

Order

Michigan Supreme Court
Lansing, Michigan

December 7, 2022

Elizabeth T. Clement,
Chief Justice

ADM File No. 2022-18

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

Amendment of IOP 9.207(B)-13
and Addition of IOPs 9.202(G)-6,
9.207(B)-14, and 9.207(B)-15 for
the Judicial Tenure Commission

On order of the Court, the following amendment and additions of Internal Operating Procedures for the Judicial Tenure Commission are adopted, effective immediately.

[NEW] IOP 9.202(G)-6 Complaints about Commission Staff. The Commission occasionally receives complaints about staff or the executive director. In order to ensure that complaints about staff are resolved fairly and expeditiously, they will be handled as follows:

Complaints about staff other than the executive director. The executive director will promptly review all complaints about members of the staff other than the executive director. After reviewing the complaint, the executive director will take such action as they determine to be appropriate. Before taking any disciplinary action, the executive director will discuss the complaint with the staff member.

Complaints about executive director. Complaints about the executive director will be provided to the Commission chairperson and vice-chairperson. The chairperson and vice-chairperson will promptly review each complaint. If it appears that some investigation or other action may be appropriate, the chairperson or vice-chairperson will provide the complaint to the entire Commission. The Commission will then decide, in executive session, whether to select three members of the Commission to act as a subcommittee to investigate the complaint and recommend a resolution. If the subcommittee will be recommending disciplinary action, the executive director should be given an opportunity to respond to the complaint. The Commission will then vote, in executive session, whether to accept the subcommittee's recommendation or take some other action.

IOP 9.207(B)-13 – Prompt Resolution of Complaints. The Commission recognizes that the public and judiciary have a strong interest in prompt and fair resolution of complaints alleging a judge has committed misconduct. The Commission's goal is to

- review all complaints expeditiously and impartially;
- fairly and thoroughly investigate those that warrant further examination;

- accurately and impartially determine the merits of each complaint; and
- arrive at a just resolution as quickly as practicable.

[NEW] IOP 9.207(B)-14 – Practice Regarding Investigation. It is in the interest of justice and the interest of the Commission to be aware of exculpatory information prior to recommending any action other than dismissal of the RFI. To that end, after the Commission approves a full investigation, staff will make reasonable efforts to obtain all information that appears useful to determining whether there is misconduct, in order to ensure that the investigation is both thorough and fair. If a respondent asks staff to obtain and review information that appears both relevant and useful to determining whether there is misconduct, staff will take such steps as are appropriate to obtain that information unless there are circumstances that make it unreasonable to do so.

[NEW] IOP 9.207(B)-15 – Practice Regarding Discovery. MCR 9.232(A) requires disciplinary counsel to provide the following to respondents, at least 21 days before a public hearing is scheduled to begin: names and addresses of all witnesses that disciplinary counsel intends to call at the hearing; copies of statements and affidavits given by disciplinary counsel’s proposed witnesses; copies of all exhibits that disciplinary counsel intends to introduce; and copies of all exculpatory information in disciplinary counsel’s possession.

It is in the Commission’s interest that public charges against a respondent be resolved fairly and on the basis of all relevant evidence. To that end:

- Unless there are circumstances that make it unreasonable to do so, disciplinary counsel will endeavor to provide discovery to a respondent as soon as reasonably feasible after the Commission files a public complaint, but no later than the time limit in MCR 9.232(A).
- Unless circumstances make it unreasonable to do so, disciplinary counsel will make available to respondent all witness statements, without regard to whether disciplinary counsel intends to call the witness, and all evidence that is a part of the investigation, without regard to whether disciplinary counsel intends to introduce the evidence. In that way, disciplinary counsel will not be in the position of having to speculate as to what a respondent may consider to be “exculpatory.”



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 7, 2022

Clerk