

# Order

**Michigan Supreme Court  
Lansing, Michigan**

September 28, 2011

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2010-15

Michael F. Cavanagh  
Marilyn Kelly

Proposed Amendment of  
Rule 6.005 of the  
Michigan Court Rules

Stephen J. Markman  
Diane M. Hathaway  
Mary Beth Kelly  
Brian K. Zahra,  
Justices

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On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.005 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [www.courts.mi.gov/supremecourt/resources/administrative/ph.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/ph.htm).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 6.005 Right to Assistance of Lawyer; Advice; Appointment for Indigents;  
Waiver; Joint Representation; Grand Jury Proceedings

(A)-(G)[Unchanged.]

(H) Scope of Trial Lawyer's Responsibilities. The responsibilities of the trial lawyer who represents the defendant include:

- (1) representing the defendant in all trial court proceedings through initial sentencing,
- (2) filing of interlocutory appeals the lawyer deems appropriate, and
- (3) responding to any preconviction appeals by the prosecutor. The defendant's lawyer must either:

- (i) file a substantive brief in response to a prosecutor's interlocutory application for leave to appeal, or
  - (ii) notify the Court of Appeals that the lawyer will not be filing a brief in response to the application.
- (4) Unless an appellate lawyer has been appointed or retained, or if retained trial counsel withdraws, the trial lawyer who represents the defendant is responsible for filing postconviction motions the lawyer deems appropriate, including motions for new trial, for a directed verdict of acquittal, to withdraw plea, or for resentencing, and-
- (5) when an appellate lawyer has been appointed or retained, promptly making the defendant's file, including all discovery material obtained, available for copying upon request of that lawyer. The trial lawyer must retain the materials in the defendant's file for at least five years after the case is disposed in the trial court.
- (I) [Unchanged.]

Staff Comment: This proposed amendment would clarify that trial counsel is required to make a defendant's file available to an appellate lawyer, and would be required to retain the file for at least five years. This file was prompted by reports of appellate counsel having difficulty obtaining trial materials (especially video or audio materials that were not transcribed as part of the transcript). The five-year period mirrors the five-year retention period contained in MRPC 1.15(b)(2).

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2012, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2010-15. Your comments and the comments of others will be posted at [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm).



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 28, 2011

*Corbin R. Davis*  
Clerk