

Court of Appeals

CAVANAGH, WEAVER, and KELLY, JJ., would appoint Judge Owens as Chief Judge of the Court of Appeals.

3rd Circuit Court

CAVANAGH, J., (*dissenting*)

I again dissent from this Court's appointment of Chief Judge for the Third Judicial Circuit Court. I note that the current Chief Judge, whom a majority of this Court selected for the past three terms, has done a good job in administering that court under many difficult and trying times. I believe, however, that position should devolve to the only other nominee, Judge Robert J. Colombo who has, again, received the overwhelming support of more than a majority of his colleagues, including, I am informed, that of the current Chief Judge.

Judge Robert J. Colombo, Jr., was elected to the Wayne County Circuit Court in November 1982 and took office on January 1, 1983. His first major administrative responsibility was to serve on a committee that formulated a plan of converting the Wayne County Circuit Court docket from a master calendar to an individual calendar. In 1985, Judge Colombo chaired a subcommittee that came up with the concept of a Docket Review Committee. The purpose of the committee was to instruct judges on proper case management techniques, set goals, and ensure that judges' dockets did not become backlogged. Judge Colombo chaired the Docket Review Committee three different times under three different Chief Judges, including Richard Kaufman, James Rashid, and Mary Beth Kelly. Initially, his extensive responsibilities were to make certain that judges were properly trained regarding the individual calendar system, and to make certain they met

the goals of the Docket Review Committee. Thereafter, he was called back to chair the committee two additional times after the dockets had fallen into disrepair.

As a result of Judge Colombo's work on the Docket Review Committee, he has extensive experience in training new judges on proper case management techniques, and in managing dockets in different divisions. He also ran a training program when Recorder's Court was merged into Wayne County Circuit Court. As a result of these experiences, his colleagues have come to trust and rely upon Judge Colombo. He is often consulted by his colleagues with respect to issues that arise in the courtroom.

In 1985, Judge Colombo was a member of a committee that created the successful individual calendar for the civil and family cases in Wayne County. Of two proposed plans, Judge Colombo's plan was ultimately selected and is still in operation today.

In 1990, Judge Colombo was Chair of the Chief Judge/Court Administrator Manual Revision Committee that drafted the Michigan Court Administration Reference Guide for the State Court Administrative Office.

In 1993, the Michigan Supreme Court assigned all breast implant cases in the State of Michigan to Wayne County Circuit Court, with the understanding that the docket would be managed by Judge James Mies and Judge Robert Colombo. With Judge Mies' instruction, Judge Colombo primarily handled that docket until most of the cases were resolved by either the bankruptcy of Dow Corning or the Global settlement in the federal class action. Judge Colombo tried one of the most complex cases in the history of Michigan involving Dow Corning's declaratory judgment insurance coverage case with 50 insurance company defendants and over one billion dollars of coverage at issue.

During the mid 1990's, Judge Colombo was selected to sit on the Mass Tort Litigation Committee, a committee comprised of state judges, who dealt with complex litigation and met periodically to train other judges on the methods for handling complex litigation.

Because of Judge Colombo's experience and organizational skills, he has handled the Wayne County Asbestos Docket for almost 14 years. He has recently implemented electronic service of documents on the asbestos docket.

Around 2000, Judge Colombo was also selected by the Michigan Supreme Court to handle a class action brought against Microsoft for overcharging on its software products under the Michigan Antitrust Act.

The Michigan Supreme Court has also shown confidence in Judge Colombo by appointing him as a Special Master to review disciplinary files to determine if there were

any discoverable materials in those files.

In 2005, Judge Colombo undertook assisting in the creation of a new case management system for the Wayne County Juvenile Division. He chaired a subcommittee that drafted a scheduling order.

At the request of a Michigan Supreme Court Justice and the Chief Judge of the Wayne County Circuit Court, Judge Colombo joined a team of attorneys in conducting an audit of child protection cases to determine whether the orders entered in those cases comply with Title IV-E. Significant federal funding was at stake because there was an audit of the juvenile files that began in March 2006. As part of his responsibility, Judge Colombo was asked to move over to the Juvenile Division and assist in the implementation of the new case management system that began January 1, 2006. He was also been requested to hear all motions for adjournments of trials. In the past, Judge Colombo has served as the Presiding Judge of the Civil Division. He has also served on numerous committees dealing with court administration and the hiring of court administration personnel.

Inexplicably, however, this Court's majority has sought out and prevailed upon another, very qualified and able, member of that bench to accept the appointment. Perhaps the majority prefers to ignore Judge Colombo's significant accomplishments and leadership qualities out of their concern that he is too outspoken and direct and has, my heavens, had the audacity to critique, occasionally, this Court.

In light of his most impressive record of service, much of which has been at the request of this Court, I would heed the clear preference of the overwhelming majority of Third Circuit judges and honor Judge Colombo's request to serve as Chief Judge.

WEAVER and KELLY, JJ., join in the statement by Cavanagh, J.

WEAVER, J., (*dissenting*). I join Justice Cavanagh's dissent to the order appointing Judge Giovan as Chief Judge of the 3rd Judicial Circuit Court.

With all due respect to Judge Giovan who has served with distinction as Judge of the 3rd Circuit, Judge Colombo would be better suited to serve as Chief Judge at this time, especially since Judge Giovan will only be able to serve as Chief Judge for one year. Judge Giovan is up for reelection in November 2008 and is ineligible to run for reelection in 2008 because of his age.

Further, for the sake of continuity and avoidance of unnecessary change in the largest and busiest circuit court in Michigan, it is in the best interest of the 3rd Judicial Circuit Court for this Court to appoint Judge Colombo, who is most qualified and eligible to serve the full two-year Chief Judge term.

16th Circuit Court

WEAVER, J., (*dissenting*)

I dissent from Chief Justice Taylor, and Justices Corrigan, Young and Markman's decision to appoint 16th Judicial Circuit Court Judge Richard L. Caretti as the Chief Judge of the 16th Circuit Court. I, like Justices Cavanagh and Kelly, have voted to appoint Judge Donald G. Miller as Chief Judge.

With all due respect to Judge Caretti, Judge Miller has more experience and would be better suited to serve as Chief Judge at this time. Judge Miller has already served as presiding judge of the Family Division of the 16th Circuit Court and has been a judge with the 16th Circuit for almost ten (10) years. He has extensive administrative experience as a military officer and as Chair of the Workers' Compensation Appellate Commission. He has five (5) years experience as an elected representative of the Michigan Judges' Association (MJA) and has served on the Rules Committee of the MJA. Judge Miller, who was appointed to the 16th Circuit Court in 1998, has had nearly ten (10) years of experience on the bench, and ten (10) of the thirteen (13) judges serving on the 16th Judicial Circuit Court have endorsed Judge Miller to serve as Chief Judge. In contrast, Judge Caretti, who was appointed to the 16th Circuit Court in 2002, has been a judge for five (5) years, and has only served as Pro Tempore Chief Judge at the request of Chief Judge Antonio Viviano, whose term ends December 31, 2007.

The majority of four has failed to provide sufficient reasons for selecting Judge Caretti over Judge Miller who is more-experienced, has more seniority, and is favored by his colleagues over Judge Caretti.

CAVANAGH, J., joins in the statement by Weaver, J.

Macomb County Probate Court

WEAVER, J., (*dissenting*)

I dissent from the order appointing Judge Kathryn George as Chief Judge of the Macomb County Probate Court. A cloud of doubt over her appointment remains.

At the time that this Court was considering whether to appoint Judge George as Chief Judge, the Court lacked sufficient information about certain events and actions concerning Judge George. Consequently, a majority of this Court (Chief Justice Taylor and Justices Corrigan, Young and Markman) should have refrained from selecting her as Chief Judge. Like Justices Cavanagh and Kelly, I voted for Chief Judge Pamela

O'Sullivan to continue serving as Chief Judge because she has given outstanding service as the Chief Judge for almost eight (8) years.

Specifically, more and sufficient information is needed as to why Judge George, only nine (9) months into her first year as a judge, was assigned to Genesee County in October of 2003, for a period of months, to fill the vacancy created as a result of a Genesee County probate judge's death. It is not the usual practice when a judge dies in one county to send a full-time judge from another busy county to fill the vacant seat for several months at a time. Instead, typically, a judge is assigned for a few days or weeks, or a retired judge is assigned to sit for an extended period of time. The cost of such assignment is usually paid by the county with the vacancy (in this case Genesee County), not the state of Michigan. It appears a special arrangement was made for the assignment of Judge George to serve on the Genesee County Probate Court.¹

It further appears that this Court, or the State Court Administrator's Office (SCAO), had the state of Michigan pay Macomb County approximately \$30,000 for Judge George's assignment to the Genesee County Probate Court during the several months she was assigned to Genesee County.² No satisfactory answers have been supplied as to why this unusual assignment was made, and as to why this unnecessary expense was incurred because Macomb County rightly had to be reimbursed for the expense it incurred to cover Judge George's caseload while she was absent from Macomb County and assigned to Genesee County.

Further, the Region One Deputy Court Administrator's November 17, 2007 memo to the Court indicates that the deputy is awaiting the results of the SCAO Region One office's audit on the Drwencke conservator case—a matter which has generated negative publicity directed at Judge George and the Macomb County Probate Court.³ At this point, consideration of an independent audit of the situation involving Judge George and the ADDMS Guardianship Services organization appears to be necessary, rather than an "in-house" audit by the SCAO, or the Macomb County Probate Court. If necessary, a private firm, or the Auditor General, should be requested to do the audit.

While this Court lacked sufficient information to make an informed decision about whether to appoint Judge George as Chief Judge, the Court had ample reasons to re-appoint Judge Pamela O'Sullivan as Chief Judge of the Macomb County Probate Court. Having been first elected as a judge in 1994, reelected, without opposition, for a second term in 2000, and again reelected, without opposition, for a third term in 2006, Judge O'Sullivan has served on the Macomb County Probate Court bench for nearly thirteen

¹ Letters from SCAO to Macomb County Probate Court dated October 14, 2003 and December 5, 2003.

² Macomb County Probate Court financial record entries for fiscal year 2004.

³ *Referrals draw fire for Macomb Judge; Firm gets bulk of work handling finances of disabled.* The Detroit News, November 8, 2007 <<http://www.detnews.com/apps/pbcs.dll/article?AID=/20071108/METRO/711080368/1408/LOCAL>> accessed November 20, 2007.

(13) years, and has also excellently served the past seven plus (7+) years as Chief Judge, since her initial appointment as Chief Judge in 1999, and for successive appointments by this Court as Chief Judge in 2001, 2003, and 2005.

In addition to her nearly thirteen (13) years of bench experience, Judge O'Sullivan is a member of the Michigan Judicial Institute Faculty and also sits on the Institute's Academic Advisory Committee. Since 1999, she has served on the Governor's Task Force on Children's Justice, having been appointed to that position first by Governor Engler, and then by Governor Granholm. Also in 1999, Judge O'Sullivan established the second Juvenile Drug Court in the state of Michigan. In addition, she serves as a State Court Administrative Office approved general civil mediator, and serves on various community boards of directors, including: (1) Care House—Child Advocacy Center, (2) CARE—Community Assessment and Referral Education, (3) Human Services Coordinating Body, (4) Macomb County Traffic Safety Commission, and (5) Childhelp, USA.

Finally, Judge George is up for re-election in November 2008 and already two opponents have announced their intention to run against her. Thus, a contested race for the judgeship appears in the offering, likely drawing Judge George's attention away from the administration of the Macomb County Probate Court.

Given Judge O'Sullivan's years of experience, both on the bench and in the larger community, and the fact that unanswered questions still remain with regard to Judge George, it is in the best interest of the Macomb County Probate Court for this Court to re-appoint Judge Pamela O'Sullivan as Chief Judge for 2008. Assuming Judge George is reelected, and the issues concerning ADDMS are independently audited to the Court's satisfaction, and assuming questions about Judge George's performance have been satisfactorily resolved, in November of 2008, this Court can consider appointing her as Macomb County Chief Judge for 2009.

CAVANAGH and KELLY, JJ., would appoint Judge O'Sullivan as Chief Judge of the Macomb Probate Court.



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.

November 21, 2007

Corbin R. Davis

Clerk