

NEED FOR REFORMS FOR AND TRANSPARENCY AT THE MICHIGAN SUPREME COURT

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I am often asked how I like retirement. I LOVE IT. It's now over two years since I departed from the Court. I've been very busy. Like most retirees, I don't know how I had time to do the court work, and I don't miss it a bit.

I do not practice law, take cases or clients. I am a citizen advocate for reforms for and transparency at the Michigan Supreme Court and for prevention of sexual abuse of children. By invitation from appropriate interested groups I accept—when possible—speaking engagements on these topics as well as inspirational welcoming talks.

I do continue to serve by appointment of Governor Granholm until 2014 as the chair of the Task Force on Child Abuse and Neglect as I have since its establishment by Governor John Engler in 1991. Recently I completed my service on the Committee on Juvenile Justice. I served there since the 1970s by appointments of Governors Milliken, Blanchard, Engler and Granholm.

In retirement I had hoped (and still do) to play more golf, tennis, gardening, and catch up on my reading. I haven't yet. But hope springs eternal!

I have travelled more even though I had to take time to defend myself in spring 2011 from the latest bogus political attacks launched through the Attorney Grievance Commission (AGC) by former Justice Maura D. Corrigan, now Governor Rick Snyder's Director of the Department of Human Services. Those complaints were all dismissed by the AGC June 27, 2011, just as the attacks—which were exactly the same—by Justices Corrigan, Markman and Young were dismissed by the Judicial Tenure Commission September 2010. You can read all about those episodes on my website: www.justiceweaver.com.

When invited to talk about the serious topic of the need for reforms for and transparency at the Michigan Supreme Court, I couldn't resist the privilege of coming to be with you here in Kalamazoo.

I believe we all want a Michigan Supreme Court in which we can have **trust and confidence**..., a Court peopled with truly independent, nonpartisan Supreme Court justices.

Do we NOW have such a Supreme Court? From my almost 16 years Supreme Court experience, I say NO.

Can we EVER have it? I believe, YES. (Or I wouldn't be here today.)

But 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.**

What is an *independent justice*?

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

How can we get such a Supreme Court in which we can have trust and confidence?

First, we must find, develop, promote, and support to achievement SOLUTIONS to two (2) critical and chronic problems for and at the Michigan Supreme Court. They are:

1. The very obvious **need to reform the system of selection of Supreme Court justices** in order to make much more likely *truly independent justices* are elected and appointed.
2. The less obvious, but equally or even more important, **need for transparency at the Supreme Court—transparency to eliminate the unnecessary secrecy under which the Supreme Court operates.**

Unless unnecessary secrecy is eliminated, reform of the justice selection system (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 selection** (the election and appointment of justices) that allows for political party nominations, exorbitant campaign spending with millions of dollars spent on often deceitful campaigns—untimely reported or not reported at all, the unnecessary

secrecy and no transparency, and ignoring geographic diversity does not advance the cause and promotion 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.

Further, at present **all 7 justices live in only three (3) counties**: Wayne, Ingham, and Oakland—the “Detroit/Lansing beltway.” Those three (3) are home to just 34 percent of Michigan’s 10 million citizens. The remaining 66 percent (more than 6 million) of our residents in the other 80 diverse counties (very different from the Detroit/Lansing beltway) are left without even one (1) voice out of the seven (7) justices. And adding insult to injury, 3 of the 7 justices have come from the same Detroit law firm.

As to **exorbitant campaign spending**, at least 11.4 million dollars was spent on the 2010 Supreme Court justices’ campaigns. Mind you, that’s for only two seats. Of that, the candidates raised and spent 2.4 million. So, at least 9 million was spent by outside groups including the political parties. And, much of it is untraceable, unidentifiable, unaccountable, deceitful spending. It is likely the 11.4 million figure will be surpassed in this year’s 2012 Supreme Court campaign.

Further, *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 that resulted in the unfair and unjust treatment is the case of Kent County Judge Steven Servaas. It’s 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 Steven 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 five (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.

There are throughout this state including in the Lansing, Detroit, Traverse City areas as well as here in western Michigan too many other examples of the Michigan Supreme Court's misuse and abuse of its power to administer the operations of the court system and of its power of interpretations and discretion in decisions to particularize here now. So I'll leave their enumeration, identification, and specifics for another day. (likely in the not too distant future.)

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

While some justices, sometimes even a majority of the Court, 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.

Each justice must be free to fulfill his/her **duty to the people—to inform them of what they need to know—no more, no less—as each justice deems necessary, about not only what the Supreme Court decides, but how, when, why, and where.**

Canon 3A(6) of the Code of Judicial Conduct 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 asserted to attempt to keep any justice from speaking (communicating) to the public FOREVER about the decisions, performance, and operations of the Court.

The business of the Michigan Supreme Court does NOT deal with treason, sedition, national defense or international diplomacy where permanent secrecy is sometimes (often) necessary. The Court's work is basically dealing with people's lives – their property, businesses, families and freedom. There is no need for forever secrecy. Those who believe they must have “forever secrecy”, a “GAG ORDER”, sometimes disguised as “deliberative privilege,” to do the Court's work are not ready or worthy of the privilege and responsibility to serve.

The Michigan Supreme Court should not be a secret club. Instead it should consist of seven (7) truly independent justices who act in a transparent, open, accountable, independent

manner. It should be the SUPREME EXAMPLE of conducting government business publicly, openly, fairly, orderly, professionally and justly.

It's a simple fact: **An uninformed and misinformed public cannot make wise decisions on the suitability and performance of justices and the Supreme Court. As long as there is unnecessary secrecy, no transparency and no accountability can exist.**

NOW, FOR SOLUTIONS

Here are the proposed solutions for the needed reform of our dual system of selecting Supreme Court justices. They are **seven (7) specific proposals for reform, a seven-point plan** that does *not eliminate* our dual system of electing and appointing Supreme Court justices, but *reforms* it. The proposed SOLUTIONS grew 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 three (3) constitutional amendment.

We should:

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. (To be achieved by legislation.)

2. Provide election by district. The state should be divided into seven (7) Supreme Court election districts with one justice coming from each district. (To be achieved by legislation.)

3. Provide public funding. We should change tax check-off for money designated for gubernatorial campaigns to be a check-off for Supreme Court justice campaigns. (To be achieved by legislation.)

4. Require transparency and accountability in campaign finance reporting requirements. Allow no secret or unnamed contributors. This would involve real time reporting...within 48 hours for all elections. (To be achieved by legislation.)

5. Achieve rotation in high office by limiting justices to only one term of a maximum of 14 years, and a justice never would be eligible for reelection or appointment. (To be achieved by constitutional amendment.)

6. Establish for the appointments process, a Qualifications Commission composed of all stakeholders in the justice system. (To be achieved by constitutional amendment.)

7. Eliminate unnecessary secrecy and require transparency in the Supreme Court. (To be achieved by constitutional amendment.) 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 ...”

You can view the reasons for and the specifics and details of the Seven-Point Plan on—and copy it from—page one (1) of my website <http://www.justiceweaver.com>. I think it’s important as you review and consider these solutions – these seven proposals in the Seven-Point Plan and other proposals (such as those from the spring 2012 report of the Task Force on Judicial Selection) that you ask yourself:

Are they rooted in basic American democratic principles for preventing, detecting and eliminating misuse and abuse of government power? That is the democratic principles of:

- Rotation in office
- Check and balances
- Transparency—no unnecessary secrecy

Do the proposed reforms contain and/or promote these principles?

Recognize and remember:

The Judiciary has the ultimate power—the power of interpretation—the power to say what something means, having the last say on the meaning and having it followed by the other branches and the people, combined with the power of administration of the courts including making the court rules and appointments and combined with the power of contempt—to order jail (to take away personal freedom) and to order fines and costs (to take property).

This power of the judiciary to interpret and have the last say and to administer the courts and make their rules is necessary for our system of government to function

Yet because it is so powerful, the judiciary is potentially the most dangerous branch if the power can easily be misused and abused by a power block of agenda-driven justices acting in a

majority and in unnecessary secrecy through the unrestrained misuse and abuse of the judicial powers.

We need to guard against, prevent, and if necessary, discover and correct the misuse and abuse of the Supreme Court's powers of interpretation and administration. We need reforms of the system for the selection of justices. And we need to eliminate unnecessary secrecy at the Supreme Court; it must be replaced with transparency in the justices' performance of their individual and collective powers or duties of interpretation and administration including constitutional affirmance of each justice's duty to the people, what the justice believes the people need to know—no more , no less. Justices who abuse and misuse their powers and who believe the Court should be cloaked in secrecy are mistaken and not ready or fit to serve.

Finally, 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**](mailto: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 need for reform at and transparency in 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**.