

A HISTORY OF THE COLLEGE OF COMMERCIAL ARBITRATORS

Introduction

This is a brief narrative history of the College of Commercial Arbitrators (“CCA” or “the College”). It has few footnotes and no appendices. It is intended to remind the long term Fellows and inform the newer Fellows about what our goals were when we started, how we grew, and about the major accomplishments that have brought us to such prominence among organizations speaking for and improving commercial arbitration. It is not intended as a detailed historical record, although our major initiatives, Best Practices, the Protocols, and our Educational outreach are all reviewed briefly and are readily available to the Fellows as well as to the entire arbitration community. Yearly statistics exist. Lists of Presidents, Officers, Directors, membership census can be created. Our annual budgets, and historical information about the content and location of our annual meetings has generally been preserved. It is assumed that these more granular details are of interest to a very modest subset of the membership and not of sufficiently general interest for a narrative document outlining the history of the College.

Founding of the College of Commercial Arbitrators

The College of Commercial Arbitrators began with discussions among a small group of commercial arbitrators in 2000. The discussions were about the desirability and feasibility of creating an organization that would bring together experienced and respected commercial arbitrators throughout the country to join in an organization that would provide an opportunity for Fellows to interact with each other about their profession, promote competent and ethical practices and elevate the standard of arbitration practice.

Those meetings led to the formation of a group of 22 very experienced commercial arbitrators who became the Founding Board of the College of Commercial Arbitrators. In April 2001 The Founding Board selected 50 (including the members of the Founding Board) proposed Fellows to invite to the first meeting of the College in Marina del Rey on November 10-12, 2001.

The 50 Fellows invited to join the College accepted the invitation and all who were able to do so attended the first meeting. The CLE portion of the meeting consisted of presentations by Stephen Hayford and Larry Waddington about recent cases addressing the law of commercial arbitration. Time was devoted to discussing the goals of the College, the organizational structure and bylaws and the likely viability and growth of the College. It was agreed that it should be an elite group with limited membership dedicated to the growth and integrity of commercial arbitration. An important part of the meeting was the opportunity for arbitrators from different parts of the country to meet and interact, make new friendships and discuss issues relating to commercial arbitration arising in the various parts of the country where the Fellows were practicing.

The first President of the College was Richard Chernick, who played a significant role in organizing the College and in guiding the College in the early years of its existence. He was President from May 2001 when he was selected by the Founding Board, through the 2002 meeting of the College when Gerry Aksen became the President. His major contribution to the College was recognized with a special award at the 11th meeting of the College in Denver.

Over the next few years the College grew steadily with 28 new Fellows in 2002, 28 in 2003 and 24 in 2004. The largest group (34) was admitted in 2010, the year following the *National Summit on Business-to-Business Arbitration* in Washington, D.C. In 2014 the College had 234 members; 246 members in 2017.

The Early Years

In the early years of the College, management was casual. The College was small. The officers (or their staff) got out the annual dues statements, paid the bills, organized the meetings and generally ran the College. As the College grew it required more professional administration. In 2006 the College hired the Texas Institute of Continuing Legal Education (TICLE) to provide the College with professional administrators. Their contract has been regularly renewed and they remain our valued partners. They have helped the College with our accounting needs, provided regular profit and loss statements and balance sheets, and do the College billings. They also help us with our other record keeping by note taking at meetings and facilitating communications to membership. They have helped plan and organize our regular and mid-year meetings, helped us identify facilities for our meetings and negotiated with the facilities to obtain favorable pricing using their experience in providing similar services to other organizations. With their assistance the financial records of the College are now professionally handled and the officers and directors, and the membership, have access to accurate financial accounting and the record keeping of College activities is maintained in one place.

Other management activities of the College became more formal. Bruce Belding was the first president to appoint members to the Nominating Committee which nominated new directors and officers. The use of committees as part of the management structure of the College has increased over the years to the point where there are now 20 committees. Creation of and population of committees is by the Board of Directors, mostly at the suggestion of the President or Executive Committee.

Membership

The process of evaluating nominations for new members was supervised in the early years by Gerald Phillips. There was no formal committee structure for that process until 2009 when Ty Holt became Chair of the membership committee.

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The process was formalized and systematized by Ty. The process has since been further organized by succeeding committee Chairs, Christi Underwood and Judith Ittig with forms and schedules for consideration of applications, clear responsibility for providing the necessary information and a process established for reporting to the Directors.

The welcoming arrangements for new members were begun under the leadership of Susan Nycum. It started with a breakfast at which the new Fellows are welcomed and introduced to all of the committee activities. New Fellows now also benefit from a mentoring process which assigns veteran members as “squires” to help mentor the new members through their initial meeting and broaden their acquaintance with the membership.

An Outreach Committee was started to help the College accomplish its diversification goals by identifying candidates that offer the College diversity in ethnicity, gender, and geography. The Outreach Committee continues its efforts following the processes put in place by Stephen Strick, Reginald Holmes and Connie Peterson and the College is committed to expanding the diversification of its members.

Relationships with Other Organizations

The College has maintained a close relationship with the Dispute Resolution Section of the American Bar Association. Four CCA Fellows, Richard Chernick, Bruce Meyerson, Ruth Glick and Wayne Thorpe have been the Chair of the Dispute Resolution Section. Other Fellows have been officers in the DR Section and many have been presenters at the Section’s Spring meetings. The established relationship of the College with the American Arbitration Association, JAMS and CPR has been and remains helpful to the College in gaining in acceptance within the hierarchy of organizations committed to improving commercial arbitration.

Major Initiatives of the College

BEST PRACTICES

In 2004, under the leadership of then President of the College, Winslow Christian, a man revered by the Fellows who were privileged to know and work with him, the College embarked on a project that demonstrated the resources of the College in commercial arbitration and put the College on the map as a serious player in the field of commercial arbitration: That project was The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration. The first edition of the Guide was published in 2006. A second edition was published in 2010 and a third edition was published in 2014. Fellow Curtis E. von Kann was Editor-in-Chief of the first edition with Fellows James M. Gaitis and June R. Lehrman as editors. Fellow James M. Gaitis was Editor-in-Chief of the second and third editions, with Fellows Curt von Kann and Robert Wachsmuth acting as editors of the Second Edition and Fellows Carl F. Ingwalson, Jr and Vivien B. Shelanski acting as editors of the Third Edition.

The Guide is possible because of the dedication of numerous Fellows who undertook to write the various chapters reducing to writing the experience and expertise they had gathered over the years. The Guide covers every aspect of an arbitration from start to finish with practical guidance and citations to applicable institutional rules and case law. Each new addition refined and expanded the previous editions, with the Third Edition adding sections on electronic discovery, interlocutory decisions, intra-tribunal issues and hybrid processes.

The Guide has been a professional and commercial success. It has raised the profile of the College in the field of commercial arbitration and advanced the goals of the College to improve commercial arbitration. The man who conceived this project and did much to keep it moving forward until his untimely death in 2005 was Winslow Christian. The Dedication of the Third Edition bears quoting here:

“The College of Commercial Arbitrators fondly dedicates this book to the memory of Winslow Christian (April 12, 1926 – November 15, 2005), distinguished lawyer, judge, arbitrator, and former President of the College who conceived the Guide, launched its creation, but died suddenly before the first edition of the Guide could be published. The work is part of the rich legacy he leaves to the profession he loved and served so well.”

THE NATIONAL SUMMIT AND THE PROTOCOLS

During the first decade of the 21st Century there was evidence of growing concerns – and a troubling public perception – that arbitration was losing its image as a fast and inexpensive way to resolve disputes. It was becoming increasingly expensive and delays were more common. While these problems were evident to many arbitration professionals, providers and users, it was the College which took the decisive steps to address these problems at a National Summit and to suggest broad based solutions. The result was the publication by the College in 2010 of the Protocols for Expeditious, Cost-Effective Commercial Arbitration (“The Protocols”).

The idea for the project that led to the creation of The Protocols was triggered by a keynote address at the 2007 Annual Meeting of the CCA entitled “Arbitration and Choice” by Tom Stipanowich, a founding Fellow of CCA, and Director of the Straus Institute for Dispute Resolution at Pepperdine University School of Law. Early in 2008, CCA President-elect Curt von Kann approached Professor Stipanowich about helping him organize a project to address the challenge laid down by his address. With the strong support of CCA President Bruce Belding, von Kann and Stipanowich moved forward with plans to convene a *National Summit on Business to Business Arbitration* (“National Summit” or “Summit”). It was agreed that the National Summit would be held in conjunction with the 2009 annual meeting of the College in Washington, D.C in 2009, and that a set of draft guidelines

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aimed at four different constituent groups who participate in commercial arbitration – in-house counsel, outside arbitration counsel, arbitrators and provider institutions – would be developed in advance of the Summit and serve as a basis for discussion.

Sponsors were sought and agreed to assist in the project. Many Fellows of the College participated in committees, and task forces were created to prepare for a conference that would develop contemporary, broad based solutions to these problems. CCA Fellow Deborah Rothman was brought on by von Kann and Stipanowich to assist them in overseeing preparation of the draft guidelines. Stipanowich, as Editor-in-Chief, with his staff at the Straus Institute and with the assistance of Associate Editors Curt von Kann and Deborah Rothman created the final version of the Protocols. The many individuals who participated in organizing and planning the Summit are listed in the Protocols, which are available on the CCA web site, www.CCAarbitration.org.

The National Summit was attended by approximately 250 participants representing all four constituencies – in-house counsel, outside arbitration counsel, arbitrators and provider institutions – and was extremely successful. Suggestions for resolution of the problems affecting commercial arbitration were generated by the discussions at the National Summit and were rigorously evaluated, articulated, and supported by authority and analysis under the direction and supervision of Professor Stipanowich, and Associate Editors von Kann and Rothman. The end result was the Protocols for Expedious, Cost-Effective Commercial Arbitration, which were published in 2010. In addition, Stipanowich authored two related white papers, “*Arbitration: The ‘New Litigation,’*” and “*Arbitration and Choice: Taking Charge of the ‘New Litigation,’*” that were eventually published as articles.

The College distributed the finished Protocols widely to other arbitration organizations, academia, law firms, businesses, judges and institutions interested in arbitration. DuPont General Counsel Thomas Sager personally sent copies of The Protocols to all of the Fortune 1,000 General Counsel with an encouraging cover letter. The College established a distribution committee headed by John Hinchey and James Durham which provided talking points and outlines for use by other members of the College in the process of distribution. The Protocols were distributed internationally as well. To date almost 10,000 copies of the Protocols have been distributed. The College was recognized and honored with the American Bar Association ADR Section’s John W. Cooley Lawyer as Problem Solver Award in 2011 for the College’s creation of The Protocols. The Protocols also received the 2010 Practical Achievement Award from the International Institute for Conflict Prevention & Resolution (CPR).

The reputation of the College as a serious and effective voice for the improvement of commercial arbitration was greatly enhanced by the issuance of the Protocols, which have been widely cited.

EDUCATION

Another important outreach of the College, which expanded the reputation of the College for actions to benefit and improve commercial arbitration jurisprudence in the United States, was the development and presentation of programs designed to educate arbitrators, users and advocates in arbitration best practices.

In 2008, the Education Committee, with Gene Farber and John Byrne as Co-Chairs, developed and presented a program to the New York bar titled “*Managing Your First Arbitration*.” The program was successful beyond initial expectations. For the next several years the program was refined and expanded and presented throughout the country with Fellows of the College volunteering their time to educate others. The American Arbitration Association and JAMS joined in sponsoring this program and provided assistance to the College in the marketing and presentation of the programs. With the later addition of a program entitled “*Managing a Successful Arbitration*” the CCA programs have been received with enthusiasm in cities across the country including, NYC, Hartford, Boston, Columbus, Nashville, Seattle, Denver, Houston, Washington DC, LA, Phoenix, Miami, Chicago, Atlanta, San Antonio, Charlotte, New Brunswick, NJ, Oklahoma City and Columbus, Ohio.

Thereafter, a committee for Law Firm CLE’s was formed and charged with providing CLE Programs to law firms on various topics to enhance the body of knowledge in law firms on commercial arbitration, and provide an opportunity for Fellows to present publicly in their regions. Aply chaired by Roy L. De Barbieri, since the Committee’s inception, the Committee has successfully presented over twenty live programs at various law firms in New York City, Chicago, Los Angeles, Connecticut, and throughout the United States.

The value of the education programs to the community of arbitrators and users of arbitration was apparent, as was the enhanced profile of the College in the arbitration community. The education initiative was significantly expanded when Gene Farber became President of the College in 2012. He substantially increased the funding for education programs and created a broader group of education programs for presentation to various constituencies. Some example of the programs initiated during Gene’s presidency, and expanded upon by successive Presidents, include:

- The Corporate Outreach Committee, which has provided educational programming to in house counsel and offers bespoke sessions tailored to the needs and requests of the particular company.
- The Judicial Liaison Committee has been offering sessions geared to judges to further inform them about the unique aspects of arbitration that they are most likely to encounter in their courts.

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- The Legislation Committee launched by Edna Sussman has tracked legislation relating to arbitration in the states across the country with the help of dozens of CCA Fellows.
- The Construction Committee has organized educational programming in this specialized field.

The College also formed other committees to meet specific needs: The Technology and Website committees chaired by Pete Michaelson and later Mark Heley and Christopher Lee to review the web site and inform the Fellows about useful advances in technology; the Public Policy Committee chaired by Jim Carter to consider requests received by the College to take public positions; the Ethics Committee chaired by Bob Holtzman to keep Fellows up to date on the latest developments with possible ethical implications, such as social media.

International

The College has always had members who were active in and well-known in international arbitration. Many of our current Fellows are active in Europe and the Pacific Rim. (In fact, at least one of the Fellows has undertaken to learn Chinese in order to act as an arbitrator in the Far East.) And in recent years, in response to the globalization of trade and consequent growth of international arbitration, the College founded an International Committee, first chaired by Susan Nycum, Walter Gans and Elliot Polebaum. The committee has been active in developing programming for this year's and last year's annual meetings, and bringing highly regarded arbitration practitioners from around the world to speak with us so the Fellows can gain the benefit of their perspectives. The College has also admitted a number of additional distinguished international Fellows to join our ranks and is embarking on several initiatives with cross-border implications.

The Straus Institute

Through much of its history the CCA has enjoyed a fruitful relationship with the Pepperdine University School of Law's Straus Institute for Dispute Resolution, led by Tom Stipanowich. Inspired by his address to the CCA in 2007, CCA President Tyrone Holt invited Professor Stipanowich to prepare and present an updated report to the Board and membership of CCA on the state and future of commercial arbitration, to be delivered at the Annual Meeting in October, 2013. With CCA funding the report and survey, and giving Professor Stipanowich access to the CCA membership to conduct an extensive survey, the CCA/Straus Institute Survey of Experienced Arbitrators was the most extensive public survey of its kind ever undertaken. The Report and the accompanying Survey data contained considerable new information and insights on many different aspects of commercial arbitration practice in the U.S. and in international disputes. Tom subsequently published several articles on arbitration practices, challenges and the future

based on the Survey,¹ and has made many presentations on the Survey data and his Report around the U.S. and abroad. The Straus Institute funded the distribution of copies of his articles to all members of the CCA in the spring of 2015.

A third important result of the Report and Survey was the preparation of a third article on commercial arbitration and settlement.² This article, which emphasized the apparent growing incidence of settlement during the course of arbitration and the varying attitudes of CCA members in their role, if any, in setting the stage for settlement, was the primary template for a morning brainstorming session conducted prior to the Fall, 2014 at the CCA Annual Meeting in Los Angeles. The meeting was facilitated by Professor Stipanowich, Louise La Mothe and John Sherrill and produced a new round of insights regarding such topics as the role of mediation in laying the groundwork for arbitration, and vice versa, and the appropriate activities arbitrators might undertake in regards to settlement.

Members

The College is rich in the high quality of its members. The accomplishments of its members are too numerous to list in detail. They publish articles in scholarly journals, arbitration magazines, bar publications, and international journals. They make presentations to professional organizations, corporate users, judicial groups and national, state and local organizations. A good number are professors or adjuncts at distinguished educational institutions.

An outstanding example of our Fellows' innovative accomplishments is Paul Lurie's creation and maintenance of a Mediation and Arbitration Forum (*MEDIATE-AND-ARBITRATE@Peach.Ease.listerve.com*) which is a valuable resource begun by him before he became a Fellow of the College, and which he has maintained at a high level since its inception. The listserv allows its membership of national arbitrators, many of whom are Fellows in the College, as well as arbitration providers and users, to debate issues and remain up to date on arbitration law and practice in the U. S. and increasingly internationally, on a current basis.

In 2015, encouraged by President Deborah Rothman, who hoped to retain the collegiality of our growing College, Paul Dubow edited and compiled a bi-monthly newsletter, with assistance from Bill Seward. The goal of the Newsletter is to keep the Fellows up to date on latest developments inside and outside the College, apprise them about other Fellows' activities and accolades, and decrease e-mail traffic to Fellows from the College.

All of these activities remind those active in the field of arbitration of the contributions of the College of Commercial Arbitrators to the field of arbitration in general and commercial arbitration in particular.

Conclusion

This narrative history has been prepared for distribution to the Fellows at the 15th Annual Meeting of the College in New York on October 22-24, 2015³. The annual gathering of the College has offered the Fellows cutting edge programming and an opportunity to learn from one another. The program for this year's meeting demonstrates many of the virtues of the College. It contains programs addressing significant developments in commercial arbitration, both identifying them and providing a forum for suggestions about how to deal with them. It also has programs addressing the future changes in arbitration and evolving roles for arbitrators as well as consideration of ethics issues to be addressed by the College and the Fellows. The history of the College will continue. If past is prologue, the College will continue in its leadership role in commercial arbitration and bright new chapters in the history of the College will continue to be written.

Respectfully,

Michael A. Williams

Past President, 2011-2012

Historian

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¹ Thomas J. Stipanowich, *Reflections on the State and Future of Commercial Arbitration: Challenges, Opportunities, Proposals*, 25 COLUMBIA AMERICAN REVIEW OF INTERNATIONAL ARBITRATION 297 (2014), Thomas J. Stipanowich & Zachary P. Ulrich, *Arbitration in Evolution: Current Practices and Perspectives of Experienced Commercial Arbitrators*, 25 COLUMBIA AM. REV. OF INT'L ARB. 395 (2014).

² Thomas J. Stipanowich & Zachary P. Ulrich, *Commercial Arbitration and Settlement: Empirical Insights into the Roles Arbitrators Play*, 6 YEARBOOK ON ARBITRATION AND MEDIATION 1 (2014).

³ Updated April 27, 2017.

