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Friday, July 19, 2013

Supreme Court Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

re: *ADM File No. 2012-06*
Proposed change affecting magistrates and referees
receiving a corrective action letter



Dear Clerk and Members of the Court:

Imagine for a moment you are a judge in a multi-judge court and you receive a letter of caution from the Judicial Tenure Commission (JTC). You don't need to report the JTC's action to your chief judge. And, the JTC does not submit its disposition to the chief judge of the court.

Imagine again that you are a judge's staff attorney, a court research attorney, or an attorney who is a court administrator or deputy administrator and you receive an admonishment from the Attorney Discipline Board (ADB). You don't need to report the ADB's action to your judge. And, the ADB does not submit its disposition to the judge.

Imagine once again that you are a partner or employee in a law firm and you receive an admonishment from the ADB. You don't need to report the ADB's action to your partners or employer. And, the ADB does not submit its disposition to your partners or employer.

In each situation, the affected jurist or attorney has not been subjected to further humiliation and possible disrespect. Since both the ADB and JTC felt no formal complaint was necessary, the need to communicate the negative event was not necessary.

So, why then single out referees and magistrates when they might have done something which never rose to the level of a formal complaint?

Proposed amendment to MCR 9.221 would mandate the JTC to notify the chief judge of a court if a referee or magistrate has been subjected to less than a formal complaint. This proposed amendment should not be adopted by the Supreme Court for the following reasons:

1. The magistrate or referee already has been subjected to negative scrutiny by the JTC through its issuance of either a letter of caution, a conditional dismissal, an admonishment, or a recommendation for private censure. Corrective action has been determined by the JTC.

2. There is no cogent need to single out magistrates or referees who might have been subjected to JTC investigation of an event which does not rise to issuance of a formal complaint.

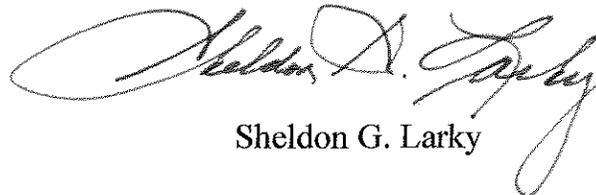
3. Courts already have procedures in place for litigants and the public to raise concerns and complaints about court personnel including, but not limited to, magistrates and referees.

4. Within the judicial and attorney disciplinary processes, the proposed amendment is discriminatory. It singles out magistrates and referees. The proposed amendment does not affect judges in multi-judge courts. It ignores the fact the attorneys subject to ADB authority have no similar parallels since the ADB does not contact employers or partners when less than a formal complaint is issued against an attorney.

5. The Judicial Tenure Commission, speaking through its executive director on May 14, 2013 in a letter to you, states, "An employer *should* know if its employee has engaged in unethical conduct." If true, then the proposed rule should apply to a judge in a multi-judge court. Furthermore, if the amendment is adopted by the Supreme Court, then the rules affecting attorneys who may be judicial attorneys, court research attorneys, or court administrators, as well as all private practitioners should be also changed making the ADB required to send a notice to every employer, court and partner of an admonished attorney.

The Supreme Court should take no further action on the proposed amendment and close the file on it.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Sheldon G. Larky". The signature is written in black ink and is positioned above the printed name.

Sheldon G. Larky