

MCR 6.425(B) PRESENTENCE REPORT: ADDING INFORMATION TO; ADJOURNMENT ALLOWED WHEN NOT TIMELY SUBMITTED BEFORE SENTENCING

Issue

Should the Representative Assembly recommend that the Michigan Supreme Court amend MCR 6.425(B) of the Criminal Procedure 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, as follows:

RULE 6.425(B) SENTENCING; APPOINTMENT OF APPELLATE COUNSEL

(B) Presentence Report; Disclosure Before Sentencing. 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 of the day of sentencing 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, or work telephone number, unless an address is used to identify the place of the crime. The court may exempt from disclosure information or diagnostic opinion that might seriously disrupt a program of rehabilitation and sources of information that have been obtained on a promise of confidentiality. When part of the report is not disclosed, the court must inform the parties that information has not been disclosed and state on the record the reasons for nondisclosure. To the extent it can do so without defeating the purpose of nondisclosure, the court also must provide the parties with a written or oral summary of the nondisclosed information and give them an opportunity to comment on it. The court must have the information exempted from disclosure specifically noted in the report. The court's decision to exempt part of the report from disclosure is subject to appellate review.

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 two matters to the Special Issues Committee for review and a recommendation. The first concerned amendment of MCR 6.201 (preservation of evidence); the second was with respect to amendment of MCR 6.425(B) (presentence reports for felony sentencing).

An ad hoc committee was organized that was comprised of members of the Special Issues Committee and delegates from other entities, e.g., Criminal Law Section, Criminal Jurisprudence, and Prisons & Corrections. Ad hoc committee members invited to participate included: Mark Boonstra, Kim Eddie, Gordon Gold, John Hammond, C.J. Horkey, Wally Kent, Marty Krohner, Mike McClory, David Perkins, Paul Raine, Ron Foster, Richard Stapleton, and Stephen Taratuta. As Chair of Special Issues, I [Stephen Gobbo] am indebted to these individuals for taking the time to assist the Committee in its deliberations though not all the members were able to participate during meetings.

REPORT

- 1) The ad hoc committee reached consensus about amendment of MCR 6.201 (preservation of evidence) and chose not to make any recommendation to amend this Rule.
- 2) (a) The ad hoc committee reached consensus about amendment of MCR 6.425(B) (presentence reports for felony sentencing) and recommended the amendatory language as indicated in this proposal.

(b) It is noted that there are two other Rules that involve sentencing and use of presentence reports. One is for District Court sentencing (MCR 6.610); the other for Juvenile sentencing (MCR 6.931). The ad hoc committee did not make a recommendation about either of these other two Rules, but they are submitted to the Representative Assembly for its consideration. The Special Issues Committee, however, would like to draw the attention of the Representative Assembly to the following: MCR 6.931 refers back to specific statutory provisions, which appear to sufficiently address procedural concerns. On the other hand, MCR 6.610, though worded differently than MCR 6.425(B), may result in similar concerns as those giving rise to the referral to the Special Issues Committee. It is, however, noted that amendment of MCR 6.610 should be balanced against the impact on the timely administration of justice given the volume of District Court cases and the fact a presentence report may not be prepared in every case. For discussion purposes only, the proposal before the Representative Assembly is illustrative of one way to amend MCR 6.610(F) to conform to the proposed amendment of 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 6.425(B) 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