



The Los Angeles County Bar Association
Appellate Courts Section Presents

Arbitration: A Favored Process?

Thursday, October 18, 2018

Program - 4:30 PM - 6:00 PM

California Court of Appeals , Los Angeles

1.5 CLE Hours **(INCLUDES 1.5 HRS OF APPELLATE COURTS SPECIALIZATION CREDIT)**



Provider #36

The Los Angeles County Bar Association is a State Bar of California approved MCLE provider. The Los Angeles County Bar Association certifies that this activity has been approved for MCLE credit by the State Bar of California.



T: 213-620-1133
F: 213-620-0100

Case Manager

Geri Yulo
JAMS
555 W. 5th St.
32nd Floor
Los Angeles, CA
90013
213-253-9711 Phone
213-620-0100 Fax
Email:
gyulo@jamsadr.com

Hon. Carlos R. Moreno (Ret.)

Hon. Carlos R. Moreno (Ret.) joins JAMS after a distinguished 25-year career on the judiciary, including ten years on the California Supreme Court. During his tenure, Justice Moreno authored over 140 majority opinions on a wide range of precedent setting cases, including significant opinions implicating LGBT rights, arbitration, and insurance policy coverage. Previously, he served fifteen years as a trial judge in state and federal courts presiding over hundreds of trials covering the full spectrum of criminal and civil litigation. Most recently, Justice Moreno served as United States Ambassador to Belize where he made great strides in advancing citizen security within Belize and the region, focusing on citizen protection, economic development, and governance.

Justice Moreno is a first-generation Mexican-American and fluent Spanish speaker. He was the third Latino to serve on the Supreme Court of California. Justice Moreno has been honored with numerous accolades for his work on and off the Bench, recognizing his commitment to equality and justice, his pioneering accomplishments as a Mexican-American, and his work in child advocacy. He has served on numerous community-based organization boards.

ADR Experience and Qualifications

- Served as United States Ambassador to Belize working to improve citizen security for Belize and the region, emphasizing citizen protection, economic development, and good governance
- Ten years on the California Supreme Court authoring over 140 majority opinions on a wide range of precedent-setting civil and criminal cases, including death penalty appeals, and the author of significant opinions implicating LGBT rights, arbitration, and insurance policy coverage. Participated in at least 1000 oral arguments before the Court
- Fifteen years as a trial judge in state and federal courts presiding over 100's of trials involving the full panoply of criminal and civil litigation
- Four years as a prosecutor with the Los Angeles City Attorney's office, including dozens of trials and assignment to consumer protection section
- Ten years in private practice with business law firms

Representative Matters

- **Arbitration**
 - Author of several decisions on arbitration including arbitrability and unconscionability doctrines
- **Appellate**
 - Neutral Evaluator on several matters before the California Supreme Court including foundation for expert witness testimony, redevelopment legislation, charter schools, and water district resource allocations among other issues, including petitions for review and preparation for oral argument
- **Business/Commercial**
 - Author of majority opinion in *Korea Supply* re: remedy of restitution in unfair competition cases
 - Arbitrated multi-million dollar dispute over fraudulent representations by seller on the purchase value of ongoing business
 - Presided over lengthy federal trial concerning breach of prospective defense contract to build fighter jets and enforceability of oral representations made in bid

- process
- **Civil Rights**
 - Author and majority member of numerous decisions on LGBT rights including same-sex adoptions, domestic partner rights, in vitro fertilization and child custody rights, and same-sex marriage
- **Employment**
 - Neutral Evaluator in case concerning minority faculty allegations of discrimination in hiring and promotions at major public university
 - Matters involving issues of discrimination based on race, age, gender, disability, medical condition, religion, sexual origin, national origin
 - Sexual harassment claims
 - Retaliation claims
- **Insurance**
 - Author of majority opinion in *McKinnon* and other coverage cases discussing “reasonable expectations of the insured”
 - Author of coverage cases concerning mixed concurrent causation, successor liability, bad faith insurance claims, Brandt fees, policy interpretation, and lost policies
- **Intellectual Property**
 - Neutral evaluator in matters concerning patent standards, infringements, and trademarks
 - Trial judge in patent infringement and patent invalidity claims, trade secrets, trademark, and copyright violations

Honors, Memberships, and Professional Activities

- Lifetime Achievement Award, Mexican American Bar Association Foundation, 2011
- Cesar E. Chavez Legacy Award, 2011
- Lambda Legal Liberty Award, 2011
- Diversity Award, State Bar Council on Access & Fairness, 2011
- Esperanza Award, California Latino Caucus, 2011
- Equality & Justice Award, Equality California, 2010
- Yale University Medal, 2010
- Lifetime Achievement Award, Hispanic National Bar Association, 2009
- Legal Services for Children Advocacy Award, 2007
- Justice Roger J. Traynor Appellate Justice of the Year, Consumer Attorneys Association of Los Angeles, 2002
- Yale University – For God, For Country and For Yale Award, 2002
- Member, California Judges Association, Present
- President, Yale Club of Southern California, 1997-1999
- Board of Governors, Association of Yale Alumni, 1991-1994
- Board of Visitors, Stanford Law School, 1988-1991
- President, Mexican American Bar Association, 1982

Background and Education

- United States Ambassador to Belize, 2014-2017
- Of Counsel, Irell & Manella LLP, 2011-2013
- Associate Justice, California Supreme Court, 2001-2011
- United States District Judge, Central District of California, 1998-2001
- Judge of the Superior Court, County of Los Angeles, 1993-1998
- Judge of the Municipal Court, Compton Judicial District, 1986-1993
- Kelley, Drye & Warren, 1979-1986
- Deputy City Attorney, Los Angeles City Attorney, 1975-1979
- J.D., Stanford Law School, 1975
- B.A., Political Science, Yale University, 1970

Disclaimer

This page is for general information purposes. JAMS makes no representations or warranties regarding its accuracy or completeness. Interested persons should conduct their own research regarding information on this website before deciding to use JAMS, including investigation and research of JAMS neutrals. [See More](#)



Deborah Crandall Saxe, Esq.



Case Manager

Julie Ware

T: 213-253-9721

F: 213-620-0100

555 W. 5th St., 32nd Floor, Los Angeles, CA 90013

jkware@jamsadr.com

Appellate Biography

Before becoming a full-time neutral, **Deborah Crandall Saxe, Esq.** was a litigator and appellate lawyer at Jones Day, Heller Ehrman, and Seyfarth Shaw for more than 30 years. When she was practicing law, she was lead counsel in litigation matters resulting in more than 30 reported court decisions. She litigated cases before state and federal trial courts, the California Court of Appeal, the United States Courts of Appeals for the Fourth, Sixth, Seventh, Eighth, Ninth, and District of Columbia Circuits, the California Supreme Court, and the United States Supreme Court. Chambers USA called her “an aggressive and highly capable litigator” with “substantial experience in the courtroom as a trial lawyer.” More recently, Chambers USA called her a “talented mediator.”

Ms. Saxe is highly regarded and well-respected. She is a quick study, prepared, personable, approachable, creative, and flexible. As an arbitrator, she is known to be fair, practical, unflappable, and not afraid to make tough decisions. As a mediator, she is strong, good at listening and reading people, and a tenacious closer. She is known for her ability to quickly establish rapport with parties and counsel and enable them to recognize their legal risks. The perspective gained from her extensive trial and appellate court experience allows her to offer valuable insights as to how a case is likely to proceed in the courts and how it is likely to appear to a judge and jury.

Appellate Experience

- Claim that trial court erred when finding that ERISA preempted claim that employer was required to “bridge” employment for older workers so they could become eligible for early retirement benefits under pension plan
- Claim that trial court erred when granting anti-SLAPP motion dismissing employee’s claims for defamation and invasion of privacy
- Claim that trial court erred when granting non-suit for employer in defamation case arising out of statements made by employer when handling a sexual harassment allegation
- Claim that trial court erred when failing to grant judgment NOV for employer after jury rendered verdict of \$4.1M against employer in case alleging constructive discharge because of age
- Claim that trial court erred when awarding attorneys’ fees to defendant under California Labor Code § 218.5 following summary judgment on split shift premium and reporting pay claims
- Claim that trial court erred when granting demurrer on ground that PAGA claims based on allegedly unlawful commission chargebacks were barred by the doctrine of res judicata because they involved the same parties and the same (non-PAGA) commission chargeback claims that had been litigated in an earlier case.

- Claim that trial court erred when denying defendant employer's motion for JNOV in workplace injury case involving "point of operation guards" on a power press in which jury awarded the plaintiff more than \$1M
- Claim that trial court erred when granting summary judgment for employer on fraud claims brought by former employees of a closed coke plant on grounds that claims were pre-empted by federal labor law and that the collective bargaining agreement between the employer and the union representing the former employees gave the employer the right to determine, in its sole discretion, whether plant should be closed
- Claim that NLRB erred when finding that an employer committed an unfair labor practice by complying with collective bargaining agreement requiring employees to use special forms (provided by Union) to revoke their authorizations for the Company to deduct Union dues from their paychecks
- Claims that trial court erred when finding that employer was required to provide health benefits for former union-represented workers for their lifetimes
- Claim that NLRB erred when affirming ALJ's decision on grounds that the proven violations were neither alleged in the NLRB's complaint nor fully and fairly litigated in the ensuing proceeding
- Claim that NLRB erred when confirming union representation election that may have been tainted by chain voting
- Claim that EEOC waived Freedom of Information Act (FOIA) exemption protecting interagency memoranda and investigatory records by reading documents out loud to employer's counsel
- Claim that Office of Federal Contract Compliance Programs (OFCCP) was required to send copies of employers' affirmative action plans to those who requested them under FOIA
- Claim that EEOC should be prohibited from investigating employment practices because EEOC Commissioner's charge was facially invalid

Honors, Memberships, and Professional Activities

- Listed in *Best Lawyers in America*, 2005-2017, 2019
- Recognized as a SuperLawyer, Alternative Dispute Resolution category, 2019
- Fellow, Chartered Institute of Arbitrators, 2014-present
- Fellow, International Academy of Mediators, 2015-present
- Fellow, College of Labor & Employment Lawyers, 2001-present
- Ranked by *Chambers USA* as a "leading lawyer" in employment law, 2004-2012
- Identified as one of the 100 Most Powerful Labor & Employment Lawyers in the Nation, 2010, 2011, 2012
- Recognized by peers as a Southern California SuperLawyer in the field of ADR, 2014-2017
- Recognized by peers as one of the Top 50 Women SuperLawyers in L.A. and Orange Counties for 10 consecutive years, 2004-2013
- Recognized by peers as one of the Top 100 SuperLawyers in L.A. and Orange Counties, 2010
- Member, American Bar Association, Labor & Employment Law Section, 39 years
- Member, American Bar Association, Dispute Resolution Section, 6 years
- Member, California Bar Association, Labor & Employment Law Section, 32 years
- Trustee, Los Angeles County Bar Association (LACBA), 2005-2008 and 2010-2013; Member, 32 years
- Chair, LACBA Labor & Employment Law Section, 2002-2003; Member 32 years
- Associate Member, California Employment Lawyers Association (CELA), 2012-present
- Member, Board of Governors, Women Lawyers Association of Los Angeles (WLALA), 2012-2013
- Lifetime Member, WLALA
- Associate (neutral) member, California Employment Lawyers Association (CELA)
- Listed in Marquis' *Who's Who in America*, *Who's Who of American Women*, and *Who's Who in the World*

ADR Profile

- "[Speedy Synthesizer](#)," ADR Profile, *Daily Journal*, May 27, 2016

Background and Education

- Full-time neutral since July 2012 (part-time since January 2007 - July 2012)
- Partner, Jones Day, 1988-1996 and 2006-2012
- Shareholder, Heller Ehrman, 1997-2005
- Associate, Jones Day, 1983-1987
- Associate, Seyfarth Shaw, 1978-1983

- J.D., UCLA School of Law, 1978 (Member, *UCLA Law Review*)
- M.A., Comparative Literature, UCLA, 1973
- B.A., English Language & Literature, *magna cum laude*, Penn State, 1971
- B.A., Russian Language & Literature, *cum laude*, Penn State, 1971

General Biography

Available nationwide ›

Disclaimer

This page is for general information purposes. JAMS makes no representations or warranties regarding its accuracy or completeness. Interested persons should conduct their own research regarding information on this website before deciding to use JAMS, including investigation and research of JAMS neutrals. [See More](#)

Robert A. Olson



More than 30 years ago Bob Olson found his passion and calling for appellate law. It started with a clerkship with Hon. Anthony Kennedy, then on the United States Court of Appeals for the Ninth Circuit after graduating Order of the Coif from Stanford Law School. He eventually found his way to GMSR where he has practiced for nearly three decades.

Bob is a leader of the appellate bar, a past president of the California Academy of Appellate Lawyers, a fellow of the American Academy of Appellate Lawyers and a past president of the Association of Southern California Defense Counsel. He has been a California Lawyer of the Year and recognized as one of the “Best Lawyers in America.” He has represented individuals, companies, insurers and public entities in the California Supreme Court, the United States Court of Appeals for the Ninth Circuit and the California Courts of Appeal. He also actively collaborates with local counsel on cases before several state Supreme Courts.

Bob has a breadth of experience, which helps in placing difficult cases in a context that will enhance the likelihood of success. He has particular expertise, and successful appellate outcomes, in matters of insurance coverage and bad faith, tort liability, contract—including entertainment contract—claims, anti-SLAPP and defamation, and arbitration.

Education

J.D., Stanford Law School (1983). Order of the Coif.

A.B., Stanford University (1979). Phi Beta Kappa.

Honors

A California Lawyer of the Year, *California Lawyer Magazine* (2016)

Daily Journal's Annual Top 100 California Lawyers (2012)

Southern California Super Lawyers (Appellate) (2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017)

Top 100 Southern California Super Lawyers (2017)

Named in The Best Lawyers in America (Appellate Law) (2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018)

Bar Admissions

California 1983

U.S. Supreme Court

U.S. Court of Appeals: Ninth Circuit

U.S. District Courts: Central District of California

Speaking and Involvement

"The Bermuda Triangle of Coverage Issues," 2017 CLM New York Conference

2017

"Going Postal--The Coverage and Insurance Guide for Religious and Non-Profit Organizations," 2017 CLM Midwest Conference

2017

"Tort & Civil Procedure Appellate Update – Important 2016 Cases for Your Practice," South Bay Bar Association

2017

The Year in Review: A Summary of Recent Cases, Association of Southern California Defense Counsel (1996 to Present)

2017

"Best Practices When Dealing with Reptiles" and "Legal Writing in the Electronic Age," Federation of Defense & Corporate Counsel (FDCC) Annual Winter Meeting

2017

"How to Use Amicus Support Effectively," Beverly Hills Bar Association

2014

"Howell v. Hamilton Meats: What it Means, How to Take Advantage of it & What's Left," Association of Southern California Defense Counsel

2011

"About Face! Howell Reverses Direction in the Supreme Court," Association of Defense Counsel of Northern California and Nevada

2011

"Update on Insurance Issues," Lorman Education Services, Costa Mesa

2007

"Winning Strategies Using Legislative Intent", State Bar of California Annual Meeting

2007

"Appellate Practice in the 2nd District Court of Appeal", Bar Association of San Francisco's Appellate Courts Committee, San Francisco

2007

Adjunct Professor of Law, Loyola Law School, Los Angeles (appellate advocacy)

1998

Professional Associations

California Judicial Council: Civil and Small Claims Advisory Committee

Past President, California Academy of Appellate Lawyers

Fellow, American Academy of Appellate Lawyers

Los Angeles County Bar Association: Appellate Courts Committee

Past President, Association of Southern California Defense Counsel

Association of Business and Trial Lawyers

The Federation of Defense and Corporate Counsel

Claims and Litigation Management Alliance

DRI

Beverly Hills Bar Association

High Impact Wins

Sterling v. Sterling (2015) 242 Cal.App.4th 185

Jan 01, 2015

Sanchez v. Valencia Holding Co., LLC (2015) 61 Cal.4th 899

Aug 03, 2015

Farmers Insurance Exchange v. Superior Court (2013) 220 Cal.App.4th 1199

Oct 01, 2013

Celador Internat., Inc. v. American Broadcasting Cos., Inc. (9th Cir. 2012) 499 Fed.Appx. 721

Dec 03, 2012

Howell v. Hamilton Meats & Provisions, Inc. (2011) 52 Cal.4th 541 (amicus)

Aug 18, 2011

Ladd v. Warner Bros. Entertainment, Inc. (2010) 184 Cal.App.4th 1298

May 25, 2010

Publications

Deciding Whether To Make The Leap: Evaluating The Chances Of Success On Appeal.

Mar 21, 2018

Wretched Excess – Working with Umbrella and Excess Coverage to Manage the Large Claim

Apr 17, 2017

Limiting Reptile Arguments, By Appeal And Otherwise

Jan 17, 2015

The “Metaphysical Moment” When a Pipe Begins to Leak Is Not a “Sudden” Discharge Where Damage Only Results From a Gradual or Continuous Process (2013) 2 Verdict 13.

Sep 10, 2013

Write this Down: California Supreme Court Rejects Recovery of ‘Written Down’ Amount of Medical Bills (Oct. 21, 2011) Westlaw Journal Insurance Coverage, Vol. 22, Issue 2.

Oct 21, 2011

Anticipating ‘Reid v. Google,’ reserving objections for review, S.F. Recorder (July 5, 2010).

Jul 05, 2010

Part 2: Getting it Right – Challenging a Statement of Decision (Feb. 2009) Appellate Tips for Trial Lawyers (a newsletter of the Los Angeles County Bar Association) Vol. 1, No. 14.

Feb 01, 2009

Part 1: Getting it Right – Challenging a Statement of Decision (Jan. 2009) Appellate Tips for Trial Lawyers (a newsletter of the Los Angeles County Bar Association) Vol. 1, No. 13.

Jan 01, 2009

Taking the Offense (2d quarter 2008) Verdict Magazine, pp. 17-20.

Jun 01, 2008

Examining the Rules – Divining Legislative Intent and Finding Statutory Meaning, (3d quarter 2006) Verdict Magazine pp. 37-43.

Jul 01, 2006

Strategic Opportunities In The Statement Of Decision Process (2d quarter 2005) Verdict Magazine, pp. 42-46.

Apr 01, 2005

A Few Of My Favorite Things Tips for Persuasive Writing (4th quarter 2004) Verdict Magazine, pp. 38-43.

Oct 01, 2004

How Much is Enough? Evidentiary and Instructional Issues in Trying the Amount of Punitive Damages (3d quarter 2002) Verdict Magazine pp. 30-38.

Jul 01, 2002

The Meaning of An Insurance Carrier’s Reservation of Rights – Part I, (Spring 2002) Association of Business Trial Lawyers Report pp. 1, 9-11.

Mar 22, 2002

Issues in Trying the Amount of Punitive Damages (Sept. 1996) Association of Business Trial Lawyers Report, pp. 5-6.

Sep 01, 1996

Is It Too Late to Settle? Problems with Settlement After Adjudication

Feb 01, 1996



Deborah Crandall Saxe, Esq.



Case Manager

Julie Ware

T: 213-253-9721

F: 213-620-0100

555 W. 5th St., 32nd Floor, Los Angeles, CA 90013

jkware@jamsadr.com

General Biography

Before becoming a full-time neutral, **Deborah Crandall Saxe, Esq.** was a litigator and appellate lawyer at Jones Day, Heller Ehrman, and Seyfarth Shaw for more than 30 years. When she was practicing law, she was lead counsel in litigation matters resulting in more than 30 reported court decisions. She litigated cases before state and federal trial courts, the California Court of Appeal, the United States Courts of Appeals for the Fourth, Sixth, Seventh, Eighth, Ninth, and District of Columbia Circuits, the California Supreme Court, and the United States Supreme Court. Chambers USA called her “an aggressive and highly capable litigator” with “substantial experience in the courtroom as a trial lawyer.” More recently, Chambers USA called her a “talented mediator.”

Ms. Saxe is highly regarded and well-respected. She is a quick study, prepared, personable, approachable, creative, and flexible. As an arbitrator, she is known to be fair, practical, unflappable, and not afraid to make tough decisions. As a mediator, she is strong, good at listening and reading people, and a tenacious closer. She is known for her ability to quickly establish rapport with parties and counsel and enable them to recognize their legal risks. The perspective gained from her extensive trial and appellate court experience allows her to offer valuable insights as to how a case is likely to proceed in the courts and how it is likely to appear to a judge and jury.

ADR Experience and Qualifications

- Has mediated and arbitrated legal disputes for decades, first as an advocate and later as a mediator and arbitrator
- Began serving as a neutral on a part-time basis in January 2007 (while a partner at Jones Day)
- Full-time neutral since July 2012
- Extensive trial and appellate court experience as an advocate
- Extensive mediation and arbitration training through Straus Institute of Dispute Resolution, JAMS, AAA, and other organizations
- Has mediated and arbitrated hundreds of cases
- Has served as Chair of a tripartite panel of arbitrators

Representative Matters

- **Contract disputes**, including those involving:
 - Executive employment contracts

- Law firm and other partnership agreements
- Non-disclosure agreements
- Confidentiality and trade secrets agreements
- Inventions agreements
- Independent contractor agreements
- Consulting agreements
- Severance pay contracts
- Release agreements
- Corporate transactional documents
- **Business torts**, including those involving:
 - Invasion of privacy, including alleged misappropriation of voice and likeness
 - Intentional and negligent infliction of emotional distress
 - Interference with contractual relations
 - Interference with prospective economic advantage
 - Defamation
 - Fraud
- **Attorneys' fees disputes**
- **Employee pension and health insurance matters**, including those involving:
 - Vesting of benefits in defined contribution pension plans
 - Withdrawal liability under the Multiemployer Pension Plan Amendments Act (MEPPA)
 - Withdrawals from multiple employer pension plans
 - Whether private sector employers with collective bargaining agreements providing for retiree health insurance had right to change or terminate retiree health insurance plan for employees who already had retired
 - Whether public sector school district with collective bargaining agreements providing for lifetime retiree health insurance for its teachers had right to alter deductibles, premium payments, and/or covered benefits for teachers who already had retired
 - ERISA class action alleging partial termination of pension plan
- **Labor and employment matters of all kinds**, including those involving:
 - Employment discrimination
 - Harassment
 - Retaliation
 - Reasonable accommodation
 - Leaves of absence
 - Wage and hour issues arising under the Fair Labor Standards Act (FLSA), the California Labor Code (including PAGA), California's Wage Orders, and California Business & Professions Code §§ 17200, *et seq.*
 - The Family and Medical Leave Act (FMLA), the California Family Rights Act (CFRA), and the California Pregnancy Disability Leave Law (PDL)
 - Non-compete agreements (including issues arising under California Business & Professions Code §§ 16600, *et seq.*)
 - California Labor Code § 1102.5
 - Employee raiding
 - Alleged misappropriation of trade secrets under the Uniform Trade Secrets Act
 - Wrongful termination in violation of public policy

Honors, Memberships, and Professional Activities

- Listed in *Best Lawyers in America*, 2005-2017, 2019
- Recognized as a SuperLawyer, Alternative Dispute Resolution category, 2019
- Fellow, Chartered Institute of Arbitrators, 2014-present
- Fellow, International Academy of Mediators, 2015-present
- Fellow, College of Labor & Employment Lawyers, 2001-present
- Ranked by *Chambers USA* as a "leading lawyer" in employment law, 2004-2012
- Identified as one of the 100 Most Powerful Labor & Employment Lawyers in the Nation, 2010, 2011, 2012
- Recognized by peers as a Southern California SuperLawyer in the field of ADR, 2014-2017
- Recognized by peers as one of the Top 50 Women SuperLawyers in L.A. and Orange Counties for 10 consecutive years, 2004-2013
- Recognized by peers as one of the Top 100 SuperLawyers in L.A. and Orange Counties, 2010
- Member, American Bar Association, Labor & Employment Law Section, 39 years
- Member, American Bar Association, Dispute Resolution Section, 6 years
- Member, California Bar Association, Labor & Employment Law Section, 32 years

- Trustee, Los Angeles County Bar Association (LACBA), 2005-2008 and 2010-2013; Member, 32 years
- Chair, LACBA Labor & Employment Law Section, 2002-2003; Member 32 years
- Associate Member, California Employment Lawyers Association (CELA), 2012-present
- Member, Board of Governors, Women Lawyers Association of Los Angeles (WLALA), 2012-2013
- Lifetime Member, WLALA
- Associate (neutral) member, California Employment Lawyers Association (CELA)
- Listed in Marquis' *Who's Who in America*, *Who's Who of American Women*, and *Who's Who in the World*

ADR Profile

- "[Speedy Synthesizer](#)," ADR Profile, *Daily Journal*, May 27, 2016

Background and Education

- Full-time neutral since July 2012 (part-time since January 2007 - July 2012)
- Partner, Jones Day, 1988-1996 and 2006-2012
- Shareholder, Heller Ehrman, 1997-2005
- Associate, Jones Day, 1983-1987
- Associate, Seyfarth Shaw, 1978-1983
- J.D., UCLA School of Law, 1978 (Member, *UCLA Law Review*)
- M.A., Comparative Literature, UCLA, 1973
- B.A., English Language & Literature, *magna cum laude*, Penn State, 1971
- B.A., Russian Language & Literature, *cum laude*, Penn State, 1971

Available nationwide ›

Disclaimer

This page is for general information purposes. JAMS makes no representations or warranties regarding its accuracy or completeness. Interested persons should conduct their own research regarding information on this website before deciding to use JAMS, including investigation and research of JAMS neutrals. [See More](#)

George Abele is a partner in the Employment Law practice of Paul Hastings and is based in the firm's Los Angeles office. He divides his practice among his employment advice and litigation, "disaster mitigation," and appellate practices. Mr. Abele's employment advice and litigation practice includes the representation of private and public employers in all aspects of employment law, including wage and hour class actions, wrongful discharge, discrimination, sexual harassment litigation, traditional labor arbitrations, and private arbitrations. He has particular experience in wage and hour class actions and PAGA representative actions. Mr. Abele also helps lead the firm's disaster mitigation practice, helping his clients undo or significantly reduce disastrous verdicts levied by California juries. His extensive appellate practice serves as a perfect complement to both practices. He is a frequent speaker on a variety of employment law topics.



George W. Abele

Partner, Employment Law
Department

515 South Flower Street
Twenty-Fifth Floor

Los Angeles, CA 90071

P: 1(213) 683-6131

F: 1(213) 627-0705

georgeabele@paulhastings.com

Experience

- Obtained reversal on appeal of order granting summary judgment against wrongful death claimant. *A.G., a Minor, v. County of Los Angeles*, Case No. B282023 (October 1, 2018)
- Argued appeal affirming trial court order denying anti-SLAPP motion. *California Trucking Ass'n v. Labor and Workforce Development Agency*, Case No. G055185 (September 27, 2018)
- Successfully moved to dismiss wage and hour class action complaint as a matter of law prior to discovery.
- Successfully moved to dismiss PAGA representative action complaint as a matter of law prior to discovery.
- Obtained affirmance on appeal of summary judgment disposing of wrongful termination, defamation, and wage and hour claims.
- Successfully moved to compel arbitration of discrimination and wrongful termination claim.
- Obtained a complete defense judgment in a disability discrimination and failure to accommodate trial on behalf of nationwide transportation company.
- Obtained writ of mandate staying, and ultimately reversing, trial court discovery order, thereby protecting client's attorney-client privileged material.
- Obtained appellate reversal of trial court ruling that had denied petition to compel arbitration.
- Defeated class certification on behalf of a major communications company whose retail store managers had claimed to be misclassified as exempt, asserting claims for overtime, missed meal and rest breaks, and other wage-and-hour violations.
- Obtained Ninth Circuit review and secured reversal of a remand order under the Class Action Fairness Act (CAFA) in a case involving a purported waiver by plaintiff of any recovery over the federal court jurisdictional threshold. *Rodriguez v. AT&T Mobility*, 728 F.3d 975 (9th Cir. 2013).
- Argued before California Supreme Court in *Kirby v. Immoos Fire Protection, Inc.*, 53 Cal.4th 1244 (2012).

- Sought to dismiss individual defendants from personal liability for penalties under the California Private Attorneys General Act. Cal. Labor Code section 2698 et. seq.
- Convinced a federal district court, just three weeks before trial, to decertify a class of over 1300 supervisors in a case plaintiff's counsel had valued at several hundred million dollars. *Marlo v. United Parcel Service, Inc.*, 251 F.R.D. 476 (C.D. Cal. 2008). Prepared the appellate court briefing in which the decertification was upheld. *Marlo v. United Parcel Service, Inc.*, 639 F.3d 942 (9th Cir. 2011).
- Took over a case for a nationwide financial institution against whom a California jury had awarded \$1.6 million in an age-harassment trial, and convinced the trial court to order a complete new trial. After plaintiffs appealed from directed verdicts entered earlier by the trial court, Mr. Abele persuaded the appellate court not only to uphold the directed verdicts, but (on a cross-appeal) to direct the trial court to order judgment notwithstanding the verdict, thereby avoiding the new trial altogether.
- Helped reverse an \$89.5 million verdict in favor of two individual plaintiffs who claimed to have been denied a promotion. Through briefing up to the California Supreme Court, Mr. Abele's team successfully obtained a new trial for the firm's client. *Lane v. Hughes Aircraft Company*, 22 Cal.4th 405 (2000).
- Argued numerous appeals in Ninth Circuit Court of Appeals and California Court of Appeal.
- Obtained numerous summary judgments in federal and state courts on individual plaintiff cases asserting various forms of discrimination and wrongful termination.

Accolades and Recognitions

- Elected as a Fellow in The College of Labor and Employment Lawyers (June 2011).
- Selected of as a Top Labor & Employment Lawyer in California by the *Daily Journal* (July 2011).
- Selected for inclusion on the *Best Lawyers in America* and *Super Lawyer* listings each year since 2003.

Publications

- Matthew Bender Practice Guide, *California Wages and Hours* (Abele & Wilcox, eds.) (Initial publication, October 2016; updated bi-annually)
- Matthew Bender, *California Employment Law*, Editorial Consultant (bi-annual updates)
- Matthew Bender, *California Employment Law*, Chapter 9: "Wage and Hour Class Actions" (author) (Wilcox, ed.)
- Rutter Group, *California Practice Guide: Employment Litigation*, Chapter 7: "Employment Discrimination – In General" (author) (Chin, Wiseman, Callahan & Exelrod, eds.)

Recent Speaking Engagements

- National Employment Law Institute, Employment Law Update, “Developments In EEO Law” (July 12, 2018)
- National Employment Law Institute, Mid-Year Employment Conference, “Developments In EEO Law” (May 24, 2018)
- National Employment Law Institute, Mid-Year Employment Conference, “Developments In EEO Law” (May 10, 2018)
- Beverly Hills Bar Association, “The Latest Developments Regarding The California Labor Code Private Attorney General Act” (March 27, 2018)
- Client Presentation, “Responding to SOX and Dodd-Frank Whistleblower Claims” (October 31, 2017)
- National Employment Law Institute, Public Sector EEO & Employment Law Update, “Developments In EEO Law” (August 17, 2017)
- American Bar Association, “Class Action Waivers and Arbitration Agreements” (May 11, 2017)
- Beverly Hills Bar Association, “Twelve Years After – The California Labor Code Private Attorney General Act” (October 27, 2016)
- JAMS, “The Year In Review: Annual Employment Law Update” (October 6, 2016)
- Orange County Bar Association, “The Rising Tide of PAGA” (June 11, 2016)
- Beverly Hills Bar Association, “Eleven Years After – The California Labor Code Private Attorney General Act” (October 15, 2015)
- Santa Monica Bar Association, “California Labor Code Private Attorneys’ General Act” (November 14, 2014)
- Beverly Hills Bar Association, “Ten Years After: The California Labor Code Private Attorneys’ General Act” (April 30, 2014)
- Los Angeles County Bar Association, “Policing the Workplace: Advanced Seminar on PAGA Actions” (January 25, 2014)
- Client Teleconference, “We Did What? Bridging the HR – Legal Divide” (July 11, 2013)
- U.S. EEOC Training Seminar, “Top Five Steps To Avoid EEO Pitfalls” (November 8, 2012)
- BNA Webinar Series, “Appellate Lawyers In The Trial Court: Towards a Multiphase Litigation Strategy” (February 15, 2012)
- National Employment Law Institute, “Cutting Edge Wage-Hour Issues” (March 22, 2011)
- Client Roundtable, “Wage and Hour 360: From Compliance to Resolution” (February 10, 2011)
- American Conference Institute, National Forum on Wage & Hour Claims and Class Actions, “Collective and Class Action Certification Battles: Analysis of Recent Rulings, and Crafting a Strategy for Managing Large Scale Litigation” (January 31 - February 2, 2011)

- California State Bar, Labor & Employment Law Review, “Tip-Pooling Or Tip-Allocation? How the Law Applicable to Tip Policies Evolved in 2009.” (May 2010)
- Matthew Bender, California Labor & Employment Law Bulletin, “Stray Remarks May Not Be Deemed ‘Stray’: The California Supreme Court Clarifies the Role of Stray Remarks” (November 2010)

Professional and Community Involvement

- President, California Supreme Court Historical Society
- Executive Committee, Council of Appellate Lawyers, ABA Judicial Division
- Treasurer, Appellate Courts Section, Los Angeles County Bar Association
- Member of the State Bar of California
- Member of the American and Los Angeles County Bar Associations


Education

- University of Virginia, B.A. (with distinction), 1985
- UCLA School of Law, J.D., 1990

ARBITRATION: A FAVORED PROCESS?

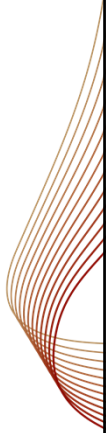
LOS ANGELES COUNTY BAR ASSOCIATION
APPELLATE COURTS SECTION
OCTOBER 18, 2018

Honorable Carlos R. Moreno (Ret.)
Deborah Crandall Saxe
Robert A. Olson
George W. Abele



ARBITRATION: A FAVORED PROCESS?

2

- “The [Federal] Arbitration Act thus establishes a ‘federal policy **favoring arbitration**,’ requiring that ‘we **rigorously enforce agreements to arbitrate**.’”
 - *Shearson/American Express v. McMahon*, 482 U.S. 220, 226, 107 S. Ct. 2332, 2337 (1987) (citations omitted; emphasis added).
 - “Title 9 of the [California] Code of Civil Procedure, as enacted and periodically amended by the Legislature, represents a comprehensive statutory scheme regulating private arbitration in this state. Through this detailed statutory scheme, the Legislature has expressed a ‘**strong public policy in favor of arbitration** as a speedy and relatively inexpensive means of dispute resolution.’”
 - *Moncharsh v. Heily & Blase*, 3 Cal. 4th 1, 9, 10 Cal. Rptr. 2d 183, 186, 832 P.2d 899, 902 (1992) (citations omitted; emphasis added).
- 

ARBITRATION OVERVIEW

3

- Federal Law: Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*
 - FAA § 2:
 - “A written provision in any . . . contract evidencing a transaction involving commerce
 - to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof,
 - or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal,
 - shall be valid, irrevocable, and enforceable,
 - save upon such grounds as exist in law or in equity for the revocation of any contract.”

ARBITRATION OVERVIEW

4

- Federal Law: Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*
 - FAA § 1:
 - “Commerce” means commerce among the several states or with foreign nations
 - But FAA does not apply “to contracts of employment of seamen, railroad employees or any other class of workers engaged in foreign or interstate commerce.”
 - Supreme Court reads this exclusion narrowly to reach only contracts involving employees directly engaged in the transportation industry. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001).

ARBITRATION OVERVIEW

5

- Federal Law: Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*
 - Application of the “Savings Clause” (FAA § 2):
 - [arbitration agreements] shall be valid, irrevocable, and enforceable,
 - **save upon** such grounds as exist in law or in equity for the revocation of **any** contract
 - If the FAA applies to the arbitration agreement, state laws that single out arbitration – e.g., prohibiting the arbitration of specific kinds of claims – are preempted, because such laws apply differently to arbitration agreements than to other kinds of agreements.
 - After *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344-45 (2011), state laws that apply equally to all kinds of contracts also are preempted if they interfere with the “fundamental attributes” of arbitration.
 - Informal
 - Efficient
 - Streamlined

ARBITRATION OVERVIEW

6

- California Arbitration Act, CCP § 1280 *et seq.*
 - “A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract.” (CCP § 1281)
 - A California court (with certain exceptions) may deny a petition to compel arbitration, even when there is a valid, enforceable arbitration agreement, when:
 - A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. (CCP § 1281.2(c))

ARBITRATION OVERVIEW

7

- Which law governs?
 - If interstate commerce not involved, FAA does not apply.
 - The FAA has the full reach of the Commerce Clause of the U.S. Constitution – it applies to all activity “within the flow of interstate commerce.” *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265 (1995).
 - The FAA’s substantive provisions preempt inconsistent state law. *AT&T Mobility v. Concepcion*, 563 U.S. 321 (2011).
 - But courts will honor the parties’ express agreement that their arbitration agreement is governed by law of a state. *Volt Information Sciences, Inc. v. Board of Trustees*, 489 US 468, 470 (1989).
 - “Unlike its federal counterpart, the California Arbitration Act...contains a provision allowing a court to stay arbitration pending resolution of related litigation. We hold that application of the California statute is not preempted by the Federal Arbitration Act (FAA or Act), 9 USC § 1, et seq., in a case where the parties have agreed that their arbitration agreement will be governed by the law of California.”

ARBITRATION OVERVIEW

8

- What difference does it make which law applies?
 - Who decides whether the arbitration agreement is enforceable?
 - FAA:
 - The answer depends on whether the challenge is to the arbitration clause itself, or to the contract as a whole which contains an arbitration clause.
 - The arbitrator determines any challenge to the validity of the contract as a whole (unless the rules of the tribunal specify otherwise).
 - The court determines if there is a valid arbitration clause.
 - CAA:
 - Unless the arbitration clause says otherwise, a court (not the arbitrator) determines defenses to the enforcement or revocation of the contract as a whole and arbitral issues.
 - *City of L.A. v. Superior Court*, 56 Cal. 4th 1086, 1093 (2013) (“Unless an arbitration agreement expressly provides otherwise, a dispute regarding the scope of a contractual duty to arbitrate is subject to judicial resolution.”).

ARBITRATION OVERVIEW

9

- What difference does it make which law applies?
 - Who decides the availability of class arbitration?
 - CAA: There is no presumption that the availability of class arbitration is to be decided by the courts; “who decides” is a matter of party agreement; an agreement silent on the issue sends the class-action question to an arbitrator.
 - *Sandquist v. Lebo Automotive, Inc.*, 1 Cal. 5th 233, 248, 250 (2016) (construing ambiguous arbitration provisions as allocating the class arbitration availability question to the arbitrator; analysis under CAA and FAA).
 - FAA: Unclear
 - In *Green Tree Financial v. Bazzle*, 539 U.S. 444, 451 (2003), a plurality of the Justices on the U.S. Supreme Court concluded the question should be for the arbitrator because “[u]nder the terms of the parties’ contracts, the question—whether the agreement forbids class arbitration—is for the arbitrator to decide.”
 - But in *Stolt-Nielsen S. A. v. Animal Feeds Int’l Corp.*, 559 U.S. 662 (2010) and *Oxford Health Plans v. Sutter*, 569 U.S. 564 (2013), the Court went out of its way to say *Bazzle* was decided by a plurality and the Court had not yet decided the issue.
 - Five U.S. circuit courts of appeals have held that it is a gateway question of arbitrability for the court.

ARBITRATION OVERVIEW

10

- What difference does it make which law applies?
 - Discovery is different under the CAA and the FAA.
 - Issuing subpoenas
 - FAA: Only an Arbitrator can issue a subpoena.
 - See FAA §7
 - CAA: In certain circumstances, an attorney of record can issue a subpoena.
 - See CCP §§ 1282.6 (subpoenas shall be served and enforced in compliance with CCP § § 1985-1987); 1283, 1283.05.

ARBITRATION OVERVIEW

11

- What difference does it make which law applies?
 - Discovery is different under the CAA and the FAA.
 - Subpoenas for depositions
 - FAA: As interpreted by the 2nd, 3rd, 4th, and 9th Circuits (but not the 8th), third parties may be subpoenaed only for hearings, not for depositions.
 - CAA: In certain circumstances, third parties may be subpoenaed for depositions.
 - Geographic reach of subpoenas
 - FAA: If FRCP applies, a subpoena may be served at any place in the U.S. See FRCP § 45(c).
 - CAA: Under the CCP, an Arbitrator may only summon a witness who can be served in California. See CCP § 1289.

ARBITRATION OVERVIEW

12

- What difference does it make which law applies?
 - Appellate review
 - FAA: Does not permit the parties to provide for appellate review by courts for errors of law or legal reasoning.
 - *Hall Street Associates v. Mattel*, 552 U.S. 576 (2008).
 - CAA: Permits the parties to provide for appellate review by courts for errors of law or legal reasoning.
 - *Cable Connection, Inc. v. DirecTV, Inc.*, 44 Cal.4th 1334 (2008).
 - Grounds for vacating arbitration awards

PROS AND CONS OF USING ARBITRATION

13

- **Reasons for Using Arbitration**
 - Typically faster than litigation
 - Less formal
 - Choice of decision-maker
 - Creature of contract – design your procedure
 - Flexibility
 - Confidential (a pro for defendants)
 - Can eliminate class actions and runaway juries (a pro for defendants)

- **What About “Speed” and “Efficiency”:** aren’t those the oft-stated benefits?

PROS AND CONS OF USING ARBITRATION

14

- **Risks of Using Arbitration**
 - Perceived bias of arbitrator
 - Potential costs – far more expensive than court proceedings
 - Arbitration may not be enforceable against non-signatories
 - Discovery can be limited
 - Limited ability to vacate awards, even when wrong on the law
 - Limited appellate review
 - Confidential (a con for most plaintiffs)

IMPACT ON THE DEVELOPMENT OF THE LAW

15

- Lack of Transparency
- Focus on Particular Industries
- Do Confirmation Petitions Help?
- How Can Arbitration Awards Be Challenged?
 - Undisclosed conflict
 - Illegal contract
 - Massively wrong on the law
- What Are the Hot Issues?
 - Claims that cannot be arbitrated for public policy reasons
 - Results that cannot stand because of public policy reasons
 - Whether an agreement silent on the issue of class actions can be construed to allow them.
 - *Lamps Plus Inc. v. Varela* (U.S. Supreme Court; oral argument on October 29, 2018)

THE FUTURE OF ARBITRATION

16

- Recent Focus on Arbitration
 - Media
 - Legislative
 - Others
- Would Transparency Address Public Opinion Concerns?
- How Would Transparency Impact Arbitration?
- Are We Likely To See More Legislation?
- Is There Still a Strong Public Policy in Favor of Arbitration?

