STATE OF MICHIGAN
THIRTY-NINTH JUDICIAL CIRCUIT

TIMOTHY P. PICKARD, JUDGE
ADRIAN, MICHIGAN

RECEIVED
AUG 26 2005
CORBIN R. DAVIS
CLERK SUPREME COURT

August 24, 2005

State of Michigan
Supreme Court Clerk
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2004-02 and ADM File No. 2004-60

Dear Clerk,

I am writing to comment and strongly oppose the proposed amendment of Rule 8.103(4) and Rule 9.205 (B).

I vehemently oppose the proposed amendment of Rule 8.103(4) which requires the State Court Administrative Office to file a request for investigation with the Judicial Tenure Commission against each judge who consistently fails to comply with the caseload management standards set forth in Administrative Order 2003-7.

Administrative Order 2003-7 required each court to establish a caseflow management plan and set forth guidelines for creation of such plans. Upon review of Administrative Order 2003-7, I personally contacted our regional administrator at the State Court Administrative Office and inquired if the time standards set forth in the order were mandates or simply guidelines for the courts to follow. I was assured that the time standards were guidelines and not mandates.

To require the State Court Administrative Office to report judges noncompliance with permissive guidelines to the Judicial Tenure Commission for sanction is wrong. Had the Court intended to make the time standards set forth in Administrative Order 2003-7 mandates which judges are required to follow, they should have passed those standards as court rules.

**No Circuit Court Enforcement Mechanism** - The Court, in Administrative Order 2003-7, failed to provide judges with any type of meaningful enforcement mechanism for the time standards set forth. For example, judges were not given the authority to dismiss cases that are not in compliance with the time standards. We can't sanction attorneys or pro per litigants for noncompliance with the time standard guidelines because they are not court orders or court rules. If we can't enforce the time standards set forth in some meaningful way, how can we be held accountable for noncompliance and threatened with sanction by the Judicial Tenure Commission

for something we really have no control over? In addition, the Court wants to amend 9.205 to require judges to pay costs, fees and expenses to the Judicial Tenure Commission for prosecuting complaints.

**Inadequate time to determine feasibility of time guidelines** - Caseflow management plans became effective in January of this year. Six months is not an adequate amount of time to determine if the time guidelines are feasible and are able to be complied with.

**No distinction based on caseload** - The Court fails to address the reality that different courts have different caseloads. It is patently unfair to hold courts to the same time standards if they have vastly different numbers of cases. A court with 1250 cases per judge is not in the same position as one with 850 cases per judge, yet both judges are held to the same time standards.

I have identified a number of factors which I believe make compliance with the time guidelines impossible. They are:

**Endangerment to the Public** - In Criminal Sexual Conduct cases it is often difficult for the probation department to obtain information on pedofiles and other perpetrators. To require the probation department to prepare an expedited report may result in significant information being left out because they simply did not have enough time to investigate. This could result in a reduced sentence and earlier release of a Defendant which would endanger the public.

**Discouragement of Judicial Economy** - Particularly in criminal cases, this Court allows adjournments to enable all of the Defendant's pending criminal matters to be heard together or sentenced at the same time. The Court does this to maximize judicial economy by resolving all of the pending matters at one time. Compliance with the time guidelines discouragesplea agreements.

**Discouragement of Certain Plea Arrangements** - This Court routinely adjourns sentencing hearings at the request of the Defendant and the approval of the Prosecutor to allow the Defendant additional time to pay restitution to the victim. The time guidelines set forth would discourage this type of plea arrangement.

**Discouragement of Use of Professional Evaluations and Reports** - In criminal cases, many times professional evaluations are needed, such as forensic evaluations. These evaluations are completed by experts in their field and many times the scheduling and completion of such evaluations will cause a delay in the proceedings. The Court should encourage the use of such professional evaluations despite the delay.

**Time Guidelines are Contrary to Legislative Intent** - The Michigan State Legislature has enacted legislation to require a mandatory waiting period for parties wishing to obtain a divorce. The legislative intent of such waiting periods was to encourage the reconciliation of parties and to preserve marriages whenever possible. The waiting period provides the parties time to decide if a divorce is really something they want to pursue. To expedite divorce actions to comply with the guidelines is contrary to the purpose of the waiting period.

**Service of Process** - the Michigan Court Rules provide that a Defendant has 28 days to file an answer to a complaint if the Defendant was served by mail. In Michigan the summons and complaint is good for 90 days initially and may be extended by the Court by order. Potentially a defendant could be served on the 90th day of the summons and have an additional 28 days to respond. Guidelines such as the one for divorces without children which require that 90% of those cases should be adjudicated within 91 days of the filing of the complaint are simply not realistic.

**Discouragement of Reconciliation** - Time guidelines for divorce cases used to expedite the dissolution of a marriage are inappropriate because they discourage reconciliation of the parties. This Court believes that the preservation of marriage is a goal of the State Legislature and should be a goal of the Courts. The Court should encourage reconciliation of parties and should not be scrutinized for adjournments granted in order to encourage such reconciliation.

**Discouragement of use of Professional Evaluations** - In divorce actions, many times professional evaluations are needed such as custody evaluations, property appraisals, business valuations, and domestic relations agreements such as QDROS and EDROS. These professional evaluations often are prepared by experts in their respective fields. The scheduling and completion of such professional evaluations will cause a delay in the divorce proceedings. The Court should encourage the use of such professional evaluations and should not be scrutinized for adjournments granted to enable the parties to obtain such professional evaluations.

**Discouragement of Alternative Dispute Resolution** - Guidelines that expedite the resolution process of cases, discourage ADR. ADR in contested cases is a valuable resource for resolution, but it takes time to perform successfully. This Court encourages parties to utilize all available forms of ADR despite the possible delay in proceedings. This Court recognizes that such encouragement is inconsistent with the times guidelines set forth in this order as participation in ADR virtually guarantees that many cases will not be completed within the set forth guidelines.

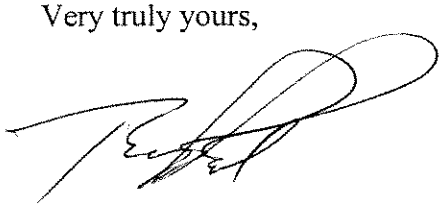
**Attorney Malpractice** - The time guidelines set forth in this order encourage the speedy resolution of all types of cases without taking into consideration the complexity of some litigation. The Court fears that if attorneys are pressured by the Court to expedite the resolution of cases, the attorneys may feel the need to expedite their cases to please the Court and potentially cause them to commit malpractice by not being as thorough in case preparation and resolution as they should be. To require attorneys to meet unrealistic time guidelines for resolution of cases would amount to malpractice in some cases.

**Discouragement of Payment of Child Support** - In felony child support cases, this Court routinely grants adjournments consented to by the Defendant and the Attorney General who prosecute such cases, to enable the Defendant to pay all or a portion of the delinquent child support. To require that these guidelines be followed, discourages this type of adjournment and the effective collection of child support arrears.

For the above reasons, I believe the proposed amendments to 8.103(4) and 9.205(B) are not feasible and, given the lack of authority courts have to meaningfully enforce the time guidelines set forth in Administrative Order 2003-7, how can a judge be held accountable?

Thank you for consideration of my comments. I remain.

Very truly yours,



Honorable Timothy P. Pickard
Lenawee County Circuit Court Judge