

Order

Michigan Supreme Court
Lansing, Michigan

December 20, 2006

Clifford W. Taylor,
Chief Justice

ADM File No. 2006-48

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly

ADMINISTRATIVE ORDER - January 17, 2007 PUBLIC HEARING

Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Order adding Administrative Order
No. 2006-8 to the Public Hearing
scheduled on January 17, 2007

On order of the Court, Administrative Order 2006-8 has been added to the public hearing scheduled for January 17, 2007. Such order, having been enacted by the Court as an emergency measure on December 6, 2006 for purposes of preserving the integrity and confidentiality of the Court's deliberative process and to reflect practices that have characterized the Michigan Supreme Court, and to the best of our knowledge every other appellate court within the United States, including the United States Supreme Court, since their inception, the Court is particularly interested in witnesses addressing the following question: Where a Justice violates or threatens to violate Administrative Order 2006-8, what means of enforcement and/or sanction, if any, are properly adopted by the Court?

WEAVER, J. (*concurring and dissenting*). I concur only with placing on the January 17, 2007 public administrative hearing the adoption of Administrative Order No. 2006-8 (AO 2006-8), adopted by a 4-3 vote on December 6, 2006, by Chief Justice TAYLOR and Justices CORRIGAN, YOUNG, and MARKMAN. I dissent from the remaining language in the order.

As stated in my dissent to AO 2006-8 (filed yesterday, December 19, 2006), AO 2006-8 must be placed on the January 17, 2007, public administrative hearing because it significantly affects the administration of justice as it can be used to order the censorship and/or suppression of any justice's dissents or concurrences, as the majority of four, Chief Justice TAYLOR and Justices CORRIGAN, YOUNG, and MARKMAN, did on December 6, 2006, by ordering the Clerk of the Court to suppress my December 5, 2006, dissent from *Grievance Administrator v Fieger*, Docket No. 127547 (motion for stay).

Censoring and/or suppressing a justice's written opinion is contrary to article 6, § 6 of the Michigan Constitution and the right to free expression as guaranteed by both the Michigan Constitution and the United States Constitution. Further, censoring and/or suppressing a justice's written opinion interferes with a justice's duty to inform the public of abuse of power and/or serious mishandling of the people's judicial business.

The issue that should be of most interest and given most attention at the January 17, 2007, public administrative hearing is the constitutionality of AO 2006-8.

KELLY, J. (*concurring in part and dissenting in part*). A bare majority of the justices adopted Administrative Order No. 2006-8 on an emergency basis without stating what emergency existed. That same majority now requests public comment on what sanctions are appropriate for violation of the order. AO 2006-8 contains no sanctions, and the hearing order lists none that might be appropriate. I can recall no other instance in which the Court has sought public comment without revealing such information.

The language that the majority does present to the public is a rule that it purports to be necessary to preserve the integrity and confidentiality of the Court's deliberative process. What interests me most is the community's view on whether this rule is necessary or even legal. I request comment on whether the rule unnecessarily or even unconstitutionally restricts the right of justices to speak out on matters crucial to the functioning of the judiciary. I am interested in hearing what good reasons exist to: (1) prevent release of information once a case has been finally decided, (2) prevent release of information about administrative matters, and (3) limit justices to disclosing certain information to only the Judicial Tenure Commission or a "proper authority," rather than to the public at large. I believe that full and frank discussion on this important new rule will be had only when these questions are addressed.

CAVANAGH, J., concurs with KELLY, J.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 20, 2006

Corbin R. Davis
Clerk