

KYML. WORTHY
PROSECUTING ATTORNEY

COUNTY OF WAYNE
OFFICE OF THE PROSECUTING ATTORNEY
DETROIT, MICHIGAN 48226

FRANK MURPHY HALL OF JUSTICE
1441 ST. ANTOINE STREET
TEL. (313) 224-5792
Fax (313) 224-8224
e-mail: tbaughma@co.wayne.mi.us.

From the Desk of
TIMOTHY A. BAUGHMAN
CHIEF, RESEARCH, TRAINING AND APPEALS

January 16, 2013

Corbin Davis
Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2011-19/proposed amendments to MCR 6.302 and MCR 6.310.

Dear Mr Davis:

I write in support of the proposed amendments to MCR 6.302 and MCR 6.310. The amendments would, as did the proposal in ADM File 2006-16, provide that where an agreement for a sentence *recommendation* by the prosecutor is reached, the defendant would be informed that the court need not follow that recommendation, and, if the court does *not* do so, withdrawal of the plea would no longer be required. I write to support these amendments.

Agreements for sentence recommendations by the prosecuting attorney and agreements for specific sentences (when ratified by the trial judge) should not be treated the same if the trial judge determines that he or she cannot follow them. An agreement for a specific sentence, if not followed, should result in the opportunity for plea withdrawal, but an agreement for a *recommendation* is just that, and, so long as the defendant is informed at the time of the plea that a recommendation by the prosecutor need not be followed, withdrawal of the plea if it is not should not result. This is consistent with the federal rule.

While I remain of the view that judges should not be involved in plea bargaining,¹ which was part of the proposal in Adm. File 2006-16, that was rejected then and it appears that ship has sailed.

¹ Among other reasons, “Cobbs” agreements render the state constitutional and statutory right of victims to make impact statements meaningless to the sentence; these are not designed to be simply psychological exercises, but may be considered by the judge in setting sentence.

For these reasons, the proposed rule changes should be adopted. These views are my own and not intended as an expression of those of my Office.

Sincerely,

TIMOTHY A. BAUGHMAN
Chief of Research, Training, and Appeals