



AMERICAN **BAR** ASSOCIATION

Forum on Construction Law

# NAVIGATING GOVERNMENT CONSTRUCTION

*DON'T MAKE A FEDERAL CASE OUT OF IT*

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SEPTEMBER 27-29, 2023 | WASHINGTON, D.C.



PROGRAMS - PUBLICATIONS - PEOPLE



**BUILDING THE BEST**  
CONSTRUCTION LAWYERS



# NAVIGATING GOVERNMENT CONSTRUCTION

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# DEAR COLLEAGUES:

Join us at the ABA Forum on Construction Law's 2023 Fall Meeting - *Navigating Government Construction: Don't Make a Federal Case Out of It*. The program, appropriately set in our Nation's Capital, offers a journey into the world of government construction. There is no better place than Washington, D.C. to learn to navigate the minefield of requirements applicable to your clients who may be literally trying to drain a swamp.

This is a must attend event for all construction/government contracts lawyers, consultants, and those who would like to venture into or learn more about the practice area.

The Program promises to engage both new and seasoned attorneys alike, with plenary sessions and workshops covering both introductory and advanced topics related to government construction. Our sessions are loaded with esteemed judges, sharp in-house counsel, experienced government lawyers, and skilled private practitioners, all with particular knowledge to impart to attendees.

Session topics include:

- ◆ Navigating the government claims process and procedures
- ◆ Delay, disruption, and pricing of claims on federal projects
- ◆ Green and sustainable government spending
- ◆ Cybersecurity threats and obligations of government contractors
- ◆ Termination on government projects
- ◆ ADR with the government

Prior to the main program, we will offer a practicum: "A Guide to Bid Protests." At the practicum, our faculty, including Judge Marian Blank Horn, will take a federal bid protest from start to finish and share insight on the process for federal bid protest.

In addition, renowned speaker, Bob Kendrick, President of the [Negro Leagues Baseball Museum](#) in Kansas City, Missouri, and host of the Black Diamonds podcast, will speak as a part of the Forum's Diversity Breakfast series. Mr. Kendrick is a dynamic and engaging speaker and the leading authority on the topic of the Negro Leagues baseball history and its connection to issues relating to sports, race, and diversity.

Washington, D.C. in the Fall promises beautiful weather and a welcoming city with countless memorials, museums, and monuments to explore.

Please check out our [D.C. Insider's Guide and Restaurant Guides](#) courtesy of Forum Chair, John Marshall Cook. There is so much to do, you will need an extra day or two!

## Thank you to our Co-Sponsors:

ABA Section of Public Contract Law

American Arbitration Association

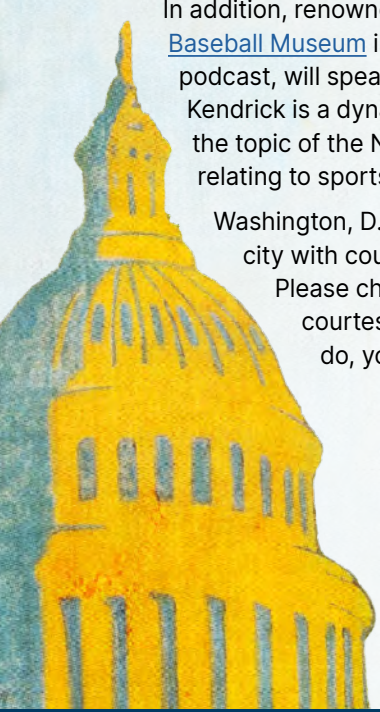
American Subcontractors Association (National and Metro Washington Chapter)

Associated General Contractors - Metro Washington Chapter

ConsensusDocs

Virginia State Bar Section on Construction & Public Contracts Section

Washington Building Congress



# PROGRAM SCHEDULE



## WEDNESDAY, SEPTEMBER 27

12:00 – 5:00 P.M.

### Advanced and On-Site Registration Opens

1:00 – 4:00 P.M.

#### Practicum

### Practicum: A Guide to Bid Protests

Federal bid protests present challenges for new attorneys and seasoned practitioners. Our expert faculty will explain the process and provide invaluable insights into bid protests on federal projects. They will also consider how and whether federal procurement decisions may influence outcomes of state and local bid protests and offer tips and pointers on state and local bid protests. Participants will have the opportunity to workshop their skills through a role play of protests to the GAO and injunctive actions at the Court of Federal Claims.

**Hon. Judge Marian Blank Horn**, U.S. Court of Federal Claims | Washington, D.C.

**Y. Lisa Colon**, Saul Ewing LLP | Fort Lauderdale, FL

**Joseph C. Kovars**, Baker Donelson, Bearman, Caldwell & Berkowitz, PC | Baltimore, MD

*\*Limited space and separate registration fee required*

5:15 – 6:00 P.M.

### New Attendee Meet and Greet

### Young Lawyer Division Social Event

## THURSDAY, SEPTEMBER 28

7:15 A.M. – 5:00 P.M.

### Registration and Exhibit Hall Open

7:30 – 8:30 A.M.

### Continental Breakfast

8:20 – 8:30 A.M.

### Welcome from the Forum Chair

Opening Remarks and Announcements

**John Marshall Cook** | Forum Chair

**Catherine W. Delorey** and **Brian R. Zimmerman** | Program Co-Chairs

8:30 – 9:45 A.M.

#### Plenary 1

### Adventures in Federal Construction: Traps for the Unwary

Epic infrastructure spending has attracted unseasoned contractors to federal projects, sometimes without understanding the “strings” attached. This session will examine core concepts, strategies, and developments that counsel must consider when lawyering on government projects. The panel will discuss pitfalls for the unwary, including the False Claims Act, Buy American Act, Davis-Bacon Act, Christian Doctrine, and Performance Evaluations.

**Aaron P. Silberman**, Rogers, Joseph, O'Donnell | San Francisco, CA

**Erin K. Cannon-Wells**, Keller - North America | Hanover, MD



# PROGRAM SCHEDULE



**9:45 – 10:00 A.M.    Networking Break**

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**10:00 – 11:15 A.M.    Navigating the Government Claims Process**

**Plenary 2**

Construction projects invariably lead to claims and disputes. Projects with the government are no exception. This session will focus on the special rules and procedures required to assert a claim against the government. Our panel will discuss issues most frequently litigated when pursuing federal government construction claims.

**Moderator: Andrew D. Ness**, JAMS | Washington, D.C.

**Michelle D. Coleman**, Crowell & Moring | Washington, D.C.

**Timothy C. Tozer**, Associate General Counsel, Real Property, U.S. General Services Administration | Washington, D.C.

**David Wonderlick**, Varela, Lee, Metz & Guarino, LLP | Tysons Corner, VA

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**11:15 – 11:30 A.M.    Networking Break**

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**11:30 – 12:45 P.M.    The Greening of Construction: Exploring Sustainability through Government Spending**

**Plenary 3**

The U.S. Government is the largest purchaser of goods and services in the world spending more than \$550 billion annually, with more than \$24 billion of that spent on construction. With its massive monetary influence, the government has legislated its way into green and sustainable construction. This session examines recent green construction and sustainability legislation, rules, and regulations.

**James F. Nagle**, Smith Currie Oles | Seattle, WA

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# PROGRAM SCHEDULE



**12:45 – 2:30 P.M.    Division Lunches and Networking Break**

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**2:30 – 3:30 P.M.    **Workshop A****  
**Cybersecurity: The Evolving Threats and Obligations for Government Projects**

The growing threats posed by cyber criminals have reshaped how business and government function. Our panel will address the latest developments in cybersecurity regulations embedded in the Federal Acquisition Regulations, the Cyber Security Maturity Model Certification (CMMC), Controlled Unclassified Information (CUI), Secure Software Development Framework (SSDF), along with subcontract requirements, cyber insurance, and enforcement.

**B. Stephanie Siegmann**, Hinckley Allen | Boston, MA  
**Alex Trafton**, Ankura | Irvine, CA

**Workshop B**  
**A Journey Through Delay and Disruption Claims Against the Government**

Supreme Court Justice Holmes said, "Men must turn square corners when they deal with the Government." So quoted the U.S. Court of Federal Claims in its decision in *Lodge Construction, Inc. v. United States*, which describes itself as "a cautionary tale to government contractors." Delays can be an issue throughout any project, from award through contract completion. The panel will discuss what must be done to document and submit successful delay and disruption claims on federal projects.

**Michael A. Branca**, Peckar & Abramson, P.C. | Washington, D.C.  
**Christopher Foux, CPA, ASA, ABV**, LitCon Group, LLC | Alexandria, VA

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**3:30 – 3:45 P.M.    Networking Break**

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**3:45 – 4:45 P.M.    **Workshop C****  
**Small and Disadvantaged Business Subcontracting Dynamics on Government Projects**

An array of statutes, regulations, and contract clauses incentivize prime contractors to subcontract with small and disadvantaged businesses. However, qualification requirements may be challenging, and prime contractors may struggle to document good faith efforts to find appropriate small and disadvantaged subcontractors. Even after contract award, project changes, staffing and material shortages, inflation, and other real-life project challenges can make meeting subcontractor commitments difficult. This panel will address pre-award concerns, compliance issues, and penalties regarding small and disadvantaged subcontracting requirements, including contracts at the federal, state, and local levels.

**Jennifer L. Dauer**, Diepenbrock Elkin Dauer McCandless LLP | Sacramento, CA  
**Adam K. Lasky**, Seyfarth Shaw LLP | Seattle, WA  
**Sam Q. Le, Esq.**, U.S. Small Business Administration | Washington, D.C.

# PROGRAM SCHEDULE



## Workshop D

### When the Axe Falls: Termination on Government Projects

Termination, whether for cause or convenience, represents a monumental event on any construction project. This session will explore the unique aspects of both termination for convenience and termination for default on government projects as it affects both prime and subcontracts, along with performance bond implications.

**Judah Lifschitz**, Shapiro Lifschitz & Schram | Washington, D.C.  
**Barbara Werther**, Samek Werther Mills LLC | Alexandria, VA

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### 5:00 – 6:00 P.M. Women’s Networking Reception

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### 6:30 P.M. Welcome Reception at [Planet Word Museum](#)

This reception is included in the registration fee. Guests tickets can be purchased for \$65. **Planet Word Museum** is at 925 13th Street, NW, Washington, D.C. just a few blocks from the hotel.

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## Division Social Events

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## FRIDAY, SEPTEMBER 29

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### 7:45 A.M. – 12:15 P.M. Registration and Exhibit Hall Open

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### 8:15 – 9:15 A.M. Diversity & Inclusion Breakfast

**Keynote Speaker: Bob Kendrick**, President, Negro Leagues Baseball Museum | Kansas City, MO

Renowned speaker, Bob Kendrick, President of the Negro Leagues Baseball Museum in Kansas City, Missouri, and host of the Black Diamonds podcast, will present as a part of the Forum’s Diversity Breakfast series. Mr. Kendrick is a dynamic and engaging speaker and a leading authority on the topic of Negro Leagues Baseball history and its connection to issues relating to sports, race, and diversity.

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### 9:15 – 9:25 A.M. Networking Break

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### 9:25 – 9:30 A.M. Opening Remarks

**John Marshall Cook** | Forum Chair

**Catherine W. Delorey** and **Brian R. Zimmerman** | Program Co-Chairs

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# PROGRAM SCHEDULE



9:30 – 10:45 A.M.  
**Plenary 4**

## How to Dance with the Feds - ADR in Government Disputes

Alternative dispute resolution, and in particular mediation, has become more prevalent as a process for resolving disputes on government contracts. But be wary, ADR with the government is not the same dance and presents unique challenges compared to private projects. Hear from authorities on ADR regarding the legal, procedural, and practical hurdles to getting the government to the table and methodologies for mediating government claims and disputes.

**Hon. Jeri Somers (ret.)**, Potomac Law Group | Washington, D.C.  
**Adrian P. Bastianelli, III**, Peckar & Abramson, P.C. | Washington, D.C.  
**Scott N. Flesch**, Army Chief Trial Attorney, U.S. Army Legal Services Agency | Fort Belvoir, VA

10:45 – 11:00 A.M.

## Networking Break

11:00 – 12:00 P.M.  
**Plenary 5**

## Ethics of Litigation for Construction Attorneys

Distinguished ethics speaker Tom Spahn will provide a program not to be missed. This interactive program uses hypotheticals to explore litigation ethics issues facing both commercial and government construction litigation. This educational and entertaining program is a must for litigators and transactional attorneys alike.

**Thomas E. Spahn**, McGuireWoods, LLP | Tysons, VA

12:00 – 12:10 P.M.

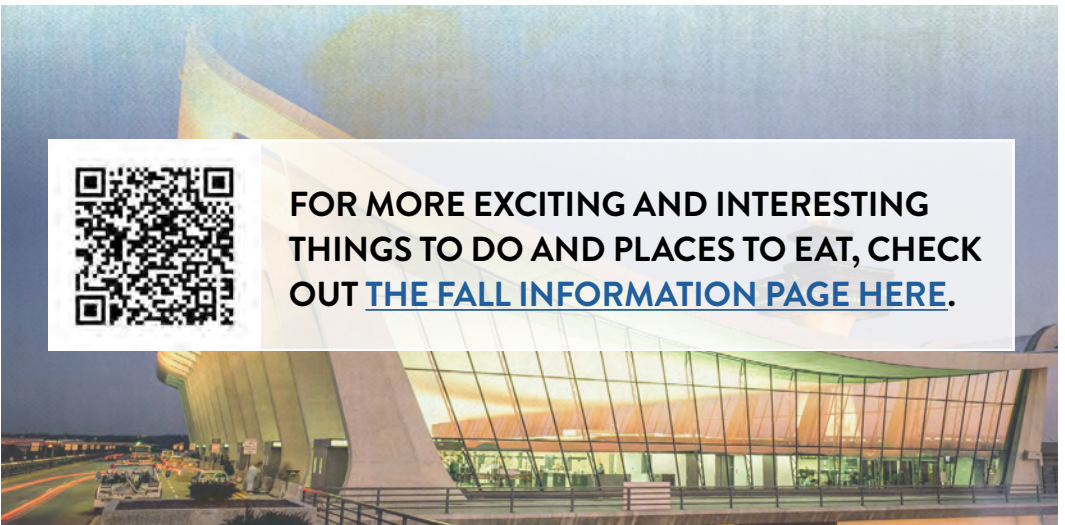
## Concluding Remarks

**John Marshall Cook** | Forum Chair

**Catherine W. Delorey** and **Brian R. Zimmerman** | Program Co-Chairs



FOR MORE EXCITING AND INTERESTING  
THINGS TO DO AND PLACES TO EAT, CHECK  
OUT [THE FALL INFORMATION PAGE HERE.](#)





# SPECIAL EVENTS

Thursday, 9 A.M.– 2 P.M.

## Guest/Spouse Tour to Glenstone



A visit to Glenstone is an opportunity to experience the intersection of art, nature, and architecture. Unlike other D.C. museums, Glenstone's collection is spread throughout several buildings and outdoor spaces set on the 300 acre property. The vision for Glenstone is to provide a place for people to slow down and interact with the art in a way that allows them to see the contemporary pieces in a new and uncluttered way.

Much of this amazing collection of Post-WWII art is housed in a group of zinc, granite, and stainless steel structures with a serene lily pad filled central water court. While at Glenstone, you'll find pieces of art by Jackson Pollock, Mark Rothko, Alexander Calder, Andy Warhol and Barbara Kruger to name just a few. Visitors can proceed along a woodland trail to the cafe to enjoy refreshments while absorbing all that Glenstone has to offer.

We hope that you will join us on this trip to a one-of-a kind collection outside the Nation's Capital. Comfortable attire and walking shoes are encouraged for this trip. For more information, [glenstone.org](http://glenstone.org).

*\*Limited space and separate registration fee required*

Friday, 1:00 – 3:00 P.M.

## National Cathedral Tour



The Washington National Cathedral tour will access behind-the-scenes features at one of the nation's most unique architectural landmarks. The Cathedral is home to many unusual details such as a Darth Vader gargoyle, a stained glass window featuring a moon rock, and tombs of and monuments to historical figures including Woodrow Wilson and Hellen Keller (and her teacher Anne Sullivan).” Guests will visit the lower-level crypt, the nave, chapels, and gardens.

The Washington National Cathedral is a unique treasure, making this tour one of the greatest in a city full of spectacular monuments and historical sights.

*\*Limited space and separate registration fee required*

# SPECIAL EVENTS



Friday, 8:00 – 11:00 P.M.

## Moonlight Monuments Bus Tour



As the sun sets, the flow of tourists along the National Mall slows, which creates the perfect opportunity for guests to see the monuments under the stars! A professional guide will take guests on a specialized bus tour of Washington's most iconic sights, illuminated against the night sky. Guests will have opportunities to stop and explore certain sites in more detail as the tour progresses, offering the opportunity for introspection and incredible photos. Throughout the tour, the guide will

share insightful trivia and exciting facts about the monuments and museums along the way, including the Smithsonian Museums, the World War II Memorial, the Washington Monument, and more. It's D.C. all in one night.

*\*Limited space and separate registration fee required*

Saturday, 9:00 – 12:00 P.M.

## Georgetown Walking Tour Featuring Tudor Place



Guests will explore the beauty and history of the fashionable Georgetown neighborhood. A knowledgeable tour guide will stroll you through the charming streets of Georgetown, past the lovely shops and historic homes, including former homes of John & Jacqueline Kennedy, Liz Taylor & Senator Warner, Kitty Kelly and other notable figures.

The tour also includes a visit to historic Tudor place, an 8.5 acre estate in the heart of Georgetown and the home of George & Martha Washington's granddaughter, Martha Custis Peter. The home and its beautiful gardens offers a glimpse into the family of our first President and the generations that followed and the history of our Nation. Have you heard the story that Martha Washington burned all of the love letters between her and George? Come to Tudor Place to find out if she got them all.

*\*Limited space and separate registration fee required*



# CONFERENCE INFORMATION



**ACCOMODATIONS:** The conference will be held at the Renaissance Washington, D.C. Downtown, rates start at \$329/night plus tax. The deadline for reservations is September 4, 2023 at 5:00 P.M. (CST) or until the room block is exhausted.

PLEASE NOTE THAT YOU MUST REGISTER FOR THE CONFERENCE PRIOR TO MAKING YOUR HOTEL RESERVATION.



**PROGRAM REGISTRATION:** Online at <https://ambar.org/fclfall23> or complete and return the attached registration form with your payment before **September 20, 2023**. Conference registrations will only be accepted when accompanied by a check or credit card. Credit card registrations may be FAXED directly to the ABA at 312-988-5850. If you do not receive a written confirmation by **September 25, 2023**, please call the ABA at 800-285-2221 to verify that your registration form and payment were received.

## FORUM DIVERSITY & INCLUSION

**SCHOLARSHIP OPPORTUNITY:** The Forum will award two Diversity Scholarships for the 2023 Fall Meeting. Each scholarship covers the cost of registration. These scholarships are awarded to women and minority construction lawyers, construction lawyers with disabilities, and construction lawyers from the LGBTQ+ community. Applicants should submit a copy of their resume together with a short letter describing their construction law practice, along with reasons why they want to attend the 2023 Fall Meeting. If selected, candidates must commit to attend the program (the scholarships are not transferable). Questions and/or applications for the scholarships should be sent directly to the Chair of the Forum's Diversity and Inclusion Committee, Jaimee L. Nardiello, Esq. at [JNardiello@zdlaw.com](mailto:JNardiello@zdlaw.com). The deadline for applications is **August 7, 2023**.

**SCHOLARSHIP:** Scholarships may be available for a limited time. Attorneys who qualify will receive up to a 50% reduction in the course fee(s). This does not include

any reduction in meals, lodging, or travel costs associated with the meeting. For more information email [Tamara.Harrington@americanbar.org](mailto:Tamara.Harrington@americanbar.org) or call 312-988-5674. The deadline for applications is August 31, 2023.

**CANCELLATION POLICY:** No refunds will be granted for cancellations received after **August 30, 2023**. To receive a refund, minus a \$65 administrative fee, cancellations must be made IN WRITING and RECEIVED by [Tamara.Harrington@americanbar.org](mailto:Tamara.Harrington@americanbar.org).

**MEMBERSHIP:** To join the Forum for \$75 go to [ambar.org/constructionlaw](https://ambar.org/constructionlaw).

**CLE CREDIT:** The ABA will seek 11 hours of CLE credit in 60-minute states, and 13.20 hours of CLE credit for this program in 50-minute states. Credit hours are estimated and are subject to each state's approval and credit rounding rules.

**ADVANCED REGISTRATION:** Advance Registration is highly recommended to avoid delay in admittance to the program.

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# CONFERENCE INFORMATION



to help protect against unauthorized access to or unauthorized alteration, disclosure or destruction of data. Finally, the ABA may share email addresses with third parties as necessary for the ABA to perform certain services on our behalf, such as packaging, mailing and delivering products and processing event registrations and to respond to your service requests.

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**TAX DEDUCTION FOR EDUCATIONAL EXPENSES:** In the United States, an income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals and lodging expenses (see Treas. Reg. Sec. 1.162-2, *Coughlin v. Commissioner*, 203 F.2d 307 (2nd Cir. 1953)).

**AMERICANS WITH DISABILITIES ACT:** If special arrangements are required for disabled individuals to attend this program, please contact the Forum in writing by **September 1, 2023** at the American Bar Association, 321 N. Clark Street, Chicago, Illinois 60654. Fax: 312-988-5677. Email [Patricia.Harris@americanbar.org](mailto:Patricia.Harris@americanbar.org).

**QUESTIONS:** If you have questions or require additional conference information, please email [Tamara.Harrington@americanbar.org](mailto:Tamara.Harrington@americanbar.org).





# NAVIGATING GOVERNMENT CONSTRUCTION



## PROGRAM REGISTRATION

### Three Ways to Register

- Online at [Ambar.org/fclfall23](http://Ambar.org/fclfall23)
- Call (800) 285-2221
- Mail the completed registration form to:  
American Bar Association  
Attention: Service Center - Meeting/Event  
Registration CI2309  
321 N. Clark St. - FL 19  
Chicago, IL 60654

## Registration Information (please print)

NAME (FIRST, MIDDLE INITIAL, LAST) \_\_\_\_\_

(NAME AS YOU WISH IT TO APPEAR ON ATTENDEE LIST AND NAME BADGE) \_\_\_\_\_

ABA MEMBER# \_\_\_\_\_

FIRM/COMPANY/AGENCY \_\_\_\_\_

ADDRESS \_\_\_\_\_

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BUSINESS PHONE \_\_\_\_\_ BUSINESS FAX \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

## Registration Fees:

	Early Bird <small>(ends 8/28/2023)</small>	Regular Price <small>(begins 8/29/2023)</small>
<b>Non-ABA Member</b>	<input type="checkbox"/> <b>\$1,240</b>	<input type="checkbox"/> <b>\$1,300</b>
<b>ABA Member</b>	<input type="checkbox"/> <b>\$1,060</b>	<input type="checkbox"/> <b>\$1,125</b>
<b>Forum Member</b>	<input type="checkbox"/> <b>\$780</b>	<input type="checkbox"/> <b>\$840</b>
<b>First Time Attendee, New Member, and YLD (Email for Discount)</b>	<input type="checkbox"/> <b>\$600</b>	<input type="checkbox"/> <b>\$650</b>
<b>In-House/Government/Academic (Email for Discount)</b>	<input type="checkbox"/> <b>\$600</b>	<input type="checkbox"/> <b>\$650</b>
<b>Past Forum Governing Committee (Email for Discount)</b>	<input type="checkbox"/> <b>\$525</b>	<input type="checkbox"/> <b>\$575</b>
<b>Law Student</b>	<input type="checkbox"/> <b>\$75</b>	<input type="checkbox"/> <b>\$75</b>
<b>Practicum</b>	<input type="checkbox"/> <b>\$100</b>	<input type="checkbox"/> <b>\$125</b>
<b>Welcome Reception (Guest Tickets)</b>	<input type="checkbox"/> <b>\$65</b>	<input type="checkbox"/> <b>\$65</b>
<b>Guest/Spouse Glenstone Tour</b>	<input type="checkbox"/> <b>\$50</b>	<input type="checkbox"/> <b>\$50</b>
<b>National Cathedral Tour</b>	<input type="checkbox"/> <b>\$60</b>	<input type="checkbox"/> <b>\$60</b>
<b>Moonlight Monuments Bus Tour</b>	<input type="checkbox"/> <b>\$65</b>	<input type="checkbox"/> <b>\$65</b>
<b>Georgetown with Historic Homes Bus and Walking Tour</b>	<input type="checkbox"/> <b>\$60</b>	<input type="checkbox"/> <b>\$60</b>
<b>Materials Only</b>		<input type="checkbox"/> <b>\$250</b>

\*Join the Forum for \$75 and save on this meeting, future meetings, publications and webinars.  
For registration questions please email [Patricia.Harris@americanbar.org](mailto:Patricia.Harris@americanbar.org) or [Tamara.Harrington@americanbar.org](mailto:Tamara.Harrington@americanbar.org)

Discount Code (if applicable) \_\_\_\_\_

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For additional information contact [Patricia.Harris@americanbar.org](mailto:Patricia.Harris@americanbar.org) or [Tamara.Harrington@americanbar.org](mailto:Tamara.Harrington@americanbar.org)

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Forum on Construction Law

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*DON'T MAKE A FEDERAL CASE OUT OF IT*

SEPTEMBER 27-29, 2023 | WASHINGTON, D.C.

**PLEASE SAVE THESE DATES AND JOIN US  
FOR THESE UPCOMING FORUM MEETINGS!**

▶ **2023 Foundations of  
Construction Law  
(Regional Meeting)**

**November 2 - 3, 2023**

Atlanta, GA  
Philadelphia, PA  
St. Louis, MO  
San Francisco, CA

▶ **2024 Midwinter Meeting**

**January 25 - 26, 2024**  
Las Vegas, NV

▶ **2024 Annual Meeting**

**April 10 - 13, 2024**  
New Orleans, LA

