The Circuit Court

for the Sixth Judicial Court of Michigan

COURTHOUSE TOWER

PONTIAC, MICHIGAN 48341-0404

MICHAEL WARREN
CIRCUIT JUDGE

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November 2, 2010

RECEIVED
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CORBIN R. DAVIS
CLERK SUPREME COURT

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

RE: Administrative File No. 2010-16 – Proposed Amendments of Rules 6.302 and 6.610 of the Michigan Court Rules

Dear Mr. Davis and Justices of the Supreme Court:

I have reviewed with great interest the thoughtful comments previously submitted by interested parties on this issue. As some have noted, prying into citizenship status of a defendant and/or the discussions between counsel and a criminal defendant is problematic. In addition, the detail presented in the proposals – if applied logically to the other portions of the advice of rights – would require the court to read a small legal treatise to take a plea. Such detail is neither necessary nor wise.

I suggest a very simple alternative that addresses the core issue (as well as the effects of probation and parole) as an amendment to MCR 6.302(A) (and corresponding amendment to MCR 6.610):

> (B) An Understanding Plea. Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that each defendant understands:
>
> (1)-(3) Unchanged.
>
> (4) <u>if the defendant is on probation, parole, or immigration status, that the plea could effect such status</u>.
>
> (4) <u>(5)</u> if the plea is accepted, the defendant will be giving up any claim that the plea was the result of promises or threats that were not disclosed to the court at the plea

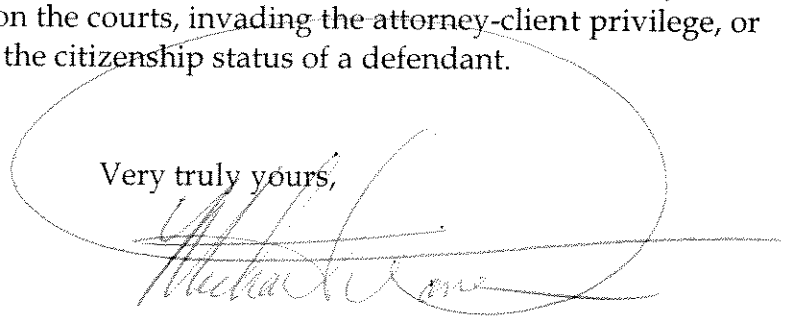
proceeding, or that it was not the defendant's own choice to enter the plea;

(~~5~~) (6) any appeal from the conviction and sentence pursuant to the plea will be by application for leave to appeal and not by right;

The requirements of subrules (B)(3) and (B)(~~5~~)(6) may be satisfied by a writing on a form approved by the State Court Administrative Office. If a court uses a writing, the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

This simple amendment of adding proposed new paragraph (4) to MCR 6.302(A) addresses the core constitutional issues without creating an overly burdensome requirement on the courts, invading the attorney-client privilege, or unduly probing regarding the citizenship status of a defendant.

Very truly yours,



Hon. Michael Warren