

Order

Michigan Supreme Court
Lansing, Michigan

December 21, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2023-32

Brian K. Zahra

David F. Viviano

Administrative Order No.
2023-2

Richard H. Bernstein

Megan K. Cavanagh

Elizabeth M. Welch

Kyra H. Bolden,

Justices

2023-2 – Independent Audit of the Judicial Tenure Commission

On June 13, 2023, the Judicial Tenure Commission announced its intention to undergo 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’s press release stated:

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.

However, under MCR 9.261, the files of the Judicial Tenure Commission are confidential and absolutely privileged from disclosure, effectively preventing an independent audit. Nonetheless, Const 1963, art 6, § 30 establishes the Judicial Tenure Commission and provides this Court with the authority to make rules to implement this constitutional provision and provide for confidentiality and privilege of its proceedings.

The Commission has requested that this Court authorize disclosure of otherwise confidential and privileged information to facilitate the independent audit.

Accordingly, to facilitate the independent audit that the Judicial Tenure Commission has committed to undertaking, this Court authorizes the Commission to disclose otherwise confidential and privileged information in its files only as necessary to complete the independent audit and subject to the following conditions:

- 1) Within four (4) months of the date of this order, the Judicial Tenure Commission must enter into a contract with an independent auditor to conduct a review of all requests for investigation filed between 2008 and 2022. The contract is subject to the State Court Administrator's approval for compliance with the requirements of this order.
 - a. For purposes of this order, the term "independent" is defined as an entity that does not currently have active contracts or engagements with the Judicial Tenure Commission and does not receive the majority of its funding from the Judicial Tenure Commission, Michigan Supreme Court, State Court Administrative Office, or the State of Michigan.
 - b. For purposes of this order, the term "review" is defined as a quantitative and, if warranted, qualitative assessment of every point in the Judicial Tenure Commission's decision-making process.
- 2) If feasible, the auditor must have experience conducting audits related to perceived racial disparities. If no such auditor is available, the Judicial Tenure Commission must engage a consultant who can assist an auditor without such experience.
- 3) The Judicial Tenure Commission must enter into a binding non-disclosure and confidentiality agreement with the selected independent auditor and any consultant engaged under paragraph 2, to ensure the confidentiality and privilege of the Commission's records are preserved.
- 4) The Judicial Tenure Commission must share the results of the independent auditor's review with the Michigan Supreme Court no later than one year from the date of this order.



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 21, 2023

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

Clerk