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Date: 12/18/2024

ADM File Number: 2022-57

Comment:

I strongly support the proposed amendments in ADM File No. 2022-57.

When a motion for relief from judgment is filed in trial court, it often includes more than one claim, and trial courts frequently deny some claims while setting some claims for an evidentiary hearing. It would not make sense (in terms of practicality and resource conservation) to require that the defendant file a leave application to the Court of Appeals on the denied claims even while an evidentiary hearing is proceeding on some of the other claims. This would be an invitation to chaos, and thankfully it has not been the norm in our state. However, given that the Court of Appeals has recently taken action that muddies up this issue (see COA Docket No. 363001, *People v Kennedy*), it is vital that this Court pass the proposed amendment in ADM File No. 2022-57.

Mr. Kennedy (for whom I am counsel) filed a motion for relief from judgment in which he made claims under Strickland, Brady and Cress. The trial court denied the Strickland and Brady claims without a hearing, but set an evidentiary hearing on the Cress claims. It took about a year to have the hearing and get a decision from the trial court on the Cress claims, which was a denial of relief. Mr. Kennedy then moved for leave to appeal the denials of his Strickland, Brady and Cress claims in the Court of Appeals. He did so within six months of the final decision from the trial court (which denied the Cress claims and denied the overall motion for relief from judgment, given that there were no additional claims left), though obviously it had been more than six months since the denial of the Strickland and Brady claims.

The Court of Appeals inexplicably held that the Strickland and Brady claims could not be considered on appeal because they had been denied more than six months before the leave application was filed. However, Mr. Kennedy had filed his leave application within six months of the final trial court order denying his motion for relief from judgment, and logically, that leave application included all the claims that had been presented to the trial court in the motion for relief from judgment.

Had the court rule amendment proposed in ADM File No. 2022-57 been in place prior to Mr. Kennedy's appeal, all this confusion could have been avoided. Mr. Kennedy proceeded in the way that has always been the one that makes implicit sense—given that there seems no good reason to require litigants to simultaneously litigate an interlocutory appeal on the denied claims while an evidentiary hearing is happening on the other claims in trial court. I strongly support adopting the amendment proposed in ADM File No. 2022-57 so that the implicitly sensible position becomes more explicitly stated in our court rules.

Thank you,

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*This Comment is made in my individual capacity, with institutional affiliation provided for identification purposes only.