Order

Michigan Supreme Court
Lansing, Michigan

October 30, 2024

ADM File No. 2023-32

Amendment of Administrative
Order No. 2023-2

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Elizabeth T. Clement,
Chief Justice

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

On order of the Court, the following amendment of Administrative Order No. 2023-2 is adopted, effective immediately.

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

Administrative Order No. 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:

1-3 [Unchanged.]

4) The Judicial Tenure Commission must share the results of the independent auditor's review with the Michigan Supreme Court no later than July 31, 2025~~one year from the date of this order~~.

Staff Comment (ADM File No. 2023-32): The amendment of AO 2023-2 extends the timeframe for which the independent auditor must share its results with the Michigan Supreme Court.

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.

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.

October 30, 2024

Clerk