

## **Golden Legal Oversight Amendment**

### **Theodore A. Golden, M.D.**

Michigan Justice requires constitutional changes if the citizens of Michigan are to be treated fairly and ethically by the Michigan legal system. In 1970 former U.S. Supreme Court Justice Tom Clark stated that a “scandalous situation” existed nationally concerning the legal system policing itself. He warned attorneys that the public would not allow the legal system to police itself if changes were not made. He implied that the public has the right to police the legal system. His mission was to correct the “scandalous situation” so the legal system could continue to police itself. He did identify deficiencies and made recommendations to improve attorney ethics and discipline, while keeping the disciplinary process under the control of the legal system. Most of his recommendations have been implemented including courses in attorney ethics in law school curriculums, attorney ethics in bar exams, and utilizing professional staffs in the disciplinary process.

At a national level according to the most recent American Bar Association tabulations 1.5 percent of complaints filed against attorneys result in disciplinary sanctions with a high percentage of the disciplinary sanctions being a reprimand. The statistics for Michigan reflect the national average. In Michigan about 120 out of 4,000 complaints a year result in some type of disciplinary action. **The same “scandalous situation” exists today because the legal system controls the disciplinary process.**

Michigan citizens are injured by the legal system because the current Michigan Constitution deprives its citizens of fully participating in the legal system by denying citizens direct control of vital processes within the legal system. The Michigan Constitution grants the Michigan Supreme Court the authority to write the rules concerning attorney ethics, the power to be the prosecutor in the policing process, the right to appoint the juries hearing the prosecutor’s cases, and to be the judge and court of last resort. This concentration of authority and power goes counter to the basic American principle of checks and balances in the governing process. The Michigan Constitution allows the fox (ie. Michigan Supreme Court) to police the henhouse. This situation exists because the majority of individuals who wrote the current Michigan Constitution in 1963 were attorneys.

The Michigan Constitution renders the average citizen powerless to protect the integrity of the legal system by only allowing attorneys (ie. Justices of the Michigan Supreme Court) to write the Michigan Rules of Professional Conduct for attorneys, and gives the Justices of the Michigan Supreme Court complete control of the enforcement process. The Justices have written and established a very good ethical code with the Michigan Rules of Professional Conduct, but will not enforce the code. A tremendous conflict of interest exists because Michigan attorneys police themselves. Because the fox guards the henhouse, many attorneys who violate the Code are not disciplined. Errant attorneys know that they can violate the Code with impunity. Individuals are injured by the legal system because citizens lack the power to control the policing process.

### **Detrimental Michigan Court Rules**

The Michigan Constitution authorizes the Michigan Supreme Court to formulate and maintain Michigan Court Rules. Some of the rules due to conflicts of interest compromise Michigan citizens by favoring the legal system. Standards of behavior or enforcement of standards of judicial conduct are detrimental to citizens of Michigan because the Michigan Constitution gives the Michigan Supreme Court the authority to run and maintain the legal system.

Article VI, Sec. 5 of the Michigan Constitution states:

The Michigan Supreme Court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state. The distinctions between law and equity proceedings shall, as far as practicable, be abolished. The office of master in chancery is prohibited.

### **A new section must be added to the Michigan Constitution**

Article VI, Sec. 31 New section to be added:

Sec. 31

### **Citizens Legal Oversight Board**

A board known as the Citizens Legal Oversight Board shall be established. This board shall consist of nine members who shall hold office for terms of four years. The members of the Board need not be attorneys.

#### **Election and Appointment of Board Members**

The Board members shall be elected every two years at general state elections on a partisan ballot with independent candidates permitted on the ballot. Approximately one half of the Board members shall be elected at each general election. A primary election must be held prior to the general election for the partisan candidates. Independent candidates will be entered as a separate grouping on the primary ballot and all voters may vote on the independent slate of candidates. At the general election each party's slate or the independent slate cannot exceed the number of seats on the Board that are up for election. A registered voter of Michigan may qualify for a listing on the primary ballot if he/she presents a nominating petition to the proper agency with the number of names that is required for an individual to run for the State House of Representatives in that district. The governor shall fill board vacancies by appointment. Each appointee shall hold office until a successor has been nominated and elected as provided by law.

#### **New Name for The Michigan Rules of Professional Conduct**

The Michigan Rules of Professional Conduct will hence be known as the Michigan Code of Attorney and Judicial Conduct.

#### **Duties and Authority of the Citizens Legal Oversight Board**

The Citizens Legal Oversight Board shall be solely responsible for maintaining the Michigan Code of Attorney and Judicial Conduct. The Citizens Legal Oversight Board shall be solely responsible for maintaining Michigan Court Rules. Through rules established in the Michigan Code of Attorney and Judicial Conduct The Citizens Legal Oversight Board shall be empowered to specify who shall be licensed to practice law in the state of Michigan and its courts. The Citizens Legal Oversight Board shall have the authority to suspend and fine attorneys licensed in the state of Michigan, and suspend or remove sitting judges from the bench. The Citizens Legal Oversight Board is solely empowered to protect the integrity of the Michigan legal system by enforcing the Michigan Code of Attorney and Judicial Conduct.

The Citizens Legal Oversight Board is empowered to appoint delegates and hire staff to carry out its responsibilities.

### **Abolition of Existing Boards and Commissions**

The Boards of the Michigan Attorney Grievance Commission, Attorney Discipline Board, and Judicial Tenure Commission are abolished. All cases pending before the Boards of the Michigan Attorney Grievance Commission, Attorney Discipline Board, and Judicial Tenure Commission will be under the jurisdiction of the Citizens Legal Oversight Board. All records, files, and properties of the Boards of the Michigan Attorney Grievance Commission, Attorney Discipline Board, and Judicial Tenure Commission will be under the jurisdiction of the Citizens Legal Oversight Board.

### **Deletion of Article V, Sec 5 and Article VII, Sec. 30**

Article V, Sec. 5 (A majority of members of a licensing board must be of that profession.) will be deleted from the Michigan Constitution.

Article VII, Sec. 30 (Establishes the Judicial Tenure Commission) will be deleted from the Michigan Constitution.

### **Modification of Article VI, Sec. 3**

Article VI, Sec. 3 currently states:

#### **Chief justice; court administrator; other assistants.**

Sec. 3. One justice of the supreme court shall be selected by the court as its chief justice as provided by rules of the court. He shall perform duties required by the court. The supreme court shall appoint an administrator of the courts and other assistants of the supreme court as may be necessary to aid in the administration of the courts of this state. The administrator shall perform administrative duties assigned by the court.

New Article VI, Sec. 3

#### **Chief justice**

Sec. 3. One justice of the supreme court shall be selected by the court as its chief justice as provided by rules of the court. He shall perform duties required by the court.

### **Court Administration**

The Citizens Legal Oversight Board will be responsible for administering all courts in Michigan. The Citizens Legal Oversight Board shall appoint an administrator of the courts and other assistants as may be necessary to aid in the administration of the courts of this state. The administrator shall perform administrative duties assigned by the Citizens Legal Oversight Board.

### **Funding**

Funding for the Citizens Legal Oversight Board shall be by a mandatory assessment of each member of the Michigan Bar Association as determined by the Citizens Legal Oversight Board and through funds appropriated by the legislative branches of the Michigan government. The Michigan Supreme Court may not assess members of the Michigan Bar Association.

## **Comment**

Article VI, Sec. 31 shall be known as the **Golden Legal Oversight Amendment**.

The **Golden Legal Oversight Amendment** will help eliminate the *scandalous situation* due to conflicts of interest that are inherent with the current system maintained by the Michigan Supreme Court.

The intent of Article VI, Sec. 31 is to remove the Michigan Supreme Court and the legal profession from making and enforcing the rules concerning legal ethics in the State of Michigan. Michigan citizens will be empowered to formulate, maintain, and enforce Michigan Court Rules. A member of the legal profession will be able to participate in the process like any other citizen. The election process specified in Article VI, Sec. 31 is to make it difficult for special interest groups to control the Board. Hopefully, a partisan ballot with a primary election prior to the general election will stimulate public debate and awareness concerning the Board and candidates for the Board. Article V, Sec. 5, and Article VII, Se. 30 are to be deleted in order to remove conflicting language from the Michigan Constitution.

The Citizens Legal Oversight Board should administer the courts in Michigan. Citizen control of the courts will make the courts and the legal system more responsive to the needs of individuals and the public.

The **Golden Legal Oversight Amendment** will enhance the Michigan Supreme Court, because it will enable the Court to concentrate on its key function of interpreting Michigan law, and being the Court of last resort in Michigan.

I am sure the legal profession will be consulted and work on matters concerning the *Citizens Legal Oversight Board*, because that is the legal profession's role in society. Ethical attorneys should support Article VI, Sec. 31, because it will enable them to practice their profession in an honest, scrupulous, conscientious, and noble manner.

Amending the Michigan Constitution is a large undertaking and the **Golden Legal Oversight Amendment** should be subject to a lot of discussion and debate.

Michigan citizens should have a timetable for enacting the **Golden Legal Oversight Amendment**. I would like to see the **Golden Legal Oversight Amendment** on the ballot in 2008 or 2010 at the latest. Further information on what the citizens of Michigan can do to enact the **Golden Legal Oversight Amendment** will be forthcoming. If the citizens of Michigan want to be treated by the legal system in an ethical manner it is their responsibility to enact the **Golden Legal Oversight Amendment**, and then participate in the procedures that the Amendment provides to protect the integrity of the legal system.

Thank you.

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