

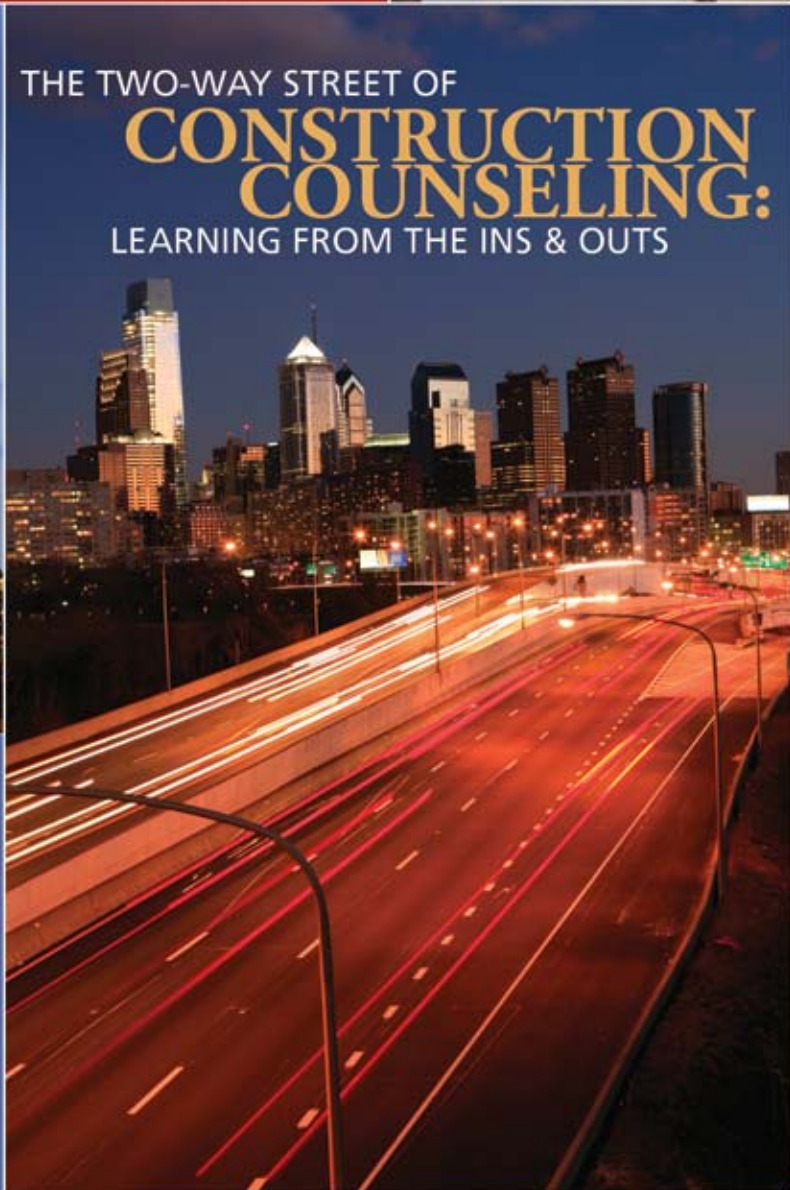


American Bar Association
Forum on the Construction Industry

2009 FALL MEETING



THE TWO-WAY STREET OF
**CONSTRUCTION
COUNSELING:**
LEARNING FROM THE INS & OUTS



OCTOBER 15-16, 2009

LOEWS PHILADELPHIA HOTEL,
PHILADELPHIA, PENNSYLVANIA

PROGRAMS

PUBLICATIONS

PEOPLE

SERVING THE CONSTRUCTION INDUSTRY THROUGH EDUCATION, LEADERSHIP AND FELLOWSHIP OF CONSTRUCTION LAWYERS



DEAR COLLEAGUES

The Fall meeting of the Forum lands in Philadelphia, Pennsylvania in October 2009 to showcase the current and persistent issues facing construction attorneys, with a unique contribution from some of the most notable in-house counsel in the country. The program, **“The Two-Way Street of Construction Counseling: Learning from the Ins and Outs,”** will take up the challenges of advising construction industry participants in a lackluster economy, sharing the viewpoints of in-house counsel and outside counsel on such diverse topics as dealing with conflicting state laws and regulations, managing complex litigation, workforce and government contract compliance issues, addressing the Obama Administration’s impact on the construction industry and procuring outside counsel services by in-house counsel.

This two-day program will include five plenary sessions and eight focused workshops, all with the goals of providing both inside and outside counsel with must-have information to assist their respective clients and a reciprocal understanding of their unique needs. The program also includes a unique workshop solely for in-house counsel to address the effective and efficient procurement of outside counsel services.

We kick off this program by revealing the best practices in managing the in-house and outside counsel relationship from the perspective of the buyer – the in-house counsel. This Plenary session, moderated by an outside counsel, brings into sharp focus the keys to effectively managing this crucial relationship. From there, competing workshops illuminate the New Dawn of labor issues under the Obama administration and principles of advanced litigation principles. The offerings continue with a workshop exposing the conflicting state law approaches to addressing immigration, including a particular state case study, and a workshop on drafting, negotiating, and educating management on the “new” key construction contract terms. Following lunch, concurrent workshops develop the in-house counsel view of handling the storage and retrieval of electronic information tempered by a consultant’s guidance to get the job done correctly, and a David Letterman style “Top Ten Issues” in the government contracting minefield. The first day concludes with two plenary sessions to drill down on the real impact of state regulation on the industry and its participants, and to examine the impact of state legislation on substantive construction contract provisions.

The second day is a half-day session leaving the afternoon free so attendees may enjoy a stroll through the National Constitution Center or Independence Mall, or perhaps the simple pleasure of an authentic cheese steak sandwich. We begin the day with the never-ending press of employment discrimination issues. The opening Plenary is followed by a unique workshop on selecting outside counsel services, which will be limited to in-house counsel participation. The opposing workshop for outside counsel will grapple with the question: Where’s the Money? A panel comprised of an official from a leading banking institution, a real estate lawyer, and a bankruptcy specialist will examine the ins and outs of contracting on financially distressed projects. The Program will end with key ethical considerations affecting both in-house and outside counsel in their every day roles of advising companies on legal issues arising across multiple jurisdictions.

We are pleased to have an equal balance of in-house and outside counsel speakers, with several crucial perspectives from consultants. They are drawn from within and outside the Forum, and from large to mid-size construction, design and subcontracting firms so that the program can provide a wealth of knowledge to help attendees more effectively traverse the two-way street of construction counseling to their benefit.

Besides the program, there are other opportunities provided to each attendee: Division breakfasts, networking Thursday evening at the reception in one of the most beautiful venues in the East, the Pennsylvania Academy of Fine Arts, a stroll through the oldest museum in the United States, or enjoying the many historical venues in Philadelphia.

Please come and join the largest convergence of in-house and outside counsel to grace the halls of the Forum in decades. We are thrilled to provide you the venue and the topics to make it historic! We look forward to seeing you in Philadelphia.

PROGRAM CO-CHAIRS:

Kerry L. Kester
Woods & Aitken LLP
Lincoln, NE

Terry Galganski
Opportune Risk™ Bridging, LLC
Johnston, IA

GC LIAISON

Joseph D. West
Gibson, Dunn & Crutcher LLP
Washington, DC



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CONSTRUCTION
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Jones Walker
New Orleans, LA

Joseph D. West
Gibson, Dunn & Crutcher LLP
Washington, DC

2009 FALL MEETING
**PROGRAM
SCHEDULE**

WEDNESDAY, OCTOBER 14

3:00 – 5:00 PM

ADVANCED REGISTRATION/ INFORMATION

3:00 – 5:00 PM

EXHIBITION OPEN

5:00 – 6:30 PM

EXHIBITION HALL RECEPTION

(Available to Exhibitors and paid registrants)

A casual reception where you can relax while meeting exhibitors and fellow attendees.

THURSDAY, OCTOBER 15

7:30 AM – 5:00 PM

REGISTRATION/EXHIBITION OPEN

7:30 – 8:45 AM

CONTINENTAL BREAKFAST

(Available to paid registrants)

8:15 – 8:30 AM

**WELCOME FROM THE CHAIR
OPENING REMARKS AND ANNOUNCEMENTS**

8:30 – 9:45 AM

**PLENARY 1: THE INSIDE/OUTSIDE COUNSEL
RELATIONSHIP: BEST PRACTICES**

With an outside counsel acting as the moderator, a panel of three in-house lawyers will explore their respective views on the best practices for managing outside counsel, including selection of outside counsel costs; creative and alternative billing arrangements; quality control; written opinions of counsel and other reporting requirements for outside counsel; and counsel selected by the insurance carrier.

SPEAKERS:

Leslie K. O'Neal Coble
Brasfield & Gorrie LLC, Lake Mary, FL

Chip F. Mitchell
John J. Kirilin, LLC, Rockville, MD

Steve D. Butler
Parsons Brinckerhoff, Inc., San Francisco, CA

MODERATOR:

Robert S. Peckar
Peckar & Abramson, River Edge, NJ

9:45 – 10:00 AM

BREAK

10:00 – 11:00 AM

**WORKSHOP A: LABOR ISSUES IN THE
NEW DAWN**

With the Obama administration now on the scene, the federal government's approach to labor issues has changed. There has been and will be new regulations, executive orders, and legislation, such as The Employee Free Choice Act and the Order regarding the use of Project Labor Agreements. New appointments at the NLRB, DOL, EEO, OFCCP, and other agencies will result in changes in the enforcement of existing regulations and laws. A two person panel will address the color and shades of this new dawn from both the union and non-union contractor's perspective.

SPEAKERS:

Maurice Baskin
Venable LLP, Washington, DC

Laura M. Finnegan
Baum Sigman Auerbach & Neuma, Chicago, IL

10:00 – 11:00 AM

WORKSHOP B: ADVANCED LITIGATION MANAGEMENT PRINCIPLES

The panel will address the issues faced by in-house counsel in managing complex construction litigation including, the relationship between in-house counsel and outside litigator, litigation budgets, protecting privileged communications and proprietary information, cost effective discovery, selection and use of experts; the role of in-house counsel in the litigation process; and claim prosecution and joint defense arrangements.

SPEAKERS:

Andrea G. Woods

Nabholz Construction Corporation, Conway, AR

Chris M. McAnney

Balfour Beatty Construction Inc., Atlanta, GA

MODERATOR:

Arthur D. Brannan

DLA Piper, Atlanta, GA

11:00 – 11:15 AM

BREAK

11:15 AM – 12:15 PM

WORKSHOP C: COMPLYING WITH THE CONFLICTING WAVES OF IMMIGRATION RULES

Today's multinational work force requires employers and their in-house and/or outside counsel to understand the wave of state and federal immigration requirements and compliance requirements. This session will focus on these changing laws and regulations as they effect the employer, including a case study of what one state has done to address immigration. Some of the topics include: the pitfalls and landmines associated with the I-9; everything you need to know about e-verify; what to do when you discover an undocumented worker on the company's payroll; traps to avoid when assisting employees with applications to work; Social Security no match regulation; the effect of new laws and federal policy on the employers work force; conflicts between state and federal immigration-related rules; and where are we headed.

SPEAKERS:

Gerald "Pete" Stamper

Barrow & Grimm PC, Tulsa, OK

Mauritia G. Kamer

Stites & Harbison, PLLC, Lexington, KY

11:15 AM – 12:15 PM

WORKSHOP D: DRAFTING AND NEGOTIATING THE "NEW" KEY CONTRACT CLAUSES

Negotiating and drafting contract clauses that properly allocate the risk on a construction project is a key task for both in-house and outside counsel. This panel will discuss the general philosophy regarding the negotiation and drafting of these clauses. They will also provide an in-depth evaluation of the primary risk shifting clauses found in construction contracts including scope of work, performance guarantees, limitations of liability, waivers of consequential damages, differing site conditions, indemnity, and liquidated damages/incentives and practice pointers for both drafting and negotiating these provisions as well as commentary on effective tools for educating management personnel on the recognition of the "new" red-flag contract terms.

SPEAKERS:

Michael C. Chase

URS Corporation, Princeton, NJ

Brad A. Gordon

Gilbane Building Corporation, Providence, RI

MODERATOR:

James J. Scott

Greensfelder Hemker & Gale, St. Louis, MO

12:15 – 1:45 PM

LUNCH

1:45 – 2:45 PM

WORKSHOP E: ELECTRONIC DOCUMENTS – CONTROL AND LEGAL FINE-TUNING

As the world continues to evolve in the electronic age, the practical control and management of the exponential growth of digitally stored data so that a company can effectively and economically function is more critical than ever. To complicate matters, it is no longer enough simply to manage the electronic documents. Now, emphasis must be put on ensuring the integrity of the content of the data - protecting BIM models, CAD files, photographs, and sound files. Then there is the issue of whether electronic communications meet the notice requirements of the contract or statutes. Finally, there is the problem of developing a system for managing electronic documents that is effective when litigation begins and how to control the cost of electronic discovery. This workshop provides best practices and practical suggestions on how to manage and maintain electronic files.

SPEAKERS:

Kristin L. Altice

Shiel Sexton Company Inc., Indianapolis, IN

Andrew J. Grant

Data Builder, Inc., Des Moines, IA

1:45 – 2:45 PM

WORKSHOP F: TIPTOEING THROUGH THE GOVERNMENT CONTRACT MINEFIELD

Doing business with the federal government can be profitable, but you must understand the rules of the game. The panel in this session addresses the top ten issues facing companies doing business with the federal government in today's market. The workshop is geared to both the sophisticated government contract practitioner and those who may be new to the game. The workshop will address the differences between dealing with the federal government and companies in the private sector; the FAR and other regulations; the new compliance and disclosure requirements and how they effect in-house counsel; false claims; bidding federal contracts; the Stimulus Act; subcontractor payment requirements; billing and collecting from the government; truth in negotiations; ADR tactics with the federal government; DBE/MBE issues; record-keeping; and bribery. Attendance is a must for those contracting with the federal government.

SPEAKERS:

John M. Cook

Smith Pachter McWhorter PLC, Vienna, VA

Timothy E. Heffernon

Watt, Tieder, Hoffar & Fitzgerald, LLP, McLean, VA

MODERATOR:

Douglas S. Oles

Oles Morrison Rinker & Baker LLP, Seattle, WA

2:45 – 3:00 PM

BREAK

3:00 – 4:00 PM

PLENARY 2: MANAGING THE SWELL OF CONFLICTING REGULATION IN THE CONSTRUCTION INDUSTRY

Management and compliance with the ever-increasing level of state and federal regulation of the construction industry and its professionals is a growing challenge for industry counsel. Contractors, design professionals, construction managers, and design-builders operating in multiple jurisdictions must deal with often conflicting trends in licensing, registration, responsible persons-in-charge, bonding, and other issues. This session will discuss the results of fifty-state surveys of key regulatory issues applicable to the construction industry. The surveys will be provided as part of the written course materials.

SPEAKERS:

J. Andy Howard

Alston & Bird LLP, Atlanta, GA

Susan Fisher Stevens

Sprint Nextel Corporation, Overland Park, KS

MODERATOR:

Professor Carl J. Circo

University of Arkansas Fayetteville Law School, Fayetteville, AR

**4:00 – 4:15 PM
BREAK**

**4:15 – 5:15 PM
PLENARY 3: LEGISLATING
CONSTRUCTION CONTRACT TERMS
AND CONDITIONS**

Legislative restructuring of contractual relationships among construction industry participants is gathering momentum among the States and is altering the terms and conditions of construction agreements you draft, often without your knowledge. The panel will examine in depth the impact of state legislation on substantive contract provisions including dispute resolution requirements, changes and payment terms, payment security, and choice of law provisions.

SPEAKERS:

John D. Onnembo, Jr.
Turner Construction Company, New York, NY

Wendy K. Venoit
Pepe & Hazard LLP, Hartford, CT

MODERATOR:

Christopher H. Little
Little, Medeiros, Kinder, Bulman & Whitney PC,
Providence, RI

**6:30 – 8:30 PM
WELCOME RECEPTION
Pennsylvania Academy of Fine Arts**

The Pennsylvania Academy of the Fine Arts is the nation's oldest museum and school. PAFA's museum is known for its 19th and 20th-century American paintings, sculptures, and works on paper, and its collection is considered one of the three best collections of American art in the world.

FRIDAY, OCTOBER 16

**7:30 AM – 12:30 PM
REGISTRATION**

**7:30 – 11:30 AM
EXHIBITION OPEN**

**7:30 AM – 8:30 AM
CONTINENTAL BREAKFAST**

(Available to paid registrants)

**8:45 – 9:00 AM
ANNOUNCEMENTS**

**9:00 – 10:00 AM
PLENARY 4: EMPLOYMENT AND
DISCRIMINATION IN THE REAL WORLD**

Managing employees in the construction industry has its challenges in these difficult economic times. These challenges include: the lawful use of background checks in the hiring process, compensating employees in compliance with the Fair Labor Standards Act and state wage and hour laws, handling employee leaves under the Family and Medical Leave Act and Americans with Disabilities Act, and downsizing the workforce and reducing costs in a way that does not violate the many discrimination statutes with which employers must contend. With such a multitude of challenges, the panel will provide tips on the ways employers can avoid liability when it comes to the management of your workforce.

SPEAKERS:

Mark M. Stublely
Ogletree Deakins, Greenville, SC

Michael J. Ossip
Morgan Lewis & Bockius LLP, Philadelphia, PA

**10:00 – 10:15 AM
BREAK**

**10:15 – 11:15 AM
WORKSHOP G: FORUM ON
SELECTING OUTSIDE COUNSEL**

(IN-HOUSE COUNSEL ATTENDEES ONLY)

This interactive workshop is limited to in-house counsel so you can have an open and candid conversation regarding selection of outside counsel. The panel will address, with audience participation, outside counsel selection for all types of construction-related assignments, including transactional, negotiation, litigation and ADR. The "BUY" discussion will focus on the key factors to consider in selecting outside counsel; how to obtain good referrals; the initial meeting; how to select the best firm or lawyer for the matter; the pros and cons of various fee arrangements; the importance of rates; and the essential elements of the engagement letters.

SPEAKERS:

John F. Hoehner
Jacobs Engineering Group Inc., Pasadena, CA

Jose M. Pienknagura
The Hunt Corporation, Scottsdale, AZ

MODERATOR:

John "Jack" W. O'Neil, Jr.
Western Construction Group Inc., Breckenridge, CO

**10:15 – 11:15 AM
WORKSHOP H: WHERE'S THE MONEY?**

"Cash Is King" has never been truer than in the last twelve months. With banks failing, funds trapped in FDIC takeovers, equity evaporating, and projects halted, how can you secure payment for your clients? The panel will address the stress placed on traditional methods of financing and securing payment by the global economic downturn and provide practice pointers for companies that are entering into projects and for those seeking payment.

SPEAKERS:

Ronald Bloch
US Bank, Philadelphia, PA

Charles "Kevin" Kobbe
DLA Piper, Baltimore, MD

MODERATOR:

Dominic J. De Simone
Ballard Spahr, Philadelphia, PA

**11:15 – 11:30 AM
BREAK**

**11:30 AM – 12:30 PM
PLENARY 5: BUSINESS ETHICS &
PROFESSIONALISM: REPRESENTING
THE CONSTRUCTION INDUSTRY**

Inside and outside counsel have their respective ethical challenges in the construction industry. This session will explore several of these ethical issues: Influencing Without Authority: Distinct Roles for Inside and Outside Counsel — or Are They? (The duties and liabilities of inside counsel contrasted with those of outside counsel and their respective roles with the client.); Who Is My Client? (The ethics issues associated with representing a company and its owners/officers/directors amid potential conflicts and potentially divergent interests); Multi-Jurisdictional Practice Issues for the Construction Lawyer (the normal issues plus the concern of counsel, inside or outside licensed in one state, handling matters and communications across multiple jurisdictions for their client); and Privilege Issues and the In-House Counsel.

SPEAKERS:

Timothy W. Triplett
Black & Veatch, Overland Park, KS

Patrick J. Whelan
Skanska USA Civil Northeast, Whitestone, NY

MODERATOR:

Daniel E. Toomey
Duane Morris LLP, Washington, DC

**12:30 PM
ADJOURN**

CONFERENCE INFORMATION

ADVANCE REGISTRATION

Please complete and return the attached registration form with your payment by **September 9, 2009**. If you wish to have your name appear on the pre-registration list distributed at the program, we must receive your registration no later than this date. We encourage you to register online at **www.abanet.org/forums/construction**. Conference registrations will only be accepted when accompanied by a check, Visa, American Express, or MasterCard information. Credit card registrations may be FAXED to the ABA Forum on the Construction Industry, at (312) 988-5677. Registrations cannot be held without payment.

ON SITE REGISTRATION

On site registration is available for those persons who missed the registration deadline. If you plan to register at the door, you must call (312) 988-5678 at least 72 hours before the conference to confirm that space is still available. Failure to call in advance may result in not being admitted to a sold out program. On site registration will only be accepted when accompanied by a check, money order, American Express, Visa or MasterCard information. Registrations will not be accepted without payment.

REGISTRATION CONFIRMATION

If you do not receive a written confirmation by **September 16, 2009**, please call Katie Lawrence at (312) 988-5678 to verify that your registration form and check were received. Failure to call in advance of the program may result in not being admitted.

TUITION

Tuition includes admission to the program, coffee breaks, continental breakfasts, lunch, one ticket to the Annual Reception, and one set of program course materials. Lunch is limited to registrants, faculty and members of the press.

CANCELLATION POLICY

No refunds will be granted for cancellations received after **September 9, 2009**. To receive a refund (less a \$50 administrative fee), cancellations must be made IN WRITING and RECEIVED on or before September 9, 2009. Registrants who are unable to attend may send a substitute or receive course materials in lieu of a refund. The ABA reserves the right to cancel any programs, and assumes no responsibility for personal expenses.

HOTEL

The conference will be held at the Loews Philadelphia Hotel, 1200 Market Street, Philadelphia, PA. Reservations can be made by calling the hotel directly at (215) 627-1200. A room block has been reserved for our attendees at a rate of \$229 a night single/double room per night. **After September 15, 2009 at 5:00 CDT or when the room block is sold out, guest rooms at the special ABA rate are not guaranteed and may not be available.** Please refer to the ABA Forum on the Construction Industry 2009 Fall Meeting when making your reservation. Individuals with guaranteed reservations must cancel their reservations 72 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge.

AIR TRANSPORTATION

Discounted airfares are available for travel to ABA Master Calendar meetings. ABA and Orbitz negotiated airfare discounts and web only fares are available to members at ABA Online Travel. Visit www.abanet.org and select ABA Online Travel under the ABA Calendar. Airfare discounts are available to all meeting attendees by calling the ABA's travel agency, Orbitz for Business, toll-free at (877) 222-4185.

CLE CREDIT

Accreditation has been requested for the conference from every state with mandatory continuing legal education (MCLE) requirements for its lawyers. Please be aware that each state has its own rules and regulations, including its definition of "CLE". Check your state agency for confirmation of this program's approval. Attorneys seeking to obtain MCLE credit in Louisiana and Pennsylvania are required to pay state accreditation fees directly to that state. Certificates of attendance will be available at the conclusion of this conference. For questions pertaining to the number of credit hours granted by each state, call (312) 988-5678 two or three weeks after the conference.

MEMBERSHIP

As an added bonus to new members, the membership tuition rate will be available to registrants who join the Forum on or before the first day of the program. For your convenience, a Forum membership form is included in the brochure. Membership dues are not deductible as charitable contributions for federal income tax purposes. However, such dues may be deductible as a business expense.

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. 1.162-5) (Coughlin vs. Commissioner 203 F 2d 307).

COURSE MATERIALS

If you are not planning to attend the program and wish to order the course materials, check the appropriate box on the registration form and send it with the appropriate fees. Allow approximately 3-4 weeks after the program for delivery.

SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required for an individual with a disability to attend this program, please submit your request in writing to Mark Nagasawa, Forum on the Construction Industry, American Bar Association, 321 N Clark, MS 18.2, Chicago, IL 60654, or Fax to (312) 988-5677, no later than September 9, 2009.

FORUM ON THE CONSTRUCTION INDUSTRY WEBSITE

Website:
www.abanet.org/forums/construction/home.html

CELL PHONE POLICY

As a courtesy to speakers and attendees, we request that all cell phones and pagers be turned off in the meeting rooms.

ABA FORUM ON THE CONSTRUCTION INDUSTRY 2009 FALL MEETING

PROGRAM REGISTRATION FORM

* THIS FORM IS AVAILABLE ONLINE AT: www.abanet.org/forums/construction/home.html

Please print or type

Housing Deadline: September 15, 2009
Advanced Registration Deadline: September 9, 2009

1. REGISTRANT INFORMATION:

Last Name First Name M.I.

(Name as you wish it to appear on name badge) ABA Member ID#

Firm/Company/Agency

Address

City State Zip

(Area Code) Business Phone Number (Area Code) Business Fax Number

E-mail Address

Spouse or Guest (Print as you wish name to appear on badge)

2. REGISTRATION FEES:

	ON OR BEFORE 9/9/09	ON OR AFTER 9/10/09
<input type="checkbox"/> General Attendees	\$640	\$690
<input type="checkbox"/> Forum Members	\$540	\$590
<input type="checkbox"/> Government/Academic/ YLD	\$380	\$430
<input type="checkbox"/> Law Students	\$270	\$320
<input type="checkbox"/> In-House Counsel	\$380	\$430

Subtotal \$_____ \$_____

Please check one if you are:

- I am a New Member
- I am a First-Time Attendee

3. SOCIAL EVENT TICKETS:

Event:	Fee	Quantity	Total
Welcome Reception	N/A	_____	N/A
Spouse/Adult Annual Reception	\$65	_____	\$_____
Child Annual Reception (under 12)	\$30	_____	\$_____
Subtotal			\$_____

4. MEMBERSHIP APPLICATIONS:

- Please enroll me as a member of the Forum on the Construction Industry. Membership fee (\$50 Regular/\$5 Law Student). I understand I must be a member of the ABA and at least one Section. I belong to the following Section(s):

5. MATERIALS ONLY:

- I will not be attending the seminars and wish to order program materials for \$150

6. TOTAL PAYMENT:

Total (Add subtotals 2, 3, 4 or 5): \$_____

7. PAYMENT INFORMATION:

- Check (made payable to ABA)
- MasterCard American Express VISA
- Season Pass Voucher Money Order

Credit Card Number Expiration Date

Signature

8. THREE WAYS TO REGISTER:

ONLINE:
www.abanet.org/forums/construction/home.html

MAIL:
ABA Forum on the Construction Industry
321 N Clark Street
Chicago, IL 60654

FAX:
(312) 988-5677

EDUCATIONAL REGISTRATION

Thursday, October 15, 2009

- 10:00 - 11:00 AM (Make one choice)
- Workshop A or Workshop B
- 11:15 AM - 12:15 PM (Make one choice)
- Workshop C or Workshop D

1:45 - 2:45 PM (Make one choice)
 Workshop E or Workshop F
Friday, October 16, 2009

- 10:15 - 11:15 AM (Make one choice)
- Workshop G or Workshop H



American Bar Association
Forum On The Construction Industry, MS 18.2
321 North Clark Street
Chicago, IL 60654

2009 FALL MEETING



[PRESORTED]
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