



UC Hastings College of the Law
San Francisco, CA
October 22, 2022

Introduction

The conference, to be held on campus and virtually on October 2022, is the first in what will be an annual event addressing Complex Litigation Ethics. It will bring together luminaries in the field—judges, scholars, lawyers, and others—to discuss a cutting-edge topic that is of critical importance to our justice system.

Importance of the Topic

Data suggest that about half of all cases filed in federal court are part of multidistrict litigation (MDL) proceedings or involve proposed class actions. Yet scant scholarly attention has been paid to the ways in which ethical rules, which are typically designed for traditional litigation, should be adapted and applied to MDLs and class actions. The Complex Litigation Ethics Conference will address these important and timely issues.

About the Organizers

The Conference is being primarily organized by Professor [Joshua P. Davis](#), a Research Professor at U.C. Hastings College of the Law associated with its Center for Litigation and Courts. He is collaborating on this project with Professor [Scott Dodson](#), the James Edgar Hervey Chair in Litigation, the Geoffrey C. Hazard Jr. Distinguished Professor of Law, and the founding [Director of the Center for Litigation and Courts](#). Both have extensive academic knowledge and practical experience with complex-litigation ethics and in organizing academic conferences. Huntington National Bank is co-sponsoring the Complex Litigation Ethics Conference. Organizational and directional authority, however, resides with Professors Davis and Dodson.

To assist with ideas and the recruiting of speakers, the organizers have assembled a diverse, all-star Advisory Board for the conference composed of the following:

- [Hon. Yvonne Gonzalez Rogers](#), District Judge, N.D. Cal.
- [Prof. Myriam Gilles](#), Cardozo Law School
- [Prof. Brad Wendel](#), Cornell Law School
- [Sarah Ray](#), Partner, Latham & Watkins LLP
- [Eric Cramer](#), Chairman, Berger Montague PC
- [Nina Gliozzo](#), Associate, Girard Sharp LLP (and former Executive Symposium Editor of *Hastings Law Journal*)

Agenda

8:15-8:45 am: Continental Breakfast and Coffee

8:45-9:00am: Welcome and Opening Remarks

Scott Dodson, Director, Center for Litigation and Courts
Chris Ritchie, Executive Managing Director, Huntington Bank
Joshua P. Davis, Research Professor, UC Hastings College of the Law

9:00-10:30am: Panel 1: Adapting Ethics to Complex Litigation

Are the existing ethical rules up to the challenges of complex litigation? With what kinds of modifications? And do courts even have authority to incorporate ethical rules into complex litigation? Some courts claim to derive their authority from their inherent powers. Others base them on a conflict—or at least tension—between Federal Rule of Civil Procedure 23 and the local rule through which most federal courts adopt the ethical rules of the state in which they are located. Yet other court seem to believe they are bound to apply the ethical rules mechanically to class actions and other complex litigation. Which approach courts take to these and related issues can have profound effects on how judges and lawyers conduct themselves, including whether plaintiffs’ counsel and defense counsel can communicate with absent class members and whether conflicts of interest disqualify class counsel when they disagree with the named plaintiffs about whether to accept a settlement.

Presenters:

Lynn Baker (Univ. of Texas)
Joshua P. Davis (Hastings)
Lauren Godshall (Tulane)
Jocelyn Larkin (Impact Fund)
Roger Michalski (Oklahoma)

10:30-10:45am: Break

10:45-12:15pm: Panel 2: Ethics in Funding Complex Litigation

Plaintiffs in complex litigation recover tens of billions of dollars each year. The attorneys representing them are paid hundreds of millions of dollars. Only recently have courts begun to address a large and growing source of capital to pursue this litigation: private funders. They can take various forms. Some of them provide lines of credit to plaintiffs’ law firms. Others provide loans secured only by individual cases, often as part of a portfolio. Yet others may provide a loan to clients directly. These arrangements themselves likely involve hundreds of millions of dollars each year, although the precise amount is unknown. Related ethical issues include whether law firms are sharing their fees with non-attorneys, whether they are improperly ceding control of litigation to non-attorneys, and whether they are following the ethical rules for receiving compensation for their services from non-clients.

Presenters:

Jiamie Chen (Parabellum Capital)
Brent Landau (Hausfeld)
Maya Steinitz (University of Iowa)

Steve Weisbrot (Angeion Group)
W. Bradley Wendel (Cornell Law School)

12:15-1:15pm: Lunch and Presentation of the Annual Complex Litigation Ethics Award

1:15-2:30pm: Panel 3: Diversity, Equity, and Inclusivity in Complex Litigation

This panel involves diversity, equity, and inclusivity (DEI). Courts and commentators have noted that the same law firms and lawyers seem to represent plaintiffs and proposed classes in litigation. That pattern is understandable to an extent. Lawyers need capital and experience to serve their clients' interests effectively. But the pattern also can perpetuate a history of systemic bias, including against women and people of color. Plaintiffs' lawyers and courts may have an ethical duty to balance these and other competing considerations to improve diversity, equity, and inclusivity in the practice of complex litigation.

Presenters:

Eric L. Cramer (Berger Montague PC)
Joshua P. Davis (Hastings)
Brooke Hodge (Postlethwaite & Netterville)
Melissa Mortazavi (Oklahoma)
Dubravka Tasic (Berkeley Research Group)
Sarah Ray (Latham)

2:30-2:45pm: Break

2:45-4:15pm: Panel 4: Communications with Absent Class Members

Before class certification, putative class members have no attorney-client relationship with counsel. When, and under what conditions, can class counsel, the defendant, or defense counsel communicate with such class members? How does that relationship change after certification? What if the class members and the defendant have an ongoing business relationship, such as an employee-employer relationship or a customer/consumer-business relationship? Could, for example, a business served with a putative class-action lawsuit brought by customers require its customers to agree to a no-class arbitration agreement?

Presenters:

Candice Enders (Berger Montague PC)
Angel Garganta (Venable)
Myriam Gilles (Cardozo)
Alexandra Lahav (Cornell)
Eli Wald (Denver)

4:15-4:30pm: Concluding Remarks

Chris Ritchie, Executive Managing Director, Huntington Bank
Joshua P. Davis, Research Professor, UC Hastings College of the Law

Pre-recorded Content Are Third-Party Filers Helpful or Hurtful?

While class actions are subject to scrutiny by judges, academics, journalists, and politicians, little attention has been paid to so-called “third-party filers.” Their business model is based on assisting class members in obtaining recoveries from class action settlements. At their best, they can help parties, courts, and class members at ensuring that class action settlement funds reach their intended recipients more effectively and efficiently than might otherwise be practical. At their worst, they can encumber the claims administration process, promote illegitimate claims, delay the distribution of funds, mislead class members, and extract money while providing little or no value. This panel will discuss what third-party filers do, the ways in which they can potentially be helpful or harmful, how they tend to operate in practice, and best practices for class action lawyers, courts, and third-party filers.

Presenters:

Joshua P. Davis (Hastings)

Gary Smith, Jr (Hausfeld)

Kendall Zylstra (Rust Consulting)