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48933-2012

**RE: ADM File No. 2010-20 – Proposed Amendment of Rule 6.302 of the Michigan Court Rules**

Dear Clerk Davis:

At its November meeting, the Board of Commissioners of the State Bar of Michigan considered the above rule amendment published for comment. In its consideration, the Board reviewed recommendations from the Criminal Jurisprudence & Practice Committee and the Criminal Law Section<sup>1</sup>. The Board voted unanimously to oppose the proposed published amendment.

The proposal prompted considerable debate within the criminal law community. Some attorneys are concerned that the proposed amendment may, in practice, prompt a defendant to delay his or her guilty plea until 22 days after arraignment in circuit court to preclude a subsequent habitual offender notice. Other attorneys want to afford stronger protections to a defendant, if a habitual offender notice is filed after a guilty plea.

Prosecutors and defense attorneys alike want to ensure that a defendant is fully aware of any plea implications. Everyone recognizes the statutory authority for a prosecutor to file a habitual offender notice up to 21 days after a defendant's arraignment in circuit court. However, instances where a defendant enters a guilty plea and is subsequently charged as a habitual offender seem to occur, although infrequently.

We thank the Court for the opportunity to comment on the proposed amendments.

Sincerely,



Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Julie I. Fershtman, President

<sup>1</sup> In its discussion, the Criminal Jurisprudence & Practice Committee drafted alternative language to the proposal as published, consistent with its argument that a court rule

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would assist in avoiding undue speculation for a defendant. The committee's alternative language follows:

Rule 6.302 Pleas of Guilty and Nolo Contendere

(B) An understanding Plea. Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that each defendant understands:

- (1) [Unchanged.]
- (2) the maximum possible prison sentence for the offense and any mandatory minimum sentence required by law; ~~further, the court shall advise the defendant that if the defendant has been previously convicted of a felony, the defendant may be charged as an habitual offender and the maximum possible sentence may be increased.~~ If a plea of guilty or no contest takes place before or within the time allowed for the filing of a habitual offender notice, the court shall advise a defendant that, if the prosecutor files a habitual offender notice within the time allowed by law, the maximum possible sentence may be increased under the Habitual Offender Act.

The Criminal Law Section voted to oppose the proposed court rule. As its alternative language, the Section recommended that MCR 6.310(B) be amended to allow a defendant to withdraw a guilty plea if a prosecutor subsequently files a habitual offender notice.

We provide these alternative approaches to the Court for informative purposes only. Neither has been endorsed by the Board of Commissioners.