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March 18, 2016

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

re: ADM File 2015-12

*Proposed Amendment of 3.605, 3.606, 3.928, 3.944, 3.956, 6.001
6.425, 6.610, 6.933 of the Michigan Court Rules*

Dear Mr. Royster:

On behalf of the Criminal Defense Attorneys of Michigan, I write in support of the proposed amendments referenced above. Our members regularly, indeed routinely, represent persons convicted of criminal offenses who are indigent or near indigent, and see the devastation caused to these people and their families when they are incarcerated for failing to pay court assessments. Certainly, court orders should be respected and complied with, but when it is not humanly possible for a defendant to pay an assessment because that person is poor society must excuse the default, as the United States Supreme Court has recognized. Accordingly, CDAM echoes the sentiments expressed by other commenters, especially those of the ACLU of Michigan, the State Appellate Defender Office, and the Michigan District Judges Association, in urging adoption of the reforms and guidance embodied in the proposed amendments.

The suggestion has been made that the Court modify the proposed court amendments to place the burden of proof upon the defendant to demonstrate inability to pay, and for the standard of proof to be "clear and convincing" evidence. We oppose this suggestion. Usually this issue arises as a complaint for violation of probation, where payment of the assessment is a condition of that probation. Other times, it is treated similarly to a contempt of court. In either context, and in every other context with which this writer is familiar where incarceration may be imposed, the burden of proof is on the state to make the case for imposition of that penalty. It should be no different

here. Once a defendant interposes the defense of inability to pay, the state should bear the burden to demonstrate the defendant's ability to pay without manifest hardship and failure to make a good faith effort to do so.

Another suggestion has been made to include in proposed MCR 6.425(E)(3) an explicit authorization for a court to permit community service or similar alternative in lieu of payment of the financial assessment. We support that suggestion. Many of us have experience with some courts that provide this option already with respect to local assessments (not mandatory state assessments), and to good effect.

As always, we appreciate the opportunity to provide this comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'John A. Shea', with a long horizontal flourish extending to the right.

John A. Shea, Co-Chair
Rules and Laws Committee
Criminal Defense Attorneys of
Michigan