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March 11, 2024

Justices of the Michigan Supreme Court
Hall of Justice
P.O. Box 30052
Lansing, MI 48909

ADM File No. 2023-36

Honorable Justices,

We write in support of the proposed changes to MCRs 3.937, 3.950, 3.955, 3.993, and 6.931. The State Appellate Defender Office (SADO) supports these new rules implementing the amendments to the Appellate Defender Act and expanding opportunities for children to request the appointment of appellate counsel.

Public Act 299 of 2023 includes the first substantive amendments to the Appellate Defender Act since it was originally enacted in the 1970s. As amended, youth defense is integrated into the mandate of SADO and the Michigan Appellate Assigned Counsel System (MAACS). Starting October 1, 2024, all requests for the appointment of appellate counsel in delinquency, designation, and waiver proceedings in juvenile court will go MAACS for the assignment of counsel, and SADO attorneys will represent some youth on such appeals. The creation of a uniform system for assigning counsel is great progress for youth wanting to appeal decisions of the trial courts.

The main part of ADM File No 2023-36 is the addition of MCR 3.993(D)(5) and references to it. Subrule (D)(5) creates a procedure for assigning appellate counsel for youth which is nearly identical to the procedure for assigning counsel in felony appeals for adults under MCR 6.425(G). By adopting the same procedure for youth appeals, the assignment process will be efficient and reliable, rather than deferring to the hodgepodge of systems throughout the state which are currently utilized.

This ADM includes one other important proposal which was not part of the Appellate Defender Act amendments. Under MCR 3.993(D)(2), a court must appoint appellate counsel for an indigent respondent (in both delinquency and child protective proceedings) if the respondent requests appellate counsel within 6 months of entry of the order to be appealed. This follows the adoption of MCR 6.425(H), which requires

that courts appoint counsel if the request for counsel form is received within 6 months after sentencing.

In addition to the new procedure for appointing counsel in delinquency proceedings, we support extending the time for requesting appellate counsel to 6 months to match the criminal rules. Currently, youth are only guaranteed counsel if they file a request within 21 days of the order, and then only if the order is one which is appealable by right. Trial courts have discretion to deny a request for appellate counsel for any appeal which is an application or delayed application for leave to appeal. Making the change to require appointment of counsel so long as an appeal is available will help protect youth by limiting the discretion of courts to deny requests for counsel and by ensuring that young people have access to counsel even if the appeal is an application and not by right.

Accordingly, SADO supports ADM File No 2023-36 and urges this Court to adopt it in full. We thank you for your consideration.

Respectfully,

Joshua Pease
Youth Defense Project Director

SADO/MAACS Court Rules and Legislation Committee

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