

Reflections on the Pivotal Role of the Appellate Court Administration Committee, the Court of Appeals, and Two Lost Friends

By Don Fulkerson

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The Appellate Court Administration Committee

I was a member of the Appellate Court Administration Committee in the 90's. During my time, Gary Hayden, Ann Herzberg, and Linda Garbarino chaired the Committee. After I left, Ellen Mason chaired the Committee for its final year of existence.

The ACAC distinguished itself for non-partisanship and dedication to the better administration of our appellate system. Without slighting anyone by omission, I fondly and respectfully recall the work of the Committee's chairs, liaison Judge Doctoroff, and members such as COA Commissioner Neal Villhauer and attorneys Deb Hebert, Tom Wimsatt, and Gary Field. In all the early evenings we spent in the Court's cozy library in the American Center Building, and in all our debates over procedure or the syntax of proposed rule amendments, there was never a hint of partisanship or personal agenda.

The ACAC also played a pivotal role in the history of Michigan's jurisprudence. In the early 90's, Committee members began discussing the need for an appellate section of the State Bar. Deb Hebert, who I believe is the mother of the APS, was its strongest proponent. When the consensus formed, and the Appellate Practice Section was created, Neal Villhauer and Gary Field drafted the first Bylaws. In 1995, the Section's original Council was elected. Several ACAC members served on the Council.

Members of the ACAC, along with other practitioners, Court of Appeals' judges and staff, were integrally involved in creating the first Michigan Appellate Bench-Bar conference. The Bench-Bar Conferences have spawned many beneficial changes, such as adoption of the Court of Appeals' IOPs. Before the IOPs, it seemed that the corpus of the Court's institutional memory resided in the mind of former Chief Clerk Ella Williams. I used to joke that, unless someone finally wrote down the Court's IOPs, we would have had to make a science fiction movie and "Save Ella's Head."

Ironically, creation of the APS led to the Committee's demise. With the Section effectively advocating and commenting on rule changes, at the beginning of the 2000's, the Committee was disbanded. During its time, however, the ACAC served our appellate system well.

A Brief Reflection on the Legacy of the Court

After practicing in the Court of Appeals for 30 years, I remain impressed with and grateful for the consistent excellence of the Clerk's office. Despite constant budget

constraints, Ella Williams, Sandy Mengel, and the other chief, deputy and assistant clerks have efficiently administered case dockets and patiently helped so many callers. I also appreciate and respect the Court's continued due process commitment to oral arguments and issuing full opinions. When an attorney can present arguments directly to a panel of the Court and can later show a client a decision, whether favorable or not, providing the analytical basis for its holding, the benefit this accountability provides is incalculable.

Two Lost Friends

In writing this reflection, I was flooded with sadness and appreciation for two friends who left us far too early: Ann Herzberg and Judge Mike Smolenski. Ann, who edited the Michigan Appellate Digest and chaired the ACAC (and taught me bridge), was the embodiment of a renaissance person. Ann's love of life, and brilliant contemplation of its aesthetics and contradictions, was amazing.

Judge Smolenski, with whom I served on the Michigan Court Reporting and Recording Board of Review, was a wonderful, funny, decent, honorable man. I miss them both very much.

Happy 50th anniversary to our Court of Appeals.