



State Appellate Defender Office

645 Griswold, Ste. 3300, Detroit, MI 48226
(Phone) 313.256.9833 (Fax) 313.965.0372
(Client calls) 313.256.9822 www.sado.org

Jonathan Sacks
Director

Marilena David-Martin
Deputy Director

Michael L. Mittlestat
Deputy Director

Bradley R. Hall
MAACS Administrator

Kathryn R. Swedlow
MAACS Deputy Administrator

**Michigan Appellate Assigned
Counsel System (MAACS)**
200 N. Washington Sq., Ste. 250, Lansing, MI 48913
(Phone) 517.334.1200 (Fax) 517.334.1228

July 1, 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. 2019-27

Dear Ms. Boomer:

On behalf of the State Appellate Defender Office and its Court Rules Committee, I am writing in support of the proposed amendments to MCR 7.205 and other related rules surrounding applications for leave to appeal in the Court of Appeals.

These proposals are the result of a collaborative effort between SADO, the State Bar of Michigan Appellate Practice Section, and the Court of Appeals. Our impetus with these proposals was *not* to achieve substantive change, but rather to clarify and align MCR 7.205 with existing standards and expectations of appellate practice. Any minor substantive changes were deemed necessary to achieve greater clarity and consistency or ensure a more efficient appellate process.

Particularly for newer and unfamiliar appellate practitioners, the existing rule is unnecessarily confusing and riddled with landmines. When the rule is understandably misunderstood, it can mean missed jurisdictional deadlines and the loss of appellate rights. The Michigan Appellate Assigned Counsel System (MAACS), a division of SADO, is acutely aware of these problems, as it is our responsibility to admit and train dozens of new plea-appeal attorneys every year to the MAACS roster. The existing rule adds to the demands of training, oversight, and the need for reassignment and cleanup. There will always be a need for rigorous training and oversight, but appointed appellate lawyers should also be able to open a rule book and reliably determine the filing deadlines. The proposed amendments would codify existing practice and expectations in a much simpler and more straightforward manner.

In response to Judge Power's objection to the proposed MCR 6.126, this provision already appears in the Michigan Court Rules almost verbatim, albeit in an unlikely location at MCR 7.205(F)(3). The proposal moves this provision to a more intuitive location in Chapter 6, where trial judges and counsel are more likely to recognize and

follow it. The proposal eliminates the existing second sentence from MCR 7.205(F)(3) because it is redundant to MCR 7.213(C)(1) and unnecessary.

And in response to the Michigan Coalition of Family Law Appellate Attorneys (MCFLAA) and the State Bar of Michigan (SBM), we see no need for their proposed alternate language, though we also have no strong opposition. The concern expressed by MCFLAA, and apparently shared by the SBM, is that “[p]roposed MCR 7.205(A)(4)(b) could be read to require filing a delayed application with 21 days after a dismissal order for lack of jurisdiction even if the 6-month delayed appeal window **has not** expired.” But that is not how the proposal reads; MCR 7.205(A)(4)(a) and (A)(4)(b) provide two alternate deadlines within which “a delayed application for leave to appeal *may be filed . . .*” (emphasis added). The deadline under (A)(4)(b) was not intended to shorten the deadline under (A)(4)(a), and we see little risk that it would be read that way. Nevertheless, since the alternate language is consistent with the intent and meaning of the proposal, we would not strongly oppose the suggested alternate language.

We hope the Court agrees that these amendments would help clarify expectations and improve the efficiency of our appellate process. Thank you for your consideration, and please contact me if you have any questions.

Sincerely,

s/ Bradley R. Hall
MAACS Administrator