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STATE BAR OF MICHIGAN | JUDICIAL SECTION | PROBATE COURT COMMITTEE

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## The Road Less Travelled

by Hon. Tim Connors, Washtenaw County Circuit Court

We live in conflict. It is the path we have chosen. As judges, we sit each day at its center. We hear conflict, we see conflict, we touch conflict, we breathe conflict.

To our youth, to our families, to our communities, we serve as mile-stones on that path of discord. In a legal sense, we are the funnel point in the hour glass. The mass of conflict enters, is funneled, then analyzed grain-by-grain, case by case, person by person. We judge the who, what, when, where and how (seldom why) of an event. We label the event with the labels we have been given and send the litigants on their way. As we do, we tell them we never want to see them again.

I suspect the feeling is mutual.

Is that justice? If it is, can it be more than that?

If it can't, why not?

The experience of those inside the funnel either feeds the discord or dilutes it. If we are really fortunate, it transforms it. The transformation takes the gristle of divisiveness, utilizes the event to occasion reflection on common values and hears the perspective of those affected. The power of positive human interaction and expression is affirmed and that which is hurtful and destructive is consciously rejected.

It seems to me we should actively avoid the first outcome, strive for the second at all times, and seek the third whenever possible. Where might we find pathways to that third possibility? I believe we have much to learn from listening to the collective wisdom of those who were here before us,

our Native communities. In listening, it is important to reflect on a world view that permeates much of our institutional thinking, legal training and actual practice. Much of our approach to conflict is to resolve it by declaring the triumph of one legal right over the extinguishment of others.

When that conflict involves individuals with ongoing relationships, they often part company muttering, "I live to fight another day." The battleground is oftentimes our youth and our families. The fabric of our community continues to fray and eventually our institutions fight among themselves.

Like the White Walkers in *Game of Thrones*, the conflict continues to victimize and feed itself. The victims themselves add to and become part of the growing inhuman machine. Institutionally, we just shudder and mutter "Winter's coming."

Perhaps the movie *Abraham Lincoln: Vampire Hunter*, was not a spoof after all, but instead inspired by the President's famous lines, "Discourage litigation. . . . [T]he nominal winner is often a real loser. . . . As a peacemaker, the lawyer has a superior opportunity of being a good man."

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***“Each day, probate judges oversee conflict involving ongoing relationships. These conflicts need affirmation of, and redirection back, to the most basic values of human dignity and compassion.”***

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Abraham Lincoln: Vampire Hunter. Dir. [Timur Bekmambetov](#). Perf. [Benjamin Walker](#), [Rufus Sewell](#), [Dominic Cooper](#), 20th Century Fox, 2012, Film.

Our Michigan Supreme Court has built a road that could help lead us to that transformative path, The Michigan Tribal State Federal Forum. On June 25, 2014 in Administrative Order No. 2014-12 our Supreme Court opened with, “Michigan is privileged to be the home of 12 federally recognized Indian tribes and tribal court systems. Michigan has also enjoyed a long history of collaboration between state and tribal courts... Fostering continuing good relations between our state and tribal courts is of great interest to this Court.”

Our Supreme Court further explains in its Order, “For purposes of building on the past spirit of cooperation and of creating a dialogue among the state, tribal, and federal judiciaries, the Court recognizes the importance of establishing an ongoing forum that will address working relationships among the court systems and the interaction of state, tribal, and federal court jurisdiction in Michigan. The Michigan Tribal State Federal Judicial Forum is established.”

In its Naakonigewin (Charter) the Forum was given seven charges. The first charge is as follows;

*(1) to foster mutual understanding and acceptance by state, tribal and federal judges of the similarities and differences among each other's courts and legal systems;*

In support of fostering that mutual understanding and acceptance, the State Court Administrative Office (SCAO) had previously given Washtenaw County support to explore tribal court peacemaking philosophies, principles and practices and test how they might improve the quality of justice in state court systems. Tribal judges and tribal peacemakers from Michigan tribes were instrumental in providing a much needed rudimentary education to various state court actors. A summary of that work was most recently shared with attorneys in the June 2015, Michigan Bar Journal, in an article co-authored by me, Referee Susan Butterwick, and intern Kathleen Howard, entitled *Tribal Court Peacemaking A Model for the Michigan State Court System?* Through the Forum the

Supreme Court continues this commitment by providing Peacemaking education to state and federal judges. Once again, our tribal judges are instrumental in helping their state and federal counterparts to understand and appreciate it.

The inaugural meeting of the Forum in October of 2014 was truly historic. One of the more impressive results of that meeting was the formal adoption of the Forum's *Individual and Collective Commitments to the Forum and Each Other*. The process for developing those commitments was to posit to the entire body, “How should we relate to each other?” Thus, the question itself recognized and centered on the importance of relationships.

The resultant twelve commitments represent the amalgamation and acceptance of individual thoughts. As individuals, choosing how we should communicate with each other is a reflection of how we choose to view each other. When compared with the form of dialogue we most often see elsewhere in our society, these choices reflect a stark contrast. The question immediately surfaces: Which choice has the best possibility of achieving justice?

The twelve commitments promulgated by the Forum are as follows:

- Please do not interrupt the person speaking.
- Allow ample time for discussion of issues. Agree to commitment of discussion even if it extends beyond the time noted on the agenda.
- Allow everyone to express their position
- Trust in the co-chairs to select the best process for that meeting/issue regarding the style or method of discussion (i.e. use of a talking piece).
- Talking circle concept: everyone is an equal at the table, no hierarchy.
- Presume the best intentions of others.
- Seek first to understand and then be understood.
- Practice active listening.
- Have a willingness to adapt the agenda/discussion to recent developments.
- Maintain a commitment to an environment that fosters meaningful discussions.
- Be respectful of each other (Follow the 7 Grandfather teachings: Wisdom, Respect, Humility, Truth, Honesty, Love and Bravery)

- Speak your truth even when you are in the minority.

The Forum’s way of thinking has had ripple effects outside of judicial systems. For example, in May of 2015, the Board of Directors of Eversight, a domestic and international not-for-profit corporation, [www.eversightvision.org](http://www.eversightvision.org), reviewed the Forum’s Individual and Collective Commitments and adopted them as their own.

I did not come to the probate bench by birth, I was adopted. I have been elected by our community first as a district judge, then as a circuit judge. I asked to be placed under the guardianship of the probate judges. I did so because my collaborative work with tribal courts convinced me that probate judges do the most important work of our state judicial system, and I wanted to be a part of it. The Forum is fortunate to have longstanding judicial leaders from the probate judges’ association among its members. I consider my work to be “a relative placement” and I am grateful for it.

Each day, probate judges oversee conflict involving ongoing relationships. These conflicts need affirmation of, and redirection back, to the most basic values of human dignity and compassion. Here, more than anywhere else, the need for a concurrent path of conflict resolution is imperative. Native communities can help us nurture that concurrent path.

What follows are some quotations from parties and attorneys in probate cases, who walked the less travelled path and availed themselves of the peacemaking process to resolve their differences:

*“Thank you. Now I can finally be the daughter [in relation to my sibling] that my mother would have wanted me to be.”*

*“I learned that the others and myself all had truth; it just needed to be pieced together.”*



*“I have no doubt in my mind, that if this guardianship petition would have gone through the normal court procedure, there would be no mother/daughter relationship today...the Peacemaking Court saved one of the most important relationships one can experience – the parent/child relationship.”*

*“.[T]here are many different versions/perspectives to the truth...you need to be open to being empathic and make an effort to accept the other’s views/beliefs...not to try to change them but to accept them as their truth.”*

When I find the adversarial path and the peacemaking path diverge,

I choose the one less travelled by, and that has made all the difference

*[Editor’s Note: Robert Frost applied to peacemaking]*