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March 29, 2018

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

306 Townsend Street  
Michael Franck Building  
Lansing, MI  
48933-2012

**RE: ADM File No. 2016-31: Proposed Amendment of Rule 1.16 of the Michigan Rules of Professional Conduct**

Dear Clerk Royster:

At its March 20, 2018 meeting, the State Bar of Michigan Executive Committee considered the above-referenced proposed rule amendment published by the Court for comment.<sup>1</sup> As part of its review, the Executive Committee considered recommendations from the Criminal Law Section, Criminal Jurisprudence & Practice Committee, Professional Ethics Committee, and Public Policy Committee.

After this review, the Executive Committee voted unanimously to oppose both Alternative A and Alternative B. Instead, the Executive Committee recommends that the Court adopt the following amendments to Rule 1.16 (proposed amendments shown in underline, strikethrough, and bold):

(a) [No change.]

(b) Except as stated in paragraph (c), **after informing the client that the lawyer cannot do so without permission from the tribunal for the pending case,** a lawyer may withdraw from representing a client if withdrawal can be accompanied without material adverse effect on the interests of the client, or if:

(1)-(2) [No change.]

(3) the client insists upon ~~taking action pursuing an objective~~ that the lawyer considers repugnant or **with which the lawyer has a fundamental disagreement**~~imprudent;~~

(4)-(6) [No change.]

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<sup>1</sup> Under Article III, §9 of the State Bar of Michigan Bylaws, “[t]he Executive Committee may take a position on a proposed Court Rule if the deadline for a response does not allow for consideration by the Board, provided the position is not inconsistent with policies adopted by the Board or Representative Assembly.”

To address the issue presented in *People v Townsend*, in subsection b, the State Bar recommends that the rule require the lawyer to inform the client that the lawyer must obtain permission from the court before he or she will be allowed to withdraw.

In addition, the State Bar agrees with the Michigan District Judges Association (MDJA), the Criminal Law Section, and Mr. Blanchard that a lawyer should not be allowed to withdraw from a case simply because the lawyer considers the client's actions to be "imprudent." The dictionary defines "imprudent" as "not prudent; lacking discretion; incautious; rash." This term is too broad and subjective to serve as the basis for an attorney to withdraw from representation. This is particularly true in the context of determining whether to accept a plea deal, given a client's right to proceed to trial even in the face of overwhelming evidence against him or her. Therefore, the State Bar joins MDJA, the Criminal Law Section, and Mr. Blanchard in advocating for MRPC 1.16(b)(3) to be amended to adopt the language of ABA Model Rule 1.16(b)(4).

We thank the Court for the opportunity to convey the State Bar's position on this rule proposal.

Sincerely,



Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Donald G. Rockwell, President, State Bar of Michigan