SBM STATE BAR OF MICHIGAN

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February 28, 2014

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

RE: ADM File No. 2012-11 – Proposed Amendment of Rule 6.302 of the Michigan Court Rules

Dear Clerk Royster:

At its last meeting, the Board of Commissioners of the State Bar of Michigan considered the above rule amendment published for comment. In its review, the Board agreed with recommendations from Criminal Jurisprudence & Practice Committee and Criminal Law Section, and voted unanimously to oppose the amendment because the rule would: (1) allow a potential retreat from important protections in the plea bargaining stage; (2) adopt a federal rule that did not apply well in a system with very different procedures in different counties and with a troubled indigent defense system; (3) adopt a federal rule when the federal system allows appeals by right for pleas whereas the state system only allows applications for leave to appeal.

Guilty pleas are already protected against non-substantive errors made by the court during the plea process by the "substantial compliance" rule of People v Saffold, 465 Mich 268 (2001). Under current case law, the imposition of the proposed rule would require a defendant to prove prejudice where there has been an error in the plea-taking process upon which the State wishes to rely. As it stands now, setting aside a plea for error in the plea-taking process has been characterized as a Herculean task. With the limited record created by a guilty plea, when there is no trial a showing of the prejudice necessary to overcome a harmless error presumption is made even more difficult.

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
Brian D. Einhorn, President