

**NEW YORK STATE BAR ASSOCIATION  
Dispute Resolution Section**

**COMMERCIAL ARBITRATION TRAINING FOR ARBITRATORS AND COUNSEL:  
*Comprehensive Training for the Conducting of  
Commercial Arbitrations, Domestic and International***

July 12-14, 2021  
Presented by Webinar

**Co-Sponsors**  
**Benjamin N. Cardozo School of Law**  
**American Arbitration Association**  
**International Centre for Dispute Resolution**  
**CPR: International Institute for Conflict Prevention & Resolution**  
**College of Commercial Arbitrators**  
**New York International Arbitration Center**

## **Program Agenda**

### **Commercial Arbitration Training for Arbitrators and Counsel**

**Monday, July 12, 2021, Morning Session (*Credit totals for the day: 1.0 credits in Ethics, 5.5 in Skills, 1.0 Areas of Professional Practice*)**

**9:00-9:15 a.m. - Welcome and Introductions**

Prof. Lela Love, Cardozo Law School  
Charles J. Moxley, Jr., Training Co-Chair

**9:15-10:30 a.m. - Pre-Preliminary Hearing Issues—Ethical and Other Issues**

- Selection of arbitrators
- Arbitrator disclosure of potential conflicts
- Organizational meeting of panel members when there is a panel
- Preparing for the preliminary hearing
- Applications for interim relief
- Whether the preliminary hearing should be held in-person or by telephone
- Whether clients should be present at the preliminary hearing
- Whether to send the parties an agenda of items to be covered at the preliminary hearing
- Whether to ask the parties to meet in advance to agree on schedule
- Setting the date and time for the preliminary hearing
- Whether to encourage the parties to start the process of document disclosure in advance of the preliminary hearing

- Related ethical issues

**Faculty:**

Charles J. Moxley, Jr.  
Edna Sussman  
Lea Haber Kuck

**10:30-10:45 a.m. – Break**

**10:45-12:25 p.m. - Preliminary Hearing: Part 1**

- Purposes of preliminary hearing
- Role of chair and “wings” in the preliminary hearing
- Arbitrator’s opening remarks in preliminary hearing
- Review of what documents the arbitrators have received in advance to make sure there is nothing missing
- Review of arbitration clause
- Requests for interim relief
- Applications for a change of venue
- Determination of applicable law
- Substantive law applicable to the parties’ agreement and conduct, etc.
- Arbitration law, including whether the Federal Arbitration Act and/or state arbitration law apply
- Issues as to arbitrability
- Possibility of amended pleadings
- Particularizations of damages claims or counterclaims and of other matters of proof
- Applications to disqualify counsel
- Related ethical issues
- Substantive Motions
- Motions to Dismiss Claims or Counterclaims
- Motions to Dismiss Punitive Damages Claims
- Motions to Dismiss Based upon Statutes of Limitations or Similar Defenses
- Procedures for Screening Potential Motions

**Faculty:**

Charles J. Moxley, Jr.  
Edna Sussman  
Lea Haber Kuck

**12:25-12:45 p.m. - Lunch break**

**12:45 p.m. - Luncheon Address: The Promise of Arbitration – What We’re Trying to Do**

Speaker Charles J. Moxley, Jr.

**Monday, July 12, 2021, Afternoon Session - 1:25-3:05 p.m. Preliminary Hearing: Part 2**

- Discovery
- Non-electronic documents
- Electronic documents generally (there will be a more detailed program on electronic documents later in the program)
- Depositions
- Interrogatories
- Differences between domestic and international arbitrations
- Establishing a schedule for document production, including dates for:
- Document requests
- Objections to document requests
- Counsel’s conferring in an effort to resolve document disputes
- Submission of letters to the arbitrator relating to remaining discovery disputes
- Setting dates for oral argument of discovery disputes
- Production of non-objectioned to documents
- Establishing a completion date for all document production
- Issue of whether to set up a separate process to maintain control of e-discovery
- Approaches as to depositions
- Avoiding them all together
- Limiting the number of depositions
- Limiting the duration of depositions
- Phasing the depositions
- Rule 30(b)(6) depositions
- Generally precluding speaking objections
- Getting agreement on alternatives to standard depositions
- Appearance at the hearing by videoconference
- Appearance by videotaped deposition
- Appearance by telephone
- Establishing cut-off dates for discovery
- Related ethical issues

Faculty:

Charles J. Moxley, Jr.  
Edna Sussman  
Lea Haber Kuck

**3:05-3:20 p.m. - Break**

**3:20-5:00 p.m. Preliminary Hearing: Part 3**

- Other motions
- Motions to consolidate or sever
- Possible alternatives to testimony
- Stipulations of uncontested facts
- Direct testimony by affidavit
- Affidavits
- Expert witnesses
- Identification of anticipated experts
- Exchange of experts' reports
- First exchange: On issues as to which parties have the burden of proof
- Responsive experts' reports
- Depositions of experts
- Pre-hearing papers
- Witness lists
- Level of detail
- Whether/when to require summaries of testimony
- Exhibits
- Joint exhibits
- Individual exhibits
- Organization of exhibits
- Chronologically
- By topic
- Separate page ranges assigned to each side
- Key exhibits
- To be exchanged on a joint basis or separately by each side
- Marking up of key exhibits to designate portions relied upon
- Pre-hearing memoranda
- Relationship of pre-hearing memoranda to the question of what kind of post-hearing papers/oral argument will be interposed
- Form of testimony of witnesses
- In person
- By videoconferencing
- By videotaped deposition
- By telephone
- By deposition
- Subpoenas for non-party witnesses and their documents
- Materiality to the case of the documents or testimony sought
- Legal issues as to the authority of arbitrators to sign subpoenas (to be discussed further in a later panel)

- Legal and ethical concerns as to the appropriateness of arbitrators' signing subpoenas
- Interplay of FAA versus state law on the question of the appropriateness of arbitrators' signing discovery subpoenas
- Mediation: Whether to include a suggestion that, as some point, the parties discuss settlement/mediation and a schedule for same
- Establishing dates for status conferences
- Form of decision: Standard versus reasoned awards (this topic will be covered in more detail in a later panel)
- Court Reporter
- Whether the parties will arrange for a court reporter
- Relationship of that question to the question of whether the parties want a reasoned award
- What to do when one party wants to retain a court reporter and the other doesn't
- Scheduling of the hearing
- When to schedule the hearing
- How many days to schedule
- Discussion of whether parties will be limited to those days
- Report of preliminary hearing and scheduling order
- Related ethical issues

Faculty:

Charles J. Moxley, Jr.  
Edna Sussman  
Lea Haber Kuck

**5:00-6:00 p.m. - Optional Virtual Networking**

**Tuesday, July 13, 2021, Morning Session (*Credit totals for the day: 3.5 credits in Skills and 5.0 in APP*)**

**9:00-10:00 a.m. - Issues Arising Between the Preliminary Hearing and the Hearing**

- Overall description of what happens during this period
- Hearings on applications for interim relief
- Discovery motions
- Discovery requests and productions subsequent to the discovery cut-off
- Handling of substantive motions
- Handling of substantive motions made subsequent to the cut-off date
- Requests for delays and extensions of established deadlines
- How to handle parties' notification of change of counsel, particularly when the change causes conflicts for arbitrators or is otherwise a basis for delay
- Non-compliance with deadlines and directives of the arbitrators

- Arbitrators' authority or not to issue sanctions
- Final pre-hearing status conference
- Withdrawal of claims on the eve of the hearing
- Related ethical issues

Faculty:

Charles J. Moxley, Jr.  
Edna Sussman  
Lea Haber Kuck

### **10:00-11:00 a.m. - Session 2: The Hearing**

- General introduction to the conducting of the hearing
- How to handle and limit breaks
- How, generally, to keep the hearing going efficiently
- How and when to handle objections as to documents
- Desirable effect of the arbitrator during the hearing
- Avoiding *ex parte* conversations during breaks at the hearing
- Sequestration of witnesses
- Opening statements, if any, by counsel
- Limited requirements as to foundations for documents and other exhibits
- Generally deeming un-objected-to pre-marked exhibits as in evidence as of the opening of the hearing—and alternate approaches
- What, if any, rules of evidence or the like to follow in deciding what evidence to permit as an arbitrator
- Attitude towards hearsay testimony and other evidence in arbitration
- Witness statements/experts' reports
- Counsel's extensive reading from documents
- Cumulative testimony
- Repetitive witnesses
- Harsh cross-examination
- Witnesses on cross who keep repeating their overall points
- Counsel talking with witnesses while they are on cross-examination
- Excessive objections
- Closing statements, if any
- How to handle disclosures that become necessary during the hearing because of the identification of new parties or entities involved in the case
- Related ethical issues

Faculty:

Charles J. Moxley, Jr.  
Edna Sussman  
Lea Haber Kuck

**11:00-11:15 p.m. - Break**

**11:15-12:15 p.m. - Post-Hearing Issues - Part I: The Arbitrators' Perspective**

- Drafting of the award (general introduction -- There will be a more detailed discussion of this topic by a later panel)
- Post-hearing applications for introduction of additional evidence
- Post-award requests to change the award
- Mathematical or formal corrections and the like
- Substantive changes
- Rule as to *functus officio* status of arbitrators after issuing a final award
- No Contact with counsel or parties following the award
- Related ethical issues

Faculty:

Charles J. Moxley, Jr.  
Edna Sussman

**Part II: The Courts' and Litigators' Perspectives**

- Motions to confirm and vacate and motions re arbitrability
- How Litigators see them
- How Courts see them
- How best to advance such motions
- What arbitrators should do to lessen likelihood of vacatur
- Remands to arbitrators

Faculty:

Hon. Carolyn E. Demarest (Ret.)  
Lea Haber Kuck

**12:15-12:35 p.m.**

**Lunch break**

**12:35 p.m. - Luncheon Address: Introduction to the World of International Arbitration – and How It Fits into Today's World**

Speaker: Luis M. Martinez

## **Tuesday, July 13, 2021, Afternoon Session**

### **1:15-2:30 p.m. - International Arbitration: How It Differs from Domestic Arbitration**

- Introduction to the overriding conventions and laws applicable to international as contrasted with domestic arbitration
- Discussion of the practices of international arbitration that are different from domestic
- The extent and significance of international arbitration as the default methodology of choice for international business
- “Soft law” applicable to international arbitration

Faculty:

Moderator: Charles J. Moxley, Jr.  
Lea Haber Kuck  
Luis M. Martinez  
Richard L. Mattiaccio  
Camille M. Ng  
Rekha Rangachari

### **2:30-2:45 p.m. - Break**

### **2:45-4:00 p.m. - Electronic Discovery**

- Significance of electronic discovery in terms of cost and delay
- Definition of terms
- Identification of the areas of greatest expense in connection with electronic discovery
- Matters to establish at the outset to minimize the expense and optimize the efficiency of electronic discovery
- ICDR recommended practices as to electronic discovery
- CPR Protocols as to electronic discovery
- Best Practices as to electronic discovery

Faculty:

Moderator: Edna Sussman  
Joseph V. DeMarco  
Ignatius Grande  
Diane O’Connell  
Hon. Shira A. Scheindlin

### **4:00-5:00 p.m. - Award Writing**

- Standard versus reasoned awards



- Advantages and disadvantages of various types of award
- Consideration of what should be included in a standard award
- Consideration of what should be included in a reasoned award
- The structure of a reasoned award
- How to go about drafting a reasoned award
- When to start drafting a reasoned award
- Best Practices as to drafting of reasoned awards where there is a panel of three arbitrators

Faculty:

Moderator: Charles J. Moxley, Jr.  
 Hon. Ariel E. Belen (Ret.)  
 Steven Certilman  
 Richard H. Silberberg  
 Richard Ziegler

**5:00-6:00 p.m. - Best Practices in Selecting Arbitrators**

Faculty:

Moderator: Charles J. Moxley, Jr.  
 David J. Abeshouse  
 Oliver J. Armas  
 Erin Gleason Alvarez  
 David M. Goldman  
 David Singer

**6:00 p.m. - ADJOURN**

**Wednesday, July 14, 2021, Morning Session (*Credit totals for the day: 5.0 credits in APP, 2.0 in Ethics and 1.5 in Diversity and Inclusion*)**

**8:50-9:50 a.m. - Ethics and Cyber Security for Arbitrators – Maintaining the Security of the Arbitration Process**

Faculty:

Moderator: Lea Haber Kuck  
 Stephanie Cohen  
 Diana Didia  
 Mark C. Morrill

**9:50-10:50 a.m. - Arbitration Law**

- Introduction to the FAA

- Introduction to New York arbitration law – CPLR Article 75
- Interplay of the FAA and New York arbitration law in arbitrations held in New York
- Arbitrability as to parties and non-parties
- The “Who Decides” issue: Who determines arbitrability, the arbitrators or a court?
- Arbitration due process
- Enforceability of non-party subpoenas for documents and testimony
- Within subpoena range of the seat of the arbitration
- Beyond subpoena range of the seat of the arbitration
- Standards of review under the FAA and New York arbitration law
- How these areas of law differ in the context of international arbitration
- Review of recent decisions applicable to arbitration

Faculty:

Moderator: Charles J. Moxley, Jr.  
Tracey B. Frisch  
Boaz S. Morag  
Steven Skulnik

**10:50-11:05 a.m. - BREAK**

**11:05-11:45 a.m. - Arbitration Law Part II**

**11:45-1:00 p.m. - Diversity, Inclusion and Elimination of Bias – Implicit Bias, Serving a Diverse Population, and Sensitivity to Culture and Other Differences, Including Heuristics Affecting Arbitrators’ Exercise of Judgment and Decision-Making**

Faculty:

Moderator: Charles J. Moxley, Jr.  
Ingeuneal Gray  
Edna Sussman  
Daniel M. Weitz

**1:00-1:15 p.m. - Lunch Break**

**1:15 p.m. - Luncheon Address: How to be a Great Neutral—The Importance of Humility and Listening**

Speaker: Professor Lela Love

**Wednesday, July 14, 2021, Afternoon Session (1.5 credits in Ethics, 2.5 in APP)**

## **2:00-3:15 p.m. - Arbitration Ethics**

- Disclosure rules
- Codes of Ethics applicable to arbitrators
- Best practices for disclosures by arbitrators
- Ongoing nature of disclosure obligation
- Party-appointed arbitrators
- Appropriateness of an arbitrator's accepting appointment to a new case that involves parties or attorneys who are already appearing before the same arbitrator in another case
- Use of associates/assistants
- Appropriateness of an arbitrator's accepting employment as counsel for a party who had previously appeared before the arbitrator in an unrelated case
- Involvement of arbitrators with respect to possible settlement discussions among the parties
- Inclusion of all arbitrators on a panel in arbitrator discussions concerning the case
- Recent ethical decisions

Faculty:

Moderator: Lea Haber Kuck  
Leslie Berkoff  
Betsy A. Hellmann  
Daniel F. Kolb  
Abigail Pessen

## **3:15-3:30 p.m. - Break**

## **3:30-4:00 p.m. - The Real World: Developing Your ADR Career**

Faculty:

Jeffrey T. Zaino  
Michelle Skipper

## **4:00-5:40 p.m. - Perspectives on Practice Development in the Arbitration World**

- Overview of the arbitration world
- Level of training and experience necessary to be a good arbitrator
- How to go about getting experience as an arbitrator
- Traits that parties and their counsel look for in prospective arbitrators
- Opportunities for arbitration training and skills building

Moderator, Charles J. Moxley, Jr

Faculty (Providers):

Helena Erickson, CPR  
Mansi Karol, AAA  
Chrystal Loyer, FINRA  
Robyn Weinstein, Eastern District of New York

Faculty (Experience Transitioning to Service as an Arbitrator)

Erin Gleason Alvarez  
Simeon H. Baum  
Linda Gerstel  
Jack Levin  
Michael Walsh

**5:40-6:00 p.m. - Questions and Answers/Final Wrap Up**

**6:00 p.m. - ADJOURN**