

MICHIGAN SUPREME COURT

PUBLIC HEARING

JANUARY 23, 2018

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**ITEM NO. 1 (ADM File No. 2002-37)**

**JUSTICE ZAHRA:** We will call the first item up. Item number one, ADM File No. 2002-37; we have three endorsed speakers. I'll start with Livingston County Prosecutor, William Vaillencourt.

For purposes, everybody gets three minutes. But I know a lot of you have travelled quite a way, so we're not gonna cut you off exactly at three minutes, but please don't abuse the privilege of extending it on.

**MR. VAILLIENCOURT:** Don't worry, I'm familiar with the rules. Good morning, William Vaillencourt. I'm Livingston County Prosecutor. I'm also the Vice-President of the Prosecuting Attorney's Association of Michigan. I appreciate the opportunity to appear today.

Prosecutors are certainly supportive of statewide e-filing. We've found it to be especially efficient and useful in the Appellate Courts and we especially appreciate its recent extension of the Michigan Supreme Court.

But the amendments under consideration, calling for the identification and disclosures of cases involving a family member or dependent of a defendant in a criminal case, they're not only unworkable, but they're impossible for prosecutors to comply with. PAM's written comment I think aptly summarizes our opposition

to those requirements and the difficulties they present. There's no need really for me to repeat them here. But I'd like to point out the -- that the Michigan District Court Judge's Association, and the State Bar of Michigan, have raised similar objections on these points. And I'd also like to specifically acknowledge and join in the observations of the State Bar Criminal Juris Prudence and Practice Committee.

One option to consider, depending on how significant this information actually is to e-filing, is a modification of the bond rule, to require the court to inquire of the defendant, at arraignment, of this information. Because the defendant obviously would be the person in the best position to have the knowledge about their dependents and whether or not there may be any cases involving them. Similar procedures could also be established for respondents in juvenile cases, or abuse/neglect proceedings as necessary.

I'd like to thank the Court for their consideration and we especially appreciate your action in suspending the implementation of these court rules, while the Court considers this. And I invite any questions.

**JUSTICE VIVIANO:** This information is not part of what you do now?

**MR. VAILLIENCOURT:** No -- no. I mean, we don't -- we don't have any information as to a defendant's family background, whether they're married, whether they have children. Obviously, in the course of a police investigation, the focus is on other information rather than getting that. And so, it's not information the police would ever obtain. It's not information that we would ever have at our fingertips, being able to identify -- you know, spouse, people they've had children with, the identity of their children. And then, trying to identify are there any court cases, not

only in our particular jurisdiction, but any jurisdiction throughout the state. And then the way the rule is worded, requires not only to identify the cases, but to know what the impact is on what any court orders might have been entered. So theoretically, the duty that's imposed by this rule is to find those cases and then review the pleadings to see if there's any court orders affecting any family member or dependent of the defendant; we just don't have that information and frankly, we don't have the resources to be able to do that either.

**JUSTICE ZAHRA:** Boy. That was well-timed. Any other questions? Okay. Thank you, very much.

**MR. VAILLIENCOURT:** Well, thank you.

**JUSTICE ZAHRA:** Have a good day. The next speaker is Novi District Court Judge, Judge Travis Reeds, representing the Michigan District Judges Association. Good morning.

**JUDGE REEDS:** May it please the Court, Travis Reeds on behalf of the District Judges Association. I do appreciate this opportunity to be here and speak on behalf of our organization. I won't take all of my time, because our commentary is fairly short; it's more of a nuts and bolts question that we have -- the immediacy of the rule versus the -- the practical application especially in the District Court, is what our concern is.

E-filing is going to require modifications to hardware to systems and making it immediately effective is going to be problematic. But philosophically, we're definitely on board with e-filing. I think that's the way our world has been heading for a long time. And the court systems as well, and we're definitely supportive of that concept. Just the role of it, if

you will, of that procedure is our only concern. And so, that's all I had unless there are questions.

**JUSTICE ZAHRA:** Any questions?

**MR. REEDS:** I'm the serial [ph] commentator, if I [indiscernible @4:46]. I might speak on that.

**JUSTICE BERNSTEIN:** Hey, we're going to see you a lot today, which is -- which is great.

**JUSTICE ZAHRA:** All right. Thank you, very much. Our final speaker on Item One is Lorry Brown, State Bar of Michigan Access to Justice Policy Committee. Did I pronounce your first name correctly?

**MS. BROWN:** Yes, your Honor.

**JUSTICE ZAHRA:** Thank you.

**MS. BROWN:** Yes. Good morning, your Honor.

**JUSTICE ZAHRA:** Good morning.

**MS. BROWN:** My name is Lorry Brown and I'm the co-chair with the State Bar Access to Justice Committee. I'm also an attorney with the Michigan Poverty Law Program. I'm here on behalf of the Access to Justice Committee of the State Bar. The State Bar first -- I'd first like to say the State Bar thanks this Court for its continued efforts to implement the state-wide e-filing system and appreciates the opportunity that the Court has welcomed feedback on this process.

The statewide e-filing system has the potential to dramatically improve access to the courts for vulnerable populations. Given that, and wanting to make sure that this happens, the Access to Justice Committee set out several recommendations in its Position Statement to ensure that indigents'

representative, the self-represented, the disabled, all will have access to the courts. I will just highlight at least three of the recommendations in our statement to ensure those access.

The first one is the expandin' the good cause exception to the proposed e-filing court rules. Currently, under the proposed rules, all litigants must e-file unless the advocate satisfied good cause exception. The rules, though, sort of sufficiently define the factors that will go into a good cause exception. And so wanted to make sure that it specifically sets out factors that will ensure that this vulnerable population that we're talkin' about, get to -- an opportunity to opt out. So factors such as whether they have access to an electronic device; whether they have access to a public computer; lack of transportation; often times where clients who live in rural -- they'll have transportation to the public library, have access to the public computer. Also, if they -- inability -- inability to travel as well. So certain factors. I mean, I specifically had a client last year that I was going to her home all the time, because she was disabled, a senior, and she didn't have ability to travel. And so a client like that would be a perfect client to be able to opt out, having to meet the good cause -- cause exception to opt out of the e-filing rules.

Another concern is that we wanted to make sure that if we're movin' towards mandatory e-filing system, the rules also require courts to help ensure accessibilities by providing computer terminals at the court houses, and accommodating individuals who don't have access to e-mails. And also, accepting payments other than credit cards. We have litigants -- litigants who have credit -- limited accessibility to credit. Also there are the [indiscernible @ 8:01] and those have debit cards or credit cards and so we're asking that there are alternatives such as being unable

to pay cash or a credit card -- I mean, or a money order at the counter so that to -- to ensure that they have access to the e-filing process. And so my minute -- my time is up. I just wanted --

**JUSTICE ZAHRA:** You can sum up, if you like.

**MS. BROWN:** Yes, please. Thanks. The State Bar also feels that the fundamental -- there's fundamental access to courts to all and the e-filing process will address that. All our details information are in access to Justice Statement and we hope that you take those into consideration.

**JUSTICE ZAHRA:** Thank you, any questions?

**JUSTICE VIVIANO:** I just want to say thank you for being here. Obviously, with respect to the e-filing the idea is to increase access to justice, and I think it does that in many -- many ways. But, we have to be mindful not to leave folks behind. And so I appreciate your input in the process.

**MS. BROWN:** Yes, well thank you. Thank you.

**JUSTICE ZAHRA:** Thank you.

**ITEM NO. 2 (ADM File No. 2014-29)**

**JUSTICE ZAHRA:** Move on to Item Two, Administrative File 2014-29; our first speaker will be Judge Travis Reeds from Michigan District Judges Association.

**MR. REEDS:** Good morning, again, your Honors. So this is something that the District Court deals with on a very regular basis. In our Court, it's almost a daily basis and we think this is also an excellent

example of where collaboration between the State Bar and the other organizations which are our [indiscernible @ :36] holders and how efficient we can operate, got together and we came up with perhaps a blended proposal.

From the District Judges perspective, we would suggest that you adopt the blended proposal. I think it's now called C, with a minor addition that the ability to waive the 14-day requirement of sub (c) 2 C's 14-day waiting period. That could be waived in the judgment. And that takes into account the balance between a landlord not having to wait longer; for example, in a landlord/tenant action to execute their writ as opposed to balancing people who may be applying for public assistance, or their funding for some of these things could be impacted negatively by entry of a judgment. With that being said, I think that our proposal adequately lays it out -- our -- our commentary. And if you have any questions and I can answer them?

**JUSTICE ZAHRA:** No questions, thank you.

**JUSTICE VIVIANO:** Thank you for working together to come to a --

**MR. REEDS:** What's that? I'm sorry, Justice.

**JUSTICE VIVIANO:** Thank you for working together to come to a reasonable resolution.

**MR. REEDS:** I think this will work, actually. So, thank you.

**JUSTICE VIVIANO:** Good, right [indiscernible @ 1:40].

**JUSTICE ZAHRA:** Karen Safran, State Bar of Michigan Civil Procedure and Courts Committee.

**MS. SAFRAN:** Good morning, your Honors. It feels weird, I was just introduced. But, I'm Karen Safran just repeating back -- my name back to you. I'm here on behalf of the State Bar of Michigan. I'm the Chairperson of the Civil Procedure and Courts Committee and -- just following up on what Judge Reeds just mentioned.

What has happened is, we were given Option A, originally. And then the suggestion as well, pick A or B. And the State Bar and a lot of stake [ph] holders -- holders went back and said would your Honors be willing to consider a third option, which has been colloquially termed Option C. And that is what's laid out in the letter from the State Bar dated -- from Janet Welch (ph), dated December 20.

The purpose of the rule is to allow for some flexibility and creative process in allowing parties to resolve cases, and to enter into judgments. The idea of a pocket judgment, where you have your settlement agreement and somebody doesn't pay, then you can come into court and get a default judgment. The rule was created as a compromise effort. I believe that all the stake holders are on board. There may be a couple of minor requests for minor revisions. And the couple of language changes that are in Option C, in the State Bar Proposal, rather than calling it the plaintiff or the defendant, the parties are now referred to as the defaulting party and the non-defaulting party. The reason for doing that is the plaintiff may not be the person who gets the judgment. If you have a counter-claim then you end up with a money judgment in favor of the counter-plaintiff. You know, the nomenclature may be a little bit different than simply plaintiff/defendant. So that was the reason for the defaulting and non-defaulting party language that was used.

The Option C, I think, as proposed, does give the parties the ability to waive the 14-day requirement. I think what happens is the -- it's the default as if the judgment doesn't say or the stipulated conditional order of dismissal doesn't say that a judgment can be entered immediately. So if the parties haven't specifically negotiated for that, then you fall into the 14-day waiting period. But the parties are free to agree to something different and to waive the 14 days.

**JUSTICE VIVIANO:** Is the default the same thing as a breach?

**MS. SAFRAN:** I -- a default of the -- I'm perhaps using both terms the same way. When you have your --

**JUSTICE VIVIANO:** Well then I guess, more importantly, does the rule use the terms -- to have time to refer to the non-defaulting party and other times, the breaching -- the breaching party?

**MS. SAFRAN:** Non-defaulting party/the breaching party; you're -- you're correct. So I guess we would need to change --

**JUSTICE VIVIANO:** The non-breaching party? Is the non-breaching party different than a non-defaulting party?

**MS. SAFRAN:** I would say no.

**JUSTICE VIVIANO:** Okay.

**MS. SAFRAN:** That we -- that should be cleaned up and it should be consistent throughout.

**JUSTICE VIVIANO:** Okay.

**MS. SAFRAN:** I -- I don't think there was --

**JUSTICE VIVIANO:** An intent there.

**MS. SAFRAN:** I did have one last point, if I may, just to --

**JUSTICE ZAHRA:** You may.

**MS. SAFRAN:** Appreciate that. And that is on the -- in response to the -- the creditors [indiscernible @5:08] letter. And the rule, as set up, puts the onus on the party, who is seeking a non-breaching party, to schedule the hearing, in the event that there's an objection by the breaching party. And the creditors [indiscernible @ 5:24] suggested that -- that be flipped and that either the court should set the hearing, or the party that filed the objection should schedule the hearing. And I think that is consistent with the way the rules are currently, with objections to 7-day orders.

However, in this instance, it may be more efficient to leave the proposal as is, because I think the party who has -- of the three parties, the party that wants the judgment entered, the party that's objecting to the judgment and the court, of the three of them, the party that is the most motivated to move this to a conclusion, would be the party that's seeking the entry of the judgment. So that's the reason why it was proposed that way. With that, unless there are any questions?

**JUSTICE ZAHRA:** I don't see -- none. Thank you, very much.

**MS. SAFRAN:** Thank you, very much.

**ITEM NO. 3 (ADM File No. 2015-20)**

**JUSTICE ZAHRA:** Item three, Administrative File 2015-20, proposed amendments to MCR 8.110 and 8.111; we have three speakers endorsed. We will start with Judge Michael Wagner from the Association of Black Judges of Michigan . Good morning.

**JUDGE WAGNER:** Good morning, Justices, and thank you for this opportunity to address this prestigious body. My name, as you stated, is Michael Wagner. I'm currently Judge of the 36<sup>th</sup> District Court. And I'm speaking on behalf of the Association of Black Judges in Michigan.

I've hold -- I held the privilege to have worn the uniform of the United States Marine Corp for 28 years. I retired to make [sic] a Colonel. And I give you this background because I have -- I've visited faraway lands, and I've waived the U.S. Flag to defend and promote democracy, fairness and due process. And it is disappointing that I now stand before this body and question proposals that would diminish and eradicate principles of justice and fundamental fairness at home.

Proposed amendments to MCR 8.110 AND 8.111 are the antithesis of what we learned in our Civic Government and Law classes. We learned that due process and fundamental fairness are the pillars that support our democratic and judicial procedures. We learned that all, rich and poor, have the same right to view and examine accusations against them, to question and/or respond, to have a fair hearing by an impartial or unbiased body. These proposed amendments would suspend and eliminate a necessary check and balance. There's an old adage, if it isn't broken don't fix it.

The State Court Administrator's Office and the Judicial Tenure Commission currently have the administrative structure and the necessary components to be sure that all allegations against a Judge are thoroughly investigated and reviewed through an

unbiased prism. The irony of this proposal is that it is directed at the Judiciary and would never be considered the State Courts against the general public.

I have to pose the question, why? And what is this need and why now? Pardon me. Is there a dramatic uptake in the Judge -- uptake in Judges that are suddenly not competent and not of sound mind, behaving unethically or immorally? Is this behavior now at a tipping point that exceeds the capabilities of the JTC or SCAO? Is there a need to push this great responsibility and authority down to the local Chief Judge, where the scandals could vary greatly.

Michigan has 57 Circuit Courts, 78 Probate Courts and approximately 100 District Courts that -- I don't know exactly how many Chief Judges that would be, but I would expect there would be over 100. And, of course, this is below the Cir -- the Court of Appeals and not including Tribal Courts. This is troubling in that many disputes are often predicated, not necessarily on substance, but rather on personality, relationships, history, temperament and the color of conviction -- red versus blue, as well as other human shortcomings. This authority must remain the purview of SCAO and JTC, to maintain a consistent application of due process.

Well, I don't wanna -- well, I was gonna read a part of the rule and -- if I -- if I may? If a Judge does not timely dispose of his or her assigned judicial work, or fails or refuses to comply with an order or directive from the Chief Judge, made under this rule -- and this is a part of the change here -- or otherwise acts in a way that raises questions regarding the propriety of the Judge's continued service, the Chief Judge shall report the facts and initiate corrective action, including relieving the Judge from presiding over some of the Judge's docket; this is something that's historically and constitutionally been the authority of the Supreme Court. And I believe that's

where it should remain. In closing, there was a few other things, but I don't want to exceed my time.

In closing, I would like to point out an additional concern that this body should consider. And that would be HIPAA, The Health Insurance Portability and Accountability Act. Now that a Judge can be ordered, as opposed to requested, to submit to an independent -- well, strike that. If in fact this proposal goes through, a Judge could be ordered to submit to an independent medical examination, and not requested as the -- as the prior rules would have had. Must a Judge agree, now that he's ordered? Will there be HIPAA compliance training? HIPAA requires confidentiality, what does that entail; is that the Chief Judge, the Court Administrator, Administrative Assistants? And what of violations? Who would maintain these records, and where, and how long. And can a Judge have his records returned?

I thank you for your time. Are there any questions?

**JUSTICE ZAHRA:** You raised some HIPAA questions, but setting those aside, is it -- you know, on your due process point, are there any other checks and balances that would satisfy you? If the Chief Judge takes action and provide for an immediate hearing, is there anything that -- that can be provided additional process --

**JUDGE WALKER:** Well, I think if you're going to --

**JUSTICE ZAHRA:** -- that could be satisfactory to you?

**JUDGE WALKER:** I apologize for, you know.

**JUSTICE ZAHRA:** No, that's okay.

**JUDGE WALKER:** I think if there's any shortcomings, they should be shoring up those within the JTC and SCAO. Right now, this proposed hearing would eliminate the notice that a Judge would hear -- if there's a request for investigation, currently a Judge would be assigned -- strike that -- a lawyer would be assigned to the Judge and none of those are in place with this proposed rule change.

**JUSTICE ZAHRA:** Anything else? Okay. Thank you very much.

**JUDGE WALKER:** Thank you.

**JUSTICE ZAHRA:** Next is Judge -- is it Philip Thomas? Attorney, Philip Thomas.

**MR. THOMAS:** Good morning, Justices and thank you for the opportunity to appear here, today. I serve -- I had -- I serve today as counsel for the Association of Black Judges of Michigan, and I --as I have in the past.

Judge Wagner covered a lot of the due process concerns of ABJM, as was covered in the letter that the ABJM sent to the Court. I want to make you aware of something that you may not be aware of right now. And that is that these rules really eradicate a Judge's ability to have legal counsel represent him or her in this new type of hybrid proceeding that is contemplated by the amendments to MCR 8.110. There is no provision in there for notice to the Judge; there is no provision in there for a Judge to answer.

I want to tell you first hand, I -- I represent Judges in Judicial Tenure Commission proceedings. And while a lot of people, myself included, have complained about the restrictions and the limited protections provided in Chapter 9.200 et seq, they are worlds and light years ahead of this proposed amendment that we're

here talking about today. A Judge under the proposed amendment, literally would not have any notice that his or her Chief Judge and the State Court Administrator are investigating them or evaluating questions as to their mental competency, physical competency, or their ability to oversee their docket; there's none of that.

You take a look at Michigan Court Rule 9.207. There is a panoply of rights in there that are given to Judges. Now, while there are a panoply of rights given to Judges to know what the allegations are, to -- to respond to them, the same rule gives the Judicial Tenure Commission the ability to come to the court and say, look, a lot of the time limits and -- and the time periods that a respondent Judge has to normally respond, should be cut short here, because these are extraordinary circumstances. And I'm quoting now from MCR 9.219.

Back in 2010, the then Court Administrator, along with a Chief Judge, had occasion to make a determination that a member of the Association of Black Judges of Michigan may have had mental problems. I was brought into the scene late. And the reason I was brought in late is the Judge never even knew that there was this type of back-door communications going on between the Chief Judge and the Court Administrator. At the time I was brought in, I was only afforded a very limited role. And of even more concern to just the mechanics of me not having any right to know what the allegations were, who made them and to respond, I want you to know that Judges' insurance policies, where they have them -- and not every court in the state of Michigan has Directors Liability policies for their Judges. But in those that do, and in that particular case, my client had coverage -- he had coverage through a limited liability policy. They wouldn't provide any coverage because a request for an investigation had not been filed with the Judicial Tenure Commission; there was no action pending.

**JUSTICE ZAHRA:** You said Director Liability policy, you mean disability policy?

**MR. THOMAS:** No -- no, the Directors' Liability Policy. It's a policy carried by courts to defend Judges if a civil lawsuit is filed, if a Judicial Tenure Commission Complaint is filed against a Judge. Something along those lines. But those are complaint-oriented; in other words, if a Judge is involved in a dispute with his or her Chief Judge, there's no Directors Liability policy --

**JUSTICE ZAHRA:** I see.

**MR. THOMAS:** -- that's going to cover that. The Judge would have to go out and retain a lawyer, as I was retained in that circumstance. And the heartbreaking thing in that case was my client had to cave in. We wanted to come to the Michigan Supreme Court on a Superintending Control action. He didn't have funds available to pay out for that. And we had to accede to the mental examination. And I want to tell you, you have a file here in the Court Administrator's Office. He passed with flying colors.

There is a danger in this court rule. For there to be rubs between Chief Judges and -- and I hate to say this, but oftentimes in the cases I'm involved in, members of the Court Administrator's Office are called as witnesses. And generally speaking, from my experience, they side with the Chief Judge. You know, it's just something --

**JUSTICE ZAHRA:** All right.

**MR. THOMAS:** -- that happens.

**JUSTICE ZAHRA:** Would you like an opportunity to sum up, your time is up.

**MR. THOMAS:** Okay. Justices, you have a court rule right now, 9.219. And in that court rule, it says that in extraordinary circumstances the Judicial Tenure Commission can petition for interim suspension of a Judge, before an investigation is even completed. So if there were good faith arguments that a Judge is totally unfit to oversee his or her docket, or that there's a mental problem, or a physical problem, they can -- they can petition under this court rule just to open an investigative file and come and ask you to suspend the individual.

Language could be added to that rule. As you sit here today, and you contemplate the court rule and what I'm asking you to consider, language -- specific language can be added to that court rule which says, extraordinary circumstances include, but is not limited to, mental or physical disability. So we have rules in place right now. And that's my -- that's the position that I'm presenting to the Court on behalf of ABJM.

**JUSTICE ZAHRA:** Thank you for your presentation.

**JUSTICE BERNSTEIN:** Coun --

**JUSTICE ZAHRA:** Any questions?

**JUSTICE BERNSTEIN:** -- counsel, I have a few questions; what is meant by physical disability? What would the concern arise in pertaining to a physical disability?

**MR. THOMAS:** Are you talking about that particular case that I handled back in 2010, Justice?

**JUSTICE BERNSTEIN:** Well, I'm talking about just how would you define physical in general, when it says -- why would the Chief Judge have to get involved with a Judge who has a perceived physical disability?

**MR. THOMAS:** Well I have represented several Judges in situations where there is chronic absence from the Court --

**JUSTICE BERNSTEIN:** I see.

**MR. THOMAS:** -- due to a physical illness. Once it was a heart ailment and -- and that would be physical. Mental, I would assume that -- that goes to a Judge's emotional status or a question of mental illness. It's very broad. It's very vague as contemplated in this proposed amendment.

**JUSTICE BERNSTEIN:** And why do you think that this is being brought forward, now?

**MR. THOMAS:** I -- I believe that historically, from my -- from my experience in judicial disciplinary matters, I think historically that there may have been some feeling by those involved in the process, the Court Administrator's Office, even this Court, Chief Judges that judicial disciplinary proceedings oftentimes are drug out. They don't resolve fast unless, you know, a petition is filed for an interim suspension before you. And that does not happen in every case. I'm -- I'm hypothecating on that. I'm just saying that I think there has -- you know, you -- on two different occasions, you've amended the court rule to indicate that you have the right to order that a case be expedited. And I think that sometimes that's happened when there's been a high visibility case that's obtained a lot of media coverage.

**JUSTICE BERNSTEIN:** I guess my other question is, why couldn't this just all -- and I think you addressed it, but I just want you to expand a little bit more. Why couldn't this all be handled through the JTC? Why is this not their purview and why can they not be able to deal with these issues?

**MR. THOMAS:** Well, Justice, I -- I'm tellin you that's the position of the Association of Black --

**JUSTICE BERNSTEIN:** All right.

**MR. THOMAS:** -- Judges of Michigan, the District Court Judges wrote to you, the State Bar wrote to you; this is within the purview of the Judicial Tenure Commission. By -- by Constitution --

**JUSTICE BERNSTEIN:** All right, I'm gonna ask the speakers that support this, the same question. So I'm just asking it to you, as well.

**MR. THOMAS:** What I feel about it? I feel that it can be covered. I feel that there's no question that everything that is -- and that people are endeavoring to cover in this proposed amendment, I think it can be covered in the existing rules. I -- I do. I've seen it done.

**JUSTICE BERNSTEIN:** And do you think -- and I think you said this, but I just wanna kind of hear it just, you know, to get a sense of exactly -- do you think that this could create issues in terms of the fact that, you know, ultimately the Chief Judge -- when we choose the Chief Judge, this would really kind of heighten the Chief Judge's power in a lot of ways. And in certain situations when you have rifts that exist, kind of on certain benches, do you feel that this could be something that could create some other issues that people could now have in terms of their service on the court?

**MR. THOMAS:** Yes, absolutely. And I will tell you why. Judges come to the bench, different personalities, different background. Some Judges have served in prosecutors' offices and they may be perceived as [indiscernible @ 15:17] being pro-

prosecution in criminal cases. Other Judges come from the defense bar. They may be perceived as being pro-defense oriented. You get a Chief Judge that may be pro-prosecution, be perceived as pro-prosecution. Another Judge that's perceived as being pro-defense -- who -- who's to say that issues aren't going to arise just from the Judge's rulings, or how a Judge is handling his or her case? Or, complaints that the Chief Judge is hearing through the grapevine.

I think it's ripe for abuse and I will tell you this, I really believe that when you look at the comments of the other by [ph] the entities that submitted them, I think that those -- that those concerns are problems. They're certainly concerns of the Association of Black Judges in Michigan.

**JUSTICE BERNSTEIN:** Thank you, counsel.

**JUSTICE ZAHRA:** Thank you. Thank you, very much.

**MR. THOMAS:** Thank you, very much.

**JUSTICE ZAHRA:** The next speaker is Judge Travis Reeds, Michigan District Judges Association, Novi District Court. I suspect you concur with the prior comments?

**JUDGE REEDS:** Yes. Entirely? Want me to --

**JUSTICE ZAHRA:** No, please. Go ahead, you've got your time.

**JUDGE REEDS:** Oh, no. I just wanna -- we have a suggestion, so I don't want to reiterate prior issues that have been raised or points that have been made. But, we as the District Judges Association, have a potential solution that's a modification or -- or an addition, perhaps. That this Court create -- when there's a Judge that fails to inform their Chief Judge

of a health condition or circumstance, which results in that Judge's absence for a period of 10 days, to create an affirmative duty to advise the Chief Judge and inform him or her of that reason, and the expected duration of the absence that seemed to be kept confidential. And then failure to inform the Chief Judge, failure to so inform the Chief Judge of that health condition or circumstance, which necessitates the absence, could then be a basis forming SCAO and initiation of the JTC complaint.

In other words, it appears from -- it appears that there's perhaps some motivations for the proposed amendment which might be satisfied by that, by creating this affirmative duty. I think Judges should be self-policing. We need to be forthright. We need to be honest, even when we're accused of doing something improper, we need to always be honest and respond. And in creating this affirmative duty would fit nicely into that requirement that all of us have as Judges. And that would be the only addition I would have to our commentary.

**JUSTICE ZAHRA:** Thank you, very much. Any questions?

**JUDGE REEDS:** Thank you.

**JUSTICE ZAHRA:** Thank you.

**ITEM NO. 4 (ADM File No. 2017-04)**

**JUSTICE ZAHRA:** Item Number Four, proposed amendment to Canon 4E sub(4)(a) and (c)--

**JUDGE REEDS:** You would think --

**JUSTICE ZAHRA:** -- of the Code of Judicial Conduct.

**JUDGE REEDS:** -- you would think this would have been the most important one, right? They sent me up on the previous, however. Obviously we have no objection. This tracts the federal proposals and the federal procedures. It's more in line with current values of the dollar and so on and I don't see any reason why this would be objectionable. And it's probably long overdue. So that's our position. Any questions?

**JUSTICE ZAHRA:** None. Thank you, very much. That concludes our public hearing. We'll adjourn.

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