

An interview with Justice Cavanagh



MICHAEL F. CAVANAGH

with Cavanagh

Shortly after Justice Michael F. Cavanagh retired from the Michigan Supreme Court, after 32 years of service on the high court, and formally joined the firm of Alane & Chartier, PLC, he was good enough to grant an interview with *BRIEFS*.

Following are his comments on what the future holds for him now that he has returned to private practice after a nearly a half century of public service:

Question: Justice Cavanagh, you are the longest serving appellate court judge in Michigan history, and, I believe, by a matter of just a few months, the second-longest serving Justice of the Michigan Supreme Court. You have done it all, from clerking at the (then) brand new Michigan Court of Appeals, to serving in the Lansing City Attorney's Office, to private practice with

the Farhat firm, and service at the District, Court of Appeals and Supreme Court levels of the Michigan judiciary. Yet here you are, embarking on another career. What keeps you so active and engaged in the profession at a stage in life when many would be happy to say, for the last time, "my pen is down?"

Answer: I am fortunate to have good health and a pretty good energy level and I can't imagine dropping out of sight and doing nothing. I enjoyed private practice very much prior to assuming the bench and am looking forward to returning to it at a rather leisurely pace.

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Q: I noticed when I was working on background for this interview that the clerks who were with you at the end of your term, Elizabeth Ribby-Shiels, Julie Agueros, Kirk Lapham and Joel Knaack, have all gone on to some form of public service. Do you think your example played any part in their post-clerkship career choices? And, pardon the compound question, but have many of your clerks gone on to careers in public service? Have you stayed in touch with the dozens of attorneys who have

served in your chambers?

A: A good number of my former clerks have continued in public service with the Attorney General's office, as Assistant U.S. Attorneys, in Prosecutors' offices, and in judgeships. I stay in touch with many of them. I have been fortunate to have had the service of some fifty-two outstanding and talented men and women, and was flattered when over thirty of them, from around the country, returned for the Court's retirement reception for me.

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Q: Not many jurists with a history of accomplishments as impressive as yours have gone into practice with two of their former clerks after leaving the bench, as you have chosen to do. What is it about Mary Chartier and Natalie Alane and their practice that persuaded you to take this unusual step?

A: Mary and Natalie are two very talented and dynamic individuals possessed of boundless energy. Having worked with them at the Court, I became well aware of their talent and engaging personalities and felt very comfortable reuniting with them. After my many years on the bench, our association

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Baker was a Michigan Supreme Court Commissioner from 2005 to 2013, after 19 years in the Honigman firm's Lansing office. Baker taught full-time at Wayne Law School and Cooley Law School, and in an adjunct capacity at Cooley and MSU Law School. He is now of counsel to Willingham & Cote, P.C., where he began private practice after serving as a law clerk to the Chief Judge of the Court of Appeals, the late Robert J. Danhof.

has provided me with a low pressure "soft landing."

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Q: What goals have you set for yourself in this new private practice phase of your career? What kinds of work do you see yourself doing?

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A: I anticipate that my role will be diverse -- mentoring the young lawyers in the firm, aiding Mary and Natalie in their appellate matters, consultation with other lawyers on appellate matters, moot courting (with other retired appellate judges) other firms' appellate arguments, and, of course, continuing my involvement with our State's Tribal Courts.

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Q: *Former Chief Justice Thomas Brennan appeared before the Court, both on briefs and as an oral advocate, a number of times after serving on the Court. Do you think that someday you might appear as an advocate before your former colleagues?*

A: I have no such plans at present, but would not rule out that possibility.

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Q: *You, perhaps more than any other single person, are responsible for the collegial relationship of mutual respect that exists between the Michigan Judiciary and the Tribal Courts of Michigan's federally recognized tribes. What prompted you, especially when you were Chief Justice,*

and consistently since then while serving as an Associate Justice, to devote so much time and effort to establishing and nurturing the relationship between these separate-sovereign judicial systems?

A: When I served as Chief Justice, I became aware of my own ignorance about our State's tribal courts and felt it important to educate our state court judges and the Bar about the constitutions and court rules of these sovereigns within our state. These tribal court systems are much less adversarial than our system, where we have to have a winner and a loser. Their goals are more focused on a restorative sort of justice. I firmly believe that our State can benefit greatly from greater informed and cooperative interaction with our tribal communities.

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Q: *Traditional Indian culture places a greater value on the wisdom that comes with age and experience than is perhaps reflected in Michigan's constitutional bar against being re-elected to the bench after the age of 70. Michigan tribal courts also include an appellate level. Have you ever thought about what your*

reaction might be if a Michigan tribe asked you to serve on its appellate court?

A: Yes, I have thought about that possibility and think I would enjoy such an opportunity.

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Q: *When I was a Commissioner at the Court, I once researched how often the United States Supreme Court had reversed the Michigan Supreme Court in cases in which you had dissented. Though I cannot recall the exact percentage, I remember being astonished at how often SCOTUS had agreed with you when you dissented. Can you recall any cases in which you were particularly gratified to be vindicated by the High Court?*

A: I have never kept track of my batting average but have always felt a well written dissent serves a very useful purpose by airing a rational opposing view and pointing out the flaws in the majority's reasoning. One matter where the reasoning of my dissent was adopted by SCOTUS was very gratifying. In the case of *People v. Bulger* [462 Mich 495 (2000), overruled in *Halbert v Michigan*, 545 US 605, 622 (2005) (citing dissent

Judicial clerks move on with their careers

By **FREDERICK BAKER JR.**

We thought it would be interesting to track down the clerks who served Justice Michael F. Cavanagh at the end of his final term. We asked each what they were doing in the next stage of their careers.

Elizabeth Ribby-Shiels was "happy to report that I am legal counsel with the Legislative Service Bureau, Legal Division." She enjoys her work with the bureau, a non-partisan agency that assists legislators with crafting proposed legislation, and is excited about her future there.

Kirk Lapham joined the Executive Division of the Department of Natural Resources, where he is "engaged with the administrative rules process, research(es) legal issues that arise in connection with the work of the DNR's various divisions, and interacts with the Attorney General's office" in connection with litigation involving the DNR.

Julie Agueros replied that "Justice Cavanagh was fundamental in developing many of his law clerks' outstanding professional ideals of loyalty and working tirelessly, while

never forgetting the importance of a laugh." She reports that she has "been lucky enough to land at the City of Lansing Attorney's Office, where I hope to apply those professional ideals to being a strong voice for the city where I grew up."

Joel Knaack, the last clerk Justice Cavanagh hired, has taken a position with Justice Bernstein to assist with his transition into office. "Working for Justice Cavanagh was amazing because ... I had the benefit of his history on the Court and his extensive jurisprudence. Working with Justice Bernstein has provided me an entirely new experience ... I have the opportunity to see the other end of the spectrum and help a brand new Justice shape his jurisprudence." Knaack has also been accepted into the Air Force JAG Corps, hopes to be commissioned soon and expects to leave for the Air Force in late March.

Unsurprisingly, after serving a Justice who has devoted almost a half-century to serving the public, all four appear to have found opportunities to render some form of public service. □

in Bulger of Cavanagh, J.], the Legislature had determined a guilty-pleading defendant forfeited an appeal of right and could only appeal by application. Our court ruled [in Bulger] that there was no right to counsel on that application. I dissented and would have held that as the only first tier of appeal that a

defendant had, there was a right to counsel. SCOTUS, by I believe a 7-2 vote, ultimately agreed with my dissent.

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Q: *Having had some opportunity to reflect on your many years of service on the Michigan bench, do you have any thoughts to share?*

A: I have said many times that I feel very fortunate to have had the opportunity to serve on a trial court, our intermediate appellate court and, of course, our Supreme Court. Each level presented different challenges and each produced a unique sense of satisfaction. I am very grateful. □