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October 1, 2019

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

RE: ADM File No. 2018-23, Proposed Amendments to MCR 6.610

Dear Justices,

PAAM supports proposed Alternative B as it provides the discovery needed by prosecutors and the defense in a workable format that will allow misdemeanor cases to proceed in an efficient manner.

PAAM previously detailed the reasons for its support of reciprocal discovery in its prior comment.

While both of the proposed alternatives provide a limited framework for discovery in district court that is preferable to the previous proposed amendment, which applied MCR 6.201 in its entirety to cases in the district court, Alternative B provides the most practical and efficient framework.

Alternative B better addresses the distinct concerns that exist in district court practice. Alternative A does nothing more to address the realities and circumstances of district court cases than the original proposal did. Alternative B is substantially the same as the proposed language that PAAM suggested in its March 4, 2019 comment on a prior version of ADM File No. 2018-23. It balances the need for discovery in misdemeanors with the concerns that such rules may slow the efficient handling of criminal cases in district court.

The majority of misdemeanor cases are neither legally nor factually complex. Alternative B provides for discovery of the essentials prior to trial so that defense counsel can make an informed assessment of the case. Many misdemeanors are not contested by the defendant, and the defendants themselves seek to resolve their cases expeditiously with minimal legal fees and court appearances. In practice, a large number of misdemeanor files are resolved at the first opportunity or the pretrial conference. Cases that are more complicated factually, or those that may require expert testimony (i.e. operating while intoxicated or moving violation causing death cases) are typically continued for trial.

Alternative B contains a more effective mechanism to trigger discovery than Alternative A, where reciprocal discovery occurs only after defense counsel requests discovery and then the prosecution complies. If a case is set for trial, especially under the time constraints that exist in district court, both parties should contemporaneously provide the materials required. Alternative B ensures that this exchange occurs efficiently.

Alternative B also provides for more extensive discovery on good cause shown, where the case requires it. Considering the universally cited concern of lack of time and resources, it is better to default to a system where the litigants in a more complicated case would file a motion to expand discovery, not a rule where extensive discovery is the standard.

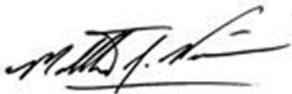
The proposed language in Alternative A would only apply MCR 6.201(A) if the defendant requests discovery, and only requires the defendant to comply with the rule if he or she has requested discovery and the prosecution has complied. If adopted, this alternative creates risk of an incorrect perception that defense counsel who chooses to resolve a case early on, foregoing more extensive discovery, is not diligently representing a client. Where defense counsel recognizes from the police report and a discussion with the client that the facts are uncontroverted and an expeditious resolution is beneficial to the client, counsel should be able to proceed to a resolution without concern about how the decision not to seek further discovery could be construed in evaluating counsel's representation. Under proposed alternative A, in any case where a prosecutor suspects that a defendant might call an expert witness, in order to avoid trial-by-ambush, the prosecutor will be forced to file a motion for discovery to discover the name of the expert.

Adoption of Alternative B will best provide both sides with the discovery needed in misdemeanor cases without overburdening the parties or the court, and without slowing the process of cases to the detriment of the parties. Thank you for your attention to our concerns.

Respectfully submitted,



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