Justice Elizabeth A. Weaver
5545 W. River Road
Glen Arbor, MI 49636

April 4, 2011

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Suite 256
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Re: Honorable Maura D. Corrigan as to the Honorable Elizabeth A. Weaver
File No. 0665/11

Dear Ms. Stevens:

This letter is the response required of me by MCR 9.113(A) to your Attorney Grievance Commission (AGC) Request for Investigation letter dated March 15, 2011, which I received a few days later. As explained below, I adamantly deny the allegations and intimations of misconduct stated in the materials submitted by former Justice Corrigan and Justices Young and Markman attached to your letter.

What a sad surprise to receive the AGC Request for Investigation letter, a letter giving me 21 days to respond to a nearly year old communication of false allegations and intimations (April 28, 2010) addressed to the AGC by my politically motivated former colleagues. I believe the AGC should have long ago wisely disposed of this old Request filled with false allegations and intimations. For over six (6) months, the AGC has known that the Judicial Tenure Commission (JTC) dismissed last September 2010 this same communication sent to the JTC by the same former colleagues. (The dismissal was noticed to me September 27, 2010 and also noticed to the AGC)

Your Request letter states: "Enclosed please find a **recent** Request for Investigation received by this office. Hon. Maura D. Corrigan is the complainant." The referenced enclosure was the nearly year-old document on Supreme Court stationary dated April 28, 2010, apparently received by the AGC April 30, 2010, as it is stamped "2010APR30 PM 1:50." The document is signed not just by Justice Maura D. Corrigan, but also by Justices Robert P. Young, Jr. and Stephen J. Markman.

How is this nearly year-old request "recent"? Since April 2010, until a few weeks ago by your March 15, 2011 letter, I heard nothing from the AGC.

And why do you state the Hon. Maura D. Corrigan is the only complainant? Have there been secret communications by my former colleagues with the AGC your letter failed to disclose to me? Has former Justice Corrigan communicated with you or the AGC about me and/or this Request since April 2010? If so, when and what? Have Chief Justice Young and/or Justice Markman communicated with you or the AGC about me and/or this Request since April 2010? If so, when and what?

Although I heard nothing from the AGC in 2010, I knew the false allegations and intimations had been sent to the AGC and the JTC because the complaining justices sent copies to me, and publicly accused and judged me at the televised May 12, 2010, public administrative hearing. Further, in violation of the Michigan and United States Constitutions, the Michigan Supreme Court censured me without recommendation from the JTC and without notice or hearing, informing me by a letter on Supreme Court stationary dated November 17, 2010, and signed by a majority of five (5) justices (the 3 complaining Justices—Corrigan, Young, Markman—and Justices Cavanaugh and Kelly) with Justice Hathaway writing her refusal to sign the letter. Justice Davis did not sign the letter.

Nevertheless, since April 2010, I sent the below-listed communications to the AGC answering these baseless, politically motivated allegations and intimations attempting to harass, gag, and prevent me FOREVER from doing my duty as a justice, and now as a retired justice (with almost 36 years experience as a trial and appellate judge and as a supreme court chief justice), to share with people what I believe they need to know about the Michigan Supreme Court and its justices' performance of their duties, including their decision-making and the administrating of the operations of the court itself as well as its offices, commissions and boards.

As to what I believe the people need to know about our Supreme Court and its performance and operations, I refer you to my recent speech to the Leland Educational Foundation at the Leland public school, March 2011, found on my website www.justiceweaver.com.

The following communications were sent to the AGC between April and June 2010, and each thoroughly refutes and shows untrue these allegations and intimations:

- My April 20, 2010, statement of disclosure in *Brady, et al v Attorney Grievance Commission*, 486 Mich 997 (2011) (which can be found www.justiceweaver.com);
- My statement of non-participation in the June 23, 2010 Supreme Court Order of Dismissal in *Brady, et al v Attorney Grievance Commission* (which can be found at www.justiceweaver.com).

As to the allegations and intimations in the request please note the following:

I did not violate Admin Order 2006-8. Even if constitutional, which I deny, that Order declares to be confidential only "[a]ll correspondence, memoranda and discussions [by justices of the Supreme Court] regarding cases or controversies." Disclosing an earlier vote in a case, and speculating why some justices changed their votes, which is all I did, quite properly, did not reveal any "correspondence," "memoranda," or "discussions" as specified in the Order. At most,

what I am accused of disclosing are deductions from the latter, which are different. In their rush to adopt that Order, a majority of the Supreme Court did not, apparently, write it carefully.

Furthermore, what I am accused of disclosing was, I believe, "unethical" and "improper" conduct by Justices Young and Corrigan. Changing votes based on information which is not part of the record, but was provided to those Justices in some other fashion, not only reflects ex parte communications by and/or with them, the very thing of which I am accused, but is action based on ex parte, secret communications, which is worse. That is inherently unethical and improper. The Administrative Order cannot, as it purports to do, limit disclosures of improprieties to the JTC or proper authorities. Such disclosures to the voting public cannot be stifled.

For the reasons elaborately stated in my dissent from the adoption of Admin Order 2006-8, the Order is unconstitutional. But, even if my analysis is flawed, which I do not believe it is, I was no more obligated to blindly follow what I believed to be an unconstitutional Order than were, according to them, Justices Markman, Young and Corrigan obligated to follow what they perceived to be an unconstitutional disqualification rule. See, e.g., *Pellegrino v AMPCO Systems Parking*, 485 Mich 1147, 1155 (2010); *Bezeau v Palace Sports & Entertainment, Inc*, 488 Mich 891 (2010); and *McCarthy v Sosnick*, 488 Mich 1030 (2011). If the Commission believes that I acted improperly, it must find that those justices also acted improperly and must file complaints against them with the JTC. Finding my conduct improper, but their indistinguishable conduct proper, would not only be hypocritical, but would undermine the credibility of the discipline process and the integrity of the Court. Blatant inconsistency is intolerable.

Furthermore, my luncheon chat with Mr. Muth, which was no more substantive than a casual chat, did not violate either Canon 3(A)(4), which addresses communications with parties concerning a "pending or impending proceeding," or Canon 3(A)(6) which restricts judges' comments "about a pending or impending proceeding." Our chat pertained exclusively to the case of *In re Servaas*, 484 Mich 634 (2009). The Judicial Tenure Commission Director Mr. Fischer was never mentioned. By the time of our lunch, the Supreme Court had issued its opinion in *Servaas* and had denied a motion for reconsideration. Therefore, according to *Grievance Administrator v Fieger*, 476 Mich 231, 249-250 (2006), that case was neither pending nor impending, so that neither of those canons apply to my lunch with Mr. Muth.

Nor did my lunch conversation with Mr. Muth violate MRPC 3.5(b). That subrule forbids ex parte communications "concerning a pending matter." "Impending" matters are not included. As just noted, the *Servaas* case was no longer pending. Hence, it was not improper for Mr. Muth to talk to me about the case, and, necessarily, my talking to him cannot have been improper. Furthermore, as noted, we did not discuss Mr. Fischer or the as-yet-unresolved grievance against him.

That there was pending before the AGC a request for investigation of the JTC Director Fischer's behavior in the *Servaas* case does not transform my conversation with Mr. Muth about that case into a conversation about the JTC Director. Our conversation related exclusively to what had happened in the *Servaas* case. An early vote and speculation as to why the lineup changed are not matters pertaining to the grievance against the JTC Director. Nor would have any disclosure about the Justices' dissatisfaction with the JTC tactics, which we did not discuss,

have violated MRPC 3.5(b). Their dissatisfaction was stated bluntly and publicly during oral argument in the *Servaas* case and in their separate opinions.

Moreover, there was nothing "impending" in the Supreme Court, not even something that might eventually be filed. According to the commentary to the Rules of Professional Conduct, "impending" means a proceeding that "is anticipated, but has not yet begun." When I had lunch with Mr. Muth, there was no basis to anticipate an appeal to the Supreme Court. At the time of our luncheon, a complaint for superintending control against the AGC was merely a possibility just because the rules authorize such a filing if the Grievance Commission denied the request for investigation and the complainants were dissatisfied. That that ultimately did happen does not mean that it was likely enough, when Mr. Muth and I met, to happen to constitute "impending."

For your further information I provide the following legal analysis. If it proceeds against me in this matter, the Attorney Grievance Commission's actions will be unconstitutional in violation of the Michigan and United States Constitutions and in violation of Michigan Court Rule MCR 9.116(B)

In *Grievance Administrator v Fieger*, *supra*, then-Justices Taylor and Corrigan and current Justices Young and Markman asserted that I had leveled "irresponsible and false charges" against them and had undertaken to "falsely" impugn them. That is a statement that they have already concluded that I am dishonest. Then, in a public administrative session of the Supreme Court, now-Chief Justice Young stated in so many words that I am "dishonest" and "unethical." Then, in connection with *Brady v Attorney Grievance Commission*, 486 Mich 997 (2010), Justices Young, Markman and Corrigan sent to the AGC, a memorandum accusing me of assorted misconduct. Finally, those Justices filed requests for investigation, commonly called "grievances," with the JTC.

It is plain from the just-recited history that two current Justices of the Supreme Court, Chief Justice Young and Justice Markman, have already determined that I cannot be believed and am guilty of the very misconduct alleged by Justice Corrigan. Were their separate opinion in *Fieger*, the materials they circulated in *Brady*, and their filing with the JTC of a grievance against me all that had happened, those two Justices would, unquestionably, be disqualified from hearing this case should it progress to the Supreme Court. A majority of the Court would, however, be available to hear the case. But, much more has happened, and what did happen means that the grievance against me by former Justice Corrigan cannot be processed any further without violating the Constitution of the United States.

On November 17, 2010, five Justices of the Supreme Court, four of whom still sit on that Court, publicly and in writing "censur[ed]" me for, among other things, the very conduct which is the subject of former Justice Corrigan's and Justices' Young's and Markman's grievance and your letter. Specifically, those Justices castigated me for having made public material from the Court's deliberations and for believing that I had authority to use my best judgment in deciding whether to do so. In other words, a majority of the Court has already determined that not only am I guilty of doing the kinds of things former Justice Corrigan alleges, but that I have done what she and Justices Young and Markman allege.

The Supreme Court's "censure" of me establishes three facts: that the AGC cannot handle this matter any further; that the Attorney Discipline Board (ADB) cannot constitutionally adjudicate the matter, should it be presented to them; and, that the Supreme Court cannot review any of the ADB's decisions regarding me.

The letter of censure does not merely "pose[] such a risk of actual bias or prejudgment" that proceeding any further with former Justice Corrigan's grievance "must be forbidden if the guaranty of due process is to be adequately implemented," *Caperton v C A Massey Coal Co, Inc*, 556 US ___; 129 S Ct 2252, 2263; 173 L Ed 2d 1208 (2009), quoting *Withrow v Larkin*, 421 US 35, 47; 95 S Ct 1456; 43 L Ed 2d 712 (1975); rather, that letter establishes unmistakable prejudgment by a majority of the Court.

Because, plainly, the Supreme Court cannot hear this case, it would be unconstitutional to proceed with this matter. Any lawyer, a former Supreme Court Justice included, against whom a request for investigation is filed with the AGC is entitled to review by the Supreme Court of the AGC's and the ADB's decisions. MCR 7.304(A), and 9.122(A). Such review is mandatory because the power of discipline belongs exclusively to that Court. MCL 600.904. Discipline proceedings without the availability of Supreme Court review would violate that statute. Therefore, because no honest, meaningful review will ever be available to me in this case, proceeding with this grievance will violate Michigan law. Action by either the AGC or the ADB, without any possibility of review by the Supreme Court, would arrogate to those entities the control over the lawyers of this State which the Legislature has chosen to place in the Supreme Court, not in them.

In addition, *Caperton* makes it clear that not only may the Supreme Court not be involved, given its prejudgment of me, neither can the AGC or the ADB. That case reminded all that because "no man is allowed to be a judge in his own cause," no one can "choose[] the judge in his own cause." Allowing either the AGC or the ADB to proceed would be the latter. The AGC "is the prosecution arm of the Supreme Court," MCR 9.108(A), while the ADB is "the adjudicative arm of the Supreme Court," MCR 9.110(A), and both are appointed by the Supreme Court. In other words, the Supreme Court has chosen all of the persons charged with deciding former Justice Corrigan's and Justices Young's and Markman's grievance. Under the circumstances of this case, that is constitutionally intolerable. For the AGC to do anything other than decline to entertain the grievance is forbidden by the core doctrines of separation of powers and due process.

Under other circumstances, the inability of the AGC and ADB to properly proceed could be remedied by MCR 9.131. Were only the AGC, disqualified from proceeding, the Court could itself review a request for investigation and appoint an independent attorney to investigate, file a complaint, and prosecute any complaint. MCR 9.131(A). Were the ADB disqualified, the Chief Justice could appoint a hearing panel and that panel's decision would proceed directly to that Court. MCR 9.131(B). Neither the Supreme Court nor the Chief Justice may so act in this case, however. They are disqualified. Therefore, there is no way around the AGC's and ADB's respective disqualifications.

It also appears to be improper for the AGC to review the grievance because pertinent evidence may be testimony and a memorandum by one of its own employees, Mr. McGlinn,

about a conversation he had had with Judge Servaas. The comments by Judge Servaas in his memorandum are hearsay and significantly inaccurate as to me. Were there no other problem, the situation could be handled by the procedures set out in MCR 9.131(A).

I also note that the JTC declined to take action on the complaint sent to it by former Justice Corrigan, and Justices Young and Markman. By letter dated September 27, 2010, it "dismissed" their request for investigation. MCR 9.116(B) dictates that the AGC "may not take action against a judge unless and until the Judicial Tenure Commission recommends a sanction." Obviously, the JTC did not recommend a sanction. It dismissed the grievance. The AGC has known this since September 2010, more than six (6) months ago. Therefore the AGC "may not take action" against me. The dictate of the subrule could not be clearer.

Admittedly, nowhere in any of the rules pertaining to attorney discipline, including MCR 9.116(B), is the word "judge" defined. That word is defined, however, in MCR 9.201(B) to include former judges against whom a request for investigation was filed while they were in office or about conduct while in office, both of which are my situations. That definition applies to MCR 9.116(B) because MCR 9.201 declares that all of its definitions apply to "this chapter," which is Chapter 9 of the Michigan Court Rules, which includes MCR 9.116(B).

In conclusion, I hope the Attorney Grievance Commission will now dismiss this old baseless Request for Investigation and cease to be a part of this injustice –this tyranny—this misuse and abuse of Supreme Court power by my former colleagues, attempting to stifle my free speech as a justice and now as a retired justice in letting the people know what I believe they need to know about the Michigan Supreme Court and its justices performance in decision-making and administering the operations of the court itself and its offices, commissions, and boards. It is unworthy of my former colleagues, unworthy of the office of Supreme Court justice, and unworthy of the Attorney Grievance Commission.

Very truly yours,

Elizabeth A. Weaver

Posted on my website: www.justiceweaver.com