

## THE (S)ELECTION OF APPELLATE JUDGES AND JUSTICES



Thomas J. Ryan

*As an elected circuit judge in Oakland County, I have always favored the election of judges. However, I now see real merit in the position of those who favor appointment.*

—Judge William R. Beasley at his investiture to the Michigan Court of Appeals after being appointed by Governor William G. Milliken

Is it time that Michigan changes the way in which it (s)elects members of its appellate courts? Maybe, maybe not. However, it is a particularly opportune time to discuss and examine this important question. Recent events have caused some to question the independence and impartiality of the appellate courts of Michigan and across the nation.

It seems like now, more than ever, the press and the general public are aware of the significant role that appellate courts can play in our lives. With this increasing awareness, comes a curiosity about the men and women who serve in these positions and how they are chosen. This growing appreciation of the

substantial influence of our appellate justices and judges has made their (s)election the focus of interest groups who want to press their agenda.

The result has been elections that have become increasingly polarized with expensive, negative campaigning. This is beneath the dignity of our judiciary and court system and, as a practical matter, can erode the confidence and respect that these courts deserve and need to enforce the rule of law. In the very recent case of *Bush v Gore*, one justice of the U.S. Supreme Court described the public confidence in the Court as a “public treasure” that is “a vitally necessary ingredient of any successful effort to protect basic liberty and, indeed, the rule of law itself.”

Since lawyers are part of this same judicial system, the potential for erosion of confidence and respect directly affects all lawyers. Without a dispute resolution system whose authority is generally accepted, our ability to assist people in resolving their problems is significantly diminished. If there is even the possibility that the (s)election of judges and justices of the Michigan appellate courts may be changed, discussion and debate should begin and be led by us, as members of the organized Bar. No other person or group is so involved and familiar with the day-to-day work of these important courts. This is not to say that we should decide the matter, even if we could. However, we can serve a

vital role in beginning and leading the debate by providing to the public and government institutions our recommendations and rationale.

These discussions will begin with the February 10, 2001 meeting of the Representative Assembly to be held in Lansing. It will start with an introduction by Professor John Reed who has chaired the Judicial Selection Committee, which has been developing this issue for the last five years. Then there will be a panel discussion moderated by

our vice-president, Reginald M. Turner, Jr. Before this February 10th meeting, materials will be presented to Representative Assembly members.

Prior to the Representative Assembly's April 2001 meeting, additional materials will be supplied to members and they will begin to discuss this issue with an eye to formulating appropriate recommendations and rationale for the

possibility of changes in the (s)election of the appellate justices and judges.

Sometimes, it seems like there are almost as many proposals as there are folks who are concerned about this important process. These proposals should be examined with the goal of bolstering public confidence in the men and women who administer our judicial system. One U.S. Supreme Court justice in the *Bush v Gore* case described this confidence as “the true backbone of the rule of law.”

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One proposal sure to draw attention is the one made by Chief Justice Elizabeth Weaver. This would have Supreme Court justices appointed by the governor to serve one 14-year term, without a vote on retention or re-election. At the end of the term, they would be ineligible to serve again as a Supreme Court justice, but would be fully vested with a pension.

Another proposal, by Senator Sikkema, is a modification of the Missouri Plan, by which the governor would make an appointment from a group of candidates recommended by a bi-partisan State Bar panel, but with that appointee standing for retention election in the future.

Judge Whitbeck of the Court of Appeals has suggested simply eliminating the nomination of Supreme Court justices as candidates at partisan political conventions. Each individual seeking to run for our state's highest court would need to gather signatures and file petitions. Interestingly, this proposal would require only an amendment to the statute and not to the Michigan Constitution.

Another proposal calls for an appointment from a group of candidates interviewed and recommended, not just by the Bar Association, but others who have participated in the interview process. The governor could select only from that group and the appointment would require the consent of the state senate. Then, in the future, there would be a retention election. Except for the electoral process, this option is similar to the federal system.

Each of us should take the opportunity to participate in this discussion, directly or indirectly. If you have ideas or comments on this important issue, it would be helpful to our deliberations for you to contact your board member in the Representative Assembly. It is our hope that we can draw upon a significant cross section of the legal profession to help fashion recommendations and rationale in an effort to improve the public confidence and respect of the legal system. This is an effort in which we lawyers are natural and vital participants.

## E-NEWS

In constantly striving to provide value to our members to enhance their professional

lives, we are announcing the first, of what will be many, electronic billboards, so that we can communicate electronically throughout the state of Michigan. In utilizing the State Bar of Michigan's website, we will set up an electronic billboard for the president to communicate with members and for members to communicate with the president. We have the capability of providing a chat room format, but we are attempting the billboard format to see how it is received and to remove any glitches that may occur.

After the roll-out period, we will offer to our sections and committees the opportunity to set up these electronic billboards for themselves to utilize as a communication tool among their members.

This technology provides us with the tools to better communicate with our members. Information will be forthcoming, after the first of the year, on the president's format

and we look forward to your comments about this effort.

## BUILDING UPDATE

We are pleased to announce that the building renovation for the first floor and the lower level have been substantially completed. We have a certificate of occupancy from the city of Lansing and all the committees and sections are being notified that they may resume meetings at the Michael Franck Building in Lansing.

We will be hosting an Open House for all who wish to attend, after the Representative Assembly meeting on February 10, 2001, and invite any member interested.

We believe the renovation will serve our membership and our organization for many years to come, and we believe you will find it a professionally appealing venue, as well as a technologically advanced one. ♦

### UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN

## Public Notice for Reappointment of Incumbent Magistrate Judge Virginia M. Morgan

The current term of the office of United States Magistrate Judge Virginia M. Morgan at Detroit, Michigan is due to expire on June 4, 2001. The United States District Court is required by law to establish a Merit Selection Panel to consider the reappointment of Magistrate Judge Morgan to a new eight-year term.

The duties of a magistrate judge position include (1) the conduct of most preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) the conduct of various pretrial matters and evidentiary proceedings on delegation from the judges of the district court; and (4) trial and disposition of civil cases upon consent of the litigants.

Comments from members of the Bar and the public are invited as to whether Magistrate Judge Morgan should be recommended by the Panel for reappointment by the Court. Comments must be received by Wednesday, February 28, 2001, and should be directed to:

Merit Selection Panel  
814 Theodore Levin United States Courthouse  
Detroit, Michigan 48226