

# Order

Michigan Supreme Court  
Lansing, Michigan

December 22, 2021

Bridget M. McCormack,  
Chief Justice

ADM File No. 2019-28

ADM File No. 2021-36

Brian K. Zahra

David F. Viviano

Richard H. Bernstein

Elizabeth T. Clement

Megan K. Cavanagh

Elizabeth M. Welch,  
Justices

Proposed Alternative Amendments  
of Rule 9.202 and Proposed  
Addition of Rule 9.254 of the  
Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering alternative amendments of Rule 9.202 and a proposed addition of Rule 9.254 of the Michigan Court Rules. Before determining whether either 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 public hearing are posted on the [Public Administrative Hearings](#) page.

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.]

## ALTERNATIVE A

### Rule 9.202 Standards of Judicial Conduct

- (A) [Unchanged.]
- (B) Grounds for Action. A judge is subject to censure, suspension with or without pay, retirement, or removal for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice. ~~In addition to any other sanction imposed,~~ a judge may not be ordered to pay the costs, fees, and expenses incurred by the commission in prosecuting the complaint ~~only if the judge engaged in conduct involving fraud, deceit, or intentional misrepresentation, or if the judge made misleading statements to the commission, the commission's investigators, the master, or the Supreme Court.~~

(1)-(3) [Unchanged.]

## ALTERNATIVE B

## Rule 9.202 Standards of Judicial Conduct

- (A) [Unchanged.]
- (B) Grounds for Action. A judge is subject to censure, suspension with or without pay, retirement, or removal for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice. ~~In addition to any other sanction imposed, a judge may be ordered to pay the costs, fees, and expenses incurred by the commission in prosecuting the complaint only if the judge engaged in conduct involving fraud, deceit, or intentional misrepresentation, or if the judge made misleading statements to the commission, the commission's investigators, the master, or the Supreme Court.~~
- (1)-(3) [Unchanged.]

## [NEW] Rule 9.254 Taxation of Costs

- (A) Right to Costs. Except as otherwise provided by the Supreme Court, the prevailing party in the Court's review of a commission decision is entitled to costs. For purposes of this rule, the prevailing party is the commission if the Court imposes any sanction on the respondent, regardless of the recommendation proffered by the commission. If the Court dismisses an action against a respondent, the respondent is the prevailing party.
- (B) Rules Applicable. The procedure for taxation of costs under this rule is as provided in MCR 7.219.
- (C) Costs Taxable. A prevailing party may tax only the reasonable costs incurred in the action as allowed under MCR 7.319(B) and MCL 600.2405.

*Staff Comment:* The proposed alternative amendments would address whether and how costs should be imposed in JTC proceedings. Under Alternative A, the provision allowing the Court to impose costs of prosecution for fraud, deceit, or intentional misrepresentation would be eliminated, and the rule would be clarified to reflect that costs may not be imposed. Under Alternative B, the provision allowing the Court to impose costs of prosecution for fraud, deceit, or intentional misrepresentation would be eliminated, and a proposed new rule would allow basic costs to be assessed as in general civil actions.

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 April 1, 2022 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](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2019-28/2021-36. 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.

December 22, 2021

A handwritten signature in black ink, appearing to read "Larry S. Royster", written over a horizontal line.

Clerk