

# The Michigan Supreme Court's Road to Change

*And the Seven Justices Bound by  
a Steadfast Esprit de Corps*

By Bridget Brown Powers



Photo by Doug Elbinger, Elbinger Media Group LLC

Front row, left to right: Justice Stephen J. Markman, Chief Justice Robert P. Young Jr., and Justice Brian K. Zahra. Back row: Justice Richard H. Bernstein, Justice Bridget Mary McCormack, Justice David F. Viviano, and Justice Joan L. Larsen

*“Hear ye, hear ye, the chief justice and justices  
of the Supreme Court of the  
state of Michigan, all persons having business...”*

On the sixth floor of Lansing’s Hall of Justice, seven robe-clad justices file into the coffered-ceiling courtroom, the newest appointee in the lead, taking their seats as designated by seniority behind the commanding mahogany bench as the court crier twice strikes his gavel. It is the second day of argument of the November 2015 case call. Chief Justice Robert P. Young Jr., recently elected leader by his colleagues for a third time, sits in the center as the Court’s presiding justice. Justice Stephen J. Markman, the most senior associate justice, sits on the chief’s right, and Justice Brian K. Zahra is seated immediately to his left. Justice Bridget Mary McCormack is seated two chairs down on the right, and Justice David F. Viviano two seats down on the left. Newly elected Justice Richard H. Bernstein is seated on the

chief’s far right, while newly appointed Justice Joan L. Larsen is seated to his far left.<sup>1</sup>

Recent years have brought significant change and continued reform in Michigan’s court of last resort, including the addition of four justices and a new chief clerk. The Court also implemented TrueFiling, an electronic filing and service system that went live January 2015. Under Chief Justice Young’s leadership, the Court continues its reform efforts to make Michigan’s judiciary more efficient and improve its service to the public.<sup>2</sup> And although the Supreme Court is, by definition, a “collegial” court, its current membership epitomizes the very meaning of that term.

## The Court’s four newest faces

In addition to the Court’s milestone venture into the electronic age, four justices recently joined the bench—Justices McCormack, Viviano, Bernstein, and

Larsen. These four individuals represent a diverse mix: liberal and conservative judicial philosophies; differing backgrounds as trial judge, private practitioner, and academic; varied focuses on civil and criminal matters; male and female; disabled and non-disabled. However, when talking with them about their roles on the Court, it is clear the new justices share their senior colleagues' common goal of working together to reach the right decision in each case.

Inspired as a child by her lawyer godmother, Justice McCormack was elected in 2012 and joined the Court in January 2013. In her words, the current Court is "unbelievably high functioning."<sup>3</sup>

"This branch of government has a very specific role to play," McCormack said. "[We] have to apply the laws as written, unless they violate the Constitution."<sup>4</sup>

McCormack enjoys sitting on the state's highest court along with her six colleagues who "work together to try to get the right answer."<sup>5</sup> She and the other justices bring their ideas to the table and "do their best to articulate them."<sup>6</sup> But, she notes, one "must listen honestly [and] be willing to change your mind if you are persuaded. If not, you agree to disagree." She acknowledges that cases making it to the Supreme Court are difficult. "The sum of our collective decision making is better" than any individual decision.<sup>7</sup>

Justice Viviano, former Macomb County Circuit Court chief judge, was initially appointed to the Supreme Court by Governor Rick Snyder in 2013 and was later reelected in 2014. He takes a particular interest in the Court's administrative functions, having previously spearheaded Macomb County's e-filing pilot project and participated in a pilot project on jury system reform.<sup>8</sup> Inspired by his accomplished father, whose footsteps he followed to the bench, Viviano brings a trial judge's perspective to the Court.<sup>9</sup>

The proud father of four young children and Macomb County's third state Supreme Court justice, Viviano is the Court's e-filing liaison.<sup>10</sup> As a strong advocate of innovative technological advancement, he is animated when he speaks about the proposed statewide e-filing system and the challenges it would bring.

"It's fun to find better ways to do things," said Viviano. The electronic age presents a "fun legal challenge" in a world that is rapidly changing.<sup>11</sup> He believes that a statewide e-filing system would improve accessibility and efficiency. "[W]e have to make sure we are moving toward our goals of integration and broad access."

These goals include a unified e-filing system that is integrated with case- and document-management systems as well as the ability to communicate with the outside world, including other departments of the state and the public at large.<sup>12</sup>

Justice Bernstein, elected as Michigan's 110th justice in 2014, is the first blind state court justice in the United States. One might wonder how it is possible for a blind person to review the voluminous amount of material filed in connection with Supreme Court cases. Bernstein does not have the luxury of referring to a notepad, laptop, or other memory-aid device. Braille is ineffective—one page of text equals 70 braille pages—with the amount of information that must be reviewed. So, the contents of every file are read to him over and over again by his reader until he's memorized the information. Thus, his days are usually 15 hours long, beginning at 4 a.m.<sup>13</sup>

Bernstein accomplishes this seemingly impossible feat with his untiring dedication to his job and a passionate appreciation for the opportunity, as a disabled person, to serve as a justice on Michigan's highest court. Of special importance to Bernstein—as he talks, one can almost feel his energy—is the example he sets for other disabled persons to show what *is* possible.<sup>14</sup>

To accommodate Bernstein, the Court employs a new approach during its weekly conferences. The commissioner reads aloud the procedural history of each case on the agenda to trigger Bernstein's memory before the justices commence discussions.<sup>15</sup>

The Court's most recent addition, Justice Larsen, is a former University of Michigan Law School professor who assumed her new role after she was appointed by Gov. Snyder on September 30, 2015, to fill the vacancy created by Justice Mary Beth Kelly's resignation. Born and raised in Des Moines, Iowa, as the "surprise" child, with two significantly older sisters, Larsen resides in Scio Township with her husband and two children. She commutes to Lansing so her children aren't uprooted from school, friends, and activities.<sup>16</sup>

Initially thinking she would become a teacher, Larsen instead went to law school where she "fell in love with the law" and graduated first in her class at Northwestern, after which she completed two clerkships, including one for the late United States Supreme Court Justice Antonin Scalia. Larsen then joined Sidley Austin LLP's<sup>17</sup> Washington, D.C., office for two years, followed by a visiting assistant professor stint at Northwestern and service as deputy assistant attorney general in the U.S. Department of Justice Office of Legal Counsel.<sup>18</sup>

## The Court's new chief clerk

Attorney Larry Royster was named chief clerk and chief of staff of the Supreme Court in 2013. Royster, a Thomas M. Cooley Law School graduate, previously served as chief clerk and research director for the Michigan Court of Appeals.<sup>19</sup> He



Photos by Larry Royster

Left: Legend has it that this was one of the original desks of the “Big Four.” It is in the Clerk’s Office. Right: The “Short Book” includes handwritten entries for each calendared case.

replaced retired clerk Corbin R. Davis, who served the Court for nearly four decades and is now the reporter of decisions.<sup>20</sup>

Royster enjoys his new post. Though he has been instrumental in the Court’s implementation of the e-filing system, he has continued several of the Court’s traditions, including keeping up the “Short Book,” a leather-bound volume with handwritten entries of the docket number, case name, disposition, justices’ initials, and date of each calendared case.<sup>21</sup> In addition, Royster still employs the “poker chip” majority opinion assignment method at the Court’s conferences, an approach started by Davis.<sup>22</sup>

### The Court enters the electronic age

TrueFiling, a 24-hour e-filing and service system developed by ImageSoft, allows users to initiate new cases or file into existing Court of Appeals or Supreme Court cases.<sup>23</sup> Although e-filing is voluntary, “the Court anticipates that e-filing will eventually become mandatory” in the Court of Appeals and Supreme Court.<sup>24</sup> Similar to the previous e-filing system in the Court of Appeals, filings submitted through TrueFiling at or before 11:59:59 p.m. on a business day will be docketed as filed on that day,<sup>25</sup> giving filers seven additional hours to meet deadlines.

With approximately 2,000 new cases filed in the Supreme Court each year,<sup>26</sup> most of them applications for leave to appeal, Royster believes the “e-filing system is going very well so far[,]” noting that the Court receives a lot of late-night filings from counsel.<sup>27</sup> Davis agrees, calling the system “a big development” for the Court.<sup>28</sup> Deputy Clerk Inger Meyer, who takes the lead on docketing new cases, believes the

new system is working well, noting a consistent trend in increased e-filings, the majority of which represent cases from the Court of Appeals.<sup>29</sup> Meyer is typically the first person to review and docket cases.<sup>30</sup>

The results of a TrueFiling user survey completed last summer show that nearly 40 percent of users are very satisfied and 29 percent are somewhat satisfied with the e-filing system. Nine percent of respondents reported being very dissatisfied and 10 percent were somewhat dissatisfied.<sup>31</sup> Overall, the survey reflects positive feedback; however, Royster cautions that the results might be skewed because it is not clear how many of those surveyed were appellate practitioners.

Justice Zahra, an avid hockey fan and “textualist” judge who resides in Northville with his wife and two children, is “impressed with the e-filing system” and believes its implementation is going well.<sup>32</sup>

Chief Justice Young agrees. He hopes that, in five years, “the entire state will have e-filing access to every court” in keeping with the Court’s stated goals of increased efficiency and public access.<sup>33</sup> The plan to create a statewide e-filing system “is harder to do than one might think because Michigan’s judicial system is structurally anything but ‘One Court of Justice,’” he said. “Our trial courts are locally funded by their counties (or cities) and other resources such as technology. As a result, there are 150 different computer platforms used in our trial courts. Designing any technology for our courts is complicated.”<sup>34</sup>

A single, statewide e-filing system has arrived under legislation enacted in December 2015.<sup>35</sup> The act created the Judicial Electronic Filing Fund in the Michigan Treasury for depositing e-filing fees that will be used for the system’s implementation, operation, and

maintenance.<sup>36</sup> The State Court Administrative Office projects system costs between \$40 and \$45 million over the course of the first five years, and estimates that \$41.5 million in e-filing fees would be collected during that same span.<sup>37</sup>

## Camraderie among the justices

Perhaps the most significant change in our state's highest court in recent years is the camaraderie among the seven justices. Indeed, while firmly questioning counsel during oral argument, one might observe the occasional injection of quick-witted humor that prompts smiles and even laughter. These days, the courtroom is devoid of the angst and rancor that once plagued it.

Chief Justice Young describes the current Court as "engaged and deeply committed to trying to render justice under the law."<sup>38</sup> He admires all of his colleagues whose qualities include "humor, incandescent intellect, and a deep and abiding love of the law. We like and respect one another."<sup>39</sup>

Justice Markman comments that he is "proud to be a member of the Court with the justices we have today; we have a wonderful group of judges all of whom have a common commitment to getting it right. My colleagues are all very engaged; all concerned about getting it right in all of the cases we have."<sup>40</sup> Markman adds that he and his colleagues have a "very robust and productive exchange."<sup>41</sup> And, despite their diverse backgrounds, "more than 90 percent of the time, the decisions are unanimous, [which] speaks well for the equal rule of law."<sup>42</sup>

Believing that "all seven of us look to the letter of the law," Justice Zahra describes the Court's conferences as having a "tremendous amount of exchange," noting that there is more debate and humor.<sup>43</sup> The congeniality that exists has resulted in a more lively exchange among the justices.<sup>44</sup>

The sentiments expressed by all seven members demonstrate how well the justices work together. As Justice Larsen said, "[p]eople of Michigan should be proud of this Court."<sup>45</sup> ■



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## ENDNOTES

1. Case Call, Michigan Supreme Court Courtroom, Hall of Justice, Lansing, Michigan (November 5, 2015).
2. Interview with Robert P. Young Jr., chief justice of the Supreme Court, in Lansing, Michigan (November 6, 2015).
3. Interview with Bridget Mary McCormack, justice of the Supreme Court, in Lansing, Michigan (November 18, 2015).
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. Interview with David Viviano, justice of the Supreme Court, in Detroit, Michigan (November 10, 2015).
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. Interview with Richard Bernstein, justice of the Supreme Court, in Lansing, Michigan (November 18, 2015); telephone interview with Justice Bernstein in Lansing, Michigan (November 19, 2015).
14. *Id.*
15. *Id.*
16. Interview with Joan L. Larsen, justice of the Supreme Court, in Novi, Michigan (November 10, 2015).
17. *Id.* (then known as Sidley & Austin).
18. *Id.*
19. Interview with Larry Royster, chief clerk of the Supreme Court, in Lansing, Michigan (November 5–6, 2015).
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*; interview with Inger Meyer, deputy clerk of the Supreme Court, in Lansing, Michigan (November 18, 2015); see also Michigan Courts, *E-Filing* <[http://courts.mi.gov/opinions\\_orders/e-filing/Pages/default.aspx](http://courts.mi.gov/opinions_orders/e-filing/Pages/default.aspx)> (accessed February 11, 2016).
24. Administrative Order No. 2014-23.
25. *Id.*
26. According to the Michigan Supreme Court's 2014 Quantitative Report, 1,960 cases were filed in 2010; 1,924 cases filed in 2011; 1,978 cases filed in 2012; 1,884 cases filed in 2013; and 2,194 cases filed in 2014. By October 31, 2015, 1,734 new cases were filed.
27. Interview with Chief Clerk Royster in Lansing, Michigan (November 5–6, 2015).
28. Interview with Corbin R. Davis, reporter of decisions, in Lansing, Michigan (November 18, 2015).
29. Interview with Deputy Clerk Meyer in Lansing, Michigan (November 18, 2015).
30. *Id.*
31. *Id.*
32. Interview with Brian Zahra, justice of the Supreme Court, Lansing, Michigan (November 18, 2015).
33. Interview with Chief Justice Young in Lansing, Michigan (November 6, 2015).
34. *Id.*
35. MCL 600.1985 *et seq.*
36. *Id.*; see also House Legislative Analysis, HB 5028, December 10, 2015.
37. House Legislative Analysis, HB 5028, December 10, 2015.
38. Interview with Chief Justice Young in Lansing, Michigan (November 6, 2015).
39. *Id.*
40. Interview with Stephen Markman, justice of the Supreme Court, in Lansing, Michigan (November 6, 2015).
41. *Id.*
42. *Id.*
43. Interview with Justice Zahra in Lansing, Michigan (November 18, 2015).
44. *Id.*
45. Interview with Justice Larsen in Novi, Michigan (November 10, 2015).