

October 1, 2021

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2020-29 – Proposed Amendment to Rule 410 of the Michigan Rules of Evidence

Dear Clerk Royster:

At its September 17, 2021 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2020-29. The Board voted unanimously to support the amendment as proposed.

Accepted pleas are rarely withdrawn or vacated. When a court permits withdrawal or vacation, it does so due to a serious defect in the plea proceeding, because the plea was not made knowingly or voluntarily, because the withdrawal serves the interest of justice, or because the court has concluded that it is unable to follow the terms of a sentence agreement. It is fundamentally unfair to subsequently use statements made by defendants under such circumstances against them.

By adding vacated pleas to the list of pleas and statements that are inadmissible against the defendant who made the plea under the Michigan Rules of Evidence and prohibiting the use of a statement made during the withdrawal or vacation of a plea, the amendment would further the intent of MRE 410 and make the Michigan rule more consistent with the existing federal practice under FRE 410. In addition, the amendment would protect the due process interests of defendants participating in plea discussions or who made a plea that is subsequently withdrawn or vacated.

We thank the Court for the opportunity to convey the Board's position.

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Dana M. Warnez, President