

December 15, 2020

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2019-06 – Amendment of Rule 6.302 of the Michigan Court Rules

Dear Clerk Royster:

At its November 20, 2020 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2019-06. In its review, the Board considered recommendations from the Access to Justice Policy and the Civil Procedure & Courts committees.

The Board voted unanimously to support the proposed amendment to Rule 6.302 with further amendments to Rule 6.302(B)(2), as follows:

...the maximum possible prison sentence for the offense, including, if applicable and based upon the matters pending before that judicial officer, whether the law permits or requires consecutive sentences, making clear to the defendant that the representation only relates to cases pending before that judicial officer, and any mandatory minimum sentence required by law, including a requirement for mandatory lifetime electronic monitoring under MCL 750.520b or 750.520c;

Because a judge may not have perfect information at the time of sentencing, the additional amendments to subsection (B)(2) would clarify that a judge's representations about the length and nature of a sentence are to be based only upon the information available to the judge at the time of sentencing. The amendment supports the spirit of the Rule 6.302 by reinforcing that defendants have the right to understand their maximum sentence. The proposed amendments also take the additional step of informing defendants that representations about their sentences are restricted to information known to the judicial officer at the time of sentencing and that their sentences could ultimately be recalibrated based on new information, such as newly pending federal matters.

The Board also recommends to the Court that the State Court Administrative Office bench books and cards be updated to reflect amended Rule 6.302.

We thank the Court for the opportunity to comment on the proposed amendment.

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Robert J. Buchanan, President