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January 2, 2020

Ms. Anne M. Boomer
Administrative Counsel, Michigan Supreme Court
Michigan Hall of Justice
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2014-46, Proposed Amendment of MCR 6.508

Dear Ms. Boomer:

On behalf of the State Appellate Defender Office and its Court Rules Committee, I am writing to express concerns with the language provided under Alternative B in the Court's September 18, 2019 Order regarding this proposal.

While the language in Alternative A is consistent with the Court's opinion in *People v Johnson*, 502 Mich 541, 577 n 17 (2018), the innocence standard in Alternative B—requiring the defendant to demonstrate “a *strong likelihood* of actual innocence” (emphasis added)—appears untethered to existing standards. Specifically, MCR 6.508(D)(3)(b) allows courts to “waive the ‘good cause’ requirement of subrule (D)(3)(a) if it concludes that there is a *significant possibility* that the defendant is innocent of the crime.” (Emphasis added.) We are concerned that the proposed heightened innocence standard would sow confusion and inconsistency in the law and create an unnecessarily difficult burden for defendants to satisfy. We therefore oppose incorporation of the “strong likelihood” innocence standard into MCR 6.508(D)(2).

SADO supports the proposal by the State Bar of Michigan, which would combine Alternative A and Alternative B, but replace “strong likelihood of actual innocence” with “significant possibility of actual innocence.”

Thank you for your consideration, and please do not hesitate to contact me if you have any questions.

Sincerely,

s/ Bradley R. Hall
MAACS Administrator
Chair, SADO Court Rules Committee