SBM STATE BAR OF MICHIGAN

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CRIMINAL JURISPRUDENCE & PRACTICE COMMITTEE

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October 7, 2010

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

RE: ADM File No. 2010-16
Proposed Amendments of Rules 6.302 and 6.510 of the Michigan Court Rules

Dear Clerk Davis:

At its September 29, 2010 meeting, the Board of Commissioners of the State Bar of Michigan considered the above rule amendments published for comment. The Board voted to authorize the Criminal Jurisprudence & Practice Committee to advocate its position.

The Criminal Jurisprudence and Practice Committee supports Alternative B. However, the committee suggests the removal of the phrase "exclusion from admission to the United States, or denial of naturalization under the laws of the United States" in proposed MCR 6.302 E (2). The Committee recommends deleting the language because it expands the ruling and the advice required in *Padilla*.

There was also a consensus from the Committee that the court rule language be amended to allow for the proposed advice by a judge to come during the advice of rights and not after the colloquy. Further, the judge should note on record whether the attorney has notified the defendant of the deportation consequence.

The Committee expressed concerns over Alternative A because it may cause a defendant to abdicate his or her fifth amendment rights by admitting illegal residence status on the court record.

We thank the Court for its publication of the proposed amendments. Please contact us with any further questions.

Sincerely,

Hon. David Hoort
Co-Chair, Criminal Jurisprudence & Practice Committee

Gretchen Schlaff
Co-Chair, Criminal Jurisprudence & Practice Committee

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
W. Anthony Jenkins, President

CRIMINAL JURISPRUDENCE & PRACTICE COMMITTEE
Respectfully submits the following position on:

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ADM File No. 2010-16

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The Criminal Jurisprudence & Practice Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Criminal Jurisprudence & Practice Committee only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter but is authorizing Criminal Jurisprudence & Practice Committee to advocate their position.

The total membership of the Criminal Jurisprudence & Practice Committee is 18.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 18. The number who voted in favor to this position was 6. The number who voted opposed to this position was 4.