

STATE BAR OF MICHIGAN
CRIMINAL LAW SECTION

July 28, 2010

Mr. Corbin Davis
Supreme Court Clerk
PO Box 30052
Lansing, MI 48909

**RE: ADM File No. 2009-19
Proposed Amendments of Rules 6.425, 6.502, 7.204, and 7.205**

Dear Mr. Davis,

The Criminal Law Section of the State Bar is composed of judges, prosecutors, and defense attorneys with an interest in education, information, and dialog in criminal law. On May 18, 2010, the Council of the Criminal Law Section of the state bar voted 14 to 1 in opposition to the proposed amendments to appellate deadline and motion for relief from judgment proposals.

The Council feels Michigan benefits from a working post-conviction and appellate system that does not need to be changed. These proposals risk limiting relief for actually innocent defendants and denying criminal defendants basic appellate rights.

First, the proposal to place a one year time limit on motions for relief from judgment means that actually innocent defendants might lose their opportunity for relief. Documented exonerations in Michigan and throughout the country have involved newly discovered evidence. By limiting the one year time limit to the date where issues “could have been discovered through *due diligence*,” the proposal eliminates any claims where the lack of diligence by either counsel or the state resulted in flawed investigations or false accusations. The Council feels that the ability to file only one motion for relief from judgment should not have a deadline.

Second, the proposal to limit the time for filing applications for leave to appeal rests on a flawed analysis of the nature of guilty plea appeals. Michigan establishes a jurisdictional deadline for filings of applications for leave to appeal. Unlike claims of appeal after a trial which just require notice, the appeal is taken through the actual filing of a pleading that details grounds for relief. As a practical matter, transcripts will not be available for plea cases until long after the new proposed deadlines have run, and it will be impossible to file a proper appeal based upon the record. The Council is concerned that this proposal unintentionally undermines the constitutional right to counsel for plea appeals recognized in *Halbert v Michigan*, 545 US 605 (2005).

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Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Opolla Brown".

Opolla Brown (P57253), Chairman
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