Faith in our Judicial System is at Stake

To the Editor:

During the last 40 years as a trial judge, I have often been asked, "What do we need to do to improve the public confidence in our courts?"

First, we need to make sure we have fair and impartial judges. The public doesn't care if a Republican or Democratic governor appointed us, whether we are members of the Federalist Society or the American Constitution Society, whether we are a liberal or conservative. What they want is for us, as judges, to listen to the facts and decide the case based on the law. Our bias, prejudice, judicial philosophy, or political beliefs should be left at home.

All the police and sheriffs in Michigan could not enforce our court decisions unless the vast majority of litigants trusted our judicial process. Even the losers in court will generally accept the decision if they know *they have had an opportunity to be heard, to present their side of the case,* and that an *impartial* and *non-biased* judge or jury has decided their case.

To ensure that the public has faith in our legal system we need the following:

The Supreme Court needs to adopt rules that give litigants and their attorneys a clear basis for knowing when a Supreme Court justice should be disqualified from hearing a case. As a trial judge, I have always assumed the rule (MCR 2.003) that covers "disqualification" applied to *all judges,* including trial judges, Court of Appeals judges, and Supreme Court justices. However, the majority of the Supreme Court has said in some cases that the rule does not always apply to them in its entirety because they are justices, not judges.

Attorneys and litigants often spend many days voir diring jurors to make sure they have a fair and impartial jury. Just like jurors, judges are human beings and we, too, have bias and prejudice. The Michigan Supreme Court should adopt a new rule that clearly lets litigants and attorneys know the basis on which a justice of the Michigan Supreme Court can be disqualified, the procedure thereto, and what happens after disqualification. Justice Michael Cavanagh has proposed just such a rule, but such a rule has not yet been adopted.

Likewise, the Supreme Court must adopt a rule that does *not* restrict what justices may write in their opinions. Secrecy is the greatest cause of suspicion. If we don't know what is going on, we often assume something "bad" is being "hidden."

The reason the Michigan Constitution says that Supreme Court decisions must be in writing and state reasons therefore is so the litigants in a particular case, as well as litigants in other similar cases, will know the thinking of justices—not only in the case at hand, but in future litigation.

To allow the majority to tell the minority what the minority can write in their written decisions destroys the voice of the minority. Yes, the majority rules, but the minority must be able to speak and should not be suppressed by the majority. Only then do we have a free exchange of thoughts and ideas. This "freedom" brings about the best result.

Once a case is decided, or a court rule adopted, or an administrative order is in place, the public must be able to hear the voice of the minority—uncensored—particularly uncensored by the majority. School boards, city councils, and thousands of public bodies are all able to adequately function with the public right to know. This is why we have an Open Meetings Act. There is a free exchange of ideas even when the public is present. Yes, justices can deliberate and argue amongst themselves, but we must all think before we speak. This is not just a legal issue, but also an issue of confidence in our judicial system.

My father, a Probate Court and Circuit Court judge for 40 years, said to me as I took the bench that regardless of how wrong you may think a colleague, friend, or adversary may be, never do or say anything in private or public that you wouldn't want the public to read as a headline in the local paper the next day.

This is what makes the system work. Only with "openness" and proper rules of recusal with no appearance of impropriety will the public maintain this confidence in our judiciary.

I urge the State Bar of Michigan to take a leadership role in urging the Michigan Supreme Court to adopt the above proposals. Faith in our judicial system is at stake.

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Defining "Pro Bono"

To the Editor:

I read with interest President Cahill's August 2007 President's Page column ("Pro Bono"). I have always wondered about the definition of "pro bono" work. I definitely agree that community activities and services, not just traditional legal work, should be included. There are many civic boards and organizations that lawyers are asked to join because of their legal knowledge and experience and the value such a viewpoint brings to the board or organization. Lawyers who agree to do so, for no pay, often donate countless hours, and to suggest that this is any less valuable to the community and to the public's view of our profession than traditional legal work is ludicrous and unrealistic.

President Cahill's article, like all others she has written as president, is well thought out and clear. Keep up the good work!

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