

## Report on Public Policy Position

**Name of section:**

Criminal Law Section

**Contact person:**

Ken Malkin

**E-mail:**

[kenmalkin@charter.net](mailto:kenmalkin@charter.net)

**Proposed Court Rule or Administrative Order Number:**

[2009-11 - Proposed Amendment of Rule 6.302 of the Michigan Court Rules](#)

The proposed amendment of MCR 6.302 would require all discussions regarding a defendant's plea agreement to occur in open court and on the record to reduce the possibility that a defendant would be coerced into agreeing to a particular sentence.

**Date position was adopted:**

September 18, 2009

**Process used to take the ideological position:**

Position adopted after discussion and vote at a scheduled meeting.

**Number of members in the decision-making body:**

21

**Number who voted in favor and opposed to the position:**

21 Voted for position

0 Voted against position

0 Abstained from vote

0 Did not vote

**Position:**

Oppose

**Explanation of the position, including any recommended amendments:**

The Criminal Law Section is opposed to the amendment of MCR 6.302 as presented in the Michigan Supreme Court's Order ADM2009-11. The proposed addition of amendatory language to MCR 6.302(C)(1) would have a chilling effect on plea negotiations between the defendant, his or her counsel, and prosecution. Also, the requirement of placing all negotiation discussions on the record could result in unintended consequences. These consequences may include the unnecessary expenditure of scant judicial resources during tedious negotiations and the disclosure of information that may place the defendant in jeopardy or lead to a lack of impartiality by the sentencing judge if an agreement is not reached or not accepted by the sentencing judge. The Criminal Law Section recommends that the State Bar of Michigan adopts this Section position.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report. <http://courts.michigan.gov/supremecourt/Resources/Administrative/2009-11-6-30-09.pdf>