

REMARKS

by
JUSTICE ELIZABETH A. WEAVER (retired August 2010)

Upon receiving Justice Blair Moody, Jr. Justice Award
Washtenaw Association for Justice Annual Awards Banquet, May 25, 2011

NEED FOR REFORMS FOR AND TRANSPARENCY AT MICHIGAN SUPREME COURT

We all want a Michigan Supreme Court in which we can have trust and confidence. In order to have such a Court, we need a Supreme Court of seven (7) independent justices about whom we have sufficient information to hold each justice accountable for his/her individual and collective performance and administration of the people's judicial business.

An independent justice is not agenda-driven and does not hold to and promote political party lines, philosophies, or ideologies. An independent justice is dedicated to the rule of law, impartial, exercises judicial restraint and self-discipline, applies common sense, and is wise, honest, orderly, kind, fair, just, civil, courageous, charitable, professional, open, not secretive, and non-partisan.

Do we NOW have that? NO.

Can we EVER have it? YES.

HOW? We must find, develop, promote, and support to achievement SOLUTIONS to two (2) critical, chronic, continuing problems for and at the Court. They are:

- 1. The very obvious need to reform the selection of Supreme Court justices system in order to make much more likely *truly independent justices* are elected and appointed.**
- 2. Less obvious, but equally or even more important for accountability, the need for transparency to eliminate the unnecessary secrecy under which the Supreme Court operates in order to make much more likely *the prevention of the misuse and abuse of the justices' huge powers of interpretation, discretion in decision-making and administering the operations of the Court itself and its offices (State Court Administrator Office (SCAO), commissions (Judicial Tenure Commission (JTC) and Attorney Grievance Commission (AGC) and boards (Board of Law Examiners).***

Unless unnecessary secrecy is eliminated, reform of the justice selection processes will be futile; selection reform alone will not solve the problems of and at the Michigan Supreme Court.

Our deeply flawed dual system of election and appointment of justices allowing for political party nominations, exorbitant campaign spending (millions of dollars spent on often deceitful campaigns)—untimely reported or not reported at all—and ignoring geographic diversity does not advance the election or appointment of independent justices.

The flawed system produces power blocks of justices usually joining together with a majority of 4 (or more) votes to promote AGENDAS of:

- Political Parties and Special Interests
- Personal Interests, Philosophies and Ideologies
- Biases and Prejudices.

At present all 7 justices live in only three (3) counties: Wayne, Ingham, and Oakland—the “Detroit/Lansing beltway.” Those three (3) counties are home to just 34% of Michigan’s population of almost 10 million in its 83 diverse counties.

As to exorbitant campaign spending, at least 11.1 million dollars was spent on the 2010 Supreme Court justices’ campaigns. Of that, the candidates raised and spent 2.4 million. So, at least 8.7 million was spent by outside groups including the political parties. And, much of it is untraceable, unidentifiable, unaccountable, deceitful spending.

Unnecessary secrecy allows for the misuse and abuse of the Supreme Court’s huge powers of interpretation and discretion in decision-making and power of administrating (too often unjustly and unfairly) the operations of the Court itself and its offices (State Court Administrative Office [SCAO]), its commissions (Judicial Tenure Commission [JTC] and Attorney Grievance Commission [AGC]) and its boards.

An example of this misuse and abuse of the Supreme Court power resulting in the unfair and unjust treatment of Judge Steven Servaas is described in my lead opinion in his case and on the Internet. **Every citizen should go to my website--- www.justiceweaver.com —and listen to the unannounced, ambush visit from the Judicial Tenure Commission (JTC) director and a State Police officer that Judge Servaas experienced (as recorded by the State Police officer). There you can hear the JTC director threaten “to drag (Judge Servaas’) name through the mud” unless he agreed to resign by 9 a.m. the next morning. It is an example**

of tyranny. ...A tyranny condoned by 5 Supreme Court justices when they refused to investigate or have investigated the egregious conduct of the JTC director in the Servaas and the Brady v. Attorney Grievance Commission matters.

Unnecessary secrecy is the crux of the problem. It allows to take root and grow the worst propensities in human nature—hatred, lust for power, revenge and deceit— rather than encouraging kindness, purity, charity and honesty. Unnecessary secrecy enables and facilitates people, even good people, to do bad things.

During this most recent election I revealed some of the inner working at the court. It wasn't a pleasing sight, and the response from those so revealed was predictable. Five (5) of the 7 justices signed and issued a censure in violation of the Michigan and U.S. Constitutions, 2 justice refusing to participate, with one pointing out the violation of my (the censured's) due process rights.

And at least one of the former justices is not done yet. In an ongoing effort to silence my continued work for Supreme Court reform and to stop me from telling the public the kinds of things that have gone on at the Court, I am now the subject of an AGC investigation for my work as a justice. Never mind that the JTC took up the same complaint about my work as a justice— exactly the same complaint by the same then-Justice Corrigan and Justices Young and Markman—more than a year ago and dismissed it without recommending any sanction in September 2010. Never mind that the AGC does not have authority to investigate the work of a judge “unless and until the JTC recommends a sanction” of the judge. Now, at the insistence of former Justice Maura D. Corrigan, Governor Snyder's new Director for the Department of Human Services, the AGC has begun (March 2011) an investigation on the same more-than-a-year-old complaint already dismissed without sanction recommendation by the JTC more than 8 months ago. (You can read all about this on my website: www.justiceweaver.com.)

While some justices, sometimes even a majority of them, have exhibited some of the worst propensities in human nature, **Michigan Supreme Court justices, even when kind, collegial, charitable, orderly and professional, clearly should not “go along to get along” while doing the people's business. Justices must be free to fulfill their DUTY TO THE PEOPLE—to inform them of what they need to know—no more, no less—as the justice deems necessary, about not only what the Supreme Court decides, but how, when, and where. Canon 3A(6) of the Code of Judicial Conduct (which I've always followed) sets the**

proper standard for temporary secrecy for pending and impending proceedings. There should be no GAG ORDER as the majority of the Michigan justices adopted to attempt to keep any justice from speaking to the public about the decisions, performance, and operations of the Court FOREVER.

The Michigan Supreme Court should not be a Secret Club. It should consist of seven (7) truly independent justices who act in a transparent, open, and accountable manner. It should be the SUPREME example of conducting government business publicly, openly, fairly, orderly, professionally and justly.

An uninformed and misinformed public cannot make wise decisions on the suitability and performance of justices and the Supreme Court. No accountability can exist.

The needed solutions to solving and preventing the problems and misuses and abuses of the powers of interpretation, discretion and administration at the Supreme Court and its offices (SCAO), commissions (JTC and AGC) and boards are Reform of the Selection of Justices System and Elimination of the Unnecessary Secrecy by increased Transparency.

Below proposed solutions for the needed reform of our dual system of selecting Supreme Court justices, are **6 specific proposals for reform, a 6-point plan** that does *not eliminate* our dual system of electing and appointing Supreme Court justices, but *reforms* it. The proposed SOLUTIONS grow out of common sense and my more-than 35 years' experience as a judge, justice and chief justice. Four (4) of these proposals require legislature action and only 2 constitutional amendment. They are:

1. Provide no political party nominations for elections. Supreme Court candidates would earn a spot on the ballot by petition—the same way trial and Court of Appeals judge candidates do.
2. Provide election by district. The state should be divided into seven (7) Supreme Court election districts with one justice coming from each district.
3. Provide public funding. Change tax check-off for money designated for gubernatorial campaigns to check-off for Supreme Court justice campaigns.
4. Require transparency and accountability in campaign finance reporting requirements. Allow no secret or unnamed contributors. This would involve real time reporting (and within 48 hours for all elections).
5. Achieve rotation in high office by limiting to only one term of a maximum of 14 years

for any justice, and a justice never would be eligible for reelection or appointment.

6. Establish for the appointments process, a Qualifications Commission composed of all stakeholders in the justice system.

You can view the reasons for and the specifics and details of the six (6) point plan on—and copy it from—page one (1) of my website <http://www.justiceweaver.com>.

I hope you are convinced of the need for reforms for and transparency in the Michigan Supreme Court and you are inspired to want to act to fix it. You can contact me with any suggestions, criticisms, or ideas at my email: **justiceweaver@centurytel.net**.

It is time to stop counting on our elected and appointed officials, special interests, the press, the media and “just anybody else” to lead in the preservation of our vital institutions like the judiciary and the Michigan Supreme Court.

It is time for everyone of us to take individual responsibility, to take the lead—to educate ourselves, our families, friends, neighbors, co-workers, local county, city, township, state officials, the press and the media, to recognize the problems and the needs for reform of the selection processes for Supreme Court justices and transparency at the Michigan Supreme Court, and to join with others who have done the same, to propose and pursue to achievement the solutions through legislation and constitutional amendments in order to correct the problems and meet the needs.

It is time to do Right and Fear Not.