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June 29, 2016

Mr. Larry S. Royster, Clerk
Michigan Supreme Court
925 West Ottawa Street
Lansing, MI 48915

Re: ADM File No. 2013-18

Dear Mr. Royster:

The State Appellate Defender Office supports amending MCR 6.006(C)(2) and the related rules in accordance with Alternate Proposal B. This amendment would allow defendants at criminal trials to present witness testimony via video. If the prosecution objects, the trial court must weigh a number of factors to determine whether each party's rights can be adequately protected if the video testimony is permitted.

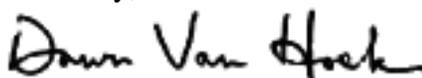
The proposed rule change will help ease the burdens defendants face in mounting an effective defense using fact and expert witnesses who may not otherwise be able to testify due to the expense and hardship of travelling to court for trial. Ultimately, this advances the truth-seeking function of criminal trials.

Furthermore, the rule change will save cash-strapped counties a lot of money. Courts are obligated to provide public funds for indigent defendants to retain expert witnesses upon a showing of necessity. See *People v Agar*, 2016 WL 399933 (2/6/16) (holding that the court deprived defendant of his right to represent a defense by refusing to authorize expert witness funds). Expert witnesses can be very expensive, as many charge upwards of \$400-\$500 per hour plus travel expenses to testify in court. Video technology allows these witnesses to testify from close to home, often from their own office as SADO attorneys have observed from utilizing this tool in post-conviction proceedings. Expanding this tool in the trial setting will thus significantly reduce costs and remove financial disincentives to the granting of expert witness funds.

While it may seem inequitable to allow video testimony over the prosecution's objection, it is important to bear in mind that, unlike defendants, prosecutors have no corresponding constitutional right to confront witnesses face-to-face. See *Maryland v Craig*, 497 US 836 (1990) (allowing exception to face-to-face confrontation by defendants only when “necessary to further an important public policy” and “only when the reliability of the testimony is otherwise assured.”) And prosecutors will still have the opportunity to challenge witnesses under the proposed rule change. Unlike the dry preliminary examination transcripts that are routinely admitted against defendants at trial, see e.g., *People v Sardy*, 2015 WL 9485072 (12/29/15); MRE 804(a)-(b)(1), a witness appearing via video can be cross examined in real time before the factfinder, and technological advances have significantly enhanced the ability to observe demeanor and evaluate credibility. *Craig*, 497 US at 845-846 (reliability of video testimony is assured by: (1) the taking of an oath, (2) the availability of cross-examination, and (3) the observation of the witness by the jury.) And judges still retain discretion to deny video testimony if they determine, after weighing the factors set forth in proposed MCR 6.006(C)(2)(a) through (f), that the interest of justice will not be served by allowing a defense witness to testify by video.

In summary, Alternate Proposal B of the proposed amendment to MCR 6.006(C)(2) strikes the appropriate balance by bolstering the accused's right to present often costly expert witness testimony while protecting prosecutors' right to effectively challenge such testimony in court.

Sincerely,

A handwritten signature in black ink that reads "Dawn Van Hoek". The signature is written in a cursive, slightly slanted style.

Dawn Van Hoek
Director

DVH/was