



# Prosecuting Attorneys Association of Michigan

116 W. Ottawa Street – Suite 200  
Lansing, Michigan 48913  
(517) 334-6060 – Fax (517) 334-7571  
[www.michiganprosecutor.org](http://www.michiganprosecutor.org)

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January 14, 2021

Larry Royster  
Clerk of the Michigan Supreme Court  
P.O. Box 30052, Lansing, MI 48909  
[ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov)

Re: Administrative File 2020-7

Dear Mr Royster:

The Court has proposed two alternative possible amendments to MCR 6.502(D):

### ALTERNATIVE A

(D) Return of Insufficient Motion. If a motion is not submitted on a form approved by the State Court Administrative Office, or does not substantially comply with the requirements of these rules, the court shall either direct that it be returned to the defendant with a statement of the reasons for its return, along with the appropriate form, or adjudicate the motion under the provisions of these rules. When a pro se defendant files his or her first motion effectively seeking to set aside or modify the judgment but styles the motion as something other than a motion for relief from judgment, the court shall promptly notify the defendant of its intention to recharacterize the pleading as a motion for relief from judgment; inform the defendant of any effects this might have on subsequent motions for relief, see MCR 6.502(B), (G); and provide the defendant \_\_\_ days to withdraw or amend his or her motion before the court recharacterizes the motion. If the court fails to provide this notice and opportunity for withdrawal or amendment, the defendant's motion cannot be considered a motion for relief from judgment for purposes of MCR 6.502(B), (G). The clerk of the court shall retain a copy of the motion.

### ALTERNATIVE B

(D) Return of Insufficient Motion. If a motion is not submitted on a form approved by the State Court Administrative Office, or does not substantially comply with the requirements of these rules, the court shall either direct that it be returned to the defendant with a statement of the reasons for its return, along with the appropriate form, or adjudicate the motion under the provisions of these rules. Where the defendant files a motion effectively seeking to set aside or modify the judgment but styles the motion as something other than a motion for relief from judgment, the court shall direct that it be returned to the defendant with a statement of the reasons for its return, along with the appropriate form. The clerk of the court shall retain a copy of the motion.

The Staff comment says that “The proposed alternative amendments of MCR 6.502 would address the issue of a court’s recharacterization of a defendant’s motion for relief from judgment that is styled as something other than a motion for relief from judgment. Under Alternative A, the court would be required to notify the defendant of its intent to recharacterize the motion and allow the defendant an opportunity to withdraw or amend the motion. Under Alternative B, the court would be required to return the motion to the defendant with a statement of the reason for return.”

Adopting one of the alternatives is consistent, we would note, with the practice in the federal system, where under the federal analogue to our motion for relief from judgment practice, the United States Supreme Court has held that:

when a court recharacterizes a pro se litigant's motion as a first § 2255 motion . . . the district court must notify the pro se litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restrictions on “second or successive” motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has. If the court fails to do so, the motion cannot be considered to have become a § 2255 motion for purposes of applying to later motions the law's “second or successive” restrictions.

*Castro v. United States*, 540 U.S. 375, 383, 124 S. Ct. 786, 792, 157 L. Ed. 2d 778 (2003).

Though alternative A appears to more closely approximate the federal requirement, we believe that alternative B would accomplish the goal sought, and be more easily administered by busy trial court judges; indeed, a form with appropriate blanks to be filled in and then sent to the pro se defendant, along with the proper motion for relief from judgment form, could perhaps be developed by SCAO.

We endorse, then, Alternative B.

Sincerely,



Matthew J. Wiese  
Marquette County Prosecutor  
President, Prosecuting Attorneys Association of Michigan