

# STATE APPELLATE DEFENDER OFFICE

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March 7, 2016

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

Re: Proposed New Rules 3.605, 3.606, 3.928, 3.944, 3.956, 6.001, 6.425, 6.6.445, 6.610, and  
6.933 of the Michigan Court Rules  
ADM File No. 2015-12

Dear Mr. Royster:

The Court should adopt the proposed rules that require courts to assess a defendant's ability to pay before imposing incarceration as a penalty for failing to pay legal financial obligations. We at SADO routinely witness indigent clients who are virtually buried in onerous fines, fees, and costs, a financial burden that increases exponentially by the imposition of draconian late fees and interest. Such burdens are imposed now with little or no up-front inquiry into the defendant's current ability to pay, despite a readily-apparent indigency. The proposed rules are vitally necessary to ensure that no defendant is incarcerated due to his or her poverty – a practice that was formally abolished long ago in our country.

While SADO strongly supports the proposals, we also suggest an additional modification to ensure that defendants appealing a sentence of incarceration for failure to comply with an order to pay money are not forced to serve that sentence before their appeal can be heard.

In addition to the proposed rules, SADO suggests an additional modification to MCR 7.108, as follows:

Rule 7.108 Stay of Proceedings; Bond; Review

(A)-(B) [Unchanged.]

(C) Criminal Cases.

(1) *Immediate Effect.* A criminal judgment may be executed immediately even though the time for taking an appeal has not elapsed, unless the sentence is incarceration for failure to comply with an order to pay money. A sentence of incarceration for failure to comply with an order to pay money shall not be executed until expiration of the time for taking an appeal of right. An appeal from such an order shall further stay execution pending disposition of the appeal. The granting of bond and its amount are within the discretion of

the trial court, subject to the applicable laws and rules on bonds pending appeals in criminal cases, provided further that the court shall not require payment of money into court or execution of a bond by a surety as a condition to appeal a sentence of incarceration for failure to comply with an order to pay money.

(2)-(3)[Unchanged.]

(D)-(E) [Unchanged].

As appellate specialists, we often see egregious injustices that cannot be remedied, simply because they have been rendered moot by the defendant's release from custody. The appellate process simply works too slowly in some cases to operate as a safeguard against errors such as the jailing of individuals because they are unable to pay their fines, fees, or costs. Many such individuals are sentenced to days or weeks in jail as a sanction, while appellate review of the judge's ability-to-pay determination can take months to complete. By that time, the damage has been done.

Our proposed rule change accounts for this and ensures that there will be meaningful review of ability-to-pay determinations and meaningful relief granted where the trial judge erred in imposing jail or prison sanctions. In short, we feel that our proposal is needed to give meaning and effect to the other proposed rules that require an ability-to-pay determination before sanctions are imposed for non-payment.

We applaud the steps the Court is taking to ensure that the Michigan Court Rules protect the Federal and State constitutional rights of all defendants regardless of financial means.

Sincerely,



Dawn Van Hoek  
Director

DVH/svn