

Order

Michigan Supreme Court
Lansing, Michigan

March 6, 2025

Elizabeth T. Clement,
Chief Justice

ADM File No. 2023-35

Brian K. Zahra
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

Proposed Amendments of
Canon 3 of the Michigan
Code of Judicial Conduct
and Rule 6.5 of the Michigan
Rules of Professional Conduct

On order of the Court, this is to advise that the Court is considering amendments of Canon 3 of the Michigan Code of Judicial Conduct and Rule 6.5 of the Michigan Rules of Professional Conduct. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Michigan Code of Judicial Conduct

Canon 3. A Judge Should Perform the Duties of Office Impartially and Diligently.

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities:

(1)-(13) [Unchanged.]

(14) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, based upon race, color, sex, gender identity or expression, religion, national origin, ethnicity,

disability, age, height, weight, sexual orientation, marital status, familial status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.~~Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect. To the extent possible, a judge should required staff, court officials, and others who are subject to the judge's direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the court.~~

- (15) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment as provided in MRPC 6.5.
- (16) The restrictions of paragraphs (14) and (15) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

B.-D. [Unchanged.]

Michigan Rules of Professional Conduct

Rule 6.5. Professional Conduct

- (a) A lawyer shall not, by words or conduct manifest bias or prejudice for or against any person involved in the legal process, or engage in harassment against any person involved in the legal process, based upon race, color, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, height, weight, sexual orientation, marital status, familial status, socioeconomic status, or political affiliation, and~~A lawyer shall treat with courtesy and respect all persons involved in the legal process. A lawyer shall take particular care to avoid treating such a person discourteously or disrespectfully because of the person's race, gender, or other protected personal characteristic. t~~To the extent possible, a lawyer shall not permit~~require~~ subordinate lawyers and nonlawyer assistants to do so~~provide such courteous and respectful treatment.~~
- (b) A lawyer serving as an adjudicative officer, shall not, by words or conduct manifest bias or prejudice for or against any person, or engage in harassment against any person, based upon race, color, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, height, weight, sexual orientation, marital status, familial status, socioeconomic status, or political affiliation, and~~A lawyer serving as an adjudicative officer shall, without regard to a person's race, gender, or other protected personal characteristic, treat every person fairly, with courtesy and~~

~~respect. To the extent possible, the lawyer shall not permit~~ require staff and others who are subject to the adjudicative officer's direction and control to ~~do so~~ provide such fair, courteous, and respectful treatment to persons who have contact with the adjudicative tribunal.

Comment:

Duties of the Lawyer.

[Paragraph 1 unchanged.]

A lawyer must pursue a client's interests with diligence. This often requires the lawyer to frame questions and statements in bold and direct terms. The prohibition against manifesting bias or prejudice or engaging in harassment~~The obligation to treat persons with courtesy and respect~~ is not inconsistent with the lawyer's right, where appropriate, to speak and write bluntly. Obviously, it is not possible to formulate a rule that will clearly divide what is properly challenging from what is impermissibly biased, prejudicial, or harassing~~rude~~. A lawyer's professional judgment must be employed here with care and discretion.

[Paragraphs 3-4 unchanged.]

A supervisory lawyer should make every reasonable effort to ensure that subordinate lawyers and nonlawyer assistants, as well as other agents, avoid biased, prejudicial, or harassing~~discourteous or disrespectful~~ behavior toward persons involved in the legal process. Further, a supervisory lawyer should make reasonable efforts to ensure that the firm has in effect policies and procedures that do not discriminate against members or employees of the firm on the basis of the attributes identified in the rule~~race, gender, or other protected personal characteristic~~. See Rules 5.1 and 5.3.

Duties of Adjudicative Officers. [Unchanged.]

Staff Comment (ADM File No. 2023-35): The proposed amendments of MCJC 3 and MRPC 6.5 would incorporate the ABA Model Code of Judicial Conduct Canon 2, Rule 2.3 into Michigan's code and rule to prohibit bias, prejudice, and harassment.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201.

Comments on the proposal may be submitted by July 1, 2025 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2023-35. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ZAHRA, J., would have declined to publish the proposal for comment.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 6, 2025

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk