

LEGAL ALERT

February 2005

CHANGE IS HERE, AND MORE IS COMING, FOR MICHIGAN'S APPELLATE COURTS

By Jon D. Vander Ploeg, Attorney

Michigan's appellate courts (the Court of Appeals and the Supreme Court) provide the final pronouncements on the meaning and application of Michigan law. The Court of Appeals is the first step in the appellate process. The Supreme Court is the top rung of the appellate ladder. These courts shape Michigan's common law, and interpret Michigan's statutes to guide their application. One fundamental principle of the law is *stare decisis*. This principle states that prior appellate decisions provide precedent for the decision to current and future cases. Hence, appellate courts revere tradition. Change of any sort comes slowly in the Court of Appeals or the Supreme Court. However, two major changes of interest are currently afoot in the Michigan appellate courts.

Brief Rules

First, the rules have been changed for processing a large category of Court of Appeals cases. Over the last couple of decades, every case in that Court has taken two years or more, from start to finish. The delay has been a source of great frustration to most litigants, but the Court of Appeals has recently been moving cases at a more rapid pace. Now, the Court has changed the rules regarding appeals from summary disposition, to make things go even faster.

When a trial court grants summary disposition to one of the parties prior to trial, the unhappy loser will usually take the matter to the Court of Appeals. The new rules cut the briefing time in half for these appeals. The rules also require that the circuit court briefs be filed in the Court of Appeals, serving as

the initial appellate briefs, with the parties allowed only to file supplemental briefs. The supplemental briefs are to be shorter than those that the Court of Appeals used to allow. The Court of Appeals anticipates that it should decide summary disposition appeals within six months, start to finish, following this new procedure.

Lawyers will now have to take greater care to produce circuit court briefs which will later meet Court of Appeals expectations. As for the Court, we shall see whether it can live up to its promise. As for litigants, they will see justice within a more reasonable time, so long as the Court gives all the care and attention that it should in deciding these cases.

Shifting Opinions

A second item of significant change for Michigan appeals is one of changing personnel in the Supreme Court. Justice Elizabeth Weaver has announced that she will retire in October 2005. Her retirement, and particularly the timing, heralds some shift in the Court's orientation.

The current seven member court has been divided between five "conservative" justices, and two of a more "liberal" persuasion. Justice Weaver came to the court some years ago with the support of the Republican Party. The conservative majority has counted on her. Her resignation allows Governor Granholm to make a more liberal appointment to fill her spot on the Court. It seems Justice Weaver has resigned with that outcome in mind. Her vote has noticeably turned away from the conservative majority in a few decisions of late.

With this new appointment, the court will likely split between four “conservatives” and three “liberals.” A three-member liberal minority will have a much better chance for swaying some decisions their way, than was true of the two member minority in the past. In other words, the pendulum which had swung so far toward judicial conservatism in the last few years, may be starting to swing in the other direction.

Finally, Justice Weaver criticizes the current system for electing judges to the Court of Appeals and the Supreme Court. She urges term limits, saying that she has been on the Court long enough, and that other judges and justices should be required to step down when they have reached a similar tenure on the court.

It is true that one political party will often leave a legacy on the high court that lasts well beyond a

change in popular political sentiment. Perhaps that is as it should be, in a system of checks and balances. Justice Weaver suggests otherwise. She does, however, criticize the term limits on the Michigan Legislature as being too short. Citing the precedent of Goldilocks, she says the limits should be neither too long nor too short, but, just right. Justice Weaver sees her ten years on the court as having been just right and she invites the Legislature to look into judicial term limits. The big question is whether the Legislature will have any interest in doing so. The answer is likely “no.” The party with the legislative power to do so will have little desire to term limit its political legacy on the courts.

Jon Vander Ploeg is a shareholder with Smith Haughey, where he practices appellate law in the state and federal courts. He can be reached at 616.458.1365 or jvanderploeg@shrr.com.

The Attorneys of the Appellate Law Department of Smith Haughey Rice & Roegge are:



Lance R. Mather, Chair
616.458.3364
Grand Rapids



Jon Vander Ploeg
616.458.1365
Grand Rapids



Richard C. Kraus
517.318.5653
East Lansing



John R. Oostema
616.458.0495
Grand Rapids



William L. Henn
616.458.5456
Grand Rapids