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October 2, 2017

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

306 Townsend Street
Michael Franck Building
Lansing, MI
48933-2012

RE: ADM File No. 2015-20: Proposed Amendment of Rules 8.110 and 8.111 of the Michigan Court Rules

Dear Clerk Royster:

At its September 27, 2017 meeting, the State Bar of Michigan Board of Commissioners (the Board) considered the above-referenced proposed amendments published by the Court for comment. As part of its review, the Board considered comments from a number of members with an expertise in professional ethics, along with the comment submitted to the Court by the Michigan District Judges Association (MDJA).

For many of the same reasons articulated by the MDJA, the Board voted to oppose the proposed amendments to MCR 8.110 and 8.111. The Board was concerned that language used in the rule, such as "propriety," "good faith," and "fitness," is too vague and could lead to abuse. For example, proposed MCR 8.110(C)(4) instructs the chief judge to report a judge to SCAO if he or she "acts in a way that raises questions regarding the propriety of the judge's continued service." "Propriety" is defined as "conformity to established standards of good or proper behavior or manners," which could invite subjective interpretation. The Board was concerned that this vagueness could potentially lead to abuse in courts where there are personality or political conflicts between judges.

Board was also concerned that adoption of these rules would appropriate some of the jurisdiction over judicial misconduct from the Judicial Tenure Commission (JTC) to chief judges and SCAO. Most specifically, for the reasons set forth by MDJA, the Board was concerned about proposed MCR 8.110(C)(4) empowering the chief judge, with the approval of SCAO, to order a judge to submit to an "independent medical examination." The Board was unaware of instances in which the JTC's power to order such examinations has proved to be insufficient.

We thank the Court for the opportunity to convey the Board's position.

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Donald G. Rockwell, President, State Bar of Michigan