



Fortieth Annual Labor And Employment Law Update Conference



TARGET OUT OF RANGE





Sevierville Convention Center
Wilderness at the Smokies
Sevierville, TN
November 21-22, 2019





Wimberly Lawson

Attorneys & Counselors at Law

AGENDA

THURSDAY, NOVEMBER 21, 2019

8:00 AM – 9:00 AM	REGISTRATION AND CONTINENTAL BREAKFAST MAIN HALLWAY
9:00 AM – 9:10 AM	WELCOME AND INTRODUCTION <i>Jeffrey G. Jones</i>
9:10 AM – 9:15 AM	ANNOUNCEMENTS AND CONFERENCE KICK-OFF <i>Fredrick R. Baker</i>
9:15 AM – 10:30 AM	GENERAL SESSION MAIN BALLROOM
9:15 – 9:35	A. The Year in Review <i>James W. Wimberly, Jr., Michael E. Avakian</i>
9:35 – 9:55	B. The Rise of Gen-Z in the Workplace..... <i>Mary C. Moffatt</i>
9:55 – 10:10	C. Arbitration, Mediation or Litigation: Know Your Options <i>J. Eric Harrison</i>
10:10 – 10:30	D. The Insider's Look at Litigation and Claims <i>Brent A. Morris</i>
10:30 AM – 10:50 AM	NETWORKING & REFRESHMENTS..... MAIN HALLWAY
10:50 AM – 11:50 AM	BREAKOUT SESSIONS
	E. The Incivility of Civilization and Conflict Resolution <i>Fredrick J. Bissinger, David J. Otten, Suzanne K. Roten</i> STONE HILL LODGE, CADES COVE
	F. Navigating Complicated Disability Issues and the ADA <i>Mary Dee Allen, Edward H. Trent</i> BREAKOUT BALLROOM
	G. "You're Fired!" - The Right Way and the Wrong Way <i>Kelly A. Campbell, Jeffrey M. Cranford</i>STONE HILL LODGE, DEEP CREEK
	H. DOL Update -- Including Overtime Calculations and Joint Employers -- and Attorney/Client Privilege with Third-Party Employers <i>Jerome D. Pinn, Michael E. Avakian, Carol R. Merchant, Rosalia Fiorello</i> MEETING ROOM A
	I. NLRB Update – An In-Depth Discussion <i>James W. Wimberly, Jr., J. Larry Stine, M. Lee Daniels, Jr.</i> MEETING ROOM B
	J. Immigration, E-Verify and I-9 <i>Jeremy Jennings</i> MEETING ROOM C
	K. Cyber-Security Issues for Employers <i>Howard B. Jackson, J. Eric Harrison, Edward D. Lanquist, Jr.</i> MEETING ROOM D
11:50 AM – 1:05 PM	LUNCH (AS GUESTS OF WIMBERLY LAWSON) EXHIBIT HALL
1:05 PM – 1:20 PM	ANNOUNCEMENTS <i>Jeffrey G. Jones</i>
1:20 PM – 2:20 PM	GENERAL SESSION BALLROOM
	KEYNOTE SPEAKER – <i>Dr. Jerry Punch</i> , former ESPN auto racing and college football analyst/commentator, and physician MAIN BALLROOM
2:20 PM – 2:40 PM	NETWORKING & REFRESHMENTS..... MAIN HALLWAY
2:40 PM – 3:40 PM	BREAKOUT SESSIONS
	L. FMLA and Leave Laws <i>Kelly A. Campbell, G. Gerard Jabaley, Catherine E. Shuck</i> BREAKOUT BALLROOM
	M. Public Employers <i>Jeffrey G. Jones, Margaret L. Noland, Carol R. Merchant</i> MEETING ROOM A
	N. Developing Trends in Internal Audits – Current and Future Issues <i>Fredrick J. Bissinger, Brent A. Morris, Suzanne K. Roten</i> MEETING ROOM B
	O. Why Boundaries Matter in the Workplace <i>Mary Dee Allen, Rebecca B. Murray</i> STONE HILL LODGE, CADES COVE
	P. Tips & Tricks in Recruiting and Retention <i>Howard B. Jackson, David J. Otten, Courtney C. Hart</i>STONE HILL LODGE, DEEP CREEK
	Q. Employment Contracts, Severance Agreements, and Class Action Waivers, Including Non-Compete and ADEA <i>Edward H. Trent, J. Eric Harrison</i> MEETING ROOM C
	R. The Storm on the Horizon: Workplace Retaliation Claims <i>Mary C. Moffatt, L. Eric Ebbert</i> MEETING ROOM D

AGENDA

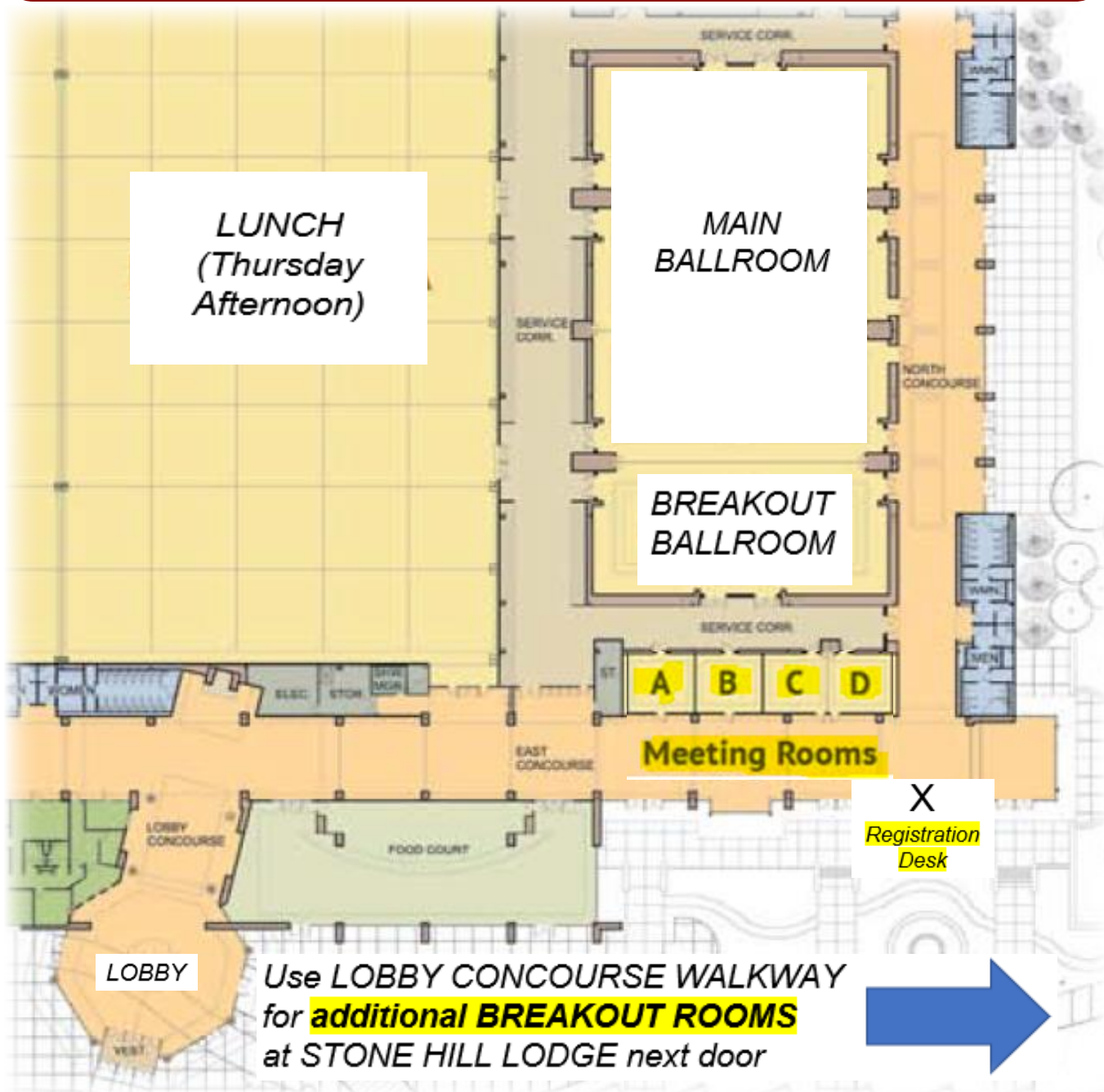
3:40 PM – 4:00 PM	NETWORKING & REFRESHMENTS.....	MAIN HALLWAY
4:00 PM – 5:00 PM	GENERAL SESSION	MAIN BALLROOM
4:00 – 4:15	S. NLRB Update.....	<i>M. Lee Daniels, Jr.</i>
4:15 – 4:30	T. 2019 OSHA Update.....	<i>J. Larry Stine</i>
4:30 – 4:45	U. Tennessee Work Comp Update	<i>T. Joseph Lynch III</i>
4:45 – 5:00	V. The 2020 Election Year.....	<i>William R. Seale</i>
5:00 PM – 6:30 PM	RECEPTION	MAIN HALLWAY

FRIDAY, NOVEMBER 22, 2019

8:00 AM – 8:20 AM	CONTINENTAL BREAKFAST	MAIN HALLWAY
8:20 AM – 8:25 AM	ANNOUNCEMENTS	<i>Jeffrey G. Jones</i>
8:25 AM – 9:25 AM	GENERAL SESSION	MAIN BALLROOM
8:25 – 8:40	W. Marijuana, CBD Oil, and Drug Testing	<i>Mary Dee Allen</i>
8:40 – 8:55	X. LGBTQ+, Religious Liberty, and Title VII	<i>Edward H. Trent</i>
8:55 – 9:10	Y. Social Media in the Workplace – The Changing Landscape.....	<i>David J. Otten</i>
9:10 – 9:25	Z. EEOC Update 2019	<i>Fredrick J. Bissinger</i>
9:25 AM – 9:45 AM	NETWORKING & REFRESHMENTS.....	MAIN HALLWAY
9:45 AM – 10:45 AM	BREAKOUT SESSIONS	
	Z1. EEOC Update and Panel Discussion <i>Fredrick J. Bissinger, Elizabeth K. Dorminey, Suzanne K. Roten, and EEOC and THRC Panelists</i>	STONE HILL LODGE, DEEP CREEK
	Z2. LGBTQ+, Religious Liberty, and Title VII – An In-Depth Discussion <i>Edward H. Trent, T. Joseph Lynch III</i>	MEETING ROOM A
	Z3. Tennessee Work Comp Update <i>Andrew J. Hebar, Jeffrey M. Cranford, Rosalia Fiorello, Courtney C. Hart</i>	MEETING ROOM B
	Z4. Employee Handbooks – The Good, the Bad, and the Ugly <i>Howard B. Jackson, Mary C. Moffatt</i>	MEETING ROOM C
	Z5. Nancy Drew...or Inspector Gadget? Conducting Effective Internal Investigations <i>Eric Ebbert, Kelly A. Campbell, Marianna Jablonski</i>	BREAKOUT BALLROOM
	Z6. The Deceptively Dangerous Fair Credit Reporting Act – Including Background Checks, Credit Checks, Criminal Convictions, and Workplace Violence <i>Jerome D. Pinn, Brent A. Morris</i>	MEETING ROOM D
	Z7. HR 101 – Seven Skills for Effective HR Management <i>J. Eric Harrison, Margaret L. Noland, Courtney C. Hart</i>	STONE HILL LODGE, CADES COVE
10:45 AM – 11:05 AM	NETWORKING & REFRESHMENTS.....	MAIN HALLWAY
11:05 AM – 11:15 AM	DOOR PRIZES	MAIN BALLROOM
11:15 AM – 12:00 PM	GENERAL SESSION.....	MAIN BALLROOM
11:15 – 11:30	Z8. FLSA: Wage & Hour Nightmare Scenarios	<i>Jerome D. Pinn</i>
11:30 – 11:45	Z9. Avoiding the Train Wreck: Proactive Steps to Avoid Bullying	<i>Andrew J. Hebar</i>
11:45 – 12:00	Z10. Tempests and Turkeys: Communicating on Volatile Issues.....	<i>G. Gerard Jabaley</i>
12:00 PM	CONCLUSION	MAIN BALLROOM



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MICHAEL AVAKIAN, ASSOCIATE DEPUTY SECRETARY OF THE U.S. DEPARTMENT OF LABOR, RETURNS TO WIMBERLY LAWSON

Michael E. Avakian has returned to private practice with Wimberly Lawson earlier this year, after serving as Associate Deputy Secretary of the U.S. Department of Labor in Washington, D.C. At the DOL, Michael provided oversight for over 20 subordinate federal agencies as Senior Executive, working with the Solicitor's Office and agency staff on regulatory matters. He received broad guidance from the Secretary and Deputy Secretary and analyzed and advised on the implications of proposed, new or revised policies, regulations and legislative proposals, and assessed their impact on the regulated communities. We are pleased that Michael Avakian has rejoined Wimberly, Lawson & Avakian and will run the D.C. office.

GUEST SPEAKERS

Edward D. Lanquist, Jr. is the Managing Shareholder with the firm of Patterson Intellectual Property Law. He is an AV-rated lawyer who focuses his practice on patent and trademark litigation, intellectual property counseling, and trademark prosecution. He has litigated and performed appellate work in cases involving patent infringement, trademark infringement, trade dress infringement, right of publicity, copyright infringement, design patent infringement, and trade secret misappropriation cases. Ed received his J.D., with Honors, University of Tennessee, 1988 and his B.S., Civil Engineering, with Honors, University of Tennessee, 1985. Ed is General Counsel for the Tennessee Bar Association.

Suzanne K. Roten is a Partner with Brown Law Group in San Diego, California from June 2011 to present. Previously, she was a Senior Associate in the Knoxville, Tennessee office of Wimberly Lawson Wright Daves & Jones, PLLC from November 2001 to June 2011. Ms. Roten's practice focuses on labor and employment law. She advises management on federal and state employment law compliance. She defends employers against claims of discrimination, wrongful discharge, sexual harassment, retaliation and wage and hour disputes in state and federal courts and before governmental agencies. Ms. Roten has expertise in the area of disability discrimination and reasonable accommodation, and in public accommodation compliance under Title III of the Americans with Disabilities Act. She also provides assistance with executive employment contracts, arbitration agreements and confidentiality agreements, as well as conducting employee complaint investigations. Ms. Roten is experienced in writing appellate briefs for presentation to the California Court of Appeal and the United States Court of Appeals for the Ninth Circuit. Ms. Roten's clients include both small and large employers in private sector businesses, as well as non-profit corporations. Ms. Roten also has considerable experience representing public sector employers, including representing a large federal agency in employee disciplinary appeal proceedings and in discrimination charges brought by federal employees before the EEOC.

Catherine E. Shuck is the Vice President for Legal Services / General Counsel at East Tennessee Children's Hospital. Previously, she was Of Counsel with the Knoxville, Tennessee office of Wimberly Lawson Wright Daves & Jones, PLLC, which she joined in September 2009. Her practice involved training and counseling regarding the Patient Protection and Affordable Care Act and handling special assignments. Cathy received her B.A. from Northwestern University and her J.D. from Boalt Hall at the University of California, Berkeley where she was a member of the Order of the Coif. While at Boalt Hall she was the Senior Articles Editor for the **Berkeley Journal of Employment and Labor Law**. Her Comment written for the journal, *That's It, I Quit: Constructive Discharge After Ellerth*, was cited by the United States Supreme Court in 2004. Following law school she served as a law clerk to Justice E. Riley Anderson of the Tennessee Supreme Court and to Judge William A. Fletcher of the United States Court of Appeals for the Ninth Circuit. Prior to attending law school, Cathy worked for several years in the human resources field. Cathy has been admitted to practice in the United States District Courts for the Eastern and Middle Districts of Tennessee as well as the U.S. Court of Appeals, Sixth Circuit. Cathy is the author of the article, *Bargaining Power: Understanding the Rights of Public Sector Workers in Tennessee*, published in the **Tennessee Bar Journal**, May 2011, Vol. 47, No. 5. She is a member of the Knoxville and Tennessee Bar Associations, the East Tennessee Lawyers Association for Women, the Hamilton Burnett Inns of Court, and is a Fellow of the Knoxville Bar Foundation.

Edmond C. Sims Jr. / EEOC – Edmond was named District Deputy Director in the Memphis District Office of the EEOC in January 2017. He is responsible for the management of all Memphis Office Enforcement, Finance, Information Technology, and Human Resources Management functions within the District, which encompasses the states of Tennessee, Arkansas, and northern sixteen counties of Mississippi. Edmond earned his B.S. degree in Business Administration from Baker University, Baldwin, Kansas in 1994, and his Master's Degree in Public Administration from Troy University, Troy, Alabama in 2003. He started his career with the EEOC in 2007 as an Investigator and was subsequently promoted to District Resource Manager in 2009 before assuming his current position in 2017. During his tenure as an Investigator, his performance led to his selection as the FY2008 and FY2009 *Investigator of the Year* for the Memphis District, as well as the CY2009 *Federal Executive Association Memphis Metropolitan Area Federal Employee of the Year*, in the Outstanding Specialist category. Edmond was further selected as one of the EEOC Chair's *Gold Award Winners* for CY2014 based on his outstanding performance in the areas of Human Resources, Financial Management and Information Technology. He is a frequent speaker on a variety of employment discrimination issues across the District.

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Beverly L. Watts / THRC – Beverly was appointed Executive Director of the Tennessee Human Rights Commission in July 2007. Prior to her current appointment she served as Special Advisor to the Chair at the U.S. Equal Employment Opportunity Commission responsible for state and location relations. Beverly has more than 30 years of experience in civil rights enforcement and education in the public and private sector. She is considered an expert on civil rights issues including U.S. legislation such as Title VI, Title IX (having served as one of the first Title IX coordinators in the country during her tenure at the U.S. Office of Civil Rights), Section 504 and ADA, Title VII, Title VIII and other state, local and international human rights laws. She has presented to numerous organizations on leadership, civil rights, diversity, and motivation at the local, national and international level. Beverly is a graduate of Tennessee State University, Southern Illinois University, and has completed the Duke University Leadership Program for State Executives and the Harvard University John F. Kennedy School of Government Executive Leadership Program. Beverly is the recipient of numerous awards and honors including the 2005 induction into the KY Civil Rights Hall of Fame.

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Please contact Cynthia or visit our website at <http://hrprofessionalsmagazine.com>



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As a successful physician, broadcaster and corporate CEO, Dr. Jerry Punch's career paths have allowed him to be uniquely qualified to discuss a wide variety of topics.

Dr. Punch served as an Emergency Medicine physician and Emergency Department Director, including two consecutive terms as Chief of the Medical Staff at Coastal Communities Hospital in Bunnell, Florida. In addition, Dr. Punch is founder and CEO of his own Emergency Department Staffing Company, JL Punch and Associates.

As a broadcaster for the ABC/ESPN and ESPN family of networks, Dr. Punch served as host, play-by-play and pit/sideline reporter for motorsports (Indy Car and NASCAR) and college sports (college football and basketball). The motorsports component actually began in 1980 with select appearances on the Motor Racing Network. Over the next few years, he would become a regular member of the MRN pit road reporting team alongside NASCAR Champion Ned Jarrett.

In 1982, Dr. Punch served as pit reporter on a live TBS telecast of a NASCAR race at Atlanta Motor Speedway, and moved to select live telecasts of NASCAR on ESPN in 1983. In 1984, he became a regular on all ESPN NASCAR telecasts and served in that capacity until the conclusion of 2014. In 1987, Dr. Punch was added to ABC's "Wide World of Sports" telecasts serving as both a pit reporter and expert analyst alongside legendary host Keith Jackson. In 1989, he became a regular member of the Emmy Award winning ABC team, providing live coverage of the Indianapolis 500. And in 2018, he broadcast a network record 27th Indianapolis 500 on ABC.

Through his years as a broadcaster he has interviewed some of the legendary personalities in sports, ranging from Hall of Fame drivers and coaches to well-known players.

It is Dr. Punch's unique ability to weave these experiences and relay "real life" stories into his presentations that has made him one of the most sought-after speakers of our time.



KEYNOTE SPEAKER

Dr. Jerry Punch



Wimberly Lawson

Attorneys & Counselors at Law

South Carolina. Wimberly Lawson is a successor to the labor law practice of the former firm of Mitchell, Clarke, Pate, Anderson & Wimberly which was founded in 1948 and known for its representation of the Mitchell family and its "Gone with the Wind" movie interests.

While we remain successful in representing our clients' interests in union organizing campaigns, all NLRB matters, employment law litigation matters and immigration/nationality issues, our Firm also retains more traditional legal roles. Our sophisticated litigation practice ranges from proceedings before state and federal governmental agencies to trials at all levels of state and federal courts. Our attorneys have successfully defended against all types of employment discrimination and wrongful discharge claims including class actions, trade secrets, tax, pension and benefit lawsuits.

Wimberly Lawson strives to deliver the highest quality legal service in a timely, cost-effective, and ethical manner. Our monthly Employment Law Newsletter keeps clients abreast of labor and employment issues as they occur. We also present an annual update conference which summarizes the past year's developments while anticipating future legal trends. Our attorneys maintain their competitive edge by writing articles, attending legal education courses and preparing and delivering seminars sponsored by many national, regional and local organizations.

Wimberly Lawson is a full-service labor, employment, workers' compensation, immigration, governmental and commercial law firm representing management exclusively. The Firm has affiliated offices in Knoxville, Morristown, Cookeville, and Nashville, Tennessee; Atlanta and Athens, Georgia; Washington, D.C.; and Greenville,

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