

# The National Employment Lawyers Association, New York, presents a Program of Continuing Legal Education for New York Neutrals

March 28, 2008 | NY City Bar | Stimson Room

Program Summary	Three Credits, One Ethics Credit
8:45-9:00	Registration and Coffee
9:00-10:00	<b>Understanding the Amended New York City Human Rights Law</b> Professor Craig Gurian, principal drafter
10:00-11:00	<b>Valuing Emotional, Economic and Punitive Damages in Employment cases</b> Joshua Friedman, Esq., Susan Ritz, Esq.
11:00-12:00	<b>Ethical Obligations for Neutrals – “I’m thinking of a number”</b> Professor Vivian Berger, Margaret Shaw, Esq.

Questions: Call Shelley Leinhardt (212) 317-2291 or to register by phone.

Register online go to [www.nelany.com](http://www.nelany.com) select “Events” menu and “Online Registration”

RSVP by email: email Shelley Leinhardt, Executive Director, at [shelley@nelany.com](mailto:shelley@nelany.com) with your contact information and affiliation (eg, AAA, EDNY, JAMS etc.)

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## Understanding the Amended New York City Human Rights Law

The New York City Human Rights Law is one of the most comprehensive civil rights laws in the nation. Virtually all employment discrimination claims arising in the five boroughs of New York City involve the Law. Historically the Law was poorly understood. After its enactment in its current form in 1991, federal and state courts repeatedly interpreted the Law to have the same meaning as Title VII and state anti-discrimination law. To counter that trend, in 2005 the City Council enacted the Restoration Act, in which the Council stated that the “Law has been construed too narrowly” and required that “the provisions of [the] Law . . . be construed independently from similar or identical provisions of New York state or federal statutes.” This session examines the legislative history of the City Human Rights Law, the Restoration Act, compares the City Law with federal and state law, and looks at how the Restoration Act has been construed in federal and state court.

Speaker: Craig Gurian, Esq., Legal Director and subsequently as Chief Counsel of the Law Enforcement Bureau of the Commission from 1988-91, was the principal drafter for the Commission of the comprehensive 1991 revisions to the City Human Rights Law. He was also the principal drafter of the Local Civil Rights Restoration Act of 2005. He is Adjunct Professor of Law at Fordham Law School, and Scholar-in-Residence at Fordham's Stein Center for Law and Ethics. Among his publications is “A Return to Eyes on the Prize: Litigating Under the Restored New York City Human Rights Law.”

## Valuing Emotional, Economic and Punitive Damages in Employment cases

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\* Written materials for this session are: “A Return to Eyes on the Prize: Litigating Under the Restored New York City Human Rights Law,” 33 Fordham Urb. L.J. 255 (2006) (reprinted with permission from the Fordham Urban Law Journal).

Federal, state and City law provide distinct standards for analyzing the sufficiency of damage awards. In addition, compensatory damages (which include emotional distress), economic losses and punitive damages are analyzed under different standards. This session will explore the case law which governs the factual showing necessary to support emotional distress awards, such as treatment, physical injury, expert testimony and the "Garden Variety" doctrine in the Second Circuit. The panel will review the constitutional standard for evaluation of punitive damages as well as the different burdens of proof under the City Law, and federal and state law necessary to support an award of punitive damages. The session will examine the legal standards of sufficiency for awards of back pay, front pay and benefits, including expert testimony. The Panel will review the different procedural and substantive standards for motions to set aside damages verdicts, and motions for remittitur, under federal, state and City law. Recent significant damage verdicts from federal court, state court and the Commissioner of the New York State Division of Human Rights will be discussed.

Speakers: Joshua Friedman, Esq. was lead plaintiff's counsel in *Alston v. Leibherr* (\$4 million in emotional distress damages in hostile work environment; Courageous Plaintiffs Award NELA/NY 11/05); and *Ana Patricia Del Carpio v Rio Mar Restaurant*, 9D-E-S-89-137588E (July 1, 1998) (NYS DHR, Commissioner Mercado), *aff'd*, *Rio Mar Restaurant v. NYS Div. of Human Rights*, 704 N.Y.S.2d 230; 2000 N.Y. App. Div. LEXIS 2579 (1st Dep't 2000) ("the award of \$ 500,000 in compensatory damages was excessive and we reduce said award to \$ 125,000"). Mr. Friedman lectures on proof of compensatory and punitive damages and was a presenter at the NELA National 2006 Conference "Proof Of Emotional Pain And Suffering Damages In Employment Discrimination Cases"

Susan Ritz, Esq. has practiced employment law since 1985. She is a partner in the law firm of Ritz & Clark LLP, where she handles all forms of employment-related matters, including advising employees and partners regarding their rights; handling contract, severance agreement and partnership dispute negotiations; and representing employees and partners in claims of unlawful harassment, retaliation and employment discrimination on the basis of race, sex, national origin, age, disability, religion, marital status and sexual orientation and other violations of law. She also conducts impartial investigations and provides sexual harassment prevention training for employers. Ms. Ritz serves as a pro bono mediator for the United States District Court for the Southern District of New York and a pro bono arbitrator in the Civil Court of the City of New York. She is listed in *The Best Lawyers in America* and rated a Super Lawyer. She is a frequent CLE lecturer for a wide variety of providers.

## **Ethical Obligations for Neutrals – "I'm thinking of a number"**

A common challenge for neutrals is letting parties know they are capable of reaching agreement regarding issue on which the neutral has been sworn to secrecy. Some providers have specific ethics guidelines that require their neutral to maintain party confidentiality, however, the proposed Uniform Mediation Act does not address the issue. The panel will explore several hypothetical cases and look at sources of legal authority binding on mediators and sources of ethical guidance for mediators in addressing the tension inherent in helping parties find agreement while preserving confidentiality.

Speakers: Margaret Shaw, Esq. is a Fellow of the College of Labor and Employment Lawyers, an Adjunct Professor of Law at NYU Law School where she teaches ADR and negotiation, and the author of numerous articles on a variety of aspects of the ADR field. Ms. Shaw has maintained an active ADR practice for more than twenty-five years. She joined JAMS when ADR Associates, a firm she co-founded, merged with JAMS in 2004. She has conducted well over 1,000 mediations and arbitrations nationwide.

Vivian Berger, Esq. is the Nash Professor Emerita of Law at Columbia Law School. She has conducted hundreds of mediations since the mid-1990s and been designated an Advanced Practitioner in employment mediation – her specialty – by the Association for Conflict Resolution. She is a member of the AAA Panel on Employment Mediation. She has also done arbitrations and independent workplace investigations and served as a special master in federal court. Professor Berger is on the mediator panels of the US District Courts for both the Southern and Eastern Districts of New York, for which she handles employment disputes. In the employment area, she also mediates for the EEOC (both federal agency and non-federal agency cases) and has mediated for the United States Postal Service (the "REDRESS" program) and the NYS Division of Human Rights. She mediates privately as well, and has served as a special master in a sexual harassment case in the United States District Court for the Southern District of New York. Professor Berger is a member of the NYS Unified Court System ADR Advisory Committee and served for four years on the ADR Committee of the Association of the Bar of the City of New York; in addition, she is a member of the Arbitration and Alternative Dispute Resolution Committee of the NY County Lawyers' Ass'n.<sup>Ψ</sup>

**Directions: The Association of the Bar of the City of New York is located at 42 W. 44th St. Between 6th and 5th Avenues. It is convenient to the A,B,C,D,E,F,V,1,2,3,4,5,6 and 7 subway trains. Parking is available on 43rd and 44th streets just east of 6th Avenue.**

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\* Written materials will be an outline of the case law.

<sup>Ψ</sup> Written materials will be hypotheticals prepared by the speakers.