Order

Michigan Supreme Court
Lansing, Michigan

June 11, 2008

Clifford W. Taylor,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

ADM File No. 2008-01

Appointment of Chief Judge
of the Macomb County
Probate Court

On order of the Court and until further order of the Court, the Honorable Kenneth N. Sanborn is appointed acting chief judge of the Macomb County Probate Court. Because of previously scheduled commitments on the part of Judge Sanborn, this order will not be in effect on the following dates: June 16, 2008; July 7, 2008; and July 15, 2008.

Statement by WEAVER, J. (*concurring*). I concur in the removal of Judge Kathryn A. George as Chief Judge of the Macomb County Probate Court, and I concur in the order appointing retired circuit and former probate Judge Kenneth N. Sanborn as acting Chief Judge of the Macomb County Probate Court.

The damage that has occurred to the vulnerable Macomb County citizens needing guardian and conservator services to protect them and their property must cease and those responsible must be held accountable. With the removal of Judge George as chief judge and the appointment of Judge Sanborn, acting Chief Judge Sanborn can focus on protecting the most vulnerable citizens of Macomb County needing guardians and conservators, and focus on getting to the truth about the administration of the Macomb County Probate Court and how the damage occurred.[1]

At the time that this Court first considered whether to appoint Judge George as chief judge during the November 14, 2007, administrative conference, the Court lacked

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[1] As an alternative to Judge Sanborn, if it had been needed, I would have appointed retired Livingston County Probate Judge Susan L. Reck as acting chief probate judge of the Macomb County Probate Court. Judge Reck would have been a logical choice given her previous experience as Livingston County chief probate judge and Livingston Circuit Court chief judge in rectifying acrimonious court relations in the Livingston Circuit Court, and because she is an outsider to Macomb County.

sufficient information about certain events and actions concerning Judge George.[2] Consequently, the majority of four 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 had served well as the chief judge for almost eight years and to allow for independent investigation of the cloud hanging over Judge George's performance as a probate judge and her appointments of ADDMS Guardianship, Inc. (ADDMS).[3]

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[2] As I stated in my November 20, 2007 dissent from the order appointing Judge George as chief judge:

> 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. [Letters from SCAO to Macomb County Probate Court dated October 14, 2003, and December 5, 2003.]
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> 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. [Macomb County Probate Court financial record entries for fiscal year 2004.] 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.

[3] As I stated in my November 20, 2007, dissent from the order appointing Judge George as chief judge:

> 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 (13) years, and has also excellently served the past seven plus (7+) years as Chief Judge, since her initial

In addition, the November 17, 2007, memorandum to this Court from the State Court Administrative Office (SCAO) Region One deputy court administrator indicated that the deputy was awaiting the results of its own audit on the Drwencke conservator case—a matter that had generated negative publicity directed at Judge George and the Macomb County Probate Court.[4] At that point, consideration of an independent audit of the situation involving Judge George and the ADDMS guardianship services organization appeared to be necessary, rather than an "in-house" audit by the SCAO, or the Macomb County Probate Court.

Indeed, in January 2008, the Whall Group was engaged by the SCAO to conduct a forensic examination of the Macomb County Probate Court.

After my repeated requests to the chief justice and the SCAO for updates on the status of The Whall Group's investigation,[5] on May 16, 2008, the justices of this Court received an electronic version of a copy of the Whall Group Report (Report). Included with the Report was a cover memorandum of the same date from State Court Administrator (also Chief of Staff of the Michigan Supreme Court) Carl Gromek (SCA Gromek), "summarizing" the findings in the Report and recommending the removal of Judge George as chief judge, and the appointment of an acting chief judge instead of Judge O'Sullivan. My review of the 113-page Report, in addition to SCA Gromek's 3-page summary, confirms my early concerns about the impropriety of appointing Judge George as chief judge of the Macomb County Probate Court.

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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.

[4] *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 >.

[5] I made oral requests for updates during court administrative conferences on April 2, 2008, and May 7, 2008. I sent written memorandums to the Supreme Court requesting updates on April 8, 2008, and May 14, 2008.

And while I would agree that there appears to be an acrimonious relationship between Judge George and Judge O'Sullivan,[6] I disagree with SCA Gromek's assertion that the Report establishes that Judge O'Sullivan is at fault. On the contrary, the Report confirms not only Judge George's apparent inappropriate involvement with ADDMS guardian services, but also her apparent failure to properly oversee numerous guardianship cases.

SCA Gromek, in his very conclusory cover memorandum to the audit Report, makes broad assertions against Judge O'Sullivan that are not supported by the substance of the Report. To support his assertions, SCA Gromek creates a page and a half worth of bullet points supposedly summarizing the conclusions reached by the Whall Group. His first bullet point states "Proper procedures for court operations were either ignored or circumvented; the responsibility lies with both judges and, to a lesser extent, the court administrator." However, of the nine bullet points that SCA Gromek presents, five of them concern Judge George's questionable use of ADDMS conservator services. Although Judge O'Sullivan is mentioned in these bullet points, a thorough review of the Report, as well as the responses of Judge George and Judge O'Sullivan to the Whall Group Report including the documentation offered by Judge O'Sullivan in her response, belies involvement by either Judge O'Sullivan or the Macomb County Probate Court administrator. The majority of the Report discusses the numerous problems in Judge George's oversight of her cases, as well as Judge George's questionable overuse of ADDMS. SCA Gromek's memorandum correctly recommends the removal of Judge George as chief judge, but it seems a skewed representation of what the auditors conclude about the dysfunction within the Macomb County Probate Court.[7]

Further, the Report does not address two issues of primary concern: (1) the questionable attendance record of Judge George at the Macomb County Probate Court and Genesee Circuit Court, and (2) the questionable assignment of Judge George to

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[6] During the November 2007 consideration of the appointment of the Macomb County chief probate judge, no mention of the existence of such acrimonious relationship was brought to the attention of the justices by the Region One deputy court administrator, the SCA, or Chief Justice Taylor.

[7] I also note the peculiar absence of a cover letter from the Whall Group summarizing the conclusions reached in the Report. When asked during the May 21, 2008, administrative conference whether a cover letter from the Whall Group was ever received with the Whall Group Report, SCA Gromek denied receiving one. The absence of a cover letter from the Whall Group verifying that the Report was the group's independent work product is of concern. A letter from the Whall Group is necessary to establish that the audit was conducted and reported independently. Specifically, the letter should verify that neither SCA Gromek, nor the SCAO, nor any of the justices of the Michigan Supreme Court viewed, discussed, provided input, or edited the content of this Report with the Whall Group.

Genesee County just nine months after first serving as a judge in Macomb County, as well as the payment of $30,000 by the state of Michigan to Macomb County for a visiting judge to cover Judge George's workload for the numerous months she was continually assigned to Genesee County.

Although the directive of the Report stated that its objective was to study the efficacy of the Macomb County Probate Court, it is of concern that the attendance record of Judge George and the Genesee County assignment were not considered and investigated. These oversights and the fact that all of the justices of the Court were not consulted about the selection of the Whall Group and the scope of the audit by the Whall Group are of concern.

Finally, on June 2, 2008, the justices received from SCA Gromek a copy of another memorandum of the same date from the Region One deputy court administrator commenting on the Whall Report and the Macomb County Probate Court situation. Many of the assertions made in the memorandum conflict with documentation offered by Judge O'Sullivan in her response to the Whall Group Report (dated May 27, 2008) regarding the functioning of the Macomb County Probate Court over the past five years. Consequently, further investigation into the truth of this situation is warranted.

Accordingly, because the Report confirms the necessity for Judge George's immediate removal as chief judge, I concur in this Court's order removing Chief Judge George and appointing retired Judge Kenneth N. Sanborn as acting chief judge of the Macomb County 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.

June 11, 2008

Corbin R. Davis

Clerk