

# Michigan Judges Association

## Founded 1927

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November 28, 2016

Larry Royster  
Clerk of the Court  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

Re: ADM File No. 2015-14  
Amendment of Rule 9.200 et seq. of the Michigan Court Rules

Dear Clerk Royster:

At the November 15, 2016 meeting of the Michigan Judges Association, the Executive Committee considered and acted upon the following proposed amendment to the Michigan Court Rule:

The Michigan Judges Association (MJA) provides the following recommendations on the proposed changes to MCR 9.200 et seq. MCR 9.201(J). MJA recommends that the term "Grievant" be defined in new subsection (J) as "An individual who files a written complaint against a judge or a candidate for judicial office."

MJA supports the MSC proposed amendment to MCR 9.202(B)(2).

MJA proposes the addition of the words, "including but not limited to" and add, "and whether the respondent has corrected the behavior" to the list of considerations in MCR 9.202(B)(3).

MJA opposes the MSC proposed amendment to MCR 9.210(F) believing that the Commission should only be empowered to act when 5 members are in agreement, especially in the issuance of a formal complaint.

MJA supports the MSC proposed amendment to MCR 9.210(H)(1) and that the Supreme Court further amend this section to require solicitation of input from MJA, the Michigan District Judges Association, and the Michigan Probate Judges Association.

MJA supports the MSC proposed amendment to MCR 9.201(H)(2)(b) with the recommendation that the word "substantive" be stricken from the proposal, and further recommends that the MSC consider adding additional language requiring that any ex parte communication be immediately revealed and reported to opposing counsel.

MJA supports the MSC proposed amendment to MCR 9.220(C).

MJA supports the MSC proposed amendment to MCR 9.221(E) with an amendment that adds “or the respondent” after “JTC” in the last sentence.

MJA supports the MSC proposed amendment to MCR 9.222(A) with the deletion of the language (last clause of the second-to-last sentence) requiring redaction of the grievant’s name.

MJA supports the MSC proposed amendment to MCR 9.222(C) only if language is added that would require an amended 28 day letter be issued if new information is discovered.

MJA supports the MSC proposed amendment to MCR 9.225(A)(2).

MJA opposes the MSC proposed amendment to MCR 9.225(A)(3), as it appears that this is an attempt to fashion rules based upon one particular case.

MJA recommends that the MSC adopt the ABA Model Rules for Judicial Disciplinary Enforcement, Rule 15, by striking the language in the MSC proposal “is alleged to have misappropriated funds” and inserting “poses a substantial threat of serious harm to the public or the administration of justice”.

MJA recommends that “shall” be changed to “may” in proposed rule MCR 9.231(A)(4), and MJA support the rule if amended.

MJA opposes the MSC proposed amendment to MCR 9.231(B). The same concerns expressed below are applicable.

MJA opposes the MSC proposed amendment to MCR 9.244(B)(1), MCR 9.245(B) and MCR 9.245(C).

There were significant due process concerns regarding MCR 9.244(B)(1) and 9.245(B) as they reference pre-complaint disciplinary actions and are not subject to adjudicated proceedings.

MJA supports in concept the MSC proposed amendment to MCR 9.246(B)(2), but would suggest that language be added to allow “the prevailing party” to recover costs when appropriate.

MJA opposes in concept the MSC proposed amendment to MCR 9.251(B). Disciplinary counsel is presently excluded from the JTC’s adjudicative process. Commission counsel is specifically retained to assist in the deliberative process and appears to be in a better position to advocate for the JTC’s recommendation before the Michigan Supreme Court.

MJA supports the ABA Model Judicial Disciplinary Code which provides for a complete separation between those JTC staff members who perform investigative and prosecutorial functions, and those who perform adjudicative functions on a particular case, thereby limiting the risk of prejudice to the respondent.

MJA opposes the MSC proposed amendment to MCR 9.252(A). MJA is concerned that a judge could be removed from office under circumstances that would not necessarily affect his fitness to practice law including, but not limited to a temporary mental or physical disability, questionable temperament, and failure to manage his docket in a timely manner.

We thank the Court for considering our input on this matter. If the Michigan Judges Association may provide any further information or assistance, please do not hesitate to contact us.

Sincerely,



Honorable Laura Baird, President  
Michigan Judges Association

CC: Honorable Robert Young, Chief Justice Michigan Supreme Court  
Hon. Martha P. Anderson  
Hon. Pamela L. Lightvoet  
Hon. Paul E. Stutesman  
Hon. Jon A. Van Allsburg  
Hon. Tracey A. Yokich