

From: [Allan Falk](#)
To: [ADMcomment](#)
Subject: ADM File No 2015-14
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Unusually for Supreme Court administrative files, the announcement that this proposal is pending (Sept 2016 Mich Bar J p. 62) does not feature a copy of the actual proposal, and is notably lacking in instructions on how and where to comment . Clearly, those favoring this proposal are engaged in a studied effort to conceal its substance and avoid public scrutiny of its many manifestly evil provisions.

A cursory review of the actual proposal on the Court's website reveals the reasons for such skulduggery. The proposal would revise MCR 9.202(B)(2) to *eliminate* the JTC's *existing* authority to discipline judges for conduct that preceded their election, and confine the JTC to only those actions occurring while a person holds judicial office or campaigns for such office. Given the unchanged substance of MCR 9.200 declaring that "an independent and honorable judiciary" is "indispensable to justice in our society", a proposal to allow miscreants to remain in judicial office if their wrongdoing preceded their donning of judicial robes is unfathomable and unconscionable. In an era when not one, but two, Michigan Supreme Court Justices have gone to prison for felonies, one Court of Appeals judge committed suicide when facing prosecution for accepting a bribe, and another Court of Appeals judge died while under criminal investigation, circumscribing the longstanding power of the JTC to remove judges whose very occupation of judicial office would stand as an ineradicable blot on the integrity of Michigan's "one court of justice" cannot conceivably be justified except as a naked act of political self-interest. That this concept has even seen the light of day and is being seriously considered is shameful.

On the other hand, I fully support the amendment of MCR 9.210(H)(1) to specify that JTC employees, including the executive director, serve at will, notwithstanding that appointment is for a 6-year period. While JTC Executive Directors seem to have served with distinction, the Supreme Court has twice found itself compelled to immediately terminate the employment of two different Attorney Grievance Administrators. Thus, it may well be the case that the JTC has so far been lucky in choosing its executive directors, but just in case such luck does not hold forever, the ability to discharge, and thereby avoid ridiculous wrongful discharge lawsuits such as that filed by former AGA

Phil Thomas, must be specified.

However, MCR 9.210(H)(3), because it applies to all employees of courts of record (and for that reason to JTC employees, the JTC being a subordinate agency of the Supreme Court), should be part of a general Administrative Order, which reflects this Court's decision that it is not subject to such things as the Public Employment Relations Act. Anything dealing generally with rights of employees of courts of record which is not specific as to the JTC does not belong in subchapter 9.200 of the Michigan Court Rules.

As for the proposed amendment to MCR 9.230, it is difficult to understand why a motion would ever be considered a "pleading", given the definitions in MCR 2.110(A). While this change *in theory* might do no harm, the very fact of any such revision would provide fodder for an argument that a motion *is* a pleading unless a rule specifies the contrary. Thus, this amendment is a recipe for unintended mischief in a host of unrelated situations having naught to do with judicial misconduct, and so seemingly innocuous revision is actually a terrible idea.

Elimination of MCR 9.231(A) puts the Supreme Court in position of mandating itself to appoint a special master, but without notice of the need for same. Ridiculous.

The proposed changes to MCR 9.244(B)(1) and 9.245(C) would insulate a respondent judge's past disciplines from being included in the JTC's otherwise public report. As past disciplines should already be a matter of public record, this proposed modification adds an unjustifiable layer of Star Chamber-like secrecy that ought to be instantly appreciated as anathema to a governmental watchdog agency. For judges (justices) to fashion rules to buffer themselves and their brethren from public scrutiny of the proceedings of the agency created by the people for their protection against from judicial tyranny is insidious.

MCR 9.245(E) would convert JTC proceedings to "three friends and a stranger", the "stranger" being the public, which under this proposal would be barred from review or comment on proposed compromises until after final resolution, when there is no longer a realistic possibility of influencing the outcome. That the Supreme Court is being prevailed upon to approve a system that insulates the constitutionally-created judicial watchdog from

timely public scrutiny speaks volumes about inherent corruption of the system, which is skewed in favor of judges and against the public interest.

MCR 9.246(D) would limit the effect of non-payment of costs by a recreant judge to suspension from judicial office. As no doubt many future cases will involve judges who resign in the face of disciplinary action, such a limitation on the effect of nonpayment means those former judges can return to the practice of law with no obligation to pay their assessed JTC costs. Such automatic suspension should therefore be extended to the license to practice law (including the requirement that, if such suspension exceeds 180 days, the person must requalify before the license to practice may be restored).

MCR 9.251(E) would require a brief on review of a JTC recommendation to be "similar" to other Supreme Court briefs. Such weasel words portend endless dispute over matters that should be cut and dried. Just cross-reference MCR 7.306 and be done with it.

MCR 9.252(B) allows a respondent to withdraw consent if the Supreme Court decides that a different disciplinary sanction is appropriate than that to which the respondent and JTC agreed. The JTC should have the identical right to withdraw--if lesser discipline is imposed than agreed, the JTC may legitimately wish to resume prosecution in lieu of compromise, whereby it can develop a record better justifying a harsher sanction.

MCR 9.261(A) purports to grant a blanket privilege of confidentiality to JTC proceedings including against "legislative or administrative proceedings". By what authority does the Supreme Court thus purport to usurp the power of the Legislature, Const 1963, art 4, §1, or the Executive branch, Const 1963, art 5, §1, by barring those coordinate branches of government from determining for themselves what privileges shall be recognized? This rule, and all its variants (such as MCR 9.263), is a blatant contravention of Const 1963, art 3, §2.

That other proposed modifications to the rules are not the subject of comment should not be understood as tacit approval of them, but only as an indication they are not so unspeakably egregious as to have captured my attention at this time.

Very truly yours,

Allan Falk (P13278)