

***2017 Fall ADA Conference - Announcement***

**Celebrating the Association's 25<sup>th</sup> Anniversary**

**Co-host – City of San Diego, California**

***“A Steady Hand in Uncertain Times”***

**October 23-26, 2017**

**San Diego, California**

***Current case law, best practices, policy examples, and reasonable solutions  
to trending and complex ADA situations. Updated Free ADA library on USB drive at conference.  
The Spring 2017 conference was rated outstanding by the participants' on their evaluations.***

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***“NAADAC has provided the most comprehensive and informative sessions in my 25 years of professional development experiences. I will continue to attend . . . as well as refer NAADAC as the best resource for ADA training! +504 + 508 etc.” James W.; Major University, Texas***

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For 25 years the National Association of ADA Coordinators has brought ADA coordinators together, providing a forum for the most up-to-date information on ADA issues and enforcement. Through different administrations, Republican and Democratic, from George H.W. Bush to Bill Clinton to George W. Bush to Barack Obama, NAADAC has been your guide to the ADA.

Now, as it celebrates its silver anniversary, NAADAC continues its role.

The Administration of Donald Trump is working to fill over 4,000 positions in the Federal government. So far rumors and uncertainty abound about how it will fulfill its ADA responsibilities. Will there be a new approach to ADA enforcement? Will there be new regulations or changes to existing rules? Amid the uncertainty and the tumult, you can turn to NAADAC and its faculty of nationally recognized experts for practical, understandable guidance. So, join us for our Fall Conference in San Diego in October, and you'll find that NAADAC will be “A Steady Hand in Uncertain Times.”

**John Wodatch, Association President**

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***“This is the gold standard for ADA Conferences.” Donna K.; Major University - Connecticut***

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***“This conference has the BEST presenters of all the conferences I attend regularly, really a dream team.”  
Marji M.; Major Airline - Houston, Texas***

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The Fall 2017 National Conference Scheduled Faculty includes:

*ADA attorneys, ADA architects, ADA Coordinators and  
Section 504 Compliance Officers, ADA Web Experts, and Medical Professionals*

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Confirmed Conference Faculty for the tracks include:

**Access, Services, and Design Track**

**John Wodatch, J.D.; Irene Bowen, J.D.; Dean Perkins, R.A.; Jim Terry, AIA,  
Rachel M. Weisberg, J.D. ; DOJ - Anne Raish, J.D.**

**Employment Track**

**Christopher Kuczynski, J.D., LL.M. (EEOC); Mary Jo O'Neill, J.D. (EEOC); Brian Nelson, J.D.  
Allison Nichol, J.D., Nicole St. Germain (EEOC)**

**Higher Education Track**

**Paul Grossman, J.D.; Melissa Frost, J.D.; Howard Kallem, J.D., Jim Long, J.D.**

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*Other conference sessions planned on **Law Enforcement**, **Transportation and Transit**,  
**Emergency Preparedness**, and **Web Site Accessibility/Design Issues***

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See full conference agenda, and faculty bios on Association web site.

Web Site - [www.adacoordinators.org](http://www.adacoordinators.org)

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**CONFERENCE EVENING EVENTS FOR YOUR FUN AND PLEASURE**

There is an **Association President's Reception** on **Tuesday evening** with snacks and refreshments. This is an opportunity to meet the speakers and our Board of Directors, and to network with new ADA friends in a relaxed atmosphere.

On **Wednesday evening** is our "**Association's Got Talent**" event. Back by popular demand from the past eight conferences is the **Karaoke Challenge**. Come join the fun after an informative and busy day at the conference. Be entertained by our great singers. Donated cash prizes will be awarded to three individuals, duos, and/or groups. Free refreshments available - soft drinks, beer, and wine.

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**CONFERENCE LOCATION AND HOTEL**

The conference is being held at the **Sheraton Mission Valley San Diego, 1433 Camino Del Rio South, San Diego, CA 92108**. A complimentary shuttle provided from/to San Diego International Airport and within three miles of the hotel. Hotel day-time conference self-parking and guestroom Internet are complimentary. **Participant is responsible for making own lodging reservation. Credit card guarantee is required.** The Association has negotiated a special conference rate from three days before/after the conference at a per

room rate of \$158.00 per night, plus taxes (single/double) if reserved by **9/28/17**, provided room block has not been sold out. To make lodging reservations call the hotel 619-260-0111 and mention you are attending the National Association of ADA Coordinators conference.

The hotel is also within walking distance of two shopping malls and a station for the San Diego Trolley System.

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### ***INFORMATION FOR NON-ASSOCIATES***

If you are not an Associate, now is the time to become an Individual, Professional (P.A.), or Organizational Associate. More detailed information is available on our web site at [www.adacoordinators.org](http://www.adacoordinators.org).

If you join when registering for this conference you can register at Associate registration rate on the conference registration form.

Associates received an additional email discount offer, worth at least \$250, off this 2017 Fall Conference Associate registration rate.

The Associates' Version of this Newsletter contains an additional **13** emailed pages on ADA case law and other information.

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### ***UPDATE OF OUR PROFESSIONAL ASSOCIATES (P.A.) PROGRAM***

We recognized 4 new P.A.s at the Spring 2017 conference and another 6 completed their P.A. requirements at the Spring conference. There are over 150 Associates in various phases of completing the PA program.

See our website at: [www.adacoordinators.org](http://www.adacoordinators.org) for more information on the Association's Professional Associate program.

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***Save money - register as soon as possible***

***Fall 2017 ADA National conference  
October 23-26, 2017  
San Diego, CA***

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## **ADA ARTICLES OF INTEREST**

*(Articles for information purposes only and are not to be considered as legal advice.)*

***Fall ADA Conference, October 23-26, 2017, to cover these and other ADA important ADA issues.***

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### **FEDERAL COURT RULES HAVING AN INACCESSIBLE WEBSITE VIOLATES TITLE III OF THE ADA**

Florida Federal District Court Judge Robert Scola presided over the first trial in the history of the ADA about an allegedly inaccessible website. Recently, Judge Scola issued a “Verdict and Order” finding that defendant violated Title III of the ADA by having a website that was not useable by plaintiff to download coupons, order prescriptions, and find store locations. The defendant is a person who is blind and uses screen reader software to access websites. Judge Scola ordered injunctive relief, including a draft three-year injunction and awarded plaintiff attorneys’ fees and costs. ***(Juan Carlos Gil v. Winn-Dixie Stores, Inc., U. S. District Court of the Southern District of Florida, Case No. 16-23020).***

Although the decision is not binding on any other federal courts or judges – not even in the same judicial district – it is significant.

It is the first decision to hold, after a full trial, that a public accommodation violated Title III of ADA by having an inaccessible website. To the extent that businesses consider whether to settle or litigate these cases, the decision makes the possibility of an adverse verdict much more real.

The draft injunction adopts the Web Content Accessibility Guidelines (WCAG) 2.0 as the accessibility standard that defendant must meet in making website accessible.

WCAG 2.0 AA is a set of guidelines developed by a private group of accessibility experts and has not been adopted as the legal standard for public accommodation websites, although it has been incorporated into many consent decrees, settlement agreements, and is the standard **the Department of Justice referenced in the Title II rulemaking process**. The court’s adoption of this set of guidelines seems to make WCAG 2.0 AA the de facto criterion for website accessibility.

The court did not consider the \$250,000 cost of making the website accessible to be an undue burden. The court said this cost “pales in comparison to the \$2 million [the defendant] spent in 2015 to open the website and the \$7 million it spent in 2016 to remake the website for the Plenti program.”

Commenting on an issue causing many businesses concern, the court held defendant responsible for the entire website’s lack of accessibility even though parts of the website are operated by third party vendors. It stated: “[M]any, if not most, of the third party vendors may already be accessible to the disabled and, if not, [defendant] has a legal obligation to require them to be accessible if

they choose to operate within the [defendant's] website.”

In the absence of any regulations setting forth the requirements for a website accessibility program, the injunction for this case, when finalized, will provide a judicially-approved framework for such a web accessible program for those that want to review one.

***[Note to Associates' of the National Association of ADA Coordinators - You will find a draft of the injunction in the Associates' Addendum of this newsletter.]***

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### **DECISIONS BASED UPON PERCEPTIONS OF DISABILITY VIOLATES THE ADA**

A company was just sued by the EEOC under the ADA for, as one EEOC official said, “Making employment decisions based on perceptions of disability [which] clearly violates federal civil rights law.”

Why was employee fired? As the EEOC said, the company “regarded [employee] as disabled based on its unfounded fears and beliefs about Ebola in Ghana and the risk that [employee] would contract Ebola on employee trip.”

An EEOC regional attorney, in discussing the ADA, noted that “Congress sought to protect people from being discriminated against based on unsubstantiated fears, myths, and unfounded stereotypes about actual or perceived disabilities. The employer conduct which the EEOC found in this case flouts the fundamental purpose of that very important law.”

As the Association has pointed out in numerous conference workshops, the ADA prohibits employment discrimination based on myths and stereotypes about people with disabilities or perceived to have disabilities. ***More importantly, the EEOC is targeting these cases.***

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### **12 MONTHS OF ADDITIONAL ADA LEAVE NOT REASONABLE - FIRST CIRCUIT SAYS**

A federal appellate court recently ruled that an employee's request for 12 months of additional medical leave was not reasonable, and thereby upheld the dismissal of her Americans with Disabilities Act (ADA) lawsuit against her former employer.

The 1st Circuit Court of Appeals, which hears federal cases from Massachusetts, Maine, New Hampshire, and Puerto Rico, first ruled that Plaintiff's request for additional leave was not reasonable under the ADA.

The court said that it had to decide whether the requested accommodation was feasible – or “facially reasonable” – for the employer under the circumstances. The court said it was not. “The sheer length of the delay,” it said while examining the request for 12 months of leave on top of the 5-month leave already provided to Plaintiff, “jumps off the page.” The court pointed out how the employer would be faced with obvious burdens given such a long absence, “not the least of which entails somehow covering the absent employee's job responsibilities during the employee's extended leave.”

The court then examined cases from various jurisdictions which rejected reasonable

accommodation requests for leaves spanning anywhere between two months and nine months, concluding that 12 months was just too long. It pointed out a 10th Circuit case from 2014 stated, “It perhaps goes without saying that an employee who isn’t capable of working for so long isn’t an employee capable of performing a job’s essential functions – and that requiring an employer to keep a job open for so long doesn’t qualify as a reasonable accommodation. After all, reasonable accommodations...are all about enabling employees to work, not to not work.”

Although the Plaintiff tried to argue that the Employer failed to offer evidence demonstrating that her additional leave would have caused it to face an undue hardship, the court pointed out that the burden was on Plaintiff to show the leave request was reasonable. The burden, the court said, was not on the employer to show the hardship it would face.

The court was quick to note, however, that this ruling does not mean that all 12-month leave requests will be automatically held to be unreasonable under the ADA. “Our conclusion today is a narrow one,” the 1st Circuit said. It refrained from issuing a ruling that would conclude leaves of a certain length were automatically unreasonable in “every” case. Instead, the court said that each circumstance would need to be examined individually to determine whether each leave request was reasonable under the fact pattern presented.

That point is important for employers to consider. Although it may not be the employer burden to demonstrate an undue hardship when defending against a reasonable accommodation claim, it will be to employer’s benefit to present evidence showing that the length of time requested is unreasonable for whatever specific reasons apply in the individual situation in front of the employer. That will enable the employer to demonstrate that the length of time requested by the employee is not reasonable given the fact pattern at play.

While it is helpful to cite to other cases to show how other courts have rejected leave requests of a similar (or even shorter) length, this court decision reminds employers that a long leave request, on its own, will not necessarily suffice to justify rejection of a leave.

Finally, the court rejected Delgado’s claim that employer failed to engage in a good faith interactive process with employee. Although the ADA itself does not mention the need for such a process, courts in various jurisdictions have agreed with the Equal Employment Opportunity Commission (EEOC) and concluded that employers are obligated to initiate a collaborative dialogue with any employee requesting an accommodation to exchange information about the underlying medical condition, the need for accommodation, and various related topics.

In this case, the 1st Circuit rejected the employee’s claim. “Where, as here,” the court said, “the employee fails to satisfy [the employee] burden of showing that a reasonable accommodation existed, the employee cannot maintain a claim for failure to engage in an interactive process.” The court cited to several other cases from the 1st Circuit to support this position.

Employers are cautioned to tread carefully in this area as several federal appellate jurisdictions have taken the opposite position and concluded that an employer has an absolute duty to engage in an interactive process in every such instance. If this case had arisen in one of those jurisdictions, employee may have prevailed.

Even if the employer is in the 1st Circuit, it is difficult for an employer to predict whether an

employee will be able to prove a reasonable accommodation exists **unless it engages in an interactive process.**

Therefore, although this line of thought presents a solid defense should the employer end up in litigation, it may be worthwhile to engage in a collaborative and well documented dialogue with the employee to recognize what accommodations are requested. Even when the employer decides to reject such a request, the employer has one less claim to worry about should the employee seek litigation at some later point. as the employer had fulfilled its interactive process obligations.

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### ***TRAINING REQUIRED FOR THE WORKFORCE***

According to organizations and articles as well as from DOJ, EEOC and the Bureau of Labor Statistic, the population demographic changes are remaking the workforce. Companies large and small are facing the reality of overwhelmingly diverse applicants and employees. The workforce of the future will demand greater management, supervisory, and Human Resources time, attention, and planning to capitalize the changing skills and expectations workforce.

EEOC and U.S. Department of Labor's are still enforcing equal employment opportunity statutes, recently emphasizing close scrutiny of discriminatory systemic practices.. Companies need to implement the steps to avoid potential damage from complaints, investigations, audits, and other actions by the enforcement agencies, as well lawsuits from plaintiffs' attorneys. Policies and training need to make sure employers' "workplace fairness policies" are recognized as a management priority at all levels and are regularly updated, available to all and make sure training programs are effective particularly "perception" training.

In our experience, most companies create "best practice" programs, but many fail to achieve their objectives because they do not ensure the employer's implementation efforts. But, the best policies and techniques are useless, if they are not known by the workforce, practiced by line executives, managers, supervisors and employees, and uniformly enforced by management. The value of training itself must come from the top.

Training programs must embrace these principles to be truly effective, as a means to provide substantive knowledge to management at all levels and employee. This concept provides employer with a defense to possible litigation.

In person training may mean engaging mentors and associates to participate and provide coaching. In training using technology this may mean incorporating "ask the expert" and other features.

In training, put across how the training relates to employees at all levels in their performance evaluations. If the training involves knowledge assessments and/or evaluations, tell trainees up front so the trainees know what performance is expected. As noted above, training must take into account the increasing race/gender/disability/sexual orientation/age diversity of the workforce, and the needs and demands of the diverse employees.

Always remember that protections against discrimination will remain in place, including statutory protections such as Title VII of the Civil Rights Act of 1964, Section 503 of the Rehabilitation Act,

and the ADA.

Victoria Lipnic, appointed Acting Chair of the EEOC has said that equal pay issues are of particular interest to the EEOC and that she considers it a priority to file more equal pay lawsuits since the EEOC has filed relatively few in recent years.

The expected decrease in Federal enforcement, companies may see increased “private plaintiff” enforcement. If Federal enforcement agencies do not assist employees who feel aggrieved, those employees will likely turn to attorneys and the courts.

As seen recently, state and local agencies will also step into the arena. Employers and other organizations that seek long term success in an increasingly diverse workforce must continue to enhance their approach for good business reasons.

Companies that plan for the changes in the workforce by anticipating and effectively optimizing the full range of diverse skills, views, expectations, and demands—will achieve that highly-sought competitive and professional advantage.

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### ***EMPLOYEE RESPONSIBLE FOR BREAKDOWN IN INTERACTIVE PROCESS CAN'T SUE***

An employee who repeatedly failed to return telephone calls and provide information needed to understand her job restrictions was responsible for the breakdown in the Americans with Disabilities Act (ADA) interactive process, the U.S. Court of Appeals for the First Circuit ruled.

A social worker, regularly required to write and document work, suffered a hand injury. The employee was placed on rest, underwent a series of follow-up exams, and returned to work while continuing treatment.

The information employee provided the employer did not indicate what specific accommodations were necessary to perform daily tasks. When the employer sought additional details, the employee failed to respond to multiple phone calls and a letter. Employee filed suit instead, asserting failure to accommodate in violation of the ADA.

The federal appellate panel affirmed summary judgment for the employer, holding that the employee was responsible for the breakdown in the interactive process.

The employee the supervisor with a form from employee doctors indicating the diagnosis and that employee was cleared to return to work while treatment continued. The information did not indicate what specific accommodations were necessary to assist in the completion of daily tasks. The employer supervisor advised employee that without additional information about the specific accommodations requested, the employer would not be able to reinstate the employee.

The employee obtained a letter from the doctors that stated employee needed to “be provided with an occupational adjustment” and suggested giving short rest periods during the workday. The employer, seeking more information, then attempted to contact employee on multiple occasions by phone as well as by letter. Even after the employee’s union representative advised employee the company was trying to reach her, the employee did not contact the employer or attempt to further communicate her accommodation needs.



The parties managed to connect for a meeting in which the employer reiterated the need for additional information concerning employee's medical restrictions, with questions such as the maximum weight she could lift, the frequency and duration of rest periods required, the kind of repetitive movements to be avoided, her capacity for using her hand at the level required to perform her essential duties as a social worker, and any other specific recommendations.

The employee never responded, and instead filed suit alleging that the employer failed to accommodate her disability in violation of the ADA.

A district court granted summary judgment in favor of the employer, and the U.S. Court of Appeals for the First Circuit affirmed.

The interactive process, which varies depending on the circumstances of each case, "requires both the employer and employee to engage in a meaningful dialogue, in good faith, for the purpose of discussing alternative reasonable accommodations," the panel wrote. Courts look for signs of failure to participate in good faith or the failure by one of the parties to make reasonable efforts to help the other party determine what specific accommodations are necessary.

Rejecting employee's argument that the employer request for additional information was excessive and unrelated to her work requirements as a social worker, the court found the plaintiff (employee) responsible for the breakdown of the interactive process.

"The burden is on the employee to demonstrate in the first instance what specific accommodations she needed and how those accommodations were connected to her ability to work," the court said. "Notwithstanding this burden, here the record is rife with uncontested facts demonstrating that [the employer] continually attempted to engage in the interactive process in good faith, while [the employee] refused to meaningfully engage after submitting an initial letter from her doctors ... and attending a meeting."

The employer's request for more information "was reasonable and important" to determine the type of accommodations the plaintiff (employee) required, the panel added. Questions such as how much weight [the employee] could support with her hands and how long or frequently she needed breaks throughout the day "were directly relevant to the accommodations she would need and her duties of daily desk and personal computer work," the panel said.

Simply expressing her desire to be reinstated was insufficient to demonstrate that she meaningfully engaged with the interactive process in good faith, the court explained. "A declaration of a desire to return did not assist [the employer] in probing the contours of her physical limitations in order to fashion an appropriate accommodation and [the employer's] failure to offer her any type of accommodation due to a lack of sufficient information cannot be the basis of liability—[the employer] committed no error in attempting to clarify her needs so that it could properly accommodate her," the court said. "We therefore conclude that [the employee's] failure 'to make reasonable efforts to help [the employer] determine what specific accommodations are necessary' caused the breakdown in the interactive process."

Consequently, her failure to cooperate in [the employer's] attempts to identify the proper accommodations precludes a finding that the company is liable for the failure to accommodate."

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### ***MARIJUANA AND CHANGING ATTITUDE REFLECTED IN WORKPLACE PRACTICES***

There are 28 states that have legalized medical use of the drug, and eight states permit its recreational use. With over half of the states permitting some form of marijuana use, many employers may be clearly confused about how this will impact their businesses as well as workplace drug testing programs.

There are many questions on the topic. Some that employers and legal professionals are looking at include (1) may entities maintain a zero-tolerance policy in a state that permits medical use; (2) what if entities are covered by federal drug-free workplace rules, federal safety, or similar regulations; (3) what if entities operate a business concern with many safety-sensitive positions; (4) what if an employee with a medical marijuana card says that entities need to make a reasonable accommodation to comply with the ADA; (5) may strict drug-testing policies make it difficult to hire and retain workers; and (6) how does the current state laws signify for national employment policies?

Federal law still classifies marijuana as an illegal substance. The DEA (U.S. Drug Enforcement Agency) lists marijuana as a Schedule I narcotic. This makes it illegal under the federal Controlled Substances Act (CSA). Under the former President, however, the DoJ adopted a policy to forgo enforcement of the federal law as it applies to marijuana in compliance with their states' respective laws.

Given the change in White House leadership, it remains to be seen how the administration will handle enforcement of federal law in states that have legalized marijuana. As noted by the current administration, it indicated it will take a hardline approach. In a recent press conference, the White House Press Secretary hinted that federal authorities might look at the where recreational use is legal. Also, the current U.S. Attorney General is staunchly opposed to the use of marijuana.

Colorado voters, in 2000, passed "Amendment 20", allowing the medical use of marijuana. Twelve years later, Coloradans voted to legalize the use of recreational marijuana through "Amendment 64" to the state constitution. According to the Colorado State Department of Revenue there was a total of 2,976 licensed marijuana businesses in Colorado as of May 2017, including 479 retail stores. Presumably, much of the demand comes from Colorado residents who are also employed within its borders.

Although some states like Minnesota and Arizona protect the employment of medical marijuana card holders whose use violates zero-tolerance policies, Colorado does not. In 2015, the Colorado State Supreme Court held that employees do not have protection from disciplinary action, including loss of employment, if they violate their employers' workplace drug policies through the use of medical marijuana.

Many employers were naturally relieved (in Colorado) by this decision to know they could continue

to enforce zero-tolerance drug policies. But, for some the relief was short-lived. Entities began to realize that enforcing zero-tolerance policies could result in serious difficulties recruiting and retaining a workforce. Over the past few years, Colorado employers have struggled with this issue.

California was the first state to decriminalize marijuana for medicinal use with the "Compassionate Use Act of 1996". Although, it took more than 20 years later that California legalized its recreational use. In November 2016, California voters passed "Prop 64", which allows adults aged 21 and over to possess small amounts of marijuana and up to 6 plants. Despite the fact that "Prop 64" received 56% of the vote, the numbers indicate that a noteworthy 44% of the voters opposed legalized recreational use.

"Prop 64's" passage immediately allowed Californians to possess and cultivate their own plants, but selling marijuana for recreational use will not be legal until at least January 1, 2018. By then the state will have developed appropriate regulations and will issued license for retail stores.

As in Colorado, the California Supreme Court held in 2008 that employers are not required to accommodate an employee's use of medical marijuana. "Prop 64" specifically states that employers may continue to enforce zero-tolerance policies prohibiting the use of marijuana, regardless of the reason for use.

"Prop 64" law might entice more Californians to use the drug, enable current users to consume more of the drug, and relax the attitudes of users such that they bring it into the workplace either in plant or edible form.

To prepare for this change, employers need policies in their arsenals that will allow them to make adjustments as the impact (or lack thereof) becomes clearer.

This new wave of use will need for entities to should examine personnel policies to see how entities handle marijuana use.

Review them but need to remember to determine whether the entity still needs or wants a zero-tolerance policy. The response to that decision may or will depend (1)the line of business; (2) whether the position or type of work is safety-sensitive; and (3)your employee demographics.

Remember that the federal Drug-Free Workplace Act (DFWA) obligates federal contractors and grantees to maintain a workplace that is free of "illegal drugs" as defined by the CSA. Entities who fall within the provisions of the DWFA have additional obligations to consider.

If an entity is not subject to federal drug-free workplace standards or other state or regulatory requirements to maintain a zero-tolerance policy, and are without safety-sensitive positions, the entity may have a more options when developing workplace policies.

In some ways, that freedom makes for more complicated decision and policy-making.

Entities who are not required by federal law to enforce zero-tolerance policies may wonder whether they must then provide an ADA reasonable accommodation to an employee who has a medical marijuana card. That answer depends on the state in which the entity is located.

An entity may recall that in enacting their medical marijuana laws, some states (Oregon) created additional provisions that expressly state employers have no duty to accommodate employees

who use medical marijuana. But States like New York, Arizona, Minnesota, and Illinois have enacted specific provisions that require just the opposite.

The state law regarding reasonable accommodation for medical marijuana in states where the law is silent on the issue, California has determined that because it is an illegal drug under the CSA, employers have no obligation to accommodate employees who use medical marijuana.

Also, the ADA excludes from its protections employees or applicants “who [are] currently engaging in the illegal use of drugs” as defined by the CSA.

Many entities have expressed ambivalence in assuming any sort of role that monitors employees’ off-duty conduct.

There are some options that entities have found that may relieve “personnel” hiring and retention problems - (1) maintaining zero-tolerance drug testing, but only at the time of hire; (2) announcing any such testing in advance as part of the job-posting process; (3) retaining the right to test employees who appear impaired while at work; (4) removing testing from the drug-panel test; and (5) Doing away with pre-employment and random drug testing, and retaining only reasonable suspicion testing.

Because each options that an entity may consider, there are many legal risks. As many articles and professional recommend, discuss any proposed changes to workplace drug policies with legal counsel before implementing.

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### **9<sup>TH</sup> CIRCUIT UPHOLDS OWNERS RIGHTS TO SEEK CONTRIBUTION FROM THIRD PARTIES**

In a win for the owners of facilities covered by the Americans with Disabilities Act (ADA), the U.S. Court of Appeals for the Ninth Circuit has upheld a property owner’s right to seek contribution from third parties who fail to perform their obligations to the owner to design or build a facility that complies with the ADA. **(City of Los Angeles V. Aecom Services, Inc.; Tutor Perini Corporation No. 15-56606 D.C. No. 2:13-cv-04057-sj o-pjw).**

Many property owners rely on architects, designers, builders, and even ADA compliance experts to help them ensure that their facilities comply with the ADA. This decision restores the power of owners to enforce their agreements with those third parties.

Under very similar facts, the Fourth Circuit held that an owner’s state law claim for indemnity against an architect for alleged ADA violations in the design of multifamily apartment buildings was preempted by the ADA, which holds owners and operators liable for ADA violations and prevents them from escaping liability by contracting with third parties. The reasoning behind this holding was that permitting indemnity rights would undermine owners’ incentives to comply with the ADA because they could easily transfer the onus of liability to third parties. **Equal Rights Center v. Niles Bolton Associates, 602 F.3d 597 (4th Cir. 2010),]**

While technically distinguishing the Niles Bolton decision, the Ninth Circuit held that owners could seek contribution from third parties who failed to meet their contractual obligations and that doing so would enhance—not discourage—compliance. After all, owners necessarily rely on the

expertise and skills of architects, designers, and contractors to design and build ADA-compliant facilities. The Ninth Circuit noted that the owner in *Niles Bolton* had sought indemnity for all of its liability to plaintiff, while the owner in the Ninth Circuit case had sought recovery only for its contractors' failure to comply with their contractual obligations. It is unclear just how meaningful this distinction was to the Ninth Circuit's decision. The fact that the court weighed the preemptive effect of Title II of the ADA and the Rehabilitation Act has no apparent impact on how the court would have decided the same question under Title III of the ADA, which is applicable to private businesses open to the public.

The Ninth Circuit's decision represents a significant victory for owners and operators of facilities subject to the ADA and a loss for architects, designers, and contractors who may have lost the silver bullet against derivative liability that *Niles Bolton* had arguably provided.

The decision provides lessons for all of the parties. Owners will want to include provisions in their contracts with architects, designers, and contractors requiring compliance with the ADA and providing remedies for any failure to do so. In addition, when seeking to enforce those provisions, owners might want to consider limiting themselves to recovering the direct damages resulting from a failure to comply and forego seeking recovery of the damages and attorneys' fees they paid to the plaintiff who sued them for a failure to comply with the ADA.

Architects and builders would do well to carefully negotiate the compliance provisions in their contracts and work to limit the consequences of instances where indemnity or contribution would be available.

While the Ninth Circuit attempted to downplay the conflict with the Fourth Circuit's decision in *Niles Bolton*, there remains a possibility that the Supreme Court of the United States will be asked to resolve this conflict.

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### ***FEDERAL COURT – ADA DOES NOT REQUIRE NON-COMPETITIVE REASSIGNMENT***

If an employee can no longer perform the essential functions the position due to a disability, one of the reasonable accommodation under the ADA) is reassignment to a vacant position.

The Eleventh Circuit Court of Appeals rejected a long-standing position of the EEOC that as long as the disabled employee is qualified for the position the employer must place the employee in the vacant position and cannot require the employee to compete for it. (***U.S. Equal Employment Opportunity Commission v. St. Joseph's Hospital, 2016 WL 7131479 (11th Cir. 2016)***)

A nurse suffered from a disability which required her to use a cane. The nurse worked in the hospital's psychiatric ward, and the hospital became concerned about her placement in that department because of the possibility that patients might use the cane as a weapon. The employer offered the nurse the opportunity to remain employed and gave the employee 30 days to apply for other positions for which qualified. The hospital waived its requirement that internal candidates be in their current position for more than six months before applying for a new position. Also, the employee needs to have no final written warnings in the employee record. The employee recently been demoted for failing to follow hospital procedures and did have a final

written warning in her file. In an effort to further accommodate her, the employer waived these requirements.

The employer required the employee to compete with other applicants for any position for which the employee applied. The employee was qualified for three for which the employee applied. The employer hired better-qualified applicants. When the employee was not able to secure employment within the 30-day period provided to her, the employee was terminated.

Among the list of accommodations that may be reasonable is reassignment to a vacant position. In this case, consistent with its long-standing guidelines, the EEOC argued that the employer violated the ADA by requiring the nurse to compete for a vacant position she was qualified to perform. The Eleventh Circuit disagreed.

Relying upon a U.S. Supreme Court decision that reassignment is not required when it would violate the rules of an employer's established seniority system, the Eleventh Circuit found that requiring reassignment in violation of an employer's best-qualified hiring or transfer policy is not reasonable.

The court stated, "[p]assing over the best-qualified applicants in favor of less-qualified ones is not a reasonable way to promote efficient or good performance." The court noted that "the ADA was never intended to turn nondiscrimination into discrimination against the non-disabled." According to the court, the ADA does not require an employer to turn away a superior applicant in favor of a disabled employee.

When employers have hiring or transfer policies in place, such as a seniority system or a best-qualified applicant provision, the ADA does not require a reassignment that violates the company policies.

The case may have turned out differently had the employer not had a best-qualified applicant policy in place. The court found the ADA only requires that an employer allow the disabled employee to compete equally for a vacant position. As the employer did here, employers can find other ways to accommodate the disabled employee when they require the employee to compete for positions. The hospital waived the requirements that the employee had been in the current position for six months and that there were no final warnings on file.

When it comes to reassignments and the ADA, employers need to look at their policies to determine whether any requirements can be waived to accommodate the disabled employee or whether any other measures can be taken to further assist the employee in finding reassignment within the workforce.

**Important note** – the Eleventh Circuit's decision is a split from other circuits and, depending on the employer's location, the employer may need to consider placing the disabled individual in the open position even if he or she is not the best qualified.

## **MAGNOLIA HEALTH CORPORATION TO PAY \$325,000 TO SETTLE EEOC CLASS DISABILITY DISCRIMINATION CASE**

Magnolia Health Corporation, a Visalia, Calif.-based company that operates health care and assisted living facilities throughout California's Central Valley, **will pay \$325,000 and furnish other relief to settle a disability discrimination lawsuit** filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced 3/8/2017.

The EEOC suit charged that since 2012, Magnolia had discriminated against a class of applicants and employees on the basis of their disability, having a record of a disability, or being perceived as having one. EEOC said that Magnolia denied employees accommodations for their disabilities, and refused to hire, or fired, applicants and employees who had disabilities or were regarded as such. EEOC also said that Magnolia rescinded employment offers when applicants' post-offer medical examinations indicated that they had a record of a disability or had current medical restrictions. EEOC further charged that Magnolia required employees be completely free of medical restrictions to work. Such alleged conduct violates the Americans with Disabilities Act (ADA). *(EEOC filed its lawsuit in U.S. District Court of the Eastern District of California (EEOC v. Magnolia Health Corporation, et al., Case No. 1:15-cv-01222-DAD-EPG), after first attempting to reach a pre-litigation settlement through its conciliation process.*

In addition to the monetary relief, Magnolia agreed to retain an ADA and equal employment opportunity consultant to revise the company's policies and procedures with respect to disability discrimination, **provide discrimination training to the company's workforce** with a focus on disability discrimination, and maintain a centralized system to track all accommodation requests and complaints.

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### **DOJ SETTLES DISABILITY-BASED HOUSING DISCRIMINATION LAWSUIT**

DoJ recently announced a settlement with the city of Jacksonville, Florida, to resolve allegations that the city violated the Fair Housing Act and the Americans with Disabilities Act when it refused to allow the development of permanent supportive housing for individuals with disabilities in its Springfield neighborhood.

The settlement, which must still be approved by the U.S. District Court for the Middle District of Florida, resolves a lawsuit the department filed in December 2016. That lawsuit was consolidated with similar ones brought by Ability Housing, Inc. and Disability Rights Florida, which were resolved in a separate settlement with the city.

“Federal law protects the right of individuals with disabilities to live in communities of their choice without facing discrimination,” said Acting Assistant Attorney General Tom Wheeler of the Justice Department’s Civil Rights Division. “Through this settlement, the City of Jacksonville has taken steps to ensure that its residents can exercise this right.”

“The Fair Housing Act and the Americans with Disabilities Act protect against official adoption of community discrimination,” said Acting U.S. Attorney W. Stephen Muldrow, of the Middle District of Florida. “We commend the City of Jacksonville’s willingness to rectify its past actions, and we look forward to continuing to work with the city to ensure that individuals with disabilities in Jacksonville are afforded the same opportunities as those without disabilities.”

As part of the city’s settlement with the department, the city has amended its zoning code to better comply with federal anti-discrimination laws, including removing restrictions that apply to housing for persons with disabilities and implementing a reasonable accommodation policy.

The city also agreed to 1] rescind the written interpretation that prevented Ability Housing from providing the housing at issue, 2] designate a fair housing compliance officer, 3] provide Fair Housing Act and Americans with Disabilities Act training for city employees, and 4] pay a civil penalty to the government of \$25,000.

In the separate settlement, the city agreed to pay \$400,000 to Ability Housing and \$25,000 to Disability Rights Florida, and to establish a \$1.5 million grant to develop permanent supportive housing in the city for people with disabilities.

The department’s suit alleged that in 2014, Ability Housing received a \$1.35 million grant from Florida to revitalize a 12-unit apartment building and create permanent supportive housing for “chronically homeless” individuals in Jacksonville who, by definition, have at least one disability.



Ability Housing specifically intended to provide this housing to veterans and to connect them with optional support services. The city had previously certified that Ability Housing's development of the property was consistent with the city's zoning code but, as alleged in the department's complaint, reversed itself in response to intense community pressure based on stereotypes about the disabilities of the expected residents. As a result, Ability Housing lost the grant and the property. The department conducted an independent investigation and subsequently filed this lawsuit.

Fighting illegal housing discrimination is a top priority of the Justice Department. The Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, sex, familial status, national origin, and disability. Title II of the Americans with Disabilities Act prohibits discrimination on the basis of disability by public entities.



**KEVIN L. FAULCONER**

**MAYOR**



**WELCOME TO THE  
NATIONAL ASSOCIATION OF ADA COORDINATORS'  
FALL 2017 NATIONAL ADA CONFERENCE**

**OCTOBER 23-26, 2017**

On behalf of the citizens of San Diego, I am pleased to welcome the National Association of ADA Coordinators to the Fall 2017 National ADA Conference "A Steady Hand in Uncertain Times" Celebrating the Association's 25th Anniversary.

For 25 years the National Association of ADA Coordinators has brought ADA coordinators together, providing a forum for the most up-to-date information on ADA issues and enforcement.

The City of San Diego places a high priority on ADA compliance efforts and is honored to once again co-host this important conference. I am certain you will find San Diego to be the perfect location for your conference and I invite you to explore America's Finest City during your stay here.

Please accept my warmest wishes for a successful conference.

Best personal regards,

A handwritten signature in blue ink, which appears to read "Kevin L. Faulconer". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kevin L. Faulconer  
Mayor

# **“A Steady Hand in Uncertain Times”**

**Co-host – City of San Diego**

**Day One - Monday, October 23, 2017 - Morning General Sessions**

**Conference Program - Page 1**

8:15 a - 9:00a	<b>Continental Breakfast and Registration</b>
8:00a - 8:55a	<p><b>ADA INTRO AND BASICS</b> (For <u>Anyone</u> wishing a Solid Review)</p> <p>This workshop is designed as an orienting, basic hour to acquaint the new or returning ADA Coordinator with current terms, aspects of legislation, and a solid foundation from which to proceed confidently into the rest of the conference, giving each participant a primary knowledge base similar to all conference participants. Let's start from the <b>very</b> beginning - any and all are welcome to this workshop.</p> <p><b>Irene Bowen, Melissa Frost, Brian Nelson, John Wodatch</b></p>
9:00a - 9:30a	<p><b>WELCOME</b></p> <p><b>Phong Nguyen, M.D., P.A. - Association Chairman and Conference Coordinator</b> <b>Kevin Faulconer, Mayor, City of San Diego (Invited) *</b> <b>John Wodatch, J.D., P.A. - Association President</b> <b>Paul Hagle, P.A., Association Executive Director</b> <b>Rosa Viramontes, District Director, U.S. E.E.O.C., Los Angeles</b></p>
9:30a - 10:30a (1 PA CEU)	<p><b>DOJ KEYNOTE – WHAT'S HAPPENING AT THE DOJ</b></p> <p>DOJ covers recent and important emerging ADA case law, issues and the work of DOJ with U.S. Attorneys offices throughout the U.S.</p> <p>With the goal of avoiding litigation while assuring your ADA policies and decisions are up-to-date, we open the floor to your questions relating to best practices and how we can help you be your most effective in meeting your responsibilities.</p> <p><b>Ann Raish, J.D.</b> <b>Acting Chief, Disability Rights Section</b> <b>Civil Rights Division, U.S. Department of Justice, Washington, DC</b></p>
10:45a - 12:00p (2 PA CEU)	<p><b>EEOC KEYNOTE – CASE LAW UPDATE</b></p> <p>This interactive session will focus on new, significant legal decisions pertaining to the ADA and will address relevant implications in the workplace.</p> <p><b>Christopher Kuczynski, J.D., LL.M., P.A.</b> <b>Acting Associate Legal Counsel &amp; ADA/GINA Policy Director, Office of Legal Counsel,</b> <b>U.S. E.E.O.C., Washington, DC.</b></p>
12:00p - 1:00p	<b>Hosted by National Institute on Employment Issues</b>

**Conference sessions and faculty subject to change without notice due to unforeseen circumstances.**

**Day One - Monday, October 23, 2017 - General Sessions AFTERNOON Workshops**  
**Conference Program – Page Two**

Time Periods	Workshop Synopsis
1:00p - 2:00p <u>and</u> 2:15p - 3:15p  ( 2 PA CEU )	<p><b><i>CASE LAW UPDATE &amp; THE CHALLENGES OF EXTENDED LEAVE, TELEWORK, AND JOB REASSIGNMENT</i></b></p> <p>During this double session, more recent legal decisions will be presented. There will be a discussion covering three of the most common and challenging accommodation requests - leave, telework, and reassignment. In the second hour we will continue to explore the challenges, solutions and good practices.</p> <p><b><i>Christopher Kuczynski, J.D., LL.M.</i></b>  <b><i>Acting Associate Legal Counsel, ADA/GINA Policy Director, Office of Legal Counsel,</i></b>  <b><i>U.S. E.E.O.C., Washington, D.C.</i></b></p>
3:30p - 4:45p  ( 1 PA CEU )	<p><b><i>THE ARTISTRY OF BUILDING ACCESSIBLE WEB SITES</i></b></p> <p>Using a non-accessible web site as a beginning, the web site will be modified, as needed, to make it compliant with WCAG 2.0. from a non-technical viewpoint.</p> <p><b><i>Joe Dolson with Irene Bowen, Phong Nguyen</i></b></p>

***SPECIAL CONFERENCE SOCIAL EVENTS***

***Association President's Networking Reception***

Tuesday, October 24, 2017, 5:00 PM

Meet and network with other ADA professionals and our conference faculty

***"Association's Got Talent" - Find our Association's "Voice"***

**Our Semi-Annual Karaoke Get-Together**

Wednesday, October 25, 2017, 7:30 PM

All are welcome - "singers" (single and/or groups) and voting audience members.

**Donated prize of \$50.00 each for the three most entertaining single, duo, and/or group.**

Meet your fellow conference participants and faculty in a very relaxed setting.

***Complimentary Refreshments at Both Traditional Events***

**Day Two - Tuesday, October 24, 2017 - Concurrent MORNING Workshops**  
**Conference Program – Page 3**

Time Periods	Track	Workshop Synopsis
8:15a - 9:00a		<b>Continental Breakfast and Registration</b>
9:00a - 10:20a ( 2 PA CEU ea ADVANCED )  ( 1 PA CEU ea BASIC )		<b>FOR PAs and PA Candidates only who have completed all three of the PA ADA basic sessions:</b> These advanced sessions offer the PA an opportunity to ask questions of the conference faculty. The object is to develop suggestions to solve difficult issue demonstrating best practices. There are two consecutive sessions for PAs for the Access, Services, & Design; Employment; and Higher Education tracks.
	<b>ACCESS, SERVICES, &amp; DESIGN</b>	<b>THE ADA BASICS: GUIDING PRINCIPLES OF THE ADA</b> Learn the basic principles of the ADA: equal opportunity, broad coverage of persons with disabilities, reasonable modifications, effective communication, integration, accessible new construction and alterations, program accessibility, and effective enforcement. Learn about the history of the ADA, its relationship to Section 504, and how the ADA's concepts guide ADA Coordinators in their work. <i>John Wodatch with Dean Perkins</i> <i>(Irene Bowen with Jim Terry to lead Advanced P.A. Access sessions)</i>
	<b>EMPLOYMENT</b>	<b>IS YOUR FOUNDATION SOUND?</b> This session will cover the basics of the ADA and the implications of the EEOC regulations with case studies and case law. <i>Brian Nelson with Allison Nichol, Mary Jo O'Neill, Nicole St. Germain</i> <i>(Chris Kuczynski and Paul Hagle lead Advanced P.A. Employment sessions)</i>
	<b>HIGHER EDUCATION</b>	<b>"ONE SINGULAR SENSATION"</b> <b>FUNDAMENTALS FOR THE ADA COORDINATOR 101</b> The education track will walk students Brandy and Brady through their first year- from admission and a variety of academic adjustments, to academic and discipline concerns. As their ADA Coordinator, you will learn the basic requirements to comply with DOJ Title II and Title III, along with the Sec. 504 regulations you know and love. The requirements for notice of non-discrimination, designation and publication of a Title II/Section 504 Coordinator, Policy and Procedure considerations will be discussed. <i>Melissa Frost with Paul Grossman, Howard Kallem</i> <i>(Jim Long leads the Advanced P.A. Higher Education sessions)</i>
10:40a - 12 Noon ( 2 PA CEU's ea )	<b>ACCESS, SERVICES, &amp; DESIGN</b>	<b>THE ADA BASICS: BUILDINGS AND FACILITIES</b> Title II sets out requirements for new, altered, and existing facilities. Learn what these provisions are, how they differ and explore the 2010 ADA Standards. Get an overview of the ADA Accessibility Standards and how to apply them to buildings and facilities, including sidewalks and other parts of the right of way, and recreation facilities like pools and parks. <i>Jim Terry with Dean Perkins</i>
	<b>EMPLOYMENT</b>	<b>WHAT'S UP DOC?</b> This session will address the duties and responsibilities of employees and employers with respect to health-related inquiries, examinations, and records. <i>Mary Jo O'Neill with Brian Nelson, Allison Nichol, Nicole St. Germain</i>
	<b>HIGHER EDUCATION</b>	<b>"I NEED TO SEE YOUR PAPERWORK" -</b> <b>DOCUMENTATION AND THE INTERACTIVE PROCESS</b> Learn the qualification standards and how to effectively communicate with healthcare professionals to get the information you need to implement effective academic adjustments for a variety of disabilities. <i>Paul Grossman with Melissa Frost</i>
12:00 - 1:00p		<b>Lunch - Hosted by National Association of ADA Coordinators</b>

**Day Two - Tuesday, October 24, 2017 - Concurrent AFTERNOON Workshops**  
**Conference Program – Page 4**

Time Periods	Track	Workshop Synopsis
1:00p - 2:00p (1 PA CEU ea )	<b>ACCESS, SERVICES, &amp; DESIGN</b>	<p><b><i>MODIFICATIONS TO POLICIES AND PRACTICES: A PRACTICUM</i></b></p> <p>After an overview of the “reasonable modifications” provisions of the ADA regulation and an exploration of recent case law, we’ll explore several scenarios together and in groups. The goal is to understand how to approach requests or needs for modifications and how to work with the requester and your entity’s managers and staff in deciding on the “right” approach.</p> <p align="right"><i>Irene Bowen with John Wodatch</i></p>
	<b>EMPLOYMENT</b>	<p><b><i>WHAT YOU DON’T KNOW CAN HURT YOU</i></b></p> <p>Every employer needs to ensure their employee qualification standards and essential functions are legitimate. Demonstrative case studies and case law will be presented and discussed.</p> <p align="right"><i>Brian Nelson with Allison Nichol, Mary Jo O’Neill, Nichol St. Germain</i></p>
	<b>HIGHER EDUCATION</b>	<p><b><i>“HOUSTON, WE HAVE A PROBLEM” - CHALLENGING ACCOMMODATION REQUESTS</i></b></p> <p>Brandy has a service dog and Brady needs his comfort cat. This session will outline important practice for your campus in flexible attendance, extended time on tests, quizzes and assignments and three challenging housing areas: Allergies; Requests for single room for a variety of issues including mental health concerns; and Service animal policies and when a request for an assistance animal must be considered as an accommodation.</p> <p align="right"><i>Paul Grossman with Melissa Frost, Howard Kallem, Jim Long</i></p>
2:15p - 3:15p (1 PA CEU ea )	<b>ACCESS, SERVICES, &amp; DESIGN</b>	<p><b><i>PROGRAM ACCESSIBILITY: PROVIDING SERVICES WHEN NOT ALL BUILDINGS ARE ACCESSIBLE</i></b></p> <p>Title II prohibits discrimination in the “services, programs, or activities of a public entity.” Since 1977 the Federal government has used the concept of “program access” to address providing access in an environment where not every building is accessible. Learn what program access means today, how it applies to programs offered at different types of facilities, and how the 2010 Standards affect a public entity’s obligations.</p> <p align="right"><i>John Wodatch with Irene Bowen and Jim Terry with Dean Perkins</i></p>
	<b>EMPLOYMENT</b>	<p><b><i>LET’S BE REASONABLE - PART ONE</i></b></p> <p>Using realistic scenarios, this two-part interactive workshop will address legal concepts and demonstrate how human interaction and emotions can affect the interactive process. The panel will provide practical approaches and possible solutions to the “not so easy” accommodation requests.</p> <p align="right"><i>Allison Nichol with Brian Nelson, Mary Jo O’Neill, Nicole St. Germain</i></p>
	<b>HIGHER EDUCATION</b>	<p><b><i>“THE STUFF THAT DREAMS ARE MADE OF” - ACCOMMODATION SUCCESS STORIES</i></b></p> <p>Effective academic adjustments are often the crucial difference between success and failure for a student. As the ADA Coordinator, you play a crucial role in providing equal opportunity to reach the student’s goals and dreams. This session will highlight successful student outcomes when effective academic adjustments are implemented.</p> <p align="right"><i>Melissa Frost with Paul Grossman, Howard Kallem, Jim Long</i></p>
3:30p - 4:30p (1 PA CEU ea)	<b>ACCESS, SERVICES, &amp; DESIGN</b>	<p><b><i>HEALTHCARE: FACILITIES, DIAGNOSTIC EQUIPMENT, AND POLICIES</i></b></p> <p>Accessible healthcare is a topic of growing interest and the Access Board’s publishing of the Medical Diagnostic Equipment Standards (for equipment like exam tables and scales) is generating additional interest and questions among ADA Coordinators, healthcare providers, and policy makers. This session reviews requirements for accessible healthcare from a policy, facilities, and equipment viewpoint, explores strategies that public health and private medical providers may use for compliance, and reviews how other mandates, such as those for effective communication and reasonable modifications, also apply to accessible healthcare.</p> <p align="right"><i>Jim Terry with Irene Bowen, John Wodatch</i></p>
	<b>EMPLOYMENT</b>	<p><b><i>LET’S BE REASONABLE - PART TWO</i></b></p> <p>Part Two builds on the legal and emotional factors affecting the interactive process covered in Part One and presents scenarios and solutions for complex accommodation situations.</p> <p align="right"><i>Allison Nichol with Brian Nelson, Mary Jo O’Neill, Nicole St. Germain</i></p>
	<b>HIGHER EDUCATION</b>	<p><b><i>“TO INFINITY AND BEYOND” - ATHLETICS, FIELD WORK, AND TRAVEL</i></b></p> <p>Technical and academic standards often extend beyond the classroom. Follow Brandy and Brady through academic adjustments in athletics, field work, and travel. In this scenario-based session, learn how to determine the academic and technical elements of department, program, and class, and to recognize requests for fundamental alterations.</p> <p align="right"><i>Jim Long with Melissa Frost, Howard Kallem</i></p>

**4:45p - 5:45p – Association President’s Networking Reception (food and beverages)**

**Day Three - Wednesday, October 25, 2017 - Concurrent MORNING Workshops**  
**Conference Program – Page 5**

Time Periods	Track	Workshop Synopsis
8:15a - 9:00a		Continental Breakfast and Registration
9:00a - 10:20a ( 2 PA CEU's ea)	ACCESS, SERVICES, & DESIGN	<p><b><i>PUTTING PROGRAM ACCESSIBILITY INTO PRACTICE - PART ONE: SELF-EVALUATIONS AND TRANSITION PLANS</i></b></p> <p>After an overview of the requirements under the ADA and Section 504 regulations for self-evaluations and transition plans, we'll focus on how these efforts relate to program accessibility. In the last 20 minutes, we'll introduce a scenario to be explored in the next session.</p> <p><i>Irene Bowen and Jim Terry with Dean Perkins, John Wodatch</i></p>
	EMPLOYMENT	<p><b><i>YOU CAN DO THIS STUFF</i></b></p> <p>This session will focus on unique and challenging workplace accommodation issues, such as emotional support animals, multiple chemical sensitivities, bossectomies, extended leave, collective bargaining agreements, etc.</p> <p><i>Brian Nelson with Allison Nichol, Mary Jo O'Neill, Nicole St. Germain</i></p>
	HIGHER EDUCATION	<p><b><i>"THE WHOLE TRUTH AND NOTHING BUT THE TRUTH" THE LEGAL YEAR IN REVIEW</i></b></p> <p>A review of recent, relevant Court decisions will outline important legal requirements, highlight best practices to comply with the ADA-AA and the new DOJ Title II and Title III regulations. Emphasis will include digital expectations for electronic information and technology to address Brandy and Brady's accessibility needs.</p> <p><i>Paul Grossman</i></p>
10:40a - 12 Noon ( 2 PA CEU's ea)	ACCESS, SERVICES, & DESIGN	<p><b><i>PUTTING PROGRAM ACCESS INTO PRACTICE - PART TWO: HANDS-ON SCENARIO</i></b></p> <p><b><i>(NOTE: While it's not a "prerequisite," attending Part One (the 9:00a Access session) will help you prepare for this session. Materials will be available at the registration table.)</i></b></p> <p>Working in groups, we'll examine a set of close-to-real-life facts of the sort a State or local government may face, then tease out the issues and come up with possible approaches and resolutions. For example, when must facilities be altered and when can operational means of providing access be effective? In this scenario, would a combination of these revised policies and training work?</p> <p><i>Irene Bowen and Jim Terry with Dean Perkins, John Wodatch</i></p>
	EMPLOYMENT	<p><b><i>WHAT DO YOU EXPECT?</i></b></p> <p>This session will cover the interplay between employee conduct and performance and reasonable accommodations. Case studies and case law will also be presented and discussed.</p> <p><i>Mary Jo O'Neill with Brian Nelson, Allison Nichol, Nicole St. Germain</i></p>
	HIGHER EDUCATION	<p><b><i>"BADGES? WE DON'T NEED NO STINKING BADGES" - TOP 10 OCR TIPS</i></b></p> <p>Learn what to expect when you receive notice a notice from OCR and how to effectively respond if you receive a charge of discrimination. From the initial notice and Early Complaint Resolution to Compliance Review, these tips will help you avoid common pitfalls and to proactively respond.</p> <p><i>Jim Long with Melissa Frost, Paul Grossman, Howard Kallem</i></p>
12:00p-1:00pBB		Hosted by - National Association of ADA Coordinators

**THE ASSOCIATION'S GOT TALENT!**

***Semi-annual Karaoke Challenge and Get Together***

***7:30 PM - Refreshments for all – Donated PRIZES for the audience winners.***

For those of you who don't want to sing - come and enjoy the entertainment provided by those who will make you cheer and applaud for your favorites. Maybe you will hear the next "Voice".



Time Periods	Track	Workshop Synopsis
1:00p - 2:00p ( 1 PA CEU ea )	<b>ACCESS, SERVICES, &amp; DESIGN</b>	<p><b>THE YEAR IN REVIEW</b></p> <p>To ensure that you are up to speed on the most significant recent developments in the field, this session reviews cases brought, settled, or decided in the past year. The focus will be on Title II, but the session will also include matters under Title III (such as effective communication and physical accessibility) and Title I (such as the definition of “individual with a disability”) that may impact Title II responsibilities</p> <p><b>Rachel Weisberg with Irene Bowen, John Wodatch</b></p>
	<b>EMPLOYMENT</b>	<p><b>THERE’S MORE TO THIS STORY</b></p> <p>This session will address employer liability exposures, such as disability-related harassment, retaliation, confidentiality, and associational discrimination.</p> <p><b>Mary Jo O’Neill with Brian Nelson, Allison Nichol, Nicole St. Germain</b></p>
	<b>HIGHER EDUCATION</b>	<p><b>“GO AHEAD. MAKE MY DAY”</b></p> <p><b>NON-DISCRIMINATORY APPLICATION OF THE CODE OF CONDUCT AND GRIEVANCE</b></p> <p>This scenario-based session will walk through the essential compliance elements; first with Brandy, who after acting out on campus now has a suspension hearing, and then with Brady, who has failed two courses and is claiming he did not receive accommodations. We will walk through the best policy and practice essentials to address distinguishing between academic and conduct suspension and dismissal issues.</p> <p><b>Paul Grossman with Melissa Frost, Howard Kallem, Jim Long</b></p>
2:15p - 3:15p ( 1 PA CEU ea )	<b>ACCESS, SERVICES, &amp; DESIGN</b>	<p><b>EFFECTIVE COMMUNICATION:</b> <b>WHAT’S COVERED, WHAT’S EFFECTIVE, AND WHAT ARE THE LIMITS?</b></p> <p>Through real-life and creatively-imagined examples and scenarios, we’ll examine how to apply the requirements for “effective communication” in a variety of settings. Areas addressed may include communication with or by companions, time sensitivity, web sites, court room settings, and the usual alphabet soup (VRI, TRS, TTY, etc.).</p> <p><b>John Wodatch with Irene Bowen</b></p>
	<b>EMPLOYMENT</b>	<p><b>DOCTOR, DOCTOR, GIVE ME THE NEWS</b></p> <p>This session will cover the perplexing challenges that can arise from dealing with healthcare professionals and will present solutions for addressing conflicting workplace recommendations.</p> <p><b>Phong Nguyen and Brian Nelson with Allison Nichol, Mary Jo O’Neill, Nicole St. Germain</b></p>
	<b>HIGHER EDUCATION</b>	<p><b>“ANYTHING CAN HAPPEN IF YOU LET IT”</b> <b>ATTENTION ISSUES, MENTAL HEALTH, THREAT TO SELF AND MEDICATION</b></p> <p>During this session the importance of threat assessment and the essential elements for readmission will be detailed. Then, we will learn to identify those who are “not otherwise qualified” and to recognize when mental health issues result in threat to self.</p> <p><b>Melissa Frost with Paul Grossman, Howard Kallem, Jim Long</b></p>
3:30p - 4:30p ( 1 PA CEU ea )	<b>ACCESS, SERVICES, &amp; DESIGN</b>	<p><b>RIGHT OF WAY ACCESS: COMPLIANCE WITHOUT CLARITY</b></p> <p>The non-discrimination requirements of Title II, including program accessibility, apply to pedestrian facilities along public roadways, including public sidewalks, bus stops and shelters, on-street parking, wall-mounted and overhead objects, and signs. In this session we’ll discuss DOJ’s and the Federal Highway Administration’s views of compliance, how the Title II regulation applies, what the Courts are saying, and possible strategies to compliance without ADA Standards. The discussion will include new construction, alterations, and physical changes to provide program access.</p> <p><b>Irene Bowen with Dean Perkins</b></p>
	<b>EMPLOYMENT</b>	<p><b>WHAT WERE YOU THINKING?</b></p> <p>This session will cover some of the more incredible mistakes employers and employees have made from actual decisions. You really can’t make this stuff up.</p> <p><b>Brian Nelson with Allison Nichol, Mary Jo O’Neill, Nicole St. Germain</b></p>
	<b>HIGHER EDUCATION</b>	<p><b>“ANYTHING YOU CAN DO I CAN DO BETTER” - CROSSROADS OF THE ADA AND TITLE IX</b></p> <p>Brandy is expecting. Overlapping issues between disability and modifications requested for Title IX issues will be discussed. Focus includes issues related to the Title IX regulations concerning pregnancy and their intersection with disability requirements. This session will also include relevant current issues in accommodating the longer-term effects of sexual misconduct.</p> <p><b>Melissa Frost with Paul Grossman, Howard Kallem, Jim Long</b></p>

**THE ASSOCIATION’S GOT TALENT - Maybe you will hear the next “Voice”**

**7:30 PM - Semi Annual Karaoke Contest - Refreshments for all – Donated PRIZES for the audience winners.**

**For those of you who don’t want to sing - come and enjoy the fun and entertainment provided by those who will make you cheer. Your cheers and applause will choose the prize winners.**



**Day Four - Thursday, October 26, 2017 - Concurrent MORNING Designated Sessions  
Conference Programs – Page 7**

Time Periods	Track	Workshop Synopsis
8:15a - 9:00a		<b>Continental Breakfast and Registration</b>
9:00a - 10:20a ( 2 PA CEU's ea)	<b>ACCESS, SERVICES, &amp; DESIGN</b>	<p><b>LAW ENFORCEMENT AND THE ADA – PART ONE</b></p> <p>The ADA has been in effect since 1990 and new regulations were promulgated in 2010 providing specific information for law enforcement/corrections. Law enforcement has been slow to realize the impact of the ADA on day-to-day operations. Since the passage of the ADA Amendments Act there has been an increase in litigation relating to law enforcement and corrections, in particular, a number of cases involving effective communication and the use of force.</p> <p>Solutions used by entities must be tailored to the unique criminal justice environment. This updated workshop will review significant cases, settlement agreements, and other actions brought under Title II (and other regulations) exhibiting the impact on law enforcement, explaining what a program is for law enforcement, training considerations unique to policing, false confessions, jail and prison operations, disability-based behavior confused for criminal acts, and the use of sign language interpreters.</p> <p align="right"><i>Michael Sullivan</i></p>
	<b>EMPLOYMENT</b>	<p><b>LEARNING TO JUGGLE</b></p> <p>Using case scenarios, this session will explore many common challenges and good practices in synthesizing FMLA, ADA, workers' compensation, and other disability benefits.</p> <p align="right"><i>Brian Nelson with Allison Nichol, Mary Jo O'Neill, Nicole St. Germain</i></p>
	<b>HIGHER EDUCATION</b>	<p><b>"IF YOU BUILD IT THEY WILL COME" - THE ACCESSIBLE CAMPUS</b></p> <p>Learn the basic necessary components to meet campus physical access requirements including: accessible housing, accessible routes, accessible events, emergency preparedness and evacuation, and access to transportation.</p> <p align="right"><i>Melissa Frost with Howard Kallem, Jim Long,</i></p>
10:40a - 12 Noon ( 2 PA CEU's ea)	<b>ACCESS, SERVICES, &amp; DESIGN</b>	<p><b>LAW ENFORCEMENT AND THE ADA – PART TWO</b></p> <p>In Part Two we continue reviewing the interaction between law enforcement and the ADA - the successful application and the not so successful interaction between people with disabilities in law enforcement situations. The session will provide a practical and real world application of Title II to the police and law enforcement.</p> <p align="right"><i>Michael Sullivan</i></p>
	<b>EMPLOYMENT</b>	<p><b>BRING IT ON</b></p> <p>Let's talk about any unanswered questions or unresolved issues that have arisen during the conference. Come and pick the panelists' brains – they're not scared. Bring it on!</p> <p align="right"><i>Brian Nelson with Allison Nichol, Mary Jo O'Neill, Nicole St. Germain</i></p>
	<b>HIGHER EDUCATION</b>	<p><b>"CARPE DIEM"</b></p> <p><b>REVISING YOUR TRANSITION PLAN TO GREET THE HORIZON</b></p> <p>This session will take your transition plan and explore four important areas of focus to rapidly increase accessibility compliance: Accessibility services, Policy and procedure, Physical accessibility, and Electronic information and technology. Best practice to prioritize efforts and collaborate for successful integration across campus will be discussed. Learn these effective strategies to ensure your campus is ready for the next generation of students.</p> <p align="right"><i>Melissa Frost with Howard Kallem, Jim Long</i></p>
12:00p-1:00p		<b>Hosted by MEDIC – Medical Education and International Consulting (</b>

**DAY FOUR - THURSDAY, October 26, 2016 - AFTERNOON General Sessions**  
**Conference Program – Page 8**

Designated General Sessions - All Participants	
1:00p - 2:00p  ( 1 PA CEU )	<p align="center"><b><i>RAISING UP THE RIGHT TO BE RESCUED</i></b></p> <p align="center"><b><i>When the Real Emergency Strikes – Emergency Preparedness - Part One</i></b></p> <p>As our society confronts more emergencies that test the limits of our capabilities, tough decisions will lie ahead. Although popular accounts sometimes state that the tenet of natural disasters is that they choose their victims capriciously and without remorse, the truth is far more disturbing—we choose the victims by failing to accommodate their needs. Challenging ourselves to remember that all members of society should have access to opportunities regardless of the impairments they may face may be the most difficult in moments of crisis; it is also no less important then. All too often, litigation serves to drive home lessons a willing listener could have learned long ago, litigation could have been avoided, and the parties could have gotten down to the business of crafting solutions much sooner.</p> <p align="center"><b><i>Michael Smith with Irene Bowen, Phong Nguyen, John Wodatch</i></b></p>
2:15p - 3:15p  ( 1 PA CEU )	<p align="center"><b><i>EMERGENCY PREPAREDNESS - PART TWO</i></b></p> <p>In Part Two we'll start by going over detailed plans that anticipate the needs of all people and outline clear strategies for meeting those needs. The emergency preparedness plans must provide for effective, detailed communication with all people before, during, and after emergency events. Other considerations are planning for the needs of mobility devices and service animals. Also, there requires planning with first responders for emergency evacuation of your facilities.</p> <p>What really happens after the emergency evacuation plan is in place? Does everyone know their role? How did the practice drills go?</p> <p>These sessions are designed to be interactive and addressing real-life issues.</p> <p align="center"><b><i>Michael Smith with Irene Bowen, Phong Nguyen, John Wodatch</i></b></p>
3:30p - 4:30p  ( 1 PA CEU )	<p align="center"><b><i>ADA COORDINATORS - A PERSPECTIVE</i></b></p> <p>You are your agency's/entity's/company's ADA Coordinator. The session will help you work within your organization to ensure you have the knowledge, funding, and resources - and buy-in - you'll need to succeed. Where do you start? How do you make progress? What do you need to know? What essential training and/or resources will you and your co-workers (and managers/supervisors) need? Who do you have to work with? How do you convince them that what you need to do is required, essential, and important?</p> <p align="center"><b><i>Irene Bowen, Melissa Frost, Howard Kallem, Jim Long, Brian Nelson Allison Nichol, Jim Long, Dean Perkins, Jim Terry, John Wodatch</i></b></p>

***Now is the time to plan for the Association's  
Spring 2018 National ADA Conference  
Tampa, FL, April 16-19, 2018***

# Fall 2017 National Conference Information & Registration - October 23-26, 2017 - San Diego

## Must Pre-Register

## NO Registrations Accepted at the Door

### Conference information includes Early Bird Discount

**EARLY BIRD, full conference, registration fee (\* see below)** available if registration **and** payment, **by credit card or check only**, is received by the Association, **no later than August 25, 2017. (No exceptions)**

**To RESERVE** your space, please **FAX** this completed registration form to: **(877) 480-7858, OR scanned PDF copy to NIEIEMAIL@aol.com**  
**If four or more participants from the same entity wish to register and pay in full at the same time, please call for special registration rates.**  
**Regular registrations must be paid in full and received no later than October 6, 2017, or space/materials will be not reserved.**

For information, please call **888-679-7227** and leave message with your contact number and best time to contact you.

**Mail registrations and make payments to: National Association of ADA Coordinators, P.O. Box 958, Rancho Mirage, CA 92270**

### CONFERENCE AND HOTEL INFORMATION

The conference is being held at the Sheraton Mission Valley San Diego, 1433 Camino Del Rio South, San Diego, CA 92108. Complimentary shuttle provided from/to San Diego International Airport. Guest room Internet is complimentary. Daytime self-parking is complimentary (overnight \$8 per car/day) to attendees. **Participant is responsible for making own lodging reservation. Hotel requires credit card guarantee.** The Association has negotiated a special conference rate from three days before/after the conference at a per room rate of \$158 plus taxes (single/double) if reserved **no later than 9/28/2017**, provided room block has not been sold out. To make lodging reservations call hotel reservations at (619) 260-0195 and mention you are attending the National Association of ADA Coordinators conference. Persons with disabilities please make requests for any sleeping room accommodations at the time you make reservations.

In order to participate in the training, I have need of:

Vegetarian or \_\_\_\_\_ meal.

(The Association must know of accommodations required for training no later than 9/22/2017. If an assistant attends, the person must register, attend same conference workshop sessions as person requiring the accommodation, and cover costs of food and materials.)

### JOIN or RENEW YOUR ASSOCIATE STATUS

The Association offers many benefits including reduced rates for workshops/conferences, a bi-monthly newsletter, an annual Associates' Directory for networking purposes, and a lapel pin. To join, complete contact information, check appropriate associate box below and include your fee. **If you join or renew and pay the first year dues at the time of registration, you can attend the conference at the Associate's rate.**

☐ Individual Associate – \$195;

☐ Organization Associate – \$345

See our web site - [www.ADACorrdinators.org](http://www.ADACorrdinators.org) - for updated information on the **Professional Associates (PA) Program**: **You must** include a completed copy of the PA application form found on the web site and include an additional one-time ☐ \$125 application fee per application, to become a participant in the Association's P.A.

### CONFERENCE DISCOUNTED REGISTRATION INFORMATION

Rate includes hosted continental breakfast(s), breaks, & luncheon(s) for Monday Through Thursday of conference

(Federal Tax Number is 33-0595554, nonprofit 501(c)(3) corporation)

Conference Dates	Associate Only - Daily Only Rates - Non-Associates
Mon. 10/23/2017	<input type="checkbox"/> \$595 <input type="checkbox"/> \$695
Tue. 10/24/2017	<input type="checkbox"/> \$595 <input type="checkbox"/> \$695
Wed. 10/25/2017	<input type="checkbox"/> \$595 <input type="checkbox"/> \$695
Thu. 10/26/2017	<input type="checkbox"/> \$595 <input type="checkbox"/> \$695

### All Four Days of the Conference

**Please note: You must be a current up-to-date Associate or join on this form to register at the Associate's conference rate.**

**ASSOCIATE - Full Conference After 8/25/2017 ☐ \$2,145**

**\* ASSOCIATE - Early Bird by 8/25/2017 ☐ \$1,995**

**NON-ASSOCIATE - Full conference after 8/25/2017 ☐ \$2,795**

**\* NON-ASSOCIATE - Early Bird by 8/25/2017 ☐ \$2,445**

**ANY CANCELLATION** must be in writing to us no later than 10/06/2017 (no exceptions) and is subject to a processing fee of \$600. Remaining balance, after processing fee is deducted for any cancellation on or after 10/6/2017, can only be applied to the Association's Spring 2018 or Fall 2018 national conferences.

**There are no refunds or credits for any no-shows on or after 10/12/2017.**

### TOTAL AMOUNT and METHOD OF PAYMENT

☐ Visa/MasterCard ☐ Amex ☐ Check

Cardholder: \_\_\_\_\_

Card number: \_\_\_\_\_

Expiration: \_\_\_\_\_ Total Amount: \$ \_\_\_\_\_

(Credit cards processed for the Association by conference planner, will show the words National Institute on Employment Issues - NIEI on your statement)

Please accept important emails from our Executive Administrator at:

[compperf@ix.netcom.com](mailto:compperf@ix.netcom.com)

### PARTICIPANT/ASSOCIATE INFORMATION

Name: \_\_\_\_\_ Title: \_\_\_\_\_

PLEASE Circle conference track of greatest interest to you: **ACCESS** **EMPLOYMENT** **HIGHER EDUCATION** (If left blank, **ACCESS Track** entered)

Organization: \_\_\_\_\_

Address: \_\_\_\_\_ Cty: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone:(\_\_\_\_\_) FAX:(\_\_\_\_\_) Email: \_\_\_\_\_

May we list your email in the conference participant list for networking purposes? Please circle: **Yes** **No**

Signature Required: \_\_\_\_\_ Date Approved/Received: \_\_\_\_\_ (WEB17)

## ***Fall 2017 - Conference Keynotes and Faculty***

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### ***ADA TITLE I AND GINA***

***Acting Associate Legal Counsel and Director, ADA/GINA Policy Division***

***U.S. E.E.O.C., Washington, D.C.***

***Christopher Kuczynski, J.D., LL.M., P.A.***

Mr. Kuczynski joined the Commission in February 1997 as Assistant Legal Counsel and Director of the ADA Policy Division (now the ADA/GINA Policy Division). Chris supervises the development of regulations, policy guidance, and technical assistance publications on Title I of the Americans with Disabilities Act (ADA) and Title II of the Genetic Information Nondiscrimination Act (GINA), and regularly advises EEOC field and headquarters offices, including the offices of the Chair and Commissioners, on complex ADA and GINA issues. His leadership was critical in the issuance of final regulations implementing GINA (published in November 2010) and the ADA Amendments Act (published in March 2011).

Chris has made 36 presentations on the ADA, and more recently on GINA, to our Association's national conference audiences, including human resources and EEO professionals, supervisors and managers in the public and private sectors, medical professionals, and plaintiff and defence counsels. He has been interviewed on the ADA and GINA by numerous media outlets including The New York Times, USA Today, The Wall Street Journal, and The Washington Post. He has done radio or television interviews for ABC News, the CBS Morning News, and MSNBC, and has been a guest on C-SPAN's Washington Journal.

From January to October 2003, Chris was a Special Assistant to former EEOC Chair Cari Dominguez, and from October 2003 through April 2004, he was Associate Director of the White House Domestic Policy Council. Chris was a trial attorney in the Disability Rights Section of the U.S. Department of Justice from July 1993 until February 1997, and was a litigation associate for three years with a major Philadelphia law firm.

He has a B.A. in English from Villanova University, where he was a member of Phi Beta Kappa and from which he received the School of Liberal Arts and Sciences 2007 Alumni Medallion; a J.D. from Temple Law School; and an LL.M. from Yale Law School.

### ***ADA TITLE II and III***

***Acting Chief, Disability Rights Section, Civil Rights Division***

***U.S. Department of Justice, Washington, D.C.***

***Anne Raish, J.D.***

Ms. Raish has been with the Disability Rights Section since 2010, serving as a trial attorney before being appointed as a Deputy Chief. At the Department of Justice, Anne has worked on a range of disability rights-related issues, including enforcement of the right of individuals with disabilities to live, work, and receive services in the community under the Americans with Disabilities Act. She has worked with states in the negotiation and implementation of settlement agreements, and has worked on disability rights issues in the context of child welfare and professional licensing. Prior to joining the Civil Rights Division, Anne practiced law at a major New York law firm.

## **ADA Enforcing Agency Faculty**

### ***Regional Attorney, U.S. Equal Employment Opportunity Commission, Phoenix, AZ***

**Mary Jo O'Neill, J.D., P.A.**

Ms. O'Neill began her work at the E.E.O.C. as a trial attorney, then as a supervisory trial attorney, until she was selected as the Regional Attorney in 2002. Mary Jo manages the legal staff, litigates employment discrimination cases in federal court in five states, advises her enforcement colleagues, and is a frequent national trainer/speaker for the E.E.O.C. This will be Mary Jo's 16<sup>th</sup> time she has participated in our ADA Conferences.

### ***Outreach and Education Coordinator, Los Angeles District of the U.S. E.E.O.C., Los Angeles, CA***

**Nicole St. Germain**

Ms. St. Germain oversees the education and outreach initiatives along with public relations for the Los Angeles District, which includes central and southern California, southern Nevada, Hawaii, and the U.S. territories of Guam, American Samoa, Wake Islands, and the Commonwealth of the Northern Mariana Islands. Nicole joined the EEOC in 2009 and has held the positions of Enforcement Investigator and Systemic Investigator. She was appointed to the position of Outreach and Education Coordinator in 2016. Nicole holds a graduate degree in Forensic Psychology, undergraduate degrees in Sociology and Criminal Justice, and is fluent in American Sign Language.

### ***District Director, Los Angeles District, U.S. E.E.O.C., Los Angeles, CA***

**Rosa Viramontes**

Ms. Viramontes joined the EEOC in 1978 as a clerk typist. Rosa served in several support and administrative positions including personnel clerk, director's secretary and personnel management specialist before moving to the enforcement area as an investigator. After serving as an investigator for a number of years, Rosa held various senior-level investigative and supervisory positions, including systemic investigator, systemic and enforcement supervisor and program analyst. In 1997 Viramontes advanced to the management ranks where she has served in various capacities including enforcement manager, deputy director, and acting district director. Rosa has been the recipient of numerous agency awards, including the 2012 EEOC Chair's Award for Commitment to Excellence, the highest honor bestowed on EEOC staff. The EEOC's Los Angeles District Office encompasses central and southern California, southern Nevada, Hawaii, and the U.S. territories of Guam, American Samoa, Wake Islands and the Commonwealth of the Northern Mariana Islands.

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## **ADA Enforcing Agency Faculty (Ret.)**

### ***Deputy Chief (ret.), Disability Rights Section, U.S. Department of Justice, Washington, D.C.***

***President, ADA One, LLC, Silver Spring, MD***

**Irene Bowen, J.D., P.A.**

Ms. Bowen is a nationally recognized ADA consultant, trainer, and speaker. Before starting her firm in 2009, she was Deputy Chief of the Disability Rights Section at DOJ, where she oversaw enforcement of the ADA and was actively involved in the development of the ADA accessibility guidelines as well as DOJ's Title II and Title III regulations. Irene's clients include local governments, colleges and universities, public accommodations, a large school system, the State of Texas, and a Federal agency. She teams with architectural firms and others in assisting entities with self-evaluations and transition plans, and development of cost-effective approaches to compliance. Since 2011, Ms. Bowen has presented internationally, assisted in self-evaluations of Fulton County, GA, the City of Chicago, IL, the City of Seattle, several universities, and health-care providers; and authored or co-authored



six ADA guides including an ADA guide for nonprofits; a resource for accommodating students who are deaf or hard of hearing at the post-secondary level from pepnet 2; a facilities guide for the state of Georgia and a guide for court officials). **Irene is a member of the Association's Board of Directors.**

***Chief Regional Attorney (ret.), U.S. Department of Education, Office for Civil Rights,  
Adjunct Professor of Disability Law at Hastings College of Law and the University of California  
San Francisco, CA***

**Paul D. Grossman, J.D., P.A.**

Paul is an Adjunct Professor of Disability Law at Hastings College of Law and the University of California. He regularly lectures or publishes on disability law at U.C. Berkeley, U.C. Davis, Ohio State University, LDAA, and the National Association of ADA Coordinators. Paul was one of the first individuals to bring the issue of educating returning war veterans to the attention of the higher education community and to develop both compliance and best practice strategies for this population. Many of Paul's compliance decisions, developed in his capacity as Chief Regional Attorney and Coordinator of OCR's National Disability Network are highlighted in the online publication "***Disability Compliance in Higher Education.***" Paul is co-author of "***The Law of Disability Discrimination***" (8<sup>th</sup> edition). Insights into this area of law are often drawn from his own challenges attending college and law school as an individual with a disability.

***Senior Consultant, Employment Matters, LLC/Flynn Investigations Group  
Senior Attorney (ret.), Office for Civil Rights, U.S. Department of Education  
Denver Enforcement Office, Denver, CO***

**James D. Long, Jr., J.D., P.A.**

Jim Long served for more than 10 years in the Office for Civil Rights of the U.S. Department of Education. Before joining the Office for Civil Rights he served as a litigation counsel for U.S. Department of Energy. Jim served as an officer in the Army's Judge Advocate General's Corp for 23 years. He is the Principal at Educational Rights Consulting and a Senior Consultant with Employment Matters, LLC—Flynn Investigations Group, a consulting firm. **Jim is a member of the Board of Directors of the National Association of ADA Coordinators.**

***Chief (ret.), Disability Rights Section, U.S. Department of Justice, Washington, D.C.  
Allison Nichol, J.D., P.A.***

Allison J. Nichol had the privilege of serving the Department of Justice (DOJ) for more than twenty years as both Deputy Chief and then Chief of the Disability Rights Section of the Civil Rights Division which enforces the ADA. Most recently, she was Special Counsel on Disability Employment to the Deputy Associate Attorney General (AG) for Diversity and Inclusion, Office of the AG. She served as a member of the Executive Staff of the AG's Diversity Management Advisory Council and liaison to the AG's Committee on the Employment of Persons with Disabilities. In 2012, she was a member of the group that received the AG's Award for EEO, the DOJ's highest award for performance in support of the DoJ's EEO program. In 2016, Allison was privileged to be awarded the Alexander D. Forger Award for achievement on behalf of the HIV communities by the American Bar Association's AIDS Coordinating Committee. She is Counsel for Law and Policy to the Sero Project. She received a B.A. from the University of Indiana, and a J.D. from Valparaiso University.

***Deputy Assistant Attorney General (ret.), DRS  
U.S. Department of Justice, Washington, D.C.***

**John Wodatch, J.D., P.A.**

John Wodatch is a disability rights attorney who retired after 42 years of Federal government service. He authored the Federal government's first comprehensive disability rights regulations, the regulations implementing section 504 of the Rehabilitation Act. He is one of the drafters of the Americans with Disabilities Act as he served as the Department of Justice's chief technical expert during the writing and passage of the ADA. He was the chief author of the Department of Justice's 1991 ADA regulations, created DOJ's initial ADA technical assistance programs, and assembled the Department's ADA enforcement staff. From 1990 until 2011 he served as the

Director and Section Chief overseeing all interpretation, technical assistance, and enforcement of the ADA at the Department of Justice. Just before he retired, he was responsible for the first major revision of the Department's ADA regulations, including the 2010 Standards for Accessible Design. In 2010 he was honored with the Presidential Distinguished Rank Award for exceptional achievement in his career. He is now serving clients as an expert in the application of the ADA's requirements for accessible design and program accessibility for State and local governments and private businesses. On the international level, John is continuing his work seeking U.S. ratification of the United Nations Convention on the Rights of Persons with Disabilities. He received a B.A. from Trinity College, an M.P.A. from Harvard University, and a J.D. from the Georgetown University Law School. **John is the President of the Association and is a member of the Association's Board of Directors.**

### **Featured Senior ADA Professional Faculty Members**

#### ***Accessibility Web Developer and Consultant, Accessible Web Design, St. Paul, MN***

**Joe Dolson, P.A.**

Mr. Dolson is an internationally recognized writer and educator in web accessibility. He writes a regular column on web accessibility for Practical eCommerce magazine. He works with the team that helps make the WordPress content management system to ensure great accessibility in that system. He helps people understand what makes the web work for people with disabilities. In addition to consulting and teaching, Joe provides web development and consulting services to clients throughout the United States, helping them towards more accessible web services for their customers and users. Joe is graduate of Macalester College.

#### ***Director Equal Opportunity & Affirmative Action, Title IX Coordinator, Equity Officer Utah Valley University, Orem, UT***

**Melissa L. Frost, J.D., P.A.**

Melissa has a history of public service that includes: Executive Director of Provo School District, State of Utah as the ADA Coordinator, Workers' Compensation Administrator, and a Loss Control Consultant advising all state agencies, school districts and post-secondary institutions regarding Family Medical Leave, ADA, Title VII discrimination, PDA, Title IX and other campus/student issues. She has also served the state as a Liability Prevention Specialist for the Developmental Center and as an Administrative Law Judge for the Department of Workforce Services. Prior to state service, Melissa worked fourteen years in healthcare management and administration in both California and Washington D.C. Melissa received her B.A. in Government and Politics from the University of Maryland and her J.D. from the J. Reuben Clark Law School at Brigham Young University. **Melissa is a member of the Association's Board of Directors.**

#### ***Executive Director, National Association of ADA Coordinators, Rancho Mirage, CA Managing Director, National Institute on Employment Issues, Rancho Mirage, CA***

**Paul D. Hagle, P.A.**

Mr. Hagle has been associated with the ADA since its passage in 1990. He is recognized for his seminars on ADA Title I throughout the United States. He serves as an expert witness for major hospitals on effective communications, and ADA Title I for a major airport, automobile company, airline, and a major fast food chain. He developed and presented one of the first programs dealing with ADA/Workers' Compensation/FMLA interface, the importance of disability awareness perception, and legal issues of Title I of the ADA since 1992. He was on the original Board of Directors and appointed the Association's Executive Director in 1992. He serves as Chair, Parks, Recreation and Trails Commission; and works with the City Council on ADA issues for the City of Rancho Mirage, CA. He received his B.A. from the University of Michigan and did graduate work at the University of California, Los Angeles. **Paul is a member of the Association's Board of Directors.**

***Director of Title IX Compliance at Duke University, Durham, NC***

**Howard Kallem, J.D., P.A.**

Howard Kallem previously had been with the Office for Civil Rights, U.S. Department of Education, serving for the last 15 years as the Chief Regional Attorney for the Washington, DC regional office and for five years before that in its policy office. He took a year off during his time with OCR to work as a Senior Equal Opportunity Specialist with the Office of Equity and Diversity Services at George Mason University in Virginia. Prior to that, he was with the U.S. Equal Employment Opportunity Commission for 14 years.

***Director of the Utah Division of Risk Management, State of Utah, Salt Lake City, UT***

**Brian Nelson, J.D., P.A.**

Mr. Nelson currently heads the agency which insures all state agencies, school districts, public institutions of higher education, and many charter schools in the State of Utah. Previously, Brian served as the ADA Coordinator for the Division of Risk Management, facilitating ADA/504 compliance relative to physical access, program access, employment practices, and student accommodations. He also served as Chairman of the Governor's Committee on Employment of People with Disabilities. Brian received his Bachelor of Arts and Juris Doctor degrees from Brigham Young University. **Brian is a member of the Association's Board of Directors.**

***Medical Director, Redlands Yucaipa Medical Group, Past Chief of Staff for Redlands Community Hospital, Adjunct Professor for University of California Medical School, Riverside, CA***

**Phong Nguyen, M.D., P.A.**

Dr. Nguyen is Medical Director for a large medical group. Phong is a member of the Interdisciplinary Committee; Medical Director of the Redlands, Rialto, Loma Linda, and San Manuel Fire Departments; Medical Director for the Paramedic Program at Crafton Hills College; Medical Director for Aeromedics, and ACLS Course Director/ Instructor. **Phong is the Chairman of the Board, Vice President of the Association, and is the Conference Coordinator**

***ADA Coordinator, Florida Department of Transportation, Tallahassee, FL***

**Dean Perkins, R.A., P.A.**

An architect since 1984, Dean Perkins joined the Florida Department of Transportation in 1988 to manage rest area design and production projects. He was appointed as the FDOT's statewide ADA Coordinator in January 1992. In this position, Dean is principal in initiating Department policies, developing procedures and managing practices related to accessibility for persons with disabilities for agency services and facilities along the state highway system and for buildings owned and operated by the Department. He has served as an expert witness in ADA matters. Dean designs and conducts training in ADA compliance around Florida and at national conferences. He provides technical support on accessible design and construction for city and county engineering and public works staff. He has a Master of Architecture from Florida A&M University. **Dean is the Secretary of the Association and a member of the Association's Board of Directors.**

***Fire Chief and Commissioner and Vice Chair of the Department of Safety and Health Services, San Manuel Band of Missions Indians, San Bernardino County, CA***

**Michael J. Smith, M.S., P.A.**

Chief Smith is responsible for the supervision of all emergency activities and operations. He established a 33-member fire department which serves the region under the California mutual aid system as well as a community preparedness, mitigation, response, and recovery nexus. In 2012, Michael was honored at the White House by the President as a "Champion of Change" for emergency preparedness. He was a principal in the development of San Bernardino County's Mutual Aid plan in which two or more jurisdictions furnish resources, facilities and services to each to prevent and to combat all emergencies. He was deployed to aid in the recovery from the "9-11-01" attacks as well as gulf-coast hurricanes, including Katrina. Mike is a graduate of the National Fire Academy, has a B.S. from the University of Redlands, an M.S. in Fire Service Leadership, & M.S. in Public Administration.



***ADA Consultant for Law Enforcement Issues, Michael Sullivan ADA Consulting, Petaluma, CA  
ADA Coordinator (ret.), San Francisco Police Department, San Francisco, CA***

**Michael J. Sullivan, B.A., P.A.**

Mr. Sullivan is a nationally known and award-winning consultant specializing in ADA law enforcement issues. Michael also advises on both program and physical accessibility issues and has served as an expert witness in several cases. He has extensive expertise in developing reasonable accommodations and implementing training for peace officers regarding the ADA requirements and responsibilities. Michael retired after 32 years as a police Sergeant with the San Francisco Police Department. During that time he was ADA Coordinator and Disability Community Liaison for 17 years. He was honored for his work by the City of San Francisco, the California State Legislature, U.S. Congress, and numerous community groups and non-profits. Michael was a member of the Executive Board of the President's Committee on the Employment of People with Disabilities from 1999 through 2001 and currently is on the advisory board of the ARC's, National Center on Criminal Justice & Disability. . Michael has a B.A. in Health Science with emphasis in Community Health Education from San Francisco State University. **Michael is an emeritus member of the Board of Directors.**

***Chief Executive Officer, Evan Terry Associates and Corada.com, Birmingham, AL***

**James Terry, AIA, CASp, P.A.**

Mr. Terry is a licensed architect in eight states with extensive access training and consulting experience in corporate, governmental, healthcare, schools, universities, libraries, retail, and recreational facilities. Under his leadership, ETA assists organizations in understanding their access requirements, cataloging barriers, and managing the implementation of their ADA and local access compliance plans. ETA developed **Corada** as a comprehensive online resource providing extremely fast and focused access to the regulations and standards, technical assistance, product information, just-in-time training, and other resources for ADA Coordinators. **Jim is a member of the Association's Board of Directors.**

***Staff Attorney / Employment Rights Helpline Manager, Equip for Equality (EFE), Chicago, IL***  
**Rachel M. Weisberg, J.D.**

Rachel Weisberg represents clients in a wide range of disability discrimination cases, including cases under Titles I, II and III of the ADA, and analogous state and local laws. Rachel also manages EFE's Employment Rights Helpline, which aims to expand employment opportunities by providing legal and practical advice to applicants and individuals with disabilities. Rachel is a frequent trainer on the ADA and speaks regularly at national conferences and webinars. Prior to Equip for Equality, Rachel worked as a labor and employment associate at Sidley Austin LLP, and as a law clerk for a federal judge. Before law school, Rachel worked as an ADA technical assistance specialist at the Mid-Atlantic ADA Center, and during law school interned with EFE and the Disability Rights Section of the U.S. Department of Justice. Rachel earned her undergraduate degree from the University of Michigan and her law degree from Northwestern University.

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Faculty confirmed at time of publication.

Conference announcements, agendas and faculty subject to change without notice  
due to unforeseen circumstances.