# 62-B DISTRICT COURT

4740 WALMA, S.E.
KENTWOOD, MI 49512

WILLIAM G. KELLY
DISTRICT JUDGE

TERRY DINGMAN
COURT ADMINISTRATOR

DEBORAH CLANTON
MAGISTRATE

PHONE (616) 698-9310


August 23, 2005

RECEIVED
AUG 24 2005
CORBIN R. DAVIS
CLERK SUPREME COURT

Supreme Court Clerk
PO Box 30052
Lansing, MI 48909

Re: ADM File No. 2004-42

Dear Sirs:

I am strongly opposed to the proposed amendment of MCR 8.103. I am in favor of the proposed amendment to MCR 8.110.

The proposed amendment to MCR 8.103 provides that the State Court Administrator shall "File a request for investigation with the Judicial Tenure Commission against each judge who consistently fails to comply with the caseload management standards articulated in Administrative Order No. 2003-7 or fails to accurately report all matters undecided in compliance with the reporting requirement articulated in MCR 8.107."

State Court Administrator already has the authority to file a request for investigation with the Judicial Tenure Commission against each judge "who persistently neglects to timely perform his or her judicial duties." MCR 9.205(B)(1)(b).

I strongly believe that a judge who does not manage the caseflow in his or her court should be held accountable by the Judicial Tenure Commission but I am opposed to the use of Administrative Order No. 2003-7 as the basis for a request for investigation by the Judicial Tenure Commission.

The time guidelines set forth in Administrative Order No. 2003-7 are based on the time guidelines set forth in Administrative Order 1991-4. These guidelines were proposed by the Caseflow Management Co-ordinating Committee on which I was privileged to serve. When we developed these guidelines, we specifically indicated in our preamble that these guidelines were not meant to serve as the basis for judicial disciplinary proceedings. We developed these guidelines as aspirational knowing that achieving them would be very difficult. We set the goals high in an effort to pursue excellence. They were not "standards".

Despite a judge's best efforts, there are bound to be some cases that go beyond the time guidelines for legitimate reasons. For example, District Judges are expected to conclude 98% of

the misdemeanors within 91 days and 100% of the misdemeanors within 126 days. So far this year, the 62-B District Court has adjudicated 882 of the 909 misdemeanors adjudicated within 91 days (97.03%) and has adjudicated 898 of the 909 misdemeanors adjudicated (98.79% of the cases) within 126 days. Is this court then "consistently failing to comply with the caseload management standards articulated in Administrative Order 2003-7" because we took too long in 1% of our cases? I suggest that every district judge could be subject to a request for investigation by the Judicial Tenure Commission for "consistently failing to comply with the caseload management standards articulated in Administrative Order No. 2003-7" because I believe it is impossible to dispose of every misdemeanor within 126 days.

Administrative Order No. 2003-7 provides an exception for General Civil cases "for individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur." No similar exception exists however for misdemeanor cases.

Currently, MCR 9.205 provides, as follows:

> (B) Grounds for Action. A judge is subject to censure, suspension with or without pay, retirement, or removal for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice.
> (1) Misconduct in office includes, but is not limited to:
> (a) persistent incompetence in the performance of judicial duties;
> (b) persistent neglect in the timely performance of judicial duties;

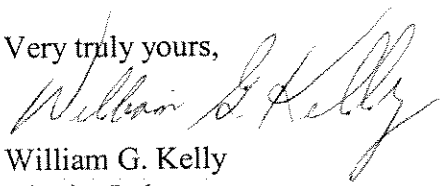
MCR 9.205(B)(1)(b) has been used several times by the Judicial Tenure Commission and the Supreme Court in judicial disciplinary matters. *In re Jelsema* 463 Mich 1229 (2001), *In re Hathaway* 464 Mich 672 (2001), *In re Noecker* 472 Mich 1 (2005), *In re Moore* 472 Mich 1207 (2005). I believe the current language of MCR 9.205(B)(1)(b) is sufficient to serve as the basis for judicial discipline for those judges who fail to properly manage the caseflow in their courts. Therefore, in my opinion, it is not necessary to amend MCR 8.103.

MCR 8.110 would be amended to require that the chief judge of each district court shall file a monthly report in which there has been a delay of more than 91 days between the date of the defendant's first appearance on the warrant and complaint or citation and the adjudication.

I agree that district courts ought to report any case that has been pending more than 91 days from the date of the defendant's first appearance. Currently, MCR 8.110 requires that the district courts report any case in which there has been a delay in excess of 6 months. The reports generated by the proposed order will be much lengthier than the current reports but I think that they will be valuable management tools for the district courts and for the State Court Administrator. The reports will highlight for the trial courts those cases which should be addressed promptly. It would also enable the State Court Administrator know which courts are in need of assistance and which judges are persistently neglecting the timely performance of judicial duties.

I suggest however that it be made clear that a court need not report a case if a bench warrant has been issued for the defendant's failure to appear for a pretrial or trial. I believe the time for disposition should start over when a defendant is arraigned after arrest on a bench warrant. Otherwise, any case in which the defendant fails to appear for a trial will almost certainly take more than 126 days from the initial arraignment to conclude.

Very truly yours,



William G. Kelly
District Judge