MICHIGAN LAW
UNIVERSITY OF MICHIGAN

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The Justices of the Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa St.
Lansing, MI 48915

December 31, 2020

Re: Comments on ADM File No. 2019-35 (Proposed Amendment of MCR 6.502(G))

Dear Justices:

We are the three supervising attorneys who run the Michigan Innocence Clinic at the University of Michigan Law School. We write this letter to express our strong support for this Court's September 16, 2020, proposed amendment to MCR 6.502(G). The proposed amendment would eliminate a contradiction in the 6.500 rules and would reinforce how this Court has handled MCR 6.502(G) in practice for many years.

Eliminating the last two sentences of MCR 6.502(G)(1), as the proposed amendment would do, would be an important improvement. MCR 6.502(G)(2) makes it clear that there are legitimate grounds to file a successive motion for relief from judgment. The last two sentences of MCR 6.502(G)(1), however, imply the opposite—going so far as to say that successive motions shouldn't even be accepted by the court, and their rejection may never be appealed.

The very last sentence of MCR 6.502(G)(1)—"A defendant may not appeal the denial or rejection of a successive motion"—is especially troubling and has led courts to ignore legitimate claims based on new evidence. That last sentence also makes no sense given that there are legitimate grounds, set out in MCR 6.502(G)(2), for filing a successive motion for relief from judgment. Such a blanket appellate bar can lead to manifest injustices: a defendant may have presented a viable claim based newly discovered evidence in their successive 6.500 motion, and the trial court may have simply overlooked it (or failed to understand that the claim was based on new evidence). Appellate courts must at least consider an application for leave to appeal from such a denial.

The case of Justly Johnson is an excellent example. Mr. Johnson filed a successive 6.500 motion that the trial court denied. Had this Court not accepted his application for leave to appeal that denial and remanded the case for an evidentiary hearing, *People v Johnson*, 497 Mich 897; 855 NW2d 749 (2014), Mr. Johnson might still be serving his life without parole sentence. This would have been a manifest injustice, since Mr. Johnson was presenting new evidence so strong that it ultimately convinced this Court to vacate his conviction and order a new trial. *People v Johnson*, 502 Mich 541; 918 NW2d 676 (2018). Mr. Johnson was fully exonerated in late 2018. *See* Entry for "Justly Johnson" in THE NATIONAL REGISTRY OF EXONERATIONS. *Available at*: https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5468.

In practice, this Court has usually done what it did in the *Johnson* case: where common sense and the facts of the case demand it, this Court has ignored the last sentence of MCR 6.502(G)(1) and has permitted appeals from the denial of successive motions. *See e.g. People v Manning*, 505 Mich 881; 935 NW2d 719 (2019) (accepting application for leave to appeal from denial of successive motion and ordering oral argument on the application); *People v Freeman*, 495 Mich 905; 839 NW2d 492 (2013) (accepting application for leave to appeal from denial of successive motion for relief from judgment and remanding for an evidentiary hearing).

Even though this Court has generally done the right thing and ignored the last sentence of MCR 6.502(G)(1),

that provision has sometimes been read as a complete bar on considering appeals from the denial of a successive motion. For example, in a case earlier this year, even where one panel of the Court of Appeals had granted leave to appeal the denial of a successive motion, another panel adjudicating the appeal wrote:

> There is no dispute that this is defendant's second, and thus successive, motion for relief from judgment. Thus, pursuant to the plain language of MCR 6.502(G)(1), "defendant may not appeal the denial" of that motion to this Court. Defendant's argument thus fails in this Court from the outset.

People v Calhoun, No. 346972 (Mich Ct App, June 18, 2020).

Another example comes from one of the most cited post-conviction cases to come before this Court, *People v Swain*. In 2016, after granting an application for leave to appeal and hearing oral argument, this Court vacated Ms. Swain's CSC convictions and remanded the case for a new trial. *People v Swain*, 499 Mich 920; 878 NW2d 476 (2016). The prosecution dismissed all charges against Ms. Swain the very next day and she was fully exonerated. *See* Entry for "Lorinda Swain" in THE NATIONAL REGISTRY OF EXONERATIONS. *Available at*: https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4897. Years before Ms. Swain's exoneration, the Court of Appeals had improperly rejected her appeal from a prior successive motion for relief from judgment under MCR 6.502(G)(1). *See People v Swain*, No. 261667 (Mich Ct App, May 20, 2005) ("The delayed application for leave to appeal is dismissed for lack of jurisdiction because the defendant cannot appeal the denial or rejection of a successive motion for relief from judgment. *See* MCR 6.502(G)(1).").

Indeed, this Court is often in the position of correcting on a case-by-case basis errors of the Court of Appeals stemming from the problematic final words of MCR 6.502(G)(1). *See e.g. People v Robinson*, No. 337865 at *1 (Mich Ct App, July 30, 2019) (noting that the Court of Appeals had initially denied leave to appeal "after concluding that defendant could not appeal the denial of a successive motion for relief from judgment," but this Court then reversed and remanded for consideration on leave granted). In *Robinson*, after the Court of Appeals's initial denial was reversed and that court was directed to hear the appeal, it actually ended up concluding that the trial court had abused its discretion in denying the successive 6.500 motion. *Id.*

This proposed amendment of 6.502(G) will eliminate confusion and the need for this Court to step in and correct on a case-by-case basis improper summary denials of successive motions for relief from judgment. Of course, trial courts will remain as free as ever to deny motions for relief from judgment on proper grounds, and appellate courts will retain the option to deny leave to appeal. However, they will need to do it on the merits of the case and appeal, and not based on a blanket rule that never made sense in the full context of MCR 6.500 *et seq*.

We thank the Court for considering this comment.[1]

Respectfully Submitted,

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[1] The Michigan Innocence Clinic is not an independent entity; it is a part of the University of Michigan. Because the signatories to this letter are not authorized to speak for the University, we clarify here that we have written and signed this letter in our individual capacities. Our titles and affiliation are included for identification purposes only.