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July 5, 2016

Mr. Larry S. Royster
Clerk, Michigan Supreme Court
Michigan Hall of Justice
P.O. Box 30052
Lansing, Michigan 48909

*re: ADM File 2013-18*
*Proposed Amendment of (inter alia) 6.006, 6.901*
*of the Michigan Court Rules*

Dear Mr. Royster:

On behalf of the Criminal Defense Attorneys of Michigan, I write in support of the proposed amendments to MCR 6.006(C), for the reasons stated in the letter of support submitted by the State Appellate Defender Office.

However, CDAM opposes the proposed amendment to MCR 6.006(D), which would permit felony sentencing via two-way interactive videoconferencing, with the defendant's consent. The sentencing hearing in a felony case almost always is the most important, and the most "critical" when talking about critical stages, of any hearing in the case. Our members who have weighed in on this issue are unanimous in their agreement that the defendant should be physically present at it, even if the defendant might otherwise consent not to be. Our collective experience is that it is important, to all participants, that the defendant have the opportunity to present himself to the court, to see, hear and fully understand what is happening at that hearing, and at the end to allocute on his own behalf or not, as the defendant sees fit after others have spoken. We firmly believe that a defendant is significantly and materially impaired if he engages this most important process via videoconference.

Furthermore, we are concerned that if videoconferenced sentencings exist as an option, courts might over-encourage its use even where it would be clearly inappropriate. Counsel who practice in such a court may in turn encourage unsophisticated defendants into waiving

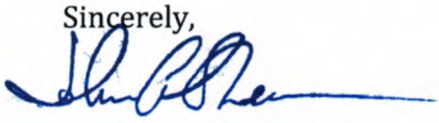
the right to be physically present at sentencing, even where such a waiver would be clearly inappropriate. Again, we strongly believe that a defendant ought to be physically present at sentencing as a rule. We oppose permitting a defendant to waive his or her presence because we believe it will encourage inappropriate overuse of this process and ultimately threaten the rule.

In addition to our philosophical opposition, we also have practical concerns. First, too many courts still are not providing the Presentence Information Report to counsel within the timelines set by court rule. As a result, oftentimes a defendant and counsel still are reviewing the PSIR on the date of sentencing. Both parties need to be present in the same place for that to occur. If they are not, delays (in the form of adjournments) are inevitable.

Second, it is common that one side or the other raises objections or other issues at the sentencing hearing, e.g. to the guidelines scoring, to substantive information in PSIR, or to matters raised in victim impact statements or in general allocution. Oftentimes these issues require defense counsel to consult with the defendant, on the spot. Likewise, sometimes a judge will raise an issue that requires such a consultation, for example when the judge indicates that s/he cannot abide by a Cobbs agreement. If counsel and the defendant are in separate facilities, such consultation is impossible. In those circumstances, again either an adjournment will be necessary, or waivers of issues or essentially uncounseled decisions about them will occur.

For all of these reasons, CDAM supports the proposed amendment to MCR 6.006(C), but opposes the proposed amendment MCR 6.006(D). Thank you for your consideration of CDAM's position on these proposals. As always, we appreciate the opportunity to provide this comment.

Sincerely,



John A. Shea, Co-Chair
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Michigan