

# HR SUPERHEROES

## Upholding the Law

March 28, 2017

Embassy Suites | 1000 Woodward Place NE | Albuquerque, NM

### CONFERENCE SCHEDULE

#### OPTIONAL BONUS SESSION

**7:00 Bonus Session Registration & Continental Breakfast**

**7:30 Early Opening & Welcome**

**7:35 Loretta Medina – What's New in EEOC Enforcement Guidance?**

**7:45 Registration/Breakfast for those not attending Bonus Session**

8:40 Welcome II

8:50 Lisa Horn-The 115th Congress and the Trump Administration: The Washington Outlook for HR Policy

9:55 Breakout Sessions:

Barbara G. Stephenson and Quentin Smith - Workplace Investigations and Whistleblower Retaliation Claims: Be Prepared

Megan Muirhead, Theresa Parrish, and Jaime Phillips, Ph.D. - Panel Discussion: Hindsight 20/20

10:55 Break with sponsors

11:25 Alice Kilborn - Alphabet Soup: FMLA, ADA, and Employee Leave

12:30 Lunch: Joseph Clees- Strange, But True – Recent Case Law & HR Professional of the Year award

1:55 Paul E. Hash, Matthew Martinez, and Michael J. DePonte - 3-part discussion: Well This Escalated Quickly: How to Protect Yourself If and When a Case Goes to Trial, The EEOC Comes Calling: The Growth and Expansion of the ADA, It's Like a Whole New World Out There: The New Administration, the New I-9, and Renewed Discussion about E-Verify

3:25 Break With Sponsors

3:55 Jason Espinoza- Twists & Turns, Victories & Defeats: The 2017 Legislative Session & Beyond

4:55 SHRM Foundation Raffle/Closing

### **Loretta Medina – What's New in EEOC Enforcement Guidance?**

What are the EEOC's strategic enforcement priorities? Join us for this unique opportunity to hear directly from a senior EEOC trial attorney. You'll gain a better understanding of the federal anti-discrimination laws, and how they apply to your organization. The focus of this session will be an update on the most recent Enforcement Guidance issued by the EEOC, including the new National Origin Discrimination Guidance. Learn more about these current initiatives and get practical tips for preventing discrimination. Don't miss this opportunity to hear directly from an expert who enforces EEOC priorities.

**Loretta Medina** has been a Senior Trial Attorney in the **U.S. Equal Employment Opportunity Commission (EEOC)** Albuquerque Area Office since August, 1997. Previously, from 1988 to 1993, Ms. Medina was a Trial Attorney in the Phoenix District Office. During her tenure with the Commission, Ms. Medina has litigated a variety of individual, small class cases as well large class systemic cases as in the District Courts of Arizona, Colorado, New Mexico, Utah and South Dakota. Ms. Medina received her Juris Doctor from the University Of New Mexico School Of Law in 1987 and her undergraduate degree in political science and Spanish from Regis College in 1984. Currently Ms. Medina has been promoted by the EEOC Phoenix District as an "STA" Supervisor Trial Attorney.

### **Lisa Horn-The 115th Congress and the Trump Administration: The Washington Outlook for HR Policy**

The American electorate cast their votes in November, providing the continuation of Republican control of the 115th Congress and the election of Donald Trump as the 45th President of the United States. President-elect Trump and Republican leaders of Congress have promised to move forward with a very aggressive 100-day agenda, with many issues of importance to the HR profession being at the forefront. Key issues include proposals to repeal and replace the Affordable Care Act, initiatives to reform the tax code, efforts on interior immigration enforcement, including worksite enforcement and proposals to expand paid leave and workplace flexibility. How will these issues affect employers and employees in your organization, and how can you best engage and prepare for the year ahead? This session will provide an up-to-date discussion of current congressional activity, as well as federal regulatory and judicial activity.

**Lisa Horn** is the **Society for Human Resources Management (SHRM)** Director of Congressional Affairs and Co-Director of Workplace Flexibility Initiative. Ms. Horn oversees and directs SHRM's public policy activities on Capitol Hill. She is responsible for the overall execution of the Society's partnership with Family and Workplace Institute (FWI). She makes outreach efforts to SHRM affiliates, develops products and services for the membership, and coordinates with SHRM's public relations campaign. Ms. Horn has prior experience working in the House of Representatives and the Nebraska Legislature. Ms. Horn has her Bachelor of Arts degree in Political Science from the University of Nebraska-Lincoln.

### **Barbara G. Stephenson and Quentin Smith - Workplace Investigations and Whistleblower Retaliation Claims: Be Prepared (Break-out Session)**

Ms. Stephenson will discuss an employer's duty to address workplace complaints or concerns and the use of workplace investigations in doing so. Topics for an employer to consider include:

- the selection of an investigator;
- the scope, timing, and steps of an investigation;
- whether a written report will be sought;
- and whether that report will be protected by the attorney-client privilege.

Mr. Smith will speak on Whistleblower Retaliation Claims. The filing of whistleblowing retaliation claims has exploded since the passage of the employee-friendly New Mexico Whistleblower Protection Act (WPA) in 2010 and due to court decisions favorable to plaintiffs, the publicity received by some whistleblowers, and plaintiffs' desire to avoid the administrative filing requirements of the EEOC and the HRB. In this session, Mr. Smith will discuss the

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requirements of the WPA, strategies for avoiding whistleblower claims, and how to successfully defend against whistleblower retaliation claims.

**Barbara G. Stephenson** is a Shareholder/Director at **Sheehan & Sheehan, P.A.** where she works solely in employment law defending employers in administrative charges, providing preventative counseling and working on other employment-related issues. She also conducts investigations of workplace complaints. Ms. Stephenson graduated from the University of New Mexico School of Law and worked for several public entities prior to going into private practice in 1990. Ms. Stephenson is certified by the New Mexico Board of Legal Specialization as a specialist in Employment and Labor Law; is listed in Best Lawyers® in America, Southwest Super Lawyers®, and Chambers USA: America's leading Lawyers for Business; and holds an AV® Preeminent Rating from Martindale-Hubbell.

**Quentin Smith** is Shareholder/Director at **Sheehan & Sheehan, P.A.** Mr. Smith graduated summa cum laude from the University of New Mexico School of Law in 2003 and then served a years as a judicial law clerk for New Mexico Supreme Court Justice Pamela Minzner. He is certified by the New Mexico Board of Legal Specialization as a specialist in Employment and Labor Law and also holds an AV® Preeminent Rating from Martindale-Hubbell. Mr. Smith is a graduate of the Leadership New Mexico CONNECT program, and, last year, he was a recipient of the Albuquerque Business First 40 Under Forty Award. Mr. Smith has successfully defended small and large employers against many types of claims, including discrimination, harassment, wrongful discharge, and whistleblowing claims.

### **Megan Muirhead, Theresa Parrish, and Jaime Phillips, Ph.D. - Panel Discussion: Hindsight 20/20 (Breakout Session)**

New Mexico attorneys chose real-life examples from the business world to highlight and analyze employment laws and business principles. Join us for this expert panel discussion to hear about lessons learned by employers from the point of view of lawyers who have to defend actions in court. The topics will provide participants with an overview of the main issue; background on the scenario; and the events that led to the problem or decision at hand. The case studies highlighted are real cases from New Mexico based on the lawyers experience and knowledge of the subject. Hindsight 20/20 is used to illustrate a particular set of learning outcomes; as in real life, rarely are there precise answers to the dilemma at hand.

**Megan Muirhead**, a member of the Governor-appointed New Mexico State Personnel Board since 2014, concentrates her practice on employment law and complex litigation. She has extensive experience representing government and private entities in a variety of areas of employment law including the Americans with Disabilities Act, Age Discrimination in Employment Act, breach of contract, sexual harassment, discrimination and wrongful termination. Megan also has assisted employers in a broad range of dealings with the EEOC involving responding to and resolving EEOC charges. She particularly enjoys providing guidance to employers aimed to reducing the risk of litigation such as specialized training sessions, creation of employment policies and review of employment handbooks. Megan is co-Chair of **Modrall Sperling's** Employment Group. Having achieved an AV® peer review rating from Martindale-Hubbell, the highest rating possible, she is also listed among those in Best Lawyers in America® and Southwest Super Lawyers®.

**Theresa Parrish** is a director and shareholder in the Albuquerque office of **Rodey Law**. She practices in the Litigation Department with an emphasis on employment law and litigation, together with complex and high risk litigation. She has significant jury and non-jury trial experience. She also has extensive experience in resolving claims through alternative dispute resolution including mediation and arbitration. Ms. Parrish was named Albuquerque Employment Law-Management Lawyer of the Year-2013 by *Best Lawyers in America*, and Albuquerque Litigation – Labor and Employment Lawyer of the Year-2017 by *Best Lawyers in America*.

In her employment law and litigation practice, she has defended employers in individual and class actions in the state and federal courts and in proceedings before the Equal Employment Opportunity Commission, the New Mexico Department of Workforce Solutions including the human rights, unemployment and wage and hour divisions, and the Office of Federal Contract Compliance Programs. Ms. Parrish also counsels employers regarding compliance with state and federal equal opportunity laws including Title VII, the Americans with Disabilities Act, the Family and

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Medical Leave Act, and the New Mexico Human Rights Act. She also advises employers about issues of employee discipline and discharge, and about preparation and revision of personnel policies.

Ms. Parrish has been listed in *Best Lawyers in America* since 2011 for employment law-management, and litigation-labor and employment. She has been listed in *Chambers & Partners--America's Leading Lawyers for Business* since 2006 as an employment specialist. Ms. Parrish is also listed in *Southwest Super Lawyers*. The 2011, 2012, 2013 and 2016 editions of *Southwest Super Lawyers* list Ms. Parrish as one of the Top 25 Lawyers in New Mexico.

**Jaime L. Phillips, Ph.D.** has been with the **New Mexico Department of Workforce Solutions**, Human Rights Bureau since 2006, serving first as a Civil Rights Investigator, trainer, and mediator. Since 2011 she has held the position of Administrative Law Judge presiding as Hearing Officer over administrative hearings of the Human Rights Commission. She also serves as the Bureau's training coordinator and has presented over 150 educational sessions on topics related to equal employment opportunity to employers and other interested groups. Dr. Phillips has given presentations at several local and national conferences addressing nondiscrimination in employment, as well as for human resources organizations in New Mexico. She is a certified mediator and has facilitated mediations for the Human Rights Bureau and for the Risk Management Division's ADR Bureau. Previously she was as an adjunct instructor and Visiting Assistant Professor in the Department of Women's Studies at the University of Nevada, Las Vegas. She holds a doctorate in Sociology from the University of Nevada, Las Vegas specializing in critical analyses of social stratification and inequality.

### **Alice Kilborn - Alphabet Soup: FMLA, ADA, and Employee Leave**

Navigating employee leave can be one of Human Resources' most challenging and important tasks. HR is responsible for understanding and implementing an ever-changing landscape of laws and enforcement guidelines and balancing those legal requirements with business need. This interactive session will assist employers in understanding the legal requirements that impact them, accessing resources, and crafting a strategy to prepare for and respond to varying leave issues within the workplace. Join us!

**Alice Kilborn**, JD SHRM-CP, is the founder of **Kilborn Consulting**, LLC, an employer counseling practice devoted to working with organizations on workplace issues and streamlining and improving the employer/employee relationship. Alice also serves on the Society for Human Resource Management (SHRM) Labor Relations Special Expertise Panel and on the Board of Directors for the State Bar of New Mexico's Employment and Labor Law Section. Prior to starting her own practice, Alice was an Associate Attorney at Moody & Warner, PC, where she represented employers and employees in employment and labor-related matters. Alice was selected to the Southwest Super Lawyers Rising Star lists in 2014 and 2015, a designation awarded to less than 3% of lawyers in the state. Prior to entering the legal field, Alice worked in Human Resources specializing in the areas of state and federal regulatory compliance (including oversight of Affirmative Action Plans, Equal Employment Opportunity Programs, USERRA, and the Family and Medical Leave Act) and corporate training.

Alice holds a Juris Doctorate from the University of New Mexico School of Law where she received Clinical Honors. She holds a Bachelor of Arts degree in Political Science from the University of New Mexico. Alice is a certified mediator. She holds the new SHRM Certified Professional (SHRM-CP) designation. Alice is a frequent, enthusiastic national speaker on workplace issues, employment law, and public policy related topics.

### **Joseph Clees- Strange, But True – Recent Case Law**

It seems employers are seeing more and more unbelievable things happening these days. You just never know what employees will do or say next. It's up to the remaining level-headed professionals to weigh organizational procedures against employees' rights and clean up the resulting legal mess! You don't want to miss this look at some of the wackiest recent employment law cases. Joe Clees will certainly make you laugh, but he will also provide plenty of practical tips to help your organization avoid legal and PR nightmares – and know how to respond if they do occur. How you react to such curveballs can mean the difference between a good laugh and a lawsuit.

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**Joseph Clees, Ogletree-Deakins**, represents employers throughout the United States in employment litigation and labor relations, counseling clients on a wide array of state, federal and tribal compliance laws. Mr. Clees has served as the Chair of the Executive Committee of the State Bar of Arizona's Employment and Labor Law Section, a member of the Board of Directors of the Arizona Affirmative Action Association and Board of Directors of the Metro Phoenix Human Resources Association (SHRM). He is employment law counsel to many industry and trade groups and he regularly speaks on labor and employment law topics, both regionally and nationally.

Mr. Clees is a Chambers USA Top Leader in his Field, was named an "Eminent Practitioner" by Chambers in 2014, 2015 and 2016 and is ranked in the "Number 1" tier among Arizona employment lawyers by this same organization. He was honored as one of the "100 Most Powerful Employment Lawyers in America" by HR Executive magazine in 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016. Mr. Clees is one of the "The Legal 500" nationally known attorneys and the Arizona Business Magazine has recognized him as an "Arizona Business Leader" and one of the "Top Attorneys of Arizona." He also has been designated as a "Best of the Bar" by the Phoenix Business Journal and has been rated as a "Southwest Super Lawyer." In 2016, Mr. Clees was honored as the "Phoenix Lawyer of the Year" for Labor Law-Management by Best Lawyers and in 2013 was "Phoenix Lawyer of the Year" for Employment Law-Management.

### **Paul E. Hash, Michael Martinez, and Michael J. DePonte - 3-part discussion:**

#### **Well This Escalated Quickly: How to Protect Yourself If and When a Case Goes to Trial**

- The Anatomy of an Employment Law Claim
- Understanding Your Exposure: When and Why Cases go to Trial
- Top Ten Reasons Why Employers Lose at Trial – and Top Five Things You Can Do Today to Avoid Losing Tomorrow
- Settlement Analysis and Case Valuation: the math behind the madness

#### **The EEOC Comes Calling: The Growth and Expansion of the ADA**

An overview of one of the EEOC's top enforcement priorities — systemic litigation under the ADA, highlighting ADA practices that are prompting systemic investigations, and ways the EEOC transforms individual charges into systemic investigations.

#### **It's Like a Whole New World Out There: The New Administration, the New I-9, and Renewed Discussion about E-Verify**

President-elect Donald Trump will assume office on January 20, 2017, with a Republican majority in both the Senate and the House of Representatives. While it is difficult to predict whether the new administration will be able to deliver on President-elect Trump's campaign promises, we can expect significant policy and enforcement shifts. For example, the new administration may focus on expanding enforcement of existing immigration laws in the workplace, which may include encouraging more employers to use E-Verify under existing law, as well as working with Congress to expand mandatory use of E-Verify. Under current federal law, E-Verify is voluntary for employers, except as mandated by executive order for federal government contractors.

USCIS released a new Form I-9 and employers are required to use in January 2017. Matt will provide an overview of changes to the new form so that employers are prepared. He will also review overall I-9 and E-Verify compliance pointers. Discussion will include:

- What does the new I-9 look like?
- What has changed on the form?
- Any changes in compliance requirements?

How do these changes impact E-Verify compliance?

**Paul E. Hash** is Office Managing Principal of the Dallas, Texas, office of **Jackson Lewis P.C.** He is certified by the Texas State Bar Board of Legal Specialization as a Specialist in Labor and Employment Law. Mr. Hash's 28 years of experience encompasses a broad expanse of employment and labor practice. In addition to considerable single plaintiff litigation experience, he has class action, wage and hour collective action and single and multi-plaintiff litigation experience. Mr. Hash has tried numerous jury and bench trials against private plaintiffs and against the Equal

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Employment Opportunity Commission. Mr. Hash is an instructor at The University of Texas at Arlington, where he teaches employment law.

**Matthew Martinez** is a Principal in the Phoenix, Arizona, office of **Jackson Lewis P.C.** Mr. Martinez focuses on representing employers in all matters of business immigration in a broad spectrum of industries.

Mr. Martinez' clients include major healthcare providers, multinational corporations, government agencies, sports franchises, professional athletes, and performers in the entertainment industry. He advises Latin American companies in setting up operations in the U.S. and transferring key employees. He also assists Canadians and Mexicans in obtaining work authorization through NAFTA. Mr. Martinez counsels companies on complex immigration issues that arise in mergers, acquisitions and reorganizations, and assists companies with I-9 and E-Verify issues, including internal audits and government investigations.

**Michael J. DePonte** is a Principal in the Dallas, Texas, office of **Jackson Lewis P.C.** He is the Litigation Manager for the Dallas office. He is Board Certified in both Labor and Employment Law and Civil Trial Law by the Texas Board of Legal Specialization. Mr. DePonte has also worked as an Assistant Attorney General for the State of Texas in the Law Enforcement Defense Division where he represented state law enforcement agencies and officials in civil rights and employment litigation and appeals.

Mr. DePonte has extensive litigation and trial background having tried numerous cases in state and federal courts in Texas. Mr. DePonte's practice focuses on the litigation of employment claims, wage and hour claims and collective actions, class actions, and civil rights claims under state and federal law. Mr. DePonte has defended national and regional employers on a broad range of employment-related issues including class actions. He has represented employers before numerous federal and state agencies, and has handled trials and appeals in federal and state courts.

### **Jason Espinoza- Twists & Turns, Victories & Defeats: The 2017 Legislative Session & Beyond**

The New Mexico Association of Commerce and Industry ACI is the state's leading business advocate since 1959. New Mexico's near-term prosperity and long-term growth depend on a vibrant private sector. No advocate can speak better on the needs of the private sector than the private sector, which is why ACI is proud to be the voice of New Mexico business.

Since ACI is not an association devoted to a single trade or single industry, its legislative advocacy requires ACI to track hundreds of bills and actively play offense and defense for dozens. Few Roundhouse denizens have the broad and deep involvement during a legislative session as ACI, so a post-session recap from its chief lobbyist is not one to miss. Espinoza's debriefing will recount some of the twists and turns and the victories and defeats, as well as what can be done on other fronts through 2017 to improve and protect the workplace.

**Jason Espinoza** is the president & CEO of the **New Mexico Association of Commerce and Industry (ACI)**, New Mexico's statewide business advocate. ACI gives businesses a voice to shape policies and make New Mexico a better place to do business by proactively advocating for positive change in the laws and regulations that govern business and industry.

Previously, Jason served as ACI's chief lobbyist as vice president for government affairs. As president, Jason has led ACI to more proactively champion policy, such as drafting and supporting pro-business legislation. This new approach has resulted in successful legislation to expand single sales factor apportionment for corporate headquarters in New Mexico, to create independent hearing officers for the state Taxation and Revenue Department, and to provide relief and predictability to businesses' unemployment insurance rates. During the 2016 legislative session, ACI helped to block more than 24 anti-business proposals, including more than \$452 million in tax increases for New Mexico companies, while helping to navigate more than a dozen pro-business proposals through the Legislature to become law. Jason is a member of the New Mexico Legislative Jobs Council and the New Mexico Business Water Task Force.