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Appellate Lawyer Group Urges Justices to Reject 'Trap for the Unwary'

Marcia Coyle, Supreme Court Brief

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When the U.S. Supreme Court removed the Trump administration's travel ban cases from the Oct. 10 argument slot, there was a [lone case left standing for argument](#)—a jurisdictional puzzle that would not draw nearly the attention given to the immigration challenges. The American Academy of Appellate Lawyers doesn't file many amicus briefs in the Supreme Court, but it saw a "trap for the unwary" in the case Hamer v. Neighborhood Housing Services of Chicago.

Charmaine Hamer sued her former employer, alleging age discrimination. A federal district court granted summary judgment to the employers. Hamer's lawyer asked for and received an extension of time to file an appeal as he was withdrawing as her counsel and she needed to find a lawyer. The court granted 60 days for the filing, but the trial judge was wrong. A federal rule only allows 30 days. The U.S. Court of Appeals for the Seventh Circuit dismissed the appeal for lack of jurisdiction because of the 30-day rule.

The American Academy, [which filed an amicus brief in support](#) of Hamer, was founded in 1990. The national professional association is made up of 300 appellate lawyers, former judges and academicians from all but two states. Nominations to the organization can be made only by current "fellows." Those nominees are vetted by a nomination committee, and if the committee recommends a lawyer, the board of directors makes the final decision.

Some well-known Supreme Court advocates are fellows, such as Gregory Garre, head of Latham & Watkins' Supreme Court and appellate practice; Donald Ayer, of counsel at Jones Day, and Alan Morrison of George Washington University School of Law.

The academy won't write briefs, for example, about religious liberty or rights of privacy because "that just doesn't fit who we are," said Charles Bird, the appellate academy's 2015 president and a partner in the San Diego office of Dentons. The fellows have "passionate beliefs" on both sides of controversial legal issues, he said. But the organization maintains neutrality on such issues, he said.

"We don't have a point of view you could label partisan or policy," said Bird, who wrote the amicus brief in the Hamer case. "We have filed briefs in cases where, first, we think we're

actually being a friend of the court by bringing a perspective and some legal analysis that's not coming from the parties." Bird continued: "Second, it has to be an issue that goes to things that at least we believe we know something special about. That can be technical appellate procedure or fundamental fairness in the appellate process. That's why we don't write a lot of them. The Supreme Court does not take many cases that fit that definition."

The Hamer case is both. It is about a federal rule of appellate procedure and about fundamental fairness to Charmaine Hamer. "A rule declaring a jurisdictional deadline not authorized by statute is a classic trap for the unwary," Bird wrote in the brief. "The court has long condemned procedural traps."

"I think what we provided the court in a brief that did all the scholarship about the history of these rules is a way of saying when you look at the text in light of all of the legal history, it really is just as simple as the viewpoint of that reasonable person who hears the story and does not have a mind filled with arcane legal lightening bolts flashing," he said. "The right answer is the woman on the street's practical answer."

The academy would like to grow in the future, Bird said. Its model is similar to the American College of Trial Lawyers, but it has a smaller pool from which to draw. In states like California, Arizona, Texas, Florida and Washington, as well as in Washington, D.C., there are well developed appellate practices with much of the work done by appellate specialists. But in many states, there may be only a handful of true appellate specialists.

"In order to make a living, somebody who is really good and loves the appellate work is still doing trial work," Bird said. He added: "We want those people as fellows" if they meet the criteria.

The academy will never grow to the size of the trial lawyer college, said Bird. "Would we like to be 450 in 10 years? Probably so. Would we like to see recognition of appellate practice as a true specialty and grow to support that? Absolutely."

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