

Understanding the Black Robe

Chief Judge Ann Bailey Smith

“Judge Taylor was on the bench, looking like a sleepy old shark, his pilot fish writing rapidly below in front of him. Judge Taylor looked like most judges I had ever seen: amiable, white-haired, slightly ruddy-faced, he was a man who ran his court with an alarming informality—he sometimes propped his feet up, he often cleaned his fingernails with his pocket knife. In long equity hearings, especially after dinner, he gave the impression of dozing, an impression dispelled forever when a lawyer once deliberately pushed a pile of books to the floor in a desperate effort to wake him up. Without opening his eyes, Judge Taylor murmured, ‘Mr. Whitley, do that again and it’ll cost you one hundred dollars.’” From *“To Kill a Mockingbird”* by Harper Lee

I have been a judge for 15 years, six years as a district court judge and nine years on the circuit court bench. A common occurrence in my tenure as a judge is that litigants (and particularly criminal defendants) have difficulty knowing how to address me, both with my title and my name. Now, I can understand that my name can cause some confusion.

When I married, I decided to use Bailey, which had been my last name, as my middle name. I did not hyphenate my names, which is where I believe some confusion arises. So litigants, and even some lawyers, are unsure whether I should be addressed by Smith or Bailey Smith. Rather than getting it wrong (which possibly, but wrongly, they may think would offend me) they stumble over my name or avoid saying it at all. But I am totally baffled by the confusion over my title. Very few litigants refer to me as Judge. Instead, I hear Ms. Smith or Ms. Bailey or Ms. Bailey Smith and a few have even called me Ms. Ann. The nameplate on the front of the bench in Circuit 13 reads JUDGE ANN BAILEY SMITH. Yet, even so, rarely does the word “Judge” come out of their mouths. This is not to say that I believe these individuals are purposefully being disrespectful; in fact, it seems to me that it’s just the opposite, that they are struggling with how best to address me but are falling short of the mark. You might think that the uncertainty would cause them to simply call me Judge, but that doesn’t happen.

In case anyone who is reading this article is wondering, I do wear my judicial robe at all times when I’m presiding in court. Thus, I am appropriately attired for the role of judge. But this black robe does not seem to trigger in the minds of these litigants that I should be called judge. I did a little research on the history of judges wearing black robes on the bench.

As we all know, English judges wore robes and so judges in America followed suit. England’s judges were known to wear colorful robes and, in addition, powdered wigs as they presided over court. These particular traditions did not make their way to America, or at least did not last long if they did. The official portrait of the first chief justice of the United States Supreme Court, John Jay, depicts him wearing a black judicial robe with red sleeves and a red collar with white borders. He served as Chief Justice from 1789-1795, having been appointed by President George Washington.

As the story goes, there was somewhat of a

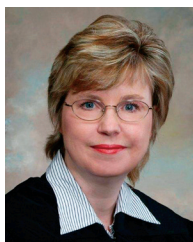
debate between Thomas Jefferson and John Adams, who were both friends and political rivals, as to whether to adopt the English tradition of judicial robe-wearing. Jefferson was against the carryover of the English tradition of judges wearing robes, describing them as needless official apparel. He was particularly opposed to the wearing of powdered wigs by the judiciary, which he claimed made the English judges look like rats peeking through bunches of ockum (loosely twisted fiber used to seal gaps).

John Adams, on the other hand, favored the pomp and ceremony of judges clad in robes. While robes were worn by American judges, the English custom from the 16th century of wearing a violet robe in winter and a green robe in summer was not adopted on this side of the pond. Most judges, both in state and federal courts, wear robes when presiding in court and, almost uniformly, they are solid black. The color black is associated with seriousness, solemnity and formality. A black robe is identifiable as a symbol of the judiciary but without being distracting.

During her confirmation hearing, Judge (now Justice) Amy Coney Barrett was asked why judges wear black robes and provided this response, “I think the black robe shows that justice is blind. We all address the law the same, and I think it shows that once we put it on, we are standing united symbolically speaking in the name of the law. Not speaking for ourselves as individuals.” Justice Sandra Day O’Connor also had the opportunity to opine about judicial garb when she said, “Today every federal and state judge in the country wears a very similar, simple black robe. I am fond of the symbolism of this tradition. It shows that all of us judges are engaged in upholding the Constitution and the rule of law. We have a common responsibility.”

So, I will continue to preside in Division 13 of Jefferson Circuit Court wearing my black robe. I hope to avoid, however, looking like a sleepy old shark with white hair and a ruddy complexion as Judge Taylor in “To Kill a Mockingbird” is described. If that’s what it takes to be called Judge, then I may just have to be content with being called Ms. Ann.

Chief Judge Ann Bailey Smith presides in Division 13 of Jefferson Circuit Court. ■



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