

A Seven-Point Plan for Michigan Supreme Court Reform

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Here is my proposed solution, a **Seven-Point Plan for not eliminating our dual system of electing and appointing Supreme Court justices, but reforming it.** (Note: election of Supreme Courts justices is retained. There is no reason to assume that a system that allowed only appointments would be any less flawed and political than the current elections and appointments. Then too, why should we modify the Michigan Constitution in order to give us citizens less direct say in our government? There is nothing inherently wrong with elections; with accurate information, they allow the people to hold accountable their high officials. It's our justice selection process of party nominees and unregulated, untraceable, unaccountable, unidentifiable, deceitful spending, unchecked gubernatorial power to appoint justices for vacancies, lack of rotation in high office, and unnecessary secrecy that's doing us in.)

Four of the proposals of the Seven-Point Plan require legislative action and only three require constitutional amendment.

Concerning elections and appointments I recommend we:

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. [In 2010 former Senator Alan Cropsy introduced Senate Bills 1296-1300 to accomplish this, but no action was taken.] (To be achieved by legislation.)

2. 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. (To be achieved by constitutional amendment.)

3. Establish for the appointments process, a Qualifications Commission composed of all stakeholders in the justice system. For example, representatives from labor, business, law enforcement, doctors, lawyers, prosecutors, defense, environmental groups, corrections, education, insurance, local government, and the like. Each organization would choose its own representative.

The Commission would be composed of 30 to 40 members. The process for appointment would require:

- The commission will meet and publicly provide in writing to the Governor two nonbinding recommendations within 60 days of a vacancy. Those written recommendations are to include why those two candidates are best qualified for a position on the Michigan Supreme Court.

- The Governor then can choose one of the two candidates recommended by the Qualifications Commission, or choose someone not recommended by the Qualifications Commission. If the Governor chooses someone not recommended by the Qualifications Commission, the Governor must give public, written reasons why her or his appointee is the best choice before or at the time of submitting an appointee's name to the Senate. The Governor must submit the appointee's name to the Senate within 60 days of receipt of names from Qualifications Commission or lose the right to make an appointment. In such a case, the Senate must appoint one of the Qualifications Commission's recommended candidates.
- The state Senate must hold at least one public hearing on the Governor's appointee within 60 days of the Governor's appointment. The Senate has the right to confirm or reject the appointment by majority vote. If the Senate does not vote to confirm or reject the appointee within 60 days of the Governor's submission of the appointee, the Governor's appointment takes effect. If the Senate rejects the appointee by majority vote, the Senate must publish promptly its reasons in writing whereupon the Qualifications Commission will have 30 days to reconvene and begin the process anew. If the Qualifications Commission fails to timely reconvene, the vacancy shall be filled at the next general election for the remainder of the term.
- If both the Qualifications Commission and the Governor fail to timely and properly perform, the vacancy shall be filled at the next general election for the remainder of the term.
- The appointed or elected justice only serves for the remainder of the vacant term and shall not serve an additional term or partial term. (To be achieved by constitutional amendment.)

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). (To be achieved by legislation.)

5. Provide public funding. Use tax check-off money designated for gubernatorial campaigns for Supreme Court campaigns. (To be achieved by legislation.)

6. Provide election by district. The state should be divided into seven (7) Supreme Court election districts with one justice coming from each district. That will allow the geographic diversity in representation now so clearly absent. [In 2009 former Senator Michelle McManus introduced Senate Bill 745 to accomplish this; it had one hearing in committee in 2010 but no action was taken.] (Note: three (3) counties with 34% of the state's population have all the justices, leaving 66% of the people in the rest of the 83 counties with NO JUSTICES living in or close to their areas.) (To be achieved by legislation.)

7. Eliminate unnecessary secrecy and require transparency in the Supreme Court. Reaffirm every Michigan Supreme Court justice's duty to the people to inform them of what they need to know—no more, no less—as each justice deems necessary, about what the Supreme Court decides and how, why, when and where. Prohibit any attempt to keep

any justice from communicating to the public forever about the decisions, performance and operations of the Court. Reaffirm the standard of *temporary secrecy* for pending and impending proceedings in Canon 3A(6) of the Code of Judicial Conduct that provides: “A judge should abstain from public comment about a pending or impending proceeding in any court ...” (To be achieved by constitutional amendment.)

So, there it is: a proposed solution—a “seven-point plan”—growing out of my long experience as a judge and justice...and with a dose of common sense.