

Order

Michigan Supreme Court
Lansing, Michigan

January 18, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2021-30

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

Proposed Amendments of
Rules 9.220, 9.221, 9.223,
9.232, and 9.261 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 9.220, 9.221, 9.223, 9.232, and 9.261 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) webpage. Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 9.220 Preliminary Investigation

- (A) [Unchanged.]
- (B) Confidentiality. A request for investigation shall be kept confidential as provided in MCR 9.261(B).
- (~~C~~B) Investigation. Upon receiving a request for investigation that is not clearly unfounded or frivolous, subject to any limitation imposed by MCR 9.261, the commission shall direct that an investigation be conducted to determine whether a complaint should be filed and a hearing held.

(C)-(E) [Relettered (D)-(F) but otherwise unchanged.]

Rule 9.221 Evidence

(A)-(D) [Unchanged.]

- (E) Cooperation With Investigation. A judge, clerk, court employee, member of the bar, or other officer of a court must comply with a reasonable request made by the commission in its investigation, including a request to keep the investigation, or any part of it, confidential. Failure to cooperate may be considered judicial misconduct or attorney misconduct. No court may charge the Judicial Tenure Commission for copying costs or certification costs, whether under MCL 600.2546 or otherwise, unless the Michigan Supreme Court specifically so authorizes.

Rule 9.223 Conclusion of Investigation; Notice

- (A) [Unchanged.]
- (B) Notice to Grievant and Respondent.
- (1) On final disposition under subrule (A)(1), if the commission has not conducted any investigation other than interviewing the grievant, grievant's attorney, or the State Court Administrative Office, the commission shall provide written notice to the grievant that the matter has been resolved without the filing of a complaint. The commission may provide notice of the request for investigation and the dismissal to the respondent only if the commission has not determined that the identity of the grievant shall be kept confidential under MCR 9.261.
- (2) Before taking action under subrule (A)(2)-(5), the commission must first have given written notice to the respondent of the nature of the allegations ~~in the request for investigation~~ and afforded the respondent a reasonable opportunity to respond in writing, pursuant to MCR 9.221(B), MCR 9.222(A), or both. Where the commission has determined that the grievant's identity should be kept confidential under MCR 9.261 and the grievant's identity has not already been revealed to the respondent, the commission shall continue to make reasonable efforts to keep the grievant's identity confidential to the extent consistent with taking the selected action.
- (C) [Unchanged.]

Rule 9.232 Discovery

- (A)-(C) [Unchanged.]
- (D) Discovery shall not include the request for investigation or the identity of a grievant that the commission has determined to keep confidential under MCR 9.261 and who has not been revealed during the investigation, unless the request for investigation contains exculpatory material or the grievant is a witness in the hearing.

Rule 9.261 Confidentiality; Disclosure

(A) [Unchanged.]

(B) Before Filing a Complaint.

(1) A grievant may request that his or her identity be kept confidential, including from the respondent, and the commission shall determine whether to grant the request. Confidentiality does not extend to communications under subrule (G).

(a) If the commission grants the grievant's request for confidentiality, the request for investigation shall not be disclosed to the respondent or other persons, either during or at the conclusion of the investigation except as necessary to conduct the investigation, unless either

(i) the grievant waives the confidentiality that the commission granted, or

(ii) the commission has filed a public complaint against the respondent, and

(A) disclosure of the grievance is necessary to comply with MCR 9.232(A)(1)(b);

(B) the grievant is a witness in the proceeding and the request for investigation is material to the grievant's testimony, or

(C) as otherwise necessary to protect the respondent's due process interests at the hearing.

(b) If the commission denies the grievant's request for confidentiality, the request for investigation will be kept confidential as required by this rule. The commission shall return the request for investigation to the grievant without taking other action, unless the grievant withdraws the request for confidentiality.

(24) [Renumbered but otherwise unchanged.]

(32) The commission may at any time make public statements as to matters pending before it on its determination by a majority vote that it is in the public interest to do so, limited to statements

(a)-(c) [Unchanged.]

Any statements made under this subrule shall not identify a grievant who has been granted confidentiality under this rule.

(C)-(K) [Unchanged.]

Staff Comment (ADM File No. 2021-30): The proposed amendments of MCR 9.220, 9.221, 9.223, 9.232, and 9.261 would help protect the confidentiality of a grievant who submits a request for investigation to the Judicial Tenure Commission.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by May 1, 2023 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2021-30. Your comments and the comments of others will be posted under the chapter affected by this proposal.



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.

January 18, 2023

Clerk