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January 27, 2012

Mr. Corbin Davis
Clerk, Michigan Supreme Court
925 W Ottawa Street
Lansing, MI 48915

Re: ADM File No. 2010-25
Proposed Amendment of MCR 7.210

Dear Mr. Davis:

I am writing to support the proposed amendment to MCR 7.210(C), which would require trial courts to temporarily retain originals or copies of documentary, photographic, or audio exhibits that were offered or admitted at trial until the period for filing a notice of appeal expires.

The current rule, which allows for the immediate release of all exhibits from the court's possession at the end of trial and then requires their return to the court within 21 days after a notice of appeal is filed, is not sufficient. In this office's experience, the rule is rarely followed, and files are regularly received long after the 21-day period, without exhibits. Appellants seeking to perfect and review the trial court record are then required to track down these materials, often from multiple offices and agencies, months and sometimes years after trial. Such materials are regularly transferred from the trial court to the prosecutor, to the police agency, and sometimes between various individuals within that agency, adding layers of possession and bureaucracy to the gathering process. Frequently, inquiries into the whereabouts of exhibits are redirected several times between these entities, and in some cases, back to the prosecutor's office. In some cases, we meet less-than-ideal cooperation or enthusiasm from the various actors along the chain of custody, further delaying the process. On occasion, this has required the filing, or the threat of filing, a motion to compel production.

January 27, 2012

Page two

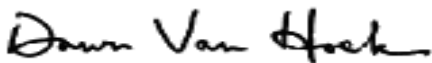
The better practice is to treat most trial exhibits for what they are – essential parts of the official record, just like any other item that has been filed in the trial court. A rule or practice that allows for the release from the court of other materials, such as motions and briefs, orders, written jury instructions, written jury questions, and the like would be unheard of and undesirable for many obvious reasons. The proposed rule change would simply require courts of record to retain important materials that are part of their record so that they are more easily available to the Court of Appeals and the parties in the event an appeal is taken.

Contrary to the concerns expressed by some, the proposed rule change does not require trial courts to become a permanent or even long term “repository” of any and all exhibits, regardless of their form. Rather, the time of retention is limited by either the commencement of an appeal or the mandatory time limit for filing a notice of appeal. In the majority of cases where no appeal is taken, exhibits may be released to the parties upon the expiration of the time for filing a notice of appeal, or 42 days from sentencing in criminal cases. If a case is appealed, trial courts may send exhibits to the Court of Appeals in accordance with MCR 7.210(G), which remains unchanged by this proposal.

Nor would the new rule threaten to create significant space or logistical problems with the tracking, storing, or preserving, of cumbersome, fragile, or hazardous materials. Rather, the new rule would only require that originals or copies of “documentary photographic or audio exhibits” be temporarily retained. Other items that were admitted at trial, such as money, drugs, guns, clothing, or biological material, may be released to the parties, just as they are now, with the proviso that parties may have access to them with permission from the court.

In summary, the proposed rule change not only recognizes that exhibits are part of the court record, but it addresses a deficiency in the current rule and practice, thus speeding the perfection of records on appeal as well as parties’ ability to have a record of sufficient completeness. I urge the Court to adopt this amendment.

Sincerely,

A handwritten signature in black ink that reads "Dawn Van Hoek". The signature is written in a cursive style with a large, stylized 'D' and 'H'.

Dawn Van Hoek
Director