

Pittsburgh, Here We Come!

By Steve Lancaster (IN), President



THE DOCKET

News of the National Conference of Appellate Court Clerks

By the time you receive this issue of *The Docket*, I hope you have made your travel arrangements to Pennsylvania and have reserved your hotel room in Pittsburgh for the 35th Annual NCACC Conference and Education Program. Irene Bizzoso, our host clerk, and Rory Perry, the program committee chair, have put together an education program and week of activities that you do not want to miss. This year's education program will feature the first annual Dwight D. Opperman speaker, Bert Brandenburg, Executive Director, Justice at Stake, who will speak about the "Practical Responses to Attacks on the Judiciary". The Opperman speaker series is funded from the generous gifts made to the NCACC by Mr. Dwight D. Opperman.

The BIG NEWS I have to share with you is that we have signed a letter of agreement with Gadd Guillot to manage a fund campaign for our education fund from May 2008 to October 2009. The Education Fund Campaign Committee (Chair Colette Bruggman and members Bill DeCicco, Marilyn May, Sherie Welch, and Diana Pratt-Wyatt) has been very busy working with Guillot putting together all the details required for the campaign. We will formally kick off the campaign at the business meeting on Sunday in Pittsburgh. Plan to be there and join us for this historic event. This is our opportunity to in-

sure that the NCACC will continue to provide the very best educational program possible for appellate court clerks.

It seems like the conference in New Orleans was yesterday and I was planning for the year ahead. Suddenly it is June and the annual conference is only a few short weeks away. I guess time does fly when you are busy and having fun!

I believe the biggest goals achieved this year are the creation of a budget for the conference to use in managing its funds, the selection of a company to manage the campaign for raising money for the education fund, and the selecting and organizing of the Education Fund Campaign Committee. All three of these will positively impact the NCACC for years to come. A big thanks to the executive committee for their tireless work in achieving these goals.

A personal thanks to this year's officers, Tom Hall, Susan Clary, Sandra Skinner, Marilyn May, and Bessie Decker, and Executive Committee, Colette Bruggman, Chris Crow, John Olivier, Jim Pelzer, Rory Perry, and Cynthia Rapp, for their advice, honest appraisals, and support. They are a talented group that willingly give of their time to make the NCACC an even better organization than it already is.

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CALL FOR THE ANNUAL MEETING

President Steve Lancaster, through Secretary Bessie Decker, and pursuant to the provisions of Article V, Section 5, of the Bylaws, hereby issues the call for the annual meeting of the Conference of Appellate Court Clerks to be held at the Renaissance Pittsburgh Hotel, Pittsburgh, Pennsylvania, beginning Sunday, August 3, 2008, and continuing through Friday, August 8, 2008.

Respectfully submitted,
Bessie Decker (MD)
Secretary

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THE DOCKET

News of the
National Conference of
Appellate Court Clerks

President	Steve Lancaster (IN)
President Elect	Tom Hall (FL)
Vice-President	Susan Stokley-Clary (KY)
Immed. Past President	Sandra Skinner (MO)
Secretary	Bessie M. Decker (MD)
Treasurer	Marilyn May (AK)
Executive Committee	Chris Crow (LA) Jim Pelzer (NY) Colette Bruggman (ND) John Tarlton Olivier (LA) Rory L. Perry, II (WV) Cynthia Rapp (DC)

Reporters:

Leslie W. Steen (AR)	(501) 682-6849 Les.steen@arkansas.gov
Judy Pacheco (WY)	(307) 777-7316 jpacheco@courts.state.wy.us
Kenneth deBlanc (LA)	(337) 433-7867 k.deblanc@cox.net
Rex Renk (MT)	(406) 444-3858 renk@state.mt.us
Tom Hall (FL)	(850) 488-0125 hall@flcourts.org
Leslie W. Steen (AR) Diana Pratt-Wyatt (LA) Brenda Stephens (LA)	Volunteer Columnist Editor Assistant Editor

Please submit items of professional or personal news to your regional reporter. Articles, letters and other submissions may be sent or faxed to the editorial office.

430 Fannin Street, Shreveport, LA 71101
Phone (318) 227-3702 FAX (318) 227-3735
dpwyatt@lascoc.state.la.us



HELP KEEP US INFORMED!!

To Remit NCACC Membership Dues:

National Center of State Courts
300 Newport Avenue
Williamsburg, VA 23185

2008 Education Program

The Education Committee, chaired by Rory Perry (WV), has been very busy putting together an education program that will be very helpful to the membership. Below is a schedule of the work in progress to give you an idea of the topics and the speakers. Make plans to attend and be educated!

Saturday, August 2

7:30 a.m. - 11:00 a.m. **Executive Committee Meeting** (Breakfast)

3:00 p.m. - 5:00 p.m. **Registration**

Sunday, August 3

10:00 a.m. - 12:00 p.m. **Registration**

2:00 p.m. - 2:30 p.m. **Welcome Meeting**
For new members & first time attendees
Hosted by BNA and NCACC

2:30 p.m. - 4:00 p.m. **Roll Call of the States, Business Meeting** (Part I)

3:30 p.m. - 4:00 p.m. **Orientation**
For members' families (children welcomed)

5:30 p.m. - 7:30 p.m. **Welcome Reception**

7:30 p.m. - 8:15 p.m. **Morgan Thomas Slide Show**

Monday, August 4

7:30 a.m. - 8:30 a.m. **Continental Breakfast - Roundtable Discussions**

- 1) **Thinking about Hosting?**
- 2) **Handling Judicial Transistions**

8:30 a.m. - 8:45 a.m. **Welcome to NCACC**

8:45 a.m. - 10:15 a.m. **Ethics and Technology**
Honorable Daniels Crothers, Justice, North Dakota Supreme Court

10:30 a.m. - 12:00 p.m. **Dwight D. Opperman Speaker:**
Practical Responses to Attacks on the Judiciary
Bert Brandenburg, Executive Director, *Justice at Stake*

1:15 p.m. - 2:45 p.m. **Appellate Performance Measures**
Ingo Keilitz, Of Counsel, *Performance Measurement*, NCSC

3:00 p.m. - 5:00 p.m. **The Role of Google in Searching the Law**
Rick Klau, *Google*

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NATIONAL CONFERENCE OF APPELLATE COURT CLERKS THIRTY-FOURTH ANNUAL MEETING

New Orleans, Louisiana
Sunday, August 5, 2007 - Thursday, August 9, 2007

Call to Order:

President Sandra Skinner (MO) called the Thirty-Fourth Annual Meeting of the National Conference of Appellate Court Clerks to order at 2:40 p.m. on Sunday, August 5, 2007. President Skinner welcomed all in attendance, particularly the 21 new attendees to the Conference. She also introduced Mr. Paul Burke, the President of the National Conference of Court Management.

Roll Call of States:

Secretary Bessie Decker (MD) called the roll of states, recognizing each person registered and present. President Skinner introduced Karyn S. Bowie from BNA and Mr. David Beach (VA) as the parliamentarian for the meeting. David Beach acknowledged the presence of a quorum to President Skinner.

President Skinner introduced the officers and the Executive Committee members.

Approval of the Minutes:

President Skinner noted that the minutes of the Thirty-Third Annual Meeting in Fort Worth, Texas were published in the June, 2007 issue of *The Docket*, and she called for a motion to waive the reading of the minutes. Norm Herring (DC) moved that the reading of the minutes be waived. John Olivier (LA) seconded the motion. All present voted in favor of the motion; none opposed. Motion carried. President Skinner then asked for a motion to approve the minutes as published. Penny Miller (ND) moved that the minutes be approved. Pete Fitzgerald (LA) seconded the motion. All present voted in favor; none opposed. Motion carried.

Committee Reports:

Before the committee reports were given, President Skinner called for a motion to defer approval of the committee reports until Thursday, August 9, 2007. Mike Richie (OK) made such a motion, which was seconded by Steve Lancaster (IN). All present voted in favor; none opposed. Motion carried.

Awards Committee:

Bill DeCicco (DC) thanked the members of the committee for their work and stated that the recipients of the J.O. Sentell Award and the Morgan Thomas Award would be announced later this week. He recognized Kathleen Kempley (AZ) and that she is celebrating her 40th year with her court.

Bylaws Committee:

Norm Herring (DC) stated the Board has recommended a modification of the bylaws concerning language describing the duties of the Technology Committee and the Bylaws Committee has agreed with this recommendation.

Convention Assistance Committee:

Amy Reitz (OH) thanked the members of the committee for their hard work. She asked the members to stand and be recognized. Amy stated the members of the committee have orange banners on their ID badges to identify them

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easily. She announced the hospitality suite's hours and location. She also stated the committee is selling hurricane glasses for \$5.00 to support the Education Fund. Anyone needing Katrina tour tickets is to see Colette Bruggman.

Education Fund Committee:

Colette Bruggman (ND) stated the committee worked hard to determine if there was a need to go forward with a capital campaign for the organization. After much discussion it was recommended to the Executive Committee that there was a need for a capital fundraising campaign.

Membership Committee:

Debbie Autrey (TX) gave the committee's report on behalf of Holly Sparrow (GA). She reported as of July 2006 we had 255 members and as of July 2007 we have 264 members with 222 being active, 34 being retired, and eight being honorary or complimentary members. During the year, the committee contacted persons whose membership expired more than two years ago to encourage these persons to renew. Committee members also contacted the states on a quarterly basis to determine if there were any new candidates for membership. They also contacted states that advertised open positions that would qualify for membership, to obtain the successful candidate's name and contact them to encourage their application for membership. The committee has also obtained short biographies of new members for inclusion in *The Docket* so current members would be able to become acquainted with new members. She thanked the members of the committee for their work this past year.

Nominating Committee:

Pete Fitzgerald (LA) welcomed everyone to New Orleans on behalf of all the co-hosts. He thanked all the committee members and said it was a personal pleasure for him to work with all the members. Pete stated nominations were solicited in *The Docket* and received from various members. The committee recommended the following persons for the offices indicated:

For Vice-President:	Susan Clary (KY)
For Treasurer:	Marilyn May (AK)
For the Executive Committee:	John Olivier (LA)
	Rory Perry (WV)
	Cynthia Rapp
	(U.S. Supreme Court)

Voting will take place on Thursday, August 9, 2007.

Finance and Investment Committee:

Marilyn May (AK) introduced and thanked the members of the committee and stated these members go over the monthly reports from the National Center to look for any mistakes possibly made and to look at different strategies for investment. She stated we currently have \$208,000 in the bank. Out of that amount a little over \$24,000 belongs to CATO and \$71,000 is in the education fund.

Past-Presidents Committee:

Terry Lord (MO) stated the committee, with Leslie Gradet's (MD) help, continued the project of archiving NCACC documents. An inventory list was submitted on the listserv during the year. Garland Pinkston (DC) did send NCACC files from a former deputy clerk of the DC Court of Appeals. Terry stated Tuesday morning there will be a Past Presidents breakfast and at that time receive a new charge from the incoming president, Steve Lancaster (IN).

Pictorial Directory Committee:

Kelly McNeely (LA) shared that members need to look at their directories to see if there are any changes and please let him know before leaving the Conference. He thanked the committee members. One of the projects this year was to move the website listing for all the courts to where the courts are in the book. Another idea was to put the directory on a CD Rom. West said they could do that but we would need to decide whether we want the paper copy or the CD Rom. He stated Lexis wanted him to remind the membership that they would be having a raffle for the Katrina Fund on Wednesday.

Publication Committee:

Diana Pratt-Wyatt (LA) welcomed everyone to her home State of Louisiana. She wanted to thank her committee members. Diana stated they will be trying to enhance the newsletter electronically in the future and believes there will be some exciting things to come. She appreciates the opportunity to chair this committee.

Program Committee:

Tom Hall (FL) stated the Program Committee's work literally starts at the end of this meeting for the next year's meeting. He recognized and thanked the members of the committee. They had lots of meetings by phone and lots of e-mails over the past year. He feels they have put together a really good program. Tom went over some

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of the highlights of the program – *Emergenetics*, professional ethics, Family Medical Leave Act, “What’s Bugging You” session, breakouts, vendor showcase presentations, and “Justice at Stake.” He reminded everyone to fill out evaluation sheets after every session. They will have roundtable discussions during breakfast each morning.

Public Relations Committee:

Ron Carpenter (WA) reported on behalf of Frankie Holt (TN). He stated Frankie sent the Membership Committee brochures to forward to prospective members and he has several with him if any members are aware of others interested in joining our organization. The committee sent a press release to several area newspapers regarding the upcoming Conference. Ron thanked the members of the committee. He said in the future the committee will be looking at utilizing electronic media.

[President Skinner indicated that the report of the Resolutions and Memorials Committee would be given on Thursday.]

Scholarship Committee:

Lisa Matz (TX) thanked and recognized the members of the committee. She stated the committee was very busy this year in giving five scholarships in which four of them went to first time attendees. She encouraged the members if they need a scholarship to apply next year. The committee added two new rules to the committee’s operational guidelines: (1) The Scholarship Committee will contact the conference host when a scholarship recipient is approved so that the recipient will not have out-of-pocket expenses. (2) When the scholarship recipient purchases their airline ticket they may be reimbursed right away by showing a receipt.

Site Selection Committee:

Deena Fawcett (CA) reported on behalf of Chairperson Ed Smith (MT). She thanked and recognized all the members of the committee. Irene Bizzoso (PA) shared that the 2008 Conference will be held in Pittsburgh, PA at the Renaissance Hotel from August 3 to August 8, 2008. She will have a more detailed presentation later in the week. Deena shared the 2009 Conference will be held in Sacramento, CA at the Holiday Inn from August 2 to August 8, 2009 and shared some activities available in Sacramento. She will also be putting together a tour of the wine country. The Conference for 2010 will be in Whitefish, Montana with Ed Smith being host. The

hotel will be the Grouse Mountain Lodge. Rex Renk shared some details and activities regarding Whitefish.

Strategic Planning Committee:

Susan Clary (KY) stated the committee was asked to brainstorm. It looked ahead at this organization to see what we might consider doing and talked about things that immediately was clear we would not consider doing. The committee worked closely with the Education Fund this year. She recognized and thanked the members of the committee. One thing that was constant with the communication within the membership was the love for this organization, the family feeling, the enjoyment of being together and the desire to keep the organization the way it should be.

[President Skinner deferred the Technology Report until Thursday.]

Website Committee:

Rory Perry (WV) reported the website is up and running. This past year we had over 3,000 unique visitors from over 693 cities. He stated if you have forgotten the password to get into the members only section, please see him. Rory stated the committee has been asked by the Executive Committee to come up with a strategy for long term management of the website. The committee will be working on this over the next year or so and if anyone is interested in that issue, sign up to be on the website committee. He thanked everyone who helped with this committee.

Trailblazer Award:

President Skinner explained about the Trailblazer Award and encouraged the members if they have an interesting story about their trip to New Orleans to please see Bill DeCicco. The award will be given out at the Thursday banquet. After several announcements were made, President Skinner announced at 4 p.m. the adjournment of the meeting until Thursday at noon.

The Thirty-Fourth Annual Business Meeting resumed at 12:15 p.m. on Thursday, August 9, 2007, with a call to order by President Skinner. David Beach, the Parliamentarian, noted the presence of a quorum.

Technology Committee:

Mike Catalano (TN) stated everyone should have received his report and it was a continuation from last year’s report. Last year the committee did a survey of

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courtroom technology and e-mail technology and this year they finished up with a survey of case management technology and website technology. Mike stated they had a hard time getting responses. At most they received 35 responses on-line. They sent the surveys out by regular mail and received 85 responses which the committee found interesting. Mike thanked all the members of the committee and he hopes that surveys will be helpful to the membership.

Pictorial Directory Committee:

President Skinner asked the members if they want to receive a paper copy of the directory or a CD. Diana-Pratt Wyatt (LA) moved to continue to receive paper copies of the directory. Chris Crow (LA) seconded the motion. After some discussion, Diana Pratt-Wyatt offered a substitute motion to advise West Publishing that we want to continue to receive the directory in book format and asked Kelly, as Chair of that Committee, to explore the best possible means whether West or some other venue can give us the same information on CD Roms or through Kelly's database that he already has in response to that, create a CD Rom for placement on the webpage. Chris Crow seconded the substitute motion. All voted in favor; none opposed. Motion carried.

Bylaws Committee:

President Skinner stated we have a proposed by-law for the Technology Committee that was published in *The Docket* and discussed by Norm at the Bylaws Committee report on Sunday. President Skinner entertained a motion to amend the Technology Committee's bylaws as published in *The Docket*. Mike Catalano (TN) so moved. Marilyn May seconded the motion. All voted in favor; none opposed. Motion carried.

Nominating Committee:

President Skinner repeated the names of the persons nominated for election to the offices indicated:

Vice-President: Susan Stokley Clary (KY)
Treasurer: Marilyn May (AK)
Executive Committee: John Tarlton Olivier (LA)
Rory L. Perry, II (WV)
Cynthia Rapp
(U.S. Supreme Court)

President Skinner asked if there were any nominations from the floor. Hearing none, Penny Miller (ND) moved to close the nominations and elect each nominee by acclamation. Jim Pelzer (NY) seconded the motion. All pre-

sent voted in favor; none opposed. Motion carried and those members were elected.

Resolutions and Memorials Committee:

Sherry Williamson (TX) presented resolutions for adoption by the NCACC to the individuals and organizations listed below for their contributions to a successful conference:

34th Annual Meeting co-hosts,
Christine "Chris" L. Crow, Clerk of Court, La. First Circuit Court of Appeal
Diana Pratt-Wyatt, Clerk of Court, La. Second Circuit Court of Appeal
Charles "Kelly" K. McNeely, Clerk of Court, La. Third Circuit Court of Appeal
Kenneth J. deBlanc, Clerk of Court (Retired), La. Third Circuit Court of Appeal
Danielle A. Schott, Clerk of Court, La. Fourth Circuit Court of Appeal
Peter "Pete" J. Fitzgerald, Jr., Clerk of Court, La. Fifth Circuit Court of Appeal
John T. Olivier, Clerk of Court, La. Supreme Court
Frans J. Labranche, Jr., Clerk of Court (Retired), La. Supreme Court
Supreme Court and the Fourth Circuit Court of Appeals for use of the courthouse building for the BNA reception
Staff of Louisiana Supreme Court, Court of Appeal, First Circuit, and Court of Appeal, Fourth Circuit
Program Committee Chair Tom Hall (FL) and members of the Committee.
Vendor Show Coordinator Rory Perry (WV)
Convention Assistance Committee Chair Amy Reitz (OH) and members of the Committee
The Docket Editor Diana Pratt-Wyatt and her assistant, Brenda Stephens (LA)
Justices of the Louisiana Supreme Court and Judges of the Louisiana Courts of Appeal (Court contributions to the educational program)
Dwight Opperman (contribution to education fund)
Wyndham Hotel at Canal Place, Terri, Lamonte, Sales Manager, Kellie Moore, Catering/
Conference Services Manager, Rebecca M. Bustamento, Group Reservations
Management and staff of Jacques and New Orleans Catering, Inc.
New Orleans Metropolitan Convention and Visitors Bureau; Louisiana Lottery, Chef Paul Prudhomme; Louisiana Department of Culture, Rec-

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recreation and Tourism

National World War II Museum
Blaine Kerns Mardi Gras World
Louisiana National Guard (volunteering for group tours)
TPC Louisiana – Pam Vitrano, Director of Sales and Marketing and Eric Welch, Tournament Coordinator
National Center for State Courts, Brenda A. Williams, Account Executive

Partners and Showcases

Thomson West represented by Dave George, Manager – Governmental Relations;
Tom Leighton, Vice President, Content Acquisition; Heidi Fessler, Manager;
Litigator Content Operations; Timothy Murphy, Manager; Litigator Content Operations;
Nancy Owens, Content Acquisition Manager;
Rob Mosimann, Acquisition Specialist
LexisNexis represented by Nikki Daugherty, Director, Government Relations and Contracts;
Dee Davis, Manager, Content Development and Operations; Paula Kreitzer; and Leslie Ostrander

Sponsor

Bureau of National Affairs, Inc., represented by Karyn S. Bowie, Manager, Judicial Opinions

Contributor

Loislaw represented by Sue Rogers

Exhibitors and Showcases

Counsel Press LLC, represented by Jeffrey Parkhurst, Director
Idea Integration, represented by Tom Casseaux, Director of Sales; Jon Johnson, Project Manager; and David Lapidés
Evans Caseload, Darryl Evans and Steven Lewis
LT Court Tech LLC represented by Victor VonKlemperer, President; Manos Jain, Vice-President; Jamison Sarno, Director; Marsha Traub, Project Manager; Jarrod Note, Project Manager

Sherry Williamson lastly presented a memorial in honor of Kevin Swanson, Retired Clerk of the California Court of Appeal, Fifth Appellate District.

Adoption of Committee Reports:

Penny Miller (ND) then moved to approve all of the committee reports including the Resolutions and Memorials Committee. Pete Fitzgerald (LA) seconded the motion. All present voted in favor; none opposed. Motion carried.

President Skinner expressed her thanks to all

Committee Chairpersons.

Other Business:

President Skinner shared an overall view of NCACC's need for a capital campaign, the Guillot Campaign proposal and the need to request additional proposals from similar management companies.

Colette Bruggman (ND) moved that the Conference approve the Executive Committee to go forward with requesting proposals and contracting for the management of the capital campaign. Terry Lord (MO) seconded the motion. After much discussion, the question was called. The motion passed by a majority vote.

President's Report:

President Skinner summarized the meetings she and other NCACC members attended this past year. Bill DeCicco (DC) attended the Rehnquist Award Dinner. President Skinner attended in February the mid-year meeting of the Chief Justices in New Orleans and in July she attended the National Association of Court Management in Chicago. Steve Lancaster (IN) attended the Annual Conference of the Chief Justices and the Conference of State Court Administrators. President Skinner feels this is very important to get our faces out and our Conference out so people will know that we are the ones that have information available and we are more than willing to help them with any needs they might have. President Skinner reminded the members of the upcoming conference meetings for 2008, 2009 and 2010.

The 2008 Annual Conference in Pittsburgh, Pennsylvania:

Irene Bizzoso (PA), host Clerk for the 2008 annual meeting, made a presentation on next year's conference in Pittsburgh, Pennsylvania from August 3 to August 8, 2008.

There being no further business, the meeting was adjourned at 1:25 p.m. on August 9, 2007.

Respectfully submitted,
Bessie Decker
NCACC Secretary



Officers and Executive Committee 2008-2009 Nominations

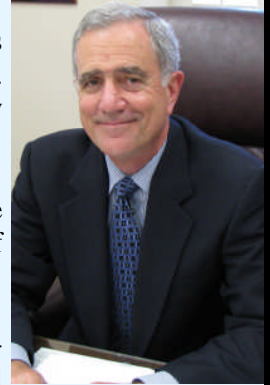
It is with great pleasure that the Nominating Committee proposes the following slate of Officers and Executive Committee members:

WILLIAM A. DECICCO (DC) **Vice-President**

Bill DeCicco has been the Clerk of the Court of the U.S. Court of Appeals for the Armed Forces since 2001. He received his B.A. from St. Mary's College of California in 1971. He holds a J.D. from the University of San Francisco (1975) and an LLM from George Washington University (1985).

After becoming a member of the California Bar, Bill served in the U.S. Navy Judge Advocate General's Corps for 25 years. He retired from the Navy in the grade of Captain and as Chief Judge, U.S. Navy-Marine Corps Court of Criminal Appeals.

Bill served as NCACC Secretary; Chairman of the Awards Committee; Chairman of the Membership Committee; and as a member of the By-Laws Committee, Nominating Committee, Pictorial Committee and the Finance and Investment Committee.



PATRICIA (TRISH) HARRINGTON (VA) **Secretary**

Trish Harrington has served as the Clerk of the Supreme Court of Virginia since 2003. She received her B.A. degrees in Psychology and History from Duke University in 1979 and her J.D. degree from the University of Richmond, T.C. Williams School of Law in 1983.

Prior to her appointment as Clerk, Trish served as Chief Deputy Clerk of the Supreme Court for 13 years, spent 3 ½ years as a Public Defender, and clerked for the Chief Staff Attorney's office of the Supreme Court.

Trish has served on the Executive Committee for a 2-year term and has been a member of the Program Committee, Nominating Committee, Convention Assistance Committee, and the Technology Committee.

REX RENK (MT) **Executive Committee**



Rex J. Renk is the Deputy Clerk of the Montana Supreme Court. Born and raised in Boise, Idaho, Rex moved to Montana where he received a B.A. in History from Carroll College in Helena. Rex went on to earn an M.A. degree from Washington State University and completed coursework in a doctoral program at the University of New Mexico.

He began court-related work as an Assistant Clerk of the Montana Supreme Court in December 1990, and was appointed Deputy by the Clerk of the Supreme Court, Ed Smith in January 1992.

Rex has been a member of the NCACC from 1992 to 1994 and from 2003 to the present. He has served on the Technology, Publication, Convention Assistance, Public Relations and Resolutions and Memorials Committees.

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MICHAEL RICHIE (OK)
Executive Committee



Mike has served as Clerk of the Appellate Courts of Oklahoma since September 2002. His office handles paperwork for the Supreme Court, Court of Criminal Appeals and Courts of Civil Appeals. He holds a B.A. from Angelo State University in West Texas and a J.D. from Tulane University School of Law. Before becoming Clerk, he was staff lawyer to two Oklahoma Supreme Court justices for 10 years, and prior to that he spent 13 years in private practice focusing on oil & gas and real property law. He is a past chairperson of the Oklahoma Bar Association's Real Property Section.

He has been a NCACC member since 2003, attending his first annual meeting in Anchorage, Alaska. In 2006 he served on the Site Selection and Scholarship Committees, and this year has chaired the Strategic Planning Committee and been a member of the Program Committee.

SHERRY WILLIAMSON (TX)
Executive Committee

Sherry Williamson was appointed Clerk of the Eleventh Court of Appeals, Eastland, Texas in 1995. Since starting her employment with the Court 32 years ago, she has worked in the positions of Deputy Clerk, Accountant, and Appellate Secretary.

Sherry is currently serving on the Membership Committee and Pictorial Committee. Last year she served as Chair of the Resolutions and Memorials Committee. In addition, she has served as a member of the Convention Assistance, Nominating, Public Relations, Publication, and Technology Committees.



Respectfully Submitted,

Terry Lord (MO) Chair, Kenneth deBlanc (LA), Joseph Lane (CA), Trish Harrington (VA), Penny Miller (ND), Amy Reitz (OH), Keith Richardson (IA), Heather Smith (IN), Mike Yearly (CA), Christine Crow (LA) - Executive Committee Liaison

Lawyer Ethics and Technology: Email Confidentiality

By Justice Daniel J. Crothers (ND)

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The following article appeared in the May, 2008 issue of *The Gavel*, North Dakota's State Bar Association publication. Justice Daniel J. Crothers grants permission to the NCACC to reprint. Justice Crothers will be one of our speakers at the annual conference this year, regarding "Ethics and Technology." Our thanks to Collette Bruggman (ND) for making this article available to this newsletter, to "whet our appetite."

Justice Daniel J. Crothers was born in Fargo, North Dakota and graduated from the University of North Dakota School of Law in 1982. He clerked for the Honorable Ramon Lopez of the New Mexico Court of Appeals, returned to North Dakota and worked in private practice. He also served as Walsh County Assistant State's Attorney from 1983-1984.

He is past-president of the State Bar Association of North Dakota and was appointed in June, 2005 by Governor John Hoeven to the North Dakota Supreme Court. He and his wife, Holly, have two children.

Technology is an indispensable part of every modern law office. So is compliance with the Rules of Professional Conduct. That is the easy part. Ethical use of technology is more complicated.

As a group, lawyers have widely embraced technology. Starting with rudimentary recording cylinders in the 1920s and recording belts in the 1950s, lawyer's dictation quickly progressed to tape recorders, mini-cassettes, micro-cassettes and, now, digital recording devices. On other fronts, we lawyers quickly adopted speech recognition software, email, facsimile machines, computer word processing, wireless telephones and more. Lawyers often use internet web pages for advertising. Electronic information increasingly is stored on small and portable devices. A lawyer's ethical obligations are entangled within the use of each of these technologies.

This article will discuss ethical issues surrounding the use of email and, perhaps, assist in minimizing the opportunity for client problems and disciplinary reprisal. As the Executive Director is able to prod me to prepare them, subsequent articles will discuss wireless and cellular telephones, computer document metadata, and internet marketing and advertising.

Email

The term "email" is used broadly to include all text-based exchanges of information via the written word. This includes traditional electronic mail sent via computer, as well as other forms such as instant messaging and cellular telephone text messaging.

Lawyers have an affirmative duty to protect their current and former clients' confidential information. Commentary to the ethics rule states, "A fundamental principle in the client-lawyer relationship is that the lawyer must not reveal information relating to the representation without the client's consent." Some form of email is used by virtually all lawyers in connection with their representation of clients. When lawyers use email, the duty of confidentiality extends to confidential information to, from and about their client.

The State Bar Association of North Dakota ("SBAND") Ethics Committee has recognized both that lawyers use email and that we may ethically do so for the transmittal of routine attorney-client information. However, the Committee also recognized email is not absolutely secure. As a result, an attorney may violate his or her confidentiality obligations if "unusual circumstances require enhanced security measures." I read this to mean either lawyers cannot

ethically email highly confidential information or they must use encryption when emailing critically sensitive information.

Much has happened in the world of computer technology and email since the Ethics Committee issued its email opinion in 1997. Then, email was often transmitted via third party sites such as "America On-Line" or "CompuServe" or by closed dial-up networks. The internet was not used by most, or even many, lawyers. Wireless networks and Blackberrys were just a glint in their developer's eyes. For most of us, text messaging from cell phones smaller than a deck of cards was unthinkable.

But that future is now the present. No matter what type of device is being used, and no matter what mode of transmission is being used, all must be reasonably secure so as to protect confidential client information. This idea was captured in a New York State ethics opinion that stated:

"A lawyer who uses technology to communicate with clients must use reasonable care with respect to such communication, and therefore must assess the risks attendant to the use of that technology and determine if the mode of transmission is appropriate under the circumstances."

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Using “appropriate” technology may mean not using technology at all. It also may mean only using reasonably secure wired or wireless network connections when communicating confidential client information.

Many lawyers accomplish this by never or seldom using unsecured wireless access points in public libraries, hotels, coffee shops or restaurants, and never using public computers in internet cafés or hotel business centers. Others limit their use of unsecured networks or computers to when they can also employ software such as “Virtual Private Network,” “PC Anywhere” or “GoToMyPC.” All of these programs allow secure, encrypted connections to home or office computers from remote locations.

A corollary concern to the ethical issues mentioned above is that disclosure of client information most often will be deemed a waiver of the attorney-client privilege. Preservation of the attorney-client privilege generally is a matter of substantive law rather than a matter of legal ethics. However, compliance with the rules of ethics and reliance on statements by the Ethics Committee should enhance an argument that the attorney and client did not intend to waive the privilege by using email.

For the Ethics Committee’s part, it noted “improvements in technology and changes in the law” regarding privacy allow lawyers to use email. From this the Committee concluded, “there now exists a reasonable certainty and expectation that [email] communications may be regarded as confidential.”

More recently, several courts have discussed waiver of the privilege by using email. Nearly all courts have concluded attorneys and clients can reasonably expect that the communi-

cation is private and that the privilege is preserved. However, one concern is worth noting.

As of this writing, there is a split of authority whether the attorney-client privilege is waived when a client uses an employer’s or other third party’s email system to communicate with the client’s personal lawyer about the client’s personal legal issues.

A New York court held the privilege was waived when a client used the employer’s email system to communicate confidential information to and from the employee’s personal lawyer. A federal district court in North Carolina reached the opposite conclusion on similar facts but slightly different analysis. As of now, the determining factor appears to be whether the client using a third party’s email system knew of the third party’s policy as to whether email was confidential to the sender.

Either way, the client’s waiver of the privilege does not automatically become the lawyer’s ethical default. However, the lawyer’s ethical obligations are relevant inquiry if the lawyer did not adequately disclose to the client the dangers associated with transmission of attorney-client information via an email system owned or controlled by a third party. Lawyers therefore should communicate these concerns and dangers to their clients and should obtain the clients’ acknowledgment of disclosure (preferably in writing).

In closing, all lawyers utilizing technology in their representation of clients have an obligation to sufficiently understand that technology so they may comply with their ethical obligations. Use of email raises ethical concerns whether information is too sensitive for that mode of transmission, and if not, whether the devices used and how they communicate with other computer devices is sufficient to protect the client’s confidential

information. So too, lawyers should warn clients about inherent risks of disclosure of confidential information when using email in general and, in particular, when transmitting highly confidential information or when using computer facilities owned, controlled or accessible to third parties.

¹ N.D.R.Prof. Conduct 1.6 (“A lawyer shall not reveal information relating to the representation of the client unless the client consents.”).

² N.D.R.Prof. Conduct 1.6, cmt.

³ SBAND Ethics Op. 97-09 (1997), available at <http://www.sband.org/data/ethics/97-09.pdf>

⁴ *Id.* at 4.

⁵ *Id.* at 7.

⁶ *Id.* at 5.

⁷ N.Y. State Bar Ethics Op. 782 (2004).

⁸ See Farm Credit Bank of St. Paul v. Huether, 454 N.W.2d 710 (N.D. 1990).

⁹ SBAND Ethics Op. 97-09 at 4.

¹⁰ *Id.*

¹¹ Scott v. Beth Israel Medical Center, 2007 WL 3053351 (N.Y. Sup. Oct. 17, 2007).

¹² Mason v. ILS Technologies, LLC, No. 3:04-CV-139-RJC-DCK, 2008 WL 731557 *4 (W.D.N.C. Feb. 29, 2008).

¹³ *Id.* See also TransOcean Capital, Inc. v. Fortin, No. 05-0955-BLS2, 2006 WL 3246401 at *4 (Mass. Super. Oct. 20, 2006) (“Since the evidence does not demonstrate that Fortin reasonably should have recognized that his personal email communications with [attorney] were accessible to TransOcean because he used its email address, this Court finds that they were made in confidence and that Fortin did not waive his attorney-client privilege by using the company’s email address and computer system.”).

THE EDUCATION FUND NEEDS YOU!

AUCTION

Patricia Harrington (VA)

Please remember to bring any items you may have made, found, or bought, to be used for the Education Fund Auction in Pittsburgh.

Although past auctions have focused on art, you can contribute anything of value and we will auction it, with proceeds going to the Education Fund.

Past items have included photographs, hand-stitched artwork, and handmade jewelry. However, we're happy to include gift certificates, baskets of items from your home state, fun or funny T-shirts, or other items you think someone would like to buy.

Bring your items to registration on Saturday and a helpful member of the Convention Assistance Committee will make sure it is passed along to the appropriate person.

Also, please give a suggested starting bid amount with any items you donate. Thank you for your help! This is a fun way to raise money for the Education Fund.

(President's Page, continued from page 1)

The year round work of our committees is our biggest strength. A special thanks to the committee chairs and their committee members for their work this year.

I would be remiss if I did not thank Diana Pratt-Wyatt and Brenda Stephens for their help in preparing these articles. Especially in granting me the time extensions I seem to need for each article. They are both examples of individuals who go the extra mile to make the NCACC the quality organization that it is.

It has been an exciting, challenging, and rewarding 10 months and I expect the next two months to be very similar. Thank you for giving me the privilege to serve as your president. See you in Pittsburgh!



Congratulations, Kathy!

Kathleen Kempley, Chief Deputy Clerk for the Supreme Court of Arizona, has announced her retirement after 40 years of service to that court. Kathleen began her career as a part-time deputy clerk and has served as the court's Chief Deputy for the last twenty years. She has worked under twenty Supreme Court Justices and seven Clerks of Court and was instrumental in the development of the court's two automated case management systems. Kathy noted that during her career she has watched the court go from the pen, recalling a time when they were required to hand-write all case docket entries, to typewriters, to computers utilizing a fully automated case management system. She is also the only employee of the Clerk's Office to work in all three locations of the Court - the old state capitol building, the executive tower at the state capitol, and today's state court's building.



Kathleen is a very active member of NCACC attending her first annual conference in Tucson, Arizona in 1990. In addition to being a dedicated conference attendee, she served on the Executive Committee in 1997-1998 and numerous committees.

NCACC congratulates Kathleen on her retirement and hopes that some of the traveling she wants to do will include her continuing participation at the annual conference.



Facts, Fiction, & Foolishness

By Leslie Steen (AR)

As you know, this edition of *The Docket* usually contains our annual travel advisory. Because we know very little about Pittsburgh, we do not feel qualified to advise about this city, so we just decided to pull random selections from our files that we have not been able to use before. If this appears to be an unorganized and hastily scripted column - bingo. Complain to the editor.

A doctor and lawyer were talking at a party. Their conversation was constantly interrupted by people describing their ailments and asking the doctor for free medical advice. After an hour of this, the exasperated doctor asked the lawyer, "What do you do to stop people from asking you legal advice when you are out of the office?" "I give it to them and then send them a bill," the lawyer replied. The doctor was shocked and agreed to give it a try. The next day, still feeling slightly guilty, the doctor prepared his bills. When he went to place them in the mailbox, he found a bill from the lawyer.

A woman sneaked off to visit a fortune teller of local repute. In a dark and hazy room, peering into the crystal ball, the mystic delivered some grave news. "There's no easy way to say this, so I'll be blunt. Prepare yourself to be a widow. Your husband will die a violent and horrible death this year." Visibly shaken, the woman stared into the psychic's lined face, then down at her hands. She took a few deep breaths to compose herself. She simply had to know. She met the fortune teller's gaze, steadied her voice, and asked, "Will I be acquitted?"

The Buffalo Theory- Cheers. Cliff explains it to Norm, "Well you see, Norm, it's like this . . . a herd of buffalo can only move as fast as the slowest buffalo. And, when the herd is hunted, it is the lowest and the weakest ones at the back that are killed first. This natural selection is good for the herd as a whole, because the general speed and health of the whole group keeps improving by the regular killing of the weakest members. In the same way, the human brain can only operate as fast as the slowest brain cells. Now, as we know, excessive intake of alcohol kills brain cells. But naturally it attacks the slowest and weakest brain cells first. In this way, regular consumption of beer eliminates the weaker brain cells, making the brain a faster and more efficient machine. And that, Norm, is why you always feel smarter after a few beers."

On the third hole, a man just scored his first hole-in-one when his cell phone rang. It was a doctor notifying him that his wife had just been in a terrible accident and was in critical condition in ICU. The man told the doctor to tell his wife where he was and that he would be there as soon as possible. As he hung up, he realized he was leaving what was shaping up to be his best ever round of golf so he decided to get in a couple more holes before leaving. He ended up playing all 18 finishing his round and shooting a personal best of 61, shattering the club record and beating his previous best game by more than 10 strokes. He was jubilant . . . and then he remembered his wife. Feeling guilty, he dashed to the hospital. He saw the doctor and asked about her condition. The doctor glared at him and shouted, "You went ahead and finished your round of golf, didn't you? I hope you are proud of yourself! While you were out there the past four hours enjoying yourself at the country club, your wife has been languishing in the ICU! It's just as well you went ahead and finished the round because it is more than likely your last! For the rest of her life, she will require 'round the clock care, and you'll be her care giver!" Wracked with guilt, the man broke down and sobbed. The doctor snickered and said, "just messing with you. She's dead. What'd you shoot?"

Hope you have enjoyed our errant wanderings. See you in Pittsburgh.

(Continued from page 3)

Tuesday, August 5

7:30 a.m. - 8:30 a.m.

Past Presidents' Breakfast

7:30 a.m. - 8:30 a.m.

**Continental Breakfast - Roundtable Discussions
Implementing Scanning and/or E-Filing**

8:30 a.m. - 9:00 a.m.

A Roadmap to New Appellate Statistical Reporting
John Olivier, NCACC Special Committee
Jim Pelzer, NCACC Special Committee
Richard Shauffler, NCSC; Shauna Strickland, NCSC

9:00 a.m. - 10:45 a.m.

Lessons Learned and Shared Successes
Tom hall, Vice President, NCACC

11:00 a.m. - 12:00 p.m.

Ergonomics in the Appellate Court Workplace
Karl Marion, Corporate Ergonomist

Wednesday, August 6

7:30 a.m. - 8:30 a.m.

Continental Breakfast - Roundtable Discussions

- 1) **Succession & Retirement**
- 2) **Surviving a Case Management System Upgrade**

8:30 a.m. - 11:15 a.m.

Dealing Effectively with Angry and Emotional People
Honorable Scott Brownell, Circuit Judge, Bradenton, Florida

11:30 a.m. - 5:00 p.m.

Vendor Instructions, Lunch, and Expo and Opening of Vendor Expo

THURSDAY, AUGUST 7

7:00 a.m.

NCACC Fun Run/Walk

7:30 a.m. - 8:30 a.m.

Past Hosts Breakfast

7:30 a.m. - 8:30 a.m.

Continental Breakfast – Roundtable Discussions
1) **Office Planning**
2) **TBA**

8:30 a.m. - 10:30 a.m.

Stress & Wellness, Dr. Isaiah Zimmerman

10:45 a.m. - 11:15 a.m.

Breakout Sessions – Part I

Record Retention in the Electronic Age,
Jim McMillan, NCSC

ADA & Accessibility
Speaker TBD by Kristen Brown, NCACC (tentative)

Appellate Statistical Reporting Workshop
Richard Shauffler, NCSC and Shauna Strickland, NCSC

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11:20 a.m. - 11:50 a.m.

Breakout Sessions – Part II

Record Retention in the Electronic Age

Jim McMillan, *NCSC*

ADA & Accessibility

Speaker TBD by Kristen Brown, NCACC (tentative)

Appellate Statistical Reporting Workshop

Richard Shauffler, *NCSC* and Shauna Strickland, *NCSC*

Jim McMillan, *National Center for State Courts*

12:00 p.m. - 1:00 p.m.

Annual Business Meeting, Part 2

1:00 p.m. - 1:30 p.m.

Executive Committee Meeting

6:00 p.m. - 9:00 p.m.

Banquet Reception and Annual Banquet

Friday, August 8

8:30 a.m. - 10:00 am.

Breakfast and Critique Session

Proposed Changes to By-Laws and Operational Guidelines Relative to Technology Committee

BY-LAWS, ARTICLE VII, § 3(C)(14)

Present Language:

Technology Committee. The purpose of this committee is to provide technical support and advice to appellate court clerks and their staffs and to coordinate electronic communications between the Conference and other organizations.

Proposed Language:

Technology Committee: The purpose of this committee is: (1) to provide technical support and advice to appellate court clerks and their staffs; (2) to coordinate electronic communications between the Conference and other organizations; and (3) to oversee the maintenance of the NCACC Web Page as the Executive Committee directs.

OPERATIONAL GUIDELINES, ¶ 3

Present Language:

The Technology Committee shall: . . . (3) Maintain the NCACC Web Page with such information as the Executive Committee directs.

Proposed Language:

None needed.