

PRELIMINARY EXAMINATION COURT RULE

Issue

Should the Representative Assembly request that the Michigan Supreme Court amend MCR 6.110(C) to mirror MCL 766.12 and set forth the protections for criminal defendants?

RESOLVED, that the State Bar of Michigan supports amendment of the Michigan Court Rules to mirror the protections for criminal defendants set forth in MCL 766.12.

FURTHER RESOLVED, that the State Bar of Michigan proposes the amendment to Chapter 6 of the Michigan Court Rules by amending MCR 6.110(C) as follows:

Conduct of Examination. A verbatim record must be made of the preliminary examination. ~~Each party may subpoena witnesses.~~ The Court shall allow the prosecutor and the defendant to subpoena and call witnesses, offer proofs, and examine and cross-examine witnesses at the preliminary examination. The court must conduct the examination in accordance with the Michigan Rules of Evidence.

Synopsis

The proposed addition to the Michigan Court Rules ensures and clarifies a criminal defendant's right to call their own witnesses at a preliminary examination. As written, MCR 6.110(C) appears to be discretionary and uses the permissive "may," regarding a prosecutor's or defendant's ability to call witnesses. However, the authorizing statute, MCL 766.12, uses the mandatory "shall" when describing that right. Without the amendment, a district court judge could exercise discretion and improperly deny defense counsel's request to call witnesses. The proposed amendment eliminates this anomaly.

Background

A preliminary examination is a critical stage of the proceedings against an accused person and is a right guaranteed by the United States and Michigan Constitutions. *Coleman v Alabama*, 399 US 1, 90 SCt 1999, 26 LEd2d 397 (1970); *People v Duncan*, 388 Mich 489, 501-502 (1972). It is an evidentiary hearing in which the district court determines whether probable cause exists to believe a person has committed a felony. If the court finds probable cause to believe the defendant has committed an offense, it will bind that defendant over to the circuit court for trial. However, if the court finds that probable cause does not exist, it may dismiss the charge. Clearly, this is an incredibly important stage in the proceedings for anyone charged with a felony.

MCR 6.110 governs the conduct of preliminary examinations in district court in felony cases.

The proposed rule is based upon *People v Brown*, ___ Mich ___, issued February 7, 2020 (Docket No. 160653), which encapsulates MCL 766.12 and affirms that district court judges must permit defense counsel to call witnesses for their client's behalf.

Opposition

None known.

Prior Action by Representative Assembly (RA)

None known.

Fiscal and Staffing Impact on the State Bar of Michigan

None known.

**STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on April 25, 2020**

Should the Representative Assembly request that the Michigan Supreme Court amend MCR 6.110(C) to mirror MCL 766.12 and set forth the protections for criminal defendants?

(a) Yes

or

(b) No