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January 31, 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. 2018-34, Proposed Amendment of MCR 6.425

Dear Ms. Boomer:

The State Appellate Defender Office (SADO) and Michigan Appellate Assigned Counsel System (MAACS) support the proposed amendment to MCR 6.425(G)(1)(d), which would help ensure an opportunity for appellate review of a trial court's decision to deny the appointment of appellate counsel. As the proposal seems to recognize, an indigent defendant whose request for counsel has been denied obviously lacks counsel to appeal that denial. At the very least, the defendant should be informed of the right to seek appellate review and provided guidance about the mechanism to do so.

A real-world example demonstrates why this amendment is necessary. Recently, MAACS received a letter from an indigent criminal defendant who had been denied the appointment of appellate counsel because she had "not disclosed reasons for the appeal." We appealed on her behalf and the Court of Appeals peremptorily reversed the trial court's "constitutionally infirm decision" and remanded for the appointment of counsel. *People v Beauvais*, unpublished order of the Court of Appeals, entered July 23, 2019 (Docket No. 349814). While the outcome was appropriate, the trial court's decision may have gone unchecked if this defendant had not written our office to request help. We hope such situations are rare, but this case underscores the importance of giving unrepresented indigent defendants the advice and tools they need to seek appellate review.

With this amendment, we envision modifications to the denial of counsel form (SCAO form CC402), which could automatically inform defendants of their right to file an application for leave to appeal from the denial of counsel, in addition to an application or claim of appeal from the underlying judgment of sentence. It may also be appropriate to create a simple new application form designed specifically for appeals from the denial of appellate counsel, which could be provided to unrepresented defendants along with the order denying counsel.

Finally, we understand that the Court of Appeals is concerned that the phrase “the right to seek appellate review” may be misunderstood to mean that a defendant is entitled to an appeal of right from the denial of appellate counsel. While we do not read the proposal to suggest an expansion of existing jurisdiction, we have no objection to alternate language that would make clearer that any appeal from the denial of appellate counsel is by leave rather than by right.

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