

DIVISION 1: LITIGATION AND DISPUTE RESOLUTION
STEERING COMMITTEE MEETING
ABA FORUM ON CONSTRUCTION LAW

Minutes for Monday, December 14, 2020 Meeting

3:00 PM EST

Join Via Zoom

<https://americanbar.zoom.us/j/6691783882?pwd=NUh3SE42eWMrc0ZrdW5pdEgyMFo0Zz09>

Meeting ID: 669 178 3882

Password: 826501

1. Steering Committee Roster

Tom Dunn (Chair)

Cassidy Rosenthal (Immediate Past
Chair)

Catherine Delorey

Kelsey Funes

Scott Griffith

Joe Imperiale

Katie Kohm

Rob Ruesch

Tom Nocar

Tony Lehman (GC)

Brett Henson (Tech Liaison)

Chris Wise (YLD Liaison)

George Fink (SPEC Liaison)

MJ Torres-Martin (Marketing Liaison)

Friends of D1: Ric Asfar, Patricia Thompson, Barrett Richards, Chase
Callaway, David Ponte, Nancy Greenwald,

The screenshot shows a Zoom meeting interface. The main window displays a presentation slide titled "Technology in Construction Law" with the following content:

Concept	Description	Setting	Potential Speakers	Comments
Technology in Construction Law	Part 1: Hands-on demonstrations of technology that is currently available to the construction litigator. Demonstrations will include technologies geared toward case analytics for strategy development, depositions, and trial presentation. Part 2: As engineering and construction firms are undergoing a digital transformation, project delivery and execution is changing, and in-house legal departments are using data analytics to support risk management and are asking law-firms to use data analytics	Either a practicum or could be two webinars	<u>Michael Chase:</u> Bechtel Global Corporation, Reston, Virginia: Manager of Legal - Technology and Intellectual Property for Bechtel Global Corporation. <u>Andrew Baker:</u> HBR Consulting, Chicago, Illinois: Senior Director specializing in digital services and analytics.	Was intended as April 2020 Practicum. Vendors to provide demonstrations were lined up and would likely participate again.

The right sidebar shows a list of participants (20):

- Tom Dunn (Host, me)
- Joe Imperiale
- Joe
- Patricia Thompson
- Anthony D. Lehman
- Barrett Richards
- Brett Henson
- Cassidy Rosenthal
- Catherine Delorey
- Chase Callaway
- Christopher Wise
- David Ponte
- George Fink
- Katharine Kohm
- MJ
- Nancy Greenwald
- NocarJT
- Ric Asfar
- Robert Ruesch
- Scott Griffith

Joe Imperiale sharing his programs concepts ideas for Division I / Forum programs.

1. Chair's Report

(a) Forum Updates / News.

(i) New Update regarding 2021/2022 Meetings

Tom stated that the 1-year extension was approved by the ABA Board of Governors. Arlan Lewis will be the Forum Chair through August 2022. There will be no nominating committee appointed this year or new Forum leadership appointed in 2021. Tony will be on the GC until August 2024!

Tom provided the following report regarding upcoming / rescheduled Forum meetings.

2021 Virtual Construction Law Conference – Feb. 24-26, 2021

The team for the Virtual Construction Law Conference has been selected and are meeting weekly to develop the program.

- Co-Chairs: Cassidy Rosenthal and Brianna Kostecka
- GC Liaison: Tracy Steedman

The team will be supported by 2020 Regional Meeting Team led by Michael Kamprath and SPEC Committee. “Fundamentals of Construction Law” + Additional CLEs.

Program ideas: economist, ethics, and in-house counsel. Will have one program for each of the 3 days. Start presentations at 10am (lunch break) and program in the afternoon. Lots of social activities as well plus other entertainment.

September 2021 Regional Meetings (In-Person)

- Originally scheduled for Sep. 2020, then rescheduled for Feb. 2021, and now to be scheduled in Sep 2021
- “Fundamentals of Construction Law” and “Sticks & Bricks”
- 2-day event in Boston, MA; Nashville, TN; Denver, CO; Los Angeles, CA; Seattle, WA*; and Chicago, IL*

Other In-Person Meetings:

- 2021 Fall Meeting: October 13-16, 2021 – Seattle, WA (original 2020 Annual Meeting)
- 2022 Midwinter Meeting: February 24-26, 2022 – San Diego, CA (original 2021 Midwinter Meeting)
- 2022 Annual Meeting: May 4-7, 2022 (Sheraton Times Square) (original 2021 Annual Meeting)
- 2022 Summer Meeting + Leadership Retreat (original Fall 2020 meeting) – date/location TBD

- (ii) [Forum Guide Program](#) – spread the word about the guide program, particularly to those who are looking to learn more about the Forum – the “explorers”

- (iii) [Supercharging Forum Membership PPT](#) – great resource!

2. D1 Toolbox Talk Series – Jade Davis, Scott Griffith, David Ponte, Jennifer Millender, Daya Naef, Patricia Thompson

- (i) January 28, 2021 | 12PM ET – Pre-Suit ADR in House. Collaboration with D11.
- (ii) Status report (Scott). Focused on 3 programs for 3 months. This is designed to keep people connected. Monthly, informal practice discussion. Designed to promote some discussion and connection. Spread the word on the event with you colleagues. We will promote inside and outside the Forum. Please attend the first event and if you have ideas about topics, contact Jade Davis.



3. Concepts Book / D1 Virtual Programs Team – Joe Imperiale, Chase Callaway, Chris Stanek.

- (i) Purpose of Group – develop programs / publications for Forum and Division 1 (with a focus on virtual programs)
- (ii) Status Report. Joe went over the list of ideas/concepts that he, Chase, and Chris developed coming out of the D1 planning retreat and other ideas. Joe shared his list which contains topics on technology in construction law, serving the construction industry (working with industry groups), tech tools for trial, DRBs, neutral training/education, dispute avoidance, early dispute avoidance, and me too 3 years later. Contact Joe if you are interested in learning about these programs, offering to speak/plan these programs, and/or provide additional ideas.
- (iii) *** One specific idea that was discussed was to develop a program or series of programs on the Construction Trial Deskbook anticipated to be published this spring. Tony, Rob, and Joe may want to get together on this. We could offer a discount for the book to attend a CLE or sign-up for a series of CLEs later in 2021.

Authors of the chapters (mostly D1 members) can speak for these CLEs.

- (iv) MJ will collaborate with Joe on proposing a program for NAWIC's annual conference and/or having NAWIC participate in one of our programs (perhaps the serving the construction industry program).

4. D1 Neutral Feature Series.

- (a) Update (Tom D.) Tom reported that we are going to generate a directory of D1 Neutrals and also provide instructions to those neutrals on how to be featured.

5. Under Construction Column

- (a) Update (Tom Dunn). Under Construction has a new column from Division 1 (on litigation and ADR topics). We will want to continue to submit articles for this on a going forward basis. Only need 3 articles per year! Below are the articles featured in the Winter 2020 edition of *Under Construction*.

DISPUTE RESOLVER

Division 1 (Litigation & Dispute Resolution) members and Forum litigators will contribute articles for *Under Construction*'s newest Dispute Resolver column. Read these articles at www.ambar.org/FCLUC.



Question: A Single Arbitrator or Three-Arbitrator Panel? Answer: A Two-Arbitrator Panel

By: Adrian Bastianelli, Peckar & Abramson, Washington, DC

Read this novel proposal for a two-arbitrator panel.



Using Zoom for Pre-Mediation Activities to Achieve Earlier Settlements

By: Paul M. Lurie, Schiff Hardin LLP, Chicago, IL and Robyn L.

Miller, Callison RTKL Inc., Los Angeles, CA

Mediate using Zoom for pre-mediation activities and earlier resolutions.



Four Tips for Remote Construction Arbitrations: Distance Does Not Have to Mean Poor Communication

By: Brenda Radmacher, Gordon Rees Scully Mansukhani LLP, Los Angeles, CA

You can remotely arbitrate a construction case effectively.



Entering a New Era – Taking and Defending Remote Depositions

By: Mary Salamone and Michelle Wells, Procopio, Irvine, CA

In these unprecedented times, everything a litigator needs to know to successfully take and defend remote depositions.



Arbitration Without Argument

By: Megan George, Stites & Harbison, PLLC, Lexington, KY

Looking for a speedy, cost-effective means to resolve project disputes: try arbitration on briefs alone.



Certificates of Merit: Practical Guidance to Avoid Procedural Pitfalls

By: James Moye and Paul Bennett, Moye, O'Brien, Pickert,

Dillon & Masterson, Maitland, FL

A primer on jurisdictions with certificate of merit statutes.

6. The Dispute Resolver Blog.

- (a) Update (Catherine). Catherine stated TDR is getting regular submissions from the editors of the blog and guest contributors. She invited all steering committee members to participate in submitting an article (at least one per year). Tom and Catherine encouraged D1 members to suggest to other construction attorneys in their firm to submit guest articles. Tom reported that the blog is getting around **1,400 views per month!!!**

7. CLE Working Group

- (a) Report -- Bill Shaughnessy and George Fink. George reported that he and Jess are speaking during tomorrow's webinar on scheduling. Please signup and attend! He further reported that discussions are ongoing for additional webinars in 2021.

- (b) 12/15 (tomorrow) webinar by George/Jessica.

What You Don't Know Can Hurt You and Your Client: Scheduling for Construction Attorneys, Part I



December 15 | 1 PM EDT

The construction schedule is a critical source of information for construction claims attorney and represents key evidence for most delay claims. Construction attorneys need to understand the basic principles involved in the development and maintenance of construction schedules. Concurrent critical paths, fragnets, excusable delay and revised baseline schedules are all terms you need to know.

[Register - NOW](#) →

8. Litigation Skills Virtual Programs

- (a) Partnership with CLC
- (b) Proposed Initial Program Description:

Title: “Practical Tips for the Corporate / Rule 30(b)(6) Depositions in Construction Cases.” Goals include discussing and providing practical guidance on:

1. Strategic use of corporate depositions and when to take them.
2. Techniques to identify designees, object to topics, and timing of disclosure of designees (assuming multiple topics and witnesses).
3. Preparation of designees and ethical considerations.
4. Creative approaches and common traps for corporate depositions, including deposition by committee and having documents available.
5. Considerations for remote corporate depositions (the good and the bad).

- (c) Status (Tom D.). Tom will follow up with the CLC as this has not progressed over the past month. Tom reported this is more topical given the FRCP amendment.

9. Reports from Division 1 Liaisons to Forum's Standing Committees

- (a) Membership – Roy Wagner reported (via written submission) that the primary topic covered during the membership call was about the Guide Program. Please help promote that program.
- (b) Technology – Brett Henson reported the primary activity is the CLE/zoom best practices committee. Once that report is developed, Brett will share.

(c) SPEC (Special Programs and Education) – George Fink reported about the February Construction Law Virtual Conference and September 2021 regionals in-person. He reported the CLE group is aiming for 1 CLE per month in 2021.

(d) Diversity – Jessica Sabbath was unable to attend.

(e) Publications – Mike Lane was unable to attend. Tom reported that the Associate Editor positions for The Construction Lawyer and Under Construction will be posted soon. Tom encouraged attendees to apply for the position and described the selection process as it has been done in the past. There was a discussion about the Construction Trial Deskbook and Tony provided the status of the same.

(f) Marketing – MJ Torres-Martin explained the promotion of the supercharged PPT and program. She said that she is on the ENR committee and that an article may be on large construction projects in the southeast. As she learns more, MJ will be in touch with Tom and D1 about any writing opportunities. MJ described the new “I am the Forum” initiative. The idea is to have 60-90 second zoom videos of Forum members about what the Forum means to them. They will start with 16 volunteers. MJ further described collaboration with NAWIC as mentioned above.

(g) Young Lawyers – Chris Wise had to jump off the call before his report. I will put this as an early agenda item for our January meeting as reach out and collaboration with YLD remains a major priority of D1.

10. Next Steering Committee Meeting:

Monday, January 11, 2021 3PM ET