The 49th NCACC Annual Conference in Williamsburg, VA July 31-August 5, 2022
Jim Hivner & Amy Funderburk, Hosts

Jim Hivner, showing true Volunteer spirit, has stepped in to host the upcoming 49th NCACC Annual Conference in Williamsburg VA with help from Amy Funderburk of the Old North State. The Conference will be held at the Woodlands Hotel and Suites, conveniently located near all that Colonial Williamsburg has to offer. The Williamsburg area is renowned for its part in formation of the United States, its preservation of American colonial history, beautiful waterways, incredible dining options, and of course, roller coasters. Plans are underway to highlight the state Doug Robelen planned to introduce us to as we once again gather together. Join us for a reunion after far too long apart!
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THE DOCKET
News of the National Conference of Appellate Court Clerks

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Like many of you (all of you?), I’m suffering from COVID fatigue.

Although I’m not completely closeted off from social activities and interpersonal contacts as I was in the early days of the pandemic, life is still far from normal. I haven’t gone to a movie, concert, or ballgame in over 18 months. I miss those activities. My wife and I rarely eat in restaurants; if we go out at all, we order the food to-go and then eat in a nearby park. I miss the firm handshakes and warm embraces of greeting family, friends, and colleagues. Fist and elbow bumps seem silly to me. I don’t mind wearing a face mask when I’m out in public but I certainly won’t feel nostalgic for mask-wearing when the pandemic has finally passed. I look forward to the time when attending work meetings or training sessions, scheduling oral arguments, and participating in public speaking events requires absolutely no consideration of COVID risk assessments and precautions.

Despite my foregoing whining, I’m weirdly grateful for the inconveniences of COVID-19 because, for me, they have been only that—inconveniences. For some of you, the suffering and sacrifice have been far greater. Family members and close friends have died or have been seriously ill. Mental or physical health has deteriorated. Financial hardship has resulted.
So I am extremely thankful for everyone and everything that I did not lose to COVID-19.

On a professional level, I am grateful for the NCACC. I especially want to thank my two immediate predecessors as president of the NCACC, Edythe Nash Gaiser (WV) and Laura Roy (MO). As I’m starting to perform the myriad tasks required of the president, I have a far greater understanding of the time and herculean effort it took Eydie and Laura to keep the NCACC moving forward while attending to the needs of their own courts during the pandemic. I, admittedly, had many difficult days just trying to keep my office operational. I’m not sure how they managed to perform their day jobs while also serving as president. I’m thankful for Scott Mitchell (AL), Blake Hawthorne (TX), and Deana Williamson (TX), the would-be hosts of the conferences in Point Clear, Alabama in 2020 and Portland, Oregon in 2021, which were canceled because of COVID. They did a huge amount of planning and preparation for the conferences, and should have had the opportunity to bask in the glory of their successes. And I’m thankful for Christopher Prine (TX) and Greg Hilton (MD), the program chairpersons for those conferences, as well as the members of the program committees for making lemons out of lemonade by changing the educational sessions to a virtual format on very short notice. The programs were terrific. Lastly, I’m thankful for all the members who shared their wisdom and knowledge on the NCACC listserv during the early days of the pandemic in response to questions about remote proceedings, different video conferencing formats, tips and best practices, COVID safety protocols, etc. Good job, everyone. Give yourself a pat on the back. Or fist bump yourself.

In the upcoming year, I’m hoping for a return to normalcy for the NCACC. Specifically, I’m looking forward to an awesome in-person conference next summer in Williamsburg, VA. Mark your calendars for July 31 through August 4, 2022. Planning efforts for the conference are already underway thanks to Jim Hivner (TN) and Amy Funderburk (NC), who agreed to serve as co-hosts after the original host, our good friend and former colleague, Doug Robelen (VA), passed away this past July, and thanks to that glutton-for-punishment Scott Mitchell (AL) who is serving as program chair.
In the next few months, the Membership and Pictorial Committee, with Doug Shima (KS) as its chairperson, will make a recruitment push for new members. We will, of course, reach out to the clerks of state, federal, and tribal courts that are not currently represented in the NCACC. But membership is not limited to just the top-level clerk of a court. The NCACC has much to offer all clerk office personnel so we hope to expand our rolls by enlisting deputy clerks, assistant clerks, and clerk’s office personnel. In early 2022, we will send out a survey to update the whitepaper on e-filing systems and to expand it to include information on e-records. Tim Gudas (NH) has graciously agreed to spearhead that project. There are a lot of good things happening with the NCACC but I know there is always more that can be done. If you have any suggestions for improving the organization or ideas for increasing its value to the membership, I would love to hear from you.

Larry Royster, NCACC President
Clerk of the Michigan Supreme Court
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Recap of Conference 2021

By: Gregory Hilton, Maryland

“No matter what obstacles 2020 had to offer, our group stood strong and successfully held our first-ever NCACC Virtual Conference. Although our program was limited to just three speakers, all three speakers provided insightful and in-depth programs that were of great benefit to our members.”

Thus began Chris Prine’s summary of the NCACC’s 2020 annual conference in the October 2020 edition of The Docket. Oh, how I wish I could have written a slightly different introduction to this article. Alas it was not to be. Sadly, we are still fighting our way through the COVID 19 emergency and we were not able to hold a live conference again this year. But, with a hopeful tone I say: “Next year in Williamsburg!”

But what of this year’s conference? Like last year, it was shorter than our usual conference. Like last year we were all at home or in our offices for the conference. But, like last year, it didn’t stop the conference from being fun, informative and fulfilling.

We were able to welcome some new members and first-time conference attendees. We saw some familiar faces that we hadn’t seen in some time. Hello Leslie and Frans! We socialized a little bit. We raised a little bit of money for the education fund. Most importantly though, we had some great presentations that appropriately focused, to one degree or another, on COVID-19.

We kicked off the substantive portion of the conference with a lively and engaging presentation by David Fram on the state of the law on the ADA. David employed a unique presentation software that allowed his disembodied head to appear amongst his presentation materials. That was very cool. Also, I don’t think I have ever seen anyone that excited about the ADA.

Coolness aside, David gave us some very valuable insights in where we are today with the ADA with some pointed comments about COVID 19 and the ADA.

Perhaps the biggest takeaway from David’s presentation was appreciating the role of the manager or leader in the “reasonable
accommodation” process. The role of the manager, in very general terms, is to engage an employee in a discussion about what accommodation can be provided to an employee with a disability. Remember, we aren’t doctors so don’t ask about the disability. Instead ask: “How can I help you?”

Next, we heard from Stepahanne Cline Thornton of the West Virginia Public Defender’s Office. Stepahanne shared with us the psychological and emotional stresses (and associated physiological effects) that the COVID 19 emergency has brought upon all of us and told us how we can re-center ourselves now and in the future. Stepahanne emphasized that taking care of ourselves is critical to our being able to be effective leaders.

The formal portion of the first day of the Conference was capped by presentations by our good friends at Thomson Reuters and Lexis/Nexis on new products available to their customers.

The day concluded with a virtual happy hour. While not as raucous as our end-of-day socializing at a live conference, it was a great time to just reconnect. As with last year, this proved to be a good opportunity to solicit contributions to the education fund. Meredith Montgomery received pledges to contribute totaling $2,600.00 from the members. Thank you all. If you haven’t already sent in your pledge, this is a gentle reminder to please do so. Of course, if you didn’t make a pledge or wish to pledge even more, you are welcome to do so.

Following our business meeting (Yeah! Quorums!), day two’s agenda focused exclusively on operational challenges we as appellate court clerks faced in 2020 and 2021. Meredith Montgomery (Alaska) and Blake Hawthorn (Texas) presented a panel discussion on Alaska’s and Texas’ responses to ransomware attacks on their information systems. Their discussion highlighted the operational challenges they faced in responding to the attacks and the efforts that they made to minimize the operational effects of the attacks and to recover from them.

When concluded the conference with a panel discussion on appellate court operational responses to the COVID 19 Emergency. Polly Brock (Colorado), Scott Mitchell (Alabama), Chris Prine (Texas), John Olivier (Louisiana), Larry Royster (Michigan) all provided perspectives on how each of their States/Courts responded to the evolving (and sadly still on-going) emergency. These perspectives were in many ways congruent, but we also learned how different circumstances on the ground led to different approaches to responding to the pandemic. Particularly interesting were the different “return-to-work” and return to live oral argument approaches. It appears that many of us Clerks were fulfilling many roles (at least at the outset) in our response to the pandemic.
As the conference concluded, it seemed like we might be coming out of the COVID 19 woods. Unfortunately, a late summer surge may have dampened prospects for a rapid release from this scourge.

With many hopes that next year is different, let’s take away from this year’s conference new tools for doing our business as usual, and, pointedly, as “un-usual.”

I thank this year’s program committee for all of their support.

HOST WANTED FOR 2025!

The Site Selection Committee is seeking bids to host the NCACC annual conference in August 2025. This is a wonderful opportunity to showcase your jurisdiction. This invitation is open to all members, including past hosts. There are plenty of resources to use to host a conference so that you are not alone in handling all 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 (including several on this committee) are also willing to answer questions or give you advice as you plan the conference. If you are concerned about having sole responsibility for hosting, you can pair with another clerk to co-host and share duties. Please contact any of the members listed below if you are interested in hosting or have any questions.

Lisa Matz (TX)
Chair, Site Selection Committee
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Daniel Shearouse (SC)
Sheila Reiff (WI)
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Polly Brock (CO)
Christie Roeder (NC - Ret.)
Tom Hall (FL - Ret.)
Ed Hoskins (US COA Feds - Ret.)
Dan Shearouse Honored
With the 2021 J.O. Sentell Award

Laura Roy nominated Dan Shearouse for the J.O. Sentell award, based on his service to the NCACC as past President, host, chair/contributor to nearly every committee, and strategic planner. Our committee agreed that Dan is an excellent leader and a man of integrity. He exemplifies what a Clerk should be. It was with great pleasure that Eydie Gaiser presented Daniel E. Shearouse, Clerk of the Supreme Court of South Carolina, with the J.O. Sentell Award at a special session of the Supreme Court on June 16, 2021.

The Governor of South Carolina, Henry McMaster, also made an appearance at the event. Governor McMaster presented Dan with the Order of the Palmetto for his 38 years of service to the Supreme Court of South Carolina, of which he served 22 years as Clerk. The Order of the Palmetto is the highest civilian honor the state can bestow. It is fair to say Dan was very surprised and honored by the recognition.
Nikiesha Cosby Honored
With the 2021 Morgan Thomas Award

Laura Roy nominated Nikiesha Cosby from the National Center for State Courts for the Morgan Thomas award. Nikiesha provided invaluable assistance last year when we converted our Alabama conference to a virtual event. She handles a lot of matters for the NCACC, such as insurance and taxes, and alleviates a lot of burden that would otherwise be felt by our members. Nikiesha supports us in all the ways that we need, and in some ways we don't even realize.

Eydie Gaiser presented Nikiesha with the Morgan Thomas Award at the meeting of the Conference of Chief Justices and Conference of State Court Administrators on July 28, 2021. Eydie reported Nikiesha was very surprised.
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Live, from North Dakota, it’s Tom Hall!

Or rather, Live from India!

Or make that Moscow, or Peru.

The retired Supreme Court clerk, who now practices appellate law and does consulting, mastered the ability to work and attend meetings remotely long before the COVID-19 pandemic forced most meetings to go online.

That has allowed him and wife Lisa, who can also run her media consulting business from the road, to indulge in their love of travel. Which means he has attended to business from some rather exotic locales.
At a recent online meeting of the Florida Court Clerks & Comptrollers’ Guardianship Improvement Task Force, Hall, who consults for the FCCC and is acting as staff for the task force, casually mentioned he was appearing from North Dakota. The next day, he added, he and his wife would be in South Dakota, completing his visiting all 50 states.

(Lisa still has four New England area states to go; they’re planning a trip there next year to take care of that detail.)

Visiting all 50 states hadn’t been a particular plan; Hall said he realized about three years ago when this year’s meeting of the National Conference of Appellate Court Clerks (to which he still belongs as a retired clerk) was set for Portland, Oregon, a state he had not visited.

“Somehow that prompted me to look at where I had been,” Hall said. “I realized I was only missing four states from having all 50.”

The other states were Idaho and the Dakotas.

So planning began on how to combine hitting all four states on one trip, including allowing for the greater distance between western states. Preparations were complicated first by the COVID-19 pandemic, and then this summer’s widespread wildfires in the western U.S. Because of the resurgent Delta coronavirus, the clerk’s conference was switched to a virtual meeting.

“We went through whether we would go or not,” Hall said. “I thought, ‘How many other opportunities will I have to go out west?’”

The trip was planned for the west side of Oregon, where COVID is less severe than on the east side of the state. Idaho would be traversed in a narrow and rural part. North and South Dakota would be visited on the safer eastern side. Most of the east-bound travel would be done by train, where full COVID masking and distancing protocols were followed.

“It turned out to be a good trip and we had a good time,” Hall said. “We took the train twice for the long rides, from Portland to Whitefish (Montana) and from Whitefish for Grand Forks, North Dakota.”

(At Whitefish, they shared a hotel shuttle van with another couple closing on the completion of their visits to all 50 states.)

The Halls flew to Portland, rented cars locally when needed, and flew back from Sioux Falls, South Dakota. The stop in Whitefish allowed a visit to Glacier National Park,
where one of their photos shows the air hazy from smoke from across the western U.S. wildfires (one was about 50 miles to the south).

They found both Grand Forks and Sioux Falls to be charming towns, although because of ongoing droughts the falls in the latter city were lower than normal.

While it took a lot of planning because of COVID, fires, other factors, Hall said probably the most dangerous part was returning to Florida, because of the spiking cases of the COVID Delta variant.

His travels began more than 50 years ago, when he joined the Navy. As a Midwesterner, he had visited only Ohio, Michigan, Indiana, West Virginia, Virginia.

“When I was in the military, I picked up a lot of states,” Hall said. “I did basic training in Illinois and was stationed in Florida, Georgia, California, and Washington, D.C., and got to surrounding states.

“Then I was on an aircraft carrier and it went to Hawaii on the way to Vietnam. I also got to go to a lot of countries. I visited the Philippines, Hong Kong (when it was still under British control), Japan, Macau (when it was under Portuguese control), and China.”

Post military and into his legal career, “I definitely got a lot of states by going to conferences, either as the Supreme Court clerk or when I was an appellate staff attorney,” he said.

The urge to travel, especially to foreign countries, was also spurred by hosting several foreign exchange students over the years.

“They come and live with you and they speak two languages. Many of them speak more and they have been to many places,” Hall said.

That and traveling inspired his wife to begin studying languages, he said, and she can speak Italian, Spanish, French, and Russian.

“I can get around in Spain and Italy,” Hall said. “I know how to ask where the restroom is and where the train station is. I can order beer and wine.”

With modern technology and with their current jobs set up to be done from anywhere, the Halls’ travel rarely is a pure vacation.
“We call them ‘workcations,’” he said, because they regularly combine travel with remote work.

On the trains east from Oregon, Hall and his wife worked on his August 19 presentation to the guardianship task force. He’s remotely attended meetings (including once on a bus) from around the country and the world, including Peru, India, Russia, Italy, and Spain.

His law firm, Bishop & Mills, has offices in Tallahassee and Jacksonville, but for its eight lawyers, Hall typically practices from the road or his home in Charlotte County’s Babcock Ranches, another practices from Orlando, and the third from Texas.

“I know somebody who’s an Orlando lawyer who spends a lot of time in Colorado and her practice doesn’t miss a beat,” he said.

It should not be surprising, he said, because Wi-Fi and the internet are virtually everywhere. The Bar’s Vision 2016 Commission, where Hall served on the Technology Workgroup, projected that remote meetings and work would be a growing trend and should be encouraged. And the FCCC long before the pandemic-inspired Zoom boom used WebEx, another online communication program, to conduct numerous meetings.

Hall has a number enjoyable memories and observations from his travels. At an Indian park, the Halls found themselves the subject of questions by a stream of grade school children.

“Our Indian daughter told us what was happening is their teachers were encouraging them to come over so they could practice their English with Americans. It was a nice cultural moment,” he said.

And the Taj Mahal, “is far more spectacular than anyone ever could tell you it is,” Hall said, and the story behind it almost as much.

An Indian leader, who had many wives, was particularly in love with one who had, among other things, accompanied him into battle. When she died in childbirth, he pledged to build her a monument.

However, the original plans were to build two identical buildings, one white and one black on each side of a river. But before the second was underway, the leader had divided his sovereignty between three sons, putting one in charge of the army. That son killed the other two and fearing the second building would be too expensive imprisoned his father in a palace room — with a view of the completed Taj Mahal.
As a history buff, Hall also enjoyed his time in Washington, D.C., where, before the age of modern security, visitors could wander in and out of the Capitol and visit unaccompanied the offices of their senators and representatives. The Smithsonian museums and the National Archive were magnets for Hall.

One stereotype Hall found mostly true is that traveling Americans speak only English while residents of the host countries can speak two or more languages.

He recalled eating with Russian friends at a restaurant in Spain where the waiter was fluent in both English and Russian. (Hall noted that a particular section of the Spanish coast is a popular vacation destination for Russians.)

And once in India while on a train tour, they stopped at the bottom of a small mountain to visit a palace at the top. The mode of transportation up the hill was elephant, and along the way, peddlers — speaking English — implored them to buy various goods and trinkets. Hall suggested his wife speak Italian to one peddler, who promptly renewed his pitch — in Italian.

Their travels also gave the couple an appreciation for public transportation. “The train system in Europe is great. In Italy, take local buses. They are cheap and you don’t have to know a whole lot of Italian to use them,” Hall said.

Another revelation was foreign laundromats are better than American ones. He recalled they departed for their first one with a pile of coins and trepidations. What they found was machines that accepted credit cards, had instructions in multiple languages, and were remotely operated from panels on the walls.

“We found those to be everywhere,” Hall said.

Travel teaches about culture and history that otherwise would be missed, he said, citing the large Italian population in Peru as an example.

That dates back to when Mussolini became dictator of Italy, and many anti-fascists who opposed him moved to Peru, where their descendants remain.

“I had no idea that was the case, it’s just fascinating to me,” Hall said. “That’s the kind of stuff you learn only by being there.”

https://www.floridabar.org/the-florida-bar-news/meeting-the-world-on-his-terms/
Recent postings to the NCACC ListServ show in so many ways how we as clerks are the same and also different in what we do and how we do it. The ListServ postings and responses share valuable information and keep us connected in our professional endeavors. Here are some highlights from the last few months.

A few inquiries reminded me of the additional responsibilities for courts of last resort. Julia Weller, Clerk of the Supreme Court of Alabama, shared questions about attorney discipline cases and case management systems. My court, an intermediate appellate court, has on occasion referred attorneys for discipline. Her questions provided insight on the cases such referrals could generate and the issues surrounding their disposition. When a future program committee is looking for the treasured ethics credit, a segment on attorney discipline systems could review how courts of last resort handle these cases, whether or how often intermediate appellate courts make referrals, and reasons that attorneys get in trouble before appellate courts and ways we might be able to ward that off.

Rulemaking touches clerks at all appellate courts. Although the decisional authority may be confined to courts of last resort, rulemaking can also involve clerks who serve on rules committees. And it certainly falls on all clerks to adapt operations and business practices in response to rule changes. Eydie Gaiser, Clerk of the Supreme Court of Appeals of West Virginia, inquired about court rules regarding the proper format for submitting rule amendments. Different in kind from straight arguments in briefs, proposed rules and amendments may resemble a type of writing seen only in legislative drafting. The language in rules can also capture the past and move to the future. In Florida, the rules are changing from "shall" to "must," an apparent trend in the legal community according to https://www.plainlanguage.gov/guidelines/conversational/shall-and-must/. A more powerful move forward was shared by Erin Lennon, Clerk of the Washington Supreme Court, when she announced a recent proposal to amend appellate rules in her state to allow brief writers to include their pronoun choice with their signature. And this effort to make her courts more inclusive was sparked by Joe Stanton, Clerk of the Massachusetts Appeals Court, who (you guessed it) wrote a previous ListServ post on this topic.

How much harder it would have been to operate our courts during a pandemic without the ListServ! This is an area that keeps on giving. Greg Hilton, Clerk of the Maryland Court of Special Appeals, shared news about a judicial branch vaccine mandate on top of vaccine incentive bonuses for judicial employees. He was not alone. In response to his post, several other clerks shared news about COVID testing, mandates, or
the absence thereof. Sheila Reiff, Clerk of the Supreme Court and Court of Appeals in Wisconsin, asked about what we are all doing as we figure out the way forward for our oral arguments with the various permutations for in person, remote, hybrid, masks, or proof of vaccination. Pandemic operations led more courts to livestream their oral arguments on platforms like YouTube. Petra Mandigo Hulm, Clerk of the North Dakota Supreme Court, has a rule that requires court approval for media recording and photography of court proceedings; she posted to the ListServ for information about any challenges that may have been lodged to similar regulations. The stress of changing times is eased by the wisdom and comfort of colleagues who can understand, and the ListServ is that resource.

E-filing, case management systems, and public access appear regularly on the ListServ and rightly so. Clerks are constantly learning and sharing best practices and news about the next big thing. Shawna Goetz, Clerk of the Wyoming Supreme Court, is kicking the tires on case management systems, and it was interesting to read the diversity of options in response. Scott Mitchell, Clerk of the Alabama Court of Criminal Appeals, wanted to know who had e-filing and whether pro se parties could participate. E-filing by attorneys and pro se parties was a lifesaver to me in these crazy times, but the responses showed that clerks can make things work without e-filing by using available technology including email. Melanie Gagnepain, Clerk of the Idaho Supreme Court, checked on the availability of public access to courts orders. These recurring topics speak to core functions of what we do.

Case management itself is a core function, yet a ListServ inquiry showed that it plays out differently from court to court. Tim Gudas, Clerk of the New Hampshire Supreme Court, asked about internal time standards for moving cases. In some courts, the clerk is not involved in the internal time standards. In my court, the clerk and chief deputy track all the cases that are pending, and the clerk provides 'friendly reminders' to judges about the status of work in their offices. This can be a delicate undertaking, and it was a relief to see that one court has a judge-to-judge form email baked into their internal operating procedures for this purpose.

These are some of the topics presented by your fellow members on the ListServ. Maybe the emails on a particular subject came and went while you were focused on other business. I hope this round up invites you to engage in on-going discussions with NCACC members on our shared work. Until next time, keep that ListServ humming.
Tell us about your Courthouse...

This is a new feature—we want to learn about each other’s workplaces—what you love and what you love to hate.

Polly Brock from the Colorado Court of Appeals is first up…

5 Reasons Why You Should Visit the Ralph L. Carr Judicial Center in Denver:

1. **An amazing 10-year old building designed by Kurt Fentress.** Fentress Architecture is also known for the Denver International Airport, the Seoul South Korean Airport, and is working on several new Appellate Courthouses throughout the country. We even are a hot spot on Trip Advisor:

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   ![Judicial Learning Center](image2)
3. The Colorado Supreme Court Library, and its Librarian, Christopher Hudson.

4. 3 Wonderful courtrooms.

5. 4 NCACC members all under one roof — Cheryl Stevens, Clerk of the Colorado Supreme Court, Pauline Brock, Clerk of the Colorado Court of Appeals, Sonya Stromberg, Deputy Court Executive for the Colorado Appellate Courts, and Tiffany Mortier, Counsel to the Chief Judge of the Colorado Court of Appeals. We all know the best place to go for lunch.