

**CRIMINAL JURISPRUDENCE & PRACTICE  
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November 3, 2011

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

**RE: ADM File No. 2008-36  
Proposed Amendment of Rule 7.202 of the Michigan Court Rules and  
Proposed Adoption of Administrative Order No. 2011-XX**

Dear Clerk Davis:

At its October 18, 2011 meeting, the State Bar Executive Committee authorized the Criminal Jurisprudence & Practice Committee to submit its recommendation on the proposed amendment to the Supreme Court.

The Criminal Jurisprudence & Practice Committee opposes the current proposed court rule, but, if the Court believes a court rule is necessary, offers the following language suggestion:

MCR 7.205(E)(3) Where the trial court makes a decision on the admissibility of evidence and the prosecutor or the defendant files an interlocutory application for leave to appeal seeking to reverse that decision, the trial court shall stay proceedings pending resolution of the application in the Court of Appeals, unless the court makes findings that the evidence is clearly cumulative or that an appeal is frivolous because legal precedent is clearly against the party's position. The appealing party must pursue the appeal as expeditiously as practicable, and the Court of Appeals shall consider the matter under the same priority as that granted to an interlocutory criminal appeal under MCR 7.213(C)(1). If the application for leave to appeal is filed by the prosecutor and the defendant is incarcerated, the defendant may request that the trial court reconsider whether pretrial release is appropriate.

If you have any questions, please feel free to contact us at your convenience. Thank you for your consideration.

Sincerely,

Judge David A. Hoort  
Co-Chair, Criminal Jurisprudence and Practice Committee

Gretchen A. Schlaff  
Co-Chair, Criminal Jurisprudence and Practice Committee