



January 30, 2025

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

RE: ADM File No. 2022-48: Proposed Amendment of Canon 3 of the Michigan Code of Judicial Conduct

Dear Clerk Royster:

At its January 24, 2025 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2022-48. In its review, the Board considered recommendations from the Access to Justice Policy, Criminal Jurisprudence & Practice, Civil Procedure & Courts, and Judicial Ethics Committees. The Board voted to support the proposed amendment of Canon 3 of the Michigan Code of Judicial Conduct with two further amendments.

First, the Board recommends that Canon 3(4) be amended as follows:

A judge ~~may~~**should** make reasonable efforts, consistent with the law~~and~~, court rules, **and rules of evidence** to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.

Second, the Board supports adding an explanatory comment drafted by the Bar's Judicial Ethics Committee:

The judge has an affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard. In the interest of ensuring fairness and access to justice, judges may make reasonable accommodations that help self-represented litigants to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law. The judge should be careful that accommodations do not give self-represented litigants an unfair advantage or create an appearance of judicial partiality. In some circumstances, particular accommodations for self-represented litigants are required by decisional or other law. In other circumstances, potential accommodations are within the judge's discretion.

Reasonable steps that a judge may take in the exercise of such discretion include, but are not limited to:

1. Construe pleadings to facilitate consideration of the issues raised.
2. Provide brief information or explanation about the proceedings.
3. Explain legal concepts in everyday language.
4. Ask neutral questions to elicit or clarify information.



5. Modify the traditional manner or order of taking evidence.
6. Attempt to make legal concepts understandable.
7. Explain the basis for a ruling.
8. Refer litigants to any resources available to assist in the preparation of the case or enforcement and compliance with any order.
9. Inform litigants what will be happening next in the case and what is expected of them.

The Board believes that these amendments will help clarify the duties of a judicial officer under Canon 3 and reduce the probability of misunderstanding. Notably, based on the Bar's review, it appears that explanatory comments have been added in nearly all of the jurisdictions that have codified some version of the ABA comment upon which ADM File No. 2022-48 is based.

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

Sincerely,

A handwritten signature in dark ink, reading "Peter Cunningham". The signature is fluid and cursive, with the first name "Peter" and last name "Cunningham" clearly distinguishable.

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Joseph P. McGill, President