

# STATE APPELLATE DEFENDER OFFICE

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February 18, 2014

Mr. Larry Royster  
Clerk, Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48090

Re: ADM File No. 2012-11

Dear Mr. Royster:

The State Appellate Defender Office writes to oppose the proposed changes to MCR 6.302 as the changes are unnecessary and will create the potential for the confusion within Michigan's plea-bargaining system.

The staff comment indicates that the proposed change would mirror the harmless-error provision of FR Crim P 11(h). However, any desire for conformity with the federal rule is misplaced. Michigan's approach to plea bargaining is different from the federal practice. For example, Michigan allows judicial involvement in plea bargaining, while federal law does not. *People v Cobbs*, 443 Mich 276 (1993). FR Crim P 11(b) requires courts to advise a defendant entering pleas on the financial consequences of the plea; Michigan does not. One of the key differences between Michigan's plea system and the federal system is that in Michigan the defendant gives up his or her right to appeal by right. This is not so in the federal system—any appeal from a plea is still by right.

Additionally, the federal plea system relies heavily on a written plea agreement, while the Michigan system often relies on oral plea agreements. And, under federal law, the written agreement is strictly interpreted, with ambiguities construed against the government. *United States v Caruthers*, 458 F3d 459, 470 (CA 6, 2006).

This is not the practice in Michigan. Rather, state cases generally move quicker, there is less interaction with counsel, less time to prepare for the plea hearing and sentencing, and very few cases that involve a comprehensive written agreement that sets forth rights and consequences. In this setting, and particularly where defendants are making sometimes abrupt choices, and must rely on defense counsel and the trial court to fully explain the consequences of a plea, the proposed amendment would substantially diminish the protections inherent to Michigan's plea system.

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Furthermore, the proposed amendment is unnecessary. This Court currently follows a substantial compliance test for errors in the plea proceedings, and has since 1975. *Guilty Plea Cases*, 395 Mich 96 (1975). The substantial compliance test is well understood by the bench and bar. It has not caused unnecessary confusion. It should continue to have the respect of the Court under principles of stare decisis.

In addition, there is a significant body of case law from this Court as to the remedy in specific situations in which there was noncompliance with MCR 6.302. Automatic reversal is required if the court fails to advise a defendant of his or her rights under *People v Jaworski*, 387 Mich 21 (1972) or of an applicable mandatory minimum term or the maximum possible sentence [*People v Jackson*, 417 Mich. 243, 246 (1983) automatic reversal not required if the defendant was sentenced pursuant to a sentencing agreement]. Automatic reversal is not required when there has been an error in advising the defendant of the sentencing consequences of a guilty plea, but rather provides the defendant with the decision whether to let the plea stand or seek plea withdrawal. *People v Cole*, 491 Mich 325 (2012); *People v Brown*, 492 Mich 684 (2012). Importantly, there is nothing in the case law that provides that rote clerical error in the process will lead to, or warrant, plea withdrawal.

If the proposed amendment is adopted, this Court would have to establish yet another body of case law regarding the plea process and MCR 6.302. "Harmless error" and "prejudice" are defined by case law, not statute. To have to develop an entirely new body of case law would add confusion to a system that has been established and followed since 1975. In addition, requiring a defendant to demonstrate prejudice shifts the burden of plea withdrawal and further diminishes protections inherent to Michigan's plea system.

In sum, due to the differences between the federal plea system and the Michigan plea system, the lack of confusion in Michigan's process, the existence of the substantial compliance test, and a robust body of case law defining the remedy, SADO opposes the amendment to MCR 6.302.

Sincerely,



Dawn Van Hoek  
Director