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Members of the Committee:

I write today objecting to the proposed amendments of MCR 9.220, 9.221, 9.223, 9.232, and 9.261. I find the timing of these proposed amendments interesting and troubling.

As prefatory matter, I would call the attention of this Committee of the multiple legal advantages that seated judges possess when it comes to revelations of misconduct:

- The investigations conducted by the JTC are completely confidential, with “all papers filed with the commission and all proceedings before it are confidential in nature and are absolutely privileged from disclosure by the commission or its staff, including former members and employees...” *See MCR 9.261(A)*;
- If the conduct that led to the allegation of misconduct occurred on the record, the recordings as a practical matter not accessible by the public. The Supreme Court has made access to audio and video recordings subject to local administrative orders. Thus, majority of Michigan Courts have thus forbidden access. *See to MCR 8.119(D) and SCAO Model Local Administrative Order 8.*
- Public access to JTC investigations is forbidden by law because MCL 15.232(h)(iv) exempts the judiciary from the definition of “Public Body” making the JTC beyond the reach of the Michigan Freedom of Information Act.
- Even if the public is aware of the allegations of misconduct and decides to take action to remove the judge from office, Judges are exempted from being recalled from office. *See the Constitution of Michigan of 1963, Art. 2 §8.*
- While the Michigan Supreme Court may, at their discretion, remove a judge from office, so may the Michigan Governor. However, to remove a judge from office for “reasonable cause...not sufficient ground for impeachment,” but can only be accomplished “on a concurrent resolution of two-thirds of the members elected to and serving in each house of the legislature.” *See Constitution of Michigan of 1963, Art. VI,*

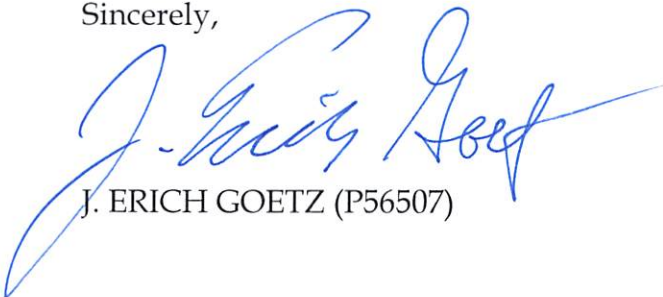
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- As it relates to elections, the Secretary of State is required to “issue an office designation of incumbent position for any judgeship for which the incumbent judge is eligible to seek reelection,” thereby giving seated judges an advantage among low-information voters. *See MCL 168.409b(5) et seq.*
- Finally, in larger circuits, the ballot does not delineate each judicial seat as an individual office. The ballot presents judges as a “slate,” of “pick not more than...” making it nearly impossible to challenge a seated judge via the ballot. Because of the structure of the ballot, challenging a seated judge accused of misconduct has the high potential of failing. Judge’s accused of misconduct will likely not be removed from office and rewarded for their conduct.

I object to the proposed amendments to MCR 9.223 and MCR 9.261. The primary purpose of the amendments appears to reveal the grievants identity to the respondents which likely will have a chilling effect on attorneys filing complaints with the JTC and also create an environment of retaliation by respondents. The disclosure of the grievants identity during the investigation period or instances where a complaint has not been filed will lead to respondents retaliating against grievants. Alleged Due Process claims by jurists during the investigation process and instances where complaints are not issued are completely disingenuous. There is no legitimate purpose to amend the current court rules. The proposed amendments will only erode the citizen's confidence and faith in our judicial system and lead the public to conclude the judiciary has no interest in transparency and accountability.

Finally, Lynn Helland, Executive Director and General Counsel of the JTC revealed to the House Committee on Appropriations Subcommittee that **seventeen judges have resigned over the past four years rather than have the revelations of their misconduct be made public**. This is another illustration of the public being denied transparency and accountability and it is shameful that the public will never know the circumstances that led to these resignations. I urge you not to amend the current court rules.

Sincerely,



J. ERICH GOETZ (P56507)