

**Report on Public Policy Position****Name of committee:**

Criminal Jurisprudence & Practice Committee

**Contact persons:**

Hon. David Hoort  
Gretchen Schlaff

**E-mail:**

Hon. David Hoort - dhoort@ioniacounty.org  
Gretchen Schlaff - Gretchen.Schlaff@macombcountymi.gov

**Proposed Court Rule Amendment:**

[2008-25 Proposed Amendment of Rule 6.433 of the Michigan Court Rules](#)

This proposal would insert a “good cause” provision into MCR 6.433 to require a defendant in postconviction proceedings to show good cause to obtain a second set of court documents. This amendment would mirror the good-cause provision in MCR 6.433(B)(2) for appeals by leave.

**Date position was adopted:**

January 22, 2010

**Process used to take the ideological position:**

Position adopted after an electronic discussion and vote.

**Number of members in the decision-making body:**

19

**Number who voted in favor and opposed to the position:**

14 Voted for position  
1 Voted against position  
4 Did not vote

**Position:**

Support

**Explanation of the position, including any recommended amendments:**

The committee supports the proposed amendment to MCR 6.433 as set forth in ADM File NO. 2008-25.

Subrule (C) deals with defendants who are not eligible to appeal by right or to apply for leave to appeal. Such defendants have more restricted rights to documents. There is a threshold requirement that the documents are not otherwise available to the defendant. If that standard is met, documents or transcripts that had been filed with the court are to be supplied to the defendant. The court has discretion as to whether to order transcription of additional proceedings on a finding of good cause.

The current version of MCR 6.433(C) requires a showing that the documents and transcripts **“are not otherwise available to the defendant”**, and then the defendant gets his or her free copy. If the defendant has already received the first copy of the documents and transcripts, then the documents would be “otherwise available to the defendant”. It appears that the addition of this “good cause” language in the proposed amendment, would expand the rights of the defendant to get a second free copy if they show good cause. Under the current subrule (C), the court could deny defendant’s request without even having to conduct a good cause inquiry. The court can just rule that the first set of copies given to the defendant means that they are “otherwise available to the defendant”. This amendment would allow the defendant to at least present facts as to why he or she should be given a second free copy.

**The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.**

<http://courts.michigan.gov/supremecourt/Resources/Administrative/2008-25-Order.pdf>