



OFFICERS

Elizabeth LaCosse,
President
Karl Numinen,
1st Vice President
Arthur Jay Weiss,
2nd Vice President
Rhonda B. Ives,
Treasurer
Bernard A. Jocuns,
Secretary
Patricia A. Maceroni,
Past President

BOARD MEMBERS

Dominic Andriacchi Jr., District 3
Joshua Blanchard
Michael Carter
Patrick A. Cherry, District 3
Marilena David-Martin, District 1
Stuart G. Friedman
Daniel W. Grow
Nadine R. Hatten
John Holmes
Thomas M. Loeb
Victor Mansour
Harry Mihas
Steven I. Moss
Takura Nyamfukudza, District 2
Michael L. Steinberg
William W. Swor, District 1
Brian R. Watkins, District 2
Jordan Zuppke

EXECUTIVE DIRECTOR

Ramona L. Sain

Mailing Address
P.O. Box 279
Davison, MI 48423

517.579.0533 office
www.CDAMonline.org

September 30, 2019

Mr. Larry S. Royster
Clerk, Michigan Supreme Court
Michigan Hall of Justice
P.O. Box 30052
Lansing, Michigan 48909

*re: ADM File 2018-23
Proposed Amendment of MCR 6.610 (ver. June 5, 2019)*

Dear Mr. Royster:

On behalf of the Criminal Defense Attorneys of Michigan, I write to address the June 5, 2019 re-issue of ADM File 2018-23, seeking to amend MCR 6.610 regarding discovery in misdemeanor cases. We appreciate the Court's ongoing initiative to address this issue. CDAM supports "Alternative A" to this version of ADM File 2018-23, which would apply the existing provisions of MCR 6.201(A) to misdemeanor cases when "Defendant elects to request discovery pursuant to MCR 6.201(A)."

CDAM opposed an earlier version of ADM File 2018-23, which would have applied the discovery provisions of MCR 6.201 regardless of whether the defense requested discovery. That opposition stemmed from concerns that defendants would be required to provide reciprocal discovery to the prosecutor even if the defendant didn't request discovery. Many of our members believed that it would be unduly burdensome, and inconsistent with a defendant's right not to cooperate in the effort to convict him, to have to provide discovery to the prosecution when the defense wasn't requesting it.

We believe that alternative addresses the above concerns. We also believe it accommodates defense attorneys who support misdemeanor discovery, by giving them the option to request it knowing that it will trigger the obligation to reciprocate on request by the prosecutor.

Given the extremely varied views across the state of when discovery in misdemeanor cases should be provided, a uniform rule is important. And to those who might observe that only 3-5% of misdemeanor cases go to trial, and ask why we should have discovery rule for the other 95-97% of cases, we answer that discovery in the modern age oftentimes is just as important in misdemeanor cases as it is in felony cases, where the trial frequency is similar. Moreover, pretrial investigation, including obtaining discovery, is as important in determining whether to go to trial, and in plea negotiations, as it is in preparing for trial. This observation exposes a major problem with "Alternative B" in ADM 2018-23. In that alternative, much discovery is triggered by a trial date. In many misdemeanor cases, one cannot effectively analyze the merits of one's case, or a prosecutor's plea offer, without adequate investigation, and that includes discovery prior to the setting of a trial date.

In our view, Alternative A in ADM 2018-23 strikes the proper balance between cases where the defense may not need discovery, and it is not requested, and where the defense believes discovery is important, and agrees to provide it reciprocally under the court rule. For this reason, CDAM supports Alternative A proposed in ADM 2018-23.

Thank you for your consideration of our position. As always, we appreciate the opportunity to provide this comment.

Sincerely,

A handwritten signature in blue ink, appearing to read "John A. Shea", with a long horizontal flourish extending to the right.

John A. Shea, Co-Chair
Rules and Laws Committee
Criminal Defense Attorneys of
Michigan