

NATIONAL CONFERENCE OF APPELLATE COURT CLERKS - NOMINATION FORM

1. For the Office of Vice President: (1 year term)
(Office presently held by Marilyn Graves))

Nominee:
Qualifications:
2. For the Office of Secretary: (2 year term)
(Office presently held by Danielle Schott)

Nominee:
Qualifications:
3. For Member of the Executive Committee (2 year term)
(Office presently held by Leslie Gradet)

Nominee:
Qualifications:
4. For Member of the Executive Committee: (2 year term)
(Office presently held by Joe Lane)

Nominee:
Qualifications:
5. For Member of the Executive Committee: (2 year term)
(Office presently held by Penny Miller)

Nominee:
Qualifications:

Name: (Optional) _____

Date: _____

Send by February 1, 1995, to:

Glen D. Clark, Clerk
Court of Appeals, Division One
1501 West Washington Street
Phoenix, AZ 85007

The Docket

News of the National Conference of Appellate Court Clerks

Vol. 23

October, 1994

No.1

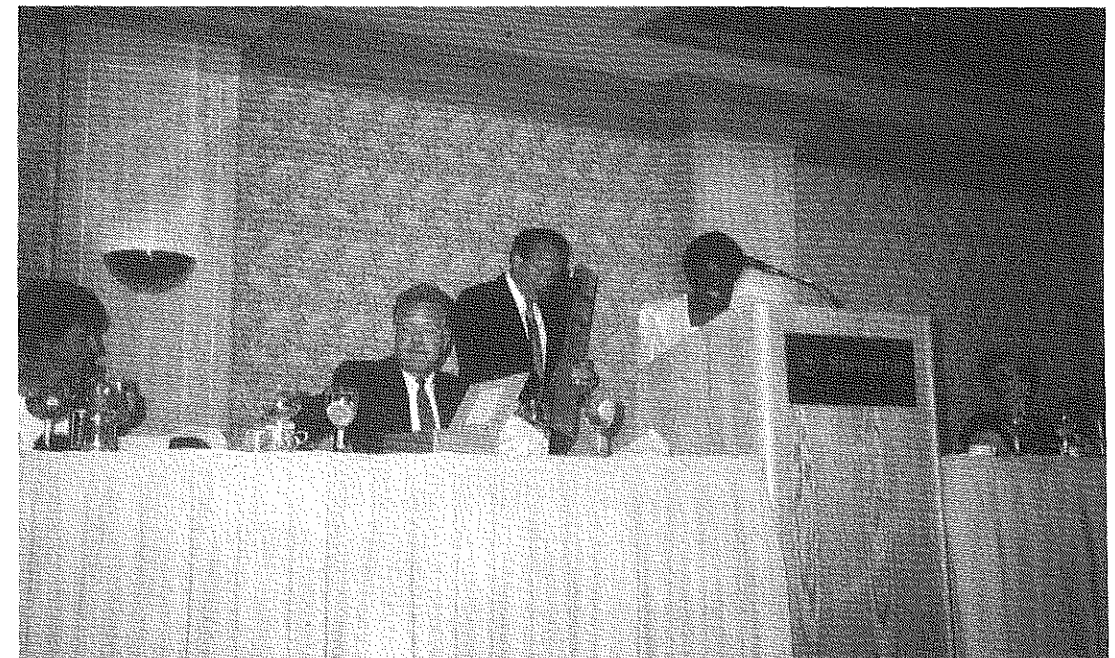
NCACC Elects New Officers and Executive Committee

New officers and executive committee members were elected as the National Conference of Appellate Court Clerks held its annual conference in San Diego, California, August 7-12, 1994, at the Sheraton Hotel on Harbor Island. Ella Williams, Clerk of the Michigan Court of Appeals, succeeded Ron Barrow, Clerk of the California Court of Appeal, First District, as President. David Beach, Clerk of Supreme Court of Virginia succeeded to the office of President-elect and Marilyn Graves, Clerk of the Wisconsin Supreme Court and Court of Appeals, was elected Vice-President. Nancy T. Foley, Clerk of the Appeals Court of Massachusetts, was elected to a second term as Secretary. Thomas F. Granahan, Clerk of the U.S. Court of Appeals for the Armed Forces, Louise

Livingston, Assistant Clerk of the Supreme Court of Alabama, and William K. Suter, Clerk of the Supreme Court of the United States, were elected to the executive committee.

ATTENTION!!!

Ken deBlanc will be contacting approximately 200 of you who failed to respond with either your biography and/or picture for the new NCACC directory. Please respond to this new request promptly.



Out-going president, Ron Barrow, passes the gavel to in-coming president, Ella Williams, at the annual conference banquet on Thursday, August 11, 1994. Photo compliments of Kathy Kempley

The President's Page

By Ella Williams



Thank you for your vote of confidence in me and the new Executive Committee. Each of us will do our best to protect and promote the best interest of the NCACC.

After the San Diego experience, I am sure that you have returned to your respective offices with new and invigorating ideas that you learned in a session or perhaps in a conversation with a fellow clerk. Each year, we leave the annual meeting armed with additional information or ideas that we can incorporate in our daily routines in our own offices. The educational programs were exceptional and I salute the chair of the educational program for a job well done and the host for making sure that our stay in San Diego was enjoyable.

It was indeed wonderful to have so many members volunteer for committee assignments for the coming year. Because of the overwhelming number of volunteers, I may not have been able to assign each of you to the committee of your preference. However, I do hope that this will not hinder you from offering assistance and sharing your ideas with committee members or with the conference at the annual meeting. I wish to thank the many new members that volunteered for committee assignments. I know that you will find your experiences to be rewarding.

To those members that were unable to attend the meeting in San Diego, we missed you and hope that you will be able to join us in San Antonio. If you have suggestions or ideas that will benefit the conference, please do not hesitate to let me know.

The National Conference of Appellate Court Clerks has grown each year and is a viable organization in the field of judicial administration because of the hard work of its members.

KEEP UP THE GOOD WORK!!!

The Docket News of the National Conference of Appellate Court Clerks

President	Ella Williams (MI)
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	William K. Suter (U.S. Supreme Court)
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Editor	Peggy McGraw (MO)

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

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FACTS, FICTION AND FOOLISHNESS

By Leslie Steen, Clerk, Supreme Court of Arkansas



Tommy Lowe sent me a copy of a column that appears in the Texas Bar Journal. The column is written by U.S. District Judge Jerry Buchmeyer and he has given me his permission to plagiarize some of his material, which I will do shamelessly.

The highlight of his column was a letter from an 81 year old lawyer named Mrs. Hulda Knipling Sellingsloh which contained excerpts of letters written to the county judge of Tarrant County, Texas about the time of the Depression. Here are those excerpts:

My husband has worked about in shifts for two months and now he has left me, and I ain't had no relief since he has gone nor before neither.

Both sides of my parents is very poor and I can't expect anything from them as my mother has been in bed one year with the same doctor and she won't take another.

Do I get more than I'm getting?

I have already wrote to the president and if I don't hear from him, I will write Uncle Sam about both of you.

This is my eighth child. What are you going to do about it?

I am glad to say that my husband who has been missing

is deceased.

Sir, I am forwarding my marriage certificate and two children. One of them was a mistake.

Please find our (sic) for certain if my husband is dead as the man I am now living with can't eat or do anything until he knows for certain.

I am very annoyed to find that you have branded my oldest child as illiterate. It is a dirty shame and a lie, as I married his father a week before he was born.

You have changed my little girl to a boy. Will this make any difference?

I have had no relief since my husband's project has been cut off.

In accordance with your instructions, I have given birth to a boy that weighed 10 pounds in the enclosed envelope.

In answer to your letter, I have given birth to twins. I hope this is satisfactory.

Nothing else needs to be said except thanks to Tommy, Judge Buchmeyer, and Mrs. Hulda Sellingsloh.

THE WAGON WHEEL PRINCIPLE

A Fictional Story by Rex J. Renk, Montana Supreme Court

Two equally significant questions flashed through Tex's mind as he swung his leg over the saddle in preparation for the daily ride to the Clerk of the Montana Supreme Court's office. One was, "What in the hell am I doing with my life?" and the other was, "Did I remember to turn the coffee pot off?"

As he settled into his saddle and spurred the Appaloosa into a brisk gait, his reluctant brain kicked the answers out. Yes and No. Yes, he did turn the coffee pot off and No, he did not know what he was doing with his life. "Well at least that's settled," he said aloud as the horse made its way around the large buffalo wallow that marked the halfway point between Tex's house and the Justice Building.

"Morning, Judge," offered Tex to the chief justice whose felt-lined carriage had arrived at the same time Tex was tying off his horse.

"Top of the morning to ya, Tex!" returned the loud, cheerful, well-fed magistrate. "Say Tex, have you noticed that damn buffalo wallow? It's getting bigger! Damn near lost the whole buggy this morning! Remind me to make a call down to the highway department. It's an outrage they let it get this far; damn animals have to be stopped. They're a damn nuisance!"

"Yeah, I suppose they are," replied Tex indifferently, his thoughts obviously wandering.

The chief justice uncharacteristically paused for a moment and studied Tex as the clerk slowly walked to the big black door of the Justice Building. "Say, Tex!" the judge called. "If you don't mind me saying, you look about as low as an ant stuck on a chip in the bottom of that there wallow. What's the matter, son?"

Tex turned back toward the Chief. He was surprised that, one, his mooding was so noticeable, and two, the bustling magistrate had taken time to recognize his mood.

"I guess I'm feeling like I've got no real significance or direction in my job," replied Tex. "I surely enjoy my work, but it seems that sometimes all I do is shuffle paper, place stamps on things, shuffle files from one place to another. In contrast, you make momentous decisions, rule on important issues, and craft legal gems into law."

The generally rose countenance of the old judge suddenly changed and a very serious look overtook his chubby face.

"Tex, you have forgotten the most important principle."

"I have? What?"

"The Wagon Wheel Principle."

"Come again, Chief?"

"The Wagon Wheel Principle! Stop for a moment and think about your role in this judicial process. Since 1867, when the clerk of court position was established in this state, the clerk has served as the direct link between the public and the court. It's you that ultimately controls the flow of information to and from the courts. Just as the hub of a wagon wheel receives the spokes from all angles, so too, do you receive all documents from the private and public sectors as well as the Court itself. A wheel ain't much good without a hub, and I'm telling you, Tex, you are the structural "hub" around which the judicial process revolves. Now don't you forget it!" snorted the plump, well-seasoned justice.

Tex stood there feeling heartened by the words of the judge but also slightly embarrassed for having been caught feeling sorry for himself. As he turned to go inside, he could hear the distant voice of the chief justice booming to an associate about the "damn buffalo wallow."

Tex smiled to himself. As he crossed the Mexican-tiled lobby toward his office, he began to feel a surge of energy swell inside him. Not the type of nervous energy that anxiety would bring forth, but the kind that fills the body with confidence and purpose. With a big grin on his face, Tex entered his office and belted out a big "Good Morning!" to his staff of three employees.

"Morning' Tex," responded Susan, the chief deputy. "Say, Tex, your wife called."

"Yes?"

"You left the coffee pot on again."

SAN DIEGO WRAPUP

By Mike Yerly, Clerk, California Court of Appeal, 6th District



The weather gods again smiled on the twenty-first Annual Conference of Appellate Court Clerks as clerks from throughout the United States made their way to San Diego, California with great anticipation of a full educational program and a slate of extracurricular activities. Our host, Steve Kelly, was there to greet us at the registration desk at the Sheraton Hotel, located on Harbor Island, with a beautiful view of the bay and downtown San Diego.

Sunday began with a new wrinkle as Ron Barrow presided over the annual business meeting. Sunday evening was a time to renew acquaintances at the reception

sponsored by BNA held outside the hotel overlooking Coronado Bay Harbor. After stories were exchanged over food and drink, it was time to retire to the hospitality suite to take in the most breathtaking view from the presidential suite on the top floor of the Sheraton.

Monday morning was time to get down to work on the outstanding educational program put together by Joseph "Moon Doggie" Lane and his program committee. After a morning of what's bugging you, the debate became spirited when sexual harassment took center stage.

(See "Wrapup, cont. on p. 4)

(*"Wrapup, cont. from p. 3"*)

For those early risers, Tuesday morning was highlighted by the First Annual NCACC Fun Run/Walk (somehow fun and run should not go together). Fifty-one participants enjoyed the early morning air and scenic three mile course on San Diego's Harbor Island. Danny Potter (California Court of Appeal) and Cecil Crosson (Supreme Court, Tennessee) lead the pack from start to finish. A special thanks to Nancy Foley who helped plan the course and kept the pack of participants together. Thank you also to our water boys Ron "keep'em wet" Barrow and Joseph "like them lips" Lane.

Tuesday morning was time for workshops with a full plate of choices including, imaging, teleconferencing, clerks office security and other choices. Tuesday afternoon was time for some relaxation and fun with a trip to Balboa Park and a stop at the world famous San Diego Zoo sponsored by Mead Data and their host Lou Tippet. A guided bus tour began our visit with an overview of the entire zoo. Then with time to revisit and talk with our favorite animal, we then gathered at the tree house restaurant for a fine feast of food and spirits.

The highlight of Wednesday morning's pre-education announcement session was Pete (The Fugitive) Fitzgerald's recount of his encounter with the San Diego Police Department. Pete (The Pyro as his wife calls him) had everyone rolling on the floor with his story recount of his detainment as an arson suspect. Hope Pete will be out on good

behavior in time for San Antonio.

After learning how much stress we are under from Dr. Zimmerman, we headed for some stress relief at the beach party sponsored by West Publishing and Mike Whetstone. John Wilkerson showed his talent at volleyball. There was plenty of fun with races, bingo, games and prizes, not to mention enough food to feed many a hungry clerk and family.

Thursday morning was time to learn how to fine tune our public speaking and to watch several brave souls make their public speaking debut. The Honorable Burton Scott returned to the conference.

Thursday evening was banquet time and time for Ken DeBlanc and his fellow clerks to put on their formal attire. Ella Williams was installed as president with Peggy McGraw being awarded the J.O. Sentell award. Entertainment was provided by Bodine with his magic. Wasn't that the Pyro's wife assisting Bodine with his act?

Friday's critique session was one of the shortest in history - a tribute to Joe Lane and his committee. Then it was time to say goodbye and back to work with memories of another conference and to look forward to next year by shouting, "SEE YOU IN SAN ANTONIO!!!"



HAPPY HALLOWEEN!

NEWS FROM THE MIDWEST

By Hank Henson, Michigan Court of Appeals

When is a 50 page brief not a 50 page brief? Marilyn Graves reports that the Wisconsin Bar became concerned that attorneys with access to Laser printers and proportional spacing could squeeze an extra five or six pages of material into 50 pages giving them an advantage over others using the typewriter standard of 10 characters per inch. Out of concern for equity came a Court rule to meet the technological age. Briefs prepared with proportional spaced fonts may not exceed 11,000 words and must be typed with a minimum of 13 point type and character resolution of at least 200 dots per inch. Your reporter wondered who counts the words to insure compliance, but Marilyn assured me that the court requires a signed certificate be attached which reports the number of words used in the body of the brief.

Some of the same concerns in South Dakota were met by requiring all briefs be prepared at 10 characters per inch, effectively outlawing proportional spacing. "Take that LEXMARK! Pow XEROX! Stick it in your ear HPI!" Jill Engel reports that they restrict the briefs to 40 pages. (Here in Michigan we are trying to learn something from both of them.)

Jill also reports that a recent decision of her Court found a South Dakota act establishing video lotteries in violation of the state constitution. There is now a ballot issue to restore the lotteries where some folks are blaming the Court for the states' budget deficits. Try to get your COLA in that environment!

Fred Gritner in Minnesota reports the Court moved into a newly renovated historical building overlooking the Capitol this past August. The offices have retained the look and charm of a 19th Century court house while being fit with all of the new features for security and computer technology. NCACC members planning for new space are invited to visit St. Paul to learn from the Minnesota experience. Fred hopes to be joining us in San Antonio after an

absence of the last few years. He also warns that he will be selling compact disk recordings of his own compositions that have recently been produced. A star is born!

As to briefs, Minnesota wants a minimum of 11 point type, not more than 16 characters per inch (Reach for your bifocals!), and no more than 50 pages. I'm told by the folks in Missouri (the SHOW ME state) that they let theirs go on for 100 pages, giving new meaning to the word spelled "b r i e f". (Put four or five copies of those in your files.)

Keith Richardson is busy in Des Moines with plans for hosting our conference in 1996. There will be more on that in future issues. He described a briefing process that starts with the filing of "Proof briefs". The "Proofs" are followed by the filing of an "Appendix" which is an abbreviated copy of the trial court record omitting those parts not at issue in the proof briefs. Final briefs are then filed with all references to the original record modified, becoming references to the appendix. The original record is not filed, and the amount of material that needs to be read is thereby greatly reduced.

Finally, Dierdre Smith reports that the legislature in Missouri is expected to provide new court fees to fund their technology program. The matter may be confused however by a ballot proposal to require a state referendum on all tax and fee increases. Whatever happened to representative government?

Here in Michigan, (Where rests your President's gavel) we are looking forward to working with four additional judges next January and are also expecting a reduction in our Criminal case load. Our voters have been asked to approve a change in the constitution to abolish the Claim of appeal by right for Criminal defendants who plead guilty in the trial court. I understand that most of you have never had such cases in the first place. We're still learning.

PEOPLE, PLACES AND THINGS . . .



A. B. NEIL underwent brain surgery on August 31, 1994, shortly after returning home from San Diego. He is recuperating in West Side Hospital. Although his recovery may be lengthy, he is making progress. A.B. and Laddie want everyone to know how much the cards, flowers, and phone calls have meant to them.

The address for West Sides is 2221 Murphy Avenue, Nashville, TN 37203, Room 5208. The phone number is (615) 342-5208.

JUDGE JOHN SHEPERD of the Michigan Court of Appeals and a participant in NCACC conferences is ill. Cards and letters can be sent to him at Sinai Hospital, Room 2612, 6767 W. Outer Drive, Detroit, MI 48235

RON BARROW is a new grandfather! Karissa Marie Barrow was born June 30, 1994 and weighed 7 lbs. 9 1/2 oz. and was 21" inches long. Congratulations Ron!

G. RONALD DARLINGTON, Executive Administrator of the Commonwealth Court of Pennsylvania, Daniel Schuckers, Prothonotary of that court, Kristen W. Brown, Deputy Prothonotary, and attorney Kevin J. McKeon have written the second edition of Pennsylvania Appellate Practice. Lawyers Cooperative Publishing Company expects to make the treatise available before the end of the year. I

EVALUATION SUMMARY OF 1994 CONFERENCE

Based on the summary of evaluations, Public Speaking and Stress Management were the winning topics at our 1994 annual conference in San Diego. Half of the participants who responded to the evaluation questionnaire (24 out of a total of 83 attendees responded) would like to see both topics repeated at a future conference. The "What's Bugging Me?" session was also popular and one participant suggested that a future session have each attendee bring some practice, procedure, or innovation that they believe may be helpful to others. Sexual harrassment was a topic many felt is presented too often.

New topics for the future: an ADA update, personnel management, automation with an emphasis on designing a case records management program, and security with an emphasis on how to handle disgruntled employees and angry pro se litigants.

Comments on the speakers and education segments were positive but some members wanted to have information on the planned social and educational program earlier in the year.

Participants would like to see future conferences in Oregon, Chicago, and the Northeast or Northwest regions.

Everyone who responded to the questionnaire indicated that he would attend a future conference and would recommend it to other appellate court clerks.

NATIONAL CONFERENCE OF APPELLATE COURT CLERKS
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ALL PAST PRESIDENTS

ILLINOIS SUPREME COURT LIMITS NUMBER AND LENGTH OF APPELLATE COURT'S OPINIONS

*By Gist Fleshman, Clerk
Appellate Court, 3rd District (IL)*

Reacting to an "avalanche of opinions," a divided Illinois Supreme Court entered an administrative order limiting the number and length of the intermediate appellate court's opinions. In Illinois, published decisions are called opinions and unpublished decisions, which are not precedential, are called Rule 23 orders. During 1993, the appellate court published 2,195 opinions. Beginning July 1, 1994, however, the court will be limited to a maximum of 1,450. Specifically, the First District, which includes Chicago, may publish 750 opinions. The Second District may publish 250 and the Third, Fourth and Fifth Districts may each publish 150 opinions.

Moreover, opinions may not be longer than 20 double-spaced pages and dissents may not exceed 5 pages. The appellate court may comply with the page limitation by splitting individual decisions between precedential issues which will be published and non-precedential issues which will not be published.

In a companion move, the supreme court amended Supreme Court Rule 23, which sets forth the criteria for determining whether an appellate court decision should be published or unpublished and provides the basic format for all decisions. As amended, the rule now creates a presumption against publication and allows for summary orders in certain cases. In the past, Rule 23 provided that the appellate court should publish any case which (1) involved an important new legal issue or modified or questioned an existing rule of law; or (2) considered a conflict or apparent conflict of authority within the appellate court; or (3) was of substantial public interest; or (4) constituted a significant contribution to legal literature by either a

historical review of the law or by describing legislative history. Now, a decision may be published only when a majority of the three-judge panel agrees that (1) the decision establishes a new rule of law or modifies, explains or criticizes an existing rule of law; or (2) the decision resolves, creates or avoids an apparent conflict of authority within the appellate court.

Further, when the panel unanimously agrees that at least one of eight listed criteria applies, it may dispose of the case with a summary order simply stating the nature of the case, the dispositive issue, a citation to controlling precedent, if any, the judgment of the court, and the applicable Rule 23 criterion. Situations appropriate for summary judgment include when the court lacks jurisdiction, the disposition is clearly controlled by existing law, no error of law appears on the record, the trial court did not abuse its discretion, or the record does not demonstrate that the trier of fact's decision was against the manifest weight of the evidence.

Writing in support of the changes, Supreme Court Chief Justice Michael A. Bilandic stated that it had gotten to the point where the appellate court judges themselves were taxed just trying to read all the opinions filed. For members of the bar it had become nearly impossible to keep up with the appellate court's output.

Supreme Court Justice James D. Heiple stated that many of the published opinions were redundant and lacking in precedential value. Moreover, because too many appellate authors were unwilling to state their findings in a few pages, legal researchers

had to read through many pages to locate the essence of a single point of law. The result was that legal research had become unnecessarily burdensome, tedious and costly.

Two justices dissented from the administrative order. Justice Benjamin K. Miller, joined by Justice Mary Ann G. McMorrow, called it "a mechanical, arbitrary exercise, demeaning to the appellate court, and to the public it serves." Justices Miller and McMorrow felt the newly amended Rule 23 sufficiently addressed the existing problems by narrowing the criteria under which publication is appropriate and permitting cases to be disposed of by summary order.

Although bar reaction to the summary disposition amendment has been positive, a number of attorneys and bar groups have reacted less favorably to the administrative order. Several small Illinois bar groups filed a petition asking the supreme court to vacate

the limit on number and length of published opinions and open the issue for public discussion. Their petition contended that the administrative order delivered a destructive message to the appellate court, the bar and the citizenry. The petitioners argued that computer-assisted research, along with opinion digests, ameliorates the effects of large number of published opinions. They further contended that published opinions tend to be of a higher quality than unpublished decisions. The petitioners were especially concerned that limiting dissents would hamper the development of the law, since "history teaches that time and again the dissenting opinions of one day become the majority opinions or legislative enactments of a later day." The supreme court denied their petition.

Several appellate districts initially expressed uncertainty regarding how they would approach the new limits. At least one, however, planned to simply allocate 24 opinions per year to each of its six justices.

INFORMATION UPDATE!

The Procedural Innovations and Case Management for Intermediate Appellate Courts scheduled for August 10-12, 1995 by the Institute for Court Management is being rescheduled. The National Center was requested to reschedule the program because it would begin before our conference in San Antonio is scheduled to end.

Stay tuned for further information.

—Ella Williams—

FEED BACK NEEDED

Last year, then President Barrow appointed me to serve on an advisory committee to the Court Services Division of the National Center for State Courts. As a part of the advisory committee's work, I want to hear from anyone who has participated in or whose state has participated in a project or has received technical support from the NCSC-Court Services Division. Contact me at (816) 889-3600.

—Peggy McGraw (MO)