

June 30, 2020

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

RE: ADM File Nos. 2018-33, 2019-20, and 2019-38 – Proposed Amendments of Rules 6.310, 6.425, 6.428, 6.429, 6.431, 7.204, 7.205, 7.208, 7.211, 7.305, and Proposed Addition of Rule 1.112 of the Michigan Court Rules

Dear Clerk Royster:

At its June 12, 2020 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendments published by the Court for comment. As part of its review, the Board considered recommendations from the Criminal Law Section, Appellate Practice Section, Prisons & Corrections Section, and the Access to Justice Policy Committee. The Criminal Law and Appellate Practice Sections both supported the rule amendments; the Prisons & Corrections Section supported the rule amendments but recommended that Rule 6.425(D)(2)(a) be amended to put the onus on the probation officer to correct the report and transmit to the Department of Corrections; and the Access to Justice Policy Committee supported the rule proposal with an amendment to the new prison mailbox rule.

After this review, the Board voted to support the rule proposal with an amendment to the new prison mailbox rule (Rule 1.112) as proposed by the Access to Justice Policy Committee.¹ As currently proposed, the rule is overbroad and creates unnecessary risks that the opposing party does not receive adequate notice of the incarcerated individual's filing. This is particularly troubling when the opposing party is involved in a family law dispute and/or is the victim of domestic violence, harassment, or sexual assault. Without ensuring that the opposing party has received adequate notice, the opposing party may miss filing deadlines or be forced to proceed with a hearing without having adequate time to prepare.

The rule should be limited to only apply when an unrepresented individual submits an untimely pleading that would result in the individual losing a right. This limitation would more properly balance the need to protect incarcerated individuals' rights with the need to provide the opposing party with adequate notice of a court filing. In addition, this limitation is consistent with other rules that apply when the court receives a pleading that involves the loss of a right by unrepresented individuals. See Rules 6.310(C)(5), 6.431(C)(5), 7.204(A)(2)(e), 7.205(A)(3), and 7.305(C)(5).

¹ The Criminal Law, Appellate Practice, and Prisons & Corrections Sections did not have the opportunity to consider the Access to Justice Policy Committee's position prior to submitting their positions to the Board.

The Board supports the remainder of the proposed rule amendments contained in these administrative files because they protect defendants' rights and streamline litigation by helping to ensure that the courts remain accessible to incarcerated individuals; eliminate unfair and potentially unconstitutional limitations on the court's ability to reinstate a defendant's appellate rights when such rights have been forfeited for circumstances beyond the defendant's control; and increase accountability and transparency throughout the presentence interview process.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Janet K. Welch". The signature is fluid and cursive, with a large initial "J" and "W".

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Dennis M. Barnes, President, State Bar of Michigan