

APPROVAL OF MINUTES RECORDED DURING MARCH 14, 2007
ADMINISTRATIVE CONFERENCE AND STATEMENTS CONCURRING WITH AND
DISSENTING FROM THE APPROVAL OF THE MINUTES

ITEM 1 APPROVAL OF MINUTES

The following minutes were approved:

March 1, 2006 (Opinions/CRs)	July 19, 2006 (ADMs)
March 1, 2006 (ADMs)	July 21, 2006 (Opinions/CRs)
March 22, 2006 (Opinions/CRs)	July 21, 2006 (ADMs)
March 22, 2006 (ADMs)	July 24-28, 2006 (Opinions/CRs)
March 29, 2006 (Opinions/CRs)	September 7, 2006 (Opinions/CRs)
March 29, 2006 (ADMs)	September 7, 2006 (ADMs)
April 19, 2006 (Opinions/CRs)	September 13, 2006 (Opinions/CRs)
April 19, 2006 (ADMs)	September 13, 2006 (ADMs)
April 27, 2006 (Opinions/CRs)	September 20, 2006 (Opinions/CRs)
May 10, 2006 (Opinions/CRs)	September 20, 2006 (ADMs)
May 10, 2006 (ADMs)	September 27, 2006 (Opinions/CRs)
May 17, 2006 (Opinions/CRs)	September 27, 2006 (ADMs)
May 17, 2006 (ADMs)	October 11, 2006 (Opinions/CRs)
May 24, 2006 (Opinions/CRs)	October 11, 2006 (ADMs)
May 24, 2006 (ADMs)	October 18, 2006 (Opinions/CRs)
May 31, 2006 (Opinions/CRs)	October 18, 2006 (ADMs)
May 31, 2006 (ADMs)	October 25, 2006 (Opinions/CRs)
June 7, 2006 (Opinions/CRs)	November 1, 2006 (Opinions/CRs)
June 7, 2006 (ADMs)	November 1, 2006 (ADMs)
June 14, 2006 (Opinions/CRs)	November 8, 2006 (Opinions/CRs)
June 14, 2006 (ADMs)	November 8, 2006 (ADMs)
June 21, 2006 (Opinions/CRs)	November 15, 2006 (Opinions/CRs)
June 21, 2006 (ADMs)	November 22, 2006 (Opinions/CRs)
June 28, 2006 (ADMs)	November 29, 2006 (Opinions/CRs)
July 6, 2006 (Opinions/CRs)	November 29, 2006 (ADMs)
July 6, 2006 (ADMs)	December 6, 2006 (ADMs)
July 10, 2006 (Opinions/CRs)	December 20, 2006 (Opinions/CRs)
July 12, 2006 (Opinions/CRs)	December 20, 2006 (ADMs)
July 12, 2006 (ADMs)	January 4, 2007 (Opinions/CRs)
July 19, 2006 (Opinions/CRs)	January 4, 2007 (ADMs)

CAVANAGH, J., concurs and states as follows:

Because I believe that it is important to move on to other matters and it is clear that this matter will not be resolved by further dissent, I concur with the Court's skeletal conference minutes as prepared by the Clerk of the Court. However, my approval of these minutes should not be viewed as an indication that I deem Justice Kelly's dissenting concerns or Justice Weaver's more explicit references and recollections inaccurate.

KELLY, J., (dissenting). I do not approve the minutes of March 1, April 19 and June 7 of 2006 because they are each inaccurate or incomplete to a significant degree. The minutes of March 1 should reflect that the Court rejected a proposal by Justice Weaver to publish for comment a court rule governing the disqualification of Justices which was proposed by Justice Cavanagh. They should also reflect that the Court voted to adopt an internal operating procedure governing the disqualification of Justices that was proposed by Justice Young. On both matters Chief Justice Taylor and Justices Corrigan, Young and Markman were in the majority and Justices Cavanagh, Weaver, and Kelly were in the minority.

The minutes for April 19 should reflect that the Justices voted unanimously to publish for comment three alternative proposals for dealing with the disqualification of Justices.

The minutes of June 7 should reflect that the Chief Justice appointed an ad hoc committee of Justices Kelly, Weaver, and Corrigan to address and recommend proposed changes in the Court's handling of its minutes of administrative conferences.

WEAVER, J. (dissenting). I dissent and file my revised dissenting statement to the minutes approved by the majority of four (Chief Justice Taylor, and Justices Corrigan, Young, and Markman) on March 14, 2007, because some of the approved minutes do not accurately and/or completely reflect what occurred concerning Administrative File (ADM) 2003-26,¹ the Rules for Justice Disqualification file,² during the March 1, 2006 administrative

¹ ADM 2003-26 is the second of at least two files that this Court has opened concerning Justice Disqualification. In March of 2003, this Court opened an administrative file to consider whether a justice who had participated in a Court of Appeals decision in a case that ultimately was appealed to this Court could sit on the Supreme Court case. The name of that administrative file was ADM 2003-24. Because ADM 2003-24 also concerned the issue of Justice Disqualification, it has sometimes been listed instead of, or along with, the subsequently opened file, ADM 2003-26. For example, over the last year, the Justice Disqualification issue has been referred to in multiple ways,

conference, and succeeding conferences. This dissent should be attached to the minutes for March 1, 2006, and March 29, April 19, May 17, May 24, May 31, June 7, and November 29, 2006, because the minutes approved for these dates are inaccurate and/or incomplete.

These incomplete and/or inaccurate minutes were part of the 60 sets of minutes dating back over a year, to March 1, 2006, slated for review and approval on the March 14, 2007 weekly administrative conference agenda (provided to the Justices on March 9, 2007).³

This dissent reveals another example of the misuse and abuse of power,⁴ and

sometimes as, “Supreme Court Disqualification Rule,” sometimes as “Disqualification of Supreme Court Justices: ADM 2003-24 and ADM 2003-26,” sometimes as “ADM 2003-24 Supreme Court Disqualification Policy,” sometimes as “Rules for Disqualification of Justices,” and sometimes as “ADM 2003-24/ADM 2003-26.” For purposes of my dissent and for clarity, my reference to ADM 2003-26 includes ADM 2003-24 as both files concern Justice Disqualification. Interestingly, while ADM 2003-26 was closed on September 7, 2006, ADM 2003-24 remains open.

² For nearly four (4) years, dating back to May 2003 in the *In re JK*, 468 Mich 202, 219 (2003) case, the Rules for Disqualification of Justices have been the subject of mostly secret conflict and dispute in this Court and during the last year (2006), have been secretly acted upon by the majority of four.

³ Although the justices generally conference weekly, there had been no minutes for approval for an administrative conference agenda for over five (5) months, since October 11, 2006. Administrative agendas are prepared and distributed by the Clerk of the Court at the direction of the Chief Justice. Since March 1, 2006 there have been 34 weekly conferences for the justices to conduct administration business

⁴ In my dissent to the January 5, 2007 election of the Chief Justice, revealing misuse of power and misconduct of the judicial business of this Court, I stated:

[T]he majority of four (Chief Justice Taylor and Justices Corrigan, Young and Markman) has misused and abused the judicial power by suppressing, or attempting to suppress, dissent and has engaged in repeated disorderly, unprofessional and unfair conduct in the performance of the judicial business of this (Supreme) Court.

Referenced as another proof of the majority of four’s attempt to suppress dissent, was the attempt by the majority of four to use the unconstitutional “Gag Order,” Administrative Order (AO) 2006-08, to suppress my (and other justices’) dissents, and to keep secret forever and unavailable to the people other important information on what, when and how justices conduct the business of the Court. This unconstitutional “Gag Order” (AO 2006-08) suppressing dissent, among other things, illustrates how the majority of four have attempted to prevent me from reporting the majority’s misuse and abuse of power, and disorderly conduct of the people’s judicial business. The unconstitutional “Gag Order” has still not been rescinded in the records of the Court.

misconduct of the people's judicial business by the majority of four, Chief Justice Taylor and Justices Corrigan, Young and Markman. The majority of four has used its power to secretly suppress and silence dissent. The deceptive and/or inaccurate, misleading, and incomplete minutes now approved by the majority illustrate the majority's attempt to deprive the people of Michigan of ever knowing, in a timely manner, what, when, and how decisions were made on Court administrative matters. By their approval, they reveal the majority of four's willingness to change and revise history by not recording the whole truth, or recording untruth, of the majority's formal actions.

What is harmful and important to the people about this misuse and abuse of power in the disorderly way of conducting the Court's administrative business is that it effectively can (and too often does) result in the following:

- keeps secret from the people important information of what the justices are discussing and deciding on the Court;
- keeps secret from the people important information of how the justices conduct the people's judicial business; and
- keeps secret from the people when the justices are conducting the people's judicial business.

This abuse of the minutes process makes it possible to attempt to mislead the people, or to confuse, deceive, misinform or not inform the people, about the conduct of the business of the Court, and thus deprive the people of sufficient, accurate information to judge the performance of the justices.

On December 6, 2006, the majority of four, Chief Justice Taylor, and Justices Corrigan, Young and Markman, adopted Administrative Order (AO) 2006-08, "the gag order" to which I filed a dissent. AO 2006-08, which has not been rescinded and therefore remains in effect today, states:

All correspondence, memoranda and discussions regarding cases or controversies are confidential. This obligation to honor confidentiality does not expire when a case is decided. The only exception to this obligation is that a Justice may disclose any unethical, improper or criminal conduct to the JTC or proper authority. [Administrative Order No. 2006-08, 477 Mich xcvi (2006)(Weaver, J. dissenting).]

As I stated earlier in my dissent to AO 2006-08, I restate today by adopting AO 2006-08, "the majority of four are attempting to hide their own unprofessional conduct and abuse of power which has resulted in their failure to conduct the judicial business of the people of Michigan in an orderly, professional and fair manner." [*Id* at xcix.]

My dissents are available to the public on my personally funded website, <www.justiceweaver.com>.

The minutes should be timely produced, acted upon, and made available to the public on the Supreme Court website. The minutes should memorialize this Court's conduct of the people's judicial business. They should be a window for the people to learn what, when, and how the justices perform one of this Court's core constitutional responsibilities, the supervision of the administration of the Michigan judiciary.⁵

Because the approval of these minutes makes it possible for the majority to suppress dissent and revise history, and to keep people in the dark by depriving them of important information as to how the justices conduct the judicial business of Michigan, I dissent to these minutes and insist that our present traditional system of processing, approving and publishing minutes end now. An efficient and impartial judiciary is "ill served by casting a cloak of secrecy around the operations of the courts."⁶

I. INCOMPLETE AND INACCURATE MARCH 1, 2006 MINUTES CONCERNING THE RULES FOR DISQUALIFICATION OF JUSTICES

All but one of the inaccurate and incomplete minutes from which I dissent stem from formal actions taken by Chief Justice Taylor, and Justices Corrigan, Young, and Markman on March 1, 2006 concerning the controversial Justice Disqualification issue and file, ADM 2003-26 and ADM 2003-24. On March 1, 2006, during a regularly scheduled weekly administrative conference, in response to growing public pressure⁷ to address the issue

⁵ Mich Const 1963 Art 6 § 4.

⁶ *Scott v Flowers*, 910 F2d 201 (CA 5 1990).

⁷ *Justices' wives: Questions about conflict of interest can't be ignored*, Detroit Free Press, January 25, 2006; David Shepardson, *High court justices refuse to step down from cases*, The Detroit News, February 1, 2006; Chris Christoff, *2 justices to stay on cases*, Detroit Free Press, February 1, 2006; *Court conflict*, Detroit Free Press, February 1, 2006; *Conflicted: Justices' defense of conflict of interest rules reveals weaknesses*, Lansing State Journal, February 3, 2006; *Justices refuse to disqualify themselves*, Michigan Lawyer's Weekly, February 6, 2006; Todd C. Berg, *Is it time for MSC to reform how it handles recusal motions?*, Michigan Lawyer's Weekly, March 14, 2006. *A Michigan Lawyer's Weekly Web poll results show that 80 percent of the Internet users who have chosen to participate voted "yes" on the question whether Justice Michael Cavanagh's proposed court rule is necessary.*

<<http://www.milawyersweekly.com/poll/pollresults.cfm?poll=020606MIdisqualify>> (accessed March 14, 2006).

of standards governing the Disqualification of Justices, the majority of four voted to adopt an Internal Operating Procedure (IOP)⁸ governing Justice Disqualification and publish it on the Supreme Court website.⁹

The March 1, 2006 approved minutes incompletely and inaccurately state:

There was discussion of this matter. Final action was deferred to a later conference.

What the March 1, 2006 minutes should at a minimum state is:

Motion made by Justice Weaver, seconded by Justices Kelly and Cavanagh to publish for comment a court rule governing the disqualification of justices as proposed by Justice Cavanagh in his statement in *Adair v State of Michigan*, ___ Mich ___ (2006). Motion failed by a 4 to 3 vote.

Motion made and carried by a 4 to 3 vote to adopt an Internal Operating Procedure (IOP) governing the disqualification of justices as proposed by Justice Young's February 28, 2006 memorandum to the justices and Court staff regarding the Supreme Court Disqualification Policy. Cavanagh, Weaver, and Kelly JJ, dissent. Weaver, J. dissenting and reserving the right to file statement dissenting to the adoption of the IOP. IOP to be published on Supreme Court website.

⁸ The Michigan Court Rules are binding and enforceable. By contrast, this Court's IOPs are "general guidelines," which are not binding or enforceable. See Supreme Court internal operating procedures at <<http://courts.michigan.gov/supremecourt/>> (accessed March 14, 2007), which provides in a disclaimer that the IOPs are unenforceable. Because IOPs are unenforceable guidelines adopted by majority vote, without public notice or comment, they can be changed at any time, without public notice or comment. *Id.*

⁹ The Internal Operating Procedure formally adopted the traditional procedure for Justice Disqualification—that each individual justice decide all recusal motions against him/her, at the justice's sole discretion, without the benefit of any standardized rules or checks or balances for alleged bias or prejudice. The IOP was never posted on the Court's website and its adoption has remained secret until this statement.

Chief Justice Taylor stated that the dissenting justices have two weeks (until March 15, 2006) to circulate their dissenting statements to be attached to the March 1, 2006 minutes,¹⁰ and the majority's responses are to be circulated by the following week, all statements to be completed by March 22, 2006.

As there were in fact formal actions, the approved March 1, 2006 minutes stating “[f]inal action was deferred to a later conference,” are incorrect.

Proof of the incompleteness and inaccuracy and thus the misleading suppression of information about actions of the Court on the handling of the administrative business in the important issue of Rules for Disqualification of Justices, is found in the majority of four's own words, in written memoranda circulated by the majority of four.

Chief Justice Taylor, and Justices Corrigan, Young and Markman, in a memorandum dated March 15, 2006 circulated their statement for the March 1, 2006 administrative minutes memorializing the majority of four's March 1 adoption by formal vote of the Justice Disqualification IOP. That memo states:

We have voted today to codify our traditional disqualification procedure that has served this Court well during its existence and to publish this as an Internal Operating Procedure. <http://www.courts.michigan.gov>. We write here to explain our opposition to the disqualification rule proposed by Justices Cavanagh, Kelly and Weaver that has received recent attention on publication of *Adair v State of Michigan*, ___ Mich ___ (2006).

The fact that the majority of four formally adopted the IOP is further proven by Justice Corrigan's memorandums of March 15 and March 27, 2006, in which she acknowledges on March 15 that she concurs in the adoption of the IOP and when she later suggests on March 27 that the adopted IOP be rescinded in order to instead put Justice Young's adopted IOP as one of three disqualification proposals to be published for public comment. Pertinent portions of Justice Corrigan's March 15, 2006 memo are:

My statement *concurring in the adoption of our disqualification policy* follows. I have not yet had an opportunity to react to Justice Weaver's statement that was circulated a short time ago, but I plan to revise in response to her statement in my next draft.

* * *

¹⁰ Typically, a justice's dissent is recorded in the minutes directly after the action from which the justice is dissenting. Dissenting statements, usually submitted after the conference, are typically attached to the minutes filed in the Clerk of the Court's office—available to the public only upon inquiry.

Corrigan, J. (*concurring*). I concur fully in the adoption of the *disqualification policy* for Supreme Court Justices. In accordance with this Court's longstanding tradition, it is appropriate that motions for recusal should be decided by each Justice and should not be subject to review by the Court

The pertinent portion of Justice Corrigan's March 27, 2006 memo is:

By way of clarification of my earlier memo today, I support publishing all of the proposals for comment. I agree that in the interim, we should retain the status quo practice on disqualification that this Court has followed for approximately 170 years. My suggestion to *rescind the IOP* was merely to allow Justice Young's proposal to be published along with the other proposals.

The majority of four's formal action to adopt the IOP was later untruthfully characterized as an informal "straw vote." On April 18, 2006, Justice Corrigan circulated a memorandum stating that her March 1, 2006 vote to adopt Justice Young's proposed Justice Disqualification IOP didn't really count:

If my previous vote was understood as a vote to adopt Justice Young's proposal as an IOP, then I wish to withdraw that vote while we proceed to publish the proposals for comment.

Accurately recording the formal votes and the events of March 1, 2006, or any administrative conference, does not prevent the majority justices from changing their minds about actions that have been taken—it merely requires them to formally rescind prior votes for the record and the public's access. It allows the actual history to be recorded—to let the truth be told. Justices should not resist or refuse to formally rescind their formal votes on administrative matters that require written dissenting statements to be produced by other dissenting justices as it is normal and understandable that people change their minds from time to time. The harm of not accurately recording the actions of this Court is great since the minutes should be a written record of the justices' formal actions carrying out the people's judicial business. Without an accurate, complete, truthful, published record, the people are deprived of information for judging how the justices perform in conducting the people's business.

Although the majority of four voted on March 1, 2006 to publish the IOP on the Court's website, as of today, March 14, 2007 (more than 1 year later), the IOP has never been published on any Court website, nor has it ever been acknowledged in the Court's

minutes. Thus, this important information has been effectively made secret and suppressed—another example of misuse and abuse of the Court’s power, and misconduct of the Court’s business.

Further, the never published, secret March 1, 2006 IOP adopted by the majority of four should not be confused with a similar, but newly proposed IOP on Rules for Justice Disqualification as set forth in a memorandum circulated by Justice Young on March 14, 2007, after the administrative conference approving the March 1, 2006 minutes.

Governed by the direction of the Chief Justice, since March 1, 2006, the minutes for the March 1, 2006 administrative agenda haphazardly appeared only seven (7) times out of 34 subsequent weekly administrative conference agendas.¹¹

II. INACCURACIES IN MINUTES FOR ADMINISTRATIVE CONFERENCES SUBSEQUENT TO MARCH 1, 2006

In addition to the inaccuracies in the March 1, 2006 minutes, the minutes for other administrative conferences¹² are also inaccurate or incomplete because they mischaracterize or contradict the facts of what actually occurred during those conferences;

¹¹ The first time that the proposed minutes pertaining to consideration of ADM 2003-26 during the March 1, 2006 administrative conference appeared on an administrative agenda for approval was May 17, 2006. The administrative minutes listed for approval were for the following dates: January 5, 2006; January 25, 2006; March 1, 2006; and March 15, 2006.

After the May 17, 2006 administrative conference, the minutes pertaining to that May 17th conference were circulated. The minutes of the May 17th conference list which proposed administrative minutes were approved. Notably absent from the list of approved minutes were the minutes for March 1, 2006, despite the fact that the minutes for March 15, 2006 *were approved*.

Until March 14, 2007, the minutes for the March 1, 2006 agenda had been listed for approval on six subsequent administrative agendas: May 17, May 24, May 31, June 7, June 14, and October 11, 2006. In every instance the minutes from March 1, 2006, were listed as "passed."

After June 14, 2006, there were administrative conferences on June 21, June 28, July 6, July 12, July 19, and July 21, 2006. *No proposed minutes for approval were ever listed on any of these administrative conference agendas.* It was not until the September 7, 2006 administrative agenda that proposed minutes appeared for approval. Again, notably absent from the September 7th list of proposed minutes for 14 administrative conferences from March 22, 2006 to July 21, 2006, were proposed minutes for the March 1, 2006 conference pertaining to the disqualification of justices file, ADM 2003-26.

¹² Specifically, the minutes approved for March 29, April 19, May 17, May 24, May 31, June 7, and November 29, 2006.

therefore, those minutes are deceptive and misleading. All but one of the inaccuracies concern the Rules for Justice Disqualification file, ADM 2003-26. The following is a history of what occurred at each conference in question, what the proposed minutes for the conference state, and what the minutes for the conference should state:

March 29, 2006 – The minutes for the March 29 administrative conference concerning ADM 2003-26 simply state that the item was

Passed.

This statement is false because it contradicts the fact that a final vote had already occurred on March 1, 2006, i.e., that the majority of four had adopted the IOP governing the Disqualification of Justices. The incorrect and inaccurate characterization of the status of ADM 2003-26 is also demonstrated by the agenda for the March 29, 2006 administrative conference, which states that the “issue” regarding ADM 2003-26 to be addressed was:

Further discussion of disqualification and whether to issue the Court’s recusal policy as an IOP.

The error of this characterization is that the IOP *had already been adopted by a majority vote* at that time and, under this Court’s IOP, the new IOP was effective from the date of its adoption on March 1, 2006.

April 19, 2006 – The minutes for the April 19, 2006 administrative conference concerning ADM 2003-26 simply state that the item was

Passed.

This statement is not only inaccurate and contradictory; it is different from the correct language first proposed by the Clerk of the Court by memo to the Court on April 20, 2006. The language first proposed stated:

Motion made and carried unanimously to publish for comment alternate proposals for dealing with disqualification of the Justices.

It is true that a motion was made and carried to publish for public comment three (3) proposals for Rules for the Disqualification of Justices. However, four and a half (4 ½) months later, when the minutes were circulated for approval for the September 7, 2006 administrative conference, the April 19 proposed minutes were changed to simply “passed,” without explanation.

Furthermore, to be accurate, the minutes for the April 19 conference regarding ADM 2003-26 should reflect that a motion was made, but not carried, to rescind the March 1, 2006 IOP. Thus, the minutes for April 19 should state:

Motion made, but not carried, to rescind the IOP adopted March 1, 2006.

Motion made and carried unanimously to publish for comment three alternate proposals to amend the Court Rules for the Disqualification of the Justices.

May 17, 2006 – The agenda for the May 17, 2006 administrative conference included the question whether the Court would approve the minutes from several prior conferences, including the administrative conference of March 1, 2006.

Because the proposed March 1, 2006 minutes were untruthful and inaccurate, on May 16, 2006, I circulated a dissent to the impending approval of the proposed minutes for March 1, 2006. The failure of a majority to approve the March 1 minutes during the May 17, 2006 administrative conference is not referenced in the minutes for May 17. Therefore, the minutes for May 17 are incomplete. The minutes for May 17 should state:

Consideration of the minutes of March 1, 2006, was deferred to a later conference.

May 24 and May 31, 2006 – The approval of the proposed March 1, 2006 minutes appeared again on the May 24 and May 31 administrative agendas. The minutes for those dates regarding whether to approve the minutes for March 1, 2006, state that the approval of the minutes was “passed.” However, the minutes for those dates do not identify that the minutes up for approval were the March 1, 2006 minutes. The May 24 and May 31, 2006 minutes for should, therefore, state (as the minutes for the June 7 and June 14, 2006, conferences state):

Consideration of the minutes of March 1, 2006, was deferred to a later conference.

June 7, 2006 – The approval of the now approved March 1 minutes appeared again on the June 7 administrative agenda and the June 7 minutes accurately state that

Consideration of the minutes of March 1, 2006 was deferred to a later conference.

However, the minutes for June 7¹³ are incomplete because they should also record, but do not, that an *ad hoc* committee was spontaneously created by Chief Justice Taylor

¹³ See also *In re Haley*, 476 Mich 180 (2006). Also in July 2006, while the consideration of the Rules for Justice Disqualification file, ADM 2003-26, was still pending, the majority of four trivialized one of the most fundamental standards that govern judicial conduct and the disqualification of justices, the appearance of impropriety standard—a standard not included in the IOP adopted by the majority of four on March 1, 2006, nor in the new IOP proposed by Justice Young in his March 14, 2007 memorandum.

during the conference to address how the minutes from the Court's administrative conferences should be written, circulated, and approved. Chief Justice Taylor appointed Justices Weaver, Kelly, and Corrigan to the committee.¹⁴ Further, the approval of the proposed March 1, 2006 minutes did not appear on an agenda for the weekly conference after the committee was created until they appeared on the agenda of October 11, 2006.

September 7, 2006 - The minutes for the September 7, 2006 administrative conference accurately reflect that the majority of four voted to close ADM 2003-26—the Rules for Disqualification of Justices file. The minutes further correctly state that Justices Cavanagh, Weaver and Kelly voted against closing the file. The minutes also accurately include Justice Weaver's dissenting statement to the closure of the file.

However, the proposed minutes for the September 7, 2006 administrative conference were not included with the October 11, 2006 administrative agenda list of minutes slated for approval, nor were they listed on any later weekly agenda, but appeared for the first time, over six months later, on the March 14, 2007 agenda for the March 14, 2007 weekly conference.

Inaccuracies in the November 29, 2006 Proposed Minutes

On November 29, 2006, during a regularly scheduled administrative conference, the majority of four moved and seconded the adoption of an "emergency" Michigan Court Rule, a "gag rule," to suppress my dissents and concurrences. The majority discussed but tabled the new proposed emergency court rule that was substantively identical to Administrative Order (AO) 2006-08, the "gag order" to suppress dissent that was adopted as an emergency on December 6, 2006. The proposed November 29, 2006 minutes do not make any mention of the majority's actions. The minutes should record that the majority of four moved, but ultimately tabled, a motion to adopt an "emergency" Michigan Court Rule, which became the basis for the December 6, 2006 "emergency court order."

III. FIXING THE CURRENT TRADITIONAL SYSTEM OF PROCESSING MINUTES FOR MICHIGAN SUPREME COURT WEEKLY ADMINISTRATIVE CONFERENCES

It is critical that the minutes of this Court's weekly conferences on administrative matters be truthful and complete and that they reflect what actually occurred at each conference. For the public to be timely, accurately and fully informed about the justices' conduct of the Michigan Supreme Court's administrative work, the Court should have the most orderly, timely, accurate, and complete process for keeping and publishing minutes

¹⁴On June 14, 2006, I circulated to all the justices and appropriate Court staff suggestions for improvements to the Court's minute-keeping practices for the *ad hoc* committee and all the justices to consider. *See infra* note 15.

for its administrative conferences.¹⁵ Presently it does not. The Court's present system for approving and publishing minutes is disorderly and subject to manipulation. It allows for effectively silencing and secretly suppressing dissent on controversial administrative matters. This system allows for suppression of information on what, when, and how the justices perform their administrative duties on important administrative judicial business, for example, the Rules for Disqualification of Justices. ¹⁶

¹⁵ By memo dated June 14, 2006, I sent to all the justices proposals for the proper, accurate, complete, orderly, and timely preparation, processing, and publication of minutes for administrative conferences. The essential improvements required are:

_ At the conferences, the moving justice or the Chief Justice should specify, before any vote, whether the vote on a motion before the Court is a straw vote or a final, recorded vote.

_ All recorded votes should list the justice who moved that the action be taken, which justice seconded the motion, which justices voted in favor of the motion, which justices voted against the motion, and which justices abstained from voting.

_ The proposed minutes should be circulated to the Court within two days of conference, for example, by 5 p.m. on the Friday following a Wednesday conference. The minutes from each administrative conference should be on the agenda for approval or correction at the following week's administrative conference.

_ The approved minutes or the fact that the minutes have not been approved should be promptly posted onto the Court's website.

¹⁶ Some background is essential to understanding why the minutes for March 1, March 29, April 19, May 17, May 24, May 31, and June 7 for the Judicial Disqualification file, ADM 2003-26, are incomplete or inaccurate.

In May 2003, I learned that the justices followed "unwritten traditions" when deciding whether to participate when the issue of their participation was raised. I was also informed that it was "tradition" for justices to decide the disqualification motions themselves and to not publicly reveal their reasons for participating or not participating in a case. See *In re JK*, 468 Mich 202, 219 (2003) (Weaver, J., nonparticipation statement). However, sometimes justices have followed procedures set forth in MCR 2.003, a court rule governing the disqualification of judges. I have argued and continue to believe that MCR 2.003, as written, applies to justices of the Supreme Court as it does to all judges. See *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 472 Mich 91, 99-100; 693 NW2d 358 (2005) (Weaver, J., concurring). In sum, despite the fact that the participation of justices in certain cases can raise due process concerns, there are currently no agreed-upon rules governing a justice's decision to be disqualified from a case.

Formal actions taken on administrative matters, for example when a majority of justices formally vote on a matter, must be recorded as such so that there is no question that the action took place, and no opportunity for a justice, or justices, to later claim that

The past four years have exposed these inconsistencies in the standards that individual justices apply to themselves when making their decision to participate, or not to participate, in a case. Thus, there is clear need for reform. At times justices have applied the court rule governing the disqualification of judges, MCR 2.003, to themselves, and at times they have not. For example in *Adair v Michigan*, 474 Mich 1027, 1043 (2006), Chief Justice Taylor and Justice Markman stated that “[p]ursuant to MCR 2.003(B)(6), we would each disqualify ourselves if our respective spouses were participating as lawyers in this case, or if any of the other requirements of this court rule were not satisfied.” Justice Young concurred fully in this legal analysis. *Id.* at 1053. Similarly, in *Grosse Pointe Park v Michigan Municipal Liability & Prop Pool*, 473 Mich 188 (2005), then-Chief Justice Corrigan used the remittal of disqualification process of MCR 2.003(D). At other times, however, the same justices have not followed the provisions of MCR 2.003. For example, in *Gilbert v DaimlerChrysler Corp*, 469 Mich 883, 889 (2003), then-Chief Justice Corrigan and Justices Taylor, Young, and Markman denied a motion for reconsideration of the Court’s order denying the motion for disqualification and did not refer the motion to the State Court Administrator for the motion to be assigned to another judge for review *de novo*, as would be proper under MCR 2.003(C)(3).

Since May 2003, I have called for this Court to reform its disqualification practices and to adopt fair and enforceable court rules concerning the participation or disqualification of justices. See, e.g., *In re JK*, *supra* at 220-221 (Weaver, J., nonparticipation statement proposing amendments to MCR 2.003), *Gilbert*, *supra* at 890 (statement by Weaver, J.), *Advocacy Org for Patients & Providers*, *supra* at 96 (Weaver, J., concurring), *Harter v Grand Aerie Fraternal Order of Eagles*, 693 NW2d 381 (2005) (Weaver, J., dissenting), *Grievance Administrator v Fieger*, 472 Mich 1244, 1245 (2005) (Weaver, J., dissenting), *Scalise v Boy Scouts of America*, 473 Mich 853, 855 (2005) (Weaver, J., dissenting), *McDowell v Detroit*, 474 Mich 999, 1000 (2006) (Weaver, J., dissenting), *Stamplis v St John Health Sys*, 474 Mich 1017 (2006) (Weaver, J., dissenting), *Heikkila v North Star Trucking, Inc*, 474 Mich 1080, 1081 (2006) (statement by Weaver, J.), *Lewis v St John Hosp*, 474 Mich 1089 (2006) (Weaver, J., dissenting), and *Grievance Administrator v Fieger*, 476 Mich 231, 344 and n 38 (2006) (Weaver, J., dissenting).

Since May 2003, there have been eleven public hearings on other administrative matters in which the rules governing the disqualification of justices could have been, but were not, addressed: September 23, 2003, January 29, 2004, May 27, 2004, September 15, 2004, January 27, 2005, May 26, 2005, September 29, 2005, January 25, 2006, May 24, 2006, September 27, 2006, and January 17, 2007.

Clear, fair, enforceable court rules for the disqualification of justices are essential to the public’s trust and confidence in the Michigan Supreme Court and in the entire judiciary.

the formal vote was a straw vote in an attempt to revise the history of prior actions taken by justices. *See supra* p 9-10.¹⁷ Revising history, and/or delaying or depriving the people of information that is important to the people for evaluating how justices conduct the people’s judicial business, is a misuse and abuse of power.

By tradition, proposed minutes for judicial conferences are currently randomly circulated, typically in large batches covering a dozen or more conferences, on an undefined date, sometimes weeks—more often months—after a conference takes place. The Chief Justice controls the agenda of the conference meetings, and the Court employees prepare the agendas at the direction of the Chief Justice. After the proposed minutes have been circulated, they are placed on a future undetermined administrative agenda for approval. To my knowledge during my twelve-plus years as a justice, the judicial conference minutes have rarely, if ever, been available before the next scheduled conference, nor have they been placed on the next week’s agenda, as they should be.

The now-approved March 1, 2006 minutes are an extreme example of how the present system can be manipulated and therefore subject to abuse. The March 1, 2006 minutes were up again for approval on March 14, 2007—more than a year after the March 1, 2006 conference occurred.¹⁸ It is a disorderly and unprofessional way to conduct the administrative business of the Court. It is essential to the integrity of the judiciary to have timely, accurate, and orderly minutes, promptly processed, approved, and published for the public’s access.

For example, the March 14, 2007 agenda contained 60 proposed minutes for review and action, dating back for more than a year from March 1, 2006 to January 4, 2007. Proposed minutes for the remaining three (3) conferences in January 2007 have still not been circulated.

Further, the lag times between the conferences and the circulation of their proposed minutes make it unnecessarily difficult for a justice to accurately compare the contents of the minutes to the actions taken at the conferences. Nevertheless, during my more than 12 years on the Court, up to the March 1, 2006 minutes, there was never a dispute about proposed minutes; the current traditional and disorderly system for recording, processing, and approving minutes seemed to work. But the disorderly tradition has proven unworkable, unacceptable and dangerous, as demonstrated by the more than year-long dispute regarding the truth of what actually happened during the March 1, 2006

¹⁷ Specifically, a formal vote by a justice during an administrative conference cannot properly be later mischaracterized as a “straw vote” simply because that justice has changed his or her opinion. A formal vote is a definitive action and must be recorded as such.

¹⁸ It is illogical to assume that the events of March 1, 2006, could be remembered more accurately on March 14, 2007, than they could have been a year ago.

administrative conference concerning the Rules for Disqualification of Justices.

Additionally, there are no rules governing what happens when all justices do not agree with what the proposed minutes should say. Historically, a dissenting justice would file a dissent with the Court, to be attached to the minutes and placed in the Clerk of the Court's office. However, at the discretion of the Chief Justice, minutes for select conferences can be omitted from the administrative agenda for approval, seemingly indefinitely. For incredibly long periods, select minutes can, and have been, kept off the administrative agenda of the Court, thereby secretly silencing and suppressing any discussion or dissent to what occurred on the date in question.

IV. CONCLUSION

The current traditional minutes processing system makes it possible for a power block of four justices, acting secretly and unaccountably, and as an unrestrained, super-legislature, to conduct the people's business in a disorderly, unprofessional, unfair, and haphazard manner. Consequently the present system must be reformed because the justices of the Supreme Court should instead be a group of seven impartial, independent, fair justices conducting the people's business in a most self-disciplined, restrained and just manner, with common sense.

It is critical that the minutes of this Court's weekly conferences on administrative matters be truthful and complete and that they record what actually occurred at each conference. The Michigan Supreme Court should have the most orderly, timely, accurate, and complete process for keeping and publishing minutes for its administrative conferences. Presently it does not. The minutes should be timely produced, acted upon, and made available to the public on the Supreme Court website. The minutes should memorialize this Court's conduct of the people's judicial business. They should be a window for the people to learn what, when, and how the justices perform one of this Court's core constitutional responsibilities, the supervision of the administration of the Michigan judiciary

An efficient and impartial judiciary is "ill served by casting a cloak of secrecy around the operations of the courts."¹⁹

¹⁹ *Scott v Flowers*, 910 F2d 201 (CA 5 1990).

Appendix A
ADMINISTRATIVE AGENDA

March 14, 2007

Update from Chief Justice

1. Approval of Minutes

March 1, 2006 (Opinions/CRs)
March 1, 2006 (ADMs)
March 22, 2006 (Opinions/CRs)
March 22, 2006 (ADMs)
March 29, 2006 (Opinions/CRs)
March 29, 2006 (ADMs)
April 19, 2006 (Opinions/CRs)
April 19, 2006 (ADMs)
April 27, 2006 (Opinions/CRs)

July 19, 2006 (ADMs)
July 21, 2006 (Opinions/CRs)
July 21, 2006 (ADMs)
July 24-28, 2006 (Opinions/CRs & ADM)
September 7, 2006 (Opinions/CRs)
September 7, 2006 (ADMS)
September 13, 2006 (Opinions/CRs)
September 13, 2006 (ADMs)
September 20, 2006 (Opinions/CRs)

May 10, 2006 (Opinions/CRs)	September 20, 2006 (ADMs)
May 10, 2006 (ADMs)	September 27, 2006 (Opinions/CRs)
May 17, 2006 (Opinions/CRs)	September 27, 2006 (ADMs)
May 17, 2006 (ADMs)	October 11, 2006 (Opinions/CRs)
May 24, 2006 (Opinions/CRs)	October 11, 2006 (ADMs)
May 24, 2006 (ADMs)	October 18, 2006 (Opinions/CRs)
May 31, 2006 (Opinions/CRs)	October 18, 2006 (ADMs)
May 31, 2006 (ADMs)	October 25, 2006 (Opinions/CRs)
June 7, 2006 (Opinions/CRs)	November 1, 2006 (Opinions/CRs)
June 7, 2006 (ADMs)	November 1, 2006 (ADMs)
June 14, 2006 (Opinions/CRs)	November 8, 2006 (Opinions/CRs)
June 14, 2006 (ADMs)	November 8, 2006 (ADMs)
June 21, 2006 (Opinions/CRs)	November 15, 2006 (Opinions/CRs)
June 21, 2006 (ADMs)	November 22, 2006 (Opinions/CRs)
June 28, 2006 (ADMs)	November 29, 2006 (Opinions/CRs)
July 6, 2006 (Opinions/CRs)	November 29, 2006 (ADMs)
July 6, 2006 (ADMs)	December 6, 2006 (ADMs)
July 10, 2006 (Opinions/CRs)	December 20, 2006 (Opinions/CRs)
July 12, 2006 (Opinions/CRs)	December 20, 2006 (ADMs)
July 12, 2006 (ADMs)	January 4, 2007 (Opinions/CRs)
July 19, 2006 (Opinions/CRs)	January 4, 2007 (ADMs)

CORRIGAN, J. (concurring). I concur in the approval of the minutes for these administrative agendas. I write in response to the dissenting statements of Justices Weaver and Kelly.

I. Response to Justice Weaver’s Draft Dissent

Justice Weaver inaccurately asserts that the vote to approve the minutes was 4-3. The vote to approve the minutes on March 14, 2007, was 6-1.²⁰ The final vote is not yet

²⁰ Under Justice Weaver’s theory, the straw vote taken at each conference is “final” and must be recorded. Thus, consistent with her own theory, Justice Weaver should recognize that the vote on 3/14/06 was 6-1, not, as she claims, 4-3. Justice Weaver dissents in writing to the minutes of 8 conferences, leaving her colleagues with no record of her position on the other 52 conferences. Moreover, Justice Kelly, who voted to approve all 60 of the minutes items that were considered on 3/14/06, has subsequently changed her mind and circulated a dissent to only 3 of the 60 minutes of conferences approved on 3/14/06. Justice Kelly has not withdrawn her vote of 3/14/06 to approve

determined, as of this date.

Fundamentally, Justice Weaver would alter the clerk's practices in recording our minutes in a regular and consistent manner for decades. Some historical background is therefore necessary. This Court first began to maintain formal minutes in 1964. Before that, no formal minutes were kept.²¹ The current clerk of the Court, Corbin Davis, has been the custodian of the minutes since 1980.

The clerk records final decisions of the Court, not, as Justice Weaver mistakenly assumes, straw votes that are subject to change. The reason for this is perfectly clear. Like all other courts, this Court speaks only through its written orders and opinions. *People v Hampton*, 407 Mich 354 (1978). If the minutes reflected straw votes subject to change, the minutes would sometimes conflict with the Court's written decision, creating unnecessary confusion regarding the Court's ruling.²²

Thus, because only final decisions are recorded, the minutes necessarily do not reflect votes that are later changed. This traditional manner of recording the minutes is entirely appropriate for a deliberative judicial body. It goes without saying that members of this Court, like all members of the judiciary, should keep an open mind when deciding a case. Therefore, justices will often try to persuade one another to rethink their initial views, and we should all endeavor to remain open to persuasion by our colleagues. This is an important and necessary ingredient of collegial deliberation.

Thus, it is certainly not uncommon for a justice to change his or her initial view on an item that has already been voted on. When that happens, the ultimate disposition of the matter is necessarily deferred to a later agenda. In that situation, the clerk's longstanding practice is, quite properly, to correct the minutes to reflect that the item has been passed to a future agenda, regardless of the amount of debate that has occurred or the degree of certainty in the minds of the justices that the matter was behind them. There is nothing remotely novel, unusual, or irregular about this practice.

the remaining 57 minutes considered on that date. Thus, Justice Weaver's assertion that the vote was 4-3 is inaccurate.

²¹ Indeed, it appears that this Court is one of the few state supreme courts to record formal minutes. An informal survey of several state courts reveals that most of them do not maintain formal minutes. For example, California maintains bare-bones minutes, and Florida keeps formal minutes, but Illinois, Indiana, New Jersey, New York, Texas, and Wisconsin do not keep formal, let alone public, minutes.

²² For the same reason, any delay in the approval of the minutes pending a final decision is appropriate. As a matter of simple logic, the minutes cannot reflect a final decision while justices remain free to reconsider their initial votes. Otherwise, the minutes would sometimes inaccurately reflect the ultimate disposition.

In short, the clerk's traditional practice is proper for the functioning of a deliberative body. It helps to ensure that justices will remain open to persuasion by their colleagues rather than becoming "locked in" to an initial vote by its recordation in the minutes.

Justice Weaver no longer shares this view of minute-keeping. She essentially suggests that the minutes on administrative matters are a form of "legislative history" that may never be corrected to account for a change in position. It is difficult to see how any internal deliberation would ever be possible if Justice Weaver's view were adopted. Indeed, it is fair to ask whether this Court would even have the benefit of confidential staff reports or interoffice memoranda if Justice Weaver's dissent were to become law. Her view simply has no basis in the historical practices of this Court.

Finally, it is noteworthy that a unanimous Court, including Justice Weaver, voted for the administrative order that distinguishes internal confidential information and final administrative decisions. Administrative Order 1997-10(B)(7) exempts a variety of internal court information from public disclosure, including:

- (e) An administrative record . . . that is to a substantial degree advisory in nature and preliminary to a final administrative decision, rather than to a substantial degree factual in nature.

* * *

- (n) An administrative record . . . in draft form.
- (o) The work product of an attorney or law clerk employed by or representing the judicial branch in the regular course of business or representation of the judicial branch.

Justice Weaver voted to adopt this order before three members of the current majority had even joined the Court. This order manifestly protects the confidentiality of our internal work product and communications. Our clerk's practices regarding the information included in the minutes remain consistent with the provisions of Administrative Order 1997-10.

II. Response to Justice Kelly's Draft Dissent

Justice Kelly contends that the minutes of 3 conferences are "inaccurate or incomplete," and she lists several items that she believes should have been included. Justice Kelly could have raised her concerns when the minutes first appeared on the Court's agenda by proposing additions or corrections before the Court voted 6-1 to approve the minutes. Instead, she raises her concerns for the first time in her draft dissent for later public dissemination. The objections she raises are answered in my response to

Justice Weaver's draft dissent.

Justice Kelly also contends that the minutes of June 7, 2006 should reflect the appointment of an ad hoc committee of three justices to consider changes to the handling of the minutes. Our clerk does not generally record the appointment of ad hoc, internal committees because the appointment of such a committee is not a final decision or action of the Court.

That said, I would be open to recording this matter if Justice Kelly would provide a reason for changing our clerk's practice.

Justice Weaver's Response to Justice Corrigan's Concurring Statement

Justice Corrigan's concurring statement (concurrence) does not refute the truth or accuracy of my dissenting statement (dissent) which evidences with quotes from her own memoranda and other members of the majority of four,²³ the inaccuracy, incompleteness,

²³ Chief Justice Taylor, and Justices Corrigan, Young and Markman, in a memorandum dated March 15, 2006 circulated their statement for the March 1, 2006 administrative minutes memorializing the majority of four's March 1 adoption by formal and final vote of the Justice Disqualification Internal Operating Procedure (IOP). That memo states:

We have voted today to codify our traditional disqualification procedure that has served this Court well during its existence and to publish this as an Internal Operating Procedure. <http://www.courts.michigan.gov>. We write here to explain our opposition to the disqualification rule proposed by Justices Cavanagh, Kelly and Weaver that has received recent attention on publication of *Adair v State of Michigan*, ___ Mich ___ (2006).

Justice Corrigan's memorandums of March 15 and March 27, 2006, further state that she concurs in the adoption of the IOP, and she later suggests on March 27 that the adopted IOP be rescinded in order to instead put forward Justice Young's adopted IOP as one of three justice disqualification proposals to be published for public comment. Pertinent portions of Justice Corrigan's March 15, 2006 memo are:

My statement concurring in the adoption of our disqualification policy follows. I have not yet had an opportunity to react to Justice Weaver's statement that was circulated a short time ago, but I plan to revise in response to her statement in my next draft.

* * *

Corrigan, J. (concurring). I concur fully in the adoption of the disqualification policy for Supreme Court Justices. In accordance with this Court's longstanding tradition, it is appropriate that motions for recusal should be decided by each Justice and should not be subject to review by the Court

The pertinent portion of Justice Corrigan's March 27, 2006 memo is:

and untimeliness of the administrative minutes for March 1, 2006, and March 29, April 19, May 17, May 24, May 31, June 7, and November 29, 2006, concerning the formal and final administrative votes, decisions, and work of this Court for over a year on the Rules for Disqualification of Justices.

Justice Corrigan's and the other members of the majority of four's mistaken view applied to the handling of the administrative minutes keeps secret from the people not only how and when the Court conducts the important administrative work of the people's judicial business, but what work is actually done. The people have a right to know what, when, and how we do the administrative work of the court, which involves such important issues as making Rules for Disqualification of Justices and adopting "gag rules" suppressing dissent, such as Administrative Order 2006-08 (AO 2006-08).²⁴

Justice Corrigan's concurrence to the adoption of the above referenced minutes, at length incorrectly and misleadingly attempts to justify the "logic" of haphazardly producing and approving inaccurate, incomplete and untimely minutes for the Michigan Supreme Court administrative conferences, some of which are approved over a year later.

In its support for this "historical" practice, the concurrence confuses and conflates two distinct areas of work of the Supreme Court: the Court's responsibility and duty for deciding cases as Michigan's court of last resort, and the Court's administrative responsibility and duty of general superintending control over all Michigan courts and judges, including making rules for their operation and discipline, and rules for admission and discipline of attorneys.²⁵ The Michigan Supreme Court's duty to decide cases is fundamentally different from its administrative duty to superintend the courts.

It is misleading for the concurrence to assert that keeping timely, accurate, and complete minutes regarding this Court's administrative votes, decisions, and work has anything to do with how this Court decides cases. Justice Corrigan incorrectly asserts that in order for the Court to function as a deliberative judicial body it is necessary that all

By way of clarification of my earlier memo today, I support publishing all of the proposals for comment. I agree that in the interim, we should retain the status quo practice on disqualification that this Court has followed for approximately 170 years. My suggestion to rescind the IOP was merely to allow Justice Young's proposal to be published along with the other proposals.

²⁴ See my dissent to the adoption of AO 2006-08, available on my privately funded website: <www.justiceweaver.com>, accessed on 4/16/07.

²⁵ Mich Const 1963, Art 6, §4.

minutes (administrative and case) only reflect final votes because “all members of the judiciary should keep an open mind when deciding a case.” *Ante* at 3. However, my dissent deals solely with minutes for *administrative votes and decisions of this Court*, not for cases heard before this Court. Administrative votes and decisions are final when they are made, unless they are specifically identified at that time as “straw votes” or decisions.²⁶ Administrative votes and decisions must be recorded in the minutes.

Votes on cases are not final until the opinion is signed and issued by the Court. My dissent does not dispute this fact, nor does it assert that the Court’s deliberations on cases be made available before an opinion is issued. When an opinion is issued by the Court, all justices must have indicated their position on the case. The mechanism for ensuring that each justice’s view has been expressed is the requirement that all justices “sign” a case opinion. A justice can write or sign the majority opinion (indicating that he/she agrees with the decision and analysis set forth in the majority opinion); write or sign a dissent (explaining why the justice does not agree with the majority opinion and indicating how the dissenting justice would decide the case); or write or sign a concurring opinion (indicating that the justice agrees with portions of the majority opinion, but perhaps states a different analysis in deciding the case). By reading a case opinion, the people can see exactly **what** was decided, and the reasons for each justice’s decision.

However, administrative votes or decisions of the Court are fundamentally different from deliberations and votes on cases. Administrative votes are formal and final actions of the Court that must be recorded the moment they are made, unless they are specifically identified at that time as straw votes.²⁷ Administrative orders or rules adopted by this Court are not “signed” by all of the justices, the way that cases are.

²⁶ The New Oxford American dictionary defines “straw votes” as “an unofficial ballot conducted as a test of opinion.”

²⁷ For example, this Court issued AO 2006-08 on December 6, 2006; however, I did not file my dissent to AO 2006-08 until December 19, 2006. The minutes for December 6, 2006, accurately reflect that AO 2006-08 was adopted on December 6, 2006. However, the proposed minutes for the December 6, 2006, administrative conference were not circulated until February 12, 2007, and were not approved until March 14, 2007.

What Justice Corrigan is suggesting is that, theoretically, any of the justices could have changed their minds about the adoption of AO 2006-08 until my dissent was circulated and/or the minutes were circulated/approved, and thereby negate the fact that AO 2006-08 was ever adopted. This suggestion is incorrect. Revoking a formal action of the Court requires a formal rescission of prior votes. The change of vote cannot simply be nullified by never mentioning that an administrative action of the Court ever occurred. The date AO 2006-08 was approved is December 6, 2006. It is not December 19 (the day I filed my dissenting statement); nor is it February 12 (the

The administrative function of the Court is a quasi-legislative function. Under its administrative authority, the Court adopts rules that govern how all the Courts in Michigan operate.²⁸ The Michigan Court Rules, Administrative Orders, and Internal Operating Procedures (IOP's) include rules (all of which were adopted by the Court) that govern the state's civil procedure, criminal procedure, appellate rules, and professional disciplinary proceedings, to name a few.

Michigan Court Rules, administrative orders, and IOPs are not "signed" by every justice before they are adopted and final. Instead they are discussed during the Court's administrative conferences, where each justice indicates his/her vote on the adoption of the rule, order, or IOP. The votes should be noted by the Clerk of the Court—to be published in the minutes for the administrative conference of the Court—and if a majority votes in favor of adopting a Court Rule, administrative order, or IOP, it is immediately adopted.

If a justice disagrees with the adoption of the rule in any way, the justice is free to write a dissenting or concurring statement, which would then be attached to the minutes concerning the rule (and in the case of Michigan Court Rules and Administrative Orders, a justice's dissenting or concurring statement would also be attached as a note to the Court Rule or Administrative Order, which is published in the Michigan Rules of Court).

If there is any hesitation about adopting an administrative rule, order, or IOP, a justice can indicate that his/her vote is a straw vote, and if the majority agrees, the matter is put off until a future administrative conference. Unless a vote is explicitly designated as

day the proposed minutes for December 6 were circulated); nor is it March 14 (the date the minutes for December 6 were approved). Had any justice wanted to rescind his/her vote adopting AO 2006-08, he/she would have had to formally do so, with the rescission duly noted in the minutes. The adoption of AO 2006-08 on December 6, 2006, is a historical event of action taken by this Court. The date AO 2006-08 was adopted is fixed and cannot be subsequently changed, whatever the reason.

The majority of four's adoption of an IOP governing the Rules for Disqualification of Justices on March 1, 2006, was an official administrative action of this Court analogous to the Court's adoption of AO 2006-08. Both the adoption of AO 2006-08, on December 6, 2006, and the adoption of the IOP on March 1, 2006, were actual official administrative actions taken by this Court. As such, subsequently filed statements cannot negate the fact that the IOP was ever adopted on March 1, 2006. An orderly way to change votes is to formally rescind the prior vote, and to note the rescission in the minutes. The concurrence's acrobatic efforts to justify the unjustifiable cannot change the fact that the minutes for the Michigan Supreme Court administrative conference of March 1, 2006, do not accurately report an official administrative action taken by this Court.

²⁸ Mich Const 1963, Art 6, §5.

a straw vote, the vote is final. If, as the concurrence asserts, final action on an administrative matter is deferred to a later agenda, the minutes should so reflect. It is a simple matter to have the minutes show “passed” when a decision on an administrative matter is truly put off to a later date. On the other hand, it is unacceptable to inaccurately and/or incompletely record in the minutes what occurred at the Court’s administrative conference to accommodate a justice’s possible eventual change of mind, or worse, to *change* the content of the minutes and thus the recorded history of what actually occurred.

If a justice subsequently changes his/her mind regarding the adoption of a Michigan Court Rule, administrative order, or IOP, the orderly procedure of doing so is to ask that the matter be placed on an administrative conference agenda of the Court, and to indicate their wish to change his/her vote and to formally move to rescind the earlier decision. A rescission of any decision should be duly noted in the minutes for the administrative conference, as should the new decision concerning the adoption or rejection of the Michigan Court Rule, administrative order, or IOP.

Given the quasi-legislative nature of this Court’s adoption of Michigan Court Rules, administrative orders, and IOPs, the people have a right to know what, when, and how the Court adopts rules, administrative orders, and IOPs. It is essential that administrative minutes be timely produced promptly after each administrative conference and circulated for approval at the next administrative conference of this Court. Otherwise, disputes over the truth, accuracy, and completeness of the administrative minutes, like this one, result in debating what actually occurred at an administrative conference over a year ago. It is illogical and indefensible to argue that actions taken at an administrative conference can be remembered with more accuracy a year after the conference took place.

The minutes for the Court’s administrative conferences are a record—a history—of the Court’s administrative work. Subsequent events *cannot* change the nature of events that have already transpired—events that the minutes should duly record. To “change” administrative votes at a later date and re-characterize what occurred at an administrative conference is to revise this Court’s history. It is critical that the minutes of this Court’s weekly conferences on administrative matters be truthful, complete, and timely and that they record what actually occurred at each conference. The Michigan Supreme Court should have the most orderly, timely, accurate, and complete process for keeping and publishing minutes for its administrative conferences. Presently it does not.

The administrative minutes should memorialize this Court’s conduct of the people’s administrative business. The minutes, along with the agendas containing the items for the business considered by the Court, should not only be filed in the Clerk’s office, but should be timely posted on the Supreme Court website. They should be a window for the people to learn what, when, and how the justices perform one of this Court’s core constitutional

responsibilities and duties, the general superintending control of the administration of the Michigan court system and judiciary.

An efficient and impartial judiciary is “ill served by casting a cloak of secrecy²⁹ around the operations of the courts.”³⁰

²⁹ It should be noted that as of today the IOP dealing with Rules for Disqualification of Justices, adopted over a year ago on March 1, 2006, has not been published. Nor have the three proposals on Rules for Disqualification of Justices been published for public review and comment, despite the fact that the proposals were approved and ready for publication on June 15, 2006, over ten months ago.

³⁰ *Scott v Flowers*, 910 F2d 201 (CA 5 1990).