Randy E. Davidson
3300 Penobscot Building
645 Griswold
Detroit, MI 48226

May 8, 2002

Mr. Corbin Davis, Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: Proposed Amendments to MCR 7.302 and MCR 7.316
Files 1999-50 and 2000-27

Dear Mr. Davis:

The Court should *not* adopt the proposal to reduce the time for filing applications for leave to appeal to the Court from 56 days to 42 days.

Many of the applications filed in the Court are from indigent defendants in criminal cases. Assigned counsel is not required to file an application for leave to appeal following a loss in the Court of Appeals. See MCR 6.425(F)(1)(c); Administrative Order 1981-7, Standard 18, Commission Comment. Many of the applications are filed *in pro per*. Incarcerated clients cannot guarantee they will receive timely notice that they have lost their appeals. They have to rely on notice from appellate counsel, which has built-in delays beginning with counsel receiving the Court of Appeals opinion through the U.S. mail, and continuing with the turn-around time to re-mail the opinion to the client. Even when timely notice is sent, incoming mail is often delayed for inspection. Incarcerated clients have limited access to prison law libraries and photocopy machines. Unlike the Federal courts, this Court does not recognize the "mailbox rule", so clients must mail their pleadings early enough to actually reach the Court by the deadline. Compare, F R App P 25(a)(2)(B); US Sup Ct R 29. Reducing the time to seek review can only work to deny access to the courts for more clients, at least some of whom will have meritorious grounds for appeal. Failure to file an application for leave to appeal in this Court may also foreclose Federal habeas review of otherwise meritorious issues. *O'Sullivan v Boerckel*, 526 US 838; 119 S Ct 1728; 144 L Ed 2d 1 (1999).

Speedy resolution of cases and finality of judgments is important. But the Court should not lose sight of the institutional difficulties facing many litigants. As a benchmark, US Sup Ct R 13 allows 90 days to file a petition for a writ of certiorari, with an additional 60-day extension for good cause.

Finally, the proposal stating that the Court will not entertain a motion to file a late application ignores the fact that exceptional circumstances may warrant relief. See, e.g., *Graves v Court of Appeals*, 431 Mich 1202 (1988), *Keen v Thumb Correctional Facility Warden*, 444 Mich 871 (1993).

Sincerely,

Randy E. Davidson

cc: James R. Neuhard
Norris J. Thomas, Jr.
Terence R. Flanagan

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CORBIN R. DAVIS
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