company considerations and private equity deals. Attendees of this Intensive will receive a copy of the Second Edition of *Mergers & Acquisitions of Franchise Companies*.

#### **Speakers:**

**Amy Cheng**, Cheng Cohen LLC

**Christina M. Noyes**, Gust Rosenfeld P.L.C.

**Kerry Olson**, CKE Restaurants Holdings, Inc.

**David Oppenheim**, Greenberg Traurig

### **Intensive 3: How Has Employment Law Changed Franchising?**

In recent years, franchise and employment law have converged in new ways and created additional legal and business considerations for franchise systems. To understand the current state of franchise law, it is now necessary to take into account issues like misclassification, joint employment, and organized labor and consider state and federal statutes and regulatory action. Pending state legislation and potential regulation could change how franchise companies do business. In addition, other employment law issues potentially impact franchising, including workplace mobility laws like covenants not to compete and anti-poaching policies, vicarious liability, disability access laws, and laws requiring pay data reporting and posting of pay scales in job postings. Traditional brand controls and uniform standards intended to enhance consumer experience across a franchise system may be in tension with local employment laws like worker dress code and appearance standards and mandating that franchisees use specific point-of-sale software for time-tracking, labor scheduling, and payroll functions. With franchise and employment laws more frequently colliding, franchisors need to understand best practices for information sharing and franchisee support without undertaking undue employment risk.

#### **Speakers:**

**Paul Barsness**, Bradley Arant Boult Cummings LLP

**Andrew Murphy**, Faegre Drinker Biddle & Reath LLP

**Jonathan Solish**, Bryan Cave Leighton Paisner LLP

**Rochelle Spandorf**, Davis Wright Tremaine LLP

## Intensives & Plenaries

**Thursday, November 2**

**8:30am – 10:15am**

### **Awards Presentation & Plenary 1: Annual Developments**

The Forum's signature event! Join us for a thoughtful, comprehensive, and interesting review of the year's key judicial and legislative developments affecting franchising and distribution.

#### **Speakers:**

**Annie Caiola**, Caiola & Rose, LLC

**Charles S. Marion**, Blank Rome LLP

**Friday, November 3**

**8:30am – 10:15am**

### **Plenary 2: A Conversation with the FTC – Policies and Priorities Impacting Franchising**

Lois C. Greisman, Associate Director of the Division of Marketing Practices and William T. Maxson, Assistant Director of the Division of Marketing Practices, both of the United States Federal Trade Commission, will join a conversation about the FTC's recent request for information regarding the franchise business model, enforcement priorities, and other current franchise-related issues with the Forum's current Chair, Elizabeth Weldon, and one of the Forum's Past Chairs, Will Woods. There will be an opportunity to propose questions in advance.

**Lois C. Greisman**, Federal Trade Commission

**William T. Maxson**, Federal Trade Commission

**Elizabeth Weldon**, Snell & Wilmer L.L.P.

**Will K. Woods**, Baker McKenzie



## Workshops

### **W-1: You Won! Now What? Handling Judgment Enforcement and Collection**

The collection of money judgments and enforcement of court-ordered non-monetary remedies can be significant undertakings that attorneys and their clients, franchisors and franchisees, may not have assessed during the course of the litigation. When the opposing party fails to satisfy a judgment voluntarily, counsel and clients must assess collectability, personal guarantees, enforceability of nonmonetary relief, and the related cost in deciding the enforcement or collection strategy. Doing so requires early and post-judgment investigation (including of the client's own records and diligence) and candor with the client. It also requires early thought on the location or the venue where a judgment will be most effective, including with respect to arbitration awards. This program will also explore the unique aspects of franchise relationships when considering the effects of collecting and enforcing judgments. The panel will discuss legal and practical issues involved in enforcing judgments, procedures to gather information about the judgment debtor's assets and recover those assets, and debt collection actions in state and federal courts. The panel will also discuss options for enforcement of non-monetary remedies such as injunctive relief.

**Robert G. Huelin**, Threshold Brands, LLC

**Jonathan E. Perlman**, Venable LLP

**Justin Sallis**, Lathrop GPM LLP

### **W-2: (Un)Common Law Principles and Doctrines for Litigating Franchise Cases**

Franchisor and franchisee counsel sometimes deploy creative common law claims when heading into battle. These can include civil conspiracy, unjust enrichment, conversion, equitable recoupment, third party beneficiary claims and negligence per se, on the one hand and statute of frauds, failure to mitigate, waiver and estoppel, unclean hands, failure of consideration, illegality, laches and impossibility on the other. This program will delve into lesser-used common law claims and defenses that franchise litigators should consider asserting. The panel will address circumstances in which those claims or defenses may be appropriate and consider how best to use and prove them.

**Natalma McKnew**, Fox Rothschild LLP

**Kirsten Nordstrom**, Garner, Ginsburg & Johnsen, P.A.

### **W-3: Enforcing Internationally: The Options and How to Choose**

Transactional franchise lawyers preparing international agreements and franchise litigators protecting brands internationally should understand the options for resolving disputes, and more critically, how to choose the most appropriate method for each matter. Is arbitration followed by recognition and enforcement in the country where the adverse party has assets always the best approach? Whether directly seeking redress in the local courts or recognizing and enforcing a foreign award, counsel must carefully consider numerous practical factors when selecting the approach to dispute resolution. These include the complexity around serving process internationally and the difference in evidentiary rules and discovery, especially in civil law jurisdictions. This program will discuss various practical strategies for enforcing domestic arbitration awards or judgments in international venues and will review the role of domestic courts in addressing both preliminary matters and the entire dispute.

**Kristin Corcoran**, Marco's Franchising, LLC

**Paul Jones**, Jones & Co.

### **W-4: The Importance of Materiality in Franchise Disputes**

In its decision in *Peterbrooke Franchising of America LLC v. Miami Chocolates, LLC* in late 2022, the Eleventh Circuit reversed the grant of summary judgment for a franchisor in a contract dispute with a franchisee, holding that there was an issue of fact as to whether the franchisee's refusal to install a new point-of-sale system was a material breach of the franchise agreement. This program will examine when a breach of a franchise agreement may or may not be material, what facts are important to the determination, including provisions of the franchise agreement, and when a court can decide the issue as a matter of law. The panel will discuss scenarios where a franchisee could argue that the franchisor terminated for a non-material breach, the franchisor's arguments otherwise, and the consequences of a franchisor terminating for a non-material breach. Finally, the panel will examine the effect of statutory prohibitions on termination even where the word materiality is absent from the statute.

**David Harford**, Bryan Cave Leighton Paisner LLP

**Jason Murray**, K&L Gates LLP

**Jaime Paoletti**, Garcia & Milas, P.C.

## Workshops

### **W-5: Recovery of Attorneys' Fees in Franchise Litigation: Success is No Accident!**

This program will offer a useful guide for practitioners seeking to recover attorneys' fees in franchise litigation and will also address best practices for drafting fee and cost-shifting provisions in franchise agreements. Franchise agreements frequently provide for the recovery of attorneys' fees in litigation—sometimes reciprocally and sometimes unilaterally. Some franchise statutes authorize the recovery of attorneys' fees by the prevailing party and other statutes preclude fee shifting provisions or limit enforceability. Thus, it is crucial that practitioners understand how to take advantage of both franchise agreement language and available statutes. The program will first present best practices for drafting fee and cost-shifting provisions, as well as other language in franchise agreements that may result in fee-shifting. The panel will then examine statutes that address recovery of attorneys' fees. And finally, the program will analyze the varied standards for recovery; apportionment requirements applicable when a party prevails on fewer than all claims; best practices for proof of reasonableness, necessity, and amount; and defenses available when opposing a fee application.

**Deborah S. Coldwell**, Haynes and Boone LLP  
**Himanshu Patel**, Zarco Einhorn Salkowski P.A.

### **W-6: Is a Little Competition Healthy?**

When franchisors and their affiliates conduct business – whether physically or virtually – in markets in which franchisees operate, the franchisors and franchisees may find themselves competing for the same customers and employees. Franchisees may raise claims of encroachment, poaching, or unfair competition, while franchisors may argue that they have an interest in fully developing the brand. This program will examine claims arising from competition within the franchise system or with other systems operated by the franchisor, how to prevent them, and how to bring them and defend against them when they arise.

**Harris Chernow**, Reger Rizzo & Darnall LLP  
**Brian Forgas**, Hilton  
**Maisa Frank**, Lathrop GPM LLP

### **W-7: It Ain't Over 'til It's Over: Creating, Enforcing, and Defending Franchisor Remedies Short of Termination**

Termination of a franchise relationship for franchisee noncompliance presents a final remedy and may lead to extensive post-termination disputes. Termination is not, however, the only way that a franchisor can incentivize compliance with or deter breaches of the franchise agreement. This program analyzes tools short of termination, including fines for noncompliance, reduction of territory, probation, and approved transfers. The program will cover how these remedies interact with other rights under a franchise agreement, how state relationship laws might impact the enforceability of such remedies, and practical considerations for both franchisors seeking to exercise such remedies and franchisees forced to respond to such enforcement tools.

**Michael Einbinder**, Einbinder & Dunn LLP  
**Benjamin B. Reed**, Plave Koch PLC  
**Stephanie Russ**, Childrens Lighthouse Franchise Company

### **W-8: The Current Landscape in the Enforcement of Intellectual Property Rights**

Intellectual property, including trademarks, trade dress, trade secrets, and other confidential information, is at the center of every franchise relationship. Eventually, most franchisors will have to act to enforce their intellectual property rights, especially in the social media age. Franchisors expect that after a cease-and-desist letter is ignored, courts will grant preliminary injunctive relief against unauthorized use of their intellectual property by former franchisees. But judges may deny injunctions on the ground that the franchisors' potential losses are calculable and for other reasons. This program will examine various ways to enforce intellectual property rights against franchisees, former franchisees, and third parties and strategies for persuading a court to protect the rights with preliminary and permanent injunctive relief.

**Anne Baroody**, Bradley Arant Boult Cummings LLP  
**Susan Meyer**, Greensfelder, Hemker & Gale, P.C.  
**Tom Vanderbloemen**, Vanderbloemen Law Firm, P.A.



## Workshops

### **W-9: The Litigation Before the Litigation**

The venue for a franchise dispute can significantly impact the ultimate outcome of the case. This program will focus on considerations attorneys and clients must explore when drafting forum selection clauses in the franchise agreement and making forum selection decisions. Topics will include strategic considerations when selecting a venue, challenging forum selection, jurisdictional considerations, general venue transfer principles, and litigation over arbitrability and the Federal Arbitration Act. The panel will also discuss issues that arise when related claims are subject to simultaneous arbitration and litigation.

**Stephanie J. Blumstein**, A.Y. Strauss, LLC  
**John M. Doroghazi**, Wiggin and Dana LLP

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### **W-10: Knowing Where to Look: Effective and Useful Discovery Tips for Franchise Lawyers**

Knowledge of discovery and evidentiary rules is essential to successfully developing and presenting claims and defenses. This program will emphasize specific subjects and sources of discovery that can be particularly useful to franchise lawyers, including informal discovery and discovery between the parties, as well as the use of and limits of third-party discovery in litigation and arbitration. The panel will discuss effective tools for compelling meaningful production of documents and other information and will focus on what practitioners can do to ensure that the discovery they obtain is actually admissible for summary judgment purposes and at trial.

**John Holland**, Dady & Gardner, P.A.  
**Scott McIntosh**, Quarles & Brady LLP

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### **W-11: Bankruptcy and the Trademark License: What Franchisors and Franchisees Need to Know After *Tempnology***

In 2019, the Supreme Court made clear in *Mission Products Holdings v. Tempnology, LLC* that rejecting a trademark license in bankruptcy does not terminate the license and that, in fact, the licensee will retain whatever rights they would have outside of bankruptcy where a licensor had breached the

licensing agreement. The direct result for franchisees is that their negotiating leverage is now stronger in the circumstance where a franchisor threatens to use a bankruptcy reorganization filing as a sword to remove the franchisee from the system. This program will analyze rejection in bankruptcy post-*Tempnology*, including the basic concepts of assumption and rejection of executory contracts in bankruptcy, the *Tempnology* holding and subsequent caselaw, and their direct and potentially indirect effects. The panel will discuss why these concepts are important even to (currently) economically healthy franchisors and franchisees and actions franchisors and franchisees can take to best position themselves for the future.

**Jason Binford**, Ross, Smith & Binford, PC  
**Nate Riordan**, Wenokur Riordan PLLC

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### **W-12: Bringing and Defending Claims Alleging Constructive Termination**

Constructive termination of a franchise or distributorship can arise when a manufacturer discontinues a line of products or when a franchisor withdraws from a certain market. It might also occur where a franchisor significantly alters the franchise relationship, discontinues services or providing supplies, or otherwise effectively terminates the franchise agreement. The party claiming constructive termination may be entitled to protections of termination provisions in its agreement, applicable franchise laws, and other state or federal laws. This program will analyze constructive termination arguments and remedies, including whether a franchisee or dealer must go out of business in order to assert a constructive termination claim, as well as claims and defenses for litigants faced with a constructive termination scenario and strategies for bringing and defending those claims.

**Joseph S. Goode**, Laffey, Leitner & Goode LLC  
**John Gotaskie**, Fox Rothschild LLP

## Workshops

### **W-13: Regulatory Update**

This program will cover the latest issues in franchise regulation and provide practical guidance for franchise practitioners. The panel will discuss trends at the federal and state level on franchise disclosure, registration and relationship matters, as well as certain ancillary regulatory initiatives that may affect franchising. Topics will include the FTC's franchise rulemaking process and recent requests for information and/or proposals regarding franchisor practices and noncompetes, recent DOL and NLRB proposals on joint employer and independent contractor determinations, recent state franchise law developments (including in Arkansas, California, and New Jersey), as well as practical guidance following a year with the NASAA commentary on questionnaires and acknowledgments and two years with FRED and other electronic registration processes. Finally, the paper will include a useful roster of state examiners and a short primer on state requirements for initial and renewal state filings.

**Ron Gardner**, Dady & Gardner, P.A., Moderator

**Robert Lauer**, Haynes and Boone LLP

**Theresa Leets**, California Dept. of Financial Protection and Innovation

**Oludolapo "Tade" Osikomaiya**, State of Maryland Office of the Attorney General

### **W-14: Complying with New Prohibitions of Questionnaires and Acknowledgements While Protecting a Franchisor's Legitimate Interests**

Effective January 2023, the North American Securities Administrators Association adopted the NASAA Statement of Policy Regarding the Use of Franchise Questionnaires and Acknowledgments that prohibits most acknowledgments and questionnaires in franchise sales activity, at least in registration states that adopt the Statement of Policy. This program will examine the potential impacts of these developments from both a franchisor and franchisee perspective. The panel will discuss steps that the franchisor can take to develop compliant sales processes without undermining its ability both to identify potential violations during the sales process, by either internal sales teams or franchise brokers, and to protect against questionable claims of fraud. The panel will also address the FTC's increased scrutiny of the franchise sales process, such as publicizing a reporting tool that allows prospective franchisees to provide details about how they claim a franchisor wronged them in the franchise sales process and enforcement actions.

**Bethany Appleby**, DLA Piper LLP (US)

**Abhishek Dube**, Baker McKenzie

### **W-15: Private Equity and Beyond: Non-SBA Lending and Financing Alternatives and Impacts**

Attorneys representing franchisees and franchisors often educate clients about financing options and the process of buying and scaling franchised businesses, and lenders about the franchise model. In addition to traditional lending arrangements, alternative forms of financing, including venture capital and crowdfunding, are increasingly popular alternatives, and counsel must understand these and other nontraditional sources of capital. This program will examine the business risks associated with various traditional and non-traditional lending processes, advantages and disadvantages of both traditional and alternative programs, and strategies to help franchise counsel in their role.

**Roland Baggott**, Baggott Law

**Gina N. Malandrino**, Cheng Cohen LLC

### **W-16: Implementing Challenging Technologies in Franchise Systems**

The introduction of contactless payment methods, mobile ordering, artificial intelligence, and other cutting-edge methods of serving customers in a franchise can present a host of strategic and operational challenges and benefits. This program will provide advanced guidance for addressing legal issues which may arise from these and other new technologies, including considerations as to whether vendors contract directly with franchisees or if franchisors obtain and pass services through to franchisees, privacy and cybersecurity, ethical use of artificial intelligence, and data governance. Finally, the program will consider what franchise systems might expect in the future as these non-traditional methods become more widely available and demanded by consumers.

**Kerry Green**, The Wendy's Company

**Manal Hall**, Dentons

**Keri McWilliams**, Nixon Peabody LLP



## Workshops

### **W-17: Responding to and Surviving Negative Social Media Reviews and Online Comments**

Social media can make or break the reputation of a brand or business. Social media can take a complaint or negative post about quality of service, property conditions, or alleged event concerning the business or brand from an isolated incident into a global brand crisis. This program will provide insights and options for dealing with negative social media and online comments, including considerations of whether to respond at all and how best to respond to protect brand reputation. It also will address posts containing false information (including potential defamation claims), and how franchisors and franchisees might respond, including when negative posts concerning franchisee locations reflect potential operational concerns. The panel also will discuss actions franchisors and franchisees can take when a negative review goes viral. The program will also examine franchise agreement provisions and social media policies that may help protect the online reputation of a franchise business and brand.

**Clifford S. Davidson**, Snell & Wilmer L.L.P.

**Mark Forseth**, Marriott Hotels International Limited

**Mark VanderBroek**, Nelson Mullins Riley & Scarborough LLP

### **W-18: Wait, What Will This Cost Me? Best Practices for Cost and Related Financial Disclosures**

Although always important disclosures, particularly in an inflationary environment, it is critical that franchisors carefully review, update, and ensure the accuracy and completeness of cost and related financial disclosures in their FDDs, in Items 5, 6, 7, 8, 11 and 19. The panel will examine the details and requirements of such disclosures and best practices for franchisor counsel in preparing these disclosures and for franchisee counsel in reviewing and advising potential franchisees.

**Doug Luther**, Luther Lanard, PC

**Dawn Newton**, Donahue Fitzgerald LLP

**Mitchell F. Zolton**, Fahey Schultz Burzych Rhodes PLC

### **W-19: From the Ground Up: Practical Considerations for Developing a Start-Up Franchise System**

What does a franchise attorney do when a client says they want to start a franchise system? This program will focus on the nuts and bolts of advising start-up franchisors. The topics will include: (1) Determining if it's time to franchise; (2) information needed to understand the prospective franchisor's business to build an appropriate franchise model; (3) questions to ask and information to gather to draft the FDD, franchise agreement, and other related documents and comply with applicable federal and state law; (4) options to scale effectively such as the use of brokers, implementation of multi-unit offerings, area developer offerings, co-brand offerings, multiple model offerings, and use of management agreements; and (5) ways to position the prospective franchisor for future strategic transactions.

**Megan B. Center**, Quarles & Brady LLP

**Caroline B. Fichter**, Bundy & Fichter PLLC

**Darin Kraetsch**, GSD Consultancy

### **W-20: What You Don't Know Can Hurt You – A Primer for Franchise Lawyers on Trusts, Estates, and Succession Rights**

Because nothing in life is certain except for death and taxes, franchisee succession planning is essential for franchisees and franchisors alike. This program will analyze entity and ownership structures such as ESOPs and revocable and irrevocable trusts, as well as buy-out provisions, and their tax and other legal implications. The panelists will also address franchisor rights arising from common franchise agreement provisions that are triggered by the death or incapacity of a franchisee or its principal and will analyze the enforceability of such provisions and potentially applicable relationship laws.

**K. Eli Akhavan**, Steptoe & Johnson LLP

**Leslie Curran**, Plave Koch PLC

**Robert Einhorn**, Zarco Einhorn Salkowski P.A.

## Workshops

### **W-21: Structuring Distribution Models to Avoid Franchise and Business and Opportunity Laws**

Some distribution models – such as multilevel marketing systems, other direct sales businesses, and commissioned sales arrangements – can be similar to traditional business format franchises and business opportunities. Consequently, when developing one of these models, lawyers should explore whether franchise or business opportunity laws apply. This program will analyze these distribution models, whether they meet the definition of a “franchise” or “business opportunity,” and how best to structure them to avoid federal and state franchise and business opportunity registration and disclosure requirements. The panel also will consider whether a particular model can be set up to automatically avoid falling within the definition of a franchise or business opportunity under the presale laws that govern these relationships.

**Susan A. Grueneberg**, Cozen O’Connor P.C.  
**Max J. Schott, II**, Larkin Hoffman Daly & Lindgren Ltd.

### **W-22: To Arbitrate or Not to Arbitrate and How to Draft Accordingly**

Franchisors have the ability to customize the dispute resolution process to meet the needs of their system. This workshop will examine the threshold question whether to mandate arbitration or litigation and then discuss different arbitration processes and related issues, including enforceability and whether to include mediation or other early dispute resolution alternatives. The panel will examine potential consequences of drafting choices with respect to dispute resolution, broadening or limiting discovery, limitations on remedies, limitations on the time to bring a claim, and other language that may be customized in dispute resolution provisions, with consideration for the impact those drafting choices have on the franchise relationship and the overall business.

**Dawn Johnson**, Greensfelder, Hemker & Gale, P.C.  
**Kathy Kotel**, Kotel Law, PLLC  
**Brian B. Schnell**, Faegre Drinker Biddle & Reath LLP

### **W-23: ESG – Environmental, Social, and Governance in Franchising**

Environmental, social, and governance (ESG) refers to a set of standards for a company’s behavior. ESG is taking on an increasingly significant role in the management of franchisors’ and franchisees’ businesses. This program will provide an overview of concepts related to ESG and its role in corporate governance and decision-making. The panel will discuss fiduciary duties; corporate culture; diversity, equity, and inclusion; corporate social responsibility; and risk management as they relate to franchising and recruiting and retention of franchisees. Additional topics will include pending and proposed regulatory requirements; guidance and codes of conduct; transactional due diligence and risk assessments tailored for ESG; and drafting, structuring, and implementing ESG policies, programs, and related disclosures. The Canadian perspective, where applicable, will be provided on some of these issues.

**Marcus A. Banks**, Wyndham Hotels & Resorts, Inc.  
**Jennifer Dolman**, Osler, Hoskin & Harcourt LLP  
**Kendal H. Tyre**, Nixon Peabody LLP

### **W-24: Privilege and Other Ethical Considerations in the Work-From-Everywhere Era**

Even before the COVID-19 pandemic, lawyers in both corporate law departments and law firms were increasingly working remotely, and that trend has accelerated and perhaps become irreversible. The untethering of work from a physical office increases the risk of breaches of client confidentiality and waiver of attorney-client privilege. It also raises questions related to the practice of law in multiple jurisdictions and potential for the unauthorized practice of law. This program will provide an overview of best practices for protection of confidentiality and privilege from the perspective of counsel and client and analyze recent cases for cautionary tales, specifically in areas where the law is unsettled.

**Daniel Oates**, Miller Nash LLP  
**Kevin Shelley**, Kaufmann Gildin & Robbins LLP



## Program Schedule

### Wednesday, November 1

7:00am – 6:30pm

Forum Registration

10:00am – 4:00pm

**\*Intensive 1:** Fundamentals of Franchising

11:00pm – 4:30pm (concurrent)

**\*Intensive 2:** Advanced Issues in Mergers and Acquisitions of Franchise Companies

**\*Intensive 3:** How Has Employment Law Changed Franchising?

5:00pm – 6:30pm

Welcome Reception

7:00pm – 10:00pm

\*Newcomers/YLD Networking Event – Westlake Brewing Co.

### Thursday, November 2

7:00am – 5:45pm

Forum Registration

7:00am – 8:15am (concurrent)

Networking Breakfast

Paralegal/Franchise Administrators Breakfast

Law Professors' Committee Breakfast

\*Women's Caucus Breakfast

8:30am – 10:15am

**Awards Presentation & Plenary 1:** Annual Developments

10:00am – 1:30pm

\*Spouse/Guest Event – Docent Led Group Tour, Nasher Sculpture Center & Lunch

10:30am – 11:45am

**Concurrent Workshops**

**W-2:** (Un)Common Law Principles and Doctrines for Litigating Franchise Cases

**W-3:** Enforcing Internationally: The Options and How to Choose

**W-6:** Is a Little Competition Healthy?

**W-7:** It Ain't Over 'til It's Over: Creating, Enforcing, and Defending Franchisor Remedies Short of Termination

**W-13:** Regulatory Update

**W-19:** From the Ground Up: Practical Considerations for Developing a Start-Up Franchise System

**W-22:** To Arbitrate or Not to Arbitrate and How to Draft Accordingly

12:00pm – 1:15pm (concurrent)

Networking Lunch

Diversity Caucus & Corporate Counsel Division Joint Lunch

1:30pm – 2:45pm

**Concurrent Workshops**

**W-5:** Recovery of Attorneys' Fees in Franchise Litigation: Success is No Accident!

**W-10:** Knowing Where to Look: Effective and Useful Discovery Tips for Franchise Lawyers

**W-12:** Bringing and Defending Claims Alleging Constructive Termination

**W-15:** Private Equity and Beyond: Non-SBA Lending and Financing Alternatives and Impacts

**W-17:** Responding to and Surviving Negative Social Media Reviews and Online Comments

**W-23:** ESG – Environmental, Social, and Governance in Franchising

**W-24:** Privilege and Other Ethical Considerations in the Work-From-Everywhere Era

3:00pm – 4:15pm

**Concurrent Workshops**

**W-1:** You Won! Now What? Handling Judgment Enforcement and Collection

**W-8:** The Current Landscape in the Enforcement of Intellectual Property Rights

\*This event is a ticketed event for which there is an additional charge.

## Program Schedule

**W-9:** The Litigation Before the Litigation  
**W-11:** Bankruptcy and the Trademark License: What Franchisors and Franchisees Need to Know After *Tempnology*  
**W-16:** Implementing Challenging Technologies in Franchise Systems  
**W-20:** What You Don't Know Can Hurt You – A Primer for Franchise Lawyers on Trusts, Estates, and Succession Rights

**4:30pm – 5:45pm**

### Concurrent Workshops

**W-2:** (Un)Common Law Principles and Doctrines for Litigating Franchise Cases  
**W-4:** The Importance of Materiality in Franchise Disputes  
**W-12:** Bringing and Defending Claims Alleging Constructive Termination  
**W-14:** Complying with New Prohibitions of Questionnaires and Acknowledgment While Protecting a Franchisor's Legitimate Interests  
**W-17:** Responding to and Surviving Negative Social Media Reviews and Online Comments  
**W-18:** Wait, What Will This Cost Me? Best Practices for Cost and Related Financial Disclosures  
**W-21:** Structuring Distribution Models to Avoid Franchise and Business and Opportunity Laws

**6:00pm – 6:45pm**

\*Corporate Counsel Reception

**7:00pm – 10:00pm**

Forum's 46th Annual Reception and Dinner – Union Station

### Friday, November 3

**7:00am – 4:15pm**

Forum Registration

**7:00am – 8:15am (concurrent)**

Networking Breakfast

\*International Division Breakfast

\*Solo/Small Firm Breakfast

**8:30am – 10:15am**

**Annual Business Meeting & Plenary 2:** A Conversation with the FTC – Policies and Priorities Impacting Franchising

**10:30am – 11:45am**

### Concurrent Workshops

**W-3:** Enforcing Internationally: The Options and How to Choose  
**W-5:** Recovery of Attorneys' Fees in Franchise Litigation: Success is No Accident!  
**W-6:** Is a Little Competition Healthy?  
**W-10:** Knowing Where to Look: Effective and Useful Discovery Tips for Franchise Lawyers  
**W-11:** Bankruptcy and the Trademark License: What Franchisors and Franchisees Need to Know After *Tempnology*  
**W-13:** Regulatory Update  
**W-19:** From the Ground Up: Practical Considerations for Developing a Start-Up Franchise System

**12:00pm – 1:15pm (concurrent)**

Networking Lunch

LADR Lunch

**1:30pm – 2:45pm**

### Concurrent Workshops

**W-1:** You Won! Now What? Handling Judgment Enforcement and Collection  
**W-7:** It Ain't Over 'til It's Over: Creating, Enforcing, and Defending Franchisor Remedies Short of Termination  
**W-9:** The Litigation Before the Litigation  
**W-15:** Private Equity and Beyond: Non-SBA Lending and Financing Alternatives and Impacts  
**W-21:** Structuring Distribution Models to Avoid Franchise and Business and Opportunity Laws  
**W-23:** ESG – Environmental, Social, and Governance in Franchising  
**W-24:** Privilege and Other Ethical Considerations in the Work-From-Everywhere Era

\*This event is a ticketed event for which there is an additional charge.



## Program Schedule

**3:00pm - 4:15pm**

### **Concurrent Workshops**

**W-4:** The Importance of Materiality in Franchise Disputes

**W-8:** The Current Landscape in the Enforcement of Intellectual Property Rights

**W-14:** Complying with New Prohibitions of Questionnaires and Acknowledgment While Protecting a Franchisor's Legitimate Interests

**W-16:** Implementing Challenging Technologies in Franchise Systems

**W-18:** Wait, What Will This Cost Me? Best Practices for Cost and Related Financial Disclosures

**W-20:** What You Don't Know Can Hurt You - A Primer for Franchise Lawyers on Trusts, Estates, and Succession Rights

**W-22:** To Arbitrate or Not to Arbitrate and How to Draft Accordingly

**6:30pm - 9:00pm**

\*Reception and Dinner - Happiest Hour

### **Saturday, November 4**

**10:00am - 11:30am**

\*Group Tour - The Sixth Floor Museum at Dealey Plaza

\*This event is a ticketed event for which there is an additional charge.

## Speaker List

**Jason Adler**, Cellairis Franchise, Inc.

**K. Eli Akhava**, Steptoe & Johnson LLP

**Phyllis Alden Truby**, Phyllis Alden Truby APC

**Bethany Appleby**, DLA Piper LLP (US)

**Roland Baggott**, Baggott Law

**Marcus A. Banks**, Wyndham Hotels & Resorts, Inc.

**Anne Baroody**, Bradley Arant Boult Cummings LLP

**Paul Barsness**, Bradley Arant Boult Cummings LLP

**Jason Binford**, Ross, Smith & Binford, PC

**Stephanie J. Blumstein**, A.Y. Strauss, LLC

**Nicola Broadhurst**, Stevens & Bolton LLP

**Annie Caiola**, Caiola & Rose, LLC

**Megan B. Center**, Quarles & Brady LLP

**Amy Cheng**, Cheng Cohen LLC

**Harris Chernow**, Reger Rizzo & Darnall LLP

**Deborah S. Coldwell**, Haynes and Boone LLP

**Kristin Corcoran**, Marco's Franchising, LLC

**Leslie Curran**, Plave Koch PLC

**Clifford S. Davidson**, Snell & Wilmer L.L.P.

**Jennifer Dolman**, Osler, Hoskin & Harcourt LLP

**John M. Doroghazi**, Wiggin and Dana LLP

**Abhishek Dube**, Baker McKenzie

**Michael Einbinder**, Einbinder & Dunn LLP

**Robert Einhorn**, Zarco Einhorn Salkowski P.A.

**Caroline B. Fichter**, Bundy & Fichter PLLC

**Brian Forgas**, Hilton

**Mark Forseth**, Marriott Hotels International Limited

**Maisa Frank**, Lathrop GPM LLP

**Ron Gardner**, Dady & Gardner, P.A.

**Steven Goldman**, Friedlander Mislner, PLLC

**Joseph S. Goode**, Laffey, Leitner & Goode LLC

**John Gotaskie**, Fox Rothschild LLP

**Kerry Green**, The Wendy's Company

**Lois C. Greisman**, Federal Trade Commission

**Susan A. Grueneberg**, Cozen O'Connor P.C.

**Manal Hall**, Dentons

**David Harford**, Bryan Cave Leighton Paisner LLP

**John Holland**, Dady & Gardner, P.A.

**Robert G. Huelin**, Threshold Brands, LLC

**Erin Johnsen**, Garner, Ginsburg, & Johnsen, P.A.

**Dawn Johnson**, Greensfelder, Hemker & Gale, P.C.

**Paul Jones**, Jones & Co.



## Speaker List

**Kathy Kotel**, Kotel Law, PLLC

**Darin Kraetsch**, GSD Consultancy

**Robert Lauer**, Haynes and Boone LLP

**Theresa Leets**, California Dept. of Financial Protection and Innovation

**Doug Luther**, Luther Lanard, PC

**Gina N. Malandrino**, Cheng Cohen LLC

**Charles S. Marion**, Blank Rome LLP

**William T. Maxson**, Federal Trade Commission

**Scott McIntosh**, Quarles & Brady LLP

**Natalma McKnew**, Fox Rothschild LLP

**Keri McWilliams**, Nixon Peabody LLP

**Susan Meyer**, Greensfelder, Hemker & Gale, P.C.

**Andrew Murphy**, Faegre Drinker Biddle & Reath LLP

**Jason Murray**, K&L Gates LLP

**Dawn Newton**, Donahue Fitzgerald LLP

**Kirsten Nordstrom**, Garner, Ginsburg & Johnsen, P.A.

**Christina M. Noyes**, Gust Rosenfeld P.L.C.

**Daniel Oates**, Miller Nash LLP

**Kerry Olson**, CKE Restaurants Holdings, Inc.

**David Oppenheim**, Greenberg Traurig

**Oludolapo "Tade" Osikomaiya**, State of Maryland Office of the Attorney General

**Jaime Paoletti**, Garcia & Milas, P.C.

**Himanshu Patel**, Zarco Einhorn Salkowski P.A.

**Jonathan E. Perlman**, Venable LLP

**Benjamin B. Reed**, Plave Koch PLC

**Nate Riordan**, Wenokur Riordan PLLC

**Stephanie Russ**, Childrens Lighthouse Franchise Company

**Justin Sallis**, Lathrop GPM LLP

**Brian B. Schnell**, Faegre Drinker Biddle & Reath LLP

**Max J. Schott, II**, Larkin Hoffman Daly & Lindgren Ltd.

**Kevin Shelley**, Kaufmann Gilidin & Robbins LLP

**Jonathan Solish**, Bryan Cave Leighton Paisner LLP

**Rochelle Spandorf**, Davis Wright Tremaine LLP

**Kendal H. Tyre**, Nixon Peabody LLP

**Tom Vanderbloemen**, Vanderbloemen Law Firm, P.A.

**Mark VanderBroek**, Nelson Mullins Riley & Scarborough LLP

**Elizabeth Weldon**, Snell & Wilmer L.L.P.

**Will K. Woods**, Baker McKenzie

**Mitchell F. Zolton**, Fahey Schultz Burzych Rhodes PLC

## Social and Special Events

### Wednesday, November 1

5:00pm – 6:30pm

#### Welcome Reception

Sheraton Dallas Hotel

7:00pm – 10:00pm

#### Newcomers/YLD Networking Event

Westlake Brewing Co.

### Thursday, November 2

7:00am – 8:15am (concurrent)

#### Networking Breakfast

#### Paralegal/Franchise Administrators Breakfast

#### Law Professors' Committee Breakfast

#### Women's Caucus Breakfast

10:00am – 1:30pm

#### Spouse/Guest Event

Docent Led Group Tour, Nasher Sculpture Center & Lunch

12:00pm – 1:15pm (concurrent)

#### Networking Lunch

#### Diversity Caucus & Corporate Counsel Joint Lunch

6:00pm – 6:45pm

#### Corporate Counsel Reception

Sheraton Dallas Hotel

7:00pm – 10:00pm

#### Forum's 46th Annual Reception and Dinner

Union Station

### Friday, November 3

7:00am – 8:15am (concurrent)

#### Networking Continental Breakfast

#### International Division Breakfast

#### Solo/Small Firm Breakfast

12:00pm – 1:15pm (concurrent)

#### Networking Lunch

#### LADR Lunch

6:30pm – 9:00pm

#### Reception and Dinner

Happiest Hour

### Saturday, November 4

10:00am – 11:30am

#### Group Tour

The Sixth Floor Museum at Dealey Plaza





## Conference Information

### 1. Hotel Information

The conference will be held at the Sheraton Dallas Hotel, 400 Olive Street, Dallas, TX 75201.

### 2. Hotel Reservations

The Forum on Franchising has negotiated a special room rate of \$249 per night plus taxes and fees (totaling 18.356% as of June 1, 2023, subject to change) for single or double occupancy.

Reservations can be secured by calling the hotel at 214-922-8000 and mentioning the ABA Forum on Franchising 2023 Annual Meeting. You may also reserve online at <https://book.passkey.com/gt/219326736?gtid=69f51a059174141dd079330c0d4014d4>

The deadline for booking your room is October 8, 2023 at 5:00pm CST or once the room block is full, whichever occurs first. All changes and cancellations to guaranteed hotel reservations must be made within 72 hours of the scheduled day of arrival to avoid a one-night cancellation charge.

### 3. Air Travel

ABA Airfare discounts are available at American Airlines available at Egencia. Car rental discounts and more information is available at [www.americanbar.org/membership/aba\\_advantage\\_discounts/egencia.html](http://www.americanbar.org/membership/aba_advantage_discounts/egencia.html).

### 4. Ground Travel

The Sheraton Dallas Hotel is approx. 25 minutes from Dallas/Fort Worth

International Airport and 15 minutes from Dallas Love Field. Taxi service, Uber & Lyft are available from either airport. Alternatively, attendees can get to the hotel via the DART Light Rail; The Sheraton Dallas Hotel is a brief 5-minute walk when you exit at the Pearl/Arts District Subway Station.

### 5. Program Registration

To register for all programs and events described in this brochure, we encourage you to register online at <http://www.americanbar.org/groups/franchising>. Confirmations will be e-mailed to you following the electronic registration receipt. In order to be included in the list of program attendees, you must register by October 13, 2023. Guest tickets for special events are available for an additional fee. Please see the registration form for price details.

### 6. On-site Check In

Beginning Wednesday, November 1 at 7:00am, attendees may check in at the Forum registration desk to pick up registration packets that contain name badges and course materials. Registration will open again November 2 from 7:00am to 5:45pm and November 3 from 7:00am to 4:15pm.

### 7. On-site Registration

On-site registration is available for those persons who missed the registration deadline. If you plan to register at the door, please contact [Yolanda.Muhammad@americanbar.org](mailto:Yolanda.Muhammad@americanbar.org) on or before October 13, 2023 to confirm that space is still available. Failure to call in advance may preclude admission to a sold-out conference. Onsite registrants must pay the registration fees by check, money order, Visa, MasterCard, or American Express. No cash will be accepted. No registrations will be accepted without payment.

## Conference Information

### 8. Tuition Information

Tuition for the intensive programs is separate and in addition to the main program registration fee. Intensive program tuition includes course materials, lunch, and welcome reception. Tuition for the main program includes admission to the two-day program, welcome reception, continental breakfasts, beverage breaks, lunches, course materials and the 46th Annual Reception & Dinner. The Forum will be providing this year's program materials electronically on the ABA Franchising 2023 app and via a web link only. A limited number of scholarships may be available. For more information contact [Yolanda.Muhammad@americanbar.org](mailto:Yolanda.Muhammad@americanbar.org).

### 9. Cancellation Policy

Registrants who are unable to attend the conference will receive a refund less a \$65 administrative fee if written cancellation is received by October 2, 2023. Cancellations may be e-mailed to [Yolanda.Muhammad@americanbar.org](mailto:Yolanda.Muhammad@americanbar.org). No refunds will be granted after October 2, 2023. Substitutions are acceptable, or conference materials will be sent in lieu of a refund after the program. The Forum reserves the right to cancel any programs and assumes no responsibility for personal expenses.

### 10. CLE Credit

The ABA will seek 15.75 hours of CLE credit in 60-minute states, and 18.9 hours of CLE credit for this program in 50-minute states including 1.25 hours of CLE ethics credit in 60-minute states and 1.50 hours of CLE ethics credit in 50-minute states. Credit hours are estimated and are subject to each state's approval and credit rounding rules. Please visit

[americanbar.org/mcle](http://americanbar.org/mcle) for general information on CLE at the ABA. Credit is not available for on-demand courses within the platform, though accredited on-demand courses may be available separately.

### 11. Membership

To encourage registrants to join the ABA Forum on Franchising, the reduced member's tuition rate will be extended to registrants who join the Forum when they register for the conference. Forum membership dues are \$50 for attorneys/associates and free for law students through August 31, 2023. Membership fees are scheduled to increase to \$75 on September 1, 2023. Please include a separate check (payable to the American Bar Association) for membership dues.

### 12. Additional Course Materials

Materials for all programs may be available for purchase after the conference by calling the ABA Service Center at 800-285-2221.

### 13. Forum Policy Regarding Self Promotion and Conflicts

In order to ensure a spirit of collegiality at the Annual Forum, please respect the Forum on Franchising's policy which provides that no individual, group or entity (other than the ABA) may engage in any type of self-promotion or conflicting activities (such as giving gifts; hosting group functions i.e., more than six guests including meals, parties, sporting events, meetings or seminars; or displaying or distributing advertising, marketing materials, books, articles, case reports or anything of value or scheduling non-Forum sponsored group meetings) at or in connection with the Annual Forum or any Forum sponsored events (i.e., from the time the first event or program starts to the time the last event or program ends),



## Conference Information

starts at 10:00am, Wednesday, November 1 and concludes at the end of the tour on Saturday, November 4 at 11:30am.

### **14. Tax Deduction for Educational Expenses**

In the United States an income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals and lodging expenses (see Treas. Reg. Sec. 1.162-2) *Coughlin v. Commissioner*, 203 F.2d 307 [2nd Cir. 1953.]

### **15. Communication Notice:**

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### **16. Privacy Notice:**

Registration for, attendance at, or participation in the Forum conferences

and other associated activities constitutes an agreement by the registrant or participant to permit the American Bar Association to use and distribute (both now and in the future) the registrant's or participant's image or voice in photographs, videotapes, electronic reproductions, and audiotapes of such event and activities.

### **17. Copyright Notice:**

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### **18. Americans with Disabilities Act**

If special arrangements are required for disabled individuals to attend this program, please contact [Yolanda.Muhammad@americanbar.org](mailto:Yolanda.Muhammad@americanbar.org) by October 2, 2023.

### **19. Dress**

In keeping with Forum tradition, participants are encouraged to wear business casual attire during the programs and to the special events.

## Conference Information

### **20. For the Latest Program Information**

Please visit the Forum on Franchising Annual meeting site at

[www.americanbar.org/groups/franchising.html](http://www.americanbar.org/groups/franchising.html)

### **21. Questions**

If you have questions or require additional conference information contact

[Yolanda.Muhammad@americanbar.org](mailto:Yolanda.Muhammad@americanbar.org).

### **22. Scholarship**

Scholarships may be available for a limited time. Attorneys who qualify will receive up to a 50% reduction in the course fee(s). This does not include any reduction in meals, lodging, or travel costs associated with the meeting. For more information email

[Yolanda.Muhammad@americanbar.org](mailto:Yolanda.Muhammad@americanbar.org). The deadline for applications is July 28, 2023.