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September 2, 2014

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

Re: ADM File No. 2014-18

The Rules Committee for the Michigan District Court Judges Association (MDJA) and the Board of Directors has reviewed the proposed amendments to MCR 6.001(B). The proposed changes would require procedural rules and sub-rules, previously only applicable to felony cases, to also be applied in misdemeanor cases heard in the District Courts. MDJA objects to the proposed amendments. The proposed changes ignore the statutes and rules currently governing the procedure in reference to arrests, sworn complaints and arraignments in the District Courts. MDJA also objects because the proposed application of MCR 6.103 (Summons Instead of Arrest), MCR 6.104(A) (Arrestment without Unnecessary Delay) and MCR 6.104 (D) (Arrest without Warrant) would replace the District Court's current procedure and practice with procedures that would cause additional cost and significant time delays.

Unless prohibited by a specific statute, individuals arrested without warrants for misdemeanors, traffic misdemeanors, or violations of local ordinance may be taken before a magistrate for arraignment or pursuant to MCL 780.581, if a magistrate is not available, the arrested person may deposit with the arresting department an interim bond to guarantee his or her appearance. In the alternative, pursuant to MCL 764.9c, an individual may be served with an appearance ticket and then may be released from custody.

The current language in MCR 6.104 (A) references the possibility of pre-arraignment release and therefore making it applicable to the District Court is not necessary.

The case of City of Plymouth v McIntosh, 291 Mich App 152 (2010) provides a detailed discussion of the multiple sources that currently govern arrests and the issuance of complaints in the District Courts. In McIntosh the Prosecutor appealed an order vacating defendant's conviction for operating a motor vehicle while visibly impaired, due to the prosecutor's failure to file a sworn complaint with the court after the defendant had pled not guilty, as would be required if MCR 6.104 (d) is made applicable to the District Courts. The Court ruled that pursuant to the Michigan Vehicle Code (MCL 257.727 c) and Code of Criminal Procedure (MCL 764 1e (1)) the signed citations issued by officers constitute a sworn complaint. The court also noted that this statutory scheme is consistent with MCR 6.615 which specifically provides for the use of citations as a sworn complaint in misdemeanor traffic cases. Citing the authority found in the Code of Criminal Procedure, which authorizes an officer to issue citations for the violation of a misdemeanor or ordinance violation (MCL 764.9c), and also allows the citation to serve as the complaint if it contains a declaration under oath that the statements are true upon information and belief above the date and signature of a peace officer (MCL 764.1e), the court found the filing of a citation takes the place of a sworn complaint and that there is no requirement to file a second form, restating the identical facts, before the proceeding can continue. The court also referenced a memorandum from the State Court Administrative Office, dated June 13, 2003 which specifically approves the Uniform Law Citation (814 N.W.2d 865) in reference to the use of citation and appearance ticket. The memo also advises that a citation may serve as the complaint and the filing of a formal complaint is not necessary to meet the requirements of the statute. According to the SCAO memo the primary point of MCL 746.9g is to ensure that the court does not proceed until either a citation or other sworn complaint has actually been filed (City of Plymouth v. McIntosh, 291 Mich App, 152 at 159-163).

The district courts throughout this state hear hundreds of thousands of misdemeanor cases each year. It would be both costly

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and an unreasonable burden, to require prosecutors to prepare, and the courts to issue a warrant or endorse the complaint in all misdemeanor and ordinance violation cases involving individuals who have been issued a citation or an appearance ticket. The Michigan District Judges' Association respectfully requests that the amendments proposed in ADM 2014-18 not be adopted and that the file be closed without any further action.

Sincerely,

Brian Oakley

Hon. Brian Oakley, President

Michigan District Judges Association

cc: Hon Robert Young, Chief Justice Michigan Supreme Court
Anne Boomer, Administrative Counsel, Michigan Supreme Court