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## THE PRESIDENT'S PERSPECTIVE

These are difficult times. Incivility in public discourse has become the new norm. As labor and employment lawyers, we are not insulated from the effects of this pervasive incivility. It threatens to affect our professional lives. It also makes the College's mission more important than it has ever been. Since its founding, a fundamental part of the College's mission has been to: "establish, by example, the standards of professionalism and civility for the practice of labor and employment law." In 2006, the Board of Governors approved our "Principles of Civility and Professionalism for Advocates." Promoting these principles has been at the heart of our College's role in the labor and employment law community. In the face of pervasive incivility in public discourse, the job of promoting civility among Fellows has become more challenging. Here is what the College is doing.



Under the leadership of Board of Governors members and co-chairs [Lisa Moss](#) and [Arlene Steinfield](#), we have begun a strategic planning initiative. The Strategic Planning Committee, made up of Board of Governors members and volunteer Fellows from each of our constituencies, had its first meeting on January 22nd. The FMCS generously lent us their top facilitator, Javier Ramirez, who was assisted by Ted Bantle. With their help, we brainstormed all day, identifying ways for the College to become more valuable to Fellows, looking at our role in promoting civility, examining the state of our video history project, and considering new initiatives. At the end of the meeting, we established five working groups that will report in March. The committee will meet with our facilitators again in June to continue refining short and long term goals consistent with our mission. We will put together an action plan that involves both Board activities and activities for Fellows in all Circuits. By the end of the year we hope the Committee will present the new strategic plan to the Board of Governors for approval. Once it is approved, we will be reaching out to Fellows for their help in making the plan a reality.

We also need your help right now. Promoting civility can sound like your Mom reminding you to eat your vegetables because they are good for you. We need your stories about how civility made a difference in your practice. How did treating your opponent with respect and empathy facilitate resolving a specific dispute? How did you save a client time and money by dealing civilly with your opponent? We would like to publish these stories for Fellows and use them for examples as we promote civility in different forums. Let me start the ball rolling.

I was mediating a case involving beer distribution and a twenty four year old man – a relatively new employee – who had been fired for sleeping on the job. He was a helper on a beer truck and was seen sleeping in the truck after loading or unloading cases of beer. He was warned and ultimately fired. A few weeks later, he collapsed and was taken to the emergency room. He had near total kidney failure. He started dialysis and was put on the kidney transplant roster. He wanted his job back. The employer did not attack the plaintiff's case. Instead, in caucus it expressed genuine concern about whether tossing 1500 cases of beer a day was a job a man with his condition wanted. In caucus, I asked the man about his ideal job. He had always wanted to drive a school bus, but he feared he could not pass the written test for the license. He had heard there were schools that prepared you for the test, but he could not afford one. We found a school; the employer paid tuition and living expenses, plus a bit. Because the employer was empathetic rather than confrontational, plaintiff got a chance at the job he really wanted, and the employer made a deal that avoided potential future problems. Civility worked.

Send me your stories.

*Norman Brand*  
*President*

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## MEET THE 2017 BOARD OF GOVERNORS

**Cynthia Nance** and **Lori Ecker** are the newest members of the Board of Governors. Cynthia is Dean Emeritus and the Nathan G. Gordon Professor at the University of Arkansas School of Law and serves as the law school's Director of Pro Bono and Community Engagement. She teaches Labor Law, Employment Law, Workplace Legislation and Poverty Law. Lori represents employees in cases arising under local, state, and federal antidiscrimination laws and in matters involving the Family and Medical Leave Act, non-compete agreements, severance agreements, employment contracts, and employment torts. Her practice is based in Chicago. Members of the Board of Governors, which consists of sixteen Fellows representing all four disciplines, serve two three-year terms.

On January 1st, **Norman Brand** became the twenty first President to serve the College. **Lynne Deitch**, **John Runyan** and **David Borgen** assumed the three other slate positions – Vice President, Secretary and Treasurer, respectively. Profiles of all Board Members can be found on the College's [website](#) and contact information can be found in the front of your directory. We hope this will make it easier to contact any of them should you have a question or concern.

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## WEBSITE ACCESSIBILITY CLAIMS ON THE RISE

One of the many benefits of being a member of The College of Labor and Employment Lawyers is the opportunity to attend our Annual Conferences where we discuss cutting-edge legal issues that affect our clients. As predicted by our panel at the 2016 Eleventh Circuit Fourth Annual Conference, claims against companies and the government under Title II and III of the ADA attacking the accessibility of websites are on the rise. The Wall Street Journal cited that since 2015, 240 nationwide businesses have been sued for inaccessible websites under Title III of the ADA. Sara Randazzo, *Companies Face Lawsuits Over Website Accessibility For Blind Users*, The Wall Street Journal, Nov. 1, 2016 at <https://www.wsj.com/articles/companies-face-lawsuits-over-website-accessibility-for-blind-users-1478005201>. The Department of Justice has been and continues to focus its enforcement efforts on this accessibility issue and has increased its litigation of these claims. Most recently, in December 2016, the Department of Justice filed a Statement of Interest in the case of *Juan Carlos Gil v. Winn-Dixie Stores, Inc.* pending in the U.S. District Court of the Southern District of Florida. Specifically, the DOJ clarified its position that websites of places of public accommodations, such as grocery stores, must be accessible to people who are blind, unless the place of public accommodation can demonstrate that doing so would result in a fundamental alteration or undue burden. *See Gil v. Winn-Dixie Stores, Inc.*, Case No. 16-cv-23020-RNS, Dkt. 23, p. 2 (S.D. Fla., Dec. 12, 2016). In that case, the plaintiff, a blind customer of Winn-Dixie Stores, a chain of grocery stores and pharmacy, alleged that the goods and services Winn-Dixie Stores provided through its website were inaccessible to him and others who are blind in violation of Title III.

As it stands, there are two prominent lines of decisions addressing the applicability of Title III of the ADA to web technology: (1) courts holding that places of public accommodation are limited to physical locations and that Title III requires a nexus between an actual physical structure and the goods, services, or privileges provided via web technologies; and (2) courts holding that places of public accommodation are not limited to physical locations and, thus, there need not be any nexus to a physical structure. (See attached article published in *The Florida Bar Journal* by Cynthia N. Sass and Benjamin Briggs.) In the article, we reached the conclusion that the Eleventh Circuit adopted the nexus theory. Upon further study of the case law and review of the respective pleadings filed in the recent case against Winn-Dixie, it appears that the Eleventh Circuit has not yet determined what theory of liability it will adopt. See *Access Now Inc., v. Southwest Airlines Co.*, 385 F.3d 1324 (11th Cir. 2004) (recognizing that the issue of website accessibility is of substantial public importance and one of first impression in the circuit but declining to decide the issue in this case because it was abandoned on appeal).

Although the case law is unsettled at this time, businesses who face these types of claims need to weigh the costs in bad publicity and litigation expenses in fighting these types of claims. As practitioners, we can help our business clients by alerting them to this issue so they obtain assistance from their technology teams to make accessibility solutions prior to receiving threats of suit or suits being filed against them. Another point of this article is that our conferences are worth attending so you can learn about these cutting-edge issues and hang out with a bunch of really great fellows!

The complete article is available to read or download [here](#).

This article by Fellow [Cynthia Sass](#) and Ben Briggs is reprinted with permission by *The Florida Bar Journal*.

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## 5<sup>TH</sup> CIRCUIT REGIONAL PROGRAM

The 5th Circuit Regional Committee will hold this year's regional program at the beautiful Omni Riverfront Hotel in New Orleans, starting Saturday April 1, 2017. We will again host a two-part program – Saturday afternoon from 1:15 to 5:30 pm and Sunday morning from 9 to 10:30 am.

Confirmed speakers include Jon Hiatt (AFL-CIO) and Randal Johnson (US Chamber of Commerce) who will give us a legislative update on what to watch for in the first 100 days and beyond of the new administration; Will Hill Tankersley (Balch & Bingham) will discuss current IP “lassos and daggers” relevant to employment lawyers, including the 2016 federal Defend Trade Secrets Act; and the hot topic of pay equity will be covered by economist Paul White, Andrew Kingsley (EEOC) and Ogletree Deakins partner Liz Washko.

Following the Saturday program, guests are invited to attend a cocktail party at the home of Fellow **Lynne Stern**. Sunday morning will include breakfast and an open forum discussion of “It’s Your CLEL: What Should It Be?”

The Omni Riverfront is offering a rate of \$189 for your stay, but the room block will expire on **March 10, 2017**, so book your room now by calling 800-THE-OMNI and reference the College of Labor & Employment Lawyers or register using the link below.

<https://www.omnihotels.com/hotels/new-orleans-riverfront/meetings/regional-meeting>

Please complete the registration form in the [attached invitation](#) and return it to Jen Motley with payment. Fellows are encouraged to invite colleagues or younger associates.

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## 11<sup>TH</sup> CIRCUIT REGIONAL PROGRAM

The 11th Circuit Regional Programming Committee hosted its sixth annual program on January 21st at the beautiful Biltmore Hotel in Coral Gables. Over fifty Fellows from the 11th Circuit, surrounding states, as well as members of the Board of Governors enjoyed not only a stellar program on Saturday morning, but also a great night of casual dining and socializing on Friday evening at the Coral Gables home of Richard and Luba DeWitt. World travelers and art collectors, the DeWitts’ home provided not only a tropical setting for a relaxing evening of food, fun and sing-alongs, but was also a gallery of art and artifacts from around the world. It was a perfect way to kick off the 11th Circuit program weekend.

The Saturday morning program included three important topics. The legislative panel featured a lively conversation between Marc Freedman, Executive Director of Labor Law Policy at the US Chamber of Commerce, and Tom Trotter, Government Affairs Representative from the AFL-CIO. Gender Pay Equity was the topic of the second panel. Fellows Leslie Dent and Adam Klein were joined by labor economist J. Michael Dumond, in an energetic discussion concerning the 2016 EEOC and OFCCP pay equality initiatives and gender pay discrimination as the next wave of class action litigation. Finally, Scott Kamber from New York City, discussed cyber security and the employer’s liability. Everyone enjoyed beautiful weather and a leisurely lunch on the terrace afterwards.

A program agenda and materials from this program can be found on the College's [website](#).







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## NAA REGIONAL CONFERENCE

Registration is now open for the The National Academy of Arbitrators, Northern California Region's highly anticipated **MEET THE LABOR ARBITRATORS CONFERENCE!**

Date: Thursday, March 30, 2017, 8:00 am - 4:30 pm

Place: Elihu Harris State Building, 1515 Clay Street, Oakland, CA

Registration Fee: \$100 per participant (includes continental breakfast and lunch, printed program materials).

Free with registration: *CPER's Pocket Guide to Just Cause: Discipline and Discharge Arbitration*

See the [attached brochure](#) for mail and email registration options.

Featured speaker will be Professor Clark Freshman (Hastings College of Law) on "Implicit Bias, Culture and Credibility." The Program also includes plenary sessions followed by small discussion groups with active Northern California Arbitrators on:



- Toil and Trouble: Disciplining the Troubled Employee
- Understanding the Different Uses of Past Practice
- New Electronic Frontiers in the Workplace

This is an extraordinary opportunity to engage in interactive discussions in small groups with local arbitrators. Throughout the course of the day, participating arbitrators rotate among the small group discussions, maximizing your chance to "meet the arbitrator." The informal nature of the small group discussions encourages arbitrators to tell you what they really think about substantive and procedural issues, and you will leave the program with a better understanding of how to present a winning case in arbitration.

Approved by California State Bar for 5 hours of MCLE Credit, including 1 hour "elimination of bias" credit.

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## SPOTLIGHT ON FELLOWS

- Fellow **Paulette Brown** has been selected by the Boston Bar Association to receive the **Beacon Award for Diversity and Inclusion** for her efforts to increase diversity in the legal profession.
- Fellow **William B. Cowen** has been named the new Regional Director for the National Labor Relations Board's Region 21 Office in Los Angeles.
- Fellow **Philip A. Miscimarra** (photo right) was named Acting Chairman of the National Labor Relations Board by President Donald J. Trump.
- Congratulations to Fellow **Stephen M. Murphy** who was recently appointed to a judgeship in the San Francisco County Superior Court by California Governor Edmund G. Brown Jr.
- Fellow **Cynthia Nance** was selected by the U.S. Commission on Civil Rights as one of five University of Arkansas faculty members to serve on its Arkansas Advisory Committee.
- Fellow **Jay D. Roth** (photo right) was selected by The Directors Guild of America as the recipient of its **Presidents Award** for service to the Guild.
- Fellow **Don Slesnick** was installed as the Orange Bowl



Committee's 79th President and Chair. He will oversee the Committee's continued commitment to the South Florida community, including a full slate of events, highlighted by the 84th Capital One Orange Bowl on December 30, 2017.

- Fellow **Kenneth G. Standard** (photo right) received a 2017 **Spirit of Excellence Award** from the ABA Commission on Racial and Ethnic Diversity in the Profession during an award ceremony luncheon on February 4 at the ABA Midyear Meeting in Miami.



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## IN MEMORIAM

The College mourns the recent passing of the following Fellows.

**Francis Dee**, a well-respected trial attorney, passed away suddenly on December 14, 2016. Recognized for his passion of the law, Mr. Dee was elected a Fellow in 1997. He was the recipient of numerous awards and professional accolades, including the 2006 **Trial Bar Award** given by the Trial Attorneys of New Jersey and he was named by *Human Resource Executive Magazine* as one of the country's most powerful employment attorneys. In 2014, the same magazine inducted him into their Hall of Fame. [Click here](#) for a link to his obituary.

Nationally renowned Canadian labour lawyer **Roy Heenan** passed away on February 3, 2017. A member of the inaugural class of Fellows in 1996, and the College's first Canadian Fellow, Mr. Heenan was co-founder of Heenan Blaikie, a powerhouse in Canada's political landscape for forty years. He also served as Officer of the Order of Canada and was Chairman Emeritus of the Trudeau Foundation. [Click here](#) for a link to his obituary.

**Penny Nathan Kahan** passed away on January 31, 2017 after a long battle with ovarian cancer. Inducted as a Fellow in the Class of 2000, her career focused on helping people who suffered from discrimination in the workplace. A mentor to many, she was a co-founder of NELA, a Fellow of the American Bar Foundation and in 2008, recognized as one of the "Top Ten Women Lawyers" in Illinois representing individual consumers of legal services. [Click here](#) for a link to her obituary.

Inducted as a Fellow in 1998, **Richard Laner** passed away on January 14th at the age of 83 after suffering a heart attack while playing his favorite sport, handball. He was name part at Chicago's Laner Muchin Ltd. and played a major role in negotiating the Illinois Public Labor Relation Act in 1983 while serving as special labor counsel to then Chicago Mayor Harold Washington. Mr. Laner also served on the 7th Circuit Credentials Committee for many years, including service as the chair in 2013 and 2014. [Click here](#) for a link to his



obituary.

**Margaret Shaw**, considered a pioneer in alternative dispute resolution, died unexpectedly on February 2, 2017. Inducted into the College as a Fellow in 2003, Ms. Shaw was a successful lawyer who saw that there was a benefit in resolving disputes, thereby avoiding costly and lengthy trials. This ultimately led to the founding of ADR Associates. [Click here](#) for a link to her obituary.

A proud member of the College, **Kent Vana** was inducted as a Fellow in the Class of 1997. He passed away on December 31, 2016 after a law career spanning fifty-four years, all of which were as a member of the law firm of Varnum Riddering Schmidt & Howlett in Grand Rapids. He served on the Michigan Attorney Grievance Commission from 2006 to 2011 after an appointment by the Michigan Supreme Court. [Click here](#) for a link to his obituary.

**Dwight Vincent** was inducted as a Fellow into the College in 1997. He specialized in labor law and practiced in Detroit over the course of his career. He served as chair of the labor law group at Clark Hill PLC at the time of his retirement from full-time practice in 1995. Mr. Vincent passed away on October 22, 2016. [Click here](#) for a link to his obituary.

Members of the College strive to promote achievement, advancement and excellence in the practice of labor and employment law. These men and women distinguished themselves as leaders in the field, and the College was proud to have been able to call them Fellows. Our thoughts are with their family and friends.

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