

# STATE APPELLATE DEFENDER OFFICE

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December 20, 2011

Mr. Corbin Davis  
Clerk, Michigan Supreme Court  
925 W Ottawa Street  
Lansing, MI 48915

Re: Admin File 2010-15  
Proposed Amendment of MCR 6.005

Dear Mr. Davis:

I write in support of the proposed amendment of Michigan Court Rule 6.005 (H), which if passed, will require trial defense attorneys to keep defendants' files – including discovery – for five years following disposition at the trial court level and make them available to appellate attorneys upon request.

Our office makes every effort to obtain discovery in each of the trial-based-conviction cases for which we are appointed. Reviewing discovery in these cases is essential to adequately and effectively representing our clients on appeal. A review of the record is a wholly inadequate means of determining whether there was a *Brady* violation, ineffective assistance of counsel, newly discovered evidence, or other non-record error at trial. These issues can only be revealed through a thorough review of the entire record and discovery. Because there are no Court rules governing discovery on appeal, we typically begin our appellate representation by requesting the discovery from trial counsel. Unfortunately our efforts are often hindered by trial attorneys who either do not retain the discovery documents, or who simply do not respond to our requests.

Alternative methods of obtaining the discovery are inadequate. Incarcerated clients often cannot retain the discovery, particularly discs, and have difficulty maintaining their documents if they have been transferred between correctional facilities. Family members who store the documents for the incarcerated are often difficult to find or contact.

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Our office employs Michigan's Freedom of Information Act to obtain documents; however, this method is flawed at best. The Act requires certain information, normally discoverable, to be redacted from the documents. Each jurisdiction applies the Act differently, often denying the request, resulting in written appeals and delays. Some agencies and law departments are so completely overwhelmed by the number of requests they receive under the Act, they fail altogether to respond to them.

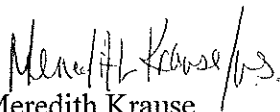
In order to establish a consistent and reliable method for obtaining the necessary discovery at the appellate level, our office asks that the Michigan Supreme Court adopt the amendment to Michigan Court Rule 6.005(H).

Thanks for your consideration.

Sincerely,



Dawn Van Hoek  
Director



Meredith Krause  
Prescreening Attorney