



p 517-346-6300

p 800-968-1442

f 517-482-6248

www.michbar.org

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

July 27, 2017

Larry Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2015-15: Proposed Amendment of Rule 6.425 of the Michigan Court Rules

Dear Clerk Royster:

At its July 21, 2017 meeting, the State Bar of Michigan Board of Commissioners (the Board) considered the above-referenced proposed amendments published by the Court for comment. In its review, the Board considered recommendations from the Criminal Jurisprudence & Practice Committee, Criminal Issues Initiative, and Justice Policy Initiative. In addition, the Board considered the comments that the Michigan Appellate Assigned Counsel System (MAACS) submitted to the Court on May 17, 2017.

After this review, the Board voted unanimously to support Approach 1 set forth in MAACS's letter, which had been recommended by all of the State Bar committees that submitted a position to the Board. Although proposed MCR 6.425 would greatly improve access to justice for plea-convicted defendants and help ensure review of meritorious appellate issues, we agree with MAACS that the process could be even further improved by amending MCR 7.211(C)(5) rather than MCR 6.425(G).

First, the Board agrees with MAACS's concern that proposed MCR 6.425 does not cover all classes of cases. Placement of the rule in MCR 6.425(G) means that the withdrawal process would only apply to discretionary appeals in which the defendant has made a timely request for appointment of counsel and would not extend to cases in which a defendant has failed to make a timely request for counsel. By moving the rule to MCR 7.211(C)(5), the withdrawal of counsel process would apply to all discretionary appeals.

Second, the Board questioned whether the proposed procedure would allow for meaningful review of *Anders* briefs because the trial judge who presided over the case would determine if there any non-frivolous issues for appeal. By moving the withdrawal procedure to MCR 7.211(C)(5), the Court of Appeals would have jurisdiction over the motion, helping to ensure independent judicial review of the motion to withdraw.

Third, the Board agrees with MAACS that the rule should explicitly set forth a process of appointing substitute counsel when a court determines that there are non-frivolous issues for appeal. In certain cases, it would not be appropriate for the previously appointed

attorney to continue to represent the plea-convicted defendant, as that attorney has already argued that there were no non-frivolous issues for appeal. Therefore, the Board supports MCR 7.211(C)(5)(c) as proposed by MAACS which gives the Court of Appeals discretion when denying a motion to withdraw to either order appointed counsel to proceed with the appeal or appoint substitute counsel.

Finally, the Board was concerned that proposed MCR 6.425 sets forth deadlines that conflict with other deadlines in the rules. As MAACS explained, by moving the process to MCR 7.211(C)(5), the Court of Appeals will have jurisdiction over the motions and will be better able to manage deadlines.

We thank the Court for its efforts to improve the motion to withdraw process concerning plea-convicted defendants and for its consideration of improvements that could be made to the process.

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Lawrence P. Nolan, President, State Bar of Michigan