

# PUBLIC CONSTRUCTION PROJECTS:

NOT ALWAYS A HOLLYWOOD ENDING



2019 MIDWINTER MEETING  
ABA FORUM ON CONSTRUCTION LAW

MILLENNIUM BILTMORE HOTEL | LOS ANGELES, CALIFORNIA  
JANUARY 30 – FEBRUARY 1, 2019

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# DEAR COLLEAGUES:

We invite you to trade the cold and gray of winter in January for the blue skies and warm breezes of Tinseltown. Yes, the Forum is finally coming to Los Angeles, and on no less than the eve of the Super Bowl of movies—the Academy Awards. Our program, “Public Construction Projects: Not Always a Hollywood Ending,” celebrates the town’s creativity and vitality while exploring the ins and outs of the

backbone of much of our national construction industry: public construction. For where would the movies be without airports, roads, bridges, museums, water treatment plants, and filled potholes to support them? Our program is designed to answer questions about public construction law and even more importantly, to teach smart lawyers what questions to ask.

We will begin our program by answering the question practitioners and their clients ask at the start of every new year—what does the immediate future hold for public construction? We have

invited exciting speakers with knowledge and expertise to answer this question, followed by two days of substantive, interesting, and hopefully entertaining sessions designed to address large issues, intricate questions, and ethical conundrums specific to the fascinating, challenging area of public construction law. From top ten issues every construction lawyer must be aware of when dipping their legal toes into the murky waters of government contracting, to seeking payment for claims from government entities and then learning the intricacies of having to litigate with them, to the fast paced, rule based world of bid protests, our program will run the gamut of public construction law, from both a local and national perspective. There are different rules and different strategies to employ on public jobs, and our program will offer both new and experienced public construction lawyers tips and advice on how to succeed—or at the very least how to avoid a box office bust.

We have also managed to secure incredible speakers for a practicum on legal writing that will be worth the trip itself. In addition to our fantastic program and practicum, we will be staying at the historic and beautiful Millennium Biltmore Hotel, in a downtown area surrounded by museums, shopping, great restaurants, and fantastic night life. We are so excited about our program, its people, and the venue, and are looking forward to seeing you at a very special midwinter meeting in a very special town. See you on the red carpet!





# PROGRAM SCHEDULE

## WEDNESDAY, JANUARY 30

**12:00 P.M. – 3:00 P.M.    Advance Registration Opens**

**1:00 P.M. – 5:00 P.M.    Advocacy Practicum—Advocacy in Writing the Perfect Brief: Tips From Expert Writers**

**Advanced Registration Only! Separate Registration Fee Required:**  
*Practicum Only - \$325*  
*If registering for the meeting - \$200*

The Forum is thrilled to be able to present an advocacy practicum dedicated to the elusive but laudatory goal of every construction lawyer—effective and crisp legal writing.

**Bryan A. Garner’s** extensive writing on the language of the law led *The Green Bag* to call him a “leading authority on good legal writing.” A chorus of other publications—including *The New York Times*, *Trial Magazine*, and *Harvard Law Review*—have echoed that sentiment.

Garner is editor in chief of *Black’s Law Dictionary* and the author of many leading works on legal style, including *Garner’s Dictionary of Legal Usage*, *The Elements of Legal Style*, *The Redbook: A Manual on Legal Style*, *The Winning Brief*, *Legal Writing in Plain English*, and *The Winning Oral Argument*. He is co-author of two books with Justice Antonin Scalia, *Reading Law: The Interpretation of Legal Texts* and *Making Your Case: The Art of Persuading Judges*. He is also the author of *Better Business Writing*, a work focused on the art of communicating in the business world, published by the *Harvard Business Review*. His latest books are *The Chicago Guide to Grammar, Usage, and Punctuation* and *The Law of Judicial Precedent*, written with 12 judicial coauthors, including Justice Neil M. Gorsuch of the United States Supreme Court.

The second half of the Practicum shall be a panel discussion of leading legal writers who will discuss best practices for lawyers on how to present the most persuasive arguments and evidence to a court or arbitration panel. Anticipated panelists include the country’s preeminent legal writing instructor, a federal judge and a leading construction lawyer. Since this program is a special event with limited seating, attendees must register for it separately.

**3:00 P.M. – 5:00 P.M.    On-Site Registration Opens**

**5:30 P.M. – 6:00 P.M.    First Time Attendee Welcome and Kickoff**



# PROGRAM SCHEDULE

## THURSDAY, JANUARY 31

7:00 A.M. – 5:00 P.M.	Registration and Exhibit Hall Open
7:30 A.M. – 8:30 A.M.	Continental Breakfast
8:15 A.M. – 8:30 A.M.	Welcome from the Chair: Opening Remarks and Announcements
8:30 A.M. – 9:45 A.M.	<b>Plenary 1</b> <b>Back to the Future: Economic Outlook &amp; Challenges in Construction</b> <p>This session will cover modern economic issues like labor shortages, changing political climate, changing climate, aging infrastructure, uncertain immigration policies, foreign unrest, and construction lending trends. Our speakers will also look at major infrastructure—America’s next big investment. What plans are there for infrastructure improvements, including funding, prioritization, private-sector involvement, technology integration, and the extent of federal influence on state and local infrastructure initiatives? This session will also focus on the impact of these events on the lawyer’s role in advising a client about how to confront the many legal issues impacted by the changes and challenges faced by the industry.</p> <p><b>Dr. Christopher F. Thornberg</b>, <i>Beacon Economics, LLC</i>   Los Angeles, CA <b>Julian Anderson</b>, <i>Rider Levett Bucknall</i>   Phoenix, AZ</p>
9:45 A.M. – 10:00 A.M.	Break
10:00 A.M. – 11:15 A.M.	<b>Plenary 2</b> <b>You Just Got a Call on a Public Project: Top 10 (plus Bonus) Tips and Traps for the Uninitiated</b> <p>Lawyers who dabble in public federal or state construction or who represent contractors who do, will learn much about top line issues that arise in public construction in this session. Learn about the Christian doctrine, obligations and laws built into the IFBs and RFPs, challenging past performance determinations, bid protests, who has “authority” to bind a public agency, how to determine if the agency has money to pay for a job, government inspection and acceptance issues, state and local rules, prompt payment issues, change orders, government duties of good faith and fair dealing, pass through claims, and much more.</p> <p><b>Paul A. Varela</b>, <i>Varela, Lee, Metz &amp; Guarino, LLP</i>   Tysons Corner, VA <b>Barbara G. Werther</b>, <i>Troutman Sanders LLP</i>   Washington, D.C. <b>Ty D. Laurie</b>, <i>Laurie &amp; Brennan LLP</i>   Chicago, IL</p>
11:15 A.M. – 11:30 A.M.	Break

# PROGRAM SCHEDULE (Thursday, January 31 continued)

## 11:30 A.M. – 12:30 P.M. **Workshop A**

### **The Subcontracting Game: From Flirting with Disaster to Happy Marriages on Public Projects**

The prime contractor/subcontractor relationship is like any relationship—bidders and potential subcontractors first must get to know each other. This panel will explore issues in the “dating” phase, such as disadvantaged business outreach requirements and preferences, and potential pitfalls in subcontractor bids. This panel also will explore greater ‘commitments’ between prime contractors and subcontractors, such as teaming agreements and obligations requiring prime contractors to use only those subcontractors identified in their bids. Finally, this panel will discuss issues where the relationship may break down, such as mistakes in subcontractor bids, remedies for non-performing subcontractors, and minimizing the damage when disputes arise.

**Aaron P. Silberman**, *Rogers Joseph O'Donnell | San Francisco, CA*  
**Jennifer L. Dauer**, *Diepenbrock Elkin Gleason LLP | Sacramento, CA*

## 11:30 A.M. – 12:30 P.M. **Workshop B**

### **Creative Collateral Claims Against Public Entities and their Agents**

Most lawyers already know that losing bidders often target the owner and winning bidder when they believe that bid criteria or due process requirements were not followed. But what about advisors to the owner, such as architects, construction managers, and owner's reps? Can they be liable to the losing bidder on theories like defamation, tortious interference, and other creative claims? This session explores theories of liability of those parties for the consequences of their advice, including a discussion of defamation and other potential claims for an architect's recommendations on bid selection.

**Kevin J. Gleeson**, *Sullivan, Ward, Asher & Patton, P.C. | Southfield, MI*  
**Mark L. McAlpine**, *McAlpine, PC | Auburn Hills, MI*  
**Jaimee L. Nardiello**, *Zetlin & De Chiara | New York, NY*

## 12:45 P.M. – 2:00 P.M. **Division Lunches**

## 2:00 P.M. – 2:15 P.M. **Break**



# PROGRAM SCHEDULE

2:15 P.M. – 3:30 P.M.	<p><b>Plenary 3</b></p> <p><b>When Federal Laws Affect Local Projects</b></p> <p>What happens when a local public works project finds itself subject to federal laws and regulations, such as the Buy America Act, Davis-Bacon Act and other prevailing wage and labor law requirements, not to mention socio-economic regulations like disadvantaged business enterprise (DBE) participation goals? Or, when additional compliance requirements are piled on top, including cybersecurity, access to records and record retention? Discover methods to ensure workforces are properly documented (such as the e-verify program). Learn about the possible consequences for noncompliance, including termination for default and debarment.</p> <p><b>Gretchen M. Ostroff</b>, <i>Vandeventer Black LLP   Norfolk, VA</i> <b>Patricia A. Meagher</b>, <i>Rogers Joseph O'Donnell, PC   San Francisco, CA</i> <b>John P. Carpenter</b>, <i>Balfour Beatty Construction   San Francisco, CA</i></p>
3:30 P.M. – 3:45 P.M.	<p><b>Break</b></p>
3:45 P.M. – 5:00 P.M.	<p><b>Workshop C</b></p> <p><b>Pay it Forward: Social Programs, Preferences, and Incentives for Federal and State Projects</b></p> <p>Learn about DBEs, MBEs, SBA (Section 8(a)) enterprises, minority set-asides, Enterprise Zones, veteran programs, “Buy American” acts, and fraud and abuse issues. This section will also touch on constitutional issues and practical issues in implementing local preferences in contracting.</p> <p><b>Rhonda K. Levinson</b>, <i>Perry &amp; Trent, LLC   Bonner Springs, KS</i> <b>Brenda K. Radmacher</b>, <i>Gordon Rees Scully Mansukhani, LLP   Los Angeles, CA</i> <b>Timothy D. Matheny</b>, <i>Peckar &amp; Abramson PC   Dallas, TX</i></p>
3:45 P.M. – 5:00 P.M.	<p><b>Workshop D</b></p> <p><b>Show Me the Money! Help Me, Help You Get Paid on Public Jobs</b></p> <p>We know we had you at “Hello.” This Workshop will examine what all practitioners must know about getting their general contractor, subcontractor, or material supplier client paid on a public project. In addition to providing a fundamental overview of public works construction remedies such as payment bond claims, this Workshop will also explore some of the more complex issues of getting paid under federal and state law, including commonly misunderstood statutory prerequisites and procedural requirements for enforcing claims, prompt payment statutes, false claims, and other issues that are often the subject of expensive litigation.</p> <p><b>Christopher E. Ng</b>, <i>Gibbs Giden   Los Angeles, CA</i> <b>Asha A. Echeverria</b>, <i>Bernstein Shur   Portland, ME</i></p>
6:30 P.M. – 8:30 P.M.	<p><b>Welcome Reception</b></p> <p><b>OUE Skyspace LA</b>   633 West 5th Street (70 stories above LA!)</p>

# PROGRAM SCHEDULE

## FRIDAY, FEBRUARY 1

**7:00 A.M. – 5:00 P.M.**      **Registration and Exhibit Hall Open**

**7:30 A.M. – 8:45 A.M.**      **Diversity Breakfast**  
**Speaker: Phillip Washington**  
Please see Mr. Washington’s biography in the Special Events section on page 9.

**9:00 A.M. – 10:00 A.M.**      **Plenary 4**  
**Federal and State False Claims Acts—Be Aware, Be Wary, Be Ready**  
Understanding the federal False Claims Act (FCA) and how it is enforced is essential for contractors and subcontractors who work on government funded projects. This session will provide background information regarding the federal FCA and similar state FCAs. Additionally, the session will address how Qui Tam cases evolve, how fraud allegations percolate, and what construction contractors and subcontractors should be aware of to avoid problems and address them when they arise. This session will also highlight frauds in Disaster Assistance programs, which typically involve both state and federal funding.  
**Lynn Patton Thompson**, *Biggs, Ingram & Solop, PLLC | Jackson, MS*  
**Claire M. Sylvia**, *Phillips & Cohen | San Francisco, CA*  
**Sam Hadley, CPA**, *Cotton & Company | Alexandria, VA*

**10:00 A.M. – 10:15 A.M.**      **Break**





# PROGRAM SCHEDULE

## 10:15 A.M. – 11:15 A.M. Plenary 5

### **Litigating Public Construction Cases: You *Can* Handle the Truth!**

Litigating claims on public projects involves different procedures and risks, including notice provisions, substantiation requirements, waivers of claims, exhaustion of administrative remedy requirements, statutes of limitations and repose, government tort claims statutes, and pass-through claims. Learn about these from experienced trial lawyers who explore the differences to expect and overcome when litigating, mediating, or trying a public construction dispute.

**Kelli E. Goss**, *Conner Gwyn Schenck PLLC* | Raleigh, NC

**L. Tyrone Holt**, *The Holt Group LLC* | Denver, CO

**James F. Butler, III**, *Smith, Currie & Hancock* | Atlanta, GA

## 11:15 A.M. – 11:30 A.M. Break

## 11:30 A.M. – 12:30 P.M. Plenary 6

### **Are Your Ethics in Jeopardy?**

Employing the Forum's most gifted actors, this session will model the popular game show *Jeopardy!* to present ethical issues in an entertaining, educational, and sometimes interactive way. This is a 'can't miss' presentation.

**Dean B. Thomson**, *Fabyanske Westra Hart & Thomson* | Minneapolis, MN

**Robert J. MacPherson**, *Gibbons P.C.* | Newark, NJ

**G. Edgar "Eddie" James**, *Polsinelli, PC* | Kansas City, MO

**Jessica R. Bogo**, *Pillsbury Winthrop Shaw Pittman LLP* | San Francisco, CA

## 12:30 P.M. – 12:40 P.M. Closing Comments and Adjourn



# SPECIAL EVENTS

## WEDNESDAY, JANUARY 30

### FIRST TIME ATTENDEE WELCOME AND KICKOFF RECEPTION

5:30 P.M. – 6:00 P.M.

This special event welcomes those attending their first Forum meeting, and welcomes back any who are attending for the first time in five or more years. Come meet other first-timers and the leadership of the Forum.



## THURSDAY, JANUARY 31

### WOMEN'S NETWORKING RECEPTION

5:00 P.M. – 6:00 P.M.

Enjoy cocktails in the Biltmore Hotel's elegant Tiffany Room, network and socialize with many of the best-known women in construction law. This reception is a great opportunity to meet colleagues and talk about how we got here, where we are, and what the future holds for women in the profession.



### WELCOME RECEPTION

6:30 P.M. – 8:30 P.M.

Come enjoy the fantastic views of Los Angeles at OUE Skyscape, 70 stories above the streets of Los Angeles, just one block from the hotel.

Feeling bold? Come and take a ride in the outside glass "slide," 1,000 feet above L.A.



## FRIDAY, FEBRUARY 1

### DIVERSITY BREAKFAST

7:30 A.M. - 8:45 A.M.

We are honored to have LA Metro CEO Phillip Washington address the Forum. As LA Metro CEO, Mr. Washington manages an annual operating budget of \$1.6 billion, is responsible for overseeing \$15 billion in capital projects, and providing oversight of an agency that transports 1.4 million boarding passengers on an average weekday, riding on a fleet of 2,000 clean-air buses and six rail lines. LA Metro also is the lead transportation, planning, and programming agency for LA County. As such, it is a major construction agency that oversees bus, rail, highway, and other mobility-related building projects – together representing the largest modern public works program in North America.

Washington was a leader in the successful effort to pass a new half-cent sales tax in LA County, which garnered 71.15% voter approval. Measure M will build 40 major highway and transit projects in its first 40 years, create 778,000 jobs through construction and various programs, and provide \$133.3 billion in economic impact.

Originally from the south side of Chicago, Washington is a 24-year veteran of the United States Army where he held the rank of Command Sergeant Major, the highest non-commissioned officer rank an enlisted person can achieve. He retired from active duty being awarded the prestigious Defense Superior Service Medal (DSSM) for exceptional service to his country.







## SPOUSE & GUEST EVENTS

**THURSDAY, JANUARY 31**

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### **SPOUSE AND GUEST BREAKFAST**

**8:30 A.M. – 10:30 A.M.**

*Limited seats available*

*Separate Ticketed Event: \$40*

In LA with a meeting attendee? This breakfast is for you! Join Forum spouses and guests for good food, networking, and conversation.

### **J. PAUL GETTY MUSEUM TOUR**

**11:30 A.M. – 4:00 P.M.**

*Separate Ticketed Event: \$65*

Enjoy the J. Paul Getty Museum's collection of European drawings, paintings, illuminated manuscripts, sculpture, and decorative arts, and American and European photographs from the 19th century to the present, as well as selections from the special collections of the Research Library at the Getty Research Institute.

**FRIDAY, FEBRUARY 1**

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### **PARAMOUNT STUDIO SECRETS TOUR**

**1:00 P.M. – 4:30 P.M.**

*Separate Ticketed Event: \$80*

Designed for all Forum members and guests, especially the movie buff. Attendees will take a guided tour behind the scenes at Paramount Studios. Guests will be chauffeured, in comfort, to numerous spots around the lot by a knowledgeable guide in a shaded tour cart.

Time to explore sound stages, the back lot, iconic Hollywood landmarks, and more! All guests will gain exclusive VIP access to the archive facilities and receive a hands-on look at props and set items from past productions.



## SPONSORS AND EXHIBITS

Visit Forum Sponsors and Exhibitors in the Exhibit Hall! The Forum Exhibits Hall brings a variety of companies together in one place with capabilities fitting the unique needs of construction lawyers. The exhibits area will be open Thursday, January 30<sup>th</sup>, 7:00 A.M.–5:00 P.M. and Friday, January 31<sup>st</sup>, 7:00 A.M.–1:00 P.M.. Thank you to all of the Forum Sponsors for their continued support of the Forum!

## HOTEL INFORMATION



The conference will be held at the Millennium Biltmore Hotel, 506 S. Grand Avenue, Los Angeles, CA 90071. Room rates start at \$249/night plus tax. The deadline for reservations is January 7, 2019 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 TO RECEIVE THE BLOCK RATE. You will receive a weblink to reserve your hotel room once you register. You will not be able to book a hotel room by calling the hotel directly unless you have a registration confirmation number.





# CONFERENCE INFORMATION

**HOUSING:** You must register for the conference prior to making your hotel reservation. The conference will be held at the Millennium Biltmore Hotel, 506 S. Grand Avenue, Los Angeles, CA 90071. To reserve a hotel room call the hotel directly Monday-Friday 9AM- 5PM (PDT) to (213) 612-1575 to book through hotel reservations directly by mentioning American Bar Association/ Forum on Construction Law 2019 Mid-Winter Meeting block. The deadline for reservations is January 7, 2019 5:00 pm (CST) or before if the block is exhausted. Room rates start at: \$249/night (plus tax). **Please reference the ABA Forum on Construction Law 2019 Midwinter Meeting.**

**TRAVEL:** Airfare and car rental discounts for ABA meetings are available through Egencia and Hertz. Go to [www.americanbar.org/membership/aba\\_advantage\\_discounts.html](http://www.americanbar.org/membership/aba_advantage_discounts.html) for more information.

**PROGRAM REGISTRATION:** Online at [ambar.org/FCLMID19](http://ambar.org/FCLMID19) or complete and return the attached registration form with your payment before January 7, 2019. 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. Registrations cannot be processed without payment. If you do not receive a written confirmation by January 10th, please call the ABA at 800-285-2221 to verify that your registration form and payment were received.

**ON SITE REGISTRATION:** Onsite registration is available for those persons who miss the registration deadline. If you plan to register at the door, you must email [Patricia.Harris@americanbar.org](mailto:Patricia.Harris@americanbar.org) 72 hours before the conference to confirm that space is still available. No cash payments are accepted.

**SCHOLARSHIP:** Scholarships may be available for a limited time. Attorneys who qualify will receive up to 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.

**CANCELLATION POLICY:** No refunds will be granted for cancellations received after January 7, 2019. 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).

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**MEMBERSHIP:** To join the Forum for \$60 go to [ambar.org/constructionlaw](http://ambar.org/constructionlaw).

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**AMERICANS WITH DISABILITIES ACT:** If special arrangements are required for disabled individuals to attend this program, please contact the Forum in writing by January 1, 2019 at the American Bar Association, 321 N. Clark Street, Chicago, Illinois 60654. Fax: 312-988-5677. Email [Tamara.Harrington@americanbar.org](mailto:Tamara.Harrington@americanbar.org).

**QUESTIONS:** If you have questions or require additional conference information, please call 312-988-5674 or email [Tamara.Harrington@americanbar.org](mailto:Tamara.Harrington@americanbar.org).



# PROGRAM REGISTRATION



2019  
MidWinter Meeting  
ABA Forum on  
Construction Law

**PUBLIC  
CONSTRUCTION  
PROJECTS:**  
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## Four Ways to Register



Online at **ambar.org/FCLMID19**



Fax your form to **(312) 988-5850**



Call **1.800.285.2221**



Mail the completed registration form to the  
**American Bar Association**  
**Attention: Service Center - Meeting/Event Registration CI0119**  
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NAME AS YOU WISH IT TO APPEAR ON ATTENDEE LIST AND NAME BADGE		ABA MEMBER ID#
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## REGISTRATION CATEGORY

	Early Bird (before 12/27/2018)	Regular Price (after 12/27/2018)
Non-ABA Member	<input type="checkbox"/> \$800	<input type="checkbox"/> \$880
ABA Member	<input type="checkbox"/> \$700	<input type="checkbox"/> \$760
Forum Member	<input type="checkbox"/> \$580	<input type="checkbox"/> \$640
First Time Attendee, New Member, and YLD (Email for Discount.)	<input type="checkbox"/> \$490	<input type="checkbox"/> \$540
In-House/Government/Academic (Special Rate)	<input type="checkbox"/> \$460	<input type="checkbox"/> \$520
Past Forum Governing Committee (Email for Discount.)	<input type="checkbox"/> \$385	<input type="checkbox"/> \$445
Law Student	<input type="checkbox"/> \$65	<input type="checkbox"/> \$65
Practicum Only	<input type="checkbox"/> \$325	<input type="checkbox"/> \$450
Practicum Rate for Conference attendees	<input type="checkbox"/> \$200	<input type="checkbox"/> \$250
Welcome Reception (Guest Tickets)	<input type="checkbox"/> \$65	<input type="checkbox"/> \$65
Paramount Secrets Studio Tour	<input type="checkbox"/> \$80	<input type="checkbox"/> \$80
Guest and Spouses Breakfast	<input type="checkbox"/> \$40	<input type="checkbox"/> \$40
Guest Tour - Getty Museum Tour	<input type="checkbox"/> \$65	<input type="checkbox"/> \$65

☐ Materials Only (I will not be attending and wish to order program materials.) \$150.00

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ABA FORUM ON CONSTRUCTION LAW

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**2019 Fall Meeting**

October 23-25, 2019  
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