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2022 DRI Appellate Advocacy Seminar

November 1–2, 2022 | San Diego, California

Join us this fall in San Diego for DRI's Appellate Advocacy Seminar!

Join us in sunny San Diego for a two-day seminar that will help improve your appellate skillset and grow your network. Ideal for all attorneys who are involved in appeals, this program offers sessions on many key topics including state constitutionalism and stare decisis after the U.S. Supreme Court's monumental recent term. Plus, attendees will benefit from tips for oral argument from both sides of the bench and principles for improving legal writing. Our diverse speaker lineup is comprised of federal appellate judges and state court justices as well as experienced appellate advocates from across the country. As a bonus, the committee is teaming up with the Asbestos Medicine Committee for a joint session on effective persuasion with Dr. Jeffrey Rachlinski from Cornell University. And, as always, there will be receptions and frequent networking opportunities with other appellate attorneys and

attendees at the Asbestos Medicine and Managing Partners Conferences. This includes an incredible Premier Networking Event at the USS Midway Museum, where you'll have the chance to network and reconnect with fellow DRI members while enjoying the floating city of the sea!

View registration information here, and make sure to **register by September 19 for the best pricing!**

What You Will Learn:

- How State Constitutions are More Important Now than in the Recent Past
- How to Avoid and Cure Preservation Mistakes
- Ethical Practices for Working with Amici
- Best Practices for Oral Argument
- How to Position Yourself for a Future Appointment to the Appellate Bench

Expand Your Network By:

- Attending receptions with attendees of Appellate Advocacy, Managing Partners, and Asbestos Medicine Conferences
- Discuss cutting-edge appellate issues with appellate attorneys and judges from across the country
- Dine with fellow members of the Appellate Advocacy Committee

Thank You to DRI's Appellate Advocacy Committee Leadership

Matthew T. Nelson
Program Chair

Hillary Taylor
Program Vice Chair

Sarah E. Spencer
Committee Chair

Adam W. Hofmann
Committee Vice Chair

M. Re Knack
Law Institute

JOIN THE APPELLATE ADVOCACY COMMITTEE

Registration Information

EARLY REGISTRATION*	REGULAR REGISTRATION*	GOVERNMENT MEMBER
DRI Member Pricing: $1,095	DRI Member Pricing: $1,395	Early Bird Pricing: $695
Non-Member Pricing: $1,395	Non-Member Pricing: $1,695	Regular Pricing: $995

Register by **September 19, 2022** to receive the early registration rate.

**If your membership recently lapsed, please renew your membership prior to registering to ensure you receive your discounted member rate. If you would like to join DRI to receive the member pricing and see the benefits of becoming a member, click here to go to the Application page.*

GROUP REGISTRATION (Non-Sponsor)**
Pricing: $995 per person

***Group registration is for registering 5 or more attendees, members and non-members. There is one free registration with every 10 registrations. You must lock in the rate three weeks prior to the seminar. If you want to register for the group pricing, please send an email to rstiner@dri.org (online registration is not available for this offering).*

REGISTER NOW

Networking Events

Premier Networking Event at the USS Midway Museum

Sponsored by: Hawkins Parnell & Young, Tucker Ellis LLP

Date: Wednesday, November 2 from 7:00–10:00 p.m.
Pricing: Free when you register for the seminar *(guest tickets $100 each, available at check-out)*
Location: USS Midway Museum, 910 N. Harbor Dr., San Diego, CA

Join the Appellate Advocacy, Asbestos Medicine and Managing Partners Seminars and reconnect with your DRI friends Wednesday evening at a networking event aboard the USS Midway sponsored by Hawkins Parnell & Young and Tucker Ellis LLP. It's only a short walk from the hotel and food and adult beverages will be served! Imagine experiencing life at sea aboard one of the United States Navy's most storied ships. Prepare yourself for a lifetime memory aboard the USS Midway Museum and walk in the footsteps of 225,000 Midway sailors who served our country and upheld the American ideals of strength, freedom and peace. You'll explore a floating city at sea and relive nearly 50 years of world history aboard the longest-serving Navy aircraft carrier of the 20th century.

Agenda with Speakers

**Schedule and Speakers subject to change*

Tuesday, November 1, 2022

Time (Pacific)	Session Description
12:30 p.m.	**Networking Lunch for Early Arrivers *(on your own)*** Join colleagues at Sally's Fish House & Bar at the Manchester Grand Hyatt to get reacquainted with other DRI members and meet other conference attendees.
1:00 p.m.	**Registration**
2:00 p.m.	**Welcome and Introductions** **Re Knack**, *Ogden Murphy Wallace*, Seattle, WA **Matthew T. Nelson**, *Warner Norcross + Judd LLP*, Grand Rapids, MI
2:10 p.m.	**Preparing for Oral Argument: Tips & Perspectives** Join appellate advocates with different levels of experience for

presentations on how they prepare for oral argument, followed by an opportunity for questions and answers. Hear presentations of how advocates with differing levels of experience prepare, what they think about, and why their perspectives differ.

Jill Wheaton, *Dykema Gossett PLLC*, Detroit, MI
Adam T. Ratliff, *Warner Norcross + Judd LLP*, Detroit, MI

3:00 p.m.

State Constitutionalism: State Constitutions as the Source of Different—and Greater—Civil Liberties

Even before the end of the October 2021 Term of the Supreme Court, judges such as the Hon. Jeffery Sutton and others were questioning why more attorneys and state courts were not relying on the different and sometimes greater protections for civil rights afforded under state constitutions. Enjoy a discussion with current federal judge and former Michigan Supreme Court Justice Joan Larsen about how state constitutions could and should function in an age where federal constitutional protections are in flux.

Moderator
Mary Massaron, *Plunkett Cooney, PLC*, Detroit, MI

Hon. Joan L. Larsen, *Sixth Circuit Court of Appeals*, Ann Arbor, MI

4:00 p.m.

Cleaning the Slate: Overturning Prior Authority and Sua Sponte Decision-making

Precedent about precedent is relatively scarce. Are there rules about when a high court can overturn prior authority it now believes was wrongly decided, and if so, what are they? If not, should there be? Even before the October 2021 US Supreme Court term and its striking Dobbs majority, concurring, and dissenting opinions, viewpoints were diverging in the U.S. Supreme Court. In Ramos v. Louisiana, several justices explained their respective views on stare decisis but consensus was not to be found. And what if no party advocates for overturning precedent? The lead opinion in United States v. Sineneng-Smith forcefully argued that reviewing courts should not materially expand the issues on review beyond the dispute presented by the parties. Is sua sponte appellate decision-making ever appropriate? If so, when?

	This program will discuss approaches federal and state appellate courts employ when deciding whether to overturn precedent or engage in sua sponte decision-making, and what involving either principle might cost the courts in terms of institutional legitimacy. Moderator **Lisa Baird**, *Reed Smith LLP*, Miami, FL **Hon. Patrick J. Bumatay**, *Ninth Circuit Court of Appeals*, San Diego, CA **Hon. Jon B. Streeter**, *California Court of Appeal, First District*, San Francisco, CA **Bernadette Meyler**, *Stanford University School of Law*, Stanford, CA
6:00 p.m.	**Networking Reception *(Joint Reception with Managing Partners)*** Enjoy drinks and hors d'oeuvres with friends and colleagues from the Appellate Advocacy Seminar and network with attendees at the Managing Partners Conference.
7:00 p.m.	**Dine-Arounds *(on your own)*** Join colleagues and friends at selected restaurants for dinner.

Wednesday, November 2, 2022

Time (Pacific)	Session Description
7:00 a.m.	**Registration and Continental Breakfast**
8:05 a.m.	**Welcome and Introduction** **Hillary A. Taylor**, *Keating Jones Hughes, P.C.*, Portland, OR
8:15 a.m.	**Appellate Lawyers to the Rescue! Strategies for Dealing with—and fixing—Preservation Mistakes** Preserving issues for appeal is not always an easy or straightforward task. Frequently, winning arguments and issues are not preserved in

	the trial court. Overcoming a failure to preserve is one of the most satisfying wins an appellate lawyer can achieve. Ms. Spencer will address advanced techniques for obtaining review of unpreserved issues. She will explain how to fix preservation errors both in the district court (post-trial, if there is still time) and after a case is on appeal. Attendees will learn practical strategies to fix a preservation "mistake", add evidence to the record, and vindicate the winning argument. **Sarah E. Spencer**, *Christensen & Jensen*, Salt Lake City, UT
9:15 a.m.	**So You Think You Might Want to be an Appellate Judge?** Ever wonder what it would take to hurdle from the bar to the bench? Experts on this panel include state and federal officials who participate in assessing candidates for judicial office and a state judge who has been appointed to various increasingly high-ranking judgeships. Get tips on what qualifications are meaningful (and which are meaningless) to the process of obtaining a judicial appointment. Identify steps that you can take early in your career to position yourself for appointment to the judiciary, and what you can do mid-career to make up for any deficiencies. Moderator **Adam W. Hofmann**, *Hanson Bridgett LLP*, San Francisco, CA **Sean Sandoloski**, *Willkie Farr & Gallagher LLP*, Washington, DC
10:15 a.m.	**Refreshment Break**
10:30 a.m.	**Oral Argument *Schadenfreude*: What Not to do at the Podium** Join experienced Oregon jurist and former appellate advocate for complementary presentations on the best and worst of oral advocacy. Current Senior Judge and Retired Oregon Supreme Court Justice and Oregon Court of Appeals Judge Hon. Jack L. Landau will present a TED-style lecture on memorable moments of less-than-brilliant oral advocacy. **Hon. Jack L. Landau**, *Ret. Oregon Supreme Court Justice*, *Distinguished Jurist in Residence at Willamette University College of Law*, Sunriver, OR

10:45 a.m.	**The Ethical *Amicus*: Best Practices for Friends of the Court** This panel will explore the basics and ethics of the amicus process, including: 1. General tips and topics regarding the effective use of amicus briefs 2. Recent judicial (Prairie Rivers Network v. Dynegy Midwest Generation, 976 F.3d 761 (7th Cir. 2020)) and legislative efforts (Sen. Whitehouse's "AMICUS Act") to limit their use 3. Supreme Court Rule 37.6 concerning disclosures of party contributions to amicus briefs 4. Guidelines related to the coordination between parties and amici and the proper content for briefs 5. The importance of ethical conduct to maintain credibility before courts Moderator **Richik Sarkar**, *Dinsmore & Shohl LLP*, Cleveland, OH **Hon. John Owens**, *9th Circuit Court of Appeals*, San Diego, CA **Johanna Schiavoni**, *California Appellate Law Group LLP*, San Diego, CA
11:45 a.m.	**Oral Argument Aspirations: What to do at the Podium** Join experienced Oregon jurist and former appellate advocate for the second complementary presentation on the best and worst of oral advocacy. The Hon. Jack L. Landau will present a TED-style lecture on memorable moments of brilliant oral advocacy. **Hon. Jack L. Landau**, *Ret. Oregon Supreme Court Justice, Distinguished Jurist in Residence at Willamette University College of Law*, Sunriver, OR
12:00 p.m.	**Lunch *(on your own)***
1:45 p.m.	***Feeling Fin-tastic!* How to be an Effective Legal Writer *(Joint Session with the Asbestos Medicine Seminar)*** This legal writing session is not about key issues like proper grammar, or avoiding the legal logorrhea of excessive wordiness, or active vs. passive voice, or the order of your arguments, or alternatives to common phrases and locutions in legal writing that

	get in the way more than they guide the reader to the correct result. Those are all important parts of legal writing, and they are covered in many sessions and articles. This session will instead focus on some aspects of legal writing that are undercovered: *Table of Contents*, *Introduction*, *Conclusion* 1. Each of these is or can be very important. And each is sometimes considered an afterthought, something to throw together at the end if the drafting process. That is wrong. More attention to these parts of the brief will make the whole brief better. 2. If time permits, the session will address a few other under-appreciated elements of good legal writing, such as effective use of quotations and citations. 3. This session will not turn a poor writer into an excellent writer. Only time and effort spent writing can do that. This session will, however, give attendees ideas about how to make their briefs more persuasive. **Don Willenburg**, *GRSM LLP*, San Francisco, CA
2:45 p.m.	**Blockbuster Session: The Science of Deciding *(Joint Session with the Asbestos Medicine Seminar)*** From homo rationalis to heuristics: hear how modern social science and behavioral economic studies have changed our understanding of logic, reasoning, and human decision making, including our understanding of judicial decisions. **Professor Jeffrey J. Rachlinski, J.D., Ph.D.**, *Cornell Law School*, Ithaca, NY
3:45 p.m.	**Refreshment Break**
4:00 p.m.	**Navigating the Politics of Appeal** By now, sophisticated clients appreciate that integrating appellate counsel into a case team, either in the trial or appellate court, can provide significant benefit to advancing the cause. But when, how, and how best to do so can be more fraught. Trial counsel can be protective of their role (having lived with the case for years), and appellate counsel have to be careful of Monday-morning quarterbacking the case (notwithstanding their fresh eyes). This

	panel, featuring both trial-lawyer and appellate-counsel perspectives, will examine how to meet these potential challenges and achieve successful partnership between trial and appellate counsel. **Kelly Perigoe**, *King & Spalding LLP*, Los Angeles, CA **Sabrina Narain**, *Sanders Roberts LLP*, Los Angeles, CA **Hillary A. Taylor**, *Keating Jones Hughes, P.C.*, Portland, OR Moderator **Derek Linkous**, *Bush Seyferth PLLC*, Troy, MI
5:00 p.m.	**Adjourn**
5:00 p.m.	**Appellate Advocacy Committee Business Meeting** Join your fellow DRI members for a committee meeting to discuss opportunities to participate in planning for future conferences, to publish, and to get involved in committee leadership. **Sarah E. Spencer**, *Christensen & Jensen*, Salt Lake City, UT **Adam W. Hofmann**, *Hanson Bridgett LLP*, San Francisco, CA
6:00 p.m.	**Networking Reception *(with Asbestos Medicine Seminar)***
7:00 p.m.	**Shell-abrate Good Times! The USS Midway Event *(includes food)*** ***Sponsored by: Hawkins Parnell & Young, Tucker Ellis LLP*** **Click here for more details.**

On Demand

NEW in 2022 – 4 Additional On-Demand Programs Included With Every Seminar!

CLE Credit will be sought from every state requiring CLE hours in elimination of bias/diversity and inclusion, ethics, substance abuse/mental health and law practice management. The CLE grid will provide updated information concerning which courses have been approved by which states and for

which credits. For states not requiring these special credits, general education credits will be sought.

Diversity/Elimination of Bias in the Profession

Batson v. Kentucky and its progeny were meant to eliminate bias in jury selection. But has that happened? This program will address that question and discuss issues of bias in the courtroom more broadly and will challenge viewers to recognize their own biases and to learn how those biases could affect their assessment of potential jurors, witnesses, judges, and adversaries. The program also will provide viewers with skills on how to identify the biases of potential jurors and how those biases could come into play during deliberations.

Stacy Douglas, *Everett Dorey LLP*, Irvine, CA
Gary Howard, *Bradley*, Birmingham, AL

Ethics

Investigating claims and lawsuits often requires interviews with employees. Corporate in-house attorneys and their outside counsel need to be able to identify potential conflicts of interest and confidentiality issues with employees who may leave their employment and become opposing counsel's best witness.

Kristie S. Crawford, *Brown & James*, Springfield, MO
Lauren Buford, *Walgreen Co.*, Deerfield, Illinois 60015.

Mental Health & Attorney Wellness

Study after study suggests that lawyers aren't happy. Continued unhappiness impacts performance, relationships, and physical health. That's the bad news. The good news is that research proven interventions exist that increase happiness without requiring a radical change in circumstances. Even a slight increase in happiness has a lasting impact on both your current performance and resilience, not to mention, happier just feels better. This program will quickly, efficiently, and practically explain why happiness matters and offer tools you can use today to work, lead, and live happier.

Rebecca Morrison, Aldie VA

Law Practice Management

Law firms must operate more efficiently to ensure they can deliver high-quality services, handle more volume and maintain a profit margin in today's climate of rate pressure and rising costs. Understanding Key Performance Indicators and law firm analytics concerning financial, operational and client service data are key to mastering law firm performance management. This presentation will address methods to collect information necessary for evaluating key areas of performance, identify tools and techniques to analyze data and generate action items and more.

Brian Kennel, *PerformLaw*, New Orleans, LA
Jan Sander, *PerformLaw*, New Orleans, LA
Sean Kennel, *PerformLaw*, New Orleans, LA

Hotel and Travel Information

A limited number of discounted hotel rooms have been made available at the **Manchester Grand Hyatt San Diego**, 1 Market Place, San Diego, CA 92101. Take advantage of the group rate of **$289.00** Single/Double in one of two ways:

- **Reserve your Room Online**
- Contact the hotel directly at **619.232.1234** and mention DRI Seminars.

The hotel block is limited and rooms and rates are available on a first-come, first-served basis. You must make reservations by **October 3, 2022** to be eligible for the hotel's group rate. *Requests for reservations made after that date are subject to room and rate availability.* A small portion of your room rate offsets the costs of the seminar.

Travel Discounts: DRI is pleased to announce that discounted air fares are available on various major air carriers for DRI seminar attendees. To receive these discounts, please contact Direct Travel Ltd., DRI's official travel provider, at 800.840.0908. If you would like to have access to the DRI online travel booking tool, you must complete a Business Travel Profile form at **www.dt.com**. Within 24 business hours, you will receive information on accessing the system.

CLE Information

Earn up to **8.00 hours** of continuing legal education hours from this seminar.

Appellate Advocacy CLE Grid (PDF)

Sponsors

DRI's Appellate Advocacy Seminar is proudly sponsored by:

Thank you to our Official Supporter: *Alexander Dubose & Jefferson LLP, Keating Jones Hughes PC*

If you would like to contact DRI about seminar sponsorship opportunities, including pricing, or to reserve a spot, please go to **Advertising and Sponsorship**.

Event Terms

Read the Event Terms including DRI's Cancellation and Refund Policy

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