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January 30, 2015

Larry S. Royster
Clerk, Michigan Supreme Court
925 W. Ottawa Street
P.O. Box 30052
Lansing, Michigan 48090

submitted via email to:
ADMcomment@courts.mi.gov

Re: ADM File No. 2013-36
Proposed Amendments would update, reorganize, and renumber the rules in Subchapter 7.300 regulating practice in the Michigan Supreme Court

Dear Mr. Royster:

I have reviewed the proposed amendments to Subchapter 7.300 and would like to expand on comments submitted by the Appellate Practice Section as to *proposed* MCR 7.305:

(F) Nonconforming Pleading.

On its own initiative or on a party's motion, the Court may order a party who filed a pleading that does not substantially comply with the requirements of this rule to file a conforming pleading within a specified time or else it may strike the nonconforming pleading. *The submission to the clerk of a nonconforming pleading does not satisfy the time limitation for filing the pleading* (emphasis added).

The emphasized language is troubling as a matter of policy and practice.

Upon receipt of an unfavorable decision from the Michigan Court of Appeals, SADO Assistant Defenders spend a considerable amount of time evaluating the merits of seeking leave to appeal in this Court and assessing other factors, including the demands of their own caseloads, before advising their clients whether any further appeal will be taken by SADO. As a practical matter, this often means that filings are submitted very close to the jurisdictional time limit for submitting an application. Any nonconforming pleadings – though obviously rare – would not

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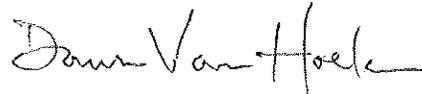
likely be able to be remedied in time to ensure a timely filing. The better practice is to allow a short but reasonable amount of time to cure defects and treat the corrected application as timely on the date originally submitted.

More often than not, SADO Assistant Defenders and MAACS Roster Attorneys do *not* seek leave to appeal an unfavorable decision from the Court of Appeals to this Court. This leaves indigent criminal defendants without representation in the Supreme Court. The risk of filing a nonconforming pleading is increased without the assistance of counsel and the rate of returned *pro se* pleadings is presumably high. My concern is that such nonconforming pleadings may be stricken even if it is generally clear from the document that the defendant has asserted a claim. United States Supreme Court precedent teaches that “a pro se complaint, ‘however inartfully pleaded,’ must be held to ‘less stringent standards than formal pleadings drafted by lawyers’ and can only be dismissed for failure to state a claim if it appears ‘beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) quoting *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972) (additional internal citations omitted).

I ask that the emphasized language (“The submission to the clerk of a nonconforming pleading does not satisfy the time limitation for filing the pleading”) be removed from proposed MCR 7.305(F). The language would only serve to frustrate access to the courts for compliance violations that are unrelated to the merits of the underlying claims.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dawn Van Hoek". The signature is written in black ink and is positioned above the typed name and title.

Dawn Van Hoek
Appellate Defender
State Appellate Defender Office