SBM STATE BAR OF MICHIGAN

TO: Criminal Issues Initiative (CII) and the Committee on Justice Initiatives (CJI)
FROM: CII Workgroup on Michigan Supreme Court ADM File No. 2010-16
DATE: September 2, 2010
RE: Proposal for Response to ADM File No. 2010-16

The Michigan Supreme Court is proposing rule changes to the plea-taking rules in Circuit and District Courts, Court Rules 6.302 and 6.610. The changes are proposed in light of the recent decision of the United States Supreme Court in *Padilla v Kentucky*, which requires that individuals who are non-citizens receive correct advice from their counsel as to deportation consequences of their pleas or convictions.

Although *Padilla* placed the burden on defense counsel to offer correct legal advice to non-citizens as to the deportation consequences of guilty pleas and convictions, courts are understandably concerned that if defendants who are represented are not advised of the deportation consequences of pleas, defendants may be applying to the courts to set aside their pleas when they are discover that the plea will result in their deportation There is also a concern, in district court, as to defendants who are unrepresented and plead guilty.

The Court proposed two alternative changes in ADM File No. 2010-16, Alternatives A and B, and invited comment. The CII assembled a workgroup of judges, criminal defense trial and appeal attorneys, immigration attorneys, and a prosecutor. The workgroup reviewed plea-taking provisions in other states to determine what requirements other states have in place to ensure that non-citizens are aware of the deportation consequences of pleas of guilty or nolo contendere, and discussed both Alternatives A and B proposed by the Court.

The workgroup reached a consensus as to a response to ADM File No. 2010-16: the workgroup supports the adoption of Alternative B, with certain revisions. A detailed memo is provided in these materials that includes additional rationale for the adoption of Alternative B (see, CII Proposal -- Background).

Also assembled in this PDF package is a copy of the Supreme Court ADM File No. 2010-16 and this workgroup's proposal for changes to Rule 6.302 and 6.610.

This workgroup requests the approval of the CII and the CJI to submit the following proposal to the State Bar of Michigan Board of Commissioners for consideration at their September 29, 2010 meeting.