

# Michigan Association of District Court Magistrates Annual Conference

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## ***Mechanics of the Judicial Tenure Commission and Recent Activities Generating Complaints***

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# Judicial Tenure Commission & Judicial Ethics



## Judicial Tenure Commission



Our Goal – promote an ethical judiciary in the least intrusive way we can, by:

1. Answering your ethical questions to prevent problems (call me at 734.649.9347 or email me at [hellandl@courts.mi.gov](mailto:hellandl@courts.mi.gov))
2. Investigating and resolving allegations of ethical misconduct or incapacity, and in the most serious cases, recommending a public sanction to the Supreme Court.



## What is the Commission?

- › Five judges
- › Two lawyers
- › Two non-lawyers
- › 4 staff attorneys plus one support staff



## What is “misconduct”?

Three main sources of guidance

- › Michigan Constitution
- › Michigan Court Rules
- › Michigan Code of Judicial Conduct (Canons)

– Also be aware of any county rules & the SCAO Model Code of Conduct



## What is “misconduct”?

Const 1963 art. 6, §30

- › conviction of a felony
- › physical or mental disability which prevents performance of judicial duties
- › **misconduct in office**
- › persistent failure to perform duties
- › habitual intemperance
- › conduct that is clearly prejudicial to the administration of justice



## What is “misconduct”?

Canons

- › Integrity of judiciary [Canon 1]
- › **Propriety & appearance of propriety** [Canon 2]
- › **Performing as judge** [Canon 3]
- › Extrajudicial activities [Canon 4]
- › Extrajudicial compensation [Canon 6]
- › Political activity [Canon 7]



## How to Invite the JTC Into Your Life (in a bad way)

- › Bad demeanor (yelling, rudeness, bullying of litigants, lawyers, or staff);
- › Failure to follow the law;
- › Abusing the power of the office for personal benefit;
- › Failing to disclose a close relationship with a party or attorney;
- › Any false statements!



## The Judicial Tenure Commission Demystifying the Process

- › Request for Investigation
  
- › Preliminary Investigation
  - Summary Dismissal
  - Request for Authority to Investigate



## The Investigation

- › Gather evidence
- › If appropriate, request judge's comments
- › If there is likely to be a public complaint, provide notice of that with a "28 day" letter



## Private Dispositions

- › Straight dismissal
- › Dismissal with explanation
- › Dismissal with caution
- › Dismissal with admonition
- › Dismissal with conditions
- › Private censure (Supreme Court)

MCR 9.207(B)



## Public Complaint

- › Issued by Commission
- › Supreme Court appoints master, who conducts hearing and submits report to Commission
- › Commission submits recommendation to Supreme Court
- › Supreme Court adopts, modifies, or rejects recommendation
- › *Only* the Supreme Court can sanction a judge

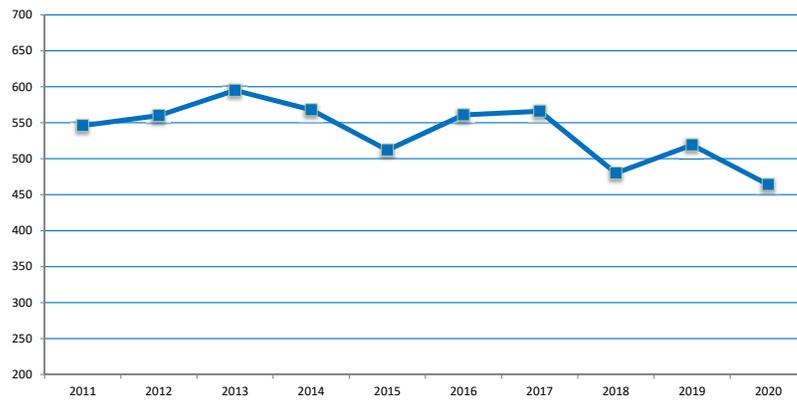


## Public Dispositions

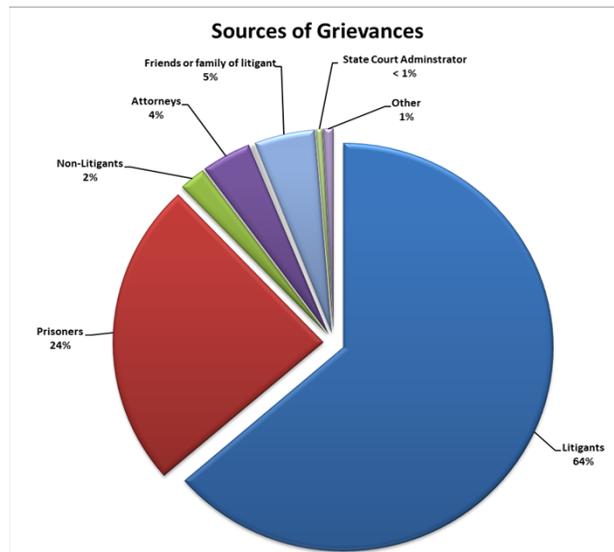
- › Public censure
- › Suspension, with or without pay
- › Removal from office
- › Retirement



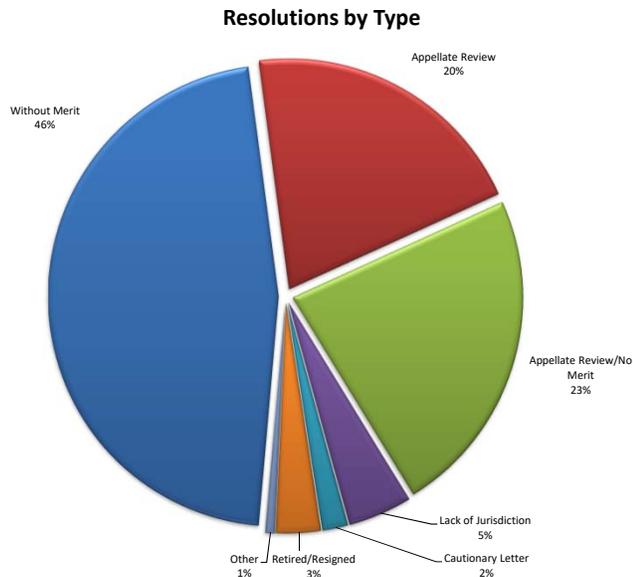
### Grievances Received 2011-2020



### Sources of Grievances in 2019



## 2020 Grievance Resolutions



### What you can do if contacted by us

- › If you have concerns, consult a good discipline lawyer
- › You can talk with us as the investigation proceeds. If we can share information, we will do so
- › Whatever you do, take us very seriously. Do your homework before answering our questions, and be truthful and candid in your statements to us

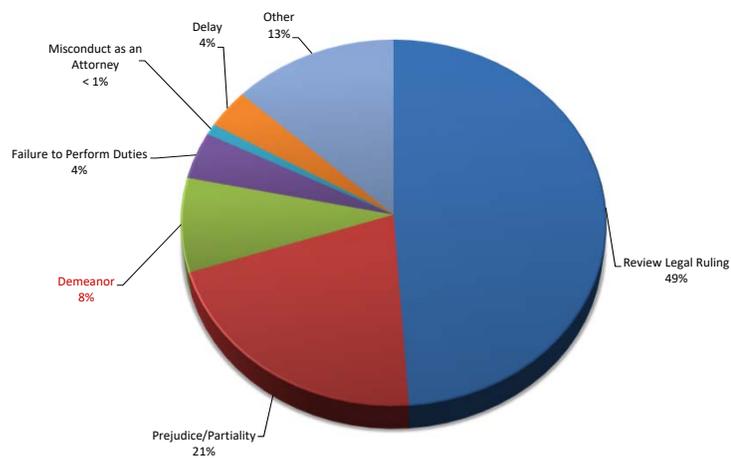


# Civility



## Respectful Demeanor – Helpful to the magistrate . . .

Types of Grievances in 2020





. . . and essential to the court's mission

Justice does not depend upon legal dialectics so much as upon the atmosphere of the courtroom, and that in the end depends primarily upon the judge.

Judge Learned Hand



## The Civility Canons

- › . . . a judge should treat **every** person fairly, with courtesy and respect.

Canons 2(B) & 3(A)(14)

- › A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and **others with whom the judge deals in an official capacity** . . . .

Canon 3(A)(3)



## New Principles of Professionalism - Upping the Civility Ante

- › Eighteen separate principles
- › Their gist: Do unto others as you would have them do unto your mother.



What makes it hard to be civil?



WHAT HAPPENS TO YOU WHEN YOU ARE PERCEIVED TO BE MORE POWERFUL THAN MANY PEOPLE AROUND YOU?



WHAT HAPPENS TO YOU WHEN MANY PEOPLE TREAT YOU WELL DUE TO YOUR POSITION?



*After all is said and done, we cannot deny the fact that a judge is almost of necessity surrounded by people who keep telling him what a wonderful fellow he is. And if he once begins to believe it, he is a lost soul.*

Medina, *Some Reflections on the Judicial Function: A Personal Viewpoint*, 38 ABA J 107,108 (1952).



How do the civility principles and canons interact with the real world of crowded dockets and unruly litigants?



**Poll 1:**

During arraignment, an apparently unhappy Mad Max told Magistrate Holmes to “f\*\*k off you f\*\*king prick,” and various other permutations of that sentiment.

What does it mean to treat Max fairly in this circumstance? Magistrate Holmes should:

- A. Take a deep breath, react with humor and patience but no penalty, and be sure to be extra nice to the *next* defendant, who has heard this exchange and fears that Magistrate Holmes will take out his anger on him.
- B. Increase Max’s bond, making clear the reason why, to ensure he and the other defendants understand there is a price for disrespecting the court.
- C. Lecture Max sternly about the proper way to behave in a courtroom, and if Max refuses to mend his ways, refer him to the district court with a recommendation that he be held in contempt.

## Brainstorming question:

Mad Max's arraignment was by Zoom. In what ways does that impact how Magistrate Holmes can and should deal with Max's outburst?



### Poll 2:



Magistrate Sky presides over a very busy civil infraction docket. He is an experienced magistrate who has heard it all. Amy Roe appears before him to challenge a parking ticket. Amy clearly does not understand court procedure. Amy tries to present her position – a position, by the way, that Magistrate Sky has heard, and rejected, from other parking ticket recipients – and does not follow the court rules as she does so. Magistrate Sky cuts her off and rules against her. When Amy asks why she cannot explain her case, Magistrate Sky tells her simply that he has ruled, and that is just the way it is. When Amy starts to ask another question, Magistrate Sky – mindful of his busy docket – tells her to file an appeal if she is dissatisfied and to leave his court promptly.

Magistrate Sky:

- A. Did exactly what a responsible judicial official should do to control the courtroom and maintain the respect of the parties.
- B. Was overly hasty and harsh, and at risk of violating the civility ethics rules.



**Poll 3:** Sybil Right is defending herself against her landlord's attempt to collect damages to property. The landlord is also an attorney. In order to treat both Ms. Right and the plaintiff landlord equally:

A. Before the hearing, Magistrate Eagle should tell Ms. Right: "Let me describe for you how the procedure works," then give a short explanation of hearing mechanics. If Ms. Right fails to follow those rules, Magistrate Eagle should explain them again.

B. Before the hearing, Magistrate Eagle should tell Ms. Right: "You and the plaintiff must follow the same rules. If you do not follow those rules, I will not consider your evidence."

C. Do nothing before hearing.



Ms. Right does not have a very firm sense of what the law entitles her to do to defend her case. As her hearing proceeds, she seems incapable of asking a witness a question, or introducing a document, in a way that complies with the rules of evidence.

**Poll 4:** Magistrate Eagle should:

A. Explain to Ms. Right the proper way to accomplish what she appears to be after.

B. Simply call the shots as he sees them. Anything else would be giving unfair assistance to one side.



During her hearing, Ms. Right emits audible sighs, guffaws of disbelief, and other dramatic gestures to convey her incredulity at the plaintiff's case.

**Poll 5:** In order to treat both Ms. Right and the plaintiff fairly and respectfully, Magistrate Eagle should:

- A. Forbid Ms. Right to speak or act out of turn.
- B. Halt the proceedings and explain to Ms. Right how she is hurting herself in his eyes, and if she cannot restrain her emotions he may have to sanction her.
- C. Tell Ms. Right that even small children learn not to behave as she is, and she will have to learn to behave like an adult if she wants to remain in his courtroom.



John Doe was issued a citation for building on his property without a permit. For the past year he has ignored every summons demanding his appearance in court. After all other efforts to get him to appear failed, he has been arrested and is making his first appearance before Magistrate Knight.

Magistrate Knight's docket is too full, as it always is. The only way for her to complete court in a timely way is to keep her docket moving.

When Magistrate Knight repeatedly calls Mr. Doe's case, he does not answer and does not move. He acts like she is not speaking to him. When she asks the bailiff to escort him to appear before her, he identifies himself as John Doe-El Bey, explains that he is the beneficial owner of "John Doe," which is a fictional entity, and states that he is appearing on behalf of the entity. Mr. Doe then files a motion to dismiss the case, asserting that the Uniform Commercial Code is the only law, he has not entered into a contract with the state, and he is not a citizen or taxpayer so the courts have no jurisdiction over him. He steadfastly refuses to acknowledge his true name or otherwise to cooperate in the proceedings.



**Poll 6:** Magistrate Knight should:

- A. Ignore Mr. Doe's arguments, set a bond that will ensure his future appearance, and call the next case.
- B. Listen to Mr. Doe's arguments, rule on them, set a bond that will ensure his future appearance, and call the next case.
- C. Adjourn Mr. Doe's arraignment but keep him in the courtroom until Mr. Doe is willing to accept that the court has jurisdiction over him.

## Zoom?

Assume Mr. Doe did not have to be arrested, and made his first appearance by Zoom instead of in-person. In all other respects, he refused to acknowledge the court's authority, based on his fervently held beliefs that he has not entered into a contract with the state.

What difference does it make that the hearing is by Zoom?





During a very busy arraignment docket, Magistrate Sky calls the names of the parties for the next case. Defendant Sparkle interrupts, saying “My name is copyrighted! You don’t have my permission to use my name, so you owe me a dollar every time you say it.”

Magistrate Sky responds: “This is a court of law, Mr. Sparkle, and I have the authority in this court ...”

Mr. Sparkle again interrupts: “You used my name again without my permission, so you owe me ANOTHER dollar!” Magistrate Sky responds: “That’s enough. I have a busy docket and don’t have time for this. One more word about me owing you money for using your legal name, Mr. Sparkle, and I will hold you in contempt of court.”

Predictably, Mr. Sparkle says “Judge! I warned you: You used my name again. You now owe me \$3.00. Pay up!”

Magistrate Sky says: “Mr. Sparkle, if you keep that up I’m going to recommend you be sentenced to jail for contempt of court.”



#### Poll 7:

#### Magistrate Sky . . .

- A. Acted very reasonably under trying circumstances, given Mr. Sparkle’s intransigence and the fact that the docket is so heavy.
- B. Would have been better served by trying to defuse the situation without resorting to threats of contempt.

### Poll 8:



Mr. Sparkle does not take well to the suggestion that he might be found in contempt. He begins to yell that Magistrate Sky has violated his rights, and begins to direct profanity at Magistrate Sky. Losing his temper, Magistrate Sky pounds his bench and loudly says he is terminating the hearing immediately and sending the case to the district judge for further determination.

- › A. In order to preserve decorum in the court, Magistrate Sky had to assert the court's authority in this way, especially since he had threatened to make this referral if Mr. Sparkle continued to misbehave.
- › B. Magistrate Sky probably escalated the situation unnecessarily.

### Poll 9:



Magistrate Starr has a great reputation for treating well the people who appear in her court. She is proud of her court, and demands that court employees meet her exacting standards. If they do not, she does not hesitate to call them out publicly. She has found immediate feedback gets the staff's attention, such as: "I can't believe you handed me the wrong file. Even my 8 year old could do better than that."

Magistrate Starr:

- A. Is right to demand that staff assist her court properly.
- B. May be a little abusive outside her courtroom, but that's no ethical problem so long as she conducts court proceedings with respect.
- C. Is at risk of violating the civility ethics rules in her treatment of staff.



### Poll 10:

Magistrate Starr is presiding over a contentious small claims case. She has become aware that family members for both of the litigants have posted critical comments during the hearing on Facebook about her appearance and her “inept” decisions.

Magistrate Starr is tired of the attacks. She can:

- A. Do nothing. As a judicial official, she just has to take it.
- B. Fight fire with fire. She can alert the parties that she is aware of the verbal attacks on Facebook and if the negative posts do not stop, warn the parties and observers that she will refer them to the district court for contempt proceedings for such disrespectful behavior.
- C. She can respond aggressively on Facebook, so long as she is honest and is mindful of the dignity of her office.



### Ethics rules do not forbid . . .

- › “Non-false” response of your choice
- › Can be in any format
- › May point out weakness, hypocrisy, or ignorance of other’s position

## What SHOULD Magistrate Starr do? Are there ANY limits??



**A judge** should participate in establishing, maintaining, and enforcing, and **should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.**

Canon 1

Limits imposed by civility canons

Canons 2(B), 3(A)(3), 3(A)(14)

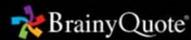


## What can you do to maintain your civility?



**Civility costs nothing, and  
buys everything.**

Mary Wortley Montagu



Relationships





## The Guiding Principle

Due process requires an unbiased and impartial decision maker

*Cain v Dep't of Corrections*, 451 Mich 470 (1996)



### Poll 11:

Magistrate Jones was the county prosecutor for almost 20 years before being appointed magistrate. Must Magistrate Jones disqualify himself from all criminal cases that come before him? If so, for how long?

- A. Magistrate Jones need not disqualify at all
- B. Magistrate Jones should disqualify in all criminal cases for two years after taking the bench
- C. Magistrate Jones should disqualify only in the cases in which he was personally involved while in the prosecutor's office



**Poll 12:**

An attorney who regularly appears before Magistrate Jameson is an office tenant in a building owned by the magistrate. What is Magistrate Jameson's obligation?

- A. None
- B. Disclose the relationship to all parties
- C. Disqualify herself from the attorney's cases.



*In re 50<sup>th</sup> District Court Judge*, 193 Mich App 209 (1992), required judge's disqualification without showing of actual bias or prejudice

JI-006

- › A relationship between a landlord/judge and a tenant/lawyer creates the appearance of impropriety if the lawyer practices before the judge
- › A full disclosure of the relationship must be made to all litigants, and the consent of all litigants obtained, in order to avoid a disqualification. *In re Waterman*, 461 Mich 1207 (1999) (Formal Complaint 55 – sixty day suspension)



## So many relationships . . .

- › OUIL defendant is husband of court employee
- › Party/victim is former court employee
- › Party's wife is former court administrator
- › Magistrate is member of defendant's church
- › Party is a former judge
- › Party is magistrate's neighbor



## . . . and how to think about them

These circumstances are not specified grounds for automatic disqualification in MCR 2.003. Absent something more, they probably do not give rise to an objective appearance of impropriety



## The Judge's Burden

A judge should raise the issue of disqualification whenever the judge has cause to believe that grounds for disqualification may exist under MCR 2.003(B).

Canon 3(C)



## The Equal and Opposite Part of the Judge's Burden

There is an obligation to remain on any case absent good grounds for recusal.

*Adair v Michigan*, 474 Mich 1027 (2006)



## The Secret to Avoiding Trouble?

- › Disclose
- › Disclose
- › Disclose
- › Disclose



## When in doubt – stay on the high road

“The law often permits what honor forbids.”

*Spartacus*, 1760  
Bernard Joseph Saurin

Questions?

