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July 1, 2008

Corbin Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

**RE: ADM File No. 2006-16
Proposed Amendment of Rules 6.302 and 6.310 of the Michigan Court Rules**

Dear Clerk Davis:

At its June 13, 2008 meeting, the Board of Commissioners of the State Bar of Michigan considered the above rule amendment published for comment. The proposal was the subject of much debate, which included consideration of comments submitted to the court through May 27, 2008 and recognition of strong arguments on both sides. In conclusion, the Board of Commissioners unanimously voted to **oppose ADM File No. 2006-16.**

The State Bar's position is based on the following factors:

- 1) The current system, which allows judges to participate in plea bargain discussions, does not mandate participation by any judge or Court. Therefore, if any judge feels that s/he cannot participate, s/he can choose not to do so. By contrast, the proposed rule would prohibit all such discussions, even in jurisdictions where the current system works very well to keep dockets to a manageable size.
- 2) Particularly in courts with substantial criminal and civil dockets, adoption of the proposed rule could result in more costly trials, resulting in delays to other criminal defendants and civil litigants, who already are routinely "bumped" from their day in court by criminal cases.
- 3) The current system affords more predictability by allowing defense attorneys to know, understand and communicate to their clients their likely sentences, without having to worry that the Court may not like or go along with the plea bargain contemplated by the parties.
- 4) The current system protects criminal defendants from the impact of an overzealous prosecutor or defense attorney, as including the judge in pretrial plea bargaining discussions forces counsel for both parties to be on their best behavior lest they risk alienating the Court.

- 5) The stated desire to bring the state rules more in line with their federal counterpart is understandable, but does not outweigh the positive effects, set forth above, of being able to involve judges (when appropriate) in plea bargain discussions.

We appreciate the opportunity to offer this position for the Court's consideration. Please contact me with any further questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Welch".

Janet Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Ronald D. Keefe, President