



*An Organization Of*

**AMERICANS FOR LEGAL REFORM**

**Comments from HALT—*An Organization of Americans for Legal Reform*  
to the Supreme Court of Michigan Regarding  
the Authority of the Judicial Tenure Commission**

Pursuant to the Supreme Court of Michigan's request, HALT—*An Organization of Americans for Legal Reform* hereby submits comments regarding the Court's proposed amendments of Rule 9.207 of the Michigan Court Rules altering the authority of the Judicial Tenure Commission.

HALT supports eliminating the ability of the Judicial Tenure Commission to issue private sanctions as provided in Alternative B of the proposed amendments. All sanctions should be formal and disclosed to the public.

HALT urges the Supreme Court to modify the proposed rule to provide real protection for litigants by requiring written explanation of all complaint dismissals. We believe that these modifications will result in a meaningful judicial accountability mechanism in Michigan.

**I. Public Discipline is the Best Means of Upholding Judicial Integrity.**

The imposition of private penalties in instances of judicial misconduct sends a message of unaccountability to Michigan's judges. Private sanctions hold no long-term professional consequences, and judges consequently have nothing to fear from these informal slaps on the wrist. Private discipline therefore does not function as a meaningful deterrent of abuses of judicial power.

In addition, private discipline does not serve the objective of public protection. Private sanctions leave Michigan's litigants in the dark about potential threats to their pursuit of justice. Complete and publicly available information about judicial disciplinary hearings is needed to empower future litigants to hold the judges presiding over their cases to a standard of fairness and impartiality.

A proscription on private penalties does not force the Court to simply remove a judge for any showing of misconduct. On the contrary, the Court has a wide range of formal and public sanctions at its disposal, including public admonitions, public censures, suspensions with or without pay, or, in the worst cases, bench removal. Regardless of the level of misconduct and the consequent action, litigants have a right to know whether the judge presiding over their case has a record of serving improperly.

HALT therefore supports Alternative B of the Supreme Court's proposal which would limit instances of judicial discipline to formal, public sanctions.

## II. Written Explanation of All Dismissals Will Safeguard the Rights of Complainants.

Leaving the Judicial Tenure Commission with only the authority to either dismiss complaints of judicial misconduct outright or pursue formal discipline will certainly lead to more instances in which no disciplinary action, private or public, is taken on a matter. In order to ensure that all complaints are given due consideration, HALT urges the Supreme Court to modify Rule 9.207 to require that an explanation of the Commission's decision accompany all written notifications to complainants that a disciplinary matter has been resolved without the filing of formal charges.

The requirement that all decisions be supported on the record with stated reasons and detailed explanations is one of the cornerstones of administrative law. The Administrative Procedure Act provides:

All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of findings and conclusions, *the reasons or basis therefor*, on all the material issues of fact, law, or discretion presented on the record; and the appropriate rule, order, sanction, relief, or denial thereof. [emphasis added] 5 U.S.C. § 557(c).

The "reasons or basis" directive of the Administrative Procedure Act serves as a critical check to ensure that governmental agencies are engaged in independent and impartial decision-making. The purpose of this requirement is "to preclude later controversy as to what the agency had done." H.R. Rep. p. 54, fn. 19 (Sen. Doc. p. 288). In light of this requirement, the Judicial Tenure Commission should ensure that every rejection of a complaint is accompanied by a written basis.

Requiring a justification of all complaint dismissals also serves practical purposes. Simple notification of dismissal without an explanation leaves individuals who feel that they have suffered judicial abuse confused and angry, and prompts many to file new complaints or inquiries which divert Commission resources. Providing an explanation of the decision to dismiss will give complainants the sense that their right to voice concerns of judicial misconduct has been respected.

### Conclusion

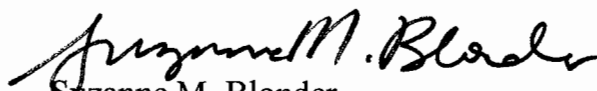
HALT supports Alternative B of the Supreme Court's proposed amendments to the Michigan Court Rules governing the authority of the Judicial Tenure Commission. Private sanctions should no longer take the place of consequential public discipline.

However, HALT respectfully recommends that the Supreme Court require written explanation of all misconduct complaints that are dismissed rather than met with formal charges. These revisions will enhance the public accountability of Michigan's judiciary.

Respectfully submitted,

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