



THE 45th NCACC ANNUAL CONFERENCE
San Diego, California
July 29 - August 3, 2017
Kevin Lane (CA), Host

Mark your calendars for the 45th NCACC annual conference in San Diego, California, which will be held July 29th to August 3rd. The conference will be held at the Sheraton Harbor Island Bay Hotel. This hotel is in a fantastic location with a water view from every window and a stone's throw from the airport. We are close to a multitude of summer activities, including watching the sea lions at La Jolla shores, dining in Little Italy, the Gaslamp or the waterfront, enjoying over 156 [microbreweries](#) including Stone, Ballast Point and Modern Times, and participating in activities for the whole family including Sea World, Legoland and the World Famous San Diego Zoo. Start planning your trip now at <https://www.sandiego.org/> This year promises to have some fantastic educational events, as well as some great family activities for the evenings. I'm excited to make this conference memorable and welcome you and your family to San Diego.

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THE DOCKET

News of the National Conference of Appellate Court Clerks

President	Eileen Fox (NH)
President Elect	Dan Shearouse (SC)
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Executive Committee	Lisa Collins (UT) Scott Mitchell (AL) Stacey Pectol (AR) Chris Prine (TX) Douglas Robelen (VA) Mac Squires (VA)

Communications Committee

Kevin Lane (CA) (619) 744-0781
Editor kevin.lane@jud.ca.gov

Sherry Williamson (TX)
Chair & Assistant Editor
sherry.williamson@txcourts.gov

Lisa Dolph (DE)
lisa.dolph@state.de.us

Trish Harrington (VA)
pharrington@vacourts.gov

Greg Pachmayr (IN)
greg.pachmayr@courts.in.gov

Deana Williamson (TX)
deana.williamson@txcourts.gov

THE PRESIDENT'S PAGE

EILEEN FOX (NH)



I am honored to serve as the president of this fine organization. I joined the NCACC shortly after I became clerk in 2001. At the first conference that I attended, I was warmly welcomed by more senior members, and quickly made to feel a part of the group. Having been a member of the NCACC for many years now, I believe that there are several hallmarks that distinguish the NCACC: its focus on welcoming and integrating new members, the willingness of members to share their knowledge and experience with each other, and the strong bonds that develop among members. It is striking how many active members we have who have retired as clerks, but who remain actively involved in the NCACC. Their participation is a testament to the importance that members place on their NCACC membership and the role that it has played in their lives. As president, I see my role as fostering the qualities that make the NCACC such a special organization.

As I begin my term, it is appropriate to thank those members who were responsible for making the last year so successful. First, I would like to thank Irene Bizzoso, my predecessor, for overseeing a successful conference and year. Irene has quietly served the NCACC for many years, hosting the 2008 conference in Pittsburgh, serving as treasurer for a number of years, and then serving as president. Whatever her role and whatever the issue, Irene has offered her advice based on her institutional knowledge of the NCACC and her concern for members. Since completing her term as president, Irene has offered her support and counsel to me, and I am very grateful for her help.

Of course, the highlight of the past year was our annual meeting at Lake Tahoe. I would like to thank our host, Tracie Lindeman, for her tireless work in organizing the conference. She is one of our retired members who continues to dedicate her time to our organization. The social events that she arranged, with the generous support of our sponsors, Thomson Reuters and Lexis-Nexis, were fabulous. The dinner cruise on Lake Tahoe took us to the beautiful Emerald Bay. The dinner at Lakeview Lodge gave us another incredible perspective on the alpine lake. I would also like to thank all the members of the Convention Assistance Committee who helped to make these events and the conference run so smoothly.

The beauty of the conference setting was matched by the strength of the conference program. Rex Renk and the other members of the Program Committee put together a program that was educational, useful, and stimulating. I found the presentation on “Honing Leadership Skills Using the MBTI” to be very useful in considering how to staff projects in a

THE PRESIDENT'S PAGE

EILEEN FOX (NH *(Continued)*)

manner that best utilizes the strengths of different staff members. The addition this year of an end-of-day discussion about applying what we learned was successful in encouraging the participation of members and reinforcing the lessons of each day. I always find it helpful to hear the perspective of other clerks and this innovation provided an excellent opportunity for this to occur.

Jakob Trierweiler organized a very successful vendor program. He found some interesting new vendors with products and services that would benefit courts. Jakob graciously agreed to serve as chair of the Program Committee for next year's conference, and I have confidence that he will put together an equally successful program.

I would also like to take this opportunity to thank Rory Perry, who is leaving his position as clerk of the Supreme Court of Appeals of West Virginia at the end of this month. Rory has made invaluable contributions to the NCACC. Perhaps his most important and lasting contribution was the development and maintenance of the NCACC website. Earlier this year, we awarded Rory the J.O. Sentell award in recognition of all of his efforts on behalf of the NCACC. I know that I speak on behalf of all members in saying that we hope Rory will continue to join us at our conferences and share his knowledge, experience and friendship.

The Communications Committee is responsible for publishing the NCACC's quarterly newsletter, *The Docket*. This year, the Communications Committee is being chaired by Sherry Williamson. In addition to her day job and her duties as NCACC Secretary, Sherry agreed to chair the committee this year. I greatly appreciate her willingness to do so. She and the other members of the committee are interested in receiving articles throughout the year — short or long — about topics that would be of interest to other members. If you have news to share, I encourage you to contact Sherry.

Finally, as most of you know, the NCACC is a member-run organization and it depends on its members to plan the annual meeting, solicit and welcome new members, and stay on a sound financial course. All of this work is done by committees made up of volunteer members. Thank you to everyone who volunteered to serve on committees this year. The list of committee appointments appears on pages sixteen through nineteen of this issue. If you volunteered, and I somehow missed you, or if you did not volunteer earlier but you are interested in volunteering now, it is not too late to be added to a committee. Please send me an email and let me know that you are interested in serving on a committee.

Thank you all for the honor of serving as your president. Please be in touch if you have any ideas or concerns. My email address is efox@courts.state.nh.us.

***Public Access vs. Party Privacy:
Managing Court Records
in the Electronic Age***

By: Larry Royster, Chief of Staff/Clerk of the Michigan Supreme Court

Judge Renee Cohn Jubelirer of the Commonwealth Court of Pennsylvania began the presentation on *Public Access vs. Party Privacy: Managing Court Records in the Electronic Age* with some remarks and a short PowerPoint slide show. Judge Cohn Jubelirer helped develop Pennsylvania's policy on public access to appellate court records via the internet and she will continue to serve on the committee tasked with implementing the policy. The goal of Pennsylvania's [record access policy](#) is very broad and simply states: "All case records shall be open to the public in accordance with this policy."

Judge Cohn Jubelirer stated that, when developing a public access policy, input should be sought from all the various stakeholders, including the litigants and attorneys of record, the judges and court staff, the bar, the public, and the media, to properly balance the competing interests of the public's right to know and the individual's right of privacy. She further noted that public access helps ensure the fairness and integrity of judicial proceedings, protects public health and welfare, and enables the media to report on matters of public interest. However, unrestricted electronic access to court records might expose information about an individual that is confidential, private, or embarrassing and increase the risk of identity theft. Depending on state and federal law and court rules, a court may need to restrict electronic access to certain case types (e.g., adoption, termination of parental rights, or PPO cases), to certain document types (e.g., medical records, tax and income forms, obscene materials), or to specific information in documents (e.g., social security numbers, dates of birth, addresses and phone numbers). In terms of the latter, the filer typically has the responsibility of redacting confidential information from documents, but the court may have some secondary responsibility as well, especially with documents filed by self-represented litigants.

After the slide show, Judge Cohn Jubelirer joined NCACC members John Tomasino, Clerk of the Florida Supreme Court, and Greg Pachmayr, Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court, for a panel discussion on the topic and to demonstrate parts of the Florida and Indiana systems. Florida has made court documents available electronically through a proprietary system for several years, with the level of access determined by user groups. John Tomasino displayed and explained a highly detailed matrix ([Access Security Matrix](#)) showing the multiple user groups, the types of documents accessible by each group, and the court rule or statutory authority restricting or allowing that access. Please see [additional information](#) about where Florida's user groups and standards for accessing public records can be found. Greg Pachmayr demonstrated Indiana's soon-to-be-unveiled system, called MyCase, for electronically accessing court records. MyCase is an Odyssey product developed and maintained by Tyler Technologies, Inc. Like Florida's system, the level of electronic access to court documents in Indiana depends on the user type, which is determined by a person's registration information. The system identifies and restricts the level of access through the person's login credentials. Please see the [webpage](#) for accessing Indiana's system.

Additional information about online access to court records is available on the [website](#) of the Center for Legal and Court Technology, which is an entrepreneurial public service initiative of the Marshall-Wythe Law School at the College of William & Mary and the National Center for State Courts. The Center also conducts conferences every few years on privacy and access to court records. The [materials](#) for the immediate past conference held in October 2015 are available.

RORY L. PERRY II RECEIVES THE J.O. SENTELL AWARD

Each year the National Conference of Appellate Court Clerks (NCACC) recognizes a member of the organization who has exhibited extraordinary leadership, service and devotion to the organization, while furthering the Conference's professional objectives in support of the advancement of the judicial system and dedication to public service. Established in 1979, the award is named for the Conference's first President and one of its founding members, J.O. Sentell, Clerk of the Alabama Supreme Court. This year the NCACC honored Rory Perry, the Clerk of the Supreme Court of Appeals of West Virginia, with its highest award at its annual meeting held in Lake Tahoe, Nevada, during the week of August 6, 2017. Rory has provided outstanding service and leadership to the NCACC throughout his 14 years as a member. His contributions to the NCACC have been significant. He served as President 2012-2013, President-Elect 2011-2012, Vice President 2010-2011, Executive Committee 2007-2008, as well as chairing numerous committees. NCACC owes the existence and maintenance of the NCACC website to Rory and his court. This has been a major contribution to the organization's operations. Also, he implemented the electronic registration for the annual conferences. The NCACC recognizes Rory for his distinguished service to our organization, and is deeply grateful for his time and efforts.



SHAUNA STRICKLAND RECEIVES THE MORGAN THOMAS AWARD



The Morgan Thomas Award is for recognition of an individual other than a regular member to the NCACC who has made distinguished contributions to enhancing professionalism and supporting the goals of the NCACC as a body and of its members individually. This year's recipient for the Morgan Thomas Award was Shauna Strickland of the National Center for State Courts. Shauna was presented the award during the NCACC 2017 annual conference in Lake Tahoe, Nevada. Shauna has long been a friend of the NCACC. She has attended many of our conferences, fostering a positive impact on the partnership between our organizations. Her assistance in the Court Statistics Project has been invaluable to the membership. The NCACC is proud to acknowledge all of the tremendous contributions Shauna has

made to our organization over the years.

Emotional Intelligence and Leadership

By: Polly Brock

Kristine Van Dorsten, Sr. Education Developer for the California Judicial Council's Center for Judicial Education and Research, lead a great discussion on *Emotional Intelligence: A Key Competency for Successful Leaders*. There are as many definitions of *leader* as there are kinds of leaders. Using the language of emotional intelligence, we can define effective leaders with traits like flexibility, respectfulness, collaborative and empathy.¹

A key element of emotional intelligence that Kristine had us spend time exploring is empathy. The empathy we need in the courthouse may not quite be what we think of when we think of empathy in our personal lives. Jayson Boyers, the executive director of the Division of Continuing Professional Studies at Champlain College, asserts that in the workplace we need to rely on our relationships to move forward institutionally and professionally—since successful people do not operate alone, we need to support and receive the support of our staff, judicial officers, and the public to accomplish our mission. “True empathy combines understanding both the emotion and the logical rationale that goes into every decision.”²

Emotional intelligence is, however, more than just empathy—all of us have emotional intelligence strengths and weaknesses. I had the great experience of taking a complete EQ-I assessment in a class with my Chief Judge, Alan Loeb. Reviewing our EQ charts together was both informative and beneficial. I have a higher score in the stress management composite—I'm highly optimistic and flexible, and pretty strong on stress tolerance. To my surprise, my Chief Judge was not particularly strong on stress management—and confided he looked to me to keep optimistic and open to change. He is, however, very strong in the decision making composite—he has strong impulse control, objectivity, and problem solving skills. This is my weakest composite area on the EQ—and I do always look to him for clear-headed thinking on decisions I am facing. And maybe that is where the empathy skill is really needed—it's not enough to know where are strengths and weaknesses are, but to use the empathy muscle when we are called upon to use those skills that we are weakest at—how would someone who is strong in this area navigate this issue? For me, it is stopping to ask myself, “*What would Chief Judge Loeb do?*” By answering that question, I can moderate my own reaction and pull in someone else's strengths.

Are you interested in learning more about your own emotional intelligence? You can take the [full assessment](#) and learn how to increase your strengths with Emotional Intelligence 2.0 by Drs. Travis Bradberry and Jean Greaves. Another great resource for self-evaluation is Tom Rath's [StrengthsFinder 2.0](#).

¹ VIPIN MITTAL, DR. EKTA SINDHU, Er. [Emotional Intelligence and Leadership](#). Global Journal of Management And Business Research, [S.I.], v. 12, n. 16, sep. 2012.

² JAYSON BOYERS, [Why Empathy Is The Force That Moves Business Forward](#), Forbes, May 30, 2013.

SHOW OFF YOUR CITY/STATE – HOST THE 2021 CONFERENCE!!!

The Site Selection Committee is seeking bids to host the NCACC annual educational conference in August 2021. This invitation is open to all members, including past hosts. This is an excellent opportunity to show off the wonderful features of your city or state. There are plenty of resources to use to host a conference so that you are not alone in handling all of the tasks. Your local visitors' organization can help solicit bids from local hotels and accompany you on site visits. There is a Host Handbook with lots of information compiled by former hosts to guide you. Former hosts are also willing to answer questions or give you advice as you plan the conference. The Contracts Committee has a collection of recent hotel contracts that you can review to compare to hotel bids. That committee also helps by reviewing any proposed contracts as things progress. During the conference itself, you will have huge amounts of help from the Program Committee, Convention Assistance Committee, and others. If you are concerned about having sole responsibility for hosting, you can pair with another clerk to co-host and share duties. We can promise you that you will enjoy showing your fellow clerks all the wonderful features of your location and will be glad you took on the challenge. Please contact any of the members listed below if you are interested in hosting or have any questions.

Ron Carpenter (WA-Ret)
Tom Hall (FL-Ret)
Lisa Matz (TX)
Renee Simien (LA)
Sonya Stromberg(CO)

Deena Fawcett (CA-Ret)
Trish Harrington (VA)
Kelly McNeely (LA)
Sandra Skinner (MO)

Debbie Autrey, Chair (TX)
debbie.autrey@txcourts.gov
(903) 798-3045

Electronic Trial Court Records on Appeal

By: John Moyer

Technology did not make its debut at Lake Tahoe until Wednesday, following two full and educational days devoted to other subjects. After many years of discussing case management systems and e-filing, two Wednesday sessions tackled electronic transmission of trial court records, the morning session dealing with how the record is compiled and transmitted followed by an afternoon session that focused on accessibility of the electronic record.

Doug Shima, Clerk of the Kansas Appellate Courts presented a “nuts and bolts” primer on how the record is assembled and transmitted electronically in Kansas. Accompanied by a video presentation, Doug explained how electronic records are assembled by trial court clerks in Kansas, including the process of “electronically consolidating” records on appeal. Doug’s entertaining presentation provided insight into the many steps required to assemble an electronic record.

Mathew Ruth, Senior Project Manager for the Administrative Office of Pennsylvania Courts, provided an explanation accompanied by written materials detailing the e-filing process in the Pennsylvania Appellate Courts, which includes both trial courts and administrative agencies. In short, the lower courts or agencies are assigned an e-filing ID and “file” the record, once compiled, in the same manner as a litigant would file a motion or brief.

An informal show of hands revealed that perhaps half or less of our members’ courts presently have electronic records on appeal, and only a few have such records in all cases. The presentations prompted many questions from the attendees.



"This really is an innovative approach, but I'm afraid we can't consider it. It's never been done before."

Recent Developments in Employment Law/ How to Avoid Traps for the Unwary

Patti Williams, Supervising Attorney, Legal Services Office Labor and
Employment Unit, Judicial Council of California

By: Colette M. Bruggman (CA)

Patti Williams presented an interesting and informative program in employment law, beginning with current events. Patti stated, "Employment issues are constantly in the news." Google has been trying to promote diversity in the workforce; there are a lot of men at Google, but where are the women? Google is still top heavy with men, and recently, a software engineer at Google published a memorandum asserting that Google's push for diversity does not recognize the biological differences between men and women, for example, women do not like conflict or high-stress positions. Patti queried the group about the software engineer's premise, and the consensus was that this premise is hogwash. Women at Google protested the memo by staying home. The CEO of Google fired the software engineer, indicating that the memorandum was not consistent with Google's ethics or morals. The software engineer believes he was fired for first amendment activity and filed an NLRB claim against Google. The trap: you can do everything right and still end up with a claim filed against you.

Patti continued with a discussion of the Equal Pay Act and some recent case law. Under the Equal Pay Act, men and women in the same position get the same pay. Prima facie case occurs when a man and a woman are in the same position and the man makes more money. In particular, we discussed *Rizo v. Yovino* (E.D.Cal. 2017). In *Rizo* a young woman, who was a successful mathematician, accepted a position and moved to Fresno. To determine the salary offer, the employer asked the young mathematician her current salary, to which the employer added a 5% increase to determine the amount of the offer. Because this amount was below entry level of the salary range for the position offered, Rizo was offered the bottom of the salary range. (This is also a common way many of the courts currently set salary offers.) Three years later, the young mathematician was talking to a new colleague (a man in the same position with less experience) and learned that he was paid more money than her, and that all the men in the same position at the County were paid more money than she was being paid. Rizo filed a complaint with the EEOC and the EEOC took the case. The County's affirmative defense is that the salary is based on a consideration other than sex; prior salary is a business reason used to attract candidates and retain them and it is an objective standard. This method provides structure that is necessary when spending public monies. The trap: women have historically been paid less than men and this structure perpetuates the historical imbalance, and the trend is moving away from this as a starting point for negotiating salaries.

Moving on, Patti queried whether sexual orientation is protected under Title VII, citing two cases recently discussing the issue. In *Hively v. Ivy Tech Community College* (7th Cir. 2017), the court found that sexual orientation was protected under Title VII, but *Christiansen v. Omnicom* (2nd Cir. 2017) found that sexual orientation was not protected under Title VII, creating a split

among the districts. Hively, an openly lesbian adjunct professor at Ivy Tech Community College, had applied for six full-time positions between 2009 and 2014. Hively, believing she was being spurned because of her sexual orientation, filed a charge with the EEOC and received a right-to-sue letter. The trial court dismissed Hively's suit, but the court of appeal reversed and remanded for further proceedings, stating that "a person who alleges that she experienced employment discrimination on the basis of her sexual orientation has put forth a case of sex discrimination for Title VII purposes."

In *Christiansen v. Omnicom*, Christiansen, an openly gay man who is HIV-positive, alleged that his direct supervisor engaged in a pattern of humiliating harassment targeting his effeminacy and sexual orientation by posting multiple suggestive and explicit drawings on an office whiteboard, circulating a poster depicting Christiansen's head on a female, bikini-clad body that one worker thought depicted Christiansen as "a submissive sissy," and making remarks about the connection between effeminacy, sexual orientation, and HIV status. Christiansen filed a charge with the EEOC and received a right-to-sue letter. The trial court dismissed Christiansen's complaint because Christiansen's claim was a sexual orientation claim that was not cognizable under Title VII. The court of appeal agreed, and affirmed the judgment of dismissal with respect to sexual orientation while allowing Christiansen to proceed on a gender stereotyping claim under Title VII.

In *Price Waterhouse v. Hopkins*, a female senior manager was proposed for partnership in 1982, but was neither offered nor denied partnership; instead, her candidacy was held for reconsideration the following year, but she was not reproposed for partnership. She sued under Title VII, charging discrimination based on sex. Hopkins had a solid work history and performance evaluations. Hopkins was told, in order to improve her chances for partnership, she should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." The Supreme Court agreed with Hopkins and said it was discrimination based on sex. *Hively* is trying to apply *Hopkins*. The trap: there is no clear decision on whether sexual orientation is protected by Title VII.

We moved on to a discussion about hostile work environment under Title VII. In *Reynaga v. Roseburg Forest Products* (9th Circuit), Reynaga filed a complaint for hostile work environment for being picked on because he was Mexican. He followed the company's internal complaint procedure. The company hired an outside investigator who confirmed the allegations. The company moved the perpetrators to a different shift and asked them to stop the comments. Later, Reynaga and his son had their shifts changed and were put back with the initial perpetrators; Reynaga complained to the company that he was being placed with the perpetrators. Both Reynaga and his son went home; they were suspended and then fired for work abandonment. Reynaga sued for hostile work environment under Title VII. Summary judgment was granted on all claims but reversed on appeal. The panel held that Reynaga suffered an adverse employment action that could be determined by a jury to be retaliatory. The trap: retaliation claims are on the rise. If an employee in a protected category or doing a protected activity suffers an adverse employment action and there is a connection between the two, it may be considered retaliation. The EEOC is all over retaliation claims. You may be wise to read the EEOC's updated [Enforcement Guidance on Retaliation](#) and Related Issues (August 2016).

In *Zetwick v. County of Yolo* (9th Cir. 2016), a female deputy sheriff complained that the sheriff hugged the women officers, but not the men. Zetwick was subjected to at least 125 hugs plus “at least one unwelcome kiss.” The sheriff responded that hugging was his way to show appreciation; however, Zetwick observed him giving handshakes to the male deputies. The County moved for summary judgment, maintaining that the “conduct was not objectively severe or pervasive enough to establish a hostile work environment.” The trial court granted summary judgment but was reversed. The trap: hugging may create a hostile work environment. The standard is whether a reasonable woman in Zetwick’s position would be offended by the behavior.

Patti continued with other traps for the wary, including accommodation requests under the American with Disabilities Act (ADA). If you receive a request for accommodations, you must go through the interactive process and understand what is and isn’t a reasonable accommodation. There are no special words necessary for making a request, and accommodations may be the result of your own observations. Accommodations may include responding to requests for leaves, including indefinite leaves. To gather information, meet face-to-face if possible, request medical information if needed (with the proper release), and focus on work-restrictions, not diagnosis. Explore ideas for accommodation by talking to the employee or asking the doctor for recommendations. An accommodation should allow for the performance of essential duties, and the accommodation requested by the employee is not required. Be creative, and document your efforts. The trap: assuming the accommodation works or that once is enough.

Accommodation is an ongoing process, and past success does not negate the need for future efforts. Follow-up with the employee—never assume one time through the process is enough. Start the interactive process all over if necessary. The interactive process is finished when it works, when the employee does not cooperate (To determine cooperation, ask, “Who is responsible for the breakdown of the interactive process?”), the employee is not “qualified” under the ADA, or the accommodation creates an undue hardship for the court (an extremely high standard). Before terminating the interactive process, ask yourself: 1. Have we done enough? (What efforts have we made to return the employee to work, or otherwise accommodate the employee, in this instance? How would you answer the question, “What did you do to help this employee? and Why did you not do X?”); and 2. How will a neutral person view your efforts? (Will a jury believe that you did everything to help the employee in the most recent instance or that you looked for the first opportunity to cut ties with the employee?)

The ADA interactive process is individualized; however, you do not have to eliminate essential functions of the job. Review the job descriptions and make sure they are up-to-date, for example, do they include keyboarding, interacting with colleagues, or that they are full-time positions. Reasonable accommodation may include modifying work schedule or acquiring new workplace equipment, but not reducing workload standards or buying personal items of use such as eyeglasses or hearing aids. (See Patti’s chart for other helpful examples.)

For conduct issues, you may be dealing with a mental disability. You have to assess the threat and determine whether there was actual misconduct. If there was actual misconduct, you do not have to roll back any discipline, but you may have to interact with the ADA and possibly provide reasonable accommodations. The trap is applying stereotypes. Always assess the threat and do not apply stereotypes to the situation.

Another trap is handling indefinite leaves. Under the ADA, there is no maximum duration for unpaid leave as an accommodation. Push the employee and the doctor for a timeframe and ask for an actual return to work date; do not accept “next examination” as a response. Look at the timeline and the doctor’s notes. Ask the doctor why the earlier predictions on return to work were wrong; there may be a legitimate reason, e.g., complications, and ask for the basis of the most recent return-to-work date. Take a snap shot of the work at the time of leave and another snapshot at the time leave is extended; this helps to establish undue hardship. Use extreme caution when deciding to terminate leave, and never terminate because the employee is “out of leave.” Conduct an individualized inquiry with input from Human Resources and ask: 1. How long has the leave been; 2. How many times has the leave been extended; 3. How long is the most recent leave request; 4. What have we told the employee in the past extensions; 5. Is the continued absence an undue hardship; and 6. Is providing more leave futile?

Leave is an undue hardship only if it creates a significant difficulty or expense, is unduly disruptive, or fundamentally alters the nature of the Court’s operations. Factors include the length of the leave requested, the ability of the Court to cover for the employee while on leave, and any special skills or requirements of the employee in the position. It is extremely rare that leave creates an undue hardship. Do not make a determination of undue hardship without guidance.

Leave is futile when continued leave will not enable the employee to eventually perform the job. This determination includes no clear prospect for the employee’s recovery, no way of knowing when the doctor would release the employee in any capacity, and the employee says he can never return to the job.

Another trap is dealing with employee abuse of FMLA leaves of absence. Proceed with caution on abuse of FMLA claims. Consider who the witnesses will be, and whether you may be subject to potential retaliation claims. In both discrimination and retaliation claims, the employee only need prove that he or she belongs to a protected class (discrimination) or is engaged in a protected activity (retaliation); that he or she suffered an adverse employment action; and there is a causal connection tying the protected characteristic to the adverse action, i.e., the adverse actions was “because of” my protected status. The bar for bringing a lawsuit and avoiding early dismissal is very low.

In dealing with complaints, procrastination is not your friend. Deal with the complaint immediately. Complaints are protected if they are made in good faith. If you are aware of, witness, or have an employee make a complaint of harassment, retaliation, or discrimination, act immediately. Remind the employee that the Court does not tolerate retaliation for making the complaint. Stay vigilant to prevent any reprisals against the complaining employee. If you are the subject of a complaint, do not try to fix it with the employee; rather participate in the HR investigation.

Performance issues should be addressed as they occur, and document, document, document. Timely and objectively document the issues. Do not rely on or trust your memory because a jury won’t. Be consistent in enforcing policies; treat everyone the same. Treat your best performer like your worst performer. You may be tough or lenient as long as you are consistent.

Patti’s use of current events and real-life examples had practical applications for us as managers and she gave us useful tools to take back to our respective courts.

Redacting Confidential/Sensitive Information in Court Documents

By Larry Royster, Chief of Staff/Clerk of the Michigan Supreme Court

In a 2011 federal lawsuit involving Apple, Inc., and Samsung Technologies, a district court judge issued a decision containing confidential information that the judge thought she had properly redacted. Unfortunately, she had simply applied a black highlighter in her word processing software to conceal the text. When the text was copied and pasted into another document, the confidential information was viewable. In 2009, the Transportation Security Administration had posted manuals online with sensitive information that was supposed to be removed but which was simply “blacked-out.” Although changing the color of confidential text from black to white or applying an electronic highlighter to cover the text makes it unreadable on-screen, the text can be revealed even after the word processing document is converted to PDF. By selecting the text within the PDF and copying it to a text file as unformatted text, the redacted words are revealed.

Numerous options are available to properly redact information from documents to avoid a similar problem from occurring in your court. The low-tech method involves manually striking the information using a black marker and then scanning the document and saving it as a searchable PDF or image file type, such as .JPG, .GIF, .TIF, or .PNG. Even this may not be fail-safe, however; if the black marker is not dark enough, some of the text underneath may still be legible. Fortunately, there are many electronic methods for redacting information that are easy, affordable, and reliable.

At one time Microsoft provided a redaction tool with its suite of products, including Word, but the tool is no longer available in the programs themselves. The code was made open source and can be downloaded as a separate yet unsupported [redaction tool](#). Officially, the tool is for use with Word 2007/2010 but some articles have indicated that it works with Word 2013 and Word 2016 as well. [Easy to follow instructions](#) for using the tool are available. You can also purchase an Office plug-in that allows you to redact Word and other Office documents. One such plug-in is Foxit Redactor, which you can purchase or [download](#) for a free trial period.

Redacting a PDF is easily accomplished using Adobe Acrobat. Because the redacted text is permanently removed once the redaction process is completed, you will want to save the document under a different name if you also need to retain the document in its original form. With Adobe Acrobat X Pro,¹ select Tools from the menu bar and click on the Protection dropdown

¹This is the version I have installed on my computer. With earlier and future versions of Adobe Acrobat, the redaction process follows similar steps, although the commands may be labeled differently or may appear in different menus. If you don't have Adobe Acrobat Pro installed on your computer and only need to redact a specific document, you can [download](#) a free 30-day trial of Adobe Acrobat Pro DC.

arrow. If you need to remove non-repeating or longer blocks of text, select the “Mark for Redaction” option. A pop-up window will advise you that redaction is actually a two-step process: You first mark the text and then you apply the redaction process to permanently delete the text. Click the OK button to close the window and begin marking the text by running your mouse over it while holding down the left mouse button. If your document contains repeating text to be redacted (e.g., the names of victims or witnesses, birthdates, social security numbers), click on the Search and Remove Text option. Another pop-up window will open warning you that images and line art may appear as text but are not searchable so you will still need to carefully review the document. After closing the pop-up window, a search screen opens that lets you enter the repeating word or phrase to be redacted and to specify if you want to search for whole words only and for the search to be case sensitive. When you have fully marked all the text to be redacted, select Apply Redactions. You will be warned that the marked content will be permanently removed once the process is completed and the document is saved. Click OK and the redactions will be applied. Finally, another pop-up window will appear asking if you want to also find and remove hidden information in your document. Hidden information includes metadata (such as when the document was created, who created it, text that was deleted or added), bookmarks, comments and markups, links, and other things. It is strongly advised that you allow the program to remove hidden information before posting any documents online for public access.

Manually redacting text from Word documents and PDFs can be time-consuming even for the most adept user. But there are many commercial redaction programs that can automate the process of identifying and removing confidential or sensitive information from individual or bulk documents. Commercial redaction software is available from [Extract Systems, LLC](#)², [RapidRedact](#), [Nitro Pro](#), [Wondershare PDFelement](#), and [OpenText Redact-It](#). Limited time trial versions of these software programs can be downloaded for free from the company websites. A no-cost alternative for redacting documents is the web-based version of [PDFescape](#). With PDFescape, you upload your PDF to its website through your browser (it supports IE, Chrome, Firefox, Opera, and Safari), but the file sizes must be less than 10 MB and the document under 100 pages. A web-based version that supports larger file sizes/page lengths and an installed desktop version for Windows PCs are available for monthly fees.

²Extract Systems should be familiar to most conference attendees because Troy Burke, a company representative, has appeared at the vendor showcases at recent conferences.

2017-2018 NCACC Committees

AWARDS, RESOLUTIONS AND MEMORIALS COMMITTEE:

The purpose of this committee is to recommend to the Executive Committee nominees for the J.O. Sentell Award and Morgan Thomas Award, to prepare appropriate resolutions for adoption by the Conference as formal expressions of its will and intent and to prepare memorials for deceased members.

Chair: Deana Williamson (TX)

Committee Members: Bill DeCicco (DC); Ed Hosken (VA); Terry Lord (MO); Joe Perlak (DC); and Doug Shima (KS).

BYLAWS COMMITTEE:

The purpose of this committee is to consider amendments to the Bylaws and to make a written report to the Executive Committee each year by April first. The Bylaws Committee shall consist of no more than 5 members including the Chairperson.

Chair: Joe Perlak (DC)

Committee Members: Ron Carpenter (WA); Sandra Grosko (OH); Greg Hilton (MD); and Michael Krimmel (PA).

COMMUNICATIONS COMMITTEE:

The purpose of this committee is to: (a) inform the membership of the activities of the Conference, to provide information to enhance the professionalism of appellate court clerks and their offices, and to publish the NCACC newsletter at least quarterly, and (b) promote the mission and objectives of the NCACC by providing information about the Conference and its members to appropriate individuals and groups.

Chair: Sherry Williamson (TX)

Committee Members: Lisa Dolph (DE); Trish Harrington (VA); Kevin Lane (CA); Greg Pachmayr (IN); and Deana Williamson (TX).

CONTRACTS COMMITTEE:

The purpose of this committee is to review any contract referred to it by the President or the Executive Committee. The committee shall report its recommendation to the President and the Executive Committee.

Chair: Tom Harris (NV)

Committee Members: Tom Hall (FL); Tracie Lindeman (NV); Greg Pachmayr (IN); Stacey Pectol (AR); Laura Roy (MO); and Larry Royster (MI).

2017-2018 NCACC Committees

CONVENTION ASSISTANCE COMMITTEE:

The purpose of this committee is to provide practical guidance, advice and assistance to the Clerks who are hosts of upcoming annual meetings. The Convention Assistance Committee shall consist of an unlimited number of members.

Chair: Deena Fawcett (CA)

Committee Members: Debbie Autrey (TX); Diane Fremgen (WI); Claudia Jenks (TX); Scott Mitchell (AL); Meredith Montgomery (AK); Rebecca Oates (AL); Christopher Prine (TX); Dorian Ramirez (TX); Doug Shima (KS); Sandra Skinner (MO); Renee Simien (LA); and Deana Williamson (TX).

EDUCATIONAL FUND COMMITTEE:

The purpose of this committee is to develop sources of income to be invested in a restricted fund, the proceeds of which shall be used for educational purposes as more fully set out in the Operational Guidelines. The Educational Fund Committee shall be composed of the President-Elect, the Treasurer, and one Executive Committee member to be named by the President. The President shall appoint one of these members as Chairperson.

Chair: Malcolm (Mac) Squires (VA)

Committee Members: Dan Shearouse, President-Elect (SC) and Janet Johnson, Treasurer (AZ).

FINANCE AND INVESTMENT COMMITTEE:

The purpose of this committee is to recommend finances and investments to the Executive Committee. The Finance and Investment Committee shall consist of the Treasurer, who shall serve as its Chairperson, and four members appointed by the Executive Committee.

Chair: Janet Johnson (AZ)

Committee Members: Chris Crow (LA); Jim Hivner (TN); Ed Hosken (VA); and Penny Miller (ND).

MEMBERSHIP AND PICTORIAL DIRECTORY COMMITTEE:

The purpose of this committee is to: (a) solicit new members and distribute information about the Conference and its activities to new or prospective members, (b) update and maintain the pictorial directory of the conference, including the annual meeting summaries contained therein, and (c) maintain and promote participation in the NCACC listserv.

Chair: Lisa Collins (UT)

Committee Members: Carol Anne Harley (TX); Brandon Henson (CA); Joseph Lane (CA); Rebecca Oates (AL); Kristina Samuels (FL); and Ed Smith (MT).

2017-2018 NCACC Committees

NOMINATING COMMITTEE:

The purpose of this committee is to recommend the nomination of regular members to office. The Nominating Committee shall consist of at least five but no more than nine members, including its Chairperson, and shall be appointed by the President, with the approval of the Executive Committee at least six months before the annual business meeting.

Chair: Marilyn May (AK)

Committee Members: Eydie Gaiser (WV); Blake Hawthorne (TX); Ed Hosken (VA); Janet Johnson (AZ); Lillian Richie (LA); and Dan Shearouse (SC).

PROGRAM COMMITTEE:

The purpose of this committee is to organize and present an educational program at the annual meeting of the Conference to further the objectives of the Conference and to enhance the skill and knowledge of appellate court clerks.

Chair: Jakob Trierweiler (AZ)

Committee Members: Jenny Abbott Kitchings, Vice Chair (SC); Patty Bennett (WY); Polly Brock (CO); Colette Bruggman (CA); Trish Harrington (VA); Marilyn May (AK); Scott Mitchell (AL); Meredith Montgomery (AK); Laura Roy (MO); Larry Royster (MI); and Deana Williamson (TX).

SCHOLARSHIP COMMITTEE:

The purpose of this committee is to recommend recipients of scholarships to the Executive Committee. The Scholarship Committee shall consist of three members, including its Chairperson, and shall be appointed by the Executive Committee.

Chair: Lisa Matz (TX)

Committee Members: Ed Hosken (VA) and Lonn Weissblum (FL).

SITE SELECTION COMMITTEE:

The purpose of this committee is to solicit potential hosts for future annual meetings, to evaluate invitations from states, and to make appropriate recommendations to the Executive Committee.

Chair: Debbie Autrey (TX)

Committee Members: Ron Carpenter (WA); Deena Fawcett (CA); Tom Hall (FL); Trish Harrington (VA); Jim Hivner (TN); Lisa Matz (TX); Kelly McNeely (LA); Renee Simien (LA); Sandra Skinner (MO); and Sonya Stromberg (CO).

2017-2018 NCACC Committees

STRATEGIC PLANNING COMMITTEE:

The purpose of this committee is to review and evaluate ideas and suggestions referred to it by the Executive Committee and based upon its review and evaluation, recommend to the Executive Committee courses of action the Executive Committee should adopt.

Chair: Steve Lancaster (IN)

Committee Members: Tim Gudas (NH); Greg Hilton (MD); Michael Krimmel (PA); Penny Miller (ND); and Christopher Prine (TX).

TECHNOLOGY COMMITTEE:

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

Chair: Larry Royster (MI)

Committee Members: Brian Cotta (CA); Tracie Lindeman (NV); Rory Perry (WV); Andrea Rohmann (CA); Renee Townsley (WA); and Amy Wood (AZ).

NOTICE:

**The updated 2017 directory is
now on the NCACC website.**



FUN IN LAKE TAHOE!!!!!!!!!!!!!!!