

From: "Richards, William" <wrichards@cityofsouthfield.com>
To: "MSC_Clerk@courts.mi.gov" <MSC_Clerk@courts.mi.gov>
CC: "Michelle Friedman Appel (friedappel@hotmail.com)" <friedappel@hotmail.com>
Date: 11/27/2013 2:50 PM
Subject: ADM File No. 2012-11

The proposed amendment to MCR 6.302 (guilty and nolo contendere pleas) would add a harmless error provision to the rule identical to Federal Rule of Criminal Procedure 11(h). I support the change and would propose the identical change to MCR 6.610 (E), which governs guilty pleas in District Court.

As the Advisory Committee Notes to Rule 11(h) explain, subdivision (h) "makes clear that the harmless error rule of Rule 52(a) is applicable to Rule 11." Without such a rule, "ceremony was exalted over substance." Adding a harmless error provision makes clear that "ritualistic compliance is not required."

Michigan likewise already follows a harmless error rule. MCR 1.105 provides that "These rules are to be construed to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties." The Legislature has also adopted a harmless error rule. MCL 600.2301 provides, "The court at every stage of the action or proceeding shall disregard any error or defect in the proceedings which do not affect the substantial rights of the parties."

So, the proposed amendment to MCR 6.302 would merely clarify, not change, current law. Yet, the clarification is needed. The rule itself does not state a consequence for non-compliance. Thus Defendants are free to argue that any error in the plea colloquy, no matter how inconsequential, undermines the validity of a solemn guilty plea.

Although I am a proud member of the State Bar Criminal Law section, which opposes this rule change, I urge its adoption. It would have helped resolve one case of mine in which a Defendant twice appealed my denial of his post-sentencing motion to withdraw his guilty plea. Although *People v Ward*, 459 Mich 602, 614 (1999) holds that ordinarily, post-sentencing motions to withdraw a guilty plea are to be considered "frivolous," this Defendant managed to persuade the Circuit Court that I had failed to accept the plea bargain in his case. This seemed an inconsequential error at most, since I gave him what he claimed was the plea bargain-sentencing under MCL 769.4a (the domestic violence deferral statute).

--Judge Bill Richards
46th District Court

CONFIDENTIALITY NOTICE: This e-mail and any attachments thereto are the property of the City of Southfield. This transmission may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of the information contained herein (including any reliance thereon) is **STRICTLY PROHIBITED**. Sender accepts no liability for any damages caused by any virus transmitted by this email. If you received this transmission in error, please contact the sender and delete the material from any computer immediately. Thank you.