

May 1, 2023

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

RE: ADM File No. 2021-30 – Proposed Amendment of Rules 9.220, 9.221, 9.223, 9.232, and 9.261 of the Michigan Court Rules

Dear Clerk Royster:

At its April 28, 2023 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2021-30. In its review, the Board considered a recommendation from the Civil Procedure & Courts Committee. The Board ultimately voted to oppose the proposed amendments to Chapter 9 of the Michigan Court Rules.

The Board held a robust discussion of the important, competing interests implicated by the question of grievant confidentiality in Judicial Tenure Commission (“JTC”) investigations. The Board recognized that the real or perceived risk of retaliation against a grievant—especially an attorney-grievant for whom the professional consequences of such retaliation can be great—has a chilling effect on grievants’ willingness to request investigations into judicial misconduct. That chilling effect undermines the effectiveness of the JTC at fulfilling its constitutional duties and promoting the integrity of the judicial process. At the same time, granting the JTC nearly unbounded authority to determine if and when a grievant’s identity should be kept confidential from a respondent judge raises significant due process concerns; all the more so because of the JTC’s unique role as both investigator and prosecuting authority in disciplinary proceedings. In the end, the Board determined that the proposed amendments lacked sufficient standards to guide the JTC’s use of confidentiality and protect the due process rights of jurists.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
 James W. Heath, President