

FOR IMMEDIATE RELEASE

Judicial Tenure Commission Seeks Independent Audit

June 13, 2023

The Michigan Judicial Tenure Commission announced today that it will seek an independent review of the racial composition of the judges about whom the Commission receives complaints, and the Commission's dispositions of those complaints, for the period 2008 through 2022.

The Commission was created by the Michigan Constitution to address the public's concerns about the ethical conduct of Michigan's judges and to ensure that Michigan's judges meet the public's expectations for ethical behavior. The Commission consists of nine volunteers – four elected by judges, three elected by the State Bar of Michigan, and two lay persons appointed by the Governor.

The Commission is seeking this independent review because it is aware that the Association of Black Judges of Michigan (ABJM) has expressed concerns about the racial composition of the Commission's public complaints. The ABJM notes that five of nine public complaints the Commission has brought against judges since 2016 have been against African American judges. The Commission's public complaints are the only actions the Commission takes for which the identity of the judge is publicly disclosed. Importantly, Michigan law prohibits the Commission from disclosing the identities of judges against whom the Commission likely would have brought public complaints but did not because the judge resigned due to the Commission's investigation.

The concerns expressed by the ABJM are not new, so to better understand whether there is a true racial disparity, in 2021 the Commission analyzed five years of Commission actions, both public and private, according to the race of the judge involved. Additional information summarizing that review is available in a memorandum analyzing the Commission's case resolutions that is on the Commission's website: www.jtc.courts.mi.gov.

The Commission believes its data show no significant racial disparity with respect to judicial misconduct that warrants a public complaint. With respect to that level of misconduct the relevant population includes all judges against whom the Commission filed some kind of public action and all judges against whom the Commission likely *would have* filed a public action except that the cases were resolved prior to a public filing by the judge either resigning or negotiating a public resolution such as a

suspension. The statistics showed that when both groups are properly considered the racial disparity no longer exists.

The disparity cited by the ABJM appears to exist because the great majority of judges who choose to resign or to consent to a suspension are Caucasian, while the majority of judges who choose to proceed to a hearing are African American. This accounts for nearly all of the discrepancy between the percentages of African American and Caucasian judges the Commission charged publicly relative to the percentage of each in the judiciary as a whole. A judge's choice of how to proceed when under investigation is a personal decision that the Commission does not control.

The Commission believes its data also show that there is no significant racial disparity in its private dispositions, which include its letters of caution and admonition to judges. The Commission is currently finalizing an updated review that appears to show that the 2021 analysis holds true through 2022 as well.

Though the Commission believes its case dispositions show no actual or deliberate racial disparity, the Commission recognizes that this is a very important issue and that the public will have more faith in the fairness of its decisions if their racial composition is reviewed by an independent auditor. Of course, if an independent auditor identifies an actual racial disparity in the Commission's actions that we have overlooked and that is not explained by the choices made by the judges under investigation, the Commission certainly wants to know about that and understand the reasons for it.

The Commission is very aware of and sensitive to the need to act without bias. The Commission's nonlawyers were appointed by Governor Gretchen Whitmer. One nonlawyer is African American, works in human resources, and has a background in the field of diversity and addressing implicit bias. The other nonlawyer is an Arab American who not only has devoted her career to diversity and to combatting discrimination, she also sits on the Supreme Court's Diversity and Inclusion Commission. One of the judges on the Judicial Tenure Commission is Hispanic. The Commission's staff also includes several African Americans, including one who has worked to address implicit bias issues in the Third Circuit Court. The Commission's executive director formerly worked to address implicit bias at the United States Department of Justice. The Commission is very aware of and sensitive to the need to act without bias. The Commission strives to make its decisions fairly and impartially and welcomes all information that will help it do its job better.