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

Re: ADM File No. 2018-23

Dear Justices,

ADM File No. 2018-23 proposes to drastically change the rules regarding discovery in misdemeanor cases. While PAAM supports the premise of providing discovery in such cases, the current proposal which applies the felony discovery rules to misdemeanor cases goes too far and will slow the efficient handling of criminal cases.

In 1999 this Court made clear in Administrative Order 1999-3 that MCR 6.201 concerning discovery in felony cases does not apply to misdemeanor cases:

> On order of the Court, in the case of *People v Sheldon*, 234 Mich App 68; 592 NW2d 121 (1999) (COA Docket No. 204254), the Court of Appeals ruled that MCR 6.201, which provides for discovery in criminal felony cases, also applies to criminal misdemeanor cases. That ruling was premised on an erroneous interpretation of our Administrative Order No. 1994-10. By virtue of this Administrative Order, we wish to inform the bench and bar that MCR 6.201 applies only to criminal felony cases. Administrative Order No. 1994-10 does not enlarge the scope of applicability of MCR 6.201. See MCR 6.001(A) and (B).

A few years later, a committee appointed by the Court to propose modifications to the Rules of Criminal Procedure included in its proposals a discovery rule designed specifically for misdemeanor cases. The rule was somewhat more modest in its reach than MCR 6.201's reach in felony cases, given the difference in seriousness in the classes of cases involved.

The Committee Comment to the proposal said "Currently the District Court rules have no discovery provisions, and it is unclear whether and to what extent district court judges have authority to grant discovery. The Committee feels rudimentary discovery in the form of witness lists, especially with regard to any possible expert testimony, and, on the part of the prosecuting attorney, any

exculpatory information as well as any statements of the defendant or codefendants or accomplices, was reasonable, along with any search warrant materials. To avoid much unnecessary discovery, however, this rule is triggered only once a case is set for trial and not before." The Court did not adopt the proposal, and thus there remains no discovery rule in misdemeanor cases.

The Court has now proposed applying MCR 6.201 root and branch to all misdemeanor cases, including those that might be called "petty offenses" or "petty misdemeanors." Many jurisdictions in this State prosecute what might accurately be called a huge number of misdemeanor cases, and do so efficiently and fairly. A large number of these cases are not complex, very often not contested, and proceed very quickly. Requiring felony discovery in this large number misdemeanor cases will slow the progress of cases often to the detriment of defendants themselves. In many of these simple cases, the evidence is uncontroverted and the defendants themselves eager to resolve their cases and move on with their lives. Mandating this level of discovery will lead to the incorrect perception that counsel who choose to resolve such cases, absent full discovery, are ineffective. The reality is that mandating felony level discovery in cases where it is not necessary will only serve to create a bottleneck in the litigation of such cases.

As earlier noted, we do not oppose a discovery rule in misdemeanor cases. Rather, we request one that makes clear that it does not apply to preliminary examinations in felony cases, discovery under MCR 6.201 in felony cases commences, as it should, once jurisdiction of the case proceeds to circuit court. The rule this Court adopts should be more limited in scope than MCR 6.201 and should vest authority with district judges to grant discovery not covered by the rule upon a showing of good cause. We disagree with the MDJA comment that "if the general discovery rule (MCR 6.201) is made applicable to district court criminal cases, subsection (I) could be used to limit its application where full-blown discovery may not be appropriate." That section is adequate to the task; rather, we think going at it the other way around is the better method; that is, that the rule should supply limited discovery with a provision for more "full-blown discovery when *that* may be appropriate."

We suggest as an alternative a modified version of the previously proposed MCR 6.610(F) that the Court previously declined to adopt:[1]

[1] See Minn. R. Crim. P. 9.04.

MCR 6.610(F) Discovery.

> (A) At any time before trial the prosecutor must, on request,
> (1) permit the defendant or defense counsel to inspect the police investigatory reports; and
> (2) provide the defendant or defense counsel any exculpatory information or evidence known to the prosecuting attorney.
>
> (B) Once a case is set for trial, the prosecutor must, on request, provide to defendant or defense counsel:
> (1) a copy of the police investigatory reports, as well as copies of any dashcam, bodycam, or other video the prosecution intends to use at trial;
> (2) any written or recorded statements by a defendant, codefendant, or accomplice pertaining to the case, even if that person is not a prospective witness at trial;
> (3) any affidavit, warrant, and return pertaining to a search or seizure in connection with the case.
>
> (C)Each party must, on request, provide the names and addresses of all lay and expert witnesses whom the party may call at trial; in the alternative, a party may provide the name of the witness and make the witness available to the other party

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In misdemeanor cases, before arraignment or at any time before trial the prosecutor must, on request and without a court order, permit the defendant or defense counsel to inspect the police investigatory reports.

Upon request, the prosecutor must also disclose any material or information within the prosecutor's possession and control that tends to negate or reduce the guilt of the accused as to the offense charged.

After arraignment and on request, the defendant or defense counsel must be provided a copy of the police investigatory reports.

Any other discovery must be by consent of the parties or by motion to the court.

The obligation to provide discovery after arraignment may be satisfied by any method that provides the defendant or defense counsel a copy of the reports, including any electronic means available to both parties.

for interview

(4) Any other discovery must be by consent of the parties or by motion to the court on good cause shown.

(5) This rule is applicable only to proceedings under this subchapter.

This rule will provide the discovery needed in misdemeanor cases without needlessly slowing the progress of such cases to the detriment of the parties. We thank you for your attention to our concerns.

Respectfully submitted,

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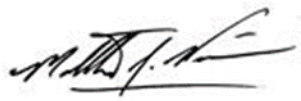

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