

# MICHIGAN SUPREME COURT



## *Office of Public Information*

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### **ATTORNEY GENERAL'S REQUEST TO REMOVE LANSING JUDGE TO BE HEARD BY MICHIGAN SUPREME COURT IN ORAL ARGUMENTS NEXT WEEK**

**District court judge's December 2010 appointment ended January 1, 2011, Attorney General argues; judge says district court statutes allow him to remain on bench**

LANSING, MI, April 27, 2011 – A dispute over whether a Lansing judge can remain in office will be heard by the [Michigan Supreme Court](#) in oral arguments on Tuesday, May 3, at the Michigan Hall of Justice in Lansing.

At issue in *Attorney General v 54-A District Court Judge* is whether Hugh Clarke, Jr., who was appointed by former Governor Jennifer Granholm to Lansing's 54-A District Court on December 20, 2010, can continue to serve as a judge. Clarke filled the seat vacated by former 54-A District Court Judge Amy Krause, whom Granholm appointed to the Michigan Court of Appeals on November 23, 2010 – three weeks after Krause was elected to a six-year term on the district court. Attorney General Bill Schuette has asked the Michigan Supreme Court to remove Clarke from office, arguing that Clarke could only continue in the district court seat until January 1, 2011.

In support of his position, Schuette cites a Michigan Supreme Court decision, *Attorney General v Riley*, 417 Mich 119 (1983). In December 1982, outgoing Governor William Milliken appointed Justice Dorothy Comstock Riley to the Supreme Court to succeed Justice Blair Moody, Jr., who died in November 1982 after being re-elected to the Court. In February 1983, after initially voting against her ouster, a majority of the Court voted to remove Riley; then-Chief Justice G. Mennen Williams concluded that the Michigan Constitution barred Riley from serving past the end of 1982. Riley won election to the Supreme Court in 1984 and served on the Court for 13 years, including four years as chief justice.

Clarke argues that the *Riley* decision does not apply to his case. Moreover, statutes that govern district courts permit Clarke to continue in office until a successor is elected and qualified, he contends.

Oral arguments in *Attorney General v 54-A District Court Judge* will begin at 9:30 a.m. in the Supreme Court's courtroom on the 6<sup>th</sup> floor of the Hall of Justice. The Court's oral arguments are open to the public.

*Please note: The following summary provides a brief account of a complex case and may not reflect the way that some or all of the Court's seven justices view the case. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of the case. Briefs are online at [http://www.courts.michigan.gov/supremecourt/Clerk/MSC\\_orals.htm](http://www.courts.michigan.gov/supremecourt/Clerk/MSC_orals.htm). For further details about the case, please contact the attorneys.*

**ATTORNEY GENERAL v 54-A DISTRICT COURT JUDGE (case no. 142550)**

**Attorney for plaintiff Attorney General:** Heather S. Meingast/(517) 373-6434

**Attorney for defendant 54-A District Court Judge:** Lawrence P. Nolan/(517) 663-3306

**Lower Court:** Court of Appeals (bypass application; complaint quo warranto)

**At issue:** The Attorney General has asked the Michigan Supreme Court to remove 54-A District Court Judge Hugh Clarke, Jr., from office, arguing that Clarke’s term expired on January 1, 2011. Clarke was appointed by former Governor Jennifer Granholm on December 20, 2010, to fill the district court position previously held by Judge Amy Krause, whom Granholm appointed to the Court of Appeals. Krause’s term on the district court was to expire on December 31, 2010; she had, however, just been elected to serve another six-year term beginning January 1, 2011. The Attorney General contends that, under Article 6, Section 23 of the Michigan Constitution, Clarke cannot hold over into the term that began on January 1. Should the Supreme Court remove Clarke from office? Does the reasoning in *Attorney General v Riley*, 417 Mich 119 (1983), apply to this case?

**Background:** The Attorney General has filed a lawsuit asking the Michigan Supreme Court to remove a Lansing judge from office, arguing that the judge – who was appointed by former Governor Jennifer Granholm in the final days of her administration – could only serve until noon on January 1, 2011. The case may turn on a 1983 Michigan Supreme Court decision, in which a Supreme Court justice appointed by former Governor William Milliken was removed by a majority vote of other justices.

On November 2, 2010, Judge Amy Krause, an incumbent of the 54-A District Court, was elected to a six-year term on the court. Three weeks later, Granholm appointed Krause to an open seat on the Michigan Court of Appeals; the judge accepted that appointment and resigned from the district court as of December 13. On December 20, Granholm appointed Lansing attorney Hugh Clarke, Jr. to fill the seat Krause had vacated; the appointment stated that Clarke would serve a term beginning December 22, 2010, and continuing until a successor is elected and qualified. Clarke was sworn in and serves as a judge of the district court.

On January 7, 2011, Attorney General Bill Schuette filed a complaint for quo warranto – a legal proceeding challenging a person’s right to hold a government office – in the Court of Appeals. He argued that Granholm did not have the authority to appoint Clarke to Krause’s new term of office, and that Clarke’s term ended at noon on January 1, 2011, when Governor Rick Snyder took office. In response, Clarke contended that he is entitled to hold office until 12 noon on January 1, 2013, following the next general election in 2012, in which his successor would be elected and qualified. Clarke also filed an emergency bypass application for leave to appeal to the Michigan Supreme Court, which the Court granted.

Under Article 6, Section 23 of the Michigan Constitution, a governor may appoint judges whenever “[a] vacancy shall occur in the office of judge of any court of record or in the district court by death, removal, resignation or vacating of the office .... The person appointed by the governor shall hold office until 12 noon of the first day of January next succeeding the first general election held after the vacancy occurs, at which election a successor shall be elected for the remainder of the unexpired term. . . .” Two statutes address vacancies in the district court and the term of a district court judge. MCL 168.467m(1) states, “If a vacancy occurs in the office of district judge, the governor shall appoint a successor to fill the vacancy. Except as otherwise provided in section 467c(4), the person appointed by the governor shall be considered an incumbent for purposes of this act and shall hold office until 12 noon of January 1 following the next general November election at which a successor is elected and qualified.” MCL 168.467i

provides that “Except as otherwise provided by law, the term of office for judge of the district court shall be 6 years, commencing at 12 noon on January 1 next following the judge’s election and shall continue until a successor is elected and qualified.”

The Attorney General argues that this case is controlled by *Attorney General v Riley*, 417 Mich 119 (1983), in which a majority of the Michigan Supreme Court ousted Justice Dorothy Comstock Riley on a quo warranto complaint from then-Governor James Blanchard’s administration. Milliken, nearing the end of his time in office, had appointed Riley to fill the remainder of Justice Blair Moody’s term; Moody was elected in early November 1982, but died on November 26. The lead opinion concluded that, under Article 6, section 23, the outgoing governor lacked the authority to appoint Riley to fill Moody’s new term, which began at noon on January 1, 1983. Relying on *Attorney General v Riley*, the Attorney General contends that Granholm did not have the authority to appoint Clarke to hold over into the term that began on January 1, 2011.

Clarke responds that *Attorney General v Riley* is a plurality opinion, signed by only three justices, and is not binding precedent. Moreover, Clarke argues, the 1983 ruling was based on constitutional language in Article 6, section 2 that applies only to Supreme Court justices’ terms of office. District courts, on the other hand, were created legislatively, and MCL 168.467i does permit holding over, so that a district court judge can continue in office until a successor is elected and qualified, Clarke maintains. He notes that MCL 168.467m(1), concerning gubernatorial appointments of district court judges, includes the same holdover language. Clarke also contends that, under Article 6, Section 4 of the state Constitution, the Michigan Supreme Court does not have the power to remove a sitting judge.

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