

February 1, 2021

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

RE: ADM File No. 2020-07 – Alternative Proposed Amendments of Rule 6.502 of the Michigan Court Rules

Dear Clerk Royster:

At its January 22, 2021 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2020-07. In its review, the Board considered recommendations from the Access to Justice Policy and the Criminal Jurisprudence & Practice committees. The Board voted unanimously to support Alternative A with the following amendments presented below in bold and underline:

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 **90** 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 **or the defendant establishes that notice was not actually received**, 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 A is preferable because, unlike Alternative B, it provides notice and a streamlined process to either (1) withdraw the motion for those individuals who did not intend to file a motion for relief from judgment or (2) recharacterize the motion for those individuals who intended to file a motion for relief from judgment but did not style it appropriately. Alternative B is also disfavored because it raises significant issues involving a defendant's federal habeas rights – specifically, the potential for the habeas clock to expire during the time it takes the court to return the motion for refiling to the defendant.

The Board proposes the additional language to clarify that when a defendant does not receive notice, the defendant's motion cannot be considered a motion for relief from judgment for the purposes of Rule 6.502(B) and (G). Non-delivery of notices has occurred when, for example, the defendant's prison address changes. In addition, the Board recommends a 90-day window in which defendants may withdraw or amend their motion.

The recommended time frame accounts for delays in mail delivery due to the Covid-19 pandemic as well as the more typical delays associated with sending and receiving mail in a correctional facility.

We thank the Court for the opportunity to convey the Board's position.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet Welch". The signature is fluid and cursive, with a large initial "J" and "W".

Janet K. Welch
Executive Director

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