

**State Bar of Michigan
Criminal Jurisprudence and Practice Committee
Thursday, January 9, 2014 – 1 to 3 PM
Teleconference Only**

MINUTES

Committee Members: Ryan Lee Berman, Mary Alexis Bowen, Thomas P. Clement, Nichole Jongsma Derks, Nimish R. Ganatra, Daniel Corrigan Grano, J. Kevin McKay, Jonathan Sacks, Samuel R. Smith, III, Michael A. Tesner, Bruce A. Timmons
SBM Staff: Peter Cunningham, Carrie Sharlow

1. Call to Order & Welcome – The meeting was call to order at 1:04 PM.
2. New Business

- a. [ADM File No. 2012-11 - Proposed Amendment of MCR 6.302](#)

This proposed amendment would add a harmless-error provision identical to that in FR Crim P 11(h).

The committee voted 10 in favor with 1 abstention to oppose the proposed amendment to MCR 6.302 in agreement with those reasons listed by the Criminal Law Section:

...the rule would: (1) allow a potential retreat from important protections in the plea bargaining stage; (2) adopt a federal rule that did not apply well in a system with very different procedures in different counties and with a troubled indigent defense system; (3) adopt a federal rule when the federal system allows appeals by right for pleas whereas the state system only allows applications for leave to appeal.

Furthermore, guilty pleas are already protected against non-substantive errors made by the court during the plea process by the "substantial compliance" rule of *People v Saffold*, 465 Mich 268 (2001). Finally, under current case law, the imposition of the proposed rule would require a defendant to prove prejudice where there has been an error in the plea taking process upon which the State wishes to rely. As it stands setting aside a plea for error in the plea-taking process is a Herculean task. With the limited record created by a guilty plea, where there is no trial, a showing of the prejudice necessary to overcome a harmless error presumption is well-nigh impossible.

3. Adjournment.