

## **MCR 6.610 (F) PRESENTENCE REPORT DISTRICT COURT: ADDING INFORMATION TO; ADJOURNMENT ALLOWED WHEN NOT TIMELY SUBMITTED BEFORE SENTENCING**

### **Issue**

Should the Representative Assembly recommend that the Michigan Supreme Court amend MCR 6.610(F) of the Criminal Procedure to allow for an adjournment of sentencing if a presentence report was prepared but is not timely presented to a defendant or the defendant's lawyer to allow for the submission of corrections, additions or deletions to the presentence report, as follows:

(F) Sentencing.

(1) ~~At the~~ For sentencing, the court shall:

(a) require the presence of the defendant's attorney, unless the defendant does not have one or has waived the attorney's presence;

(b) give the defendant's attorney or, if the defendant is not represented by an attorney, the defendant an opportunity to review the presentence report, if any, and to advise the court of circumstances the defendant believes should be considered in imposing sentence; ~~and~~

(c) inform the defendant of credit to be given for time served, if any; ~~and~~

(d) if a presentence report was prepared, the court must provide copies of the presentence report to the prosecutor, and the defendant's lawyer (or the defendant if not represented by a lawyer) at a reasonable time, but not less than two business days, before the day of sentencing. The prosecutor and the defendant's lawyer (or the defendant if not represented by a lawyer) may retain their copies for their records. If the presentence report is not made available to the defendant's lawyer (or the defendant if not represented by a lawyer) at least two business days before the day of sentencing, the defendant's lawyer (or the defendant if not represented by a lawyer) shall be entitled, on oral motion, to an adjournment to enable the defendant's lawyer (or the defendant if not represented by a lawyer) to review the presentence report and to prepare any necessary corrections, additions or deletions to present to the court. The presentence report shall not include the following information about any victim or witness: home address, home telephone number, work address, work telephone number, or any other information prohibited from disclosure pursuant to MCL 780.751 et seq., unless an address is used to identify the place of the crime.

### **Synopsis**

This change in the rule would provide that both the defendant and defense counsel have adequate opportunity to review, and to correct, add or delete information, and to allow for an adjournment in the event the presentence report is not timely submitted to the defendant's lawyer or the defendant, if not represented by a lawyer.

## **Background**

At the Representative Assembly's April 12, 2008 meeting, the Assembly referred a matter concerning MCR 6.425 to the Special Issues Committee for review and a recommendation. While the Committee made a recommendation about amendment of MCR 6.425, there are other Rules pertaining to presentence reports: MCR 6.610 (District Court sentencing) and MCR 6.931 (Juvenile sentencing). The Committee did not make a recommendation about these Rules that implicate similar procedural concerns. MCR 6.931 does cite statutory provisions about the sentencing court providing for an adjournment to allow for time to correct a presentence report. So, an amendment of that Rule does not appear to be necessary. On the other hand, MCR 6.610 is comparable to MCR 6.425. Presently, that Rule does not require the sentencing court to provide a defendant or the defendant's lawyer with an advance copy of the presentence report, if one was prepared, to review for errors. This proposal is to provide for procedural consistency with regard to sentencing and presentence report issues.

## **REPORT**

Please refer to the Special Issues Committee Report for MCR 6.425(B).

## **Opposition**

None known.

## **Prior Action by Representative Assembly**

None known.

## **Fiscal and Staffing Impact on State Bar of Michigan**

None known.

## **STATE BAR OF MICHIGAN POSITION By vote of the Representative Assembly on September 18, 2008**

Should the Representative Assembly recommend the Michigan Supreme Court amend MCR 6.610(F) as proposed to allow for an adjournment of sentencing if the presentence report is not timely submitted and to allow for the submission of corrections, additions or deletions to the presentence report?

(a) Yes

or

(b) No