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April 9, 2019

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

Re: ADM File No. 2018-25, Proposed Amendment of MCR 7.312

Dear Mr. Royster:

On behalf of the State Appellate Defender Office (SADO) and the Michigan Appellate Assigned Counsel System (MAACS), I am writing to support components of the proposal to amend MCR 7.312 so that so-called “MOAA” cases are handled more like leave granted cases.

The proposed new Section K provides that “parties should focus their argument on the merits of the case, and not just on whether the Court should grant leave” in arguing MOAA cases. This is a sound addition to the rule which clarifies what the Court is actually looking for in MOAA cases. It makes sense to memorialize this in the rule’s language so that all members of the bar are best prepared to assist the Court in making sound and just decisions.

We appreciate Justice Viviano’s concern over MOAAs becoming more like leave grant cases. We do, however, see much value in retaining MOAAs in their current form in addition to retaining the traditional leave-grant procedure. An extraordinary number of leave applications the Court receives are from criminal appellants. Having a simpler, less time-consuming avenue of review available gives those parties – most of whom are incarcerated and poor – a better chance at having their cases examined at a level beyond the commissioners’ reports or the Court’s weekly conferences than the all-or-nothing scenario that previously existed. It gives the Court greater flexibility to order peremptory and more discreet forms of relief in individual cases, despite that the Court is not an error-correcting body. And it provides counsel better and more opportunities to educate and enlighten the justices regarding recurring problems and trends within the system. On balance, the Court, the parties, and the system have benefited from the MOAA procedure.

The Court proposes that parties in MOAA cases be required to file appendices in the same manner as leave-granted cases. This too appears to harmonize the rules with current practices, as the Court's recent MOAA orders have required parties to follow MCR 7.312(D)(2). We do not object to this change but suggest the rule could more clearly state that hard copies of appendices need not be submitted if filed electronically. This appears to be the Court's intent, as reflected in the proposed change to MCR 7.312(D)(1), which reads, "[i]f submitted in hard copy, appendixes must be printed on both sides of the page. . . ." The absence of similar language in the proposed Subsection (D)(2) creates potential ambiguity. To be consistent with Subsection (D)(1), we propose amending Subsection (D)(2) so that the first two sentences would read:

"The appellant must file an appendix in calendar cases and in cases to be argued on the application. **If submitted in hard copy, the appendix must be separately bound.** . . ."

Thank you for considering this input, and please do not hesitate to contact me if you have any questions.

Sincerely,



Michael L. Mittlestat  
Deputy Director