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September 30, 2010

Chief Justice Marilyn Kelly
Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

RE: ADM File 2010-16

Dear Chief Justice Kelly and Justices of the Supreme Court:

The referenced administrative file proposes to amend the Michigan Court Rules so as to modify those rules governing the taking pleas of guilty and no contest. The purpose of the proposed amendment is to advise all defendants of potential collateral immigration consequences of their pleas in the event that they are not citizens. There are two alternatives: Alternative A addresses only felony pleas under MCR 6.302, which does not apply to district courts, MCR 6.001(B), and which is directed to the defendants counsel. Alternative B addresses both felony pleas and misdemeanor pleas in district court.

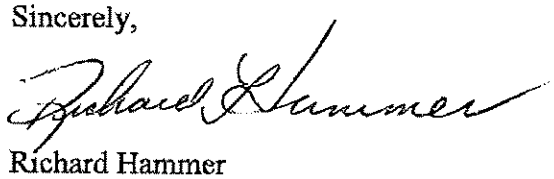
The Executive Board of the Michigan District Judges Association reviewed the proposals contained in this file, and has taken a position in support of Proposal B, with suggested modification. This alternative applies to misdemeanor pleas taken in the districts courts through a proposed amendment to MCR 6.610, as well as felony pleas under MCR 6.302, and which is directed to defendants themselves, since many are unrepresented in district court.

As you know the impetus of this proposed amendment is a result of the concern expressed by the United States Supreme Court in the case of *Padilla v Kentucky,* that the consequences of a plea may be significant, and that a defendant should be made aware of these potential consequences. Although the *Padilla* case did not address the process of a plea itself, the district judges share the concern that defendants understand the potentially significant immigration consequences of their plea, and that such consequences may result from even misdemeanor offenses in district courts.

Consequently, the MDJA Executive Board supports the concept that defendants be advised of potential immigration consequences of their pleas. The Board also suggests rather than limit the advice to non-citizens, that it be expanded to also include the potential limitations of rights of citizens to travel abroad. However, due to the high volume of pleas in the district courts, the board also recommends that the advice be allowed to be provided in written form, as currently allowed for other trial rights by the existing MCR 6.610(E)(4), rather than require of an actual colloquy on each plea. This can be clarified by amending MCR 6.610(E)(4), which allows certain advice to be in written form, so as to also include the advice given in both amended sub rules (E)(3)(b) and (E)(3)(c).

As always, if there any questions or concerns with respect to this matter, please do not hesitate to contact me.

Sincerely,



Richard Hammer
Chairperson, Rules Committee
Michigan District Judges Association

RH/dw

C: Corbin R. Davis, Clerk of the Michigan Supreme Court
Hon. Kathleen McCann, MDJA President
Anne Boomer, Administrative Counsel